

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21000

In the Matter of

**MICHAEL JAMES
FERGUSON JR. FOREIGN
PRIVATE TRUST,**

Respondent.

**THE DIVISION OF ENFORCEMENT'S MOTION
FOR ENTRY OF DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS
AGAINST RESPONDENT**

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December 15, 2022

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In accordance with the Commission’s Order to Show Cause, entered November 3, 2022 (“Order to Show Cause”), the Division of Enforcement (“Division”) respectfully submits this motion for entry of default and imposition of remedial sanctions against Respondent Michael James Ferguson Jr. Foreign Private Trust (“Respondent” or “Ferguson Trust”), pursuant to Commission Rule of Practice 155(a)(2). 17 C.F.R. § 201.155(a)(2). For the reasons set forth below, the Commission should find Respondent to be in default and revoke Respondent’s transfer agent registration.

PRELIMINARY STATEMENT

Respondent has responded to neither the Order instituting these proceedings nor the Order to Show Cause within the time allotted. Therefore, the Commission should find Ferguson Trust to be in default and, based on the Division’s allegations—all of which should be deemed true in light of the default—revoke Ferguson Trust’s transfer agent registration. Such a sanction is appropriate and in the public interest under Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) and will ensure that Ferguson Trust is not used as a vehicle to commit fraud or other securities violations in the future.

PROCEDURAL BACKGROUND: RESPONDENT’S DEFAULT

The Commission commenced this proceeding on August 25, 2022, with an Order Instituting Administrative Proceedings Pursuant to Section 17A(c) of the Securities Exchange Act of 1934 and Notice of Hearing, Exchange Act Rel. No. 95600 (Aug. 25, 2022) (“OIP”). Service was accomplished on Ferguson Trust on September 2, 2022, after the Commission sent the OIP via certified mail to the addresses listed on Ferguson Trust’s most recent registration form. *See* Decl. of Theresa H. Gue to Assist Secretary with Record of Service and to Provide

Status Report, dated Oct. 25, 2022 (“Service Decl.”) at ¶ 12; *see also* 17 C.F.R. § 201.141(a)(2)(iii).

The OIP directed Ferguson Trust to file an Answer within twenty days after service of the OIP. OIP at § IV; *see also* Rules 160(a) and 220(b) of the Commission’s Rules of Practice [17 C.F.R. §§ 201.160(a) and 201.220(b)]. Under these provisions, the Trust’s answer was due by September 22, 2022. Ferguson Trust filed no Answer or other response to the OIP. Decl. of Theresa H. Gue, dated Dec. 15, 2022 (“Gue Decl.”) at ¶ 2.

On November 3, 2022, the Commission issued the Order to Show Cause, ordering Ferguson Trust to respond by November 17, 2022. Ferguson Trust never responded to the Order to Show Cause and again failed to file an answer to the OIP with the Secretary’s Office. *Id.* at ¶ 2. Nor has Division counsel received any communication from Ferguson Trust during the pendency of this proceeding. *Id.* at ¶ 3. Indeed, the docket of this proceeding does not reflect any filing by Ferguson Trust. *Id.* at ¶ 4.

THE OIP’S ALLEGATIONS¹

Ferguson Trust has been registered as a transfer agent with the Commission since June 2019. OIP ¶ II.A.1. Ferguson Trust purports to be a “private trust organization” organized in the country of Jamaica in 2018 with its principal office in New York, New York. *Id.*

After Ferguson Trust registered with the Commission as a transfer agent, it (a) never filed required annual reports on Form TA-2, (2) never amended its Form TA-1 to update inaccurate business address information, (3) never provided the Commission with any records relating to its

¹ This section summarizes the relevant allegations in the OIP.

transfer agent activities, and (4) never permitted the Commission to inspect its books and records. *Id.* at ¶ II.B.3.

On February 16, 2022, in the civil action entitled *SEC v. Michael James Ferguson Jr. Foreign Private Trust, et al.*, No. 1:21-CV-8017, in the United States District Court for the Southern District of New York, a final default judgment was entered against Ferguson Trust. *Id.* at ¶ II.B.2. The judgment permanently enjoined Ferguson Trust from future violations of Exchange Act Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) and Rules 17Ac2-1 and 17Ac2-2 promulgated under the Exchange Act. *Id.*

ARGUMENT

I. The Commission Should Deem Ferguson Trust To Be in Default.

Rule 155(a)(2) of the Commission’s Rules of Practice provides:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the records, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: ... [t]o answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding.

17 C.F.R. § 201.155(a)(2). The OIP specifically provides that, “[i]f Respondent fails to file the directed Answer ... the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true.” OIP ¶ IV (citing Rules 155(a), 220(f), 221(f), and 310); *see also* Order to Show Cause at 2.

Rule 141(a)(2)(iii) further provides that service may be effectuated upon “a person currently registered with the Commission as a ... transfer agent by sending a copy of the order addressed to the most recent business address shown on the person’s registration form by U.S.

Postal Service certified, registered or express mail and obtaining a confirmation of attempted delivery.” 17 C.F.R. § 201.141(a)(2)(iii). The Commission sent the OIP via certified mail to the addresses listed on Ferguson Trust’s most recent registration form and obtained proof of attempted delivery on September 2, 2022. Service Decl. at ¶ 12.

Because Ferguson Trust has failed to timely respond to the OIP after having been properly served pursuant to Rule 141 and has also failed to respond to the Order to Show Cause, the Commission should deem Ferguson Trust to be in default pursuant to Rule 155(a).

II. The Commission Should Deem the Facts Alleged in the OIP To Be True.

As set forth above and in the OIP, failure to file an answer may result in the allegations of the OIP being deemed true. *See Michelle Morton*, Rel. No. 6094, 2022 WL 3587990, at *3 (Aug. 22, 2022) (“Because Morton has failed to answer or to respond to the show cause order or the Division’s motion, we find it appropriate to deem her in default and to deem the allegations of the OIP to be true.”); *Medpro Safety Prod., Inc.*, Rel. No. 87042, 2019 WL 4596705, at *2 (Sept. 20, 2019) (“We find Respondent in default and deem the OIP’s allegations against it to be true.”). In this case, the Commission should deem true the facts alleged in the OIP and described above, given Ferguson Trust’s default.

III. The Commission Should Impose the Appropriate Remedial Sanction in this Case: Revocation of Ferguson Trust’s Transfer Agent Registration.

Under the Exchange Act, the Division may seek various remedies to address violations of the statutes and regulations governing transfer agents. Exchange Act Section 17A(c)(3), together with Exchange Act Section 15(b)(4)(C), authorizes the Commission “to place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of [a] transfer agent” if the Commission finds that such a remedy is “in the public

interest” and that the transfer agent has been enjoined by “any court of competent jurisdiction ... from engaging in or continuing any conduct or practice in connection with [acting as a transfer agent].” 15 U.S.C. §§ 78q-1(c)(3)(A) & 78o(b)(4)(C).

Here, the prerequisite for such sanctions has been met, based on the OIP’s allegations. The United States District Court for the Southern District of New York has enjoined Ferguson Trust from engaging in certain conduct in connection with acting as a transfer agent. *See* OIP ¶ II.B.2.

In determining whether the public interest weighs in favor of sanctions, the Commission applies the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981). *See Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009); *Phlo Corp.*, Exchange Act Rel. No. 55562, 2007 WL 966943, at *12 (Mar. 30, 2007) (applying *Steadman* to revoke transfer agent’s registration). These factors include:

the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.

Kornman, 2009 WL 367635, at *6; *see also* 15 U.S.C. § 78u-2(c). The Commission also considers whether the sanctions will have a deterrent effect. *Lonny S. Bernath*, Initial Dec. Release No. 993, 2016 WL 1319539, at *4 (Apr. 4, 2016). The inquiry is flexible, “and no one factor is dispositive.” *Allan Michael Roth*, Exchange Act Rel. No. 90343, 2020 WL 6488283, at *4 (Nov. 4, 2020) (citations omitted).

The facts alleged in the OIP, combined with Ferguson Trust’s default, demonstrate that

revocation of Ferguson Trust's transfer agent registration is appropriate and in the public interest based on these factors.

First, Ferguson Trust's conduct was both egregious and recurrent. After registering as a transfer agent, Ferguson Trust complied with virtually none of the regulatory requirements accompanying such a registration. It failed to file required annual reports on Form TA-2, amend its Form TA-1 to update inaccurate business address information, provide the Commission with any records relating to its transfer agent activities, or permit the Commission to inspect its books and records. OIP ¶ II.B.3. Its violations of the Commission's regulatory requirements were therefore egregious and repeated. *See Select Fidelity Transfer Services Ltd.*, Initial Dec. Rel. No. 718, 2014 WL 7145632, at *7 (Dec. 15, 2014) (“[Transfer agent] Select Fidelity's actions in this matter are egregious and recurrent. Since registering in 2005, it has never filed its annual reports. It failed to maintain a current address with the Commission.”); *Phlo Corp.*, 2007 WL 966943, at *12 (“The infractions of the ... requirement to make records available for examination were egregious, recurrent, and prolonged.... Phlo did not make any records available for examination for more than two months after a response to the October 31 document request letter was due, and even then, not all of the requested documents were made available.”).

Second, Ferguson Trust acted with a high degree of scienter, given that it continuously flouted the Commission's regulatory requirements. *See Select Fidelity*, 2014 WL 7145632, at *8 (“Select Fidelity's complete failure to comply with its obligations as a transfer agent ... reflect a high degree of scienter.”).

Third, Ferguson Trust has never recognized its wrongful conduct or otherwise made any assurances against future violations. Indeed, Ferguson Trust ignored the Commission by defaulting in the district court action, OIP ¶ II.B.2, and has continued to ignore the Commission

by defaulting in this proceeding. These actions suggest that Ferguson Trust may continue to defy the Commission's regulatory requirements in the future.

Fourth, Ferguson Trust's continued registration as a transfer agent will provide it with the opportunity to continue to violate the Exchange Act provisions and rules governing transfer agents, unless Respondent's registration is revoked.

Finally, revoking Ferguson Trust's registration will deter other registrants from similarly flouting transfer agent statutes and regulations. *See Select Fidelity*, 2014 WL 7145632, at *8 ("Any transfer agent that might otherwise have been encouraged to follow Select Fidelity's noncompliant example will know that doing so will subject it to sanction.").

For all these reasons, revoking Ferguson Trust's transfer agent registration is in the public interest. The revocation will protect the investing public from potentially more serious securities violations by a non-compliant transfer agent that has chosen to default twice in Commission proceedings rather than appear and take responsibility for its actions.

CONCLUSION

For the foregoing reasons, the Commission should deem Ferguson Trust to be in default and revoke its registration as a transfer agent.

New York, New York
December 15, 2022

Respectfully submitted,

/s/ Theresa H. Gue

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CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Motion for Entry of Default and Imposition of Remedial Sanctions Against Respondent to be served on the following on December 15, 2022 in the manner indicated below:

Via eFap:
Office of the Secretary

Via First Class Mail and Email to:

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/s/ Theresa H. Gue
Theresa H. Gue