

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 SUPPLEMENTAL BRIEF
IN FURTHER SUPPORT OF ITS MOTION
FOR ENTRY OF DEFAULT AND IMPOSITION OF
REMEDIAL SANCTIONS AGAINST RESPONDENT**

Theresa H. Gue
Jack Kaufmann
Division of Enforcement
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004
(212) 336-5011 (Gue)

April 17, 2025

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In accordance with the Securities and Exchange Commission’s (the “Commission”) Order Requesting Additional Briefing and Materials from the Parties, entered March 20, 2025, the Division of Enforcement (the “Division”) respectfully submits this supplemental brief—and accompanying declarations and exhibits—in further support of its motion for entry of default and imposition of remedial sanctions against Respondent Michael James Ferguson Jr. Foreign Private Trust (“Respondent” or “Ferguson Trust”). For the reasons set forth below, the Commission should find Respondent to be in default and revoke its transfer agent registration.

PRELIMINARY STATEMENT

To date, Ferguson Trust has not appeared in this action. For the reasons set forth below—and in the Division’s December 15, 2022 Motion for Entry of Default and Imposition of Remedial Sanctions (the “Opening Brief”)—the Commission should find Ferguson Trust to be in default and revoke its transfer agent registration. As further detailed below, in light of Respondent’s repeated failures to comply with Commission regulatory requirements—and with the Commission’s and Division’s 2020-2021 examination and investigation regarding those failures—such a sanction is appropriate and in the public interest under Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”). Indeed, such a sanction will ensure that Ferguson Trust is not used as a vehicle to commit fraud or other securities violations in the future.

FACTUAL BACKGROUND

I. Ferguson Trust

Ferguson Trust, a “private trust organization” organized in the country of Jamaica in 2018 with its principal office in New York, New York, has been registered with the Commission as a

transfer agent since June 2019. (Declaration of Kenneth Liebl in Support of the Division of Enforcement’s Supplemental Brief in Further Support of its Motion for Entry of Default and Imposition of Remedial Sanctions against Respondent (“Liebl Decl.”) ¶ 6.)¹ In May 2019, Ferguson Trust filed Commission Form D, seeking to raise money from investors in an unregistered securities offering. (*Id.* ¶¶ 5, 7.) The next month, on June 13, 2019, Ferguson Trust filed Commission Form TA-1 to register with the Commission as a transfer agent. (*Id.* ¶ 8.) In February 2020, Ferguson Trust filed Commission Form C, seeking to raise a maximum of \$1 million in an unregistered securities offering in reliance on specific statutory and regulatory provisions. (*Id.* ¶ 9.) Firdaus El—Ferguson Trust’s chief executive officer, executive director, president, treasurer, and “controller of currency”—signed each of these filings. (*Id.* ¶ 10.)

II. Ferguson Trust Failed to File a Required Annual Report for the Year 2019

Ferguson Trust later ceased making regulatory filings. By March 31, 2020, Ferguson Trust was required to file its annual transfer agent report on Form TA-2 for the year 2019 under Exchange Act Section 17A(c)(2) and Rule 17Ac2-2, but it failed to do so. (*Id.* ¶ 11.)

III. Ferguson Trust Failed to Provide Documents to the Division of Examinations

In July 2020, the Commission’s Division of Examinations (“Examinations”) in the agency’s New York Regional Office initiated an examination of Ferguson Trust. (*Id.* ¶ 12.) On July 30, 2020, Examinations staff spoke to Firdaus El by telephone to schedule a phone interview of Firdaus El for August 3, 2020, and sent Ferguson Trust a formal request, pursuant to Exchange Act Sections 17(a) and (b), for records and information relating to Ferguson Trust and its transfer agent activities. (*Id.* ¶¶ 13-14.) After the interview was rescheduled at Firdaus El’s

¹ Concurrently herewith, the Division respectfully submits the Liebl Declaration and attached Exhibits 1-16 in support of its motion for default and sanctions against Respondent.

request, Firdaus El failed to answer the Examinations staff's phone call at the scheduled time. (*Id.* ¶¶ 15-16.) Examinations subsequently reached out to Firdaus El *nine* times from August 6 through August 24, 2020—by voicemail, email, and letter—to follow up on the document requests to Ferguson Trust and to reschedule the interview with Firdaus El. (*Id.* ¶ 17.)

The interview ultimately took place on August 25, 2020. (*Id.* ¶ 18.) During the interview, Firdaus El informed Examinations that the office address and mailing address listed on Ferguson Trust's 2019 Form TA-1 were no longer valid, and he provided a new address. (*Id.* ¶ 19.) During the call, Examinations staff reviewed their document requests with Firdaus El and highlighted certain requests for which Examinations thought Ferguson Trust was likely to have documents readily available. (*Id.* ¶ 20.) Following the phone call, Examinations re-sent Firdaus El the document requests, indicating in bold the specific requests that the staff thought would be easiest for Ferguson Trust to fulfill, and requested that Ferguson Trust produce documents by August 31, 2020. (*Id.* ¶ 21.)

On September 2, 2020, Firdaus El called the Examinations staff, told them that he had not looked at the document requests, and requested a 72-hour extension to produce documents. (*Id.* ¶ 22.) Examinations agreed to the extension. (*Id.*) Three days after the deadline had lapsed, Firdaus El emailed the Examinations staff and wrote: "Sorry running a bit late. Waiting for my business partner to get back to me about some of the documents you requested. May have to send by midnight tonight." (*Id.* ¶ 23.) Firdaus El never sent Examinations any documents. (*Id.* ¶ 24.)

On September 25, 2020, Examinations staff spoke to Firdaus El by phone in an examination exit interview and informed him of the deficiencies it found during its investigation, including that Ferguson Trust failed to file both an amendment to its Form TA-1,

updating the Trust's address, and a Form TA-2 for 2019. (*Id.* ¶ 25.) On the same day, Examinations sent a letter to Ferguson Trust, addressed to Firdaus El, identifying the "deficiencies and/or weaknesses in controls" resulting from the examination so that Ferguson Trust could take "immediate corrective action." (*Id.* ¶ 26.) The letter identified as deficiencies Ferguson Trust's failure to file an annual transfer agent report on Form TA-2 for the year 2019, as required by Exchange Act Section 17A(c)(2) and Rule 17Ac2-2 thereunder; and its failure to file an amended Form TA-1 to update its business and mailing addresses within sixty days of the previously listed addresses becoming defunct, as required by Exchange Act Section 17A(c)(2) and Rule 17Ac2-1 thereunder. (*Id.*) The letter also stated that Ferguson Trust was not in compliance with Sections 17(a) and (b) of the Exchange Act due to its failure to produce documents. (*Id.*) The letter requested that Ferguson Trust respond in writing by November 24, 2020, to describe any steps that it had taken or intended to take with respect to each deficiency. (*Id.*)

Firdaus El responded by email and claimed that Ferguson Trust's failure to comply with Examination's requests was due to a "misunderstanding that certain things were needed within a specific time frame to cover the avenues of filing or registering for Transfer Agents functions," but he described no steps that he or Ferguson Trust had taken to address the deficiencies. (*Id.* ¶ 27.)

On November 25, 2020, Examinations informed Firdaus El and Ferguson Trust by letter that the Trust's response had "failed to provide any description of the steps the transfer agent has taken with respect to the findings noted in the Deficiency Letter"; that the deficiencies remained outstanding; and that Examinations was closing the exam. (*Id.* ¶ 28.)

IV. Ferguson Trust Failed to Provide Documents to the Division of Enforcement

In late 2020, the Division launched an investigation of Ferguson Trust. (Declaration of Theresa H. Gue in Support of the Division’s Supplemental Brief in Further Support of its Motion for Entry of Default and Imposition of Remedial Sanctions Against Respondent (“Gue Decl.”) ¶ 4.)² On December 31, 2020, the Division sent Ferguson Trust a formal request for documents, pursuant to Exchange Act Section 17(a), by overnight delivery and email. (*Id.* ¶ 5.) After Ferguson Trust and Firdaus El failed to respond, the Division sent Ferguson Trust a letter on February 22, 2021, addressed to Firdaus El, noting that the Trust had repeatedly failed to produce any records in connection with the SEC’s examination. (*Id.* ¶ 6.) The letter cautioned Ferguson Trust that, if it did not substantively respond to the December 31 request by March 2, 2021, the Division intended to issue a Wells notice to Ferguson Trust (*i.e.*, a notice that Enforcement intends to recommend to the Commission that it authorize an enforcement action). (*Id.*) Ferguson Trust did not respond to the Division’s December 31 request and did not produce any responsive documents. (*Id.* ¶ 7.) The Division subsequently issued Wells notices to Firdaus El and Ferguson Trust, which similarly went unanswered. (*Id.* ¶¶ 8, 10.) By March 31, 2021, Ferguson Trust was required to file another annual report on Form TA-2 for the year 2020, but it again failed to do so. (*Id.* ¶ 9.)

Neither Ferguson Trust nor Firdaus El have contacted the Division at any time. (*Id.* ¶ 18.) Nor has Ferguson Trust filed an amendment to Form TA-1 to reflect the Trust’s new business address or an annual report on Form TA-2 for the years 2019 or 2020 (or the years since). (*Id.* ¶ 19.)

² Concurrently herewith, the Division respectfully submits the Gue Decl. and attached Exhibits 1-8 in further support of its motion for default and sanctions against Respondent.

V. Ferguson Trust Defaulted in the District Court Proceeding

On September 27, 2021, the Commission filed a complaint against Firdaus El and Ferguson Trust in the United States District Court for the Southern District of New York. *Securities and Exchange Commission v. Michael James Ferguson Jr. Foreign Private Trust, et al.*, Civil Action Number 1:21-CV-8017 (S.D.N.Y. 2021) (the “District Court Proceeding”). From early October through December 2021, the Commission’s process server unsuccessfully attempted to serve Firdaus El at seven different physical addresses, including at a residential address linked to Firdaus El through social media where the resident claimed not to know Firdaus El despite being linked to him on social media. Following the process server’s visit, Firdaus El and his wife made their social media accounts private. (*Id.* ¶¶ 12-13.)

Both Ferguson Trust and Firdaus El defaulted in the District Court Proceeding. (*Id.* ¶ 15.) On February 16, 2022, a final default judgment was entered against Ferguson Trust, permanently enjoining it from future violations of Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 17Ac2-1 and 17Ac2-2 thereunder; and ordering it to pay a civil monetary penalty of \$150,000. The District Court Proceeding, Dkt. No. 21.

ARGUMENT

I. 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), authorize 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).

As discussed in the Opening Brief, the second element is met because the District Court enjoined Ferguson Trust from engaging in certain conduct in connection with acting as a transfer agent. The District Court Proceeding, Dkt. No. 21.

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).

Here, revocation of Ferguson Trust’s transfer agent registration is appropriate and in the

public interest.

First, Ferguson Trust's conduct was egregious. 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 or amend its Form TA-1 to update inaccurate business address information. (Liebl Decl. ¶¶ 11, 25-26; Gue Decl. ¶¶ 9, 19.) Furthermore, it failed to provide the Commission with a single record relating to its transfer agent activities, or permit the Commission to inspect a single one of its books and records. (Liebl Decl. ¶¶ 24, 26, 28; Gue Decl. ¶¶ 7, 18.)

Respondent's conduct was particularly egregious given the lengths to which Examinations went to accommodate Ferguson Trust and remind it of its statutory responsibilities. After sending its initial document request, Examinations subsequently reached out to Firdaus El *nine* times from August 6 through August 24, 2020—by voicemail, email, and letter—to follow up on its requests for documents and an interview. (Liebl Decl. ¶¶ 14, 17.) During a call with Firdaus El on August 25, 2020, Examinations staff reviewed the document requests and highlighted certain requests for which Examinations thought Ferguson Trust was likely to have documents readily available. Examinations thereafter re-sent Firdaus El the document requests with the specific requests that the staff thought would be easiest for Ferguson Trust to fulfill highlighted in bold. (*Id.* ¶¶ 20-21.) Examinations also extended the deadline for Ferguson Trust to produce documents multiple times. (*Id.* ¶¶ 17, 22.) Despite these extraordinary efforts to accommodate Ferguson Trust, it still failed to produce a single document to Examinations (or, subsequently, to the Division). (*Id.* ¶¶ 24, 26; Gue Decl. ¶¶ 7, 18.)

Second, Defendant's violations were recurrent, not isolated. Ferguson Trust violated its filing requirements on multiple occasions. It failed to update its business address in registered

filings and to file a simple, six-page Form TA-2 describing its transfer agent activities for all years since 2019, even after Examinations repeatedly instructed it to do so. (Liebl Decl. ¶¶ 11, 25-26; Gue Decl. ¶¶ 9, 19.) Ferguson Trust also failed multiple times to respond to document requests by Examinations and, after Examinations referred the matter to the Division, to yet another document request from the Division. (Liebl Decl. ¶¶ 24, 26; Gue Decl. ¶¶ 7, 18.) Thus, Ferguson Trust’s violations of the Commission’s regulatory requirements were 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.”).

Third, Ferguson Trust, via Firdaus El, acted with a high degree of scienter in continuously flouting 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.”). For example, Firdaus El disingenuously indicated to Examinations that he was willing to comply with their document requests when, in fact, he apparently had no intention of doing so. Thus, on September 2, 2020—after Examinations already had contacted Firdaus El multiple times regarding the outstanding document requests, Firdaus El called the Examinations staff and requested a 72-hour extension produce documents. (Liebl Decl. ¶¶ 17, 22.) Examinations agreed to the extension. (*Id.* ¶ 22.) Three days after the deadline had lapsed, Firdaus

El emailed the Examinations staff and wrote: “Sorry running a bit late. Waiting for my business partner to get back to me about some of the documents you requested. May have to send by midnight tonight.” (*Id.* ¶ 23.) Neither Firdaus El, nor anyone else from Ferguson Trust, ever sent Examinations any documents. (*Id.* ¶ 24.)

Fourth, Ferguson Trust has never recognized its wrongful conduct or otherwise made any assurances against future violations. Ferguson Trust defaulted in the district court action and in this proceeding. *See* the District Court Proceeding, Dkt. No. 21. Furthermore, Firdaus El actively avoided regulatory oversight by disregarding the Commission’s efforts to communicate with him. Firdaus El refused delivery of all physical correspondence and ignored every email sent by the Division. (Gue Decl. ¶ 18.) In the District Court Proceeding, Ferguson Trust (through Firdaus El) apparently even attempted to evade service of process to further escape the consequences of its actions. (*Id.* ¶¶ 12-13; Gue Decl. Ex. 6 Wyatt Decl. ¶¶ 17-19 (noting that Firdaus El and his wife made their social media accounts private after the process server visited a residence linked to them through social media).) And Firdaus El has now deactivated the email address that served as the only means by which the Division could contact him or Ferguson Trust. (Gue Decl. ¶ 14.)

Fifth, 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. Indeed, on March 18, 2022—after the Court in the District Court Proceeding entered a default judgment against Ferguson Trust, enjoined it from engaging in certain conduct, and ordered it to pay civil penalties—Ferguson Trust, along with two other issuers, jointly filed a Notice of Exempt Offering of Securities on EDGAR, indicating that they intended to engage in a

\$500,000,000 offering of securities. (Gue Decl. ¶ 16.) On May 25, 2022, they filed an amended Notice. (Gue Decl. ¶ 17.)

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.

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
April 17, 2025

Respectfully submitted,

/s/ Theresa H. Gue

Theresa H. Gue
Jack Kaufman
Securities and Exchange Commission
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004

CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Supplemental Brief in Further Support of its Motion for Entry of Default and Imposition of Remedial Sanctions Against Respondent to be served on the following on April 17, 2025 in the manner indicated below:

Via eFap:
Office of the Secretary

Via First Class Mail and Email to:

Michael J. Ferguson Jr. Foreign Private Trust
c/o Noble Mikhail Jabal Mohommet Firdaus El
521 West 146th Street
Suite 215-Box
New York, New York 10031

Michael J. Ferguson Jr. Foreign Private Trust
c/o Noble Mikhail Jabal Mohommet Firdaus El
217 West 127th Street
Apt. 5G
New York, New York, 10027

Michael J. Ferguson Jr. Foreign Private Trust
c/o Noble Mikhail Jabal Mohommet Firdaus El
6208 West Blvd.
Los Angeles, CA 90043



/s/ Theresa H. Gue
Theresa H. Gue