

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9065 / September 21, 2009

SECURITIES EXCHANGE ACT OF 1934
Release No. 60699 / September 21, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13618

In the Matter of	:	
	:	
	:	
Regions Bank,	:	ORDER INSTITUTING CEASE-AND-
	:	DESIST PROCEEDINGS PURSUANT
	:	TO SECTION 8A OF THE
	:	SECURITIES ACT OF 1933 AND
Respondent.	:	SECTION 21C OF THE SECURITIES
	:	EXCHANGE ACT OF 1934, MAKING
	:	FINDINGS, AND IMPOSING A
	:	CEASE-AND-DESIST ORDER
	:	
	:	
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Regions Bank (“Regions” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section

21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. These proceedings involve the role of a United States-based bank as trustee of an investment plan through which unregistered broker-dealers, U.S. Pension Trust Corp. and U.S. College Trust Corp. (collectively, “USPT”) defrauded approximately 14,000 investors by charging exorbitant, undisclosed commissions and fees in connection with the sale of mutual funds. Using a network of approximately 2,000 unregistered sales agents, USPT offers and sells to investors residing primarily in Latin America mutual funds available from well-known U.S. fund companies, through a trust created at a U.S. bank. USPT sells the funds through a series of retirement and college investment plans that provide investors with a choice of making either annual contributions for multiple years or a single, lump-sum contribution. Until March 2006, USPT did not disclose to new investors that it took up to 85% of investors’ annual contributions, and as much as 18% of investors’ lump-sum contributions. USPT used these contributions to gain profits for itself, and pay commissions to its sales agents and insurance premiums to an insurance company USPT’s principals owned. As one aspect of the plans, individuals established trust accounts at Regions, which served to “hold” the assets in which individuals had invested. A primary selling point for USPT’s plans is the assurance that investors’ funds would be safe because investors would have a direct trust relationship with a major U.S. bank.

2. Regions (or a predecessor, Union Planters Bank, collectively “Regions” or the “Bank”) has served as trustee of the plans since October 2001 and, in that capacity, entered into individual trust agreements (“Trust Agreement”) with each investor and followed USPT’s instructions to distribute a portion of the investors’ contributions to USPT and use the remainder of the contributions to purchase mutual funds. In that regard, Regions has subtracted from each contribution the amounts of USPT’s commissions and fees and deposited those amounts in USPT’s operating account, in accordance with USPT’s instructions. Regions knew or should have known, however, that these exorbitant commissions and fees were not disclosed in USPT’s marketing materials or in any other document USPT provided to investors. Further, the trust agreement was misleading because it stated, among other things, that fees “may be paid” to USPT – when they always were – and, although it discloses Regions’ own, comparatively nominal trust fees, did not disclose the nature and amounts of the exorbitant commissions and fees USPT charged to investors. Finally, a Regions employee signed a certificate that USPT sent each investor after every contribution. This certificate identified the mutual funds held in trust,

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

but reflected the amount of the total contribution without disclosing any of the commissions and fees charged.

Respondent

3. Respondent Regions is an Alabama state-chartered bank providing banking services in sixteen states. Regions is the primary banking subsidiary of Regions Financial Corporation. Regions Financial's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Regions became the trustee in connection with USPT's investment plans after it merged with Union Planters Corp. in July 2004. Union Planters began serving as trustee in October 2001, assuming the trustee duties from another national bank; the former trustee bank thereafter transferred the trust accounts maintained in connection with USPT's plans to Union Planters.

Other Relevant Entities

4. U.S. Pension Trust Corp. is a Florida corporation formed in December 1995, with its principal place of business in Coral Gables, Florida. U.S. Pension has never been registered with the Commission as a broker, dealer, or in any other capacity. On September 28, 2007, the Commission filed a civil injunctive action against U.S. Pension Trust and its principals in the United States District Court for the Southern District of Florida, charging them with violations of the antifraud and broker-dealer registration provisions under the federal securities laws. *SEC v. U.S. Pension Trust Corp.*, 07-22570-CIV-MARTINEZ (Sept. 28, 2007).

5. U.S. College Trust Corp. is a Florida corporation formed in September 1997, with its principal place of business in Coral Gables, Florida. U.S. College has never been registered with the Commission as a broker, dealer, or in any other capacity. U.S. College is also charged with violations of the antifraud and broker-dealer registration provisions in the civil injunctive action filed by the Commission.

USPT's Fraudulent Offering

6. Since December 1995, USPT has offered and sold to investors residing primarily in Latin America mutual funds (and at least one hedge fund) available from well-known U.S. fund companies, through several retirement and college investment plans. USPT's investment plans provide investors with the choice of making either monthly or annual contributions for multiple years or a single, lump-sum contribution, and a choice of up to ten different mutual funds in which to invest their funds. USPT's investment plans also include an insurance component for the annual-plan investors, which provides for payment of any remaining contribution amounts due under the plan should the investor die or become disabled.

7. Since 1996, USPT has contracted with several U.S. banks in connection with its investment plans. USPT's marketing materials state that the U.S. bank acts as a trustee on behalf of investors by safeguarding their contributions pursuant to a Trust Agreement each investor

executes with the bank. The marketing materials tout USPT's investment experience and "high quality financial products" offered through its plans, and the safety of investing with USPT to Latin American investors by, among other things, emphasizing the importance of the trustee relationship that will be created between investors and the U.S. trustee bank through its investment plans.

8. From the inception of the plans until June 2006, USPT did not disclose anywhere in the marketing materials, or any other documents given to prospective investors, the exorbitant fees, commissions, and costs that it charged for the investments. Specifically, since its inception, USPT has charged annual plan investors fees ranging from 70% to 85% from investors' first year's contributions, 22% to 35% from investors' second through fifth year contributions, and up to 23% from investors' sixth through tenth year contributions. On lump-sum plans, USPT has charged from 12% to 18% from investors' single contributions. These fees are used to pay exorbitant commissions to sales agents, insurance premiums for annual plan investors, and a "net profit" on every contribution for USPT. The only fees disclosed in the USPT marketing materials are those charged by the U.S. bank for its trust services. Although USPT revised its marketing materials in 2006 to disclose the commissions, fees, and profits they deduct from investors' contributions each year, it did not provide any of these new disclosures to existing investors who have continued to make contributions under their investment plans. Moreover, USPT continues to represent to existing investors that their contributions have generated returns from the time they began to participate in the investment plans.

Regions As Trustee of USPT's Trust Plans

9. Commencing in October 2001, Regions (or, more precisely, Union Planters) began serving as trustee to individual investors in connection with USPT's plans pursuant to a master agreement executed with USPT (the "Master Agreement"), under which Regions agreed to enter into individual trust agreements with each investor. The Master Agreement specified that as trustee, Regions would receive "contributions" from each investor, deposit those funds into a separate Regions bank account pending instructions from USPT and, thereafter, deposit to USPT's operating account that portion of the contribution to be used for payment of agent commissions, insurance premiums, and USPT's "net profit." The Master Agreement further provided that Regions would use the remaining balance of each contribution to purchase shares of the mutual funds selected by the investor. The Master Agreement, which is in English, was not provided to prospective investors.

10. The Master Agreement also authorized USPT to "make use of [Regions'] name on the trust, and in the marketing and distribution" of USPT's investment plans. The agreement further provided that any advertising or marketing materials mentioning Regions' name "shall be subject to prior written approval" by Regions. Regions' representatives reviewed the description of the Bank in USPT's marketing materials and drafted information about the Bank, and a description of its role as trustee, for inclusion in USPT's marketing brochure. Regions also developed a form Trust Agreement for use by the individual investors and a summary entitled

“To the Participants of the Plan” (“Trust Summary”), based on the trust agreement and trust summary used by the predecessor bank trustee, and placed its logo and name on each document.

11. Although USPT used different marketing brochures for its investment plans, its description of Regions and its role is consistent. USPT’s marketing brochures emphasize the safety of investing through USPT’s plans because Regions, a major U.S. bank “is one of the oldest financial services companies . . . [s]erving as a trustee for more than a century . . .” USPT’s brochure further states that Regions applies “the most prudent approach” in the “management of assets.” The brochures further claim that USPT’s plans are subject to oversight by “the Federal Reserve Bank, the Comptroller of the Currency, internal and external auditors, and regulation by the Securities and Exchange Commission.” These statements are misleading because Regions did not “manage” trust assets, but rather, served as directed trustee. Moreover, USPT’s investment plans were not subject to regulatory review. Finally, until June 2006, USPT’s marketing brochures did not disclose the actual commissions, administrative costs, and other fees charged to investors.

12. The only disclosure of fees to investors was in the Trust Agreement, which set forth Regions’ fee for trust services, specifically, 1.5% of the value of the total assets held in trust, plus an additional \$40 administrative fee Regions charged for each contribution. The Trust Agreement did not disclose the commissions and other fees charged by USPT in connection with the plans. Rather, the Trust Agreement informed investors that USPT or its affiliates “*may be* paid fees by this trust, or the funds paid by the Grantor to the Trustee, for insurance placement, advisory, and other services provided to the Trustee or Grantor” (emphasis added). This statement is misleading because it states that fees “*may be*” paid when, in fact, fees and commissions have always been charged from every contribution.

13. The other trust document given to investors, the Trust Summary, set forth a summary of Regions’ services as trustee in connection with USPT’s plan. The Trust Summary explained that, as trustee, Regions would be responsible for receiving the investors’ contributions to the plan, and that “[o]nce the contributions are received, they will be allocated pursuant to USPT’s instructions, that is, to pay insurance premiums, fees, and for investments in the mutual fund selected by you from the list of funds made available.” The Trust Summary did not provide any additional information about the nature or amount of fees, including substantial commissions, which Regions withdrew from each contribution and credited to USPT’s operating account at USPT’s direction. Moreover, the Spanish version of the Trust Summary —translated by USPT—omitted the word “fees” altogether.

14. At the commencement of the relationship, Regions also created a short video that USPT posted on its website. The video featured two employees from Regions’ trust department who touted the history of the bank and Regions’ trust services. The video welcomed USPT and its “customers” and claimed that Regions’ trust department had been protecting trust clients’ interests for over 100 years. The video served to assure prospective investors of the safety of investing with USPT because of Regions’ role as trustee.

15. From October 2001 through January 1, 2008 (when Regions ceased accepting new trust relationships), Regions processed the investors' packages and contributions for USPT's plans. Upon receiving the investor's contribution and completed application package (which included the Trust Agreement, executed Trust Summary, and application for insurance, if applicable), Regions created individualized investor trust accounts at the Bank. Regions then deposited the contribution into a Regions' bank account, and disbursed those funds in accordance with instructions provided by USPT. Pursuant to USPT's instructions, Regions directed a portion of each contribution to USPT's operating account for payment of commissions, insurance premium, and USPT's "net profit." Regions used the remaining portion of the contribution to purchase the mutual fund shares for investors.

16. A Regions representative signed a certificate (prepared by USPT) after it received and processed each investor contribution. The certificate acknowledged the creation of a trust account, and identified the insurance policies and the mutual funds being held in trust on the investor's behalf. The certificate was misleading, however, because it showed the total amount of an investor's contribution, but did not reflect the amounts deducted from the contribution to pay sales commissions, insurance, and USPT's fees.

17. Regions holds the mutual fund shares in its name in omnibus accounts it created for each mutual fund offered by USPT. Although Regions ceased accepting new investor trust relationships in January 2008, it continued to receive additional contributions due under existing plans, as well as plan renewals, and processed each investor contribution in the same manner until August, 2009. At that point, Regions ceased accepting or processing new investor contributions or renewals under the USPT plans.

18. Since 1995 to the present, approximately 14,000 investors, mostly residing in Latin America, have invested over \$255 million through USPT's investment plans. Regions, which has been trustee since October 2001, currently holds approximately \$95 million in mutual fund assets on behalf of approximately 11,000 investors.

Violations

19. As a result of the conduct described above, USPT violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from obtaining money by means of an untrue statement or material omission in the offer or sale of securities; and any transaction, practice, or course of business which would operate as a fraud or deceit upon actual or potential purchasers. A violation of these provisions may be established by a showing of negligence. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

20. Also as a result of the conduct described above, USPT violated Section 15(a)(1) of the Exchange Act, which prohibits any broker or dealer from making "use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or

commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered" in accordance with Section 15(b) of the Exchange Act.

21. Section 8A of the Securities Act and Section 21C of the Exchange Act provide that the Commission may issue a cease-and-desist order against a person who is "a cause of [another person's] violation, due to an act or omission the person knew or should have known would contribute to such violation" Based on the conduct described above, Regions was a cause² of USPT's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Section 15(a)(1) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Regions' Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Regions cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Section 15(a)(1) of the Exchange Act.

By the Commission.

Elizabeth M. Murphy
Secretary

² *KPMG, LLP v. SEC*, 289 F.3d 109 (D.C. Cir. 2002) (negligence alone is sufficient to establish causing liability for non-scienter violations).