

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10869 / September 30, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 34037 / September 30, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20113

In the Matter of

**GREAT PLAINS TRUST
COMPANY, INC.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940,
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 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Great Plains Trust Company, Inc. (“Great Plains” 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 9(f) of

the Investment Company Act of 1940, 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. This case concerns Great Plains’ operation of unregistered investment companies in violation of the Investment Company Act and the public offer and sale of investments in nine common trust funds and nine collective trust funds (“Trust Funds”).² Great Plains, a state-chartered trust company, offered and sold investment units in the Trust Funds, but never registered the Trust Funds as investment companies under the Investment Company Act and never registered the offer and sale of securities in the Trust Funds under the Securities Act. In certain situations, Trust Funds offered by a bank are excluded from the definition of “investment company” under the provisions of the Investment Company Act and are exempt from the registration provisions of the Investment Company Act and the Securities Act. In this case, however, from at least 2015, the Trust Funds offered by Great Plains did not satisfy the statutory requirements necessary to qualify for the exclusions from the definition of investment company under the provisions of the Investment Company Act or exemptions from the registration provisions of the Securities Act. Great Plains did not exercise substantial investment authority over any of the Trust Funds until 2019 and, with regard to the common trust funds, Great Plains also did not employ these trust funds solely as an aid to the administration of trust accounts maintained for a fiduciary purpose, and advertised and offered them for sale to the general public. Investors were thereby denied the protections provided by the Investment Company Act and Securities Act when investing in the Trust Funds. As a result, Great Plains caused the Trust Funds to violate Section 7(a) of the Investment Company Act and violated Sections 5(a) and 5(c) of the Securities Act.

Respondent

2. **Great Plains Trust Company, Inc. (“Great Plains”)**, a Kansas corporation headquartered in Overland Park, Kansas, was formed in 1994 as a non-depository Kansas state

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

² Generally, common trust funds and collective trust funds are pools of funds maintained by a bank exclusively for the bank’s collective investment of money held by the bank in its fiduciary capacity acting on behalf of its clients. *See* Investment Company Act, Sections 3(c)(3). Collective trust funds are pools of funds maintained by a bank consisting of assets, as relevant here, of “any employee’s stock bonus, pension, or profit-sharing trust” that qualify under the Internal Revenue Code. *See* Section 3(c)(11). “Bank” is defined to include a trust company. *See* Investment Company Act, Section 2(a)(5).

chartered trust company. Great Plains is regulated by the Office of the State Bank Commissioner of Kansas. It meets the definition of a bank under Section 2(a)(5) of the Investment Company Act. Great Plains sponsored and organized the Trust Funds, and has always acted as their sponsor, trustee, administrator, and custodian. The Trust Funds invest in securities and were offered as investments to Great Plains' pension plan clients, trust clients, and other potential new investors. Great Plains' board, consisting of five members, had ultimate investment responsibility for the Trust Funds. Since the Trust Funds' inception, Great Plains hired an affiliated investment advisory firm ("IAF"), registered as an investment adviser with the Commission, to provide investment advisory services to the Trust Funds, and was responsible for the oversight of IAF. Great Plains serves as sponsor, trustee, investment manager, or custodian for over \$3 billion in the Trust Funds and other assets.

Other Relevant Entities

3. **Great Plains' Trust Funds for Retirement Investors ("Retirement Trust Funds")** were first organized and offered by Great Plains in 1994, and were operational until they were terminated and liquidated in December 2019. Great Plains marketed nine Retirement Trust Funds as "Collective Pension Trust Funds" under the following names: a) Discovery Fund, b) Growth Fund, c) International Fund, d) Small Cap Fund, e) Equity Fund, f) Large Cap Fund, g) Fixed Fund, h) Mid Cap Fund, and i) Value Fund. During the time of operation, Great Plains was responsible for making the regulatory filings of the Retirement Trust Funds. The Retirement Trust Funds were never registered as investment companies and the offer and sale of units in the Retirement Trust Funds were never registered with the Commission. These funds held pension plan assets of Great Plains' clients.

4. **Great Plains' Trust Funds for Non-Retirement Investors ("Common Trust Funds")** were first organized and offered by Great Plains in 1997, and are currently in the process of being terminated and liquidated. Great Plains marketed nine Common Trust Funds as "Common Personal Trust Funds" under the following names: a) Equity Fund, b) Discovery Fund, c) Small Cap Fund, d) Opportunity Fund, e) Mid Cap Fund, f) Growth Fund, g) International Fund, h) Global Natural Resources Fund, and i) Fixed Fund. During the time of operation, Great Plains was responsible for making the regulatory filings of the Common Trust Funds. The Common Trust Funds have never been registered as investment companies and the offer and sale of units in the Common Trust Funds have never been registered with the Commission. These funds hold non-retirement assets of Great Plains' clients.

Background

5. Great Plains began offering investment units in the Retirement Trust Funds starting in 1994. In 1997, Great Plains began utilizing the Common Trust Funds in the execution of its trust services. The number of Trust Funds grew until by 2012 there were a total of 18 different Trust Funds.

6. The assets invested in the Trust Funds and the number of investor accounts grew substantially from 1994 to 2015. From 2015 to 2019, the assets and number of investor accounts in the Retirement Trust Funds were as follows:

Date	Total Assets in Retirement Trust Funds	Total Pension Plan Accounts in Retirement Trust Funds
12/31/15	\$621,403,311	799
12/31/16	\$536,097,646	733
12/31/17	\$521,874,240	576
12/31/18	\$380,857,264	512
6/30/19	\$424,515,629	461

7. From 2015 to 2019, the assets and the number of trust accounts in the Common Trust Funds were as follows:

Date	Total Assets in Common Trust Funds	Total Investor Accounts in Common Trust Funds, Including Revocable Trusts	Number of Revocable Trusts Invested
12/31/15	\$162,381,284	791	676
12/31/16	\$144,099,307	695	597
12/31/17	\$138,964,634	621	532
12/31/18	\$100,270,690	564	479
12/31/19	\$98,066,094	452	378

Management of the Trust Funds

8. In or around when Great Plains formed the Trust Funds, it engaged IAF to provide investment advisory services to the Trust Funds. While Great Plains retained ultimate investment control over the Trust Funds, IAF performed all investment activities for the Trust Funds, including performing due diligence, selecting investments, purchasing and selling investments, monitoring the investment portfolios for performance and risks, and making changes in investment strategies.

9. From the Trust Funds' inception through 2018, Great Plains' board engaged in minimal oversight of IAF and failed to exercise substantial responsibility over the Trust Funds. It received quarterly reporting materials from IAF for each of the Trust Funds and also met once a year with a representative from IAF to discuss the Trust Funds. However, the reviews of the quarterly materials were cursory and the annual meetings with an IAF representative were focused on receiving information rather than having an active role in managing and exercising investment responsibility for the Trust Funds. Those annual reviews rarely resulted in any changes to the Trust Funds or any feedback regarding IAF's management strategy. In those cases where it

requested changes (such as requiring reduced concentrations of an investment in certain of the Trust Funds), Great Plains' board repeatedly failed to act in a timely manner so that the changes were actually implemented. The board's failures to require IAF to comply with concentration limits mandated by the investment policies of the Trust Funds within a reasonable timeframe resulted in substantial losses in certain of the Trust Funds.

Advertising and Marketing of the Trust Funds

10. From 2015 to 2019, Great Plains advertised the Trust Funds to the public on its publicly available website as an investment option. The website explained that Great Plains "offers a number of individual investment options, including private Common Funds and [Retirement] Funds." The website then provided a link to detailed investment objectives and strategies for each of Trust Funds. For example, for the Common Trust Fund called the Growth Fund, the disclosure states, among other things, that:

The investment objective of [the Growth Fund] is long-term growth of capital. Under normal conditions, the Growth Fund will invest at least 80% of its net assets in equity securities, consisting of domestic common stocks, preferred stocks, convertible securities, warrants, and rights. The Fund will maintain at least 75% of the equity weighting of the Fund's portfolio in companies with market capitalizations greater than the median of the Russell 1000 Growth Index or \$5 billion, whichever is lower.

11. Great Plains marketed the Trust Funds directly to its own clients. Clients of Great Plains often invested in the Trust Funds through trusts, including many clients with revocable trusts. From 2015 to 2019, more than 80% of clients invested in the Common Trust Funds were revocable trusts.

Great Plains Did Not Register the Trust Funds as Investment Companies Under The Investment Company Act

12. According to Great Plains, it did not register the Retirement Trust Funds under the Investment Company Act because it relied on the exclusion from the definition of investment company under Section 3(c)(11). To qualify for the Section 3(c)(11) exclusion, among other requirements, the Retirement Trust Funds must be "maintained" by a bank. The "maintained" provision requires that Great Plains have and exercise "substantial investment responsibility" when managing the Retirement Trust Funds. *See Employee Benefit Plans*, Securities Act Rel. No. 6188, nn. 139-41 and accompanying text (Feb. 1, 1980).

13. The Retirement Trust Funds, however, did not qualify for the Section 3(c)(11) exclusion. The Retirement Trust Funds failed to satisfy the "maintained" by a bank requirement because Great Plains did not exercise substantial investment responsibility over the Retirement Trust Funds. Instead, as described above, Great Plains engaged in minimal oversight of the advisory firm it hired to manage the Trust Funds and failed to exercise its own investment responsibility.

14. According to Great Plains, it did not register the Common Trust Funds under the Investment Company Act because it relied on the exclusion from the definition of investment company under Section 3(c)(3) of the Investment Company Act. To qualify for the Section 3(c)(3) exclusion, among other requirements, the Common Trust Funds must: a) be “maintained” by a bank, b) be “employed by the bank solely as an aid to the administration of trusts...created and maintained for a fiduciary purpose”, and c) except in connection with the ordinary advertising of the bank’s fiduciary services, interests in the Common Trust Funds cannot be advertised or offered for sale to the general public.³

15. The Common Trust Funds, however, did not qualify for the Section 3(c)(3) exclusion. For the same reasons outlined in Paragraph 13, Great Plains failed to satisfy the “maintained” by a bank requirement because it did not exercise substantial investment responsibility over the Common Trust Funds. In addition, Great Plains did not employ the Common Trust Funds solely as an aid to the administration of trust accounts maintained for a fiduciary purpose. Specifically, Great Plains allowed many revocable trusts to invest in the Common Trust Funds and revocable trusts are “generally not established for a fiduciary purpose.” *See In Re Dunham*, Securities Act Rel. No. 8740, p. 9 (Sept. 22, 2006) (citing *Proposed Rule: Thrift Institutions Deemed Not To Be Investment Advisers*, Exchange Act Rel. No. 49639 at n. 56 (Apr. 30, 2004)). Finally, Great Plains also advertised the Common Trust Funds for sale to the general public, thereby failing to meet another requirement of the Section 3(c)(3) exclusion. Great Plains extensively advertised the investment strategies and objectives of the Trust Funds on its website beyond the ordinary advertising of the bank’s fiduciary services.

Unregistered Offer and Sale of Securities

16. Great Plains directly or indirectly participated in the offer and sale of securities in the Trust Funds. Great Plains marketed and sold investment units in the Trust Funds to its clients. The Trust Funds, however, never filed any registration statements registering any security of the Trust Funds under the Securities Act with the Commission. Because the Trust Funds were investment companies and did not qualify for any exclusions from the definition of investment company, they did not qualify for an exemption from registration under Section 3(a)(2) of the Securities Act. They also did not qualify for any other exemption from registration under the Securities Act.

³ Except for the first requirement that a common trust fund must be maintained by a bank, the requirements in Section 3(c)(3) of the Investment Company Act were added by the Gramm-Leach-Bliley Act of 1999, which codified the Commission’s longstanding interpretation that the exclusion for common trust funds requires that the common trust fund itself must have a bona fide fiduciary purpose and not primarily serve as an investment vehicle. *Proposed Rule: Thrift Institutions Deemed Not To Be Investment Advisers*, Exchange Act Rel. No. 49639, n. 16 (Apr. 30, 2004).

Current Status of the Trust Funds

17. In June 2019, Great Plains decided to terminate and liquidate the Retirement Trust Funds. The Retirement Trust Funds were terminated and fully liquidated in December 2019. Great Plains decided to terminate and liquidate the Common Trust Funds in May 2020, and expects that process to be completed by October 30, 2020.

Violations

18. Section 7(a) of the Investment Company Act prohibits an investment company not registered with the Commission from engaging in any business in interstate commerce, including offering, selling, purchasing or redeeming interests in the investment company. As a result of the conduct described above, Great Plains caused the Trust Funds' violations of Section 7(a) of the Investment Company Act.

19. Section 5(a) of the Securities Act prohibits the sale of securities in interstate commerce or the mails before a registration statement is in effect. Section 5(c) of the Securities Act prohibits the offer to sell any security in interstate commerce or the mails unless a registration statement has been filed as to such security with the Commission. As a result of the conduct described above, Great Plains violated Sections 5(a) and 5(c) of the Securities Act.

Undertakings

20. To comply with this Order, Great Plains expects to terminate and liquidate the Common Trust Funds by October 30, 2020. Upon termination and liquidation, Great Plains has undertaken to:

- a. Distribute investor funds in the Common Trust Funds directly to investors pursuant to the terms of the Common Trust Funds.
- b. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, no later than sixty (60) days from the date of the completion of the undertakings.
- c. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a

weekend or federal holiday, the next business day shall be considered the last day.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent Great Plains shall cease and desist from committing or causing any violations and any future violations of Section 7(a) of the Investment Company Act and Sections 5(a) and 5(c) of the Securities Act; provided, however, that Great Plains may have until October 30, 2020 to take steps such that the Common Trust Funds are no longer required to be registered under Section 7(a) of the Investment Company Act.
- B. Respondent Great Plains shall pay a civil money penalty of \$300,000 consistent with the provisions of this Subsection B.
 - (1) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the \$300,000 penalty for distribution to two Common Trust Funds (the Common Fixed Fund of Personal Trusts ("CFF") and the Common Equity Funds of Personal Trusts ("CEF")), and/or past and present investors in CFF and CEF affected by the conduct described above (collectively "Distribution Recipients"). Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against the Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
 - (2) Within ten (10) days of issuance of this Order, Respondent shall deposit the full amount (\$300,000) of the civil monetary penalty (the "Fair Fund") that it has been

ordered to pay into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717.

- (3) Respondent shall be responsible for administering the Fair Fund and may hire a professional acceptable to the Commission staff, at its own costs, to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (4) Respondent shall distribute from the Fair Fund to each of the Distribution Recipients pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any individual investor accounts in which any Respondent or any of Great Plains' current or former officers or directors have a financial interest.
- (5) Respondent shall, within ninety (90) days of the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent, along with any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection B.
- (6) After the Calculation has been approved by the Commission staff, Respondent shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to the Distribution Recipients. The Payment File should identify, at a minimum: (1) the name of each Distribution Recipient, (2) the exact amount of the payment to be made from the Fair Fund to each Distribution Recipient, and (3) the amount of any *de minimis* threshold to be applied.

- (7) Respondent shall complete the disbursement of all amounts payable to Distribution Recipients within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (11) of this Subsection B.
- (8) If, after Respondent's reasonable efforts to distribute the Fair Fund pursuant to the approved Payment File, Respondent is unable to distribute any portion of the Fair Fund for any reason, including an inability to locate a Distribution Recipient or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934, pursuant to the instructions set forth in Paragraph C, below, when the distribution of the funds is complete and before the final accounting provided for in Paragraph (10) of this Subsection B is submitted to Commission staff.
- (9) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (10) Within 150 days after Respondent completes the distribution of all amounts payable to Distribution Recipients, Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each Distribution Recipient, with reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective Distribution Recipient whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Great Plains as the Respondent in these proceedings and the file number of these proceedings to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission

staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- (11) The Commission staff may extend any of the procedural dates set forth in this Subsection B for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

C. Respondent Great Plains' transfer of any undistributed funds to the Commission for transmission to the United States Treasury must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Great Plains as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

D. Respondent Great Plains shall comply with the undertakings enumerated in Section III, Paragraph 20 above.

By the Commission.

Vanessa A. Countryman
Secretary