

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90828 / December 30, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20193

In the Matter of

OTR, Inc.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 17A AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 17A and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against OTR, Inc. (“Respondent” or “OTR”).

II.

In anticipation of the institution of these proceedings, Respondent OTR 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 OTR consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 17A and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent OTR's Offer, the Commission finds that:

Summary

1. Between at least January 2018 through the present, OTR, Inc., a registered transfer agent, failed to assure that client funds in its custody and possession were adequately safeguarded against loss, unauthorized disposition, and misappropriation because the firm did not perform periodic reconciliations of its client escrow accounts. Due to these failures, during the period from at least August 2018 through at least November 2018, three of five escrow accounts that OTR maintained on behalf of its clients were overdrawn. As a result, OTR willfully violated Section 17A(d)(1) of the Exchange Act and Rule 17Ad-12 promulgated thereunder, which require registered transfer agents that have custody of funds related to their transfer agent activities to assure that, among other things, all such funds are protected, in light of all facts and circumstances, against misuse.

Respondent

2. **OTR, Inc.** was incorporated in Oregon in 1984 and maintains its principal place of business in Portland, Oregon. OTR has been registered with the Commission as a transfer agent since 1984.

Background

3. From at least January 2012 to the present, OTR has handled both securities and funds for its transfer agent clients, who primarily are small regional issuers. The firm also has acted as a paying agent for several of its issuer clients, and has disbursed dividends and interest payments to the issuer clients' shareholders of record. As a paying agent, OTR maintains custody of its clients' funds in segregated escrow accounts.

4. In 2012, the staff of the Commission's Office of Compliance Inspections and Examinations ("examination staff") conducted an examination of OTR. In November 2012, the examination staff issued a deficiency letter to OTR informing the firm that it "failed to have written safeguarding procedures governing its dividend and interest paying agent services" and "should at minimum, maintain written procedures with respect to the safeguarding of funds and securities, in particular funds held in escrow."

5. Despite receiving this deficiency letter, OTR did not establish any written safeguarding policies or procedures regarding the reconciliation of its client escrow accounts or otherwise ensure that it performed periodic reconciliations of its client escrow accounts or take other measures to avoid overdrawing its client escrow accounts.

6. Throughout 2018, OTR served as paying agent for five issuer clients and disbursed approximately \$4.8 million in dividend and interest payments on behalf of its clients.

7. At least two escrow accounts that OTR maintained on behalf of its clients were overdrawn in August 2018. In addition, OTR’s escrow account statements for June, July, and August 2018 reflected numerous checks out of sequence, and in many instances, the missing checks were not listed on the firm’s lists of outstanding checks.

8. Further, as of November 2018, the value of outstanding checks exceeded the total account balances for three of the five client escrow accounts as follows:

Client	Account Balance (as of 11/08/18)	Total Checks Outstanding (as of 11/08/18)	Checks Written in Excess of Account Balances
Issuer 1	\$6,510.23	\$20,639.49	-\$14,129.26
Issuer 2	\$105,497.73	\$119,916.72	-\$14,418.99
Issuer 3	\$2,142.27	\$14,931.01	-\$12,788.74

9. The examination staff conducted another examination of OTR beginning in 2018. On July 12, 2019, the examination staff issued a deficiency letter to OTR notifying the firm that it had failed to adequately safeguard client funds. The examination staff requested supporting documentation sufficient to show that OTR had reconciled each of the five escrow accounts as of June 30, 2019. The firm failed to provide any information in response to the examination staff’s request, or to the enforcement staff’s request for copies of its account reconciliations for the past four years, and failed to perform these account reconciliations.

10. From at least January 2018 to the present, OTR has failed to prepare reconciliations of its client escrow accounts.

11. In addition, to date, OTR has not established written policies or procedures governing how it should conduct reconciliations of its client escrow accounts or otherwise adopted appropriate safeguards to ensure that funds held in its client escrow accounts are protected against misuse.

Violations

12. As a result of the conduct described above, OTR willfully¹ violated Section 17A(d)(1) of the Exchange Act and Rule 17Ad-12 thereunder, which require every registered

¹ “Willfully,” for purposes of imposing relief under Section 17A of the Exchange Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the

transfer agent with custody or possession of any funds or securities related to the transfer agent's activities to assure that: (1) all such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss, or destruction, and (2) all such funds are protected, in light of all facts and circumstances, against misuse. Each transfer agent should exercise responsible discretion in adopting safeguards appropriate for its own operations.²

Undertakings

OTR has undertaken to:

13. Adopt and implement written safeguarding policies and procedures regarding the reconciliation of client escrow accounts within sixty (60) days after the date of the entry of this Order.

14. Certify, in writing, its compliance with the undertakings set forth above in Paragraph 13. The certification shall 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 OTR agrees to provide such evidence. The certification and supporting material shall be submitted to Assistant Director Anne C. McKinley, Division of Enforcement, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

15. For good cause shown, the Commission staff may extend any of the procedural dates relating to the 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 to be the last day.

IV.

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

Accordingly, pursuant to Sections 17A and 21C of the Exchange Act, it is hereby ORDERED that:

showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

² Exchange Act Release 19860 (June 10, 1983) ("[T]he Commission noted that each transfer agent should exercise responsible discretion in adopting safeguards appropriate for its own operations.")

- A. Respondent OTR cease and desist from committing or causing any violations and any future violations of Section 17A(d)(1) of the Exchange Act and Rule 17Ad-12 thereunder.
- B. Respondent OTR is censured.
- C. Respondent shall comply with the undertakings enumerated in Paragraphs 13 and 14 above.
- D. Respondent OTR shall pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: the first \$2,500 within 90 days of the date of this Order, the second \$2,500 within 180 days of the Order, the third \$2,500 within 270 days of the Order, and the fourth \$2,500 within 360 days of the Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment 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 OTR 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 Assistant Director Anne C. McKinley, Division of Enforcement, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604.

E. 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 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.

By the Commission.

Vanessa A. Countryman
Secretary