

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action No. 04-CV-422
	:	
v.	:	
	:	
WILMINGTON TRUST COMPANY,	:	
	:	
Defendant. :	:	

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

SUMMARY

1. This matter involves Wilmington Trust Company’s (“Wilmington Trust”) non-compliance with certain key recordkeeping and reporting requirements under the federal securities laws in connection with its transfer agent operations.

2. By engaging in the conduct described in this Complaint, Wilmington Trust violated Section 17A(d)(1) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rules 17Ac2-2, 17Ad-10(a), 17Ad-10(b), 17Ad-11(b), 17Ad-11(c), and 17Ad-13, promulgated thereunder.

JURISDICTION

3. The Commission brings this action pursuant to Section 17A(d)(3)(B) of the Exchange Act, 15 U.S.C. § 78q-1(d)(1), to enforce a bank transfer agent’s compliance with

Section 17A of the Exchange Act, 15 U.S.C. § 78q-1, and the transfer agent rules promulgated thereunder, and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), to obtain civil penalties and other appropriate relief from those who engage in non-compliant acts, transactions, practices, and courses of business, such as those further described herein.

4. This Court has jurisdiction over this action pursuant to Sections 21(d)(3)(A) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d)(3)(A) and 78aa.

5. Certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the District of Delaware and elsewhere, and were effected, directly or indirectly, by making use of the means and instruments of transportation and communication in interstate commerce, or the means and instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANT

6. Wilmington Trust, a Delaware corporation with its principal place of business in Wilmington, Delaware, has been registered with the FDIC as a bank transfer agent since December 1, 1975. Wilmington Trust is a wholly-owned subsidiary of the Wilmington Trust Corporation, which is a public company.

7. Wilmington Trust provides transfer agent services for approximately 14,000 securityholders of almost 5,000 securities issues. These issues include, among others, one equity security listed on the New York Stock Exchange (“NYSE”), municipal and corporate bonds, equipment leasing issues, collateralized mortgage obligations and other asset-backed securities issues, and limited partnerships.

FACTS

The Recordkeeping Systems At Issue

8. As a recordkeeping transfer agent, Wilmington Trust is required to maintain a master securityholder file and a control book for each security issue for which it provides transfer agent services. A master securityholder file is the official list of individual securityholder accounts that includes, among other things, the principal dollar amount of debt securities held by each account. The control book is the record that shows, in the case of debt securities, the principal dollar amount authorized and issued by the issuer.

9. Wilmington Trust also is required to report certain aged record differences to the issuer and to Wilmington Trust's appropriate regulatory agency, the FDIC, and in its annual transfer agent reports on Form TA-2. A record difference occurs when the total principal dollar amount of securities in the master securityholder file does not equal the principal dollar amount in the control book. If a record difference exists for more than 30 calendar days it is considered an aged record difference.

10. Wilmington Trust utilizes two bond processing software systems to maintain the master securityholder files for the securities issues for which it provides transfer agent services, one system for the less complex securities issues (from a processing perspective) and a second system for the more complex securities issues (the "complex securities processing system").

11. Wilmington Trust also maintains a separate control book for each security issue, subsidiary files for many issues, and separate accounting and other operating systems that process actual cash receivables and payables with respect to the securities for which Wilmington Trust

provides transfer agent services. (A subsidiary file is any list or record of accounts, securityholders, or certificates that evidence debits and credits that have not been posted to the master securityholder file.) Wilmington Trust reconciles the systems that process the actual cash receivables and payables daily.

Wilmington Trust Did Not Maintain Accurate Master Securityholder Files.

12. Wilmington Trust was aware that differences could arise between the principal balances recorded in the master securityholder files and in the control book. Such differences could arise for many reasons, including, among other things, data input errors, failures to timely update the master securityholder files with issuer changes that were in the control book, and technical limitations with the bond processing software systems utilized by Wilmington Trust.

13. For example, in order to facilitate the processing of certain payments to third parties, such as guarantors and other credit enhancement providers, Wilmington Trust inappropriately input these payments into the master securityholder files. Such entries erroneously inflated the outstanding principal balances in the master securityholder files.

14. In addition, Wilmington Trust utilized bond processing software systems that could not accurately account for some of the securities issues for which Wilmington Trust provided transfer agent services, such as securities, which, by their terms, permitted regularly scheduled interest payments to be deferred from time to time at the option of the issuer. On occasion, Wilmington Trust also experienced technical difficulties with its complex securities processing system that required adjustment to its master securityholder files records.

15. Prior to September 2000, Wilmington Trust periodically verified that the actual cash payments processed by Wilmington Trust were accurately posted to the master securityholder files. In September 2000, Wilmington Trust reorganized the manner in which it performed its transfer agent services. At that time, Wilmington Trust discontinued verifying that the actual payments processed by Wilmington Trust were accurately recorded in the master securityholder files.

16. By January 2003, almost 2,000 recordkeeping items on Wilmington Trust's master securityholder files, totaling in excess of \$5.8 billion, had not been reconciled against the actual payments processed by Wilmington Trust.

17. Between at least September 2000 and January 2003, Wilmington Trust also did not reconcile the principal balances in the master securityholder files with the principal balances in the control book.

18. Beginning in January 2003, after the Commission staff commenced an examination regarding Wilmington Trust's transfer agent functions, Wilmington Trust initiated a project to reconcile the master securityholder files with its control book and the actual payments it had processed.

19. Ultimately, Wilmington Trust found 17 active debt issues for which the principal balances in the master securityholder files differed from the principal balances in the control book. These record differences totaled approximately \$185 million.

20. Although these record differences did not represent any actual cash payment errors or financial loss to any issuers or shareholders or to Wilmington Trust, they did represent

recordkeeping errors in Wilmington Trust's master securityholder files that, in many instances, had existed for one or more years, and which Wilmington Trust had failed to report.

Wilmington Trust Did Not Timely Report Aged Record Differences.

21. To comply with Rule 17Ad-11(b), 17 C.F.R. § 240.17Ad-11(b), recordkeeping transfer agents must report aged record differences to issuers on a monthly basis if the amount of the record difference exceeds certain monetary thresholds that vary based upon the issuer's capitalization. For debt securities, all aged record differences over \$2 million must be reported; however, aged record differences of lesser amounts may have to be reported to issuers with capitalizations of less than \$150 million.

22. At least 10 of Wilmington Trust's 17 aged record differences exceeded the thresholds set forth in Rule 17Ad-11(b), 17 C.F.R. § 240.17Ad-11(b), and should have been reported to the issuers each month. However, Wilmington Trust did not report any of these 10 aged record differences to the issuers.

23. Rule 17Ad-11(c), 17 C.F.R. § 240.17Ad-11(c), requires recordkeeping transfer agents to report aged record differences on a quarterly basis to their appropriate regulatory agency if the aggregate aged record differences exceed certain monetary thresholds that vary based upon the number of issues for which the transfer agent provides recordkeeping services.

24. As a transfer agent performing recordkeeping functions for approximately 5,000 issues, Wilmington Trust must report aggregate aged record differences if they exceed \$5.6 million. Wilmington Trust's aged record differences exceeded \$5.6 million no later than January 2001 and continued to exceed that amount until July 2003. Thus, pursuant to Rule 17Ad-11(c),

17 C.F.R. § 240.17Ad-11(c), Wilmington Trust should have reported its aggregate aged record differences to the FDIC each quarter between at least January 2001 and July 2003.

25. Wilmington Trust did not report its aggregate aged record differences to the FDIC for the quarters between January 2001 and July 2003.

26. Pursuant to Rule 17Ac2-2, 17 C.F.R. § 240.17Ac2-2, recordkeeping transfer agents also must file an annual report on Form TA-2, which, among other things, requires a transfer agent to report any aged record differences that existed at the end of each calendar year, without limitation by any monetary threshold.

27. Nine of Wilmington Trust's 17 aged record differences existed at the end of 2001 and should have been reported on Wilmington Trust's 2001 Form TA-2. Seven additional aged record differences arose during 2002 for a total of 16 aged record differences that should have been reported on Wilmington Trust's 2002 Form TA-2. (One of the 17 record differences arose in December 2002 and did not become a reportable aged record difference until 30 days later in January 2003, after the reporting period for the 2002 Form TA-2.)

28. Wilmington Trust did not report any aged record differences on its 2001 or 2002 Forms TA-2, as required by Rule 17Ac2-2, 17 C.F.R. § 240.17Ac2-2.

Wilmington Trust Did Not Report to Its Audit Committee Regarding the Adequacy of Its Internal Accounting Controls for its Transfer Agent Functions.

29. Rule 17Ad-13(d)(3), 17 C.F.R. § 240.17Ad-13(d)(3), mandates that a bank transfer agent subject to regulation by the FDIC must conduct an annual study and evaluation and provide a report concerning the adequacy of the transfer agent's system of internal accounting controls to the bank's Board of Directors or to the Board's Audit Committee. If it does not, it is

required to file with the Commission and its appropriate regulatory agency, a report prepared by an independent accountant concerning its internal controls. Rule 17Ad-13(a), 17 C.F.R. § 240.17Ad-13(a).

30. Although Wilmington Trust conducted annual studies of its internal accounting controls for its transfer agent functions, those studies failed to identify as a weakness that Wilmington Trust did not reconcile the actual payments processed by it against the master securityholder files or the principal balances in the master securityholder files with the principal balances in the control book.

31. Wilmington Trust did not provide a report to its Board of Directors or the Audit Committee of its Board of Directors, nor did it file an independent accountant's report with the Commission and the FDIC, concerning the adequacy of the internal accounting controls for its transfer agent operations for 2000 or 2001 for the majority of the securities for which it provided transfer agent services, in violation of Rule 17Ad-13.

New Procedures Implemented by Wilmington Trust

____32. During July of 2003, Wilmington Trust implemented new policies and procedures regarding timely reconciliation of the master securityholder files, reporting aged record differences, and reporting to the Audit Committee of its Board of Directors concerning the annual study and evaluation of the internal accounting controls for its transfer agent functions to address the issues described above.

FIRST CLAIM FOR RELIEF
Violations of Section 17A(d)(1) of the Exchange Act

33. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 31, above, as if the same were fully set forth herein.

34. Between September 2000 and July 2003, Wilmington Trust, directly or indirectly, engaged in activity as a transfer agent in contravention of rules and regulations prescribed by the Commission and its appropriate regulatory agency.

35. In particular, Wilmington Trust failed to:

- a. maintain current and accurate master securityholder files and exercise diligent and continuous attention to resolve record differences, in violation of Rule 17Ad-10(a) and (b), 17 C.F.R. § 240.17Ad-10(a) and (b);
- b. timely report aged record differences to issuers and aggregate aged record differences to the FDIC, its appropriate regulatory agency, in violation of Rule 17Ad-11(b) and (c); 17 C.F.R. § 240.17Ad-11(b) and (c);
- c. report aged record differences on its Forms TA-2, in violation of Rule 17Ac2-2, 17 C.F.R. § 240.17Ac2-2; and
- d. report to its Board of Directors or the Audit Committee of its Board of Directors, or file an independent accountant's report with the Commission and the FDIC, concerning the adequacy of Wilmington Trust's internal accounting controls and related procedures for the transfer of record ownership and the safeguarding of related securities and funds for the

majority of the securities for which it provided transfer agent services, in violation of Rule 17Ad-13, 17 C.F.R. § 240.17Ad-13.

36. By reason of the foregoing, Wilmington Trust violated Section 17A(d)(1) of the Exchange Act, 15 U.S.C. § 78q-1(d)(1).

SECOND CLAIM FOR RELIEF
Violations of Rules 17Ad-10(a) and (b)

37. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 35, above, as if the same were fully set forth herein.

38. From at least September 2000 until July 2003, Wilmington Trust failed to maintain current and accurate master securityholder files, and despite having aged record differences, failed to exercise diligent and continuous attention to resolve such record differences.

39. By reason of the foregoing, Wilmington Trust violated Rules 17Ad-10(a) and (b), 17 C.F.R. § 240.17Ad-10(a) and (b).

THIRD CLAIM FOR RELIEF
Violations of Rules 17Ad-11(b) and (c)

40. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 38, above, as if the same were fully set forth herein.

41. From approximately October 2000 through at least July 2003, Wilmington Trust failed to report to issuers, within ten business days following the end of each month, the information specified in Rule 17Ad-11(d)(1), 17 C.F.R. § 240.17Ad-11(d)(1), regarding aged record differences for the prior month.

42. For the quarters between January 2001 and July 2003, when the aggregate market value of aged record differences for all issues for which it performed recordkeeping functions exceeded the applicable thresholds, Wilmington Trust failed to report to the FDIC, its appropriate regulatory agency, the information specified in Rule 17Ad-11(d)(1), 17 C.F.R. § 240.17Ad-11(d)(1), within ten days following the end of each calendar quarter.

43. By reason of the foregoing, Wilmington Trust violated Rules 17Ad-11(b) and (c), 17 C.F.R. § 240.17Ad-11(b) and (c).

FOURTH CLAIM FOR RELIEF
Violations of Rule 17Ac2-2

44. The Commission realleges and incorporates by reference each and every allegation in Paragraphs 1 through 42, above, as if the same were fully set forth herein.

45. Wilmington Trust filed inaccurate annual reports on Forms TA-2 for calendar years 2001 and 2002, because it failed to identify existing aged record differences.

46. By reason of the foregoing, Wilmington Trust violated Rule 17Ac2-2, 17 C.F.R. § 240.17Ac2-2.

FIFTH CLAIM FOR RELIEF
Violations of Rule 17Ad-13

47. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 45, above, as if the same were fully set forth herein.

48. Wilmington Trust failed to either provide a report to its Board of Directors or the Audit Committee of its Board of Directors, or file an independent accountant's report with the Commission and the FDIC, concerning the adequacy of Wilmington Trust's system of internal

accounting controls and related procedures for the transfer of record ownership and the safeguarding of related securities and funds for calendar years 2000 and 2001 for the majority of the securities for which it provided transfer agent services.

49. By reason of the foregoing, Wilmington Trust violated Rule 17Ad-13, 17 C.F.R. § 240.17Ad-13.

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an order requiring defendant Wilmington Trust to pay a civil penalty in the amount of \$125,000, pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

II.

Retain jurisdiction of this action for purposes of enforcing the Final Judgment and Order.

Respectfully submitted,

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