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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 06 CV 3121 (LS)
	:	
THE BANK OF NEW YORK,	:	
	:	
Defendant.	:	

COMPLAINT

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

SUMMARY

1. This matter involves the failure of defendant The Bank of New York (“BNY”), in its capacity as a registered transfer agent, to exercise reasonable care to ascertain the correct addresses of lost securityholders. Section 17A(d) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17Ad-17 thereunder require transfer agents to use reasonable care in searching for securityholders who are deemed “lost” after correspondence sent to them is returned as undeliverable.

2. Beginning in 1998 and continuing through September 2004, BNY failed to classify certain securityholders as lost despite the return of undeliverable correspondence. In addition, coding errors affecting BNY's system used for compiling lists of securityholders eligible for mandatory searches prevented BNY's system from capturing certain securityholders that BNY had classified as lost. These failures caused BNY to omit approximately 14,159 securityholders from the required searches and caused approximately \$11.5 million in securityholder assets to escheat to various states as unclaimed property. In addition, other securityholders whom BNY omitted from the mandatory searches were required to pay third parties \$743,112 in unnecessary fees to recover their lost assets.

3. By engaging in the conduct described in this Complaint, BNY violated Section 17A(d) of the Exchange Act [15 U.S.C. §78q-1(d)] and Rule 17Ad-17 [17 C.F.R. §240.17Ad-17] thereunder.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)] to obtain civil penalties.

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

6. Certain of the acts, transactions practices, and courses of business constituting the violations alleged herein occurred within the Southern District of New York 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

7. The Bank of New York is a bank with its principal place of business in New York, New York. BNY is the principal subsidiary of The Bank of New York Company, Inc., a bank holding company which trades on the New York Stock Exchange. BNY is registered as a bank transfer agent with the Board of Governors of the Federal Reserve System, which is BNY's appropriate regulatory agency. BNY provides transfer agent services for approximately 1,900 publicly traded companies with over 16 million securityholder accounts.

FACTS

8. Rule 17Ad-17 of the Exchange Act ("the Rule") requires transfer agents to exercise "reasonable care" to ascertain current addresses of "lost securityholders." Lost securityholders are those to whom the transfer agent has sent correspondence that the postal service has returned as undeliverable. Under the Rule, in exercising reasonable care, the transfer agent must perform two electronic database searches at specified intervals (subject to certain exceptions). The Rule also sets forth requirements for the scope and coverage of the databases. Transfer agents may not, in performing these two mandatory searches, use any method that results in a charge to the securityholder.

9. If the two searches required by the Rule are unsuccessful, the Rule does not restrict the methods that the transfer agent may use or the fees it may charge securityholders if it elects to perform subsequent, or "deep," searches for securityholders not located in the two mandatory searches. Transfer agents may hire a vendor to perform both the Rule-mandated searches and the deep searches.

10. Since 1998, BNY had identified lost securityholders by electronically culling its master securityholder files for a “lost” code entered by BNY into its system indicating that the postal service had returned correspondence sent to securityholders as undeliverable. BNY then provided a list of lost securityholders to a search firm hired by BNY to perform the two searches mandated by the Rule.

11. Certain BNY issuer clients also directly engaged the same private search firm to perform deep searches using data supplied by BNY. The search firm did not charge either BNY or the issuers for this service, but collected its fees from securityholders it located in deep searches. In exchange for a fee, the search firm updated the transfer agent’s records with the new address, and, at the direction of the securityholder, either obtained a new stock certificate for the securityholder or sold the security.

12. From January 1998 to September 2004, BNY improperly excluded thousands of securityholders from searches required by the Rule. BNY classified as lost only some, but not all, securityholders whose correspondence had been returned as undeliverable. As a result, BNY failed to perform the two searches mandated by the Rule for approximately 14,159 securityholders, and ultimately escheated approximately \$11.5 million in assets belonging to those securityholders to various states.

13. In addition, BNY failed to identify certain securityholders as lost due to two coding errors in its computer systems used to identify and compile lists of lost securityholders eligible for required searches under the Rule.

14. The first coding error caused the program to exclude lost securityholders who did not own the last issue of a security of an issuer with multiple issues. Therefore, if a

securityholder owned shares in the first issue of a security, but sold shares in the last issue, BNY's computer program did not capture that securityholder.

15. The second coding error caused the system to fail to capture lost securityholders who no longer owned shares, but continued to own unclaimed property, such as a dividend check, related to previously-owned shares.

16. As a result of the two coding errors, BNY did not include thousands of securityholders on lists it provided to the search firm for Rule-mandated searches, and therefore failed to perform the mandatory searches for the excluded securityholders.

17. Many of the securityholders excluded from the Rule-mandated searches due to BNY's coding errors were subjected to deep searches, and many paid fees to recover their lost assets. The program BNY used to compile the list of lost securityholders for deep searches did not have the coding errors described above. Consequently, the lost securityholders that BNY excluded from required searches due to coding errors were included on lists BNY gave to its search firm for deep searches.

18. As a result, from January 1998 to September 2004, BNY subjected approximately 1,101 securityholders to deep searches even though it had not performed the two searches required by the Rule. Approximately 250 of those securityholders paid the search firm fees totaling \$743,112 for recovery of lost assets.

19. Upon discovering the programming errors and flawed mailroom practices in September 2004, BNY implemented corrections and enhanced its procedures.

CLAIM FOR RELIEF

Violations of Section 17A(d) of the Exchange Act and Rule 17Ad-17 thereunder

20. Paragraphs 1 through 19 are realleged and incorporated herein by reference.
21. From January 1998 to September 2004, BNY, directly or indirectly, engaged in activity as a transfer agent in contravention of rules and regulations prescribed by the Commission.
22. In particular, BNY:
 - (a) failed to exercise reasonable care to ascertain the correct addresses of lost securityholders, and, in failing to exercise reasonable care to ascertain for its master securityholder file such lost securityholders' current addresses, failed to conduct two database searches using at least one information data base service; and
 - (b) failed to use a search method or service to establish contact with lost securityholders that did not result in a charge to the lost securityholders prior to completing the two database searches set forth in paragraph (a), above.
23. By reason of the foregoing, defendant BNY violated Section 17A(d) of the Exchange Act [15 U.S.C. §78q-1(d)] and Rule 17Ad-17 [17 C.F.R. §240.17Ad-17] thereunder.

WHEREFORE, the Commission respectfully requests that this Court order defendant BNY to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

Respectfully submitted,

/s/

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