

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9646 / September 11, 2014**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73076 / September 11, 2014**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3582 / September 11, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16098**

**In the Matter of**  
  
**Wilmington Trust Corporation,**  
  
**Respondent.**

**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 REMEDIAL  
SANCTIONS AND 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 Wilmington Trust Corporation (“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 Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that

#### SUMMARY

These proceedings arise out of false and misleading disclosures by Wilmington Trust Corporation (“Wilmington Trust” or the “Bank”) concerning its accruing loans past due 90 days or more over multiple quarters during 2009 and 2010, its nonaccruing loans in the third quarter of 2009, and its reserves for loan losses in the third and fourth quarters of 2009. Wilmington Trust was the public holding company for Wilmington Trust Company, a retail and commercial bank headquartered in Wilmington, Delaware. By mid-2009, many of the construction projects underlying the Bank’s loans stalled or failed to sell or lease when completed. At the same time, an increasing number of the Bank’s loans to these projects “matured,” *i.e.*, the loan’s term expired without being extended, modified or paid off, such that the principal balance of the loan was contractually due.

The Bank had deficient underwriting and loan monitoring controls and failed, for these and other reasons, to take appropriate action on many of its matured loans for protracted periods of time. As a result, the Bank had a large volume of loans that were past due, for reasons of maturity, 90 days or more. Generally Accepted Accounting Principles (“GAAP”) requires that banks disclose loans that are past due 90 days or more and still accruing,<sup>2</sup> and Regulation S-K (through SEC Industry Guide 3) further indicates that banks should disclose their “accruing loans which are contractually past due 90 days or more as to principal or interest payments.”<sup>3</sup> However, rather than disclose as past due loans that were matured (but purportedly “current for interest”), the Bank negligently and routinely omitted such loans from its disclosures of past due loans, based on unwritten, informal criteria that were loosely applied and liberally adjusted.

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<sup>1</sup> 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.

<sup>2</sup> See Accounting Standards Codification (“ASC”) 310-10-50-7(b). References to GAAP in this Order are to standards in effect at the time of the misconduct. In July 2009, the Financial Accounting Standards Board promulgated its “Accounting Standards Codification,” effective for fiscal quarters ending after September 15, 2009, which changed the applicable citation standards but not the substantive GAAP requirements.

<sup>3</sup> 17 C.F.R. § 229.303; SEC Industry Guide 3, *Statistical Disclosure by Bank Holding Companies*, 57 F.R. 36442.

As a result, the Bank omitted almost \$339 million in matured loans past due 90 days or more from its disclosures in its filings with the Commission for the third quarter of 2009. The Bank further omitted over \$330 million in matured loans past due 90 days or more from its disclosures in its filings for the year ended 2009, including its Form 10-K. The Bank then incorporated its false and misleading Form 10-K for 2009 by reference into the offering materials for a February 2010 public offering in which the Bank sold \$287 million of its common stock.

At the end of 2009, amidst increasing regulatory scrutiny, the Bank decided to address its misreporting of past due loans beginning in 2010; however, the Bank negligently implemented various practices that had the effect of avoiding full disclosure of the problems with matured loans in its portfolio. These practices included an “extension push” to extend the maturity dates of matured and maturing loans. This resulted in multiple short-term extensions for a high volume of loans even when the Bank did not have updated financial and collateral information for the loans, had not performed appropriate analysis for re-underwriting, or was engaged in difficult negotiations with borrowers concerning their matured loans. Wilmington Trust also failed to disclose in its Form 10-K, as required by Regulation S-K, that its matured, maturing and short-term extended commercial loan portfolio represented a material, but unquantified, risk to the stability of the Bank.

Despite modifications to its past due reporting practices in the first and second quarters of 2010, the Bank negligently continued to omit significant volumes of matured past due loans from its disclosures, repeated its false disclosures from prior periods, and made misleading supplemental disclosures concerning the Bank’s past due reporting and matured loan extension practices.

Finally, in its Form 10-Q for the third quarter of 2009 and its Form 10-K for 2009, the Bank also negligently failed, as required by GAAP, to properly disclose significant increases in the Bank’s nonaccruing loans according to its policy, and to properly account for updated collateral values and significant declines in commercial loan risk ratings in its loan loss provisions and reserves.

### **RESPONDENT**

1. Wilmington Trust was, during the relevant period, a bank holding company based in Wilmington, Delaware and incorporated under the laws of the State of Delaware. Its securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its common stock traded on the New York Stock Exchange under the symbol “WL.” On May 16, 2011, Wilmington Trust was acquired by M&T Bank Corporation (“M&T”) in a stock-for-stock transaction, and Wilmington Trust’s securities were removed from registration. Wilmington Trust survives as a subsidiary of M&T.

### **OTHER RELEVANT ENTITY**

2. M&T is a bank holding company headquartered in Buffalo, New York. On May 16, 2011, M&T acquired Wilmington Trust in a stock-for-stock transaction. M&T is the

successor-in-interest to Wilmington Trust. M&T did not commit any of the misconduct that is the subject of this Order, all of which preceded M&T's acquisition of Wilmington Trust.

## FACTS

### Past Due Loan Disclosure Guidelines

3. Under GAAP, banks are required to disclose their past due loans. Accounting Standards Codification ("ASC") Topic 310-10-50 stipulates certain disclosure requirements for loans. Specifically, ASC 310-10-50-7(b) requires disclosure of a bank's recorded investment in loans "past due 90 days or more and still accruing."<sup>4</sup>

4. Regulation S-K of the Securities Act, Item 303(a), requires the Management Discussion and Analysis ("MD&A") sections of an issuer's annual filings to disclose any "information that the registrant believes to be necessary to an understanding of its financial condition [or] changes in its financial condition." Item 303(b) requires quarterly filings to discuss material changes in information described in Item 303(a).<sup>5</sup> Instruction 13 to Item 303(a) directs bank holding companies to the information called for by SEC Industry Guide 3 ("Guide 3"), which is a policy of the Division of Corporation Finance; the Commission has not adopted the Guide as a rule.<sup>6</sup> Among other statistical disclosures, Item III.C.1 of Guide 3 specifies disclosure of "accruing loans which are contractually past due 90 days or more as to principal or interest payments."

### Background to the Bank's Past Due Loans Disclosure Violations

5. From at least 2006 through the third quarter of 2009, the Bank routinely removed, or, using the Bank's terminology, "waived" loans from certain internal reports and from its public disclosures of accruing loans past due 90 days or more if the loan was matured, current for interest and either 1) a loan managed by the Bank's Loan Recovery (*i.e.*, workout) unit; or 2) a loan that the Bank claimed its loan officers were "working on" extending. The matured workout loans were waived automatically, with no further requirements; for a non-workout loan, the loan officer was asked summarily to confirm that he or she was "working on" an extension and the loan was then waived. No documents or actual progress toward an extension were required and, in practice, loan officers could simply note that the loan was matured, current for interest and should be waived. The Bank did not have written policies or procedures governing its past due reporting process or its waiver practices.

6. On the Bank's internal "Delinquency Report," showing past due loans, the Bank's credit department indicated past due loans that would be waived. The Bank's finance department

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<sup>4</sup> This standard was preceded by AICPA SOP 01-06 ¶13(g), which is substantively identical.

<sup>5</sup> 17 C.F.R. § 229.303.

<sup>6</sup> SEC Industry Guide 3, *Statistical Disclosure by Bank Holding Companies*, 57 F.R. 36442.

then removed the indicated loans from a second internal report, the “Past Due and Nonperforming Loans Report.” This report was then incorporated in the Bank’s “accruing loans past due 90 days or more” table disclosure in its SEC filings. The summary past due loan amount also was disclosed in the notes to the financial statements in the Bank’s Form 10-K annual reports.

7. Equities and credit ratings analysts viewed loans 90 days or more past due as nonperforming, even if the Bank maintained them as unimpaired loans. High levels of past due loans were interpreted by the market as a signal of probable increased credit deterioration.

8. As early as August 2007, the Bank recognized that it had a mounting problem with matured loans that it needed to resolve. As the real estate market softened, the Bank was concerned by the growing volume of waived matured loans and about potential scrutiny from auditors, examiners and others concerning the waivers. However, even where loan officers had not taken meaningful steps toward extension, the Bank still waived such loans and omitted them from its public reporting.

9. As the real estate market continued to decline, more loans began to mature without repayment or completion of the underlying projects. Updated appraisals and financial statements required for re-underwritten extensions were also revealing significant deterioration. Borrowers balked at providing updated information and at the more onerous terms required by re-underwritten extensions. Some loan officers, particularly those managing the Bank’s Delaware Commercial Real Estate (“CRE”) portfolio, were reluctant to pursue the required documents to support re-underwritten extensions because of concerns that the underwriting analysis and new terms would lead to borrower nonperformance and loan downgrades. Loan officers voiced their concerns about this, and their related inability to properly underwrite loan extensions. The Bank was aware that the volume of matured loans it claimed was “in the process of extension” rose significantly through 2008 and into 2009.

10. The Bank purported to comply with GAAP and the disclosures required by Regulation S-K and called for by Industry Guide 3, but failed to do so accurately and completely. In all relevant filings, the Bank included in its MD&A section concerning credit risk a table disclosing its purported volume of accruing loans past due 90 days or more and supplemental disclosures describing them. It also disclosed the purported volume of accruing past due loans in the notes to the financial statements in its Form 10-Ks. In each period the Bank also claimed in its filings that it mitigated credit risk by employing “rigorous loan underwriting standards,” disciplined monitoring of its loan portfolio, and regular “review [of] all past due loans.”

#### Understated Past Due Loans Disclosures in the Third Quarter of 2009

11. On or about October 7, 2009, the Bank waived \$338.9 million in matured, interest current loan balances that were accruing but past due 90 days or more from the Bank’s Delinquency Report, and subsequently removed the waived loans from the Bank’s Past Due and Nonperforming Loans Report. On October 23, 2009, the Bank released its earnings and filed its Form 8-K, which incorporated the past due numbers from the Past Due and Nonperforming Loans

Report, omitted the \$338.9 million in matured loans, and disclosed only \$38.7 million in accruing loans past due 90 days or more.

12. During the third quarter of 2009 and prior to the filing of the Bank's Form 10-Q, certain senior managers voiced their concerns to senior officers about the growing number of matured loans that the Bank was claiming were "in the process of extension" but had not, in reality, been extended for protracted periods of time. Certain Bank personnel were concerned about the possibility of scrutiny from the Bank's auditors and bank examiners relating to its treatment of matured loans.

13. Concerns around matured and waived loans became heightened in late October 2009, after the Bank entered into an agreement with the Federal Reserve Bank of Philadelphia ("FRB") that required Bank management to provide enhanced reporting to the FRB of loans "past due as to principal or interest more than 90 days." In response, prior to the filing of the third quarter Form 10-Q, the Bank initiated several steps, discussed below, to begin phasing out its waiving of matured loans, and to attempt to extend some of these loans by year end.

14. Nevertheless, the Bank filed its Form 10-Q on November 9, 2009, again disclosing only the \$38.7 million in accruing past due loans and improperly omitting the \$338.9 million that had been waived. The supplemental disclosures did not provide any information about the Bank's matured or waived loans.

#### Understated Past Due Loans Disclosures and Extension Push in the Fourth Quarter and Year End 2009

15. In the fourth quarter, the Bank decided to continue to waive matured loans if an extension was "internally approved." The new criteria purported not to allow a non-workout loan to be waived where an extension was just being "worked on," as had sufficed in earlier quarters. Accordingly, a matured past due loan would be waived from the noted internal reports and omitted from public filings if the Bank had approved a lending officer's proposal to extend the loan, regardless of whether the loan had actually been extended by the borrower. The Bank continued the automatic waiver of matured, current for interest workout loans.

16. The Bank initiated an abbreviated extension process to facilitate the "internal approval" of short-term extensions of matured loans by year end. In combination with the amended waiver practice, this allowed loans for which the Bank lacked updated appraisals or financial documentation or was still negotiating terms with the borrower either to be extended temporarily or "internally approved" and waived so that they would not be reported as past due. The Bank was aware that executing long-term extensions would be difficult particularly for its Delaware CRE loans, because poor market conditions meant the Bank needed borrowers to pay down principal or increased interest rates as a part of long-term loan modifications. Certain of the Bank's senior officers and managers were informed that these borrowers were in distressed situations that could not be quickly remedied, and they recognized that the failure to accomplish long-term modifications could result in the Bank and its "shareholders get[ting] the crap knocked out of us by analysts and regulators."

17. In early January 2010, the Bank prepared a Delinquency Report indicating that \$330.2 million in matured loans 90 days or more past due would be waived; of this amount, \$177.3 million was more than 180 days past due. Accordingly, prior to releasing its earnings, the Bank was aware that the \$330.2 million in waived past due loans would be omitted from the Bank's public disclosures. A Bank manager raised concerns that the waived loans would be "a disclosure issue" for the Bank's public reporting. The Bank knew that many of the waived loans would require significant structural modifications if they were to be extended, and that the waived loans required thorough analysis and new maturity dates commensurate with the level of risk posed by the loan. The Bank also knew that it did not expect to be complete this process until the second quarter of 2010. The Bank was aware that it had an additional \$432 million in loans that would mature in the first quarter of 2010 that would also require the same process if they were to be extended.

18. Nevertheless, the Bank released its earnings and Form 8-K on January 29, 2010, disclosing only \$30.6 million in accruing loans past due 90 days or more and omitting the \$330.2 million in matured past due loans. The Bank's Form 10-K for 2009, which was filed on February 22, 2010, again disclosed only \$30.6 million accruing loans past due 90 days or more in both the footnotes to the financial statements and in the MD&A. Neither the earnings release nor the Form 10-K disclosed the Bank's problems with its matured, maturing and temporarily extended loan portfolio.

19. In mid-January 2010, shortly before releasing its earnings, the Bank decided to attempt to raise additional capital. On February 22, 2010, the Bank announced its common stock offering; the false and misleading Form 10-K was incorporated by reference in the final Prospectus Supplement, which was filed on February 25, 2010. In the offering, which closed on March 2, 2010, the Bank sold \$287 million in common stock, netting \$274 million after costs and commissions.

#### Understated Past Due Loans Disclosures and Extension Push in the First Quarter of 2010

20. In the first quarter of 2010, the Bank continued to phase out the waiver practice by determining that an "internal approval" of a loan extension would no longer suffice to waive matured loans from certain of the Bank's internal reports and its public past due reporting; rather, in order to be waived, a valid extension document had to be signed by the Borrower and received by the Bank. However, the Bank decided that matured workout loans would still be waived automatically and, as a result, excluded from the Bank's public disclosures of accruing loans past due 90 days or more.

21. The Bank had uncovered significant issues in ongoing reviews of matured and maturing loans that were resulting in the Bank's continued inability to fully analyze and appropriately re-underwrite those loans. Bank staff recommended that such loans be eligible for yet additional short-term extensions on an expedited basis without full underwriting analysis.

22. As described above, a large number of Delaware CRE loans had been waived from past due reporting at the end of the fourth quarter of 2009 on the basis that the Bank had “internally approved” extension proposals; however, many of these loans were not actually extended – *i.e.*, there was no extension agreement executed between the Bank and the borrower – for most of the first quarter. In the last two days of the first quarter of 2010, the Bank “internally approved” new extension proposals for at least 117 of these loans, because the Bank needed yet more time to do appropriate analysis and gather documentation to re-underwrite the loans. The majority of these extension proposals contemplated short-term extensions of loans that had been waived from past due reporting in multiple prior quarters; some of the loans had been matured for over a year.

23. Notwithstanding the Bank’s expedited extension practices, at quarter end, a significant volume of matured loans remained. Despite its purported use of stricter waiver criteria, the Bank subsequently waived at least \$48.1 million of these matured loans past due 90 days or more from certain of its internal reports. The Bank’s press release reporting earnings and Form 8-K (filed on April 23, 2010) and its Form 10-Q (filed on May 10, 2010) both omitted the \$48.1 million in waived loans and disclosed only \$39.7 million in accruing loans past due 90 days or more.

24. The Bank’s public filings for the first quarter also presented the materially understated accruing past due loan amounts previously reported for the fourth quarter of 2009 (and other periods) for comparison, and did not disclose that the current period’s past due loans were based on materially different criteria than in prior periods. The earnings press release and Form 10-Q noted an increase in past due loans and stated that the increase was due to matured loans for which “underwriting extensions” were in progress. However, there was no disclosure to inform investors of the Bank’s significant, ongoing problems with its matured and short-term extended loans. This information would have been important to investors to know, because without it they could not understand the true condition of the Bank’s loan portfolio.

#### Understated Past Due Loans Disclosures in the Second Quarter of 2010

25. The Bank continued to adjust its criteria for waiving loans and, after the second quarter of 2010, decided that matured, interest current workout loans should no longer be waived. In effect, by this point, the Bank had changed its practices such that all matured loans that were actually past due at the end of the quarter were to be reported as past due.

26. Before the Bank filed its current and quarterly reports for the second quarter of 2010, the Bank was aware that the market was interested in banks’ loan extension and restructuring practices, including the practice of extending loans multiple times. The Bank was aware that a large volume of both its matured loans that were reported as past due as well as loans that were current had not been fully analyzed or appropriately re-underwritten, but had been waived or extended multiple times.

27. Nevertheless, the Bank’s disclosures of accruing loans past due 90 days or more in its press release reporting its earnings and its Form 8-K (filed on July 23, 2010) and again in its Form 10-Q (filed on August 5, 2010), omitted \$24 million in matured past due loans that had

extensions that were executed after the close of the quarter. The filings also presented the materially understated accruing past due loan amounts previously reported for the fourth quarter of 2009 (and other periods) for comparison. There were no disclosures about the high volumes of multiple extensions without re-underwriting or waivers the Bank had granted.

28. Although the Bank was aware of the effect of its changed waiver practices (*i.e.*, the phasing out of matured loan waivers) on the past due loan disclosures over time, the Bank did not disclose the changes in its practices and made no effort to analyze the impact the changed practices would have had in prior periods. In addition, during the second quarter conference call, the Bank's statements concerning its past due reporting were misleading and the Bank also omitted information necessary to make the statements not misleading. The Bank's statements and omissions, considered together, were materially misleading because they obscured the true condition of the Bank's credit portfolio.

#### Understated Nonaccruing Loans Disclosures in Form 10-Q for the Third Quarter of 2009

29. According to the Bank's nonaccrual policy, loans that were rated "substandard-accruing" and also had interest payments being paid by an interest reserve or a second loan to the same borrower were to be classified as nonaccruing (and therefore impaired according to the Bank's application of ASC 310). In early October 2009, after the end of the third quarter, a senior Bank manager responsible for nonaccrual recommendations identified three construction projects that had loans that fit these criteria as of the third quarter of 2009. The three loans had total outstanding balances of \$24.1 million. The manager concluded that the loans for all of these projects required nonaccrual classification, based on the Bank's nonaccrual policy and conditions that existed as of the third quarter of 2009.

30. The manager informed other senior Bank officers that these loans required nonaccrual (and thus, impaired) classification in late October 2009, and informed them that her belated identification of these loans as nonaccruing was due to the Bank's ineffective process for tracking interest reserve loans. The Bank approved the manager's nonaccrual recommendations, which totaled \$24.1 million out of \$36 million of nonaccrual classifications approved.

31. The GAAP standard governing subsequent events, ASC 855-10-25-1, states that "An entity shall recognize in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing financial statements." The conditions underlying the nonaccrual designations – the loans' substandard ratings, and the fact that their interest was being paid via interest reserve – existed as of the date of the third quarter of 2009 balance sheet. Therefore, in accordance with GAAP, the nonaccruals should have been recognized in the third quarter financial statements.

32. On November 9, 2009, the Bank filed its Form 10-Q for the third quarter. Although the Bank stated in its Form 10-Q that it had evaluated subsequent events through the date of the filing, the Bank did not account for the three loans as nonaccruing in its Form 10-Q. The Bank reported a total of \$365.9 million in nonaccrual loans. The additional \$24.1 million in nonaccruing

loans would have represented a material 6.6% increase in the total nonaccruals for the quarter. Properly including this amount of nonaccruing loans would have caused the quarter over quarter difference in reported nonaccrual loans to increase materially, from \$67.1 million to \$91.2 million, or a difference of 35.9%.

#### Understated Loan Loss Provision and Reserves in Form 10-Q for the Third Quarter of 2009

33. The Bank's Form 10-Q filed on November 9, 2009 improperly failed to incorporate the information from four newly-obtained appraisals into its calculation of the Bank's loan loss provision and reserves. Significantly prior to the filing date, the Bank's appraisal department received appraisals that reflected material collateral value declines for impaired loans related to four construction projects, including two described in Paragraph 29 above.

34. However, Wilmington Trust's deficient internal controls prevented timely consideration of the effect of the updated collateral values on the Bank's reserve. Credit Risk Management staff tasked with allowance calculations did not obtain the updated appraisals in a timely fashion and there were no effective procedures to assure that Credit Risk Management staff were informed of updated collateral value information that was received after the end of the quarter, but prior to filing the periodic SEC reports. Nor did the Bank's disclosure controls assure that updated collateral values that Credit Risk Management staff received prior to period public filings were appropriately considered for subsequent events reporting according to GAAP.

35. Taken together, the updated appraisals for impaired loans received prior to the filing of the third quarter 2009 Form 10-Q required a supplemental provision to the reserve of \$12.8 million. This was a material understatement, because the additional required provision would have increased the recorded \$38.7 in provision to \$51.5 million, or 33%, and would have increased the \$16.6 million loss before income taxes and noncontrolling interest to \$29.4 million, or 77%.

#### Understated Loan Loss Provision and Reserves in the Fourth Quarter 2009 Earnings Release and 10-K for 2009

36. In January 2010, before the Bank issued its fourth quarter 2009 earnings press release and filed its Form 8-K, the Bank's ongoing review of its Delaware CRE projects revealed deterioration trajectories in ten highly significant borrower relationships. A senior Bank manager concluded, and informed certain senior officers, that downgrades were required for the ten relationships, which would result in an "overall provision increment ... [of] \$10.5MM." The loan reviews also resulted in the identification of 20 other loans that required downgrades which would have required an additional provision of \$1.6 million. The Bank was aware that these downgrades were not reflected in the loan loss provision and reserves that previously had been calculated for the fourth quarter.

37. The Bank represented to its Board of Directors that the loan reviews that resulted in the downgrades were rigorous and complete with respect to the relevant loans. However, a senior Bank officer directed that the downgrades not be formalized, and therefore neither the downgrades

nor the increased reserves described in Paragraph 36 above were incorporated into the Bank's quarterly earnings release and Form 8-K or its Form 10-K, which were filed on January 29, 2010 and February 22, 2010, respectively.

38. The total provision supplement associated with the downgrades was \$12.1 million. In both of its SEC filings, the Bank recognized a provision of \$82.8 million for the fourth quarter; the additional \$12.1 million in provision would have increased it materially, to \$94.9 million, or by 14.6%. The Bank recorded a loss before income taxes and noncontrolling interest of \$37.3 million; the increased provision would have deepened the loss by 30%.

### **VIOLATIONS**

As a result of the conduct described above, Wilmington Trust violated:

- a. Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- b. Section 17(a)(3) of the Securities Act, which prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities;
- c. Exchange Act Section 13(a) and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission information, documents and annual and quarterly reports as the Commission may require and mandate that periodic reports contain such further information as may be necessary to make the required statements not misleading;
- d. Exchange Act Section 13(b)(2)(A), which requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets; and
- e. Exchange Act Section 13(b)(2)(B), which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

### **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Wilmington Trust shall 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 Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$16,000,000.00 and prejudgment interest of \$2,545,896.16, for a total of \$18,545,896.16, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Wilmington Trust 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 Michael J. Osnato, Jr., Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, NY, NY 10281.

By the Commission.

Jill M. Peterson  
Assistant Secretary