

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78906 / September 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17566

In the Matter of

**WILMINGTON SAVINGS
FUND SOCIETY, FSB,**

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, 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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Wilmington Savings Fund Society, FSB (“WSFS” 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 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from WSFS' fundamental failure to comply with the rules and regulations that govern the conduct of transfer agents. Transfer agents are gatekeepers who provide critical services to issuers and their shareholders, including maintaining accurate shareholder records, timely processing of transfers, and responding to shareholder inquiries. To that end, issuers of securities, including corporations with securities registered under Section 12 of the Exchange Act, engage transfer agents to perform various recordkeeping functions.

2. Pursuant to Section 17A of the Exchange Act, the Commission promulgated rules governing services provided by registered transfer agents (the "Transfer Agent Rules"). As a registered transfer agent, WSFS was required to, among other things: (1) keep its registration current and accurate and to file annual reports regarding its transfer agent services; (2) make and maintain certain books and records for each issuer to which it provided transfer agent services; and (3) have written policies and procedures with respect to certain of its transfer agent services.

3. WSFS commenced acting as a transfer agent in 2010. From that time through 2013, however, WSFS failed to keep its registration current and accurate and failed to file an accurate annual report of its services. In addition, although WSFS maintained some records for issuers to which it provided transfer agent services, it did not maintain all of the records or create all of the reports required by the Transfer Agent Rules. Further, those records WSFS did maintain were inaccurate and/or incomplete. Finally, during this period, WSFS did not have any written policies or procedures to ensure compliance with the Transfer Agent Rules and WSFS employees were unaware of the Rules and received no training regarding the Transfer Agent Rules until 2013.

Respondent

4. WSFS is a subsidiary of WSFS Financial Corporation (NASDAQ: WSFS), a financial services holding company headquartered in Wilmington, Delaware. WSFS is registered as a transfer agent with the Office of the Comptroller of the Currency. WSFS provides comprehensive financial services, including commercial banking, retail banking and, through its Christiana Trust division, transfer agent services and trust and wealth management.

Other Relevant Persons and Entities

5. Andrew K. Proctor ("Proctor"), age 59, maintains a permanent U.S. residence in Perris, California, but is believed to spend the majority of his time in Hong Kong. He is currently the sole managing member of Atlas JG, LLC.

¹ 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.

6. Atlas JG, LLC (“Atlas”) is a Delaware limited liability company formed by Proctor in 2006. Atlas is not registered with the Commission.

Background

7. On December 3, 2010, WSFS acquired Christiana Bank & Trust Company (“CB&T”). CB&T ceased to exist and WSFS began performing the services formerly performed by CB&T, including transfer agent services, under the name Christiana Trust. WSFS provided transfer agent services, as defined by Section (3)(a)(25) of the Exchange Act, to a number of clients, including to at least one issuer with a security that was registered under Section 12 of the Exchange Act.

8. The transfer agent services undertaken by WSFS included maintaining master securityholder files (*i.e.*, official lists of individual securityholder accounts), registering ownership and the transfer of ownership of securities, monitoring the issuance of securities, and handling, processing and storing paper securities certificates.

WSFS Filed Inaccurate Transfer Agent Registration and Annual Reporting Forms in Violation of Sections 17A(c)(1) and 17A(d)(1) and Rules 17Ac2-1 and 17Ac2-2 Thereunder

9. Section 17A(c) of the Exchange Act requires transfer agents to register with the Commission or, if the transfer agent is a bank, with a bank regulatory agency, before providing transfer agent services. Pursuant to Section 17A(c)(2), to register, a bank transfer agent files a registration form (Form TA-1), which provides basic information about the transfer agent’s business and activities. The Form TA-1 must be kept current and updated on an as-needed basis. If any of the information on the Form TA-1 becomes inaccurate, misleading or incomplete, Rule 17Ac2-1(c) requires the transfer agent to file an amendment to the form within 60 days of the occurrence. Rule 17Ac2-2(a) requires each registered transfer agent to also file an annual report with the Commission on Form TA-2, describing its transfer agent activities. These forms provide important information about the organization and activities of registered transfer agents, which allows the Commission to more effectively and efficiently monitor the activities of registered transfer agents and to evaluate compliance with the Transfer Agent Rules.

10. On December 3, 2010, WSFS acquired CB&T and immediately began performing the transfer agent services that had previously been performed by CB&T. However, although it was required to amend its Form TA-1 within 60 days of any change that would render the form “inaccurate, misleading, or incomplete,” WSFS did not file a Form TA-1 until June 22, 2011, six months later. Moreover, when WSFS filed its untimely Form TA-1, it inaccurately listed the name of the entity performing transfer agent services as “Wilmington Savings Fund Society, FSB,” rather than “Wilmington Savings Fund Society, FSB D/B/A Christiana Trust.” This is inaccurate because WSFS markets its transfer agent services under the name Christiana Trust.

11. In addition, WSFS did not file an annual Form TA-2 for the year ending December 31, 2010, even though it had operated as a transfer agent since acquiring CB&T earlier that month.

12. Further, when WSFS finally filed its first annual Form TA-2 on April 16, 2012, for the year ending December 31, 2011, WSFS failed to identify the correct number of individual

securityholder accounts for which it maintained master securityholder files. WSFS was unable to provide the correct number on its Form TA-2 because it could not identify all of the issuers to which it provided transfer agent services.

WSFS Failed to Maintain Accurate Books and Records in Violation of Sections 17(a) and 17A(d)(1) and Rules 17Ad-10 and 17Ad-11

13. Pursuant to Rule 17Ad-10(e), a recordkeeping transfer agent must keep an accurate control book, which is a record or other document that shows the total number of shares (in the case of equity securities) or the principal dollar amount (in the case of debt securities) authorized and issued by the issuer.

14. In addition, Rule 17Ad-10(a) requires a recordkeeping transfer agent to accurately post transactions to the master securityholder file with details, such as the certificate number, number of shares or principal dollar amount, the securityholder's registration, the address of the registered securityholder, and the issue and cancellation dates for the security ("Certificate Detail"), about the securities issued, purchased, transferred or redeemed. When there is a discrepancy between the Certificate Detail for a security transferred or redeemed and the Certificate Detail posted to the master securityholder file, Rule 17Ad-10(a)(1) requires that the details of that discrepancy must be maintained in a subsidiary file. The transfer agent must diligently and continuously seek to resolve those differences and then promptly update the master securityholder file.

15. A transfer agent's failure to perform its duties promptly, accurately, and safely can compromise the accuracy of an issuer's securityholder records, disrupt the channels of communication between issuers and securityholders, disenfranchise investors, and expose investors, securities intermediaries, and the securities markets as a whole to significant financial loss.

16. WSFS maintained master securityholder files for several issuers to which it provided transfer agent services; however, those files contained multiple inaccuracies. For example, for certain issues, WSFS failed to maintain accurate records of the outstanding balances and registered incorrect securityholder names in the master securityholder files.

17. Further, WSFS did not maintain subsidiary files or a control book for any issuers to which it provided transfer agent services and, therefore, WSFS could not determine whether, for any issuers, there were differences between the total number of shares or total principal dollar amount of securities in the master securityholder file for a particular issue and the number of shares or principal dollar amount in the control book for that issue (one type of a "Record Difference"). WSFS was required to report Record Differences that existed for more than 30 days ("Aged Record Differences") and exceeded certain aggregate dollar thresholds that are established by Rule 17Ad-11 of the Transfer Agent Rules. WSFS was unable to determine whether Aged Record Differences existed and, therefore, was unable to determine whether it was required to report any Aged Record Differences. Indeed, WSFS' account administrators did not even know that WSFS was required to maintain subsidiary files or a control book.

WSFS Did Not Have Any Written Policies or Procedures in Violation of Sections 17(a) and 17A(d)(1) and Rules 17Ad-15, 17Ad-17, and 17Ad-19 Thereunder

18. Several of the Transfer Agent Rules explicitly require transfer agents like WSFS to maintain written procedures with respect to certain aspects of the performance of their transfer agent services. For example, the Transfer Agent Rules require that transfer agents establish written standards regarding signature guarantees (Rule 17Ad-15); that transfer agents maintain written procedures regarding their obligation to search for lost securityholders (Rule 17Ad-17); and that transfer agents establish and implement written procedures relating to the disposition of securities certificates (Rule 17Ad-19). However, WSFS did not adopt any written policies or procedures regarding its transfer agent services until 2013.

19. In addition, the WSFS Account Administrators, who performed the daily transfer agent services, including maintaining the master securityholder files, were unaware of the Transfer Agent Rules and did not receive any training regarding compliance with the Transfer Agent Rules until WSFS adopted written policies and procedures in 2013.

Transfer Agent Services Provided To Atlas

20. One of the accounts for which WSFS provided transfer agent services was Atlas. On June 14, 2016, the Commission filed a Complaint in U.S. District Court against Proctor and Atlas, SEC v. Andrew K. Proctor & Atlas JG, LLC, Civ. A. No. 1:16-cv-00437-UNA (D. Del. June 14, 2016) (the “Complaint”). As alleged in the Complaint, from 2007 through 2011, Proctor, a recidivist securities fraudster, raised through Atlas more than \$22 million from at least 200 overseas investors through a fraudulent offering of purported bonds promising annual returns of eight to nine percent. Proctor told prospective investors that their investments would be used to purchase receivables from homebuilding subcontractors at a discount, and that Atlas would profit from the discounted price it paid for the receivables relative to the amount ultimately collected on them. The Complaint alleged Atlas used less than 10 percent of the funds raised to buy receivables as promised and used the rest to make so-called “interest” and “principal” payments to investors, to fund offshore investments in Asia, and to finance his lifestyle.

21. Proctor and Atlas became clients of CB&T in December 2007 when CB&T agreed to perform transfer agent services for Atlas. WSFS subsequently acquired CB&T and from December 2010 through the fall of 2013, WSFS served as the registrar, paying agent and transfer agent for Atlas’ purported bonds. Among other services, and at the direction of Proctor, WSFS registered the ownership of the bonds; received subscription fees from the bondholders; wired and recorded quarterly payments to bondholders; transferred bond ownership; recorded redemptions of bondholders; and received money into or wired money out of the Atlas escrow account maintained by WSFS.

22. WSFS failed to maintain accurate books and records for the Atlas account and, therefore, its master securityholder files for Atlas contained a number of inaccuracies. For example, WSFS’ master securityholder file reflected that certain of Atlas’ bond holders had been redeemed as of December 31, 2012 when they had not.

23. In addition, WSFS failed to maintain a subsidiary file or control book for Atlas and, therefore, WSFS was unable to determine whether there were Aged Record Differences it was required to report.

Applicable Law

24. The Commission has authority, pursuant to Section 17A(d)(3)(B) of the Exchange Act, to enforce a bank transfer agent's compliance with Section 17A of the Exchange Act and the Transfer Agent Rules promulgated thereunder.

25. Section 17A(c)(1) requires any transfer agent that "use[s] the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 12 of [the Exchange Act] or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section" to register as a transfer agent with the appropriate regulatory agency.

26. Section 17A(d)(1) states that "No . . . registered transfer agent shall, directly or indirectly, engage in any activity as . . . transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Exchange Act]"

27. Section 17A(c)(1) requires a transfer agent to register "in accordance with this section"; and (2) if any information in its registration (Form TA-1) becomes inaccurate, misleading, or incomplete, to correct that information by filing an amended Form TA-1 within 60 days of the information becoming inaccurate, misleading or incomplete (Rule 17Ac2-1(c)).

28. Rule 17Ac2-2(a) requires that transfer agents file with the Commission an annual report, known as a Form TA-2.

29. Sections 17(a)(1) and 17(a)(3) of the Exchange Act require transfer agents to make and keep current and to retain certain records for prescribed periods of time. The recordkeeping Rules promulgated under the Exchange Act contain a number of requirements for a recordkeeping transfer agent, which is defined by Rule 17Ad-9(h) as a "registered transfer agent that maintains and updates the master securityholder file."

30. Rule 17Ad-10(a) requires every recordkeeping transfer agent to "promptly and accurately post to the master securityholder file debits and credits containing minimum and appropriate certificate detail representing every security transferred, purchased, redeemed or issued. . . ." Rule 17Ad-10 further requires a recordkeeping transfer agent to maintain and keep current an accurate: (1) master securityholder file and subsidiary files (Rule 17Ad-10(b)); and (2) control book (Rule 17Ad-10(e)). When a discrepancy occurs that requires a transfer agent to post a debit to the subsidiary file, the "recordkeeping transfer agent shall exercise diligent and continuous attention to resolve the resulting record difference"

31. Rule 17Ad-11 requires recordkeeping transfer agents to report Aged Record Differences to issuers (Rule 17Ad-11(b)) and appropriate regulatory agencies (Rule 17Ad-11(c)).

32. Rules 17Ad-15, 17Ad-17 and 17Ad-19 require transfer agents to maintain written procedures with respect to certain aspects of the performance of their transfer agent services.

33. Rule 17Ad-15 requires a registered transfer agent to maintain written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions and procedures, including written guidelines where appropriate, to ensure that those standards are used in determining whether to accept or reject guarantees from eligible guarantor institutions.

34. Rule 17Ad-17 requires a recordkeeping transfer agent to maintain written procedures which describe the transfer agent's methodology for complying with its obligation to search for lost securityholders.

35. Rule 17Ad-19 requires that a transfer agent involved in the handling, processing or storage of securities certificates shall establish and implement written procedures for the cancellation, storage, transportation, destruction or other disposition of securities certificates. Rule 17Ad-19 also establishes a number of minimum requirements for the written procedures.

Violations

36. As a result of the conduct described above, WSFS violated Sections 17(a)(1), 17(a)(3), 17A(c)(1), and 17A(d)(1) of the Exchange Act and the following rules promulgated thereunder: Rules 17Ac2-1; 17Ac2-2; 17Ad-10; 17Ad-11; 17Ad-15; 17Ad-17; and 17Ad-19.

WSFS' Remedial Efforts

37. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

38. Specifically, WSFS undertook a number of steps to enhance the procedures around its transfer agent services, including retaining an independent compliance consultant to conduct a risk assessment, revising its policies and procedures, hiring new staff, and instituting new trainings for staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent WSFS cease and desist from committing or causing any violations or future violations of Sections 17(a)(1), 17(a)(3), 17A(c)(1), and 17A(d)(1) of the Exchange Act and the following rules promulgated thereunder: Rules 17Ac2-1; 17Ac2-2; 17Ad-10; 17Ad-11; 17Ad-15; 17Ad-17; and 17Ad-19.

B. Respondent WSFS shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$375,000 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). If timely payment of the civil penalty 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 Building, 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 WSFS 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 G. Jeffrey Boujoukos, Associate Regional Director, Securities and Exchange Commission, Philadelphia Regional Office, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

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.

Brent J. Fields
Secretary