Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—Wilmington Trust improperly disclosed past due loans during financial crisis, SEC alleges, (Sept. 11, 2014)

Securities Regulation Daily Wrap Up

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By John Filar Atwood

The SEC charged Wilmington Trust Corp., a Delaware-based bank holding company, with accounting and disclosure fraud concerning the volume past due commercial real estate loans during the financial crisis. The Commission alleged that Wilmington failed to fully and accurately disclose the number of loans at least 90 days past due as they substantially increased in 2009 and 2010. Wilmington Trust agreed to settle without admitting or denying the charges (*In Re Wilmington Trust Corp.*, September 11, 2014).

Past due loans. The SEC claimed that as the real estate market declined in 2009 and 2010, Wilmington's construction loans began to mature without repayment or completion of the underlying project. Wilmington did not renew, extend, or take other appropriate action for 90 days or more on a material amount of its matured loans, according to the SEC. Instead of disclosing the amount of the loans, Wilmington excluded them from its public financial reporting.

Generally Accepted Accounting Principles require that banks disclose loans that are past due 90 days or more and still accruing. In addition, Regulation S-K indicates that banks should disclose their accruing loans which are contractually past due 90 days or more as to principal or interest payments.

Inaccurate disclosure. The SEC alleged that Wilmington omitted from its disclosures in the third and fourth quarters of 2009 $338.9 million and $330.2 million, respectively, in past due loans. Wilmington disclosed $38.7 million in past due loans for the third quarter and only $30.6 million in its annual report following the fourth quarter.

According to the Commission, Wilmington also materially misreported the loans in the first and second quarters of 2010, and failed to accurately disclose during the second half of 2009 the amount of non-accruing loans in its portfolio. Wilmington materially understated its loan loss provision and allowance for loan losses during this time, the SEC added.

SEC Enforcement Director Andrew Ceresney said in a press release that improper application of accounting principles by Wilmington misled investors about a key credit quality metric during a time of financial distress for the bank. He emphasized that banking institutions must adhere to relevant accounting principles so that investors know when they are unable to recover on material amounts of outstanding loans.

Sanctions. Wilmington, a subsidiary of M&T Bank, consented to the entry of the order finding that it violated 1933 Act Sections 17(a)(2) and 17(a)(3), and the reporting, books and records, and internal controls provisions of the federal securities laws. Wilmington agreed to cease and desist from committing or causing any violations of these provisions, and will pay $18.5 million in disgorgement and prejudgment interest to settle the charges.

Companies: Wilmington Trust Corp.

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