

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2261 / July 12, 2004**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11544**

**In the Matter of WILMINGTON TRUST COMPANY Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Wilmington Trust Company ("Wilmington Trust" or "Respondent").

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that 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, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

**III.**

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

**Respondent**

1. Wilmington Trust is a corporation organized and existing under the laws of Delaware. At all relevant times, Wilmington Trust served as the custodian for certain assets held in a custody account ("Custody Account").

**Other Relevant Entities and Individuals**

2. Landis Associates, LLC ("Landis") is a Pennsylvania limited liability company with its principal place of business in Kennett Square, Pennsylvania. Landis has been registered with the Commission as an investment adviser since 1986 and served as the investment adviser to the beneficial owner of the Trust Account ("advisory client") since 1986.

3. Michael L. Hershey is the founder, president, and 90% owner of Landis Associates, LLC and at all relevant times had power of attorney with regard to the Custody Account. Hershey and Landis had full discretion over investment decisions of the Custody Account. Landis had served as the advisory client's investment adviser since 1975.

4. Tremont Medical, Inc. ("Tremont"), incorporated in Delaware in 1992, is a privately owned corporation with its principal place of business in Aston, Pennsylvania. Tremont designs, manufactures and sells mobile point of care computers and workstations that use wireless technology to provide patient information to medical professionals.

## **Introduction**

5. This matter concerns Wilmington Trust's erroneous recording and reporting of transactions occurring in the Custody Account. As a result, the advisory client received statements prepared by Wilmington Trust that contained incorrect information concerning investments held in the Custody Account.

6. Hershey and Landis directed Wilmington Trust to invest millions of dollars of the advisory client's funds in Tremont. Ultimately unwilling to issue further stock or debt to the advisory client, Tremont, with Landis' knowledge, issued instructions to Wilmington Trust directing the disbursement of funds with a false representation to Wilmington Trust that the funds would be used to purchase common stock, when in fact the investments were mere cash advances. As a result, Wilmington Trust, as custodian, erroneously reflected the transactions as purchases of stock on the account statements it prepared and distributed to Landis, the advisory client, and his accountant.

## **Background**

7. On August 28, 1990, Wilmington Trust entered into a custody agreement with the advisory client to serve as custodian for the assets held in the Custody Account. Pursuant to the custodial agreement, among other things, Wilmington Trust was required to prepare account statements reflecting the assets held in the Custody Account and to provide these account statements to the advisory client. Also, pursuant to the agreement, if and when instructed by Hershey and Landis, Wilmington Trust was to release assets from the Custody Account.

8. Between 1994 and 1998, on the instructions of Hershey, approximately \$6 million held in the Custody Account was invested in Tremont. These investments included approximately 1.9 million shares of common stock and approximately \$900,000 in debt.

9. The investments were initiated by specific instructions from Tremont with Hershey's approval and authorization. For each of the transactions Wilmington Trust obtained supporting documentation from Tremont. At the end of each month, Wilmington Trust provided an account statement to the advisory client, his accountant and Landis reflecting these transactions. The loans extended by the advisory client to Tremont were evidenced by a series of demand notes bearing interest rates. Tremont provided Wilmington Trust with the notes, which Wilmington Trust maintained in its custody. Wilmington Trust recorded these investments on the Custody Account statements as demand notes.

## **Wilmington Trust Provides Erroneous Custody Account Statements**

10. On forty-six occasions from July 1998 through July 2000, Tremont, through its chief financial officer, with Hershey's approval and authorization, sent instructions to Wilmington Trust to purchase Tremont common stock, in an amount totaling \$8.1 million. In reliance on and in accordance with these instructions, Wilmington Trust recorded these transactions as the purchase of common stock. As these shares had no readily ascertainable market value, Wilmington Trust then prepared account statements reflecting purchases of common stock at \$1.00 per share with a market value of \$3.25 per share. Wilmington Trust assigned these values based on the prior transactions, without objection from Hershey. Wilmington Trust then sent these statements each month to the advisory client, his accountant, and Hershey.

11. Wilmington Trust did not obtain stock subscription agreements, stock certificates, or other documents to support the forty-six transactions recorded as purchases of common stock. As a result, the account statements it prepared and sent to the advisory client, his accountant and to Landis contained erroneous information about the nature and value of the investments in Tremont.

12. In or about the summer of 2000, with Hershey's knowledge and approval, Tremont issued two notes to the advisory client. These notes operated retroactively and captured the previous cash advances, as well as future transfers of funds. At the time, Wilmington Trust should have but failed to provide the advisory client with statements that reversed the earlier transactions to reflect the conversion to debt.

13. In July 2000, Tremont changed the instructions to Wilmington Trust to transfer funds in accordance with one of the promissory notes, yet Wilmington Trust continued to record transfers as purchases of common stock until November 2000.

14. Even after it received copies of the two notes, Wilmington Trust continued to prepare and send erroneous account statements to the advisory client, his accountant and Landis. As late as June 2001, the advisory client's account statements remained uncorrected and continued to erroneously reflect assets held in the Custody Account.

#### **Violations**

15. Section 204 of the Advisers Act and Rule 204-2(a) thereunder, require that investment advisers registered with the Commission maintain and preserve certain books and records. Specifically, Rule 204-2(a)(3) requires a registered investment adviser to make and keep true, accurate and current a memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Rule 204-2(a)(7) requires that a registered investment adviser make and keep true, accurate and current originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security.

16. As a result of the inaccurate account statements provided to Landis by Wilmington Trust, Wilmington Trust was a cause of Landis' violations of Section 204 of the Advisers Act and Rules 204-2(a)(3) and (7) thereunder.

#### **IV.**

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

Accordingly, it is hereby ORDERED that Wilmington Trust cease and desist from causing any violations and any future violations of Section 204 of the Advisers Act and Rules 204-2(a)(3) and (7) thereunder.

By the Commission.

Jonathan G. Katz  
Secretary

#### **Endnote**

1 The findings herein are made pursuant to Wilmington Trust's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.