

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 27473 / August 31, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12403

In the Matter of

**Delaware Service Company,
Inc.,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER.**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Delaware Service Company, Inc. (“Respondent” or “DSC”).

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, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940, 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 that:

Summary

Section 19(a) of the Investment Company Act makes it unlawful for an investment company to pay any dividend or make any distribution in the nature of a dividend payment, wholly or partly, from any source other than net income unless such payment is accompanied by a written statement which adequately discloses the source of such payment (a “19(a) notice”). Rule 19a-1 promulgated thereunder requires every such written statement to clearly indicate what portion of the payment per share is made from a list of enumerated sources, including “[p]aid-in surplus or other capital source.” Section 19(a) and Rule 19a-1 are intended to afford security holders adequate disclosure of the sources from which dividend payments are made.

From January 2000 through March 2004 (“relevant time period”), three closed-end funds (the “Funds”) administered by DSC paid a total of 98 dividends that included a return of shareholders’ capital. None of the distributions was accompanied by the required 19(a) notice. Each of the Funds had so-called “managed distribution policies.” These Funds’ annual reports stated that they would pay regular distributions at a specified annual rate. Each Fund was designed and managed to attract investors seeking a steady stream of income.

In addition, on March 14, 2002, DSC sought an exemption from the Commission for two of the Funds to allow them to distribute long-term capital gains more than once a year.¹ The exemption was granted, in part, on the basis of DSC’s representation in its application that it was providing the required 19(a) notices to shareholders of the Funds. That representation was an untrue statement of material fact in violation of Section 34(b) of the Investment Company Act.²

Respondent

1. Respondent DSC, incorporated in Delaware on February 25, 1988, provides accounting and administrative services to all open and closed-end registered investment companies in the Delaware Investments complex. DSC is an affiliate of Delaware Management Company, which is a series of Delaware Management Business Trust, a registered investment adviser.³ DSC contracts directly with each fund and is paid for accounting and administrative services based on the funds’ average net assets. For the relevant time period, DSC provided accounting and administrative services to the Delaware Investments Dividend and Income Fund, Inc., Delaware

¹ Section 19(b) of the Investment Company Act makes it unlawful for an investment company to distribute long-term capital gains, as defined in the Internal Revenue Code of 1954, more often than once every twelve months, except in certain limited circumstances.

² Section 34(b) of the Investment Company Act makes it unlawful for any person to make untrue statements of material fact, or omit material information necessary to make other statements made not misleading, in any registration statement, application, report, account, record, or other document filed with the Commission pursuant to the Investment Company Act.

³ Delaware Management Business Trust is a Delaware Statutory Trust. Delaware Management Company is a series, or division, under the trust as provided by the Delaware Statutory Trust Act. See 12 Del. C. §3806(b)(2) (2005).

Investments Global Dividend and Income Fund, Inc., and the Lincoln National Convertible Securities Fund, Inc.

Other Relevant Entities

2. Delaware Management Company is a series of Delaware Management Business Trust, a registered investment adviser. For the relevant time period, Delaware Management Company provided investment advisory services to the Delaware Investments Dividend and Income Fund, Inc., Delaware Investments Global Dividend and Income Fund, Inc., and the Lincoln National Convertible Securities Fund, Inc.

3. Delaware Investments Dividend and Income Fund, Inc. is registered under the Investment Company Act as a closed-end investment company, incorporated under the laws of Maryland. It has one class of common stock and its shares trade on the New York Stock Exchange under the symbol DDF. Its stated primary investment objective is to seek high current income. Capital appreciation is a secondary objective. In December 1995, the Fund implemented a managed distribution policy. The Fund's annual reports state that under the policy the Fund will pay monthly distributions at a specified rate and that the Fund is managed with a goal of generating as much of the distribution as possible from ordinary income (net investment income and short-term capital gains.) The balance of the distribution then comes from long-term capital gains and, if necessary, a return of capital.

4. Delaware Investments Global Dividend and Income Fund, Inc. is registered under the Investment Company Act as a closed-end investment company, incorporated under the laws of Maryland. It has one class of common stock and its shares trade on the New York Stock Exchange under the symbol DGF. Its stated objective is to seek high current income. Capital appreciation is a secondary objective. In December 1995, the Fund implemented a managed distribution policy. The Fund's annual reports state that under the policy it will pay monthly distributions at a specified rate and that the Fund is managed with a goal of generating as much of the distribution as possible from ordinary income (net investment income and short-term capital gains). The balance of the distribution then comes from long-term capital gains and, if necessary, a return of capital.

5. The Lincoln National Convertible Securities Fund, Inc. was registered under the Investment Company Act as a closed-end investment company, incorporated under the laws of Maryland. It had one class of common stock and its shares traded on the New York Stock Exchange under the symbol LNV. Its stated objective was to provide a high level of total return through a combination of capital appreciation and current income. In July 2002, the Fund implemented a managed distribution policy. The Fund's annual reports stated that under the policy it would pay quarterly distributions at a specified rate and would be managed with the goal of generating as much of the distribution as possible from ordinary income (net investment income and short-term capital gains), with the balance from long-term capital gains and, if necessary, a return of capital. On June 24, 2005, the Fund merged into the Delaware Dividend Income Fund, an open-end series of Delaware Group Equity Funds V.

DSC's Section 19(a) Violations

6. Section 19(a) of the Investment Company Act prohibits investment companies from paying dividends from any source other than accumulated undistributed net income, unless the payment is accompanied by a written statement to shareholders disclosing the source of the payment. Its purpose is to afford shareholders adequate disclosure of the sources from which dividend payments are made so that shareholders will not believe that a mutual fund's portfolio is generating investment income when, in fact, dividends are paid from other sources such as return of shareholders' capital. Rule 19a-1(g) states that its purpose is to afford shareholders adequate disclosure of the sources from which dividend payments are made.⁴ Rule 19a-1 specifies that the written statement must be made on a separate paper and clearly indicate what portion of the payment is from: (1) net income (not including capital gains); (2) capital gains; or (3) paid-in surplus or other capital source.

7. From January 2000 until March 2004,⁵ Delaware Investments Dividend and Income Fund, Inc., Delaware Investments Global Dividend and Income Fund, Inc., and Lincoln National Convertible Securities Fund, Inc., collectively "the Funds," paid 98 dividends to shareholders without contemporaneously disclosing that a portion of each dividend was actually a return of the investors' capital, in violation of Section 19(a) and Rule 19a-1 as follows:

Fund	Number of Distributions Including Return of Capital	Average Percentage Return of Capital
Delaware Investments Dividend and Income Fund, Inc.	44	44.2%
Delaware Investments Global Dividend and Income Fund, Inc.	46	51.5%
Lincoln National Convertible Securities Fund, Inc.	8	40.8%

⁴ In an accompanying Investment Company Act Release, the Commission emphasized the importance of explicit and affirmative disclosure whenever a dividend is paid from a capital source. Letter of the Director of the Investment Company Division relating to Section 19 and Rule N-19-1, S.E.C. Release No IC-71, 1941 WL 37715 (Feb. 21, 1941). Because the characterization of a distribution may change at year-end, investment companies must reasonably estimate the character of the distribution at the time it is made.

⁵ The Funds began making the required 19(a) disclosures in April 2004, in response to an inquiry from the Commission staff.

8. Each Fund operated under a managed distribution policy.⁶ The policy committed the Funds to distribute a certain percentage of average net assets as dividends. The Delaware Investments Dividend and Income Fund, Inc. and the Delaware Investments Global Dividend and Income Fund, Inc. implemented this policy in December 1995; the Lincoln National Convertible Securities Fund, Inc. implemented it in July 2002.

9. Respondent DSC contracted with each of the Funds over the relevant period to provide fund administration and accounting services. Pursuant to those contracts, DSC was responsible for determining the amount and composition of all distributions to shareholders; providing the transfer agent, dividend disbursing agent, and custodian with information necessary to effect payment of dividends and distributions; and preparing and filing all reports and notices required by the federal securities laws and regulations, including any required 19(a) notices.

10. DSC knew, or was reckless in not knowing, at the time each of the 98 distributions was made that each included a return of shareholders' capital as of the end of the period during which the distribution was made.⁷ However, DSC failed to transmit required 19(a) notices with

⁶ The Delaware Investments Dividend and Income Fund, Inc. and the Delaware Investments Global Dividend and Income Fund, Inc.'s 1995 annual shareholder reports stated: "The purpose of the managed distribution policy is to make the Fund more attractive to income-oriented investors ... thereby ... encouraging additional share purchases which should help the Fund's market price to more accurately reflect the value of its holdings." The per share Net Asset Value ("NAV") of a closed-end fund is the total value of securities in its portfolio divided by the number of outstanding shares. The price at which the shares trade on an exchange fluctuates, however, according to investor demand, which may cause the price to reflect a premium or discount to the NAV. A fund that has committed to a managed distribution policy but fails to earn or realize income sufficient to meet the target distributions as represented to shareholders will generally fund them with return of capital or long-term capital gains.

⁷ The Delaware Investments Dividend and Income Fund, Inc. and the Delaware Investments Global Dividend and Income Fund, Inc. made monthly distributions. Consequently, Section 19(a) required those funds to estimate whether a particular month's distribution was derived from a source other than net investment income as of the end of that month. The Lincoln National Convertible Securities Fund, Inc. made quarterly distributions. Consequently, Section 19(a) required this fund to estimate whether a particular quarter's distribution was derived from a source other than net investment income as of the end of that quarter.

Section 19(a) requires registered investment companies to identify the source of dividends paid from sources other than accumulated undistributed net income (or net income for the current or preceding fiscal year) determined in accordance with good accounting practice. Rule 19a-1(e) further requires that "the source or sources from which a dividend is paid shall be determined (or reasonably estimated) to the close of the period as of which it is paid" Because DSC contractually assumed the Funds' responsibilities under Section 19(a), DSC was required to reasonably estimate the Funds' net investment income position at the end of the period for which a distribution was made and to send notices if, at that point in time, the distribution included a portion from sources other than net income. DSC's justification for not sending the required 19(a) notices was that at the time most of the relevant distributions were made, its projections of net income for the remainder of the year created a reasonable likelihood that there would be sufficient investment income received during the rest of the fiscal year to cover the distributions. Rule 19a-1(e), however, mandates reasonable estimates at the time of payment and provides that inaccurate estimates be corrected. Therefore, notwithstanding DSC's projections (at the time each dividend was paid) that the nature of the distribution might change before the completion of the tax year, it was nevertheless obligated to inform shareholders of the Funds' best estimate regarding the composition of that dividend at the time it was paid. Nothing in Section 19(a) or Rule 19a-1 prevents registered investment companies from including additional disclosure about the likelihood that the nature of a dividend payment might change at the end of the year due to portfolio management activity.

the distributions. At the end of each calendar year, DSC provided shareholders with Internal Revenue Service Form 1099-DIV disclosing the nature of all distributions on a tax basis. But that notice did not comply with Section 19(a) and Rule 19a-1 because it was not made contemporaneously with each dividend.

11. As a result of the conduct described above, DSC willfully aided and abetted and caused the Funds' violations of Section 19(a) and Rule 19a-1.⁸

DSC's Section 34(b) Violations

12. Section 34(b) of the Investment Company Act makes it unlawful for any person to make untrue statements of material fact, or omit material information necessary to make other statements made not misleading, in any registration statement, application, report, account, record, or other document filed with the Commission pursuant to the Investment Company Act.

13. On March 14, 2002, DSC applied to the Commission on behalf of the Delaware Investments Dividend and Income Fund, Inc. and the Delaware Investments Global Dividend and Income Fund, Inc. for an exemption from Section 19(b) of the Investment Company Act to allow the Funds to make up to twelve distributions of long-term capital gains a year. DSC sought the exemption in order to be able to use long-term capital gains to fund the fixed distributions mandated by the Funds' managed distribution policies. In its application, DSC asserted "Applicant's Shareholders are informed that Applicants fixed distributions are not tied to their investment income and realized capital gains and do not represent yield or investment return...[because]...[i]n accordance with Rule 19a-1 under the [Investment Company] Act, a separate statement showing the source of the distribution (net investment income, net realized capital gains or return of capital) accompanies each distribution."

14. That assertion was untrue because, as described above, DSC was not providing the required 19(a) notices for the two funds at the time the application was made.

15. As a result of the conduct described above, DSC willfully violated Section 34(b) of the Investment Company Act.⁹

⁸ "Willfully" as used in paragraph 11 of this Order means intentionally committing the act that constitutes the violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

⁹ "Willfully" as used in paragraph 15 of this Order means intentionally committing the act that constitutes the violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he or she is violating one of the Rules or Acts.

DSC's Remedial Efforts and Cooperation

16. In determining to accept the Offer, the Commission considered certain remedial actions promptly undertaken by the Respondent and its cooperation with the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent DSC's Offer.

Accordingly, pursuant to Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Delaware Service Company, Inc. shall cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act and causing any violations and any future violations of Section 19(a) of the Investment Company Act and Rule 19a-1 promulgated thereunder; and

B. Respondent Delaware Service Company, Inc. shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$425,000.00 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Delaware Service Company, Inc. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Peter Bresnan, Esq., Division of Enforcement, Securities and Exchange Commission, 100 F. Street N.E., Washington, D.C. 20549.

By the Commission.

Nancy M. Morris
Secretary