

REC
TR

02-02-2001

Docket No.:



101603231

Tab settings → → → ▼ ▼

To the Honorable Commissioner of Patents and Trademarks, please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Wheat First Securities, Inc. 1.74.01

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State **Virginia**
 Other _____

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: **First Clearing Corporation**

Internal Address: _____

Street Address: **10700 Wheat First Drive**

City: **Glen Allen** State: **VA** ZIP: **23060**

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State **Pennsylvania**
 Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from
Additional name(s) & address(es) Yes N

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other **Purchase and Assumption Agreement**

Execution Date: **January 1, 1999**

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)
75/564,925

Additional numbers Yes No

B. Trademark Registration No.(s)

2,095,193	2,240,592
2,089,343	
2,224,321	

Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Mary Dalton Baril, Esquire**

Internal Address: **McGuireWoods LLP**

Street Address: **One James Center, 901 East Cary Street**

City: **Richmond** State: **VA** ZIP: **23219-4030**

6. Total number of applications and registrations involved:..... 5

7. Total fee (37 CFR 3.41):.....\$ **140.00**

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
13-0437

DO NOT USE THIS SPACE

02/01/2001 DBYRNE 00000092 2095193
01 FC:481 40.00 DR
02 FC:481 100.00 DR

Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Mary Dalton Baril *Mary Baril* **January 24, 2001**
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and

8

**PURCHASE AND ASSUMPTION
AGREEMENT**

THIS AGREEMENT, made and entered into as of this 1st day of January, 1999, by and between Wheat First Securities, Inc., a Virginia corporation ("Seller") and First Clearing Corporation, a Pennsylvania corporation with main office at Glen Allen, Virginia ("Purchaser").

WHEREAS, Seller, through a separate division, is engaged, among other things, in the retail broker-dealer clearing business;

WHEREAS, Seller desires to transfer the assets and liabilities, as shown in the pro-forma balance sheet attached on Schedule A hereto, as such balance sheet is updated to the date immediately preceding the date of closing (the "Assets and Liabilities"), associated with this business; and

WHEREAS, Seller desires to purchase such Assets and assume such Liabilities;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Purchase, hereby agree as follows:

Section 1. Purchase of Assets and Assumption of Liabilities. Subject to the terms and conditions set forth in this Agreement, on the closing date, which shall be on February 1, 1999, or such other date as may be mutually agreed to by the parties (the "Closing Date"):

1.1. Purchaser shall assume, and agree to pay, perform, fulfill and discharge, as and when due and payable, the Liabilities.

1.2. Seller shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, all of Seller's right, title and interest in and to the Assets.

Section 2. Consideration. In consideration of Purchaser's purchase of the Assets and its assumption of the Liabilities, Purchaser shall pay to Seller an amount equal to the book value of the Assets, as of the close of business on the Closing Date, less the book value of the Liabilities, as of the close of business on the Closing date. As used herein, the term "book value" shall mean book value as determined from the books and records of the Seller, in accordance with generally accepted accounting principles ("GAAP") consistently applied.

Section 3. Conditions to Closing. On the Closing Date:

3.1. The Seller shall deliver to Purchaser the balance sheet attached as Schedule A, as revised and updated, to the date immediately preceding the Closing Date, and certify that there is no material change in the condition of the Assets or Liabilities contained in such balance sheet from the balance sheet dated November 30, 1998;

3.2. The Seller shall deliver to Purchaser the Assets as shall be capable of physical delivery;

3.3. The Seller shall execute, acknowledge and deliver to Purchaser all such endorsements, assignments, bills of sale, and other instruments of conveyance, assignment and transfer as shall be reasonably necessary for Purchaser to consummate the sale and transfer of the Assets and Liabilities to Purchaser;

3.4. The Seller shall assign and deliver to Purchaser all securities, deeds, mortgages, security interests and other assets of any nature whatever held by Seller as collateral security for any indebtedness owing to Seller and relating to the Assets being transferred to Purchaser;

3.5. The Seller shall deliver or make available to purchaser all books, records and accounts relating to the Assets and the Liabilities;

3.6. The Purchaser shall pay to the Seller the Consideration calculated in accordance with Section 2 of this Agreement by such method of payment as mutually agreed upon by the parties; and

3.7. The Purchaser shall execute and deliver to the Seller an Instrument of Assumption by which Purchaser agrees to assume and discharge the Liabilities.

Section 4. Further Assurances. On and after the Closing Date, Seller agrees to give such further assurance and to execute, acknowledge and deliver such documents, bills of sale, acknowledgments and other instruments of conveyance and transfer as in the judgment of Purchaser shall be necessary to effectively vest in the Purchaser full legal and equitable title in all of the Assets.

Section 5. Individual Assignments. The parties agree that the transfer of any Assets or any Liabilities hereunder may also be shown by such individual assignments made after the Closing Date as may be appropriate under the circumstances.

Section 6. Representations and Warranties of Seller. Seller warrants, covenants and agrees that its condition as of the close of business of the Closing Date will not change materially from its condition as of the date of this Agreement and that there are no actions, suits, or proceedings pending, or to the knowledge of Seller threatened against or affecting Seller that involve the likelihood of any judgment of liability that may cause any materially adverse change in the Assets or Liabilities and that to the best of Seller's knowledge, the Assets and Liabilities shown on Schedule A are true and correct.

Section 7. Regulatory Approval. The consummation of this Agreement is expressly conditions upon obtaining all required approvals from the regulatory authorities having jurisdiction over this transaction.

Section 8. Amendment. Termination. This Agreement may be amended in writing signed by both of the parties hereto. Either party may terminate the Agreement upon written notice to the other party.

Section 9. Assignment. This Agreement shall inure to the benefit of the participating parties, their successors and assigns. This Agreement is not assignable by either party without the written consent of the other party.

Section 10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts made and to be performed entirely within the Commonwealth of Virginia without regard to the conflict of laws provisions thereof.

Section 11. Indemnification. The Seller shall indemnify and hold harmless the Purchaser from any loss, liability (other than Liabilities reflected on Schedule A hereto), obligation, claim, demand, damage or expense, including without limitation attorneys' fees and disbursements, which is directly or indirectly suffered or incurred at any time by the Purchaser, and which arises from any act, transaction or obligation entered into by the Seller prior to the Closing Date.

Section 12. Miscellaneous.

12.1 Notices. All notices, requests, demands, consents and other communications given or required to be given under this Agreement and under the related documents shall be in writing and delivered to the applicable party at the address indicated below:

If to Seller:

Wheat First Securities, Inc.
301 South College Street, TW-8
Charlotte, North Carolina 28288
ATTN: Scott Ilario
Phone: (704) 374-3369
Fax: (704) 383-0126

If to Purchaser:

First Clearing Corporation
10700 Wheat First Drive
Glen Allen, VA 23060
ATTN: Les Ravitz
Phone: (804) 965-2411
Fax: (804) 762-5931

or, as to each party at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. Any notices shall be in writing, including telegraphic or facsimile communication, and may be sent by registered or certified mail, return receipt requested, postage prepaid, by fax or by overnight delivery service. Notice shall be effective upon actual receipt thereof.

12.2 Entire Agreement. This Agreement shall include all of the Schedules attached hereto and all updates made thereto, and contains the entire understanding of and all agreements between the parties hereto with respect to the subject matter hereof and supersedes any prior agreement or understanding, oral or written, pertaining to any such matters, which agreements or understandings shall be of no force or effect for any purpose.

12.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.4 Headings. The headings used in this Agreement are inserted for purposes of convenience of reference only and shall not limit or define the meaning of any provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Agreement as of the date first written above. This Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which taken together shall constitute one and the same instrument.

SELLER:

WHEAT FIRST SECURITIES, INC.

By: [Signature]
Name: James F. Powers
Title: Senior Vice President

ATTEST:

By: [Signature]
Name: John V. Ayanian
Title: Vice President
First Union Corporation

[SEAL]

PURCHASER:

FIRST CLEARING CORPORATION

By: [Signature]
Name: David A. Hebner
Title: Vice President and Secretary

ATTEST:

By: [Signature]
Name: John V. Ayanian
Title: Vice President
First Union Corporation

[SEAL]

SCHEDULE A

ASSETS AND LIABILITIES

PRO-Forma Balance Sheet as of September 30, 1998

FULNC: 55061-1

TRADEMARK
REEL: 002228 FRAME: 0208

Net Assets

First Clearing Corporation
 Net Assets Transferred from Section 20
 November 30, 1998

Cash	\$ 19,071,306
Cash segregated in compliance with federal and other regulations	2
Receivable from brokers or dealers and clearing organizations:	
Failed to deliver:	17,596,358
Securities borrowed:	41,221,384
Clearing organizations:	12,192,268
Other	14,696,960
Receivables from customers:	
Securities accounts:	756,890,491
Allowance for doubtful accounts	(698,198)
Receivables from non-customers	21,386,208
Memberships in exchanges:	1,000,000
Investment in and receivables from affiliates, subsidiaries and associated partnerships	780,303
Property, furnitures, equipment, leashold improvements and rights under lease agreements:	
At cost (net of accumulated depreciation and amortization)	16,000,000
Other Assets:	28,399,126
TOTAL ASSETS	<u>\$ 928,536,208</u>

Payable to brokers or dealers and clearing organizations:	
Fail to receive	\$ 35,270,123
Securities loaned	305,005,085
Clearing organizations:	4,301,241
Other	13,929,509
Payable to customers:	286,904,005
Payable to non customers:	16,513,262
Accounts payable and accrued liabilities and expenses:	88,814,828
TOTAL LIABILITIES	<u>750,738,053</u>
 NET ASSETS	 <u>\$ 177,798,155</u>