

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PET QUARTERS, INC., et al PLAINTIFFS

v. 4:04-cv-1528-RSW

THE DEPOSITORY TRUST AND CLEARING CORP.,
THE DEPOSITORY TRUST COMPANY, AND
THE NATIONAL SECURITIES CLEARING CORPORATION DEFENDANTS

MEMORANDUM OPINION & ORDER

The Defendants (collectively "Depository Trust") move for an order dismissing the Plaintiffs' (collectively "Pet Quarters") case (doc. #9). Depository Trust claims Pet Quarters' state-based causes of action are barred by federal conflict and field preemption. Because Pet Quarters' state claims conflict with Congress's intent to have a uniform and efficient system for settling and clearing securities transactions, Depository Trust's motion is **GRANTED** and this case is **DISMISSED WITH PREJUDICE**.

I. Judicial Notice

Depository Trust has moved for judicial notice of many documents for the Court's review on its motion to dismiss (docs. #11 & #67). Pet Quarters objects, arguing that analyzing these documents would deviate from the Court's standard of review for a motion to dismiss. The documents Depository Trust asks the Court to review are Securities and Exchange Commission ("SEC") releases published in the Federal Register, briefs and opinions of other jurisdictions, public disclosures filed with the SEC, and other SEC publications. Pet Quarters also supplemented its record by

asking for permission to file an amicus curie brief written by the North American Securities Administrators Association, Inc. and filed in Nanopierce Technologies, Inc. v. Depository Trust and Clearing Corp. These are the types of matters that are not subject to dispute and must be judicially noticed. Fed. R. Evid. 201. Furthermore, the Court may consider these matters when considering a motion to dismiss because they are public record. See Levy v. Ohl, 477 F.3d 988, 991-92 (8th Cir. 2007) (holding it was not necessary to convert 12(b)(6) motion into a motion for summary judgment where the extra-pleading matters were part of the public record). Therefore, Depository Trust's motions for judicial notice (docs. #11 & 67) are **GRANTED**.

II. Facts

This case involves the complex manner in which securities traded on the national markets are settled and cleared after the trade. Congress had directed the SEC to facilitate the development of a uniform, national system for settling and clearing securities transactions. 15 U.S.C. § 78q-1(a) (2000). Clearing and settling refers to the process by which ownership in securities are transferred for funds when a securities transaction occurs. Paper certificates no longer change hands; instead, the transaction is recorded on a book-entry system.

Pet Quarters is an Arkansas corporation that sells pet supplies online. Pet Quarters, as a young and growing company, sought additional financing from outside investors. Allegedly,

