UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67451 / July 17, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14726

In the Matter of

JEFFREY A. WOLFSON, ROBERT A. WOLFSON, AND GOLDEN ANCHOR TRADING II, LLC (n/k/a BARABINO TRADING, LLC)

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO JEFFREY A. WOLFSON

I.

On January 31, 2012, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Sections 15(b), and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Jeffrey A. Wolfson ("Respondent" or "J. Wolfson").

II.

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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of violations of the locate and close-out requirements of Regulation SHO of the Securities Exchange Act of 1934 ("Reg. SHO") by J. Wolfson, who as a sole proprietor, from July 2006 through May 7, 2007, and through his firm BMR 2, LLC ("BMR"), from May 8, 2007 through July 2007, violated these requirements by taking advantage of an exemption to the locate rules to which they were not entitled and engaged in hundreds of violative transactions that caused large persistent fail to deliver positions in threshold securities generating $15.6 million in illicit trading profits that, after direct transaction costs, resulted in almost $9 million in net illicit trading profits through his violative conduct.

2. The Commission adopted Reg. SHO in an effort to reduce fails to deliver and to address potentially abusive "naked" short selling. Fails to deliver occur when a seller fails to deliver securities to the buyer when delivery is due. Generally, investors complete or settle their security transactions within three settlement days. This settlement cycle is known as T+3 (or "trade date plus three days"). T+3 means that when a trade occurs, the participants to the trade deliver and pay for the security at a clearing agency three settlement days after the trade is executed so the brokerage firm can exchange those funds for the securities on that third settlement day. In a "naked" short sale, the seller does not own, and does not borrow or arrange to borrow the securities in time to make delivery to the buyer within the standard three-day settlement period. As a result, the seller fails to deliver the securities to the buyer when delivery is due.

3. As noted in the Commission's proposing rule release for Reg. SHO, "[n]aked short selling can have a number of negative effects on the market, particularly when the fails to deliver persist for an extended period of time and result in a significantly large unfulfilled delivery obligation at the clearing agency where trades are settled. At times, the amount of fails to deliver may be greater than the total public float. In effect the naked short seller unilaterally converts a securities contract (which should settle in three days after the trade date) into an undated futures-type contract, which the buyer might not have agreed to or that would have been priced differently. The seller's failure to deliver securities may also adversely affect certain rights of the buyer . . . . More significantly, naked short sellers enjoy greater leverage than if they were required to borrow securities and deliver within a reasonable time period, and they may use this additional leverage to engage in trading activities that deliberately depress the price of a security." Short Sales, 68 Fed. Reg. 62972, 62975 (Nov. 6, 2003) (footnotes omitted).

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

4. A "threshold security," as defined in Rule 203(c)(6) of Reg. SHO, is an equity security that has an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency, totaling 10,000 shares or more, equal to at least 0.5% of the issuer's total shares, and which is included on a list disseminated to its members by a self-regulatory organization.

5. Two provisions of Reg. SHO are applicable in this matter. First, Rule 203(b)(1) of Reg. SHO requires, subject to certain exceptions, market participants seeking to effect a short sale to borrow, arrange to borrow, or have reasonable grounds to believe that a security can be borrowed in time for delivery when due prior to effecting the short sale. This is known as the "locate requirement." Reg. SHO contains an exception from this locate requirement for certain market makers, with respect to transactions in connection with bona-fide market making activities in the security for which this exception is claimed (the "Market Maker Exception"). Thus, a market maker can execute a short sale in connection with bona-fide market making without first obtaining a locate.

6. Second, Rule 203(b)(3) requires that if a participant of a registered clearing agency (i.e., a clearing broker) has a fail to deliver position at a registered clearing agency in a threshold security for thirteen settlement days, the participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity (the so-called "close-out" requirement). This purchase has to be a "bona fide transaction," Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO (December 17, 2004), Question and Answer 5.7 (added May 24, 2005). Also Rule 203(b)(3)(vii) specifically excludes as an effective close-out an arrangement with another person to purchase securities when the participant with the fail to deliver position knows, or has reason to know, that the other person will not deliver securities in settlement of the purchase.[2] A participant of a registered clearing agency may "allocate" a portion of its fail to deliver position to a broker-dealer for which it clears trades based on such broker-dealer's short position, in which case the obligation to close out is shifted to the broker-dealer. Once the fail to deliver position is allocated to the broker-dealer, all provisions of Rule 203(b)(3) relating to such fail to deliver position apply to that broker-dealer. This means that even a qualifying market maker who is entitled to avail himself of the Market Maker Exception to the locate requirement when he sells a stock short, has to eventually purchase that stock in a bona-fide transaction thirteen days later if his clearing firm has a fail to deliver position in the threshold security for thirteen settlement days and the clearing firm allocates the fail to deliver position to him.

7. J. Wolfson, who was not conducting bona-fide market making activities but was instead engaged in "naked" short sale transactions for his personal investment purposes, improperly utilized the Market Maker Exception from Rule 203(b)(1) in order to avoid locating shares before effecting short sales as part of "reverse conversion" and "assist" transactions, as further described below. Because J. Wolfson failed to borrow or arrange to borrow securities to make delivery when delivery was due, the short sales as part of the reverse conversions and assists were "naked" short sales. J. Wolfson also violated Rule 203(b)(3) by repeatedly engaging in a series of violative transactions to ostensibly "reset" the thirteen-day clock for complying with the close-out

[2] During the relevant period, this provision was denominated Rule 203(b)(3)(v).

requirement, but without actually purchasing shares in a bona-fide transaction. These violative transactions enabled J. Wolfson to circumvent Reg. SHO, allowed him to generate millions of dollars in profits because he did not actually borrow or arrange to borrow the securities he was selling short, and caused his clearing broker to have large persistent fail to deliver positions in these threshold securities, thus undermining one important purpose of Reg. SHO.

8. These violations occurred as a result of J. Wolfson's routine practice of engaging in a combination of three types of transactions in threshold securities. The first type of transaction, known in the industry as a "reverse conversion" or "reversal," involves selling stock short while also selling a put option and buying a call option that each have the exact same expiration date and strike price. The option combination creates what is known as a "synthetic long position" that hedges the short stock sale. All three of these transactions are executed with the same counterparty – which is engaging in a "conversion." The position is "delta neutral" to any change in the underlying stock price because whether the equity price rises or falls, the position remains hedged until the options expire, when one option will expire worthless while the other will be exercised or assigned, causing the stock to be received by the original seller and closing the short position.

9. Reverse conversions are executed to meet a one-sided market demand for hard-to-borrow threshold securities. The buyers of the threshold securities, in this case large prime brokerage firms, engaged in the conversion transaction that allowed them to acquire a long stock position that is hedged by the synthetic short options position. The brokerage firm could then loan out the shares of the threshold securities and receive fees from the borrowers. Those loan fees can be quite significant when the stock is a threshold security, because threshold securities are generally hard to borrow and therefore command large fees in the stock loan market. Indeed, the borrow rate (referred to as a "negative rebate" because it is paid by the borrower to the lender) on a threshold security can be 50% or more of the stock's market price (on an annualized basis), as compared to a small positive rebate that a financial institution borrowing securities would receive from the lender to compensate for cash collateral it posts to the lender when a security is easy to borrow. In many cases, certain threshold securities could not be borrowed at all. Alternatively, if the shares could be borrowed, the price to borrow was often much higher than the price at which J. Wolfson was willing and able to transact in reverse conversions because he did not have and did not intend to actually buy or borrow the stock he was selling short.

10. As a result, J. Wolfson, who did not comply with the "locate" requirements of Rule 203(b)(1) before selling the stock and did not comply with the close out requirements of Rule 203(b)(3), was able to attract the business of prime brokerage firms seeking to create inventory for stock loans on hard to borrow securities.

11. J. Wolfson could afford to engage in these reverse conversion transactions at a much better price than his competitors who located the stock in compliance with Reg. SHO's requirements and incurred the costs associated with actually borrowing the security as required by Reg. SHO. Thus, J. Wolfson undercut the price for reverse conversions that was charged by those who did not violate Reg. SHO by engaging in "naked" short selling. As a result, J. Wolfson made millions of dollars in illicit profit.

12. The second type of transaction J. Wolfson engaged in – referred to herein as a "reset" – was a transaction in which J. Wolfson purported to discharge his obligation to "purchase" the security and close out his short position. In reality, it was a violative transaction. In a reset transaction, J. Wolfson had a close out obligation and purportedly "bought" shares of that security while simultaneously buying from the same counterparty a short-term, deep in-the-money[3] put option (a so-called "married put," because the purchase of stock was paired with the put option) or sold a short-term, deep in-the-money call option (a so-called "buy write" because the buyer buys shares and "writes" – or sells – a call option). The violative reset transaction was more often than not priced at a net cost of $0.03 per share to the purchaser of the stock. This ostensible purchase of shares married with the short-term deep in-the-money option created the illusion that J. Wolfson satisfied the close-out obligation of Reg. SHO Rule 203(b)(3) by "purchasing" shares. But because the purchase was married to a short-term deep in-the-money option that in fact negated the purchase and returned the shares to the counterparty the next day, it was not a bona-fide purchase transaction. J. Wolfson knew or had reason to know that the shares he apparently "purchased" in the reset transactions would be transferred back to the party that apparently "sold" them the day before when J. Wolfson either exercised the put or was assigned on the call.

13. J. Wolfson also knew or had reason to know that his counterparty was selling stock short without purchasing or borrowing to cover the short sale, so no shares would actually be delivered in the transaction. J. Wolfson, when "purchasing" the stock knew or had reason to know that because his counterparty on the reset would not deliver securities in settlement of purchase, there was no actual close out of the fail to deliver position. For all these reasons, J. Wolfson also knew that even if there was no failure to deliver, the one-day purchase of stock followed by its return the next day was a violative transaction that simply rolled his short position over for another thirteen settlement days. These transactions violated Rule 203(b)(3) of Reg. SHO.

14. The third type of transaction J. Wolfson engaged in was simply taking the other side of the reset transaction, referred to as the "assist." Thus, J. Wolfson would assist with both his own and others' reset transactions by selling shares short to the resetting party while simultaneously selling to the same counterparty a short-term, deep in-the-money put option or buying a short-term deep in-the-money call option. When J. Wolfson sold short as part of his assist transactions, he did not obtain a locate prior to the short sale, and thus each assist transaction also constituted a separate violation of Rule 203(b)(1). Because J. Wolfson routinely took both sides of these transactions designed to reset the thirteen day Reg. SHO clock, he understood that no shares ever changed hands. In fact, when engaging in resets, J. Wolfson traded with Trader A or with Trader B (who received instruction from J. Wolfson in how to trade threshold securities) at least 47% of the time.

15. J. Wolfson was the key participant in this violative activity and taught Trader A, and others how to do it. One benefit to J. Wolfson of doing so was to have Trader A and others as facilitators by taking the assist on the other side of his reset transactions.

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[3] A put option is in-the-money if the stock price is below the strike price of the option. A call option is in-the-money if the stock price is above the strike price of the option.

16. In fact, J. Wolfson often did directly arrange with Trader A and Trader B to violate Reg. SHO. J. Wolfson at times had authority to instruct brokers to place trades into Trader A's and Trader B's accounts. J. Wolfson often called in both sides of his reset transaction and instructed the broker to put assists in either Trader A's or Trader B's account (and sometimes both).

17. During the period July 2006 through July 2007, J. Wolfson routinely engaged in hundreds of "reverse conversion," "reset" and "assist" transactions in numerous threshold securities.

18. During this period, J. Wolfson was not engaged in bona-fide market making activities in these securities. J. Wolfson failed to maintain regular and continuous two-sided quotations and did not hold himself out as being willing to buy and sell options in these securities on a regular or continuous basis by entering quotations in an inter-dealer communications system or by any other means. J. Wolfson was not appointed by his Self-Regulatory Organization ("SRO") as a market maker in these threshold securities or in the options of these threshold securities and did not abide by the SRO's requirements to be considered a market maker in the options of these securities. Moreover, while J. Wolfson sold hundreds of reverse conversions, he rarely purchased a conversion. Once J. Wolfson sold the reverse conversion, he did not trade out of the position but instead held onto the position (similar to any other investment transaction) until the maturity date of the underlying options, which was often several months. During this time, J. Wolfson maintained his open short position through routine use of the reset transactions. J. Wolfson simply had no legitimate claim to avail himself of the Market Maker Exception activities in the securities for which this exception was claimed when he sold short either in the reverse conversion or assist transactions.

19. These transactions caused significant amounts of persistent fails to deliver in threshold securities. By engaging in these unlawful transactions during the period July 2006 through July 2007, J. Wolfson earned $15,613,514 in illicit trading profits from reverse conversions and assists, and incurred $643,962 in costs from the resets. After direct transaction costs, J. Wolfson earned $8,771,432 in net trading profits.

20. By virtue of his conduct, J. Wolfson willfully[4] violated, aided and abetted and caused violations of Rules 203(b)(1) and 203(b)(3) of Reg. SHO.

Respondent

21. *Jeffrey A. Wolfson*, age 59, is a resident of Glencoe, Illinois. J. Wolfson, a sole proprietor, holds a Series 7 license and was a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act (File No. 8-37121) until May 8, 2007, when the assets and liabilities of the sole proprietorship were transferred to BMR 2, L.L.C. During the period January 1, 2005 through May 8, 2007, J. Wolfson was registered with the Chicago Board Options Exchange ("CBOE") as a market maker for Wol Corporation. J. Wolfson terminated his

[4] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

affiliation with Wol effective May 8, 2007. J. Wolfson is currently a member and the majority owner of Broker-Dealer 1. J. Wolfson founded Pax Clearing Corporation which Merrill Lynch Professional Clearing Corp. acquired in April 2005.

Other Relevant Entity

22. *BMR 2, L.L.C.*, was an Illinois limited liability company with an office in Chicago. BMR was a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act (File No. 8-37121) from at least May 8, 2007 until October 10, 2008. On May 8, 2007, BMR assumed all assets and liabilities of Jeffrey A. Wolfson, sole proprietor. From May 8, 2007 through March 3, 2008, BMR was a member of the CBOE. On September 11, 2009, BMR was dissolved.

Background

23. From July 2006 through July 2007, J. Wolfson, as a sole proprietor and later through BMR, engaged in "reverse conversions" and "assist" transactions in which he sold short certain threshold securities without locating the securities subject to the short sales. J. Wolfson was not entitled to rely on the Market Maker Exception to justify his failure to locate the threshold securities because these transactions were not part of bona-fide market making, as discussed further below. J. Wolfson also improperly engaged in a series of violative "reset" transactions that did not satisfy his obligations to close out his fail-to-deliver positions. Through these transactions, J. Wolfson was able to profit from selling the reverse conversions in threshold securities to prime brokers at prices less than the prevailing rate (then very high) to borrow them. J. Wolfson was able to keep as profit the entire amount made on the "sale" of the reverse conversion because he never intended to borrow or buy the securities to close out the short position created by the reverse conversion.

J. Wolfson Begins Frequent Trading in Threshold Securities

24. It was not until after J. Wolfson sold an "assist" transaction in Company A (and more assists after that) that he learned that others were using reset transactions (which he had been assisting) to close out their fails to deliver and began selling a large number of reversals in threshold securities. The reset enabled him to avoid the costs associated with borrowing or purchasing sufficient shares to make delivery on the short sale component of the reverse conversion. Thus, actually delivering on the short sale component of the reverse conversion was not part of J. Wolfson's strategy.

25. Moreover, J. Wolfson understood that he was making available shares, which he did not own or borrow, to prime brokers to use for loans via his reverse conversions.

26. Typically, in a reverse conversion, the cost to borrow stock is considered a carrying cost to the reverser – the party providing the conversion. However, J. Wolfson did not have to factor in the cost to borrow stock when he quoted conversions because he avoided such costs by not complying with Reg. SHO. As a result, J. Wolfson enjoyed a competitive advantage over others in the market who were complying with Reg. SHO.

27. J. Wolfson's trading records show that he began frequent trading in threshold securities beginning in July 2006 when he did five reverse conversions, one reset and sixteen assists. J. Wolfson's activity in threshold securities peaked in March 2007 when he did eighty-six reverse conversions, thirty resets and seventy-eight assists. Beginning in May 2007, J. Wolfson switched from trading as a sole proprietor to trading through BMR. By executing at least 380 reverse conversions, from July 2006 through July 2007, J. Wolfson generated approximately $12,129,316 in illicit profits before direct transaction costs. During the same period, J. Wolfson executed at least 486 assist trades for total profits of approximately $3,484,198, before direct transaction costs.

28. Beginning in late 2006, J. Wolfson began to teach others how to trade reverse conversions in threshold securities as well as resets and assists. J. Wolfson approached Trader B and asked if Trader B wanted to learn how J. Wolfson traded. J. Wolfson and Trader B discussed, among other things, how to do reverse conversions in threshold securities and J. Wolfson introduced Trader B to the use of reset transactions to close out his Reg. SHO fails.

29. J. Wolfson also shared his threshold securities trading strategies with, Trader A, who began trading in his own account at Broker-Dealer 2 in March 2007.

J. Wolfson Was Not a Bona-Fide Market Maker under Reg. SHO

30. The short sales executed by J. Wolfson in the reverse conversion and the assist transactions were not in connection with bona-fide market making activities in the threshold security, so he was not eligible for the Market Maker Exception.

31. Section 3(a)(38) of the Exchange Act defines a market maker as a specialist or dealer who "holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis." J. Wolfson failed to maintain regular and continuous two-sided quotations and did not hold himself out as being willing to buy and sell securities or options in the securities on a regular or continuous basis by entering quotations in an inter-dealer communications system or by any other means. Rather, J. Wolfson was engaging in reverse conversions and assists for his own investment purposes. J. Wolfson did not regularly or continuously disseminate two-sided quotes in the option classes he used in reverse conversions.

32. The proposing and adopting releases for Reg. SHO provide guidance as to what constitutes "bona-fide" market making activities. The proposing release states that the Market Maker Exception was meant "to facilitate customer orders in a fast moving market without possible delays with complying with the proposed 'locate' rule." Short Sales, 68 Fed. Reg. 62972, 62977 (Nov. 6, 2003). It also notes that "most specialists and market makers seek a net 'flat' position in a security at the end of each day and often 'offset' short sales with purchases such that they are not required to make delivery under the security settlement system." Id. The adopting release states that the Commission has specifically noted that bona-fide market making "does not include activity that is related to speculative selling strategies or investment purposes of the broker-

dealer and is disproportionate to the usual market making patterns or practices of the broker-dealer in that security." Short Sales, 69 Fed. Reg. 48008, 48015 (Aug. 6, 2004).

33. J. Wolfson's trading activities were not consistent with bona-fide market making. Rather than engaging in bona-fide market making, J. Wolfson, from July 2006 through May 2007 as a sole proprietor and then through BMR, simply executed a trading strategy to sell reverse conversions to other market participants who wanted to use conversions to acquire a long position in the stock. Instead of having a net flat position, J. Wolfson's trading records show that he maintained extended open short positions in the stocks he sold as part of reverse conversions. J. Wolfson's reverse conversion and assist trades in certain threshold securities were disproportionate to his other patterns or practices in those securities.

34. J. Wolfson executed his reverse conversion and assist trades through a floor broker, who consistently called soliciting only the reversal. J. Wolfson rarely executed conversions in threshold securities.

35. Recorded telephone conversations with the floor broker concerning assists, together with J. Wolfson's trading records, show that J. Wolfson consistently executed the violative assist trades at a net price (before related trading costs) of $0.03, the profits realized after the sale of the stock, the sale or purchase of the FLEX option, and the exercise or assignment of the FLEX option. This price remained almost constant during the thirteen months during which J. Wolfson provided assists to other market participants, regardless of the equity being traded, and is inconsistent with the varied prices one would expect from bona-fide market making activity given the varying costs to actually borrow threshold securities.

J. Wolfson Was Not a Bona-Fide Market Maker under Relevant Self-Regulatory Organization Rules

36. In addition to the Reg. SHO requirements for bona-fide market making, the SRO where J. Wolfson traded – the CBOE – had specific rules governing the conduct of market makers, including the requirement to be appointed as a market maker in specific securities.

37. J. Wolfson was not appointed as a market maker by the CBOE in the securities in which he executed reverse conversions and assists. While compliance with the CBOE's market maker rules is not dispositive as to whether J. Wolfson was conducting bona-fide market making for the purposes of Reg. SHO, it can be viewed as an additional indicia of bona-fide market making.

38. Since he was not engaged in bona-fide market making for the reverse conversion and assist trades in threshold securities, J. Wolfson was required to obtain locates pursuant to Rule 203(b)(1) of Reg. SHO, but he failed to do so.

J. Wolfson Evaded His Close-out Obligation with Resets

39. J. Wolfson's short sales in the reverse-conversions resulted in a "fail to deliver" position in the threshold security at a registered clearing agency because he failed to locate shares prior to affecting his short sales, did not borrow shares subsequent to the short sale, made no attempt to acquire long shares and did not deliver to his clearing firm the shares he sold short so that the clearing firm could settle the trade. After receiving subsequent buy-in notices from his clearing firm, J. Wolfson continued to engage in resets until the expiration day of the original options in the original reverse conversion. By engaging in this course of conduct, J. Wolfson impermissibly maintained fail to deliver positions in numerous Reg. SHO threshold securities for extended periods of time.

40. J. Wolfson employed numerous reset transactions to evade the close-out requirement for several consecutive 13-day settlement periods. During the period from July 2006 to July 2007, at a cost of at least $643,962, J. Wolfson, as a sole proprietor and then through BMR, executed at least 184 reset trades to evade Reg. SHO's close-out requirement. Of these resets, at least ninety-seven, or 53%, were executed with Trader B or Broker-Dealer 2 as the contraparty for all or part of the trade.

J. Wolfson Also Reset Fails for Broker-Dealer 3 and Broker-Dealer 1

41. On October 19, 2006, Broker-Dealer 3, established a short position in Company B. The "naked" short position in Company B, a threshold security, resulted in a failure to deliver position in a threshold security, which Rule 203(b)(3) required to be closed out. Broker-Dealer 3 and Broker-Dealer 1 had similar positions in Company B and the same requirement to close out the failure to deliver.

42. Broker-Dealer 3's trading records show that from November 7, 2006 through July 26, 2007, Broker-Dealer 3 executed eleven reset transactions. J. Wolfson directed the resets for Broker-Dealer 3 and arranged for himself and for Trader B and Broker-Dealer 2 to be on the assist side of six of Broker Dealer 3's resets.

43. J. Wolfson also directed resets for Broker-Dealer 1. On December 11, 2006, Broker-Dealer 1 established a short position in Company B of approximately 222,000 shares. From December 28, 2006 through June 15, 2007, Broker-Dealer 1 executed seven reset transactions to avoid its Reg. SHO obligations and maintain its short position with Trader B and Broker-Dealer 2 as the counterparties in four of the trades. J. Wolfson entered the orders for at least some of the seven resets.

The Resets Were Not Bona-Fide Purchase Transactions and J. Wolfson Knew or Had Reason to Know the Resets Would Result in Fails to Deliver.

44. The resets were not bona-fide purchase transactions. Instead, they were transactions specifically structured to tie the purchase to an option that assured the participants to

the transaction that the shares purportedly "purchased" would be returned to the "seller" the very next day.

45. In addition, J. Wolfson knew or had reason to know that the purchase of securities in the reset transactions was from a market participant who would not deliver securities in settlement of the purchase.

46. J. Wolfson's knowledge that the purchase legs of his resets would result in fail to deliver positions is also evident from recordings of telephone conversations.

47. It was also apparent to the floor broker who handled most of J. Wolfson's trading in threshold securities that J. Wolfson had a good idea of what Trader A's and Trader B's positions were and that J. Wolfson sometimes called in both sides of a reset and assist trade where Trader A and/or Trader B were on the other side of J. Wolfson's trade.

48. Additionally, the negative rebate on these hard to borrow securities varied and was often so high a counterparty with long shares that had a high negative rebate could loan the securities out and earn more than three cents. J. Wolfson knew or had reason to know that the seller of shares was short without a borrow to cover, given that the assist was consistently priced out at net $0.03 (before trading costs).

49. J. Wolfson had direct knowledge that the reset transaction would not result in delivery of shares at settlement because he often took the assist side (collecting the same $0.03 he would pay to reset) and knew that he was selling short in that transaction without purchasing or borrowing shares to cover the short sale. In addition, he also knew that he, Trader A and Trader B often transacted with each other and knew the others' strategy was also to sell short in the assist transaction without purchasing or borrowing shares to cover the short sale.

Violations

J. Wolfson Willfully Violated Rule 203(b)(1) of Reg. SHO and Willfully Aided and Abetted and Caused BMR's Violations

50. Pursuant to the locate requirement of Rule 203(b)(1) of Reg. SHO, a broker or dealer may not effect a short sale in an equity security unless it has "(i) [b]orrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) [r]easonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) [d]ocumented compliance with [these requirements]."

51. Rule 203(b)(2)(iii) contains an exception to this locate requirement for short sales effected "by a market maker in connection with bona-fide market making activities in the security for which this exception is claimed."

52. At the time J. Wolfson, in his own name and later through BMR, placed orders to sell short certain Reg. SHO threshold securities as part of the reverse conversion transactions and

assist transactions described above, he failed to borrow, arrange to borrow, or locate the securities, claiming the Market Maker Exception to the locate requirement. The Market Maker Exception was not available to either J. Wolfson or BMR, however, because they were not engaging in bona-fide market making activities in these securities.

53. As a result of the conduct described above, J. Wolfson willfully violated, and willfully aided and abetted and caused BMR's violations of, Rule 203(b)(1) of Reg. SHO, which required a locate to be obtained prior to the short sale of stock.

J. Wolfson Willfully Violated Rule 203(b)(3) of Reg. SHO and Willfully Aided and Abetted and Caused BMR's, Broker-Dealer 2's and Broker-Dealer 3's Violations

54. At the relevant time, Rule 203(b)(3) imposed an obligation on clearing firms to immediately close out any fail-to-deliver positions at a registered clearing agency in a threshold security that last for thirteen consecutive settlement days[5] by purchasing securities of like kind and quantity. Pursuant to Rule 203(b)(3)(vi), however, a clearing firm is permitted reasonably to allocate a fail-to-deliver position to a broker or dealer whose short sale resulted in the position. Once the clearing firm has allocated the fail-to-deliver position to another broker or dealer, the obligation to comply with the mandatory close out requirement shifts to that broker or dealer.

55. Once the fail-to-deliver position is allocated to the broker or dealer, that broker or dealer, in order to satisfy the close out requirement of Rule 203(b)(3) of Reg. SHO, must purchase securities of like kind and quantity. Borrowing securities, or otherwise entering into an arrangement that merely creates the appearance of a purchase, does not satisfy Reg. SHO's close out requirement.[6]

56. In addition, Rule 203 of Reg. SHO specifically prohibits firms from satisfying their close out obligations through violative transactions that merely give the appearance of closing out a fail-to-deliver position. Specifically, Rule 203(b)(3)(vii) provides that a clearing firm – or a broker or dealer to which the clearing firm allocated a fail-to-deliver position – will be deemed not to have satisfied the close out obligation if it enters into an arrangement with another person to purchase securities and the participant – or a broker or dealer to which the clearing firm allocated a fail-to-deliver position – knows, or has reason to know, that the other person will not deliver securities in settlement of the purchase.

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5 In October 2008, the Commission adopted Rule 204T (which was made permanent as Rule 204 on July 27, 2009). Under Rule 204, clearing firms must close out fails-to-deliver on all securities (not just threshold securities) and must do so earlier than under Rule 203(b)(3). Clearing firms must now close out fail-to-deliver by either borrowing or purchasing sufficient shares before the beginning of trading hours on the first settlement day after the settlement date. Fails relating to long sales or bona-fide market making activity have two additional settlement days before they must be closed out.

6 See id. Fail to deliver positions may be closed out under Rule 204 with either a purchase or a borrow. However, the purchase or borrow must be bona-fide. A clearing firm is not deemed to have fulfilled the close-out requirement where the clearing firm enters into an arrangement with another person to purchase or borrow securities, and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase or borrow. Rule 204(f).

57. By selling (or purchasing) deep in-the-money FLEX call (or put) options while simultaneously purporting to "purchase" stock, J. Wolfson, BMR, Broker-Dealer 1 and Broker-Dealer 3 engaged in violative transactions that gave the appearance that they were closing out their fail-to-deliver position when, in fact, they did not do so. In addition, J. Wolfson, BMR, Broker-Dealer 1 and Broker-Dealer 3 knew, or had reason to know, that the other person would not deliver securities in settlement of the purchase.

58. As a result of the conduct described above, J. Wolfson willfully violated, and willfully aided and abetted and caused BMR's, Broker-Dealer 1's and Broker-Dealer 3's violations of, Rule 203(b)(3) of Reg. SHO, which prohibits firms from evading their close out obligations through violative transactions that merely give the appearance of closing out a fail-to-deliver position.

Undertakings

Respondent has undertaken to:

59. Provide the Commission, within thirty (30) days after the end of the twelve (12) month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

60. Cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent has undertaken:

a. To produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission's staff;

b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify without service of a notice or subpoena in such investigations, litigations, hearings or trials as may be requested by the Commission's staff; and

c. That in connection with any testimony of the Respondent to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, agree that any such notice or subpoena for Respondent's appearance and testimony may be served by regular mail on: Ira Lee Sorkin, Esq., Lowenstein Sandler PC, 1251 Avenue of the Americas, New York, NY 10020.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that**:**

A. Respondent cease and desist from committing or causing any violations and any future violations of Exchange Act Rules 203(b)(1) and 203(b)(3).

B. Respondent be, and hereby is suspended, from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

C. Respondent shall pay disgorgement of $8,771,432, prejudgment interest of $2,153,568 and civil penalties of $2,500,000 to the United States Treasury. Payment shall be made in the following installments:

1. $3,000,000 within 10 days of the entry of this Order;

2. $1,325,000 within 30 days of the entry of this Order;

3. $3,100,000 within 90 days of the entry of this Order;

4. $2,000,000 within 180 days of the entry of this Order;

5. $2,000,000 within 270 days of the entry of this Order;

6. $2,000,000 within 360 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717 from the date of this Order through the date of payment, shall be due and payable immediately, without further application.

Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Respondent may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to: Enterprise Services Center, Accounts Receivable Branch, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169; and shall be

accompanied by a letter identifying the file number of these proceedings; Jeffrey A. Wolfson as a Respondent in these proceedings; and specifying that payment is made pursuant to this Order.

D. Respondent shall comply with the undertaking enumerated in paragraph 59, above.

By the Commission.

Elizabeth M. Murphy
Secretary