

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66283 / January 31, 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 INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND
21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND
NOTICE OF HEARING**

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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Jeffrey A. Wolfson (“J. Wolfson”), Robert A. Wolfson (“R. Wolfson”) and Golden Anchor Trading II, LLC (“Golden Anchor”) (collectively the “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. 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 the Respondents, who, from July 2006 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 sham transactions that caused large persistent fail to deliver positions in threshold securities generating over \$17 million in unwarranted profits through their violative conduct. The Respondents are: J. Wolfson, his brother R. Wolfson, and the entity R. Wolfson traded through, Golden Anchor.

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, such as the right to vote. 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).

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, and equal to at least 0.5% of the issuer’s total shares.

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 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. 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. 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 assigns the fail to deliver position to him.

7. The Respondents in this matter, who were not conducting bona-fide market making activities but were instead engaged in “naked” short sale transactions for their 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 the Respondents 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. These same Respondents also violated Rule 203(b)(3) by repeatedly engaging in a series of sham transactions to ostensibly “reset” the thirteen-day clock for complying with the close-out requirement, but without actually purchasing shares in a bona fide transaction. These sham transactions enabled the Respondents to circumvent Reg. SHO, allowed them to generate millions of dollars in profits because they did not actually borrow or arrange to borrow the securities they were selling short, and caused their 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 the Respondents’ 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 received 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 as high as 50% 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 the Respondents were willing and able to transact in reverse conversions because they did not have and did not intend to actually buy or borrow the stock they were selling short.

10. As a result, the Respondents, 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), were able to attract the business of prime brokerage firms seeking to create inventory for stock loans on hard to borrow securities.

11. The Respondents could afford to engage in these reverse conversion transactions at a much better price than their 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. As J. Wolfson stated in a recorded telephone conversation, “what I sell them is not guaranteed, it never gets delivered, it’s funny paper.” Thus, the Respondents 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, the Respondents made millions of dollars in illicit profit.

12. The second type of transaction the Respondents engaged in – referred to herein as a “reset” – was a transaction in which the Respondents purported to discharge their obligation to “purchase” the security and close out their short position. In reality, it was a sham transaction. In a reset transaction, the Respondent having the close out obligation purportedly “bought” shares of that security while simultaneously buying from the same counterparty a short-term, deep in-the-money¹ 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). This ostensible purchase of shares married with the short-term deep in-the-money option created the illusion that the Respondent 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

¹ 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.

purchase transaction. Instead, this paired transaction was nothing more than a temporary borrow of stock for a day. The Respondents knew or had reason to know, were reckless in not knowing or should have known that the shares they apparently “purchased” in the reset transactions would be transferred back to the party that apparently “sold” them the day before when the Respondent either exercised the put or was assigned on the call. As J. Wolfson stated in recorded telephone conversations, “every trade you make . . . you know you are not getting delivery” and “nobody in their right minds can expect delivery in any of these Reg. SHO stocks.”

13. The reset transaction was virtually always priced at a net cost of \$0.03 per share to the purchaser of the stock, regardless of how much it would actually cost the seller to borrow the stock or how much the seller could make loaning the hard to borrow stock out to a third party if he had it. At times, the \$0.03 was less than a purchaser would have to pay to borrow hard-to-borrow securities in a bona-fide transaction with a counterparty that actually held the stock long, J. Wolfson and R. Wolfson knew or had reason to know, were reckless in not knowing or should have known that their 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 and R. Wolfson, when “purchasing” the stock knew or had reason to know, were reckless in not knowing or should have known that their 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 and R. 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 sham transaction that simply rolled their short position over for another thirteen settlement days. These transactions violated Rule 203(b)(3) of Reg. SHO.

14. The third type of transaction the Respondents engaged in was simply taking the other side of the reset transaction, referred to as the “assist.” Thus, J. Wolfson and R. Wolfson would assist with both their 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 each of the Respondents sold short as part of their assist transactions, they 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 these Respondents routinely took both sides of these transactions designed to reset the thirteen day Reg. SHO clock, they understood that no shares ever changed hands. In fact, when engaging in resets, these Respondents traded *with each other* or with Trader A (who received instruction from 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 his brother, R. Wolfson, and others how to do it. One benefit to J. Wolfson of doing so was to have his brother and others as facilitators by taking the assist on the other side of his reset transactions. J. Wolfson was so concerned about the violative nature of his trading with Trader A that when Trader A’s wife, during a recorded telephone call, told J. Wolfson that Trader A wanted to give J. Wolfson some money for all that J. Wolfson had done for Trader A, J. Wolfson said, “we’re going to be investigated” by the Commission, Chicago

Board Options Exchange (“CBOE”) and American Stock Exchange (“Amex”) because they are “into this Reg. SHO thing,” and J. Wolfson was adamant that if Trader A gave J. Wolfson or any of his relatives “a penny, [the regulators] can show collusion.”

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

17. During the period July 2006 through July 2007, these Respondents routinely engaged in hundreds of “reverse conversion,” “reset” and “assist” transactions in numerous threshold securities including, but not limited to Fairfax Financial Holdings Ltd. (then trading on NYSE as “FFH”); NYSE Group (NYSE: NYX); Chipotle Mexican Grill, Inc. (NYSE: CMG); Novastar Financial, Inc. (then trading on NYSE as “NFI”); and AtheroGenics, Inc. (then trading on the NASDAQ as “AGIX”).

18. During this period, the Repondents were not engaged in bona fide market making activities in these securities. The Respondents failed to maintain regular and continuous two-sided quotations and did not hold themselves 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. The Respondents were not appointed by their Self-Regulatory Organizations (“SROs”) as market makers in these threshold securities or in the options of these threshold securities and did not abide by the SRO requirements to be considered market makers in the options of these securities. Moreover, while they sold hundreds of reverse conversions, they rarely purchased a conversion. Once the Respondents sold the reverse conversion, they 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, the Respondents maintained their open short position through routine use of the reset transactions. The Respondents simply had no legitimate claim to avail themselves of the exception from the locate requirement for transactions in connection with bona-fide market making activities in the securities for which this exception was claimed when they 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, the Respondents collectively earned at least \$17,375,000 in illicit trading profits.

<u>Respondent</u>	<u>Reverse Conversions</u>	<u>No. of Trades</u>	<u>Assists</u>	<u>No. of Trades</u>	<u>Total</u>
J. Wolfson	\$12,129,000	380	\$3,484,000	486	\$15,613,000
R. Wolfson and Golden Anchor	<u>1,319,000</u>	<u>111</u>	<u>443,000</u>	<u>130</u>	<u>1,762,000</u>
Total	<u>\$13,448,000</u>	<u>491</u>	<u>\$3,927,000</u>	<u>616</u>	<u>\$17,375,000</u>

20. By virtue of their conduct, J. Wolfson willfully violated, aided and abetted and caused; Golden Anchor willfully violated; and R. Wolfson aided and abetted and caused violations of Rules 203(b)(1) and 203(b)(3) of Reg. SHO.

B. RESPONDENTS

21. *Jeffrey A. Wolfson*, age 58, is a resident of Northbrook, 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 affiliation with Wol effective May 8, 2007. J. Wolfson is currently a member and the majority owner of Sallerson-Troob, L.L.C. J. Wolfson founded Pax Clearing Corporation which Merrill Lynch Professional Clearing Corp. acquired in April 2005.

22. *Robert A. Wolfson*, age 57, is a resident of West Orange, New Jersey. R. Wolfson, who holds no securities licenses, was employed as a market maker by Golden Anchor from March 21, 2007 through December 31, 2007, where he traded his own account using capital provided by Golden Anchor with an agreement that he receive 50% of the profits generated from his trading.

23. *Golden Anchor Trading II, (n/k/a Barabino Trading, LLC)*, is a New York limited liability company with offices in New York, New York. From November 18, 1997 until May 25, 2009, Golden Anchor was a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act (File No. 8-50620).

C. OTHER RELEVANT INDIVIDUAL AND ENTITIES

24. *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.

25. *Vintage Capital, L.L.C.*, is an Illinois limited liability company with an office in Chicago in the same offices where J. Wolfson traded. Since January 2, 2004, Vintage has been a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act (File No. 8-66175).

26. *Sallerson-Troob, L.L.C.*, is an Illinois limited liability company with an office in Chicago in the same offices where J. Wolfson traded. Since August 19, 1997, Sallerson-Troob has been a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act (File No. 8-50403). During the period January 1, 2005

through July 31, 2007, Sallerson-Troob was partially owned by J. Wolfson, who is currently the majority owner.

D. ALLEGATIONS

27. From July 2006 through July 2007, the Respondents engaged in “reverse conversions” and “assist” transactions in which they sold short certain threshold securities without locating the securities subject to the short sales. The Respondents were not entitled to rely on the bona-fide market making exception to justify their failure to locate the threshold securities because these transactions were not part of bona-fide market making, as discussed further below. The Respondents also improperly engaged in a series of sham “reset” transactions that did not satisfy their obligations to close out their fail-to-deliver positions. Through these transactions, the Respondents were 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. The Respondents were able to keep as profit the entire amount made on the “sale” of the reverse conversion because the Respondents never intended to borrow or buy the securities to close out the short position created by the reverse conversion.

28. We first set out a typical example of the complete trading pattern and then discuss in more detail each Respondent’s repeated violations.

The Violative Trading Pattern

The Reverse Conversion

29. The first step in the trading pattern involved a “reverse conversion.” This involves three transactions with the same counterparty including the short sale of a generally large block of stock tied to the sale of a put option and purchase of a call option with identical strike price and expiration dates. The short sale is hedged by the options combination that creates a “synthetic long position” so the entire position is “delta neutral” to changes in the stock price. If the price of the underlying stock increased over the life of the conversion, thereby decreasing the value of the short position, that “loss” would be offset by a corresponding increase in the value of the synthetic long position; conversely, if the price of the underlying stock decreased over the life of the conversion, the decrease in the value of the synthetic long position would be offset by the “gain” on the short position. Below is an example from J. Wolfson’s trading records of a reverse conversion in the securities of iMergent, Inc. (formerly traded on the Amex as “IIG” / options ticker: IIG).

Example 1 – Reverse Conversion

February 1, 2007	J. Wolfson sold short 35,000 shares of IIG at \$19.45 per share to a counterparty
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February 1, 2007	J. Wolfson sold 350 (each option contract is for 100 shares of stock) IIG Apr 20 puts at \$3.75 per share to the same counterparty
February 1, 2007	J. Wolfson bought 350 IIG Apr 20 calls from the same counterparty; 175 at \$2.67 per share and 175 at \$2.68 per share

30. J. Wolfson made a total profit on this reverse conversion of \$18,375, earning \$1.08 on 17,500 shares and \$1.07 on 17,500 shares on the put/call spread (\$3.75-\$2.67 and \$3.75-\$2.68), and losing \$0.55 when the calls he bought as part of the options combination were exercised at the \$20.00 strike price (\$20.00 - \$19.45), for a per share profit of \$0.53 (\$1.08 - \$0.55) on 17,500 shares and \$0.52 (\$1.07-\$0.55) on the other 17,500 shares, or \$18,375, in total for this one transaction. The reverse conversion was a “package” – all three legs would be done with the same counterparty and the price for the reverse conversion would be quoted as the price per share, e.g., \$0.53 to sell the April reverse conversion.

The Reset Transaction

31. The Respondents’ short sale in the reverse-conversion, like the one in Example 1 above, however, resulted in a “fail to deliver” position in the threshold security on the books and records of their clearing firm at the end of the third settlement day (T+3). This was because the Respondents obviously did not own the shares, failed to locate shares prior to effecting their short sales, did not borrow the shares, and did not deliver the shares they sold short on settlement day. In these cases, the clearing firm routinely notified the Respondents that the clearing firm was allocating to them the obligation to close out the fail to deliver positions and that the clearing firm would buy-in those positions if the Respondents did not close them out themselves. Such a notification from a clearing firm is typically referred to in the industry as a “buy-in” notification, *i.e.*, the clearing firm notifies its client that, if the client does not close out the fail to deliver position, the clearing firm will buy shares in the market and recover the cost from the client.

32. The Respondents did not want their fail to deliver position to be bought-in by the clearing firm because such a buy-in would have required the clearing firm to actually make purchases of Reg. SHO threshold securities (which were by definition thinly traded), at the Respondents’ expense, at a price determined by the market. Additionally, the buy-in would have exposed the Respondents to market risk on their initial reverse conversion transactions because it would have eliminated the short position leaving only the unhedged synthetic long position created by purchasing call options and selling put options.

33. To avoid being bought-in, the Respondents entered into a reset, in which they bought a married put or executed a buy-write (the purchase of stock in conjunction with the sale, or writing, of call options on the same security) that utilized a particular type of option known as a FLEX option. These are exchange traded options for which the

parties can customize certain terms, including the strike price, expiration date, and exercise type (i.e., American or European). In this case, the option would usually be a one day put option with a deep in-the-money strike price, ensuring that stock “purchased” by the buyer would be “put back” or returned to the seller when exercised the very next day. The following is J. Wolfson’s reset of the reverse conversion from Example 1:

Example 2 – Reset Transaction

- February 23, 2007 J. Wolfson received a Reg. SHO buy-in notification from his clearing firm for 35,000 shares of IIG.
- February 23, 2007 J. Wolfson “purchased” 35,000 shares of IIG at \$18.83 per share from a counterparty who assisted the transaction, thereby seeming to eliminate his fail to deliver position with his clearing firm.
- February 23, 2007 J. Wolfson simultaneously bought from the same counterparty 350 IIG 26 Feb 30 put options (which were deep in-the-money – the stock would have to rise from \$18.83 to \$30, or 59% in one day, for the put to expire worthless) at \$11.20 per share; these one-day FLEX options (February 23 was a Friday) had an expiration date of February 26, 2007.
- February 26, 2007 J. Wolfson exercised the put options resulting in a “sale” back to the seller/counterparty of the 35,000 shares he had “purchased” the day before, thereby re-establishing his original short position. Three days after the exercise of the put, J. Wolfson would fail to deliver on settlement of the “sale” of the 35,000 shares. Nonetheless, the effect of Wolfson’s “purchase” on February 23 was to appear to close out the original short position on which he was failing to deliver for thirteen settlement days, and the effect of his exercising the put option was to re-establish the short position for up to another thirteen settlement days even though J. Wolfson never actually received or delivered any IIG shares.

34. The total price paid for the 35,000 shares and the 350 put options was \$30.03 per share (\$18.83 per share for the stock, plus \$11.20 per share for the options). In return, J. Wolfson received the right to sell the shares back one day later at \$30. Thus, Wolfson effectively paid \$0.03 per share, or \$1,050 in total, to circumvent his Reg. SHO obligations. With very little exception, this “reset” transaction cost the purchaser exactly \$0.03 no matter what the underlying stock was. In most cases, these reset transactions

were brokered through a floor broker, who knew a small group of market participants, including the Respondents, willing to take the other side.

35. This reset enabled J. Wolfson to evade the close-out requirement because his clearing firm counted the long purchase component of the reset towards J. Wolfson’s “net long” position for the day and reset the clearing firm’s calculation of J. Wolfson’s close-out obligation. The underlying options on the original reverse conversion expired on April 21, 2007, and J. Wolfson executed at least one additional reset transaction (again at a cost of \$0.03 per share), on March 19, 2007, to maintain a fail to deliver position from February 23 (when the position should have been closed out by the purchase of shares of like kind and quantity) until April 21, when the options from the initial reverse conversion expired. Reverse conversion positions of longer duration required several resets to maintain the original reverse conversion until expiration of the underlying options.

36. Other reset transactions allowed J. Wolfson to maintain his failure to deliver positions for even longer. A reset executed on the thirteenth settlement day of a fail to deliver allowed J. Wolfson to maintain his short position from a reverse conversion for an additional sixteen trading days, as shown in the table below.

S13	T Day 1	T+1 Day 2	T+2 Day 3	T+3 S1 Day 4
S2 Day 5	S3 Day 6	S4 Day 7	S5 Day 8	S6 Day 9
S7 Day 10	S8 Day 11	S9 Day 12	S10 Day 13	S11 Day 14
S12 Day 15	S13 Day 16			

On settlement day 13 (shown as “S13 in the table above), J. Wolfson did a reset. On the following day (shown as “T” in the table above), the option from the reset was exercised or assigned causing J. Wolfson to sell the shares. When this sale settled on “T+3” it resulted in a fail to deliver, which then could persist for another twelve settlement days until it had to be closed on “S13,” the thirteenth settlement day.

Expiration of the Original Reverse Conversion

37. The reset transactions enabled the Respondents to maintain their short position until the expiry of the underlying options in the original reverse conversion, thereby enabling the Respondents to realize the profits they had essentially locked in at the beginning of the transaction. By the nature of the reverse conversion (which contained puts and calls with the same expiration and strike price) – one option will always expire worthless and the other will always be exercised (or assigned), thus resulting in a “purchase” to the Respondent that would close out the short position put on in the original reverse conversion.

Example 3 – Expiration of Options from Original Reverse Conversion

April 20, 2007	The 350 IIG Apr 20 call options J. Wolfson bought on February 1 were in-the-money (the stock was trading at \$25.00) and exercised by J. Wolfson at \$20 resulting in a purchase of 35,000 shares of IIG. These shares closed out J. Wolfson's original IIG fail position
April 21, 2007	The 350 IIG Apr 20 put options that J. Wolfson purchased on February 1 expired worthless since the market price of IIG was above the strike price (IIG closed at \$25.00 on April 20)

38. As a result of these reverse conversion and reset transactions in IIG, J. Wolfson made a net profit of \$16,275, equal to the difference of the \$18,375 J. Wolfson made on the reverse conversion, minus the \$2,100 cost of the two reset transactions.

J. Wolfson Learns “The Game”

39. J. Wolfson testified that it was not until after he sold an “assist” transaction in FFH (and more assists after that) that he started asking himself, “What’s the other side of this, why are they doing this, what’s the game[?]” After he “figured out” how he was going to close out by using the reset transaction (which he had been assisting) he “started really selling 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 the Respondents’ strategy. In a recorded October 5, 2006 telephone conversation, J. Wolfson discussed a request for guaranteed delivery of stock on a reverse conversion and admitted that the stock he sold as part of a reverse conversion did not get delivered – “. . . what I sell them is not guaranteed, it never gets delivered, it’s funny paper.”

40. Moreover, J. Wolfson understood that he was loaning shares, which he did not own or borrow, to prime brokers via his reverse conversions. In a recorded October 4, 2006 telephone conversation, J. Wolfson explained to a representative of a hedge fund how he could lower the hedge fund’s cost of borrowing stock – in this case FFH – to cover its short sales. J. Wolfson explained how a prime brokerage firm was paying him an implied borrow rate of 20% for the long stock it “purchased” from J. Wolfson’s reverse conversion while charging the hedge fund 30% to borrow the stock. To cut out the prime brokerage firm, and make his reverse conversions even more profitable, J. Wolfson proposed that he and the hedge fund could split the 10% the hedge fund could save by doing its conversions with J. Wolfson instead of borrowing the stock from the prime broker.

41. Typically, in a reverse conversion, the cost to borrow stock is considered a carrying cost to the reverser – the party providing the conversion. However, the Respondents did not have to factor in the cost to borrow stock when they quoted

conversions because they avoided such costs by not complying with Reg. SHO. As a result, the Respondents enjoyed a competitive advantage over others in the market who were complying with Reg. SHO.

42. 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 2, LLC. By executing at least 380 reverse conversions, from July 2006 through July 2007, J. Wolfson generated approximately \$12,129,000 in illicit profits. During the same period, J. Wolfson executed at least 486 assist trades for total profits of approximately \$3,484,000.

J. Wolfson Recruits Trader A and R. Wolfson Into "The Game"

43. 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 A and asked if Trader A wanted to learn how J. Wolfson traded. J. Wolfson and Trader A discussed how to do reverse conversions in threshold securities and J. Wolfson introduced Trader A to the use of reset transactions to close out his Reg. SHO fails.

44. J. Wolfson also shared his threshold securities trading strategies with his brother, R. Wolfson, who began trading in his own account at Golden Anchor in March 2007. All of R. Wolfson's trading in threshold securities was conducted in this account at Golden Anchor and none of Golden Anchor's other trading activity was placed in this account. As the executing broker, it was Golden Anchor's responsibility to obtain locates prior to R. Wolfson's short sales and Golden Anchor's responsibility, once allocated from its clearing firm, to close out the fails to deliver resulting from R. Wolfson's trading in threshold securities. From March 23, 2007 through July 31, 2007, R. Wolfson, trading through Golden Anchor, executed at least 111 reverse conversions in threshold securities that resulted in approximately \$1,319,000 in profits. During the same period, R. Wolfson, trading through Golden Anchor, executed at least 130 assist transactions for total profits of \$443,000.

The Respondents Were Not Bona-Fide Market Makers Under Reg. SHO

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

46. 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.” The Respondents failed to maintain regular and continuous two-sided quotations and did not hold themselves 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, the Respondents were engaging in reverse conversions and assists for their own investment purposes. J. Wolfson did not regularly or continuously disseminate two-sided quotes in the option classes he used in reverse conversions.

47. 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).

48. Market making must be in a security and reverse conversions, as a package of an equity security and two derivatives in that equity security (the put and call options), are not themselves securities. Similarly, assist transactions, as packages of an equity security and a derivative security (the FLEX put or FLEX call option), are not themselves securities.

J. Wolfson

49. J. Wolfson’s trading activities were not consistent with market making. Rather than engaging in bona-fide market making, J. Wolfson, from July 2006 through May 2007 as an individual and then through BMR 2, LLC (“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. For example, on March 2, 2007, J. Wolfson provided an assist to Trader A by selling Trader A 2,220,000 shares of NYX. On the same date, J. Wolfson sold an additional 23,100 shares of NYX in nineteen lots of between 100 and 9,200 shares. Except for the 22,200 one-day FLEX put contracts used in the assist trade, J. Wolfson had no other option transactions in NYX on March 2. On March 9, 2007, J. Wolfson did a reverse conversion with a sale of 100,000 shares of AGIX. On the same date, J. Wolfson sold an additional 57,144 shares of AGIX in forty lots of between 31 and 5,000 shares. Except for the two sets of 500 paired put and call contracts used to offset the short sales in the reverse conversions, J. Wolfson had no other option activity in AGIX on March 9.

50. Indeed, J. Wolfson's clearing firm recognized that J. Wolfson's trading at times was out of proportion with other customers for which it cleared trades. In an email string from March 20-21, 2007, a vice president in the clearing firm's compliance department noted that the largest fail at the firm was 14 million shares in NYX and that J. Wolfson was responsible for approximately 6.8 million shares and Trader A was responsible for approximately 4.5 million shares. The head of compliance noted that the size of these fails was large even when compared to the clearing firm's larger options market makers.

51. 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.

52. Recorded telephone conversations with the floor broker concerning assists, where J. Wolfson provides only an offer to sell, together with J. Wolfson's trading records, show that J. Wolfson consistently executed the assist trades at a fixed and predetermined net price – \$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.

Golden Anchor and R. Wolfson

53. Like J. Wolfson, R. Wolfson's trading strategy, executed through Golden Anchor, was to sell reverse conversions in Golden Anchor's account to other market participants who wanted to use conversions to acquire a long position in the stock. Like J. Wolfson, R. Wolfson maintained extended open short positions in the stocks he sold short as part of reverse conversions. R. Wolfson's reverse conversion and assist trades in certain threshold securities were disproportionate to his other patterns or practices in those securities. For example, on June 6, 2007, R. Wolfson did two reverse conversions in NFI. These reverse conversions involved the sale of 20,000 and 30,000 shares respectively. These were R. Wolfson's only sales of NFI on June 6. On the same date, R. Wolfson purchased a total of 7,400 shares of NFI in fourteen lots of amounts ranging from 100 to 900 shares and a single lot of 2,500 shares. Other than the purchase of ten put contracts and ten call contracts, both with the same strike price, R. Wolfson had no option activity on June 6 in NFI except for the 200 and 300 paired put and call contracts used to offset the short sales in the reverse conversions.

54. R. Wolfson executed his reverse conversion and assist trades through a floor broker, the same floor broker used by J. Wolfson and Trader A, who consistently called soliciting the reversal. R. Wolfson rarely executed conversions in threshold securities.

55. Golden Anchor's trading records for R. Wolfson's account also show that he consistently executed the assist trades at a fixed and predetermined net price – \$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. The price remained almost constant during the four months during which Golden Anchor 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 the threshold securities.

The Respondents Were Not Bona-Fide Market Makers Under Relevant Self-Regulatory Organization Rules

56. In addition to the Reg. SHO requirements for bona-fide market making, the SROs where each of the Respondents traded – the CBOE for J. Wolfson and the Amex for R. Wolfson – had specific rules governing the conduct of market makers, including the requirement to be designated as a market maker in specific securities, executing a specified percentage of trades in person, entering two-sided quotes in certain series of designated options classes in trading systems and executing certain percentages of transactions within these options classes. While compliance with the SRO market maker rules is not dispositive as to whether an options trader 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.

J. Wolfson

57. J. Wolfson was not appointed as a market maker by the CBOE in the securities in which he executed reverse conversions and assists.

Golden Anchor and R. Wolfson

58. R. Wolfson was registered as an options trader in some of the stocks he sold as part of reverse conversion and assist transactions. However, the Amex reviewed R. Wolfson's 2007 activity and found that he failed to meet the Amex requirements, contained in Rule 958(g) ANTE, for his transactions to be considered registered options trader transactions. In both the first and second quarters of 2007, R. Wolfson failed to meet the in-person and contract volume requirements for trading in option classes to which he was assigned.

59. Since they were not engaged in bona-fide market making for their reverse conversion and assist trades in threshold securities, the Respondents were required to obtain locates pursuant to Rule 203(b)(1) of Reg. SHO, but they failed to do so.

The Respondents Evaded Their Close-out Obligation with Resets

60. The Respondents' short sales in the reverse-conversions resulted in a "fail to deliver" position in the threshold security on the books and records of their clearing firm

because the Respondents failed to locate shares prior to affecting their short sales, did not borrow shares subsequent to the short sale, made no attempt to acquire long shares and did not deliver to their clearing firm the shares they sold short so that the clearing firm could settle the trade. After receiving subsequent buy-in notices from their clearing firm, the Respondents 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, the Respondents impermissibly maintained fail to deliver positions in numerous Reg. SHO threshold securities for extended periods of time.

J. Wolfson Reset His Fails

61. 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, J. Wolfson 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 A or Golden Anchor as the counterparty for all or part of the trade.

J. Wolfson Also Reset Fails for Vintage Capital, LLC and Sallerson-Troob, LLC

62. On October 19, 2006, Vintage Capital, LLC ("Vintage"), established a short position in Chipotle Mexican Grill, Inc. (NYSE: CMG/ option ticker: CMG), which was a threshold security, and a long position in another class of the same security – CMGB. J. Wolfson had identified an "arbitrage opportunity" where CMGB shares had ten voting rights and CMG had one voting right. J. Wolfson hedged the position he had in CMGB, acquired by tendering shares of McDonald's as part of its spinoff of CMG, by shorting shares of CMG without locating or borrowing shares. The "naked" short position in CMG, a threshold security, resulted in a failure to deliver position in a threshold security, which Rule 203(b)(3) required to be closed out. Vintage and Sallerson-Troob had similar positions in CMG and the same requirement to close out the failure to deliver.

63. Vintage's trading records show that from November 7, 2006 through July 26, 2007, Vintage executed eleven reset transactions to avoid its Reg. SHO obligation to close out its fail to deliver position in CMG and maintain its short position. Of the eleven CMG resets executed by Vintage during this period, J. Wolfson, Trader A or Golden Anchor were the counterparties on six of the trades.

64. J. Wolfson directed the resets for Vintage and arranged for himself and for Trader A to be on the assist side of Vintage's resets.

65. In a recorded telephone call on March 6, 2007, between J. Wolfson and the floor broker, J. Wolfson placed an order to buy 2,161 CMG for Vintage and said that J. Wolfson would sell it. In a March 28, 2007 instant message exchange, J. Wolfson and Trader A discussed Vintage's call about "a cmg reg sho" for 221,800 shares. J. Wolfson told Trader A that Trader A could sell it and that he should go through the same floor broker. Trading records for both Vintage and Trader A show that Trader A served as the

contraparty to Vintage's reset on March 28, 2007, which allowed Vintage to reset its failure to deliver position of 221,800 shares in CMG.

66. J. Wolfson also directed resets for Sallerson-Troob, LLC ("Sallerson-Troob"). On December 11, 2006, Sallerson-Troob established a short position in CMG of approximately 222,000 shares. From December 28, 2006 through June 15, 2007, Sallerson-Troob executed seven reset transactions to avoid its Reg. SHO obligations and maintain its short position. Of the seven CMG resets executed by Sallerson-Troob during this period, Trader A and Golden Anchor were the counterparties in four of the trades. J. Wolfson admitted to entering the orders for at least some of the seven resets.

R. Wolfson Reset Golden Anchor's Fails

67. Between March 27, 2007 and August 2, 2007, R. Wolfson executed at least forty-six resets to close out Golden Anchor's fails to deliver in threshold securities. A review of Golden Anchor's trading records and those of the other Respondents and others shows that J. Wolfson and Trader A were the counterparties in at least eleven, or 24%, of Golden Anchor's reset trades.

The Resets Were Not Bona-Fide Purchase Transactions and the Respondents Knew or Had Reason to Know, Were Reckless in Not Knowing or Should Have Known the Resets Would Result in Fails to Deliver.

68. 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. In essence, these transactions were nothing more than a one-day borrow of stock and not bona-fide purchases at all.

69. In addition, the Respondents knew or had reason to know, were reckless in not knowing, or should have known that the purchase of securities in the reset transactions was from a market participant who would not deliver securities in settlement of the purchase.

70. These Respondents had direct knowledge that the reset transaction would not result in delivery of shares at settlement because they often took the assist side (collecting the same \$0.03 they would pay to reset) and knew that they were selling short in that transaction without purchasing or borrowing shares to cover the short sale. In addition, they also knew that they 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.

71. 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 rebated could loan the securities out and earn more than three cents. The Respondents knew or had reason to know, were reckless in not knowing, or should have known, that the seller of

shares was short without a borrow to cover, given that the assist was always priced out at net \$0.03.

72. Moreover, the pricing of the reset transactions reveals that they were nothing more than stock loans. The reset transactions consistently sold for a net cost to the resetting party of \$0.03 regardless of the price of the underlying stock or the option premium. As the floor broker noted in an interview with the staff, the stock trade was executed first, followed by the option so that the option premium and strike price could be set to net with the stock price to \$0.03. The reset trade was almost guaranteed to be a losing trade for the resetting party, and the \$0.03 was little more than a fee to borrow the shares for the term of the FLEX option.

J. Wolfson Knew or Had Reason to Know, Was Reckless in Not Knowing, or Should Have Known That the Reset Would Result in a Fail to Deliver Position

73. 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. In recorded telephone conversations on March 20, 2007, with a high-level CBOE employee, J. Wolfson was informed that "the rule prohibits someone taking on a position where there is not an expectation of delivery," and that the legal position inside and outside the CBOE was that such transactions were prohibited and that he expected a circular from the CBOE to be forthcoming on the issue. J. Wolfson stated that if you are trading Reg. SHO securities on "every trade you make . . . you know you are not getting delivery . . . zero chance." In a recorded telephone conversation on April 2, 2007, with the managing member of Golden Anchor, J. Wolfson commented on the notion that in a close-out you must have reason to believe you are going to get delivery by stating "nobody in their right minds can expect delivery in any of these Reg. SHO stocks . . . especially, and I can name half a dozen, where it's impossible to get delivery." J. Wolfson, in a separate recorded telephone conversation later that same day noted that no one had reason to believe there would be delivery.

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

75. J. Wolfson gave floor brokers orders for both sides of reset trades. During a December 18, 2006 telephone call, J. Wolfson provided a floor broker with an order for a reset transaction in NYX, 1,100 contracts with \$120 strike, and J. Wolfson confirmed that he was the buyer and Trader A was the seller. In the same discussion J. Wolfson submitted an order for a reset in MDTL, another threshold security, for the same parties. On March 14, 2007, J. Wolfson and R. Wolfson had a recorded telephone discussion about R. Wolfson beginning to trade through Golden Anchor. R. Wolfson told J. Wolfson that he wanted to do the other side of J. Wolfson's Reg. SHO trades to which J. Wolfson responded that Trader A did the other side of J. Wolfson's trades and he couldn't just pull all of the trades from Trader A. In a recorded call with a floor broker on April 3, 2007, J.

Wolfson submitted reset and assist trade orders for himself, Trader A and R. Wolfson with all three serving as the only parties on all sides to the trades.

76. During the period from July 2006 through July 2007, J. Wolfson executed at least 486 assist trades for total profits of approximately \$3,484,000.

Golden Anchor and R. Wolfson

77. Recordings of telephone conversations show that R. Wolfson knew or had reason to know, was reckless in not knowing, or should have known that he was taking the other side of a number of J. Wolfson's resets. On an April 2, 2007 telephone call, J. Wolfson told R. Wolfson to go to a floor broker's booth on the floor of the Amex to execute some trades. In another call just minutes later, the floor broker told J. Wolfson that R. Wolfson was standing right behind him and J. Wolfson gave the floor broker the order details, including a reset for Trader A's account. When the floor broker asked J. Wolfson if he should give most of the trades to R. Wolfson, J. Wolfson said to give all of them to R. Wolfson. Trading records confirm that R. Wolfson executed three assists with J. Wolfson that day. Profits to Golden Anchor from three trades were approximately \$50,000.

78. There were also at least two instances where R. Wolfson forwarded the Reg. SHO buy-in notice from his clearing firm via email to J. Wolfson. Trading records show that, in both instances, J. Wolfson took the other side of Golden Anchors's reset.

79. From March 26, 2007 through July 31, 2007, Golden Anchor executed at least 130 assist transactions for total profits of \$443,000 and J. Wolfson and/or Trader A were contraparties in at least thirty-six, or 28%, of these assists.

E. VIOLATIONS

J. Wolfson

80. 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.

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

Golden Anchor and R. Wolfson

82. As a result of the conduct described above, Golden Anchor willfully violated, and R. Wolfson willfully aided and abetted and caused Golden Anchor's

violations of Rule 203(b)(1) of Reg. SHO, which required a locate to be obtained prior to the short sale of stock.

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

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Exchange Act Regulation SHO and Rules 203(b)(1) and 203(b)(3) thereunder, whether Respondents should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act and civil penalties pursuant to Section 21B(a) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary