

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67450 / 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 ROBERT A. WOLFSON AND GOLDEN  
ANCHOR TRADING II, LLC (n/k/a  
BARABINO TRADING, LLC)**

**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 Robert A. Wolfson (“R. Wolfson”) and Golden Anchor Trading II, LLC (n/k/a Barabino Trading, LLC) (“Golden Anchor”) (together “the Respondents”).

**II.**

Respondents have 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Respondents' Offer, the Commission finds<sup>1</sup> 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 the Respondents, who, from March 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 transactions that caused large persistent fail to deliver positions in threshold securities generating over \$1.7 million in illicit trading revenue that, after direct costs, resulted in over \$700,000 in net illicit trading profits through their 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 stated 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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<sup>1</sup> The findings herein are made pursuant to Respondents' 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, and 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.<sup>2</sup> 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. 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 own 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. The Respondents also violated Rule 203(b)(3) by repeatedly engaging in a series of violative transactions to ostensibly “reset” the thirteen-day clock for

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<sup>2</sup> During the relevant period, this provision was denominated Rule 203(b)(3)(v).

complying with the close-out requirement, but without actually purchasing shares in a bona-fide transaction. These transactions enabled the Respondents to circumvent Reg. SHO, allowed them to generate hundreds of thousands 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 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 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. 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 hundreds of thousands 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 a reset transaction, Golden Anchor 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<sup>3</sup> 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 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 Golden Anchor 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. R. Wolfson, trading with the knowledge of Golden Anchor, 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 R. Wolfson either exercised the put or was assigned on the call.

13. R. 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. R. 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, 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 simply rolled Golden Anchor’s 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, the Respondents 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 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 the 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.

15. During the period March 2007 through July 2007, the Respondents engaged in almost three hundred “reverse conversion,” “reset” and “assist” transactions in numerous threshold securities.

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<sup>3</sup> 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. During this period, R. Wolfson, trading with the knowledge of Golden Anchor, was not engaged in bona-fide market making activities in these securities. R. Wolfson failed to maintain regular or 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. R. Wolfson did not abide by his Self-Regulatory Organization's ("SRO") requirements to be considered a market maker in the options of these securities. Moreover, while R. Wolfson sold over one hundred reverse conversions, he rarely purchased a conversion. Once R. 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, R. Wolfson maintained Golden Anchor's open short position through routine use of the reset transactions. The Respondents simply had no legitimate claim to avail themselves of the Market Maker Exception in the securities for which this exception was claimed when they sold short either in the reverse conversion or assist transactions.

17. These transactions caused significant amounts of persistent fails to deliver in threshold securities. By engaging in these unlawful transactions during the period March 2007 through July 2007, the Respondents earned \$1,761,762 in illicit trading revenue from reverse conversions and assists, and incurred \$96,947 in costs from the resets. After direct costs, the Respondents earned \$722,589 in net trading profits.

18. By virtue of its conduct, Golden Anchor willfully violated, and R. Wolfson willfully<sup>4</sup> aided and abetted and caused Golden Anchor's violations of Rules 203(b)(1) and 203(b)(3) of Reg. SHO.

### **Respondents**

19. *Robert A. Wolfson*, age 57, is a resident of South Egremont, Massachusetts. R. Wolfson 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.

20. *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).

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<sup>4</sup> 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)).

## Background

21. From March 2007 through July 2007, R. Wolfson, trading through Golden Anchor, engaged in “reverse conversions” and “assist” transactions in which he sold short certain threshold securities without locating the securities subject to the short sales. Golden Anchor was not entitled to rely on the Market Maker Exception to justify its 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 “reset” transactions that did not satisfy Golden Anchor’s obligations to close out its 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 less costs because they never intended to borrow or buy the securities to close out the short position created by the reverse conversion.

22. R. Wolfson learned threshold securities trading strategies from Trader A and began trading his own account at Golden Anchor in March 2007.

### **The Respondents Were Not Bona-Fide Market Makers under Reg. SHO**

23. The short sales executed by Robert Wolfson, with the knowledge of Golden Anchor, in the reverse conversion and the assist transactions were not in connection with bona-fide market making activities in the threshold security, so Golden Anchor was not eligible for the Market Maker Exception.

24. 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.” R. Wolfson, trading with the knowledge of Golden Anchor, failed to maintain regular or 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, the Respondents were engaging in reverse conversions and assists for their own investment purposes. R. Wolfson did not regularly or continuously disseminate two-sided quotes in the option classes he used in reverse conversions.

25. 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).

26. The Respondents’ trading activities were not consistent with bona-fide market making. Rather than engaging in bona-fide market making, the Respondents, from March 2007 through July 2007, 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, Golden Anchor’s trading records show that it maintained extended open short positions in the stocks R. Wolfson sold as part of reverse conversions. The Respondents’ reverse conversion and assist trades in certain threshold securities were disproportionate to their other patterns or practices in those securities.

27. The Respondents executed their reverse conversion and assist trades through a floor broker, who consistently called soliciting only the reversal. The Respondents rarely executed conversions in threshold securities.

28. Golden Anchor’s trading records, show that R. 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 five 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 threshold securities.

29. 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 \$1,318,896 in revenue, before direct costs. During the same period, R. Wolfson, trading through Golden Anchor, executed at least 130 assist transactions for total revenue of \$442,866.

### **Robert Wolfson, Trading through Golden Anchor, Was Not a Bona-Fide Market Maker under Relevant Self-Regulatory Organization Rules**

30. In addition to the Reg. SHO requirements for bona-fide market making, the SRO where the Respondents traded – the American Stock Exchange (“Amex”) – had specific rules governing the conduct of market makers, including the requirement to be appointed as a market maker in specific securities, executing a specified percentage of trades in person and executing certain percentages of transactions within these options classes.

31. While compliance with an SRO’s rules governing market makers is not dispositive as to whether R. Wolfson was conducting bona-fide market making for the purposes of Reg. SHO, it can be viewed as additional indicia of bona-fide market making. 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.

32. 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.

### **R. Wolfson Evaded Golden Anchor's Close-out Obligation with Resets**

33. Golden Anchor's short sales in the reverse-conversions resulted in a "fail to deliver" position in the threshold security at a registered clearing agency 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 Golden Anchor's clearing firm the shares they sold short so that the clearing firm could settle the trade. After receiving subsequent buy-in notices from Golden Anchor's clearing firm, R. 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, the Respondents impermissibly maintained fail to deliver positions in numerous Reg. SHO threshold securities for extended periods of time.

34. Between March 27, 2007 and July 31, 2007, R. Wolfson executed at least forty-six resets to close out Golden Anchor's fails to deliver in threshold securities at a cost of \$96,947. A review of Golden Anchor's trading records and those of the other options traders shows that Trader A and Trader B 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 the Resets Would Result in Fails to Deliver.**

35. 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.

36. In addition, R. Wolfson, trading with the knowledge of Golden Anchor, 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.

37. Recordings of telephone conversations show that R. Wolfson knew or had reason to know that he was taking the other side of a number of Trader A's resets.

38. Also, 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. The Respondents 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).

39. The Respondents knew or had reason to know 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 other market participants, including Trader A and Trader B, and knew the others' strategy was also to sell short in the assist transaction without purchasing or borrowing shares to cover the short sale.

40. From March 26, 2007 through July 31, 2007, Golden Anchor executed at least 130 assist transactions and Trader A and/or Trader B were contraparties in at least thirty-six, or 28%, of these assists.

### **Violations**

#### **Golden Anchor Willfully Violated Rule 203(b)(1) of Reg. SHO and R. Wolfson Willfully Aided and Abetted and Caused Golden Anchor's Violations**

41. 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]."

42. 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."

43. At the time R. Wolfson, with the knowledge of Golden Anchor, 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 Golden Anchor, however, because it was not engaging in bona-fide market making activities in these securities.

44. 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.

**Golden Anchor Willfully Violated Rule 203(b)(3) of Reg. SHO and R. Wolfson Willfully Aided and Abetted and Caused Golden Anchor's Violations**

45. 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<sup>5</sup> 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.

46. 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.<sup>6</sup>

47. In addition, Rule 203 of Reg. SHO specifically prohibits firms from satisfying their close out obligations through 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.

48. By selling (or purchasing) deep in-the-money FLEX call (or put) options while simultaneously purporting to “purchase” stock, Golden Anchor engaged in transactions that gave the appearance that it was closing out its fail-to-deliver position when, in fact, it did not do so. In addition, Golden Anchor knew, or had reason to know, that the other person would not deliver securities in settlement of the purchase.

49. 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)

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<sup>5</sup> 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.

<sup>6</sup> 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).

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 R. Wolfson has undertaken to:

50. Provide the Commission, within thirty (30) days after the end of the four (4) month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

### **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. Respondents R. Wolfson and Golden Anchor 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 R. Wolfson 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 four (4) months, effective on the second Monday following the entry of this Order.

C. Respondents R. Wolfson and Golden Anchor shall together, on a joint and several basis, within ten (10) days of the entry of this Order, pay disgorgement of \$722,589, prejudgment interest of \$177,411 and civil penalties of \$200,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue 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.

Respondents 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>. Respondents 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; Robert A. Wolfson

and/or Golden Anchor Trading II, LLC (n/k/a Barabino Trading, LLC) as a Respondent in these proceedings; and specifying that payment is made pursuant to this Order.

D. Respondent R. Wolfson shall comply with the undertakings enumerated in Section III, above.

E. Respondent Golden Anchor is censured.

By the Commission.

Elizabeth M. Murphy  
Secretary