

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79460 / December 2, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17706

In the Matter of

MARC WINTERS

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Marc Winters (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. This matter involves insider trading by Respondent in the securities of GSI Commerce, Inc. ("GSI") in advance of the March 28, 2011 announcement that eBay, Inc. ("EBAY") had agreed to acquire GSI.

2. In February 2011, Winters received information about the potential acquisition of GSI from his client, Robert Munakash. Munakash had misappropriated this material nonpublic information in the context of his relationship of trust and confidence with his close friend, an executive at GSI. After learning this information from Munakash, Winters purchased GSI stock for two clients and then a small amount for himself.

3. As a result of Winter's improper use of the information misappropriated by Munakash and shared with Winters, Respondent garnered trading profits of \$4,170 for himself and approximately \$14,000 for each of his two clients.

4. By virtue of this conduct, Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent

5. **Marc M. Winters**, age 60, resides in Chatsworth, CA. Winters works at Wedbush Securities Inc., a registered broker-dealer and investment adviser in Los Angeles, CA, and is Robert Munakash's registered representative.

Other Relevant Parties

6. **GSI Commerce, Inc.**, an e-commerce company, was during the relevant time headquartered in King of Prussia, PA. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until after it was acquired by eBay. GSI's common stock traded on the NASDAQ (former ticker symbol GSIC) and options on GSI's stock traded on multiple U.S. options exchange.

7. **Robert S. Munakash**, age 47, resides in Pacific Palisades, CA. Munakash owns and operates three gas station/convenience stores in southern California.

8. **Executive A**, age 49, resides in Marina Del Ray, CA. During the relevant time, Executive A was the Executive Vice President of Strategic Business Development at GSI. After GSI was acquired by eBay, Executive A became the Executive Vice President of Sales at eBay.

9. **Client A**, age 47, resides in Beverly Hills, CA. During the relevant time, Client A was a client of Winters and had granted Winters discretionary authority over his trading account.

Facts

10. Over the course of a several weeks in late 2010 and early 2011, Munakash learned that his close friend, Executive A, had been promoted to the position of Executive Vice President of Strategic Business Development at GSI. In particular, while traveling with Executive A as his guest during the Super Bowl weekend in Dallas, Texas from February 4-7, 2011, Munakash learned that GSI was engaged in active conversations with at least one private equity fund that was considering making an offer to take GSI private and that another public company had expressed interest in acquiring GSI if a deal with a private equity firm was not successful.

11. Munakash and Executive A had a long-standing relationship of trust and confidence built on years of sharing personal and professional confidences about their lives which they understood were to be maintained confidentially.

12. Winters had been Munakash's broker for over a decade when the trading in GSI occurred. Munakash expected Winters to prevent him from making excessively risky investments, provide investment advice and, specifically with respect to GSI, monitor the investment for news affecting the stock. In addition to this business relationship, the two were friends and jointly encouraged members of Munakash's family to move their accounts to Winters.

13. During a twenty-four minute conversation on the morning of February 8, 2011, the day after Munakash returned from his Super Bowl trip with Executive A, Munakash shared the material nonpublic information he had learned from Executive A with Winters.

14. Following this conversation with Munakash, Winters immediately placed a substantial unsolicited order to buy GSI for Munakash.

15. On February 8, 2011, within a few minutes, of the purchase by Munakash, Winters sold blue chip stocks in two discretionary customer accounts in order to fund a purchase of GSI in each of these accounts. Winters purchased 2,000 shares of GSI in those two discretionary accounts on the basis of the material nonpublic information about the potential acquisition of GSI that Munakash had communicated to him.

16. On February 9, 2011, Winters purchased 600 shares of GSI in his personal trading account on the basis of the material nonpublic information about the potential acquisition of GSI that Munakash had communicated to him.

17. At 10:05 a.m. ET on March 28, 2011, GSI and EBAY announced that the companies had entered into a definitive agreement to merge, whereby EBAY would acquire GSI for \$29.25 per share. The closing last sale price of GSI on the day of the

announcement was \$29.20, an increase of approximately 50.6% over the prior day's close.

18. Following the announcement on March 28, 2011, Client A, seeing the spike in GSI's share price, called Winters and instructed his assistant to sell the 2,000 shares of GSI for a profit of \$13,909.

19. Shortly thereafter that same morning, Winters sold his 600 shares of GSI for a profit of \$4,103 and the 2,000 shares in the second discretionary client account for a profit of \$13,864.

20. As a result of the conduct described above, Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent ceases and desists from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Winters shall pay disgorgement of \$4,103, prejudgment interest of \$837, and a civil money penalty in the amount of \$31,944 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment shall be made in the following installments:

- (i) \$9,221 due 10 days from entry of this Order
- (ii) \$9,221 due March 1, 2017
- (iii) \$9,221 due June 1, 2017
- (iv) Remaining balance due September 1, 2017

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

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Marc Winters as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against the Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary