

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 80533 / April 26, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17733**

**In the Matter of**

**WILSON-DAVIS &  
COMPANY, INC.,**

**Respondent.**

**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**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter 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 (“Exchange Act”) as to Wilson-Davis & Company, Inc. (“WDCO” or the “Respondent”).

**II.**

Respondent WDCO has submitted an Offer of Settlement (the “Offer”) that 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 it and the subject matter of these proceedings, which are admitted, and Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### A. SUMMARY

1. This proceeding arises out of the trading practices of the proprietary trading group at WDCO, which resulted in WDCO's repeated violations of Rule 203 of Regulation SHO and Rule 15c3-5 of the Exchange Act.

2. From at least November 2011 through May 2013, WDCO willfully<sup>2</sup> violated Regulation SHO by taking advantage of the bona-fide market making exception to the "locate or borrow" requirement for short sales in Rule 203(b)(2)(iii) without being entitled to rely on the exception. Rule 203(b)(1) of Regulation SHO requires a broker-dealer, prior to effecting a short sale in an equity security for its own account, to borrow a security or locate a source of borrowable securities that can be delivered on the date that delivery is due, and document such locate. Rule 203(b)(2)(iii) provides a limited exception to the locate or borrow requirement for short sales effected by a market maker in connection with bona-fide market making activities in the securities for which the exception is claimed. During the relevant time, WDCO considered the majority of its proprietary trading to be bona-fide market making activity and relied on the bona-fide market making exception in Rule 203(b)(2)(iii). This reliance was improper because much of WDCO's trading was not, in fact, bona-fide market making. As a result, WDCO violated Rule 203(b)(1) of Regulation SHO. While improperly availing itself of the exception, WDCO engaged in numerous short sales in over-the-counter equity securities that resulted in significant and improper trading profits.

3. During the years 2012, 2013, and 2014, WDCO also willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5 by failing to have controls and supervisory procedures reasonably designed to prevent the entry of: (a) orders that exceeded appropriate pre-set capital thresholds, (b) erroneous orders, and (c) orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis as required by Rule 15c3-5(b) and (c). In addition, WDCO failed to establish, document and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures under Rule 15c3-5(e), including failing to review properly its business activity in connection with market access to assure the overall effectiveness of its controls and supervisory procedures as well as failing to execute the required Chief Executive Officer ("CEO") certifications.

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

<sup>2</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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

## **B. RESPONDENT**

4. WDCO is a Utah broker-dealer that has been registered with the Commission since 1968. WDCO's principal place of business is in Salt Lake City, Utah, and it has several satellite offices.

## **C. FACTS**

### **(1) RESPONDENT'S VIOLATIONS OF REGULATION SHO**

#### **(a) Regulation SHO's Locate or Borrow Requirement**

5. Rule 203(b)(1) of Regulation SHO prohibits a broker-dealer from accepting a short sale order in an equity security from another person or effecting a short sale in an equity security for its own account, unless the broker-dealer 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 this [requirement]." <sup>3</sup> This is generally referred to as the "locate or borrow" requirement.

6. Rule 203(b)(2)(iii) of Regulation SHO provides an exception from the "locate or borrow" 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. <sup>4</sup> The bona-fide market making exception under Rule 203(b)(2)(iii) of Regulation SHO is available only to U.S.-registered broker-dealers that are market makers engaged in bona-fide market making activities. This narrow exception is provided because market makers engaged in market making activities may need to facilitate customer orders in a fast moving market without possible delays associated with complying with the locate or borrow requirement. <sup>5</sup>

7. Section 3(a)(38) of the Exchange Act defines the term "market maker" as "any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, 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 Commission has stated, "a market maker engaged in bona-fide market making is a 'broker-dealer that deals on a regular basis with other broker-

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<sup>3</sup> 17 CFR 242.203(b)(1).

<sup>4</sup> 17 CFR.242.203(b)(2)(iii).

<sup>5</sup> See Exchange Act Release No. 50103 (July 28, 2004), 69 Fed. Reg. 48008, 48015 (Aug. 6, 2004) ("Regulation SHO Adopting Release").

dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.”<sup>6</sup>

8. For purposes of claiming the bona-fide market maker exception to the locate or borrow requirement, a market maker must be a market maker in the security being sold, and must also be engaged in bona-fide market making in that security at the time of the short sale. Determining whether or not a market maker is engaged in bona-fide market making “depends on the facts and circumstances of the particular activity.”<sup>7</sup>

9. In the adopting release to the 2008 Amendments to Regulation SHO, which the Commission issued approximately 3 years prior to the trading by WDCO that is at issue in this Order, the Commission provided examples of the types of activities that indicate that a market maker is engaged in bona-fide market making activities for purposes of claiming the bona-fide market making exception to the locate or borrow requirement in Rule 203(b)(1). Pursuant to the 2008 Amendments to Regulation SHO, indicia that a market maker is engaged in bona-fide market making include: (i) if a market maker incurs economic or market risk with respect to the securities (*e.g.*, by putting their own capital at risk to provide continuous two-sided quotes in markets); (ii) a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers; and (iii) continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers.<sup>8</sup>

10. Examples of the types of activities that indicate a market maker is not engaged in bona-fide market making activities include: (i) 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; (ii) where a market maker posts continually at or near the best offer, but does not also post at or near the best bid; and (iii) where a market maker that continually executes short sales away from its posted quotes.<sup>9</sup>

11. Further, it is incumbent on the person asserting an exemption to demonstrate eligibility for the exemption.<sup>10</sup>

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<sup>6</sup> See, *e.g.*, Exchange Act Release No. 58775 (Oct. 14, 2008), 73 Fed. Reg. 61690 (Oct. 17, 2008) (“2008 Amendments to Regulation SHO”).

<sup>7</sup> See 2008 Amendments to Regulation SHO at 61699.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> “[T]he general rule of statutory construction that the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits. . .” *FTC v. Morton Salt Co.*, 334 U.S. 37, 44 (May 3, 1948).

**(b) WDCO's Improper Use of the Bona Fide Market Making Exception**

12. WDCO was comprised of two trading groups: a retail trading group and a proprietary trading group. The activity that is the subject of this Order pertains to WDCO's proprietary trading group. Traders in the proprietary trading group had agreements with WDCO under which the traders were allowed to use WDCO funds for proprietary trades of securities and would split their profits with WDCO in accordance with their agreements.

13. At all relevant times, WDCO self-cleared the trading by its proprietary trading group. WDCO's proprietary trading group used firm funds to trade securities, including over-the-counter securities on OTC Link (formerly known as Pink Sheets). WDCO gave each trader an undocumented guideline on the total market exposure that the trader could have in his or her proprietary trading account at any given time and that guideline was adjusted from time to time by the WDCO principals.

14. At all relevant times, WDCO's Written Supervisory Procedures ("WSPs") manual stated that: "Traders are NOT required to record locate information when they effect short sales in the following situations: . . . *bona fide* market making transactions in NNOTC securities where the Firm publishes a two-sided quotation in an independent quotation medium."

15. Before trading in a security, WDCO required its proprietary traders to submit a one-page, internal market maker application that had to be approved by a firm principal. After this application was approved, the proprietary trader could trade that security in his or her proprietary trading account.

16. Without any further analysis, WDCO generally considered most proprietary trading activity by traders in the proprietary trading group to be bona-fide market making activity under Regulation SHO. WDCO's firm practice, therefore, was always to rely upon the bona-fide market making exception to the locate or borrow requirement when conducting proprietary trading. In fact, WDCO had no processes or procedures for locating or borrowing securities for its proprietary trading because the firm considered all proprietary trading to be bona-fide market making, and WDCO was unable to locate sources to borrow over-the-counter securities.

17. WDCO's practices made no distinction between assuming the purported status of a market maker and continuously posting superficially two-sided quotations for a security, and taking steps to ensure its actual trading activity constituted bona-fide market making activity. In fact, WDCO took no steps to ensure that its traders' activity actually constituted bona-fide market making activity. For example, WDCO did not review the quotations of its proprietary traders to determine whether the proprietary traders' activities indicated that they were engaged in bona fide market making activities for purposes of claiming the exception to Regulation SHO's locate or borrow requirement (e.g., quotations were continuous and at or near both the best bid and the best

offer).<sup>11</sup> Furthermore, WDCO took no steps to determine if its proprietary traders' activities indicated that they were not engaged in bona fide market making activities (e.g., continually executing short sales away from their posted quotes).<sup>12</sup>

18. For some of its most profitable proprietary trading, WDCO posted quotations on the OTC Link for, and traded in, various over-the-counter equity securities. However, as detailed in the examples below, WDCO's quoting and trading activity did not comport with the Regulation SHO indicia that a market maker is engaged in bona-fide market making set forth in the adopting release to the 2008 Amendments to Regulation SHO.<sup>13</sup> Furthermore, the adopting release to the 2008 Amendments to Regulation SHO provides guidance on trading activity that does not qualify as bona fide market making and WDCO's conduct conforms to the factors describing non-bona-fide market making activity.<sup>14</sup> Specifically, contrary to the guidance in the Commission's adopting release to the 2008 Amendments to Regulation SHO, WDCO: (1) posted quotations that were often not at or near the market on both sides; (2) posted a bid quotation at or near the market for that security, but failed to post an offer quotation at or near the market; (3) updated its bid quotation for the security during the trading day, as it often made few or no changes to its offer quotation throughout the entire trading day (at times, not changing an offer quotation that was far away from the market despite substantial movement in the price of the security); and (4) executed numerous short sales away from its posted offer quotations.

19. WDCO never performed locates or borrows before executing short sales on its proprietary trading desk, improperly relying on the bona-fide market making exception to Rule 203(b)(1)'s locate or borrow requirement for numerous short sales that resulted in substantial trading profits.

### (c) Examples Of WDCO's Regulation SHO Violations

20. WDCO's trading in five over-the-counter securities, from at least November 2011 through May 2013, is representative of WDCO's violations of Rule 203(b)(1) of Regulation SHO. In each instance, WDCO actively traded these over-the-counter securities, short selling shares without satisfying the locate or borrow requirement and without having a basis to rely on the bona-fide market making exception, resulting in trading profits. WDCO's trading in the over-the-counter securities described below, which was conducted primarily by a single trader at WDCO, provides examples of WDCO's violations of Regulation SHO:

#### (1) Amwest Imaging Inc. ("AMWI")

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<sup>11</sup> See 2008 Amendments to Regulation SHO at 61699.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

21. From approximately November 17, 2011 to January 17, 2012, WDCO purported to act as a market maker on OTC Link for AMWI, posted quotations on OTC Link and frequently sold short the security. One trader at WDCO was primarily responsible for WDCO's market making activity in that security. During that time, WDCO purchased and sold AMWI in roughly comparable amounts. WDCO often posted a bid quotation that was at or near the best bid and updated that bid quotation throughout the day. At the same time, WDCO often posted an offer quotation that was not at or near the best offer and did not frequently update that offer quotation. While posting an offer quotation that was not at or near the best offer, WDCO executed short sales at prices that were substantially away from its posted quotation. WDCO was not engaged in bona-fide market making, and it did not obtain locates or borrows for any of those short sales.

22. An example of this occurred between December 14, 2011 and December 21, 2011, when the security price for AMWI ranged from approximately \$0.07 to \$0.31. During that time, WDCO frequently adjusted its bid so that it stayed within approximately \$0.05 of the best bid for the security. However, it maintained a static offer of approximately \$0.52 throughout the entire seven day period which ranged from approximately \$0.19 to \$0.45 away from the best offer. During that time, WDCO effected short sales for shares of AMWI, none of which were executed at or near the price of its posted offer. These short sales executions ranged in prices from approximately \$0.23 to \$0.46 below WDCO's posted offer of approximately \$0.52.

23. At least some of this trading did not constitute bona fide market making under Regulation SHO, and therefore WDCO improperly used the Regulation SHO exception to the locate or borrow requirement.

(2) North Springs Resources Corp. ("NSRS")

24. From approximately December 27, 2011 to February 28, 2012, WDCO purported to act as a market maker on OTC Link for NSRS, posted quotations on OTC Link and frequently sold short the security. One trader at WDCO was primarily responsible for WDCO's market making activity in that security. During that time, WDCO purchased and sold NSRS in roughly comparable amounts. WDCO often posted a bid quotation that was at or near the best bid and updated that bid quotation throughout the day. At the same time, WDCO often posted an offer quotation that was not at or near the best offer and did not frequently update that offer quotation. While posting an offer quotation that was not at or near the best offer, WDCO executed short sales at prices that were substantially away from its posted quotation. WDCO was not engaged in bona-fide market making, and it did not obtain locates or borrows for any of those short sales.

25. An example of this occurred between February 16, 2012 and February 21, 2012, when the security price for NSRS ranged from approximately \$0.40 to \$0.62. During that time, WDCO frequently adjusted its bid so that it stayed within approximately \$0.09 of the best bid for the security. However, it maintained a static offer of approximately \$0.72 throughout the entire period which ranged from approximately \$0.11 to \$0.32 away from the best offer. During that time, WDCO effected short sales for shares of NSRS, none of which were executed at or near the

price of its posted offer. These short sales ranged in prices from approximately \$0.12 to \$0.32 below WDCO's posted offer of approximately \$0.72.

26. At least some of this trading did not constitute bona fide market making under Regulation SHO, and therefore WDCO improperly used the Regulation SHO exception to the locate or borrow requirement.

(3) Sunpeaks Ventures, Inc. ("SNPK")

27. From approximately March 8, 2012 to June 1, 2012, WDCO purported to act as a market maker on OTC Link for SNPK, posted quotations on OTC Link and frequently sold short the security. One trader at WDCO was primarily responsible for WDCO's market making activity in that security. During that time, WDCO purchased and sold SNPK in roughly comparable amounts. WDCO often posted a bid quotation that was at or near the best bid and updated that bid quotation throughout the day. At the same time, WDCO often posted an offer quotation that was not at or near the best offer and did not frequently update that offer quotation. While posting an offer quotation that was not at or near the best offer, WDCO executed short sales at prices that were substantially away from its posted quotation. WDCO was not engaged in bona-fide market making, and it did not obtain locates or borrows for any of those short sales.

28. An example of this occurred between April 16, 2012 and April 18, 2012, when the security price for SNPK ranged from approximately \$0.73 to \$2.40. During that time, WDCO frequently adjusted its bid so that it stayed within approximately \$0.19 of the best bid for the security. However, it maintained a static offer of approximately \$2.69 throughout the entire period which ranged from approximately \$0.29 to \$1.95 away from the best offer. During that time, WDCO effected short sales for shares of SNPK, none of which were executed at or near the price of its posted offer. These short sales ranged in prices from approximately \$0.30 to \$1.80 below WDCO's posted offer of approximately \$2.69.

29. At least some of this trading did not constitute bona fide market making under Regulation SHO, and therefore WDCO improperly used the Regulation SHO exception to the locate or borrow requirement.

(4) Great Wall Builders, Ltd. ("GWBU")

30. From approximately May 2, 2012 to August 15, 2012, WDCO purported to act as a market maker on OTC Link for GWBU, posted quotations on OTC Link and frequently sold short the security. One trader at WDCO was primarily responsible for WDCO's market making activity in that security. During that time, WDCO purchased and sold GWBU in roughly comparable amounts. WDCO often posted a bid quotation that was at or near the best bid and updated that bid quotation throughout the day. At the same time, WDCO often posted an offer quotation that was not at or near the best offer and did not frequently update that offer quotation. While posting an offer quotation that was not at or near the best offer, WDCO executed short sales at prices that

were substantially away from its posted quotation. WDCO was not engaged in bona-fide market making, and it did not obtain locates or borrows for any of those short sales.

31. An example of this occurred between June 6 and June 13, 2012, when the security price for GWBU ranged from approximately \$1.39 to \$1.94. During that time, WDCO frequently adjusted its bid so that it stayed within approximately \$0.17 of the best bid for the security. However, it maintained a static offer of approximately \$3.00 throughout the entire period which ranged from approximately \$1.05 to \$1.59 away from the best offer. During that time, WDCO effected short sales for shares of GWBU, none of which were executed at or near the price of its posted offer. These short sales ranged in prices from approximately \$1.06 to \$1.60 below WDCO's posted offer of approximately \$3.00.

32. At least some of this trading did not constitute bona fide market making under Regulation SHO, and therefore WDCO improperly used the Regulation SHO exception to the locate or borrow requirement.

(5) Pristine Solutions, Inc. ("PRTN")

33. From approximately August 27, 2012 to October 2, 2012, WDCO purported to act as a market maker on OTC Link for PRTN, posted quotations on OTC Link and frequently sold short the security. One trader at WDCO was primarily responsible for WDCO's market making activity in that security. During that time, WDCO purchased and sold PRTN in roughly comparable amounts. WDCO often posted a bid quotation that was at or near the best bid and updated that bid quotation throughout the day. At the same time, WDCO often posted an offer quotation that was not at or near the best offer and did not frequently update that offer quotation. While posting an offer quotation that was not at or near the best offer, WDCO executed short sales at prices that were substantially away from its posted quotation. WDCO was not engaged in bona-fide market making, and it did not obtain locates or borrows for any of those short sales.

34. An example of this occurred between September 21, 2012 and October 2, 2012, when the security price for PRTN ranged from approximately \$0.04 to \$0.52. During that time, WDCO frequently adjusted its bid so that it stayed within approximately \$0.14 of the best bid for the security. However, it maintained a static offer of approximately \$0.68 throughout the entire period which ranged from approximately \$0.16 to \$0.65 away from the best offer. During that time, WDCO effected short sales for shares of PRTN, none of which were executed at or near the price of its posted offer. These short sales ranged in prices from approximately \$0.18 to \$0.61 below WDCO's posted offer of approximately \$0.68.

35. At least some of this trading did not constitute bona fide market making under Regulation SHO, and therefore WDCO improperly used the Regulation SHO exception to the locate or borrow requirement.

**(2) RESPONDENT’S VIOLATIONS OF SECTION 15(c)(3) OF THE EXCHANGE ACT AND RULE 15c3-5**

36. The Commission adopted Exchange Act Rule 15c3-5 in November 2010 to require that brokers or dealers, as gatekeepers to the financial markets, “appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.”<sup>15</sup> This rule has been called the market access rule.

37. WDCO does not provide direct access to its customers; however, WDCO provided direct access to its proprietary traders to exchanges and alternative trading systems, like OTC Link, and, as such, it was required to make sure it complied with Rule 15c3-5.

38. Subsection (b) of Rule 15c3-5 requires brokers or dealers with market access to “establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks” of having market access. The Rule addresses a range of market access arrangements, including a broker’s or dealer’s trading activities that place its own capital at risk.<sup>16</sup>

39. Subsection (c) of Rule 15c3-5 identifies specific required elements of a broker’s or dealer’s risk management controls and supervisory procedures. These controls and procedures must be reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, including being reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds; and prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time.<sup>17</sup> These controls and procedures must also be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis.<sup>18</sup>

40. Subsection (c)(1)(i) of Rule 15c3-5 requires the establishment of controls and supervisory procedures that are reasonably designed to “prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer ... by rejecting orders if such orders would exceed the applicable credit or capital thresholds.” This provision of the Rule requires a broker or dealer to set capital thresholds for the firm, and to have in place controls that will prevent the entry of orders – on a pre-trade basis – that exceed those thresholds.

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<sup>15</sup> Risk Management Controls for Brokers or Dealers with Market Access, 75 Fed. Reg. 69792 (Nov. 10, 2010).

<sup>16</sup> Id. at 69798.

<sup>17</sup> Rule 15c3-5(c)(1).

<sup>18</sup> Rule 15c3-5(c)(2)(i).

41. While WDCO's WSPs manual stated that the "Firm (or its clearing firm) has established controls to prevent the entry of orders that: exceed appropriate pre-set credit or capital thresholds . . ."; nevertheless, during all relevant times, WDCO had no controls that could prevent the entry of orders that exceeded appropriate pre-set capital thresholds for its proprietary traders. In fact, to the extent that the firm reviewed capital thresholds for its proprietary traders, WDCO did so after the trades were executed.

42. Subsection (c)(1)(ii) of Rule 15c3-5 requires that a broker or dealer's risk management controls and supervisory procedures be reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. This provision of the Rule requires a broker or dealer to have controls that would prevent the entry of orders that exceeded price or size parameters.

43. WDCO's WSPs manual stated that the "Firm (or its clearing firm) has established controls to prevent the entry of orders that: . . . appear to be erroneous including duplication of orders"; however, WDCO did not have controls reasonably designed to prevent the entry of erroneous orders for its proprietary traders. While WDCO had implemented a "soft alert" for the order entry system used by its proprietary traders, that alert only notified the trader of the entry of a single order exceeding 9,999 shares in a security or \$1 million in value. WDCO had no controls reasonably designed to prevent the entry of orders that exceeded appropriate price or size parameters or indicated duplicative orders.

44. Subsection (c)(2)(i) of Rule 15c3-5 requires that a broker or dealer's risk management controls and supervisory procedures be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis.

45. WDCO did not have controls reasonably designed to prevent the entry of proprietary trade orders for short sales that did not comply with the regulatory requirements of Regulation SHO. Specifically, as detailed above, WDCO allowed its proprietary traders to rely on the bona-fide market making exceptions to Rule 203(b)(1)'s locate or borrow requirement without having controls in place to ensure that its traders were actually engaged in bona-fide market making activity at the time of their short sales.

46. Subsection (e) of Rule 15c3-5 requires a broker or dealer to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures and for promptly addressing any issues.

47. Subsection (e)(1) of Rule 15c3-5 requires that the broker or dealer review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of risk management controls and supervisory procedures.

48. WDCO did not establish, document and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures as required by subsection (e) of Rule 15c3-5. For the year ended 2012, 2013 and 2014, the firm had a year-end Supervisory Controls Verification and Testing form (the “Checklist”) that included an entry for testing market access controls under Rule 15c3-5. The Checklist was signed by one of the WDCO Head Trader’s assistants. However, that assistant did not test or verify the firm’s compliance with the market access rule for the proprietary traders before signing the checklist. As a result, WDCO performed little-to-no substantive reviews of its controls and supervisory procedures for compliance with Rule 15c3-5 in regard to the market access rule for proprietary traders.

49. Subsection (e)(2) of Rule 15c3-5 requires that the CEO (or equivalent officer) of the broker or dealer to, on an annual basis, certify that such risk management controls and supervisory procedures comply with paragraphs (b) and (c) of the section, and that the broker or dealer conducted such review, and such certifications shall be preserved by the broker or dealer as part of its books and records.

50. WDCO’s WSPs manual stated that “The CEO’s annual certification regarding the Firm’s supervisory system and controls includes a certification that the risk management controls and supervisory procedures comply with Rule 15c3-5 and that the regular review has been conducted.”

51. In 2012 and 2013, the WDCO CEO signed an Annual Certification stating that WDCO had in place “processes to establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities law and regulations.” In 2014, the WDCO CEO signed an Annual Certification stating that WDCO had in place “processes to establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, Market Access Controls, MSRB rules, and federal securities law and regulations[.]” (Emphasis added.) The certifications did not satisfy 15c3-5(e)(2) because they did not state that the risk management controls and supervisory procedures complied with paragraphs (b) and (c) of Rule 15c3-5 and the WDCO CEO signed the certifications without WDCO performing the necessary review.

52. Despite signing these certifications, the WDCO CEO was not familiar with Rule 15c3-5 and he did not know who at the firm was responsible for compliance with the Rule, or whether that person was identified in the firm’s WSPs. Nonetheless, the WDCO CEO signed the Annual Certifications for 2012, 2013, and 2014 and WDCO relied upon those certifications as part of its attempts to comply with Rule 15c3-5.

#### **D. VIOLATIONS**

53. As a result of the conduct described above, WDCO committed willful violations of Rule 203(b)(1) of Regulation SHO because it repeatedly failed to, prior to effecting short sales of equities, “(i) [b]orrow[] the security, or enter[] into a bona-fide arrangement to borrow the security;

or (ii) [have r]easonable grounds to believe that the security [could] be borrowed so that it [could] be delivered on the date delivery is due; and (iii) [d]ocument[] compliance with this [requirement].”

54. As a result of the conduct described above, WDCO committed willful violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-5(b), (c) and (e) thereunder. WDCO violated Rule 15c3-5(b) by failing to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of the business activity. WDCO violated Rule 15c3-5(c)(1) by failing to ensure that its risk management controls and supervisory procedures were reasonably designed to, among other things, systematically limit the financial exposure of WDCO that could arise as a result of a market access, including being reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds. Further, WDCO violated Rule 15c3-5(c)(1) by failing to ensure that these risk management controls and supervisory procedures were reasonably designed to, among other things, prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters on an order-by-order basis. WDCO also violated Rule 15c3-5(c)(2)(i) by failing to ensure that its risk management controls and supervisory procedures were reasonably designed to prevent the entry of orders unless there was compliance with all regulatory requirements that must be satisfied on a pre-order entry basis. Finally, WDCO violated Rule 15c3-5(e) because it did not establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures and for promptly addressing any issues. In addition, WDCO’s CEO (or equivalent officer) failed to properly certify that such risk management controls and supervisory procedures comply with the Rule on an annual basis in 2012, 2013 and 2014.

#### **E. REMEDIAL EFFORTS**

55. In determining to accept the Offer, the Commission considered remedial acts undertaken by WDCO.

#### **IV.**

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

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

A. Respondent WDCO shall cease and desist from committing or causing any violations and any future violations of Rule 203(b) of Regulation SHO and Section 15(c) of the Exchange Act and Rules 15c3-5(b), (c) and (e) thereunder.

B. Respondent WDCO is censured.

C. Respondent WDCO shall pay disgorgement of \$208,645.71, prejudgment interest of \$27,068.79 and a civil penalty of \$75,000, 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). Payment shall be made in the following installments:

- (1) \$155,354.50 within 10 days of the entry of the Order;
- (2) \$38,840 within 90 days of the entry of the Order;
- (3) \$38,840 within 180 days of the entry of the Order;
- (4) \$38,840 within 270 days of the entry of the Order; and
- (5) \$38,840 within 360 days of the entry of the Order.

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

Payments 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 WDCO 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 Jay Scoggins, Assistant Director, Division of Enforcement, Securities and Exchange Commission, Denver Regional Office, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

D. 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, it shall not argue that it is entitled to, nor shall it 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 it 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 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.

By the Commission.

Brent J. Fields  
Secretary