

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79578 / December 16, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17731

In the Matter of

BYRON B. BARKLEY

and

PAUL N. DAVIS,

Respondents.

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 Byron B. Barkley (“Barkley”) and Paul N. Davis (“Davis”) (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, and except as provided herein in Section V, Respondents consent 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 A Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

A. SUMMARY

1. This proceeding arises out of the trading practices of the proprietary trading group at Wilson-Davis & Co. ("WDCO") and WDCO's 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 willfully² violated Regulation SHO by taking advantage of the bona-fide market making exception to the "locate" 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 "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 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 all 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 for certain WDCO trades because much of WDCO's proprietary 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 bona-fide market making exception, WDCO engaged in numerous short sales in over-the-counter equity securities which resulted in significant and improper trading profits.

3. Barkley, the head of WDCO's proprietary trading group, was the designated supervisor for the proprietary trading group in WDCO's Written Supervisory Procedures ("WSPs") and, as such, he was responsible for supervising this trading activity. Barkley knew that WDCO was relying on the bona-fide market making exception under Regulation SHO to execute these short sales without a locate. Nevertheless, Barkley did not adequately review the quoting activity of the traders or make other efforts to determine whether the short sales resulted from bona fide market making activity. In fact, many of WDCO's short sales were not part of bona-fide market making activity and were, therefore, not eligible for the bona-fide market making exception in Rule 203(b)(2)(iii) of Regulation SHO. As such, Barkley caused WDCO's violations of Rule 203(b)(1) of Regulation SHO.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

² 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)).

4. 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 orders that exceeded appropriate pre-set capital thresholds, erroneous orders, and orders that did not comply with the 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 properly review 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.

5. Barkley was also responsible for ensuring that WDCO complied with Rule 15c3-5, the market access rule, for WDCO’s proprietary trading group. This included insuring that WDCO had the required risk management controls and supervisory procedures as well as a system for regularly reviewing the effectiveness of those controls and procedures and for promptly addressing any issues. Barkley knew, or should have known, that WDCO’s controls for its proprietary trading group and its system for regularly reviewing the effectiveness of those controls did not comply with Rule 15c3-5 because Barkley was responsible for them and inadequate steps were taken to review those controls or their effectiveness. As such, Barkley caused WDCO’s violations of Rule 15c3-5(b), (c) and (e).

6. Davis, the CEO of WDCO, failed to make the proper certifications on behalf of WDCO for the year ended 2012, 2013 and 2014, as required by Rule 15c3-5(e)(2). In addition, Davis knew, or should have known, that those certifications were being used by WDCO and WDCO relied on those certifications, at least in part, when determining that it was complying with the rule. Davis had little-to-no awareness of the rule or whether his firm made reasonable efforts to comply with its requirements. As such, Davis’s failure to make proper certifications violated Rule 15c3-5(e)(2).

B. RESPONDENTS

7. Barkley, age 69, lives in Salt Lake City, Utah. He is, and at all relevant times was associated with WDCO as the Vice President of and Head Trader. As set forth in WDCO’s WSPs, Barkley was the head and supervisor of the WDCO proprietary trading group. Barkley has worked at WDCO since 1969 and is a 20% owner of WDCO. Barkley holds, and at all relevant times held, Series 1, 7, 24, 55 and 63 securities licenses.

8. Davis, age 89, lives in Salt Lake City, Utah. He is, and at all relevant time was, the CEO and Chairman of the Board for WDCO. Davis has been associated with WDCO since 1968 and is a 35% owner of WDCO. Davis holds, and at all relevant times held, Series 00 and 1 securities licenses. Davis has a disciplinary history with the Financial Regulatory Authority (“FINRA”), formerly known as the National Association of Securities Dealers, Inc.

C. FACTS

(1) RESPONDENT'S VIOLATIONS OF REGULATION SHO

(a) Regulation SHO's Locate Requirement

9. Regulation SHO, the Commission's short sale regulation, was adopted, in part, to address problems associated with persistent "fails to deliver" and potentially abusive "naked" short selling. Short selling involves a sale of a security that the seller does not own or a sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. In a "naked" short sale, however, the short seller does not borrow securities in time to make delivery to the buyer within the standard T+3 settlement cycle.

10. 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]."³ This is generally referred to as the "locate" requirement.

11. Rule 203(b)(2)(iii) of Regulation SHO provides an exception from the "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.⁴ 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 requirement.⁵

12. 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-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.'"⁶

³ 17 CFR 242.203(b)(1).

⁴ 17 CFR.242203(b)(2)(iii).

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

⁶ See, e.g., Exchange Act Release No. 58775 (Oct. 17, 2008), 73 Fed. Reg. 61690 (Oct. 17, 2008) ("2008 Amendments to Regulation SHO").

13. For purposes of claiming the bona-fide market maker exception to the locate 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.”⁷

14. In the adopting release to the 2008 Amendments to Regulation SHO, which the Commission issued approximately three 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 requirement in Rule 203(b)(1) of 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.⁸

15. Indicia that a market maker is not engaged in bona-fide market making 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.⁹

16. For purposes of qualifying for the locate exception in Regulation SHO, a market maker must also be a market maker in the security being sold, and must be engaged in bona-fide market making in that security at the time of the short sale.¹⁰ Further, it is incumbent on the person asserting an exemption to demonstrate eligibility for the exemption.

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

17. During the relevant time period, 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.

⁷ See 2008 Amendments to Regulation SHO at 61699.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

18. 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).

19. Before proprietarily 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. Barkley approved many of these applications. After this application was approved, the proprietary trader could trade that security through his or her WDCO proprietary trading account.

20. Without any further analysis, WDCO and Barkley 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 to consider most proprietary trading as bona-fide market making and to always rely upon the bona-fide market making exception to the locate requirement when conducting proprietary trading. In fact, WDCO had no processes or procedures for locating or borrowing securities for its proprietary trading.

21. While WDCO's policies and practices required its proprietary traders to have two-sided quotations and to engage in trading activity in the securities for which they were registered as a market maker, WDCO took no other steps to ensure that its traders' activity actually constituted bona-fide market making activity. Instead, WDCO's practice for its proprietary traders was to assume that all short sales by its proprietary trading group qualified for the bona-fide market making exception.

22. For some of its most profitable proprietary trading, WDCO, through its proprietary traders, posted quotations on the OTC Link for, sent and received trade messages regarding, and traded in, various over-the-counter equity securities. However, some of 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 as set forth in the adopting release to the 2008 Amendments to Regulation SHO.¹¹ 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 short sale trading in certain stocks conformed to some of the factors describing non-bona-fide market making activity.¹² Specifically, WDCO posted quotations on OTC Link for a security. However, contrary to the guidance in the Commission's Regulation SHO Adopting Release and the 2008 Amendments to Regulation SHO, those quotations were often not at or near the market on both sides. Furthermore, on many days, WDCO posted a bid quotation at or near the market for that security, but failed to post an offer quotation at or near the market. In addition, while it was updating its bid quotation for the security during the trading day, WDCO 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. Finally, while purportedly making a market for some securities, WDCO executed numerous short sales away from its posted offer quotations.

¹¹ See 2008 Amendments to Regulation SHO at 61699.

¹² *Id.*

23. WDCO never performed locates 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 requirement for numerous short sales.

(c) Barkley Caused WDCO's Regulation SHO Violations

24. Barkley, as the Head Trader, was responsible for supervising and overseeing the proprietary trading group at WDCO. Section 1.1 of WDCO's WSPs expressly designated Barkley as the supervisor for the Trading Department. Section 14.2.1 of WDCO's WSPs stated that Barkley was responsible for the Qualification and Registration of OTC Traders. Barkley was also responsible for monitoring the trading activity of WDCO's proprietary traders for compliance with Regulation SHO.

25. Barkley received a salary from WDCO and was eligible to receive, and in some years did receive, one or more bonuses from WDCO. Barkley's compensation was affected, at least in part, by the profitability of the proprietary trading group and that group's profitability was affected by the short sales, discussed in this order, that violated Regulation SHO.

26. Barkley knew that WDCO was relying on the bona-fide market making exceptions when its proprietary traders placed short sales and that WDCO was responsible for making sure that those trades complied with WDCO policies and applicable law, including Regulation SHO. Neither WDCO nor Barkley ever located a security before WDCO proprietary traders executed a short sale. Barkley also knew the trading strategy of the individual trader who conducted much of the activity at issue in this order.

27. Nevertheless, Barkley did not take reasonable steps to ensure that short sales by WDCO's proprietary traders were made in connection with bona-fide market making activity. For example, Barkley did nothing to check whether WDCO's posted quotes were at or near the best bid and offer. Barkley also did nothing to check whether WDCO continually executed short sales away from its posted quotes. Rather, Barkley, like WDCO, simply assumed that the short sales placed by the proprietary traders were made in connection with bona-fide market making activity as long as WDCO authorized the proprietary trader to make a market and the trader was making both purchases and sales of the security.

28. As an experienced trader and supervisor who has been in the industry since before Regulation SHO was adopted, and as the head of WDCO's proprietary trading group and the designated supervisor of WDCO's proprietary trading group in WDCO's WSPs, Barkley knew, or should have known that WDCO's sale of millions of shares of securities while maintaining quotations that were not at or near the market and at prices that were not at or near the best offer was not bona-fide market making activity. WDCO was, therefore, unable to rely on the bona-fide market making exception under Regulation SHO when WDCO was short selling these securities.

29. WDCO violated, and Barkley caused WDCO's violations of, Regulation SHO during the relevant period, resulting in substantial trading profits from the short sales.

(2) RESPONDENTS' VIOLATIONS OF SECTION 15(c)(3) OF THE EXCHANGE ACT AND RULE 15c3-5

30. 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.”¹³ This rule has been called the market access rule.

31. 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.

32. Barkley, as head of the WDCO proprietary trading group, was responsible for making sure that WDCO complied with Rule 15c3-5 for its proprietary trading group. Section 14.7.2 of WDCO’s WSPs stated that the “Designated Supervisor” was responsible for compliance with the market access rule for Over-the-Counter Equity Trading and Market Making, and Section 1.1 of WDCO’s WSPs designated Barkley as the supervisor for the Trading Department.

33. Davis, as the CEO of WDCO, was responsible for providing certifications that WDCO was in compliance with Rule 15c3-5 as required by Rule 15c3-5(e)(2).

34. 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.¹⁴

35. As described in more detail below, WDCO did not establish, document or maintain the required system of risk management controls and supervisory procedures.

36. 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.¹⁵ These controls and procedures must also be

¹³ Risk Management Controls for Brokers or Dealers with Market Access, 75 Fed. Reg. 69792 (Nov. 10, 2010).

¹⁴ *Id.* at 69798.

¹⁵ Rule 15c3-5(c)(1).

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.¹⁶

37. 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.

38. 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. Although Barkley (and trader’s assistants who helped him) did monitor the trading as it occurred, as his terminal mirrored that of the traders, such efforts were inadequate.

39. 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.

40. 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. WDCO had no controls reasonably designed to prevent the entry of orders that exceeded appropriate price or size parameters or indicated duplicative orders.

41. 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.

42. 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

¹⁶ Rule 15c3-5(c)(2)(i).

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 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.

43. 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.

44. 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.

45. 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 Barkley'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.

46. As the head of WDCO's proprietary trading group and the supervisor of the assistant signing the Checklist, Barkley knew, or should have known, that WDCO's controls and supervisory procedures were not reasonably designed as required by Rule 15c3-5, and that WDCO performed little-to-no substantive reviews of its controls and supervisory procedures for compliance with Rule 15c3-5.

47. 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.

48. 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."

49. In 2012 and 2013, Davis 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, Davis 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 Davis signed the certifications without WDCO performing the necessary review.

50. Despite signing these certifications, Davis 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. Nor did he make reasonable inquiries about WDCO's annual review and the results of any such review. In fact, as noted above, WDCO performed little-to-no substantive reviews of its controls and supervisory procedures for compliance with Rule 15c3-5. Nonetheless, Davis 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.

51. As the CEO of WDCO and the person responsible for certifying that WDCO's risk management controls and supervisory procedures complied with Rule 15c3-5 in 2012, 2013, and 2014, Davis knew, or should have known, that WDCO's controls, supervisory procedures, and reviews of those controls and supervisory procedures were not sufficient under Rule 15c3-5.

52. WDCO violated, and Barkley caused WDCO's violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-5(b), (c) and (e) of the Exchange Act during the relevant period. Davis violated Rule 15c3-5(e)(2).

D. UNDERTAKINGS

Respondent has undertaken to:

53. Barkley and Davis shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order.

54. In connection with such cooperation, Barkley and Davis shall (a) produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission's staff; (b) be interviewed (with the presence of counsel) by the Commission's staff at such times as the staff reasonably may request and to appear and testify without service of a notice or subpoena in such investigations, litigations, hearings or trials as may be requested by the Commission's staff; and (c) in connection with any testimony of Barkley or Davis to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, agree that any such notice or subpoena for Barkley's or Davis's appearance and testimony may be served by regular mail on their counsel.

In determining whether to accept the Offer, the Commission has considered these undertakings.

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 Barkley 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. Pursuant to Section 21C of the Exchange Act, Respondent Davis cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 15c3-5(e).

C. Respondent Barkley shall pay disgorgement of \$67,710.20, prejudgment interest of \$8,977.83 and a civil penalty of \$50,000, 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) \$63,344.03 within 10 days of the entry of the Order;
- (2) \$15,836 within 90 days of the entry of the Order;
- (3) \$15,836 within 180 days of the entry of the Order;
- (4) \$15,836 within 270 days of the entry of the Order; and
- (5) \$15,836 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.

Respondent Davis shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000, 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). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717.

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 Barkley or Davis 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, each 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, each 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 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