

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 1803/September 12, 2014

ADMINISTRATIVE PROCEEDING  
File No. 3-15873

In the Matter of

THOMAS R. DELANEY II and  
CHARLES W. YANCEY

ORDER ON PREHEARING  
CONFERENCE TO CONSIDER  
SUBPOENAS DUCES TECUM

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on May 19, 2014, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940. The OIP alleges that Penson Financial Services, Inc. (Penson), violated Rule 204T(a)/204(a) of Regulation SHO, pertaining to the regulation of short sales, and that Thomas R. Delaney II (Delaney) and Penson's Senior Vice President of Securities Lending (Vice President)<sup>1</sup> willfully aided and abetted and caused Penson's violations, and that Charles W. Yancey (Yancey) failed reasonably to supervise Delaney and the Vice President with a view to preventing and detecting their violations. The hearing will begin on October 27, 2014, at 9:30 a.m. CDT in the United States District Court for the Northern District of Texas, Courtroom 1351, 1100 Commerce Street, Dallas, Texas 75242.

**Events to This Point**

I held a prehearing conference on June 23, 2014, issued two orders on motions raised by Respondents and a clarifying order as to one of those orders, and conducted an *in camera* inspection of a great deal of material that I ordered the Division of Enforcement (Division) to produce at Delaney's request. *Thomas R. Delaney*, Admin. Proc. Rulings Release No. 1557,

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<sup>1</sup> Michael H. Johnson (Johnson) was Senior Vice President of Penson Worldwide, Inc.'s Securities Lending Department. *Michael H. Johnson*, Exchange Act Release No. 72186, 2014 SEC LEXIS 1711 (May 19, 2014). The Commission accepted Johnson's Offer of Settlement and on May 19, 2014, he was (1) ordered to cease and desist from committing or causing any violations or any future violations of Rule 204 of Regulation SHO, (2) subjected to an industry-wide bar pursuant to Section 15(b)(6) of the Exchange Act and Section 9(b) of the Investment Company Act, with the right to apply for reentry after five years, and (3) ordered to pay a civil money penalty of \$125,000, which may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended (Fair Fund distribution).

2014 SEC LEXIS 2223 (June 25, 2014); *Thomas R. Delaney*, Admin. Proc. Rulings Release No. 1652, 2014 SEC LEXIS 2679 (July 25, 2014); *Thomas R. Delaney*, Admin. Proc. Rulings Release No. 1671, 2014 SEC LEXIS 2837 (Aug. 6, 2014); *Thomas R. Delaney*, Admin. Proc. Rulings Release No. 1784, 2014 SEC LEXIS 3268 (Sept. 9, 2014).

On July 25, 2014, I signed a subpoena duces tecum to the Financial Industry Regulatory Authority (FINRA) at Yancey's request.

### **Pending Issue**

On September 8, 2014, Delaney filed two requests for subpoenas duces decum. One is to FINRA and the other is to the Securities Industry and Financial Markets Association (SIFMA).

Delaney would have FINRA provide him with, among other things, “[a]ll documents and communications in FINRA’s possession and control pertaining to Penson’s practices, policies procedures, inquiries, and/or discussions under Rule 204T and Rule 204 of Regulation SHO” between FINRA staff and seventeen people deemed associated with Penson and with persons associated with the Commission for over six and a half years.

Delaney would have SIFMA provide him with “[a]ll documents and communications in the possession and control of SIFMA pertaining to Penson’s practices, policies, procedures, inquiries and/or discussions under Rule 204T and Rule 204 of Regulation SHO” between SIFMA staff and seventeen people deemed associated with Penson and with persons associated with the Commission for over six and a half years.

### **Ruling**

These subpoena requests appear unreasonable and excessive in scope. *See* 17 CFR § 201.232(b). I ORDER a telephonic prehearing conference on September 18, 2014, at 2:00 p.m. EDT. There have been an unusually large number of prehearing motions in this proceeding and the hearing is still over a month away. My objective is to resolve matters and cut down on the filings.

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Brenda P. Murray  
Chief Administrative Law Judge