

MEMORANDUM

TO: File No. S7-08-09

FROM: The Division of Trading and Markets

DATE: July 21, 2009

RE: Proposed Amendments to Regulation SHO

On July 8, 2009, Staff in the Division of Trading and Markets met with Roger Engemoen, Jr., Chairman of Penson Worldwide, Inc. (“Penson”), Bill Yancey, President and Chief Executive Officer of Penson, and David Frasiak, Principal of William & Jensen, PLLC. Among the topics discussed were short selling and the recently proposed amendments to Regulation SHO (Release No. 34-59748). Representatives of Penson also provided the attached presentation titled “Penson Worldwide, Washington, DC, July 2009.”



PENSON WORLDWIDE, INC. (NASDAQ: PNSN)

*Penson Worldwide
Washington, DC*

July 2009

“We are building the best clearing and execution services firm

in the world.”

Overview

Largest independent provider of integrated outsourcing solutions for the global securities industry

- Flexible business model provides differentiation in the industry
- Highly attractive, diverse customer base
- Scalable, recurring revenue model
- Strong financial performance and free cash flow generation
- Positive industry dynamics
- Experienced management team



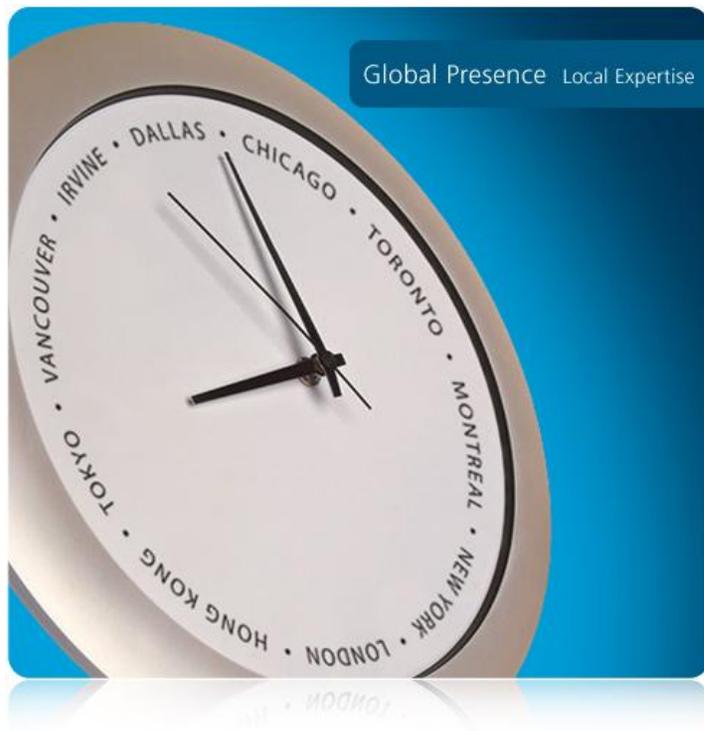
Benefits from major industry trends: Growth of electronic trading, outsourcing of infrastructure platforms, consolidation of global markets

Our Core Offering



- Clearing and execution
 - Multi-asset class platform
 - Equity – Options
 - Futures – Foreign exchange
- Custody and financing services
 - Investment of excess customer funds
 - Margin loans
 - In-house and external stock borrows
- Technology platforms (Nexa)
 - Trade entry
 - Routing and execution
 - Market data

Market Leading Positions



- Clearing Broker Rank
 - #3 in the U.S.
 - #1 or 2 in Canada
 - #2 in the U.K.
- Futures Commission Merchant Rank
 - #7 largest independent in the U.S.
 - #27 largest in the U.S.
- Significant Scale (FY08 Volume)
 - 309 million equity and options tickets
 - 185 million options contracts
 - 136 million futures contracts

New Products, Services, Geographic Markets



- Products
 - Retail FX platform for correspondents
- Execution Services
 - Trade Aggregation Program
 - NYSE Membership
 - Penson Algorithmic Routing
 - Penson “Dublin” ATS
- Geographic Markets
 - Australia (2nd Half FY09)
 - Asia (started 2007)

Short Sales Overview

- Short selling is a valid investment alternative*** - key component of overall liquidity. Penson fully supported the removal of price tests in 2007- based on academic studies that revealed price tests do not reduce short selling, only serve to degrade market quality. We strongly support the elimination of illegal, abusive and naked short selling through enforcement of existing regulations - particularly Rule 204T
- Penson recommends making Rule 204T permanent:
 - *Rule 204T enhances the delivery requirements of Regulation SHO by requiring that participants of a registered clearing agency deliver securities by settlement date, or if the participants have not delivered securities by settlement date, immediately purchase or borrow securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the settlement date following the day the participant incurred the short sale.*
 - GAO recently analyzed data from 1/2005-12/2008 and concluded that 204T worked to dramatically reduce “Fail to Delivers” (see graph next page)
 - We urge the SEC to avoid succumbing to emotional/political forces when market integrity is at stake - US equity markets have been the only markets to have continuously provided liquidity through periods of economic crisis
 - Reg. NMS was designed to modernize and strengthen US Markets - and it did!

Short Sale Threshold Securities - Trend Line



If Short Sale Regulation Must Be Modified...

- If any modifications to price tests and/or circuit breakers is required..... ***we propose:***
 - No price test in normal market conditions
 - Individual stock decline of “X” (i.e. 10%) would then require “pre-borrow” for any short sale – exemptions allowed
 - If same stock further declines to “Y” (i.e. 20%) would require “pre-borrow” for any short sale - no exemptions
 - This proposal retains current levels of liquidity - addresses a stock in distress - places economic exposure on those choosing to short
 - **This proposal is enforceable and efficient**
- If a change initiative is advanced, market maker and option market maker exemptions are critical to liquidity provision
- If a change initiative is advanced we must have a *limited pilot period* whereby no action would be taken absent measurable evidence of positive impact on markets and investors alike

Sponsored Access

- **All Sponsored Access not created equal** – PFSI is a non-conflicted provider of sponsored access (no proprietary interests)
 - Penson sponsors regulated entities (BD's) vs. non regulated entities
- The role of the clearing firm to centralize clearing/settlement and reduces counter-party risk
- Penson Sponsored Access Benefits include:
 - Reduction in costs, fostering competition; transparency and “leveling the playing field”
 - Currently bulge firms enjoy unfair pricing advantages
- NASDAQ is proposing to modify Rule 4611(d) and corresponding ARCA rule....
- Current rules are appropriate ... ***we oppose such changes!***
- Currently Rule 4611(d), NASDAQ requires sponsoring firms to take responsibility for the trades of our customer...this has proven sufficient and effective
- ***If new rulemaking must proceed, a carve-out for sponsoring regulated entities is necessary:***
 - To do otherwise would be to introduce new obligations on member firms that would not be present if they went to the exchange directly
 - The intent of our sponsored access is to enable smaller firms to receive the benefit of unfair, anti-competitive pricing at NASDAQ
 - Industry concern is over hedge funds and other non-regulated entities accessing the exchange directly, which is business Penson **does not engage in**

Dark Liquidity – PFSI Vision

- All **Dark Pools** are not created equal – approx. 40 pools exist... **why one more?**
 - Penson Dark Pool – (filed application) named “***Dublin***” (Irish for Black Pool)
 - There is a need for a truly ***Non Conflicted Agency Provider – Penson Dublin***
 - Need better definition and disclosure around the rule set of each ATS
 - Most dark pools are owned by wholesalers or other dealers who engage in proprietary trading within their pools
 - Fair access – Some B/D owned ATS’ (Automated Trading Systems) only allow themselves to post orders to interact with customer business
 - Need for greater “post-trade” transparency and reporting accuracy
 - Currently, there are no standard reporting requirements, making a determination on effectiveness and market share opaque
 - IOI’s (Indications of Interest) can be construed as quotes (hidden markets)
 - Currently many approved dark pools ‘share’ information with each other to attract order flow
 - If a pool is defined dark, it must protect anonymity and information leakage
 - ***No such pool exists today with robust technology and lack of conflict***
 - Greater efficiency, allows market participants to trade with a central counterparty and reduce transaction fees and RISK
 - PFSI executes nearly 10% of the current daily equity volume in exchange listed securities, therefore exposure to vast client base
- ** Dublin solves many of these structural problems***

Contact Information

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