

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2143/December 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15873

In the Matter of

THOMAS R. DELANEY II and
CHARLES W. YANCEY

ORDER ON STIPULATIONS AND
TRANSCRIPT CORRECTIONS

The Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings 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. A hearing was held from October 27, 2014, through November 10, 2014.

During the hearing, the parties and I conferred on a number of factual and legal issues, with the parties ultimately agreeing and stipulating to eighty-eight findings of fact and nine conclusions of law (Hearing Stipulations). *See* Hearing Transcript at 2285-2571. In a post-hearing order, I encouraged the parties to continue to strive in good faith to reach agreement on additional stipulations. *See Thomas R. Delaney II*, Admin. Proc. Rulings Release No. 2011, 2014 SEC LEXIS 4305 (Nov. 13, 2014).

On December 16, 2014, Respondent Charles W. Yancey (Yancey) filed a Notice and Stipulation of Agreed Findings of Fact (Stipulation Notice). Exhibit A to the Stipulation Notice is a list of the Hearing Stipulations, with minor modifications to those entered on the record during the hearing. Exhibit B to the Stipulation Notice is a list of fourteen additional stipulated findings of fact (Post-Hearing Stipulations). The Stipulation Notice represents that counsel for Respondent Thomas R. Delaney II (Delaney) and the Division of Enforcement (Division) agreed to its filing. On December 15, 2014, the Division filed a Notice of Additional Stipulations, attaching as Exhibit A seventeen additional Post-Hearing Stipulations to which the Division represents Delaney and Yancey have also agreed.

I commend the parties on reaching agreement on the Hearing Stipulations and Post-Hearing Stipulations, which I find are supported by a preponderance of the evidence. Accordingly, I ORDER that the following findings of fact (FOF) and conclusions of law (COL) are binding on the parties pursuant to 17 C.F.R. § 201.324:

- FOF 1. Delaney, 45, of Colleyville, Texas, was the CCO at Penson from at least October 2008 through April 2011. Delaney currently works in compliance at a registered broker-dealer. He holds Series 4, 7, 24, 27, 53, and 63 licenses.
- FOF 2. Yancey, 58, of Colleyville, Texas, was the President/CEO of Penson from at least October 2008 through February 2012. Yancey is currently a Managing Director at a registered broker/dealer. Yancey holds Series 7, 24, 55, and 63 licenses.
- FOF 3. Penson was a North Carolina corporation with a principal place of business in Dallas, Texas. It was a broker-dealer registered with the Commission, which, from at least 2010 to 2012, was one of the largest clearing firms in the United States as measured by the number of correspondent brokers for which it cleared. Penson was a wholly-owned subsidiary of SAI Holdings, Inc., which in turn was a wholly-owned subsidiary of Penson Worldwide, Inc. (“PWI”). Penson filed a Form BDW, which was effective in October 2012, and then declared bankruptcy in January 2013. A bankruptcy plan implementing Penson’s liquidation was approved in July 2013.
- FOF 4. Rule 204T/204 was adopted to, among other things, address prolonged failures to deliver. Rule 204T became effective on September 18, 2008 and Rule 204 became effective on July 31, 2009.
- FOF 5. The Depository Trust and Clearing Corporation (“DTCC”) operates the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission that clears and settles the majority of United States transactions in equities. When NSCC members purchase or sell securities on the exchanges, the exchanges send the trade information to the NSCC. NSCC operates the Continuous Net Settlement (“CNS”). NSCC member clearing firms receive reports that, as of at least close of business T+1, notify the firms of transactions scheduled to clear and settle by close of business T+3. CNS also sends reports to the firms listing net fails to deliver in each security as of T+3.
- FOF 6. At all relevant times, Penson was a clearing firm, i.e., a participant of a registered clearing agency and a member of NSCC. As a clearing firm, Penson had obligations under Rule 204(a) to close out CNS failures to deliver resulting from long sales no later than market open T+6.

- FOF 7. From October 2008 until November 2011, Penson failed to close out CNS failures to deliver resulting from long sales of loaned securities by market open T+6. The relevant long sales originated with securities held in customer margin accounts. Under the Commission's customer protection rule, Penson is permitted, subject to certain conditions and limitations, to re-hypothecate margin securities to third parties. Penson re-hypothecated margin securities according to the terms of the Master Securities Lending Agreement ("MSLA") developed by the Securities Industry and Financial Markets Association ("SIFMA").
- FOF 8. When a margin customer sold the hypothecated securities that were out on loan, Penson issued account-level recalls to the borrowers on T+3, i.e., three business days after execution of the margin customer's sale order. When the borrowers did not return the shares by the close of business T+3, and Penson did not otherwise have enough shares of the relevant security to meet its CNS delivery obligations, Penson incurred a CNS failure to deliver.
- FOF 9. Michael Johnson, SVP Global Stock Lending Group, was included on the organizational charts of PWI, the parent company, rather than within Penson, which was then a registered broker-dealer. Licensed employees of Stock Loan were associated persons of the broker-dealer.
- FOF 10. Stock Loan initially attempted to comply with Rule 204T for long sales of loaned securities by recalling loans at the account level on T+3 and buying in the borrowers at market open T+6. However, because the MSLA gave the borrowers three full days (until close-of-business T+6) to return the shares, the borrowing counterparties pushed back against Penson's attempted market-open T+6 buy ins.
- FOF 11. At least on some occasions, Stock Loan allowed CNS failures to deliver resulting from long sales of loaned securities to persist beyond market open T+6. At least on some occasions, Stock Loan personnel did not take steps, such as purchasing or borrowing securities, in order to close out Penson's CNS failure-to-deliver position.
- FOF 12. Delaney was Penson's CCO when Rule 204T was implemented in September 2008. He continued in that position at Penson until April 2011.
- FOF 13. As Penson's CCO, if Delaney learned that associated personnel were not following the securities laws, he was required to take reasonable steps to

investigate and report his findings to members of senior management where those persons reported.

- FOF 14. Delaney participated in Penson's efforts to implement procedures in response to Rule 204T in October 2008 and to Rule 204 in July 2009. Delaney knew at all relevant times that Rule 204T/204 required Penson to close out CNS failures to deliver resulting from long sales by market open T+6.
- FOF 15. In December 2009, Penson's Compliance Department conducted an NASD Rule 3012 internal audit of the Rule 204 close-out procedures, which had been in place at Penson from October 2008 forward. Penson's compliance personnel sampled 113 CNS failures to deliver resulting from both long sales and short sales, and found that Buy-Ins' procedures resulted in Rule 204(a) violations for 112 out of the 113 securities sampled. Delaney understood this NASD Rule 3012 audit had revealed failures relating to Buy-Ins' Rule 204(a) procedures that were anomalous during his tenure as CCO.
- FOF 16. In July 2010, Delaney was at least copied on e-mail discussions between compliance and operational personnel about Stock Loan's non-compliant procedures for close-outs of CNS failures to deliver resulting from long sales of loaned securities.
- FOF 17. Penson's Buy-Ins handled close-outs of CNS failures to deliver resulting from transactions initiated by customers who sold short or customers who sold long but failed to provide the shares to Penson by settlement date. In those circumstances, Penson could pass along the cost of Rule 204T/204 compliance (i.e., borrowing or buying before market open) to the customer. Upon learning of Rule 204 deficiencies in Buy-Ins through the December 2009 audit, Delaney oversaw extensive remediation efforts.
- FOF 18. Where CNS failures to deliver were not caused by the action of any customers, there was no one other than Penson to absorb the cost of the close-outs.
- FOF 19. In January 2010, Penson compiled WSPs for delivery to FINRA as part of a FINRA Rule 1017 application. FINRA had been very clear with Delaney that they were going to be "poring over the WSPs with a fine-tooth comb." On January 25, 2010, Delaney forwarded a set of WSPs to Mr. Alaniz for comment before delivering the WSPs to FINRA. Mr. Alaniz responded that the WSPs Delaney sent him did not address Reg SHO as it pertained to 204.

- FOF 20. Delaney was copied on at least one e-mail from Penson's Compliance Department delivering WSPs to FINRA as part of Penson's Rule 1017 application. A relevant WSP section had two parts: one titled "Close-Out Requirements for Fail (sic) to Deliver (SEC Rule 10b-21; Regulation SHO Rule 204)," and a subsequent part titled "Procedures Adopted in Accordance With Rule 204." The first part correctly articulated the regulatory requirement that CNS failures to deliver resulting from long sales had to be closed out by market open T+6. The section detailed Stock Loan's procedures for maintaining an easy-to-borrow list and providing locates procedures that were relevant to Penson's compliance with Rule 203, not Rule 204. The second part finished with a brief description of procedures designed to ensure close-outs of CNS failures to deliver resulting from short sales by T+4.
- FOF 21. On March 31, 2010, Delaney met with Yancey to discuss Yancey's annual certification of Penson's compliance testing procedures. As part of that certification, Penson's Compliance Department prepared and presented an Annual Report that, per Penson's WSPs, was to discuss Penson's "key compliance problems" for the period April 1, 2009 through March 31, 2010. At the March 31, 2010 meeting, an item of discussion was the results of the December 2009 audit showing the Rule 204(a) violations resulting from Buy-Ins' procedures -- a compliance failure that Delaney later characterized as "massive," "profound," and "anomalous."
- FOF 22. Delaney's March 31, 2010 Annual Report appended to Yancey's certification did not reference ongoing, willful Rule 204(a) violations relating to long sales of loaned securities by Stock Loan.
- FOF 23. On April 22, 2010, Mr. Gorenflo sent Penson's response to OCIE. The response stated: "[Penson] I would like to note that the majority of any Regulation SHO buy-ins are and have been covered by stock borrow or executing closing trades prior to the market open."
- FOF 24. Penson's April 22, 2010 response continued: "For instances where we were unable to complete buy-ins prior to market open, buy-ins were typically executed within 15 minutes of market open."
- FOF 25. The December 2009 audit memorandum (Exhibit 70) reported that Buy-Ins' Rule 204(a) close-outs of short sales occurred "anywhere from 30 minutes to a 1 hour and 15 minutes after the market open" and that Buy-Ins' Rule 204(a) close-outs of long sales occurred "anywhere from 4 hours from the market open to up until 11 minutes of the market close."

- FOF 26. On May 10, 2010, a compliance officer forwarded the April 22, 2010 response to Delaney, stating “Tom, Attached is a copy of the most recent response, as well as a link to the examination folder.” In October 2010, the junior compliance officer who signed the April 22, 2010 response forwarded the response to Delaney as part of Delaney’s efforts to respond to the OCIE exam deficiency finding. The compliance officer mentioned is the deputy compliance officer, Ms. Holly Hasty.
- FOF 27. In June and July 2010, Delaney coordinated with his staff to formally approve an updated version of Penson’s WSPs.
- FOF 28. Beginning in November 2008, OCIE conducted a review of Penson’s Rule 204T procedures. In October 2010, OCIE issued Penson a deficiency letter reporting that OCIE had found Rule 204T(a) violations. The findings reported to Penson in the deficiency letter included findings that Penson had violated Rule 204T in connection with short sales.
- FOF 29. In its November 24, 2010 response to OCIE’s deficiency findings, Penson stated the following: “Penson feels that the reasonable processes employed to close out positions that were allegedly in violation of rule [sic] 204T were effective and performed as designed.”
- FOF 30. On November 8, 2010, Brian Gover, a supervisor in Buy-Ins, e-mailed Delaney, among others, a short, 1.5 page draft of selected responses to OCIE’s findings. That draft contained the language: “Penson feels that the processes and procedures employed to close out positions that were in violation of Rule 204T were effective and performed as designed.”
- FOF 31. On November 15, 2010, a junior compliance officer shepherding the drafting process emailed Delaney a full draft of Penson’s responses to OCIE. That draft contained the language from the November 8, 2010 draft collection of selected responses regarding Penson’s Rule 204T processes and procedures.
- FOF 32. On November 19, 2010, Delaney e-mailed the junior compliance officer stating “Attached is my re-draft with a couple of additional notes.” Delaney’s November 19, 2010 re-draft edited the November 15, 2010 draft (Exhibit 208).
- FOF 33. On March 31, 2010, Delaney personally emailed the certification and Annual Report to FINRA in response to its specific request for the documents. That same day, Penson’s compliance personnel uploaded the

documents to Penson's FINRA gateway and separately emailed the Annual Report to other FINRA personnel. On April 1, 2010, compliance personnel sent the Annual Report to the Chicago Board Options Exchange ("CBOE"). In September 2010, compliance personnel sent the Annual Report to the National Stock Exchange, Inc. ("NSX") in response to an information request.

- FOF 34. On April 8, 2010, the Commission's Office of Compliance Inspections and Examinations ("OCIE") informed Penson it had learned Penson was having problems executing close outs at market open and asked for an explanation. On April 14, 2010, a junior Penson compliance officer asked OCIE to clarify how it had learned about the potential close-out problems. That same day, OCIE sent the junior compliance officer, and Delaney the following clarification and request for information: "During staff's review of fails to deliver and conversations with the firm regarding 204T compliance, Penson represented and in documents produced evidenced that the firm did not always buy-in to close-out a fail to deliver position at the market open. The reason the firm provided for not buying-in at the open was because of manual processes and system limitations. Q. What is the system limitations that prevent the firm from executing buy-ins at the market open? Has the firm fixed the system limitations and manual processes to now execute buy-ins at the market open? If so, please provide the date the firm corrected this issue."
- FOF 35. On November 24, 2010, Delaney was copied on an email seeking final review of the letter before delivery to OCIE. That draft, and the final draft delivered to OCIE on November 24, 2010, contained the exact language from Delaney's November 19, 2010 draft.
- FOF 36. The chief compliance officer (CCO) is responsible for establishing and maintaining the supervisory system policies and procedures, other than financial and operations procedures.
- FOF 37. From 2009 to 2011, the Registered Representative Supervisory Matrix listed Bill Yancey under the column titled Regulatory Supervisor with regard to Michael Johnson.
- FOF 38. Michael Johnson was the individual with primary responsibility within Stock Loan for compliance with Rule 204(a) procedures.
- FOF 39. A few months later, in July 2010, Delaney was copied on an e-mail chain between Buy-Ins, Stock Loan, and compliance personnel. In the final e-mail of the chain, one of Penson's junior Compliance Specialists stated the

failure to deliver positions “should be flat by the end of the day” and “preferably this should be completed prior to or at market open.”

- FOF 40. On August 2, 2010, Delaney met with Yancey to discuss the status of the efforts to remediate Buy-Ins’ Rule 204(a) deficiencies. Consistent with Delaney’s actions during the March 31, 2010 meeting, Delaney and Yancey did not discuss Rule 204(a) violations relating to long sales of loaned securities.
- FOF 41. Michael Johnson, the Senior Vice President of Stock Loan, was an associated person of Penson. He had primary authority and responsibility within Stock Loan for its operational practices and for the Department’s WSPs, which WSPs were incorporated into Penson’s WSPs. The Senior Vice President of Stock Loan knew that Rule 204T(a)/204(a) required Penson to close out CNS failures to deliver for long sales, including long sales of loaned securities, by market open T+6. From October 2008 through November 2011, the Senior Vice President of Stock Loan knew Penson was at times violating Rule 204T(a)/204(a) in connection with long sales of loaned securities.
- FOF 42. Yancey was Delaney’s supervisor throughout the pertinent period.
- FOF 43. Yancey was not aware that Penson’s Stock Loan Department was violating Rule 204.
- FOF 44. Yancey took no steps regarding how Stock Loan’s Rule 204 procedures may have been contributing to Penson’s Rule 204 deficiencies.
- FOF 45. Penson’s WSPs, effective as of March 31, 2010, contained a section titled “Annual CEO Certification (RULE 3130): CEO and CCO Mandated Meeting.” Those procedures identified Yancey, as CEO/President, and Delaney, as CCO, to be the relevant Designated Supervisory Principals. The procedures required as follows: “The CCO will prepare and provide the CEO (or equivalent officer) with an Annual Report that includes a review of [Penson]’s Supervisory System and Procedures and key compliance issues. The CCO will meet with the CEO to discuss and review the report and will meet at other times, as needed, to discuss other compliance matters.” The procedures further required Yancey to certify, among other things, that “[c]ompliance processes are evidenced in a written report reviewed by the CEO, CCO, and other appropriate officers and submitted to the Board of Directors and Audit Committee, if any.”

- FOF 46. At the conclusion of that meeting, Yancey signed CEO Certifications per FINRA Rule 3130 and NYSE Rule 342.30. Those certifications included copies of Penson's Annual Report. Consistent with the WSPs' requirement that the report discuss "key compliance issues," the March 31, 2010 Annual Report contained a section titled "identification of significant compliance problems." But that section of the report did not specifically discuss Penson's Rule 204 deficiencies as identified in the December 2009 audit.
- FOF 47. Yancey and Delaney, among others, were recipients on the e-mail distributing the initial draft of Penson's response to a Rule 204T exam by OCIE on November 8, 2010, and then on November 24, 2010, Delaney and Yancey received the draft for their final review before delivery to OCIE.
- FOF 48. Yancey allowed the November 24, 2010 letter to be delivered to OCIE without making any edits to it.
- FOF 49. During the relevant time period there were at least 1,500 Rule 204T(a)/204(a) violations by PFSI relating to long sales of loaned securities.
- FOF 50. During the relevant time period PFSI cleared at least 1 billion securities transactions.
- FOF 51. There were a total of 83.6 million long sale transactions by PFSI during the relevant time period that could be potentially associated with loaned shares. Out of these 83.6 million long sale transactions, only 0.12 percent could be potentially associated with a negative CNS position that was a Rule 204(a)/204T(a) violation.
- FOF 52. The 1,500 Rule 204T(a)/204 negative CNS positions identified as violations represented only approximately 0.68 percent of the total number of Penson's CNS net sale settling positions potentially associated with loaned shares.
- FOF 53. During the relevant time period the only specifically quantified benefit PFSI gained from not timely closing out at market open on T+6 is \$59,000.
- FOF 54. Penson violated Rule 204T(a)/204(a) of Regulation SHO.

- FOF 55. Michael Johnson of Dallas, Texas, was the senior vice president of Penson Worldwide, Inc's ("PWI") securities lending department from at least October 2008 until June 2012. In that position Johnson oversaw securities lending activities at PFSI. Johnson was associated with PFSI between 2004 and 2012. Johnson held Series 7, 24, 27, and 63 licenses.
- FOF 56. Mr. Delaney gave notice to Penson that he was resigning as chief compliance officer and leaving Penson to pursue other employment in mid-March 2011.
- FOF 57. Mr. Delaney, in fact, left employment at Penson at the end of April 2011.
- FOF 58. The relevant period for the Division's claim against Delaney for aiding and abetting Penson violations of Rule 204(a) of Regulation SHO runs from October 1st, 2008 until approximately February 15th, 2011.
- FOF 59. For the alleged violations of Rule 204 for long sales of loaned securities in this case, the Division of Enforcement is not alleging that a failure to recall on T+2 or failure to close out at any time prior to market open of T+6 is a violation.
- FOF 60. During Eric Alaniz's initial meetings with Stock Loan personnel related to his 3012 testing of Penson's 204 compliance, no Stock Loan personnel told Alaniz that Stock Loan was deliberately failing to comply with Rule 204.
- FOF 61. Brian Gover believed that the following language that he authored was accurate, both when drafted and as of the date that he testified at the final hearing: "Penson feels that the processes and procedures employed to close out positions that were in violation of Rule 204T were effective and performed as designed. Our [presumably meaning Penson] current procedures as they relate to Rule 204 are effective and designed to ensure that all short sales and sales not long are covered either through stock borrow or market action prior to the open on S+1."
- FOF 62. During all the relevant time periods Eric Alaniz was a compliance officer at Penson Financial Services, Inc.
- FOF 63. During all relevant time periods Eric Alaniz had been delegated primary responsibility for conducting the testing required by NASD Rule 3012 and was the one who primarily conducted such testing.

- FOF 64. Penson undertook substantial remediation efforts following the November and December 2009 testing by Eric Alaniz of Penson's Rule 204 compliance, and these remediation efforts began at least as early as January 2010.
- FOF 65. Holly Hasty was, at least until March 2011, the deputy chief of compliance at Penson Financial Services, Inc.
- FOF 66. Holly Hasty took over as chief compliance officer of Penson in March 2011.
- FOF 67. Violations of Rule 204 by Stock Loan continued after Delaney left Penson.
- FOF 68. Violations of Reg SHO Rule 204(a) by Stock Loan continued after the meeting arranged by Delaney between Penson's Stock Loan department and Penson's outside counsel.
- FOF 69. Tom Delaney could not discipline, hire, or fire members of Penson's Stock Loan Department.
- FOF 70. Members of Penson's Stock Loan Department at all times knew that Rule 204T or 204 required them to close out all long sale transactions by market open at or before market open on T+6.
- FOF 71. From at least August 2008 to 2011, Michael Johnson was a PWI employee.
- FOF 72. During the relevant time period 2008 to 2011 Penson's compliance department, under the direction of Yancey and Delaney, grew to over 23 employees.
- FOF 73. Phil Pendergraft was a licensed principal and registered representative associated with PFSI.
- FOF 74. Dan Son was a licensed principal and registered representative associated with PFSI.
- FOF 75. During the relevant period Phil Pendergraft was an executive vice president of PFSI.
- FOF 76. During the relevant period Phil Pendergraft maintained a desk inside in Mr. Yancey's office.

- FOF 77. Following meetings in January and March 2010, Mr. Yancey was told that the 204 testing results were the subject of prompt remediation and that the relevant departments were cooperating.
- FOF 78. The December 2009 audit and June 2010 follow-up 204(a) audit results related only to the Buy-Ins Department.
- FOF 79. For the relevant time period Penson's Stock Loan revenue was approximately 77 million.
- FOF 80. The total calculated benefit to Penson from the 204(a) violations at issue is only approximately 0.08 percent of Stock Loan's total revenue during the relevant period.
- FOF 81. Phil Pendergraft interacted with Mike Johnson on a regular basis during the relevant period.
- FOF 82. Phil Pendergraft had sufficient knowledge and experience to supervise Michael Johnson.
- FOF 83. Michael Johnson believed he reported to Phil Pendergraft during the relevant period.
- FOF 84. During 2008 to 2011, Michael Johnson believed he was supervised by and reported to Phil Pendergraft and/or Dan Son.
- FOF 85. Tom Delaney received and reviewed guidance from Morgan Lewis about Rule 204T and Rule 204, which referenced the adopting releases for Rule 204T and Rule 204.
- FOF 86. During the relevant time period, Penson's Buy-Ins Department was located on the 14th floor and the Stock Loan Department was located on the 19th floor.
- FOF 87. During the relevant time period, Phil Pendergraft and Dan Son shared an office.
- FOF 88. Phil Pendergraft periodically met with Bill Yancey to discuss Michael Johnson's performance.
- FOF 89. "0234" was a NSCC participant or account number for PFSI and represents information related to PFSI. Prior to June 28, 2010, "0158" was a NSCC participant or account number for Ridge Clearing and

represents information related to Ridge Clearing. After June 28, 2010, "0158" became an additional NSCC account of PFSI.

- FOF 90. Bill Yancey held quarterly FINRA Rule 3012 meetings, which exceeds FINRA's annual requirement.
- FOF 91. Stock Loan did not change its Rule 204 close out practices after consulting outside counsel in February 2011.
- FOF 92. Persistent failure to deliver positions can be consistent with Rule 204 compliance.
- FOF 93. Brian Gover, Brian Hall, and Rudy De La Sierra signed cooperation agreements with the Division related to this matter.
- FOF 94. Penson provided organizational charts to regulators.
- FOF 95. Bill Yancey routinely met with Mr. Delaney.
- FOF 96. Eric Alaniz distributed the invitation list for the March 31, 2010 Rule 3012 meeting.
- FOF 97. Michael Johnson told Bill Yancey and other Penson senior management that he had limited availability to attend meetings during market hours.
- FOF 98. NASD Rule 3010 requires each registered representative be appropriately assigned to a registered principal, e.g., an individual who holds a Series 24 or Series 27 license.
- FOF 99. On average, Penson's Compliance Department received between approximately 1,100 and 1,500 regulatory requests and state agency subpoenas per year.
- FOF 100. At Penson, the employee that dealt with licensing and registration was also the individual responsible for keeping and maintaining the Registered Representative Supervisory Matrix. During the relevant time period, Kim Miller was one of the individuals responsible for maintaining the Registered Representative Supervisory Matrix.
- FOF 101. When Penson received an examination notification or prepared an exam response, the Compliance Department's typical practice was as follows: the Compliance Department distributed the notification to the business units, senior management, and the legal department; held an initial

meeting with the recipients of the notification to determine assignments for the response among the business units; compiled a response draft document with input from, and substantive sections drafted by, the business units by assignment; circulated responses internally among the Compliance Department, business unit heads, senior management, the legal department and sometimes outside counsel; and, once a final consensus was reached, sent the response to the regulatory entity.

- FOF 102. During the relevant time period, Michael Johnson and Tom Delaney were registered representatives associated with PFSI.
- FOF 103. PWI was a public company; it had a number of subsidiaries, including: PFSI; Penson Financial Services, London; Penson Financial Services, Canada; and Nexus Technologies.
- FOF 104. Mike Johnson was charged by the Commission for willfully aiding and abetting the Rule 204 violations at issue in this matter, and settled his case on a neither admit nor deny basis.
- FOF 105. Rudy De La Sierra began working at PFSI in March 2000. He joined the Stock Loan department in June 2000. He became Vice President of Stock Loan in approximately 2006.
- FOF 106. Lindsey Wetzig began working at PFSI out of college in March 2000. In 2004, he joined the Stock Loan group. In approximately 2006 or 2007, he was promoted to Operations Manager of the Stock Loan group.
- FOF 107. Kim Miller was a PFSI compliance department employee from 2000 until 2012. One of Kim Miller's responsibilities was to provide information in response to requests from regulators and other outside sources.
- FOF 108. Bart McCain began working at PFSI in 2006. He was PFSI's chief administrative officer, and also served as PFSI's chief financial officer for a time. McCain also served as the PWI interim treasurer in 2011 and interim chief financial officer in 2012.
- FOF 109. Brian Gover began working at PFSI in April, 2007. Over time he managed several departments, including the buy-ins department. In April 2012, Gover moved into the compliance department at PFSI. He is currently the Chief Compliance Officer of Apex Clearing.
- FOF 110. Summer Poldrack and Angel Shofner were PFSI employees in the Buy-ins Department during the relevant time period.

- FOF 111. No PWI entity other than PFSI had close out obligations under Rule 204.
- FOF 112. Yancey had supervisory responsibility for Delaney.
- FOF 113. The Rule 204 December 2009 Audit was discussed in the March 31, 2010 quarterly 3012 CEO certification meeting, which was held on the same day that Yancey signed the 2010 Annual CEO Certification.
- FOF 114. Yancey personally signed the Annual CEO Certification.
- FOF 115. Yancey was aware that the CEO Certification and Summary Report were sent to regulators.
- FOF 116. Providing locates, borrowing securities, and lending securities, were functions of PFSI's Stock Loan Department rather than Penson Worldwide.
- FOF 117. Sometime prior to the implementation of Rule 204T, Johnson became the PWI Senior Vice President for Global Stock Lending, responsible for all of Penson's worldwide stock lending operations.
- FOF 118. Until Johnson was promoted to PWI Senior Vice President for Global Stock Lending, Yancey was Johnson's supervisor.
- FOF 119. Johnson received approximately 300 e-mails per day when he was PWI Senior Vice President for Global Stock Lending.
- COL 1. Rule 204T/204 requires participants of a registered clearing agency to deliver equity securities to a registered clearing agency when delivery is due; that is, by settlement date. As relevant here, settlement date is generally three days after the trade date ("T+3"). For short sales, if the participant does not deliver securities by T+3 and has a failure-to-deliver position at the clearing agency (also referred to as CNS fails/failures to deliver), at market open on the morning of T+4 it must take affirmative action to close out the failure-to-deliver position by purchasing or borrowing the securities of like kind and quantity by no later than the beginning of regular trading hours on the settlement day following the settlement date ("T+4"). For long sales, if the participant has a failure-to-deliver position at the clearing agency (also referred to as CNS fails/failures to deliver), at market open on the morning of T+6 it must take affirmative action to close out the failure-to-deliver position by purchasing or borrowing securities of like kind and quantity by no later

than the beginning of regular trading hours on the third day following the settlement date (“T+6”).”

- COL 2. The Division bears the burden of proof on all of the Division’s claims against Delaney and Yancey.
- COL 3. If adjudicated facts are subject to competing inferences, the Division, as the party with the burden of proof, must establish that its inferences are more plausible than Respondents’ inferences.
- COL 4. If the record equally supports both innocent and culpable inference, the Division fails in its burden of proof.
- COL 5. To establish that one Respondent willfully aided and abetted the violation of another, the Division must show that the aider and abettor acted with scienter.
- COL 6. Willfulness is shown where a person intends to commit an act that constitutes a violation.
- COL 7. To satisfy the substantial assistance element of aiding and abetting, the SEC must show that the defendant in some sort associated himself with the venture, that he participated in it as something that he wished to bring about, and that he sought by his action to make it succeed.
- COL 8. The primary violation must be a direct or reasonably foreseeable result of the aider and abettor’s conduct to satisfy the substantial assistance element.
- COL 9. Generally, the delegation of supervisory responsibility is reasonable when (1) the person to whom the responsibilities are delegated possesses sufficient knowledge and experience to perform those functions in a satisfactory manner and (2) the person who has delegated supervisory responsibilities to another takes reasonable steps to ensure that the functions delegated are being performed in reasonable manner.

On December 12, 2014, the Division filed a Notice and Stipulations Regarding Transcript Corrections (Transcript Notice). The Transcript Notice identifies agreed-upon corrections to the hearing transcript, attached to the Transcript Notice as Exhibit A, as well as alleged transcript errors for which correction remains in dispute, attached as Exhibit B. The Transcript Notice represents that the parties anticipate reaching resolution on the issues identified in Exhibit B in the near future. The corrections listed in Exhibit A to the Transcript Notice reflect clear typographic or scrivener’s errors, and thus they will all be adopted. Accordingly, it is

FURTHER ORDERED that the corrections described in Exhibit A to the Transcript Notice be made to the transcript.

SO ORDERED.

Jason S. Patil
Administrative Law Judge