UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9914 / September 17, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75941 / September 17, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31829 / September 17, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3697 / September 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16819

In the Matter of

PHILIP A. PENDERGRAFT,
KEVIN W. MCALEER, CPA,
THOMAS R. JOHNSON,
and CHARLES W. YANCEY,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 4C, 15(b), AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), against Philip A. Pendergraft, Exchange Act Sections 4C and 21C, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice against Kevin W. McAleer, CPA, Exchange Act Section 21C against Thomas R. Johnson, and Exchange Act Section 15(b) against Charles W. Yancey.

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("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 Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C, 15(b), and 21C of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that

A. <u>Summary</u>

1. These proceedings relate to approximately $100 million in failed margin loans made by now-defunct Penson Financial Services, Inc. ("PFSI")—which was once the second largest clearing broker-dealer in the U.S.—to certain of its customers. PFSI made the bulk of these margin loans between 1999 and 2008 to Christopher J. Hall and his affiliates, including a company named Call Now, Inc. ("Call Now"), who invested in risky, unrated municipal bonds. Hall was the Chairman of Call Now's board of directors, and in 2006 Call Now became a large shareholder of PFSI's publicly traded parent company, Penson Worldwide, Inc. ("PWI").

2. In the wake of the financial crisis of 2008, PFSI incurred significant losses on these margin loans to Hall and Call Now because their margin collateral had plummeted in value. A substantial portion of Hall and Call Now's margin collateral consisted of distressed municipal bonds related to a financially struggling horse racetrack in Texas operated by Call Now. Hall and Call Now failed to satisfy margin calls issued by PFSI because they did not have sufficient assets. Hall and Call Now's primary hope of satisfying PFSI's margin calls rested on speculation that a future change in Texas gambling laws would allow slot machines at Texas horse racetracks. Nevertheless, PFSI failed to liquidate these customers' collateral to satisfy their margin calls because doing so

[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.

would lock in large losses for PFSI and PWI (collectively "Penson"). Instead, in 2009 and 2010 Penson extended additional loans to these customers, hoping that they would survive financially and their collateral value would improve in the future so that Penson could reverse the losses on the margin loans. But these additional loans improperly increased Hall and Call Now's indebtedness to PFSI in violation of federal margin regulations, which are designed to prevent the excessive use of credit by broker-dealers.

3. Under the accounting standards governing public companies and broker-dealers, Penson should have recognized losses on the loans as early as 2009, but did not do so until nearly two years later. As a result, Penson failed to present its financial statements in SEC filings in conformity with accounting principles generally accepted in the U.S. ("GAAP"), for the annual periods ended December 31, 2009 and December 31, 2010, and with respect to PWI, the quarterly periods ended March 31, 2010 through June 30, 2011. In addition, Penson failed to adequately disclose the nature of the loans in SEC filings for the 2009 and 2010 annual periods in violation of applicable disclosure requirements.

4. PWI ultimately recorded more than $60 million in losses for these loans in 2011 and 2012. These losses and other disclosures about the loans beginning in 2011 contributed to a series of events resulting in PWI and PFSI's bankruptcies in 2013.

5. Respondent Philip A. Pendergraft, Penson's co-founder, Director and CEO of PWI, and an Executive Vice President ("EVP") of PFSI, managed Penson's loans to Hall, Call Now, and their related entities and exercised substantial control over certain key operations of PFSI. Pendergraft, along with Respondent Kevin W. McAleer (PWI's CFO), was responsible for the improper accounting treatment and disclosure of these loans in PWI and PFSI's filings with the Commission. Respondent Thomas R. Johnson, who was a Director of PWI, and a Director and the President/CEO of Call Now, was a cause of PWI's improper disclosures as he knew or should have known that these disclosures were materially misleading when he signed PWI's filings with the Commission. Finally, Respondent Charles W. Yancey, PFSI's President/CEO, failed reasonably to supervise Pendergraft, an EVP and associated person of PFSI, who managed PFSI's margin loans to Hall, Call Now, and their related entities, and directed PFSI's recordkeeping and financial reporting with respect to those loans for the relevant periods.

B. <u>Respondents</u>

6. **Philip A. Pendergraft**, age 56, is a resident of Arlington, Texas. Pendergraft was a co-founder, a Director, and the Chief Executive Officer of PWI, and an Executive Vice President and associated person of PFSI from May 1995 to July 2012. He held Series 3, 4, 7, 15, 24, 27, 53, and 63 licenses.

7. **Kevin W. McAleer, CPA**, age 64, is a resident of Frisco, Texas. McAleer was PWI's Chief Financial Officer from February 2006 to March 2012. McAleer has been a CPA since 1976 and currently is licensed as a CPA by the Texas Board of Accountancy.

8. **Thomas R. Johnson**, age 48, is a resident of Orleans, Massachusetts. Johnson was a Director of PWI from August 2003 to May 2011. Johnson also was a Director and the President/CEO of Call Now, Inc. from November 2001 to approximately November 2011. He held Series 7, 24, 52, and 63 licenses.

9. **Charles W. Yancey**, age 59, is a resident of Colleyville, Texas. He was PFSI's President and CEO from August 2005 to February 2012. Yancey currently is associated with a registered broker-dealer and holds Series 7, 24, 55, and 63 licenses.

C. Other Relevant Entities

10. **Penson Worldwide, Inc.** was a Delaware corporation with its principal place of business in Dallas, Texas, that provided clearing, execution, and other services to the securities brokerage industry through its subsidiaries. In October 2012, PWI filed Forms 25 and 15 voluntarily withdrawing its common stock from listing on the Nasdaq Global Market and terminating its registration under Exchange Act Sections 12(b) and 12(g). On January 11, 2013, PWI and its subsidiaries filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Delaware.

11. **Penson Financial Services, Inc.** was a North Carolina corporation with its principal place of business in Dallas, Texas. PFSI was a wholly owned subsidiary of SAI Holdings, Inc. ("SAI"), which was a wholly owned subsidiary of PWI. From 2009 to 2011, PFSI was the second largest clearing broker-dealer in the U.S. based on the number of correspondents. PFSI was registered as a broker-dealer with the Commission from February 1990 to October 2012, when its filed Form BDW became effective. On January 11, 2013, PFSI filed for bankruptcy along with PWI.

12. **Christopher J. Hall**, age 56, was the Chairman and controlling shareholder of Call Now, Inc. for all relevant periods. Hall was a former CFO and financial operations principal of Howe, Solomon & Hall, Inc., which was registered as a broker-dealer with the Commission from June 1983 to February 2000.

13. **Call Now, Inc.** was a Nevada corporation with its principal place of business in the City of Selma, Texas. Call Now's primary business was the operation and management of the Retama Park horse racetrack owned by the Retama Development Corporation, a municipal corporation of Selma. Call Now's common stock was registered under Exchange Act Section 12(g) until August 1, 2014, when its registration was revoked by the Commission for failure to file periodic reports since the period ended June 30, 2011.

D. **Facts**

Background

14. PFSI was PWI's U.S.-based and largest clearing broker-dealer subsidiary. PFSI generated substantial interest income from its margin lending business—extending credit to correspondent broker-dealers and customers to purchase securities on margin collateralized by existing cash or securities in their margin accounts. PFSI's margin lending business was subject to, among other things, the margin regulations of the Board of Governors of the Federal Reserve System ("Federal Reserve Board") and the Financial Industry Regulatory Authority ("FINRA").[2] These margin regulations generally require a margin account to maintain minimum equity (maintenance margin) of at least 25% of the current market value of the marginable securities in the account. PFSI's internal margin policies also required a margin account to maintain a 25% minimum maintenance margin rate.

15. When the margin equity of a PFSI customer's margin account fell below the 25% minimum maintenance margin rate, PFSI's systems generated a maintenance margin call. PFSI's policies required its operations personnel to demand the customer to deposit the required cash or marginable securities into the account within three days to cure the margin deficiency. PFSI's customer margin account agreement required the customer promptly to pay, upon demand, any margin indebtedness or deficiency. If the customer failed to do so, PFSI typically liquidated securities or other assets from the customer's account to redress the margin deficiency. In some instances PFSI also obtained guarantees or other pledges of collateral from margin customers to address margin deficiencies. PFSI generally established an allowance for doubtful accounts and recognized a bad debt expense when the collateral, guarantees, or other rights were insufficient to cover potential losses on margin loans.

Penson's Relationship With Christopher J. Hall and Call Now, Inc.

16. From 1999 to 2008, PFSI extended substantial margin loans to Christopher J. Hall and his affiliates, who primarily invested in risky, unrated municipal bonds. By 2008, these margin loans were maintained in four accounts—Hall's personal account, The Hemisphere Trust ("Hemisphere," a Belize-based trust controlled by Hall), The Global Trust ("Global," another Belize-based trust purportedly cross-guaranteed by Hemisphere), and Call Now's account (controlled by Johnson) (collectively "Hall/Call Now" or the "Hall/Call Now accounts"). During this period, Pendergraft was PFSI's primary relationship manager for Hall/Call Now based on his prior business relationship with Hall.

[2] Exchange Act Section 7(c); Regulation T, 12 C.F.R. §§ 220.1 – 220.12; NASD Conduct Rule 2520 ("NASD Rule 2520"). NASD Rule 2520 was amended and superseded by FINRA Rule 4210 effective December 2, 2010.

17. One of the key investments in the Hall/Call Now accounts was in unrated municipal bonds issued by the Retama Development Corporation ("RDC"), which owned the Retama Park horse racetrack. The RDC had issued $93.9 million in two series of bonds since 1993 to build and fund Retama Park—$7 million of Series A bonds, secured by Retama Park's facilities, and $86.9 million in Series B revenue bonds ("Retama B Bonds") that paid interest only if Retama Park generated sufficient revenue. But Retama Park had struggled financially since it opened in 1995 and the RDC never paid interest on the Retama B Bonds. Retama Park's primary hope of making a profit was legislation in Texas that would allow expanded gambling, including slot machines, at Texas horse racetracks. Since Retama Park opened, however, every bill proposing such legislation had failed in the Texas Legislature.

18. Hall and his affiliates, including Call Now, owned the vast majority of the Retama B Bonds, held in their PFSI accounts, and other Retama Park related assets. Hall and Call Now's goal with these investments was to operate Retama Park and lobby the Texas Legislature to pass enhanced gambling legislation, which purportedly would cause the value of their Retama Park related assets to appreciate and be sold at a premium to a casino or other gaming company. To finance portions of this plan, Hall and Call Now withdrew cash from their PFSI margin accounts to make loans to the RDC, which repeatedly needed money to avoid defaulting on its debts and to pay its and Retama Park's operating expenses. Hall and Call Now also obtained substantial additional margin loans from PFSI for purchasing or carrying hundreds of unrated municipal bonds and other securities, and Call Now also withdrew cash from its margin account partially to fund its own operating expenses.

19. Also, at Penson's request in 2003, Hall and Johnson (on behalf of Call Now) agreed to have Call Now purchase $6.6 million of PWI's convertible notes by borrowing from Call Now's PFSI margin account to fund the purchase. At the time, PWI needed capital to grow its business, and Penson determined that a quick way to raise that capital was to have Call Now buy PWI's notes with a margin loan from PFSI. In exchange, PWI agreed to use its best efforts to appoint a nominee of Call Now to its Board of Directors, and Johnson thereafter was elected to PWI's Board in August 2003. In May 2006, PWI completed an initial public offering of its common stock, and Call Now converted its PWI notes to common stock to become PWI's fifth largest common stockholder. Call Now also became a related party of PWI due to Johnson's dual role as a PWI director and a Call Now director and officer.

20. The Hall/Call Now accounts were unusual at PFSI for at least the following reasons. First, they were direct customer accounts not associated with a correspondent broker, which was not common at PFSI. Second, the accounts obtained substantial margin loans to purchase or carry unrated municipal bonds, whereas PFSI generally made margin loans to customers to purchase equity securities. Finally, Pendergraft was the primary relationship manager for the Hall/Call Now accounts instead of PFSI's operations department, which was otherwise responsible for monitoring margin lending risk and enforcing margin requirements.

PFSI's Margin Loans to Hall/Call Now Were Troubled by 2009

21. By early 2008, the margin equity for Hall and Hemisphere's accounts had fallen below FINRA's and PFSI's 25% minimum maintenance margin rate for all customer margin accounts. Instead of issuing margin calls to Hall and Hemisphere per PFSI's policies, however, PFSI lowered the minimum maintenance margin rate for the unrated municipal bonds in Hall and Hemisphere's accounts from 25% to 7% (which corresponds to FINRA's minimum maintenance margin rate for municipal bonds) so that, in effect, no margin call would be issued to the customers.[3]

22. But during 2008, Hall and Hemisphere's unrated municipal bonds had further declined in value, causing their margin equity to fall below the 7% minimum maintenance margin rate. Pendergraft, throughout 2008, had demanded that Hall deposit additional collateral into Hall and Hemisphere's accounts, but Hall failed to deposit sufficient collateral to satisfy the accounts' margin deficiency. Although FINRA's margin rules and PFSI's policies required PFSI to obtain the required margin from Hall and Hemisphere within fifteen business days of the date the margin deficiency occurred, PFSI could not do so because Hall did not have sufficient assets.[4] PFSI also did not request FINRA to grant it additional time to obtain the required margin. PFSI decided not to liquidate the mostly unrated municipal bonds in Hall and Hemisphere's accounts because they could not be sold without locking in substantial losses for PFSI. Because the accounts' margin equity was below the minimum maintenance margin rate, PFSI was required to deduct Hall and Hemisphere's margin deficiency from its net capital in accordance with the Commission's net capital rule.[5] By December 31, 2008, PFSI had deducted $14.2 million, as "other deductions and/or charges" from its net capital for Hall and Hemisphere's margin deficiency.

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3 NASD Rule 2520(e)(2)(B) required a minimum maintenance margin rate of 7% of the current market value of any positions in exempted securities, including municipal bonds. NASD Rule 2520(f)(1) also required that "[s]ubstantial additional margin must be required in all cases where the securities carried in 'long' or 'short' positions are subject to unusually rapid or violent changes in value, or do not have an active market on a national securities exchange, or where the amount carried is such that the position(s) cannot be liquidated promptly." PFSI's own policies required a minimum maintenance margin rate of the greater of 15% of the current market value, or 7% of face value, for investment grade municipal bonds.

4 NASD Rule 2520(f)(6) required that "[t]he amount of margin or 'mark to market' required by any provision of this Rule shall be obtained as promptly as possible and in any event within fifteen days from the date such deficiency occurred, unless [the NASD or FINRA] has specifically granted the member additional time." PFSI's policies also stated that if a margin account's equity fell below the 25% maintenance rate, PFSI would "liquidate enough securities to bring the account back to a 25% maintenance rate."

5 *See* Exchange Act Rule 15c3-1(c)(2).

23. By early 2009, PFSI's senior executives, including Yancey, became aware of irregularities with PFSI's margin loans to the Hall/Call Now accounts. Hall and Hemisphere's accounts repeatedly appeared on PFSI's exception and risk management reports that tracked large margin debts, outstanding margin calls, or negative equity (unsecured loan balances). Many PFSI senior executives were aware that the Hall/Call Now accounts held mostly unrated municipal bonds, which were distressed or in default, and PFSI generally did not extend margin loans on such collateral. The executives also knew that PFSI had taken net capital charges for Hall and Hemisphere's margin deficiency. But all of PFSI's executives, including Yancey, deferred to Pendergraft on the issues raised by these accounts. Pendergraft instructed PFSI executives, including Yancey, not to get involved with the Hall/Call Now accounts because he was managing them personally in consultation with certain members of PWI's Board. Pendergraft, as PFSI's co-founder and EVP, exercised substantial control over certain key PFSI operations, including computations of PFSI's net capital and management of the Hall/Call Now accounts. PFSI's senior executives generally did not challenge Pendergraft's authority or actions over those matters.

24. Of all the PFSI executives, only Yancey attempted to address the risks posed by PFSI's margin loans to Hall and Hemisphere. Other PFSI executives looked to Yancey to address those risks. Although Yancey reported to Pendergraft in Pendergraft's capacity as CEO of PWI, Yancey supervised Pendergraft in Pendergraft's capacity as an EVP and associated person of PFSI. By early 2009, Yancey became more aware of the Hall/Call Now accounts as Hall and Hemisphere's accounts became more distressed. Yancey was aware that the Hall/Call Now loan balances continued to increase, Hall and Hemisphere's accounts continued to appear on PFSI's negative equity reports, and PFSI deducted from its net capital increasing amounts of those accounts' margin deficiencies. Yancey told Pendergraft that PFSI should stop extending loans to the Hall/Call Now accounts and should liquidate their collateral. Yancey also denied requests for additional loans to those accounts. But Pendergraft rebuffed Yancey's efforts. Yancey routinely sought assurances from Pendergraft that the accounts were being properly managed. Pendergraft assured Yancey on numerous occasions that the accounts' collateral had substantial value and would recover in the future, and that Yancey should not worry about the accounts and instead focus on growing PFSI's business. Though Yancey repeatedly voiced his concerns about the loans to Pendergraft thereafter, Yancey did not take additional measures that reasonably would be expected to address Pendergraft's management of the Hall/Call Now accounts.

25. By early 2009, PFSI's operations personnel effectively ceased monitoring the Hall/Call Now accounts because of Pendergraft's control over them. Pendergraft also instructed PFSI's margins department to "abate" or close without any action any margin calls generated by PFSI's systems for the Hall/Call Now accounts as he would handle margin issues personally with Hall and Call Now.

<u>Penson Makes Another Loan to Hall in 2009 to Support His Account</u>

26. By March 2009, Hall's personal account had a negative equity balance of $9 million. Hall also had unmet margin calls in the amount of $15.8 million. At Pendergraft's demand, Hall agreed to pledge to Penson his controlling interest of 1.5 million restricted shares of

Call Now as additional collateral, but told Pendergraft that he needed to borrow $3.7 million to pay off purportedly existing liens on the shares. Pendergraft agreed to have Penson lend Hall the money to do so.

27. In exchange for Hall's pledge of 1.5 million Call Now shares to Penson, Pendergraft, after discussions with certain PWI directors and officers, arranged for a loan to Hall from SAI (PWI's subsidiary that owned PFSI) via promissory notes and stock pledge agreements effective June 2009 ("SAI loan"). The SAI loan to Hall was payable on demand, like a margin loan, and charged an interest rate of 7.45%, which PFSI had charged on margin loans. Pendergraft directed PFSI to wire the loan proceeds from PFSI's bank accounts to a trust account of Hall's lawyer in Florida, per Hall's wiring instructions. After the PFSI wires were received by the trust account, Hall delivered the Call Now stock certificates to PFSI. PFSI then deposited the shares into Hall's margin account, thereby reversing the account's negative balance of $9 million to a positive balance by July 2009.

28. This SAI loan to Hall was made in contravention of Regulation T, which prohibits the withdrawal of cash from any margin account that creates or increases a margin deficiency, and PFSI's own policies, which prohibited the withdrawal of any cash from a margin account that was subject to a maintenance margin call.[6] The SAI loan was effectively a margin loan as it was a demand loan that charged PFSI's margin loan interest rate, funded by PFSI, and collateralized by Hall's Call Now shares. Although the value of Hall's Call Now shares deposited into his PFSI margin account supposedly restored the account to a positive balance, the shares were non-marginable, and had no effect on his account's existing margin deficiency. Because the SAI loan was effectively a margin loan, however, the loan actually had the effect of increasing Hall's account's margin deficiency by $3.7 million. Most PFSI executives, including Yancey, were not aware of the SAI loan when it was made.

29. By June 2009, Penson's loans to Hall/Call Now reached $89 million as unpaid loan interest continued to accrue and Call Now withdrew cash from its margin account to fund Retama Park and its own operating expenses, including portions of Hall and Johnson's Call Now salaries. Hall and Hemisphere's margin accounts continued to be subject to daily margin calls that Hall had failed to meet since 2008. Though Penson and Hall had hoped that the 2009 session of the Texas Legislature (which meets every odd-numbered year) would result in enhanced gambling legislation, bills proposing such legislation failed to reach a floor vote before the session adjourned in June 2009.

[6] Regulation T, 12 C.F.R. § 220.4(e)(1)(ii), permits the withdrawal of cash or securities from an account except if "[t]he withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency."

FINRA Instructs PFSI to Take a 100% Haircut to Net Capital for the Retama B Bonds

30. During the summer of 2009, FINRA's exam staff conducted a cycle examination of PFSI, and found that PFSI failed to comply with FINRA's margin rules because the Retama B Bonds owned by Hall/Call Now were not marginable securities. The FINRA exam staff reached this conclusion because the Retama B Bonds were unrated, did not have an active market, and had deferred on interest payments. After discussions with PFSI's executives and outside counsel, the FINRA exam staff instructed PFSI to apply a 100% margin maintenance rate or "haircut" to its net capital for the value of the bonds, issue margin calls to the account holders, and submit a plan of liquidation of the collateral. The FINRA exam staff reviewed these conclusions in an exit meeting with all senior PFSI executives in October 2009.

31. PFSI eventually agreed to treat the bonds as non-marginable, and applied a 100% haircut for their value, resulting in an additional $20 million deduction to PFSI's net capital. This was on top of the nearly $20 million in net capital charges PFSI was already taking for Hall and Hemisphere's margin deficiency. By September 30, 2009, PFSI had deducted approximately $40 million from its net capital for the Hall/Call Now accounts' margin deficiency, and reported net capital of $92 million. Though PFSI did not violate minimum net capital requirements, its margin loans to the Hall/Call Now accounts had substantially reduced its net capital.

32. On September 24, 2009, pursuant to FINRA's instructions, PFSI also sent maintenance margin call letters to Hemisphere, Global, and Call Now. The letters stated that, based on FINRA's determination that the Retama B Bonds in their accounts were not marginable, Hemisphere, Global, and Call Now needed to deposit in their accounts additional margin in the amounts of $8.25 million, $2.7 million, and $5.3 million, respectively, by September 30, 2009. Hemisphere, Global, and Call Now failed to deposit any margin in response to these margin calls.

Penson "Restructures" Hall and Call Now's Debts to Support Their Accounts

33. By yearend 2009, Penson's loans to the Hall/Call Now accounts totaled $91 million and became severely distressed due to further declines in collateral value and unpaid interest. Hall and Hemisphere's accounts had become unsecured by more than $26 million. Margin calls on all four of the Hall/Call Now accounts remained unpaid for months as the customers lacked "the wherewithal" to pay. PFSI's net capital charges for those unpaid margin calls had soared to $56 million, compared with PFSI's reported net capital of $95 million at yearend 2009. Penson did not liquidate or foreclose on the accounts' illiquid collateral because liquidation would result in significant losses to Penson, and foreclosure would result in the impractical outcome of Penson controlling Call Now and Retama Park's operations. Penson concluded that the only viable option was to restructure Hall/Call Now's debts to obtain as much collateral as possible.

34. In February 2010, Pendergraft, after months of negotiations with Hall and Johnson (on behalf of Call Now), devised a complex transaction ("restructuring transaction") involving Penson, Hall, and Call Now. The purpose of the transaction was to obtain as much collateral as possible to reduce the unsecured portion of Hall's margin loan, which was $15.7 million at yearend

2009. Because Call Now's collateral (which included PWI stock) was relatively more liquid than Hall's, Penson demanded that Call Now transfer approximately $10 million in additional equity in cash and other assets to Hall by buying Hall's illiquid collateral, including certain unrated municipal bonds and an additional 721,463 Call Now shares.

35. Because Call Now did not have enough cash or liquid assets to finance this transaction, Penson again authorized the use of PFSI's capital, like the SAI loan, to make an improper loan to Call Now. PWI "converted" Call Now's $13.9 million outstanding margin loan at PFSI into a two-year promissory note in favor of PWI, effectively transferring the debt from Call Now's margin account and PFSI's books to PWI. This promissory note, which was collateralized in part by all of the securities in Call Now's margin account, ostensibly reset Call Now's margin debt to zero and allowed it to borrow on margin again from its PFSI margin account. Then, against part of the same collateral securing Call Now's promissory note, Pendergraft directed PFSI to extend another $5.5 million in margin loans to Call Now so that it could use those proceeds to buy Hall's illiquid collateral. While this transaction increased the equity in Hall's account by approximately $10 million, Call Now's overall indebtedness to Penson also increased from $13.9 million to $19.4 million as a result of this transaction.

36. Indirectly related to this transaction, Pendergraft directed PFSI to extend another $500,000 margin loan to Call Now and another $1 million margin loan to Hall in February and April 2010, respectively, when Call Now and Hall's accounts were subject to unmet margin calls. Call Now used the $500,000 to fund its investment and operating expenses for 2010, including portions of Hall's and Johnson's $200,000 annual Call Now salaries. Hall loaned the $1 million to the RDC for its and Retama Park's operating expenses.

37. These extensions of credit, like the SAI loan, were in contravention of Regulation T and PFSI's policies.

<u>FINRA Finds That PFSI Lacked Sufficient Internal Controls on the Hall/Call Now Loans</u>

38. In the summer of 2010, the FINRA exam staff conducted a cycle examination of PFSI. The FINRA exam staff concluded that PFSI did not have sufficient controls over its extension of credit to the Hall/Call Now accounts because the loans continued to be collateralized by unrated municipal bonds lacking an active market. The FINRA exam staff instructed PFSI to take a further $15.4 million deduction to its net capital for additional concentrated positions of unrated municipal bonds collateralizing the loans. The FINRA exam staff also concluded that Pendergraft's control over the Hall/Call Now accounts resulted in PFSI's failure to consider or identify risk factors such as the marketability and concentration of the collateral, liquidity risk, and the customers' creditworthiness. By not adequately considering these risk factors, the FINRA exam staff concluded, PFSI failed to supervise these credit extensions and materially impaired its net capital. The FINRA exam staff reviewed these conclusions at an exit meeting with all senior PFSI executives in October 2010.

39. By yearend 2010, Yancey knew or had reason to know that Pendergraft approved loans to Hall/Call Now in 2009 and 2010 that contravened Regulation T and PFSI's own policies and internal controls. Yancey knew that Pendergraft directed PFSI's associated persons not to record losses on the Hall/Call Now loans in PFSI's books and records and financial statements because Pendergraft had assured Yancey that he and other PWI executives had determined that the loans were collectable, following discussions with PWI's Board and auditor. But Yancey told Pendergraft that he doubted whether the Hall/Call Now loans were fully collectable because the loan balances continued to grow from 2009 to 2010, and because PFSI continued to take large deductions to its net capital for the Hall/Call Now loans since September 2009. Although Yancey continued to voice concerns to Pendergraft about extending additional credit to Hall/Call Now and advocated to liquidate their collateral to minimize losses for PFSI, Yancey failed to take additional measures that reasonably would be expected to prevent and detect Pendergraft's actions resulting in PFSI extending credit in contravention of Regulation T, and resulting in PFSI's failure to accurately record losses in its ledgers and to file its financial statements in conformity with GAAP.

Penson's Improper Accounting of the Hall/Call Now Loans in its 2009 Yearend Filings

40. PWI and PFSI were required under GAAP to evaluate whether the Hall/Call Now loans were impaired. Impairment is required to be recognized when information available before the financial statements are issued indicate that it is "probable" that the creditor will be unable to collect all amounts due, including principal and interest, in accordance with the loan's contractual terms.[7] PWI and PFSI were also required, under GAAP, to measure and recognize in their financial statements the amount of impairment losses associated with such loans, and to disclose the amount of the impaired loans and loans that were more than ninety days past due and still accruing.[8] These financial statements were included in PWI's Forms 10-K and 10-Q, and PFSI's annual audited reports filed with the Commission.

41. PWI and PFSI's accounting policies claimed that they "did not lend money to customers or correspondents except on a fully collateralized basis." Those policies also required PWI and PFSI to record a bad debt expense and an allowance for doubtful accounts if a margin customer's collateral value, guarantees, or other rights granted were insufficient to cover any potential losses.

42. At yearend 2009, Hall/Call Now collectively owed Penson $91 million, and were subject to margin calls for $56 million. Hall, Hemisphere, Global, and Call Now were required under their PFSI customer margin account agreements promptly to pay any indebtedness or deficiency upon demand from PFSI. Each of these four customers failed to meet PFSI's demands for payment by September 30, 2009.

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7 Financial Accounting Standards Board Accounting Standards Codification ("ASC") Topic 310-10-35-16.

8 ASC 310-10-35-22 & 310-10-50-7.

43. Nonetheless, PWI and PFSI, at Pendergraft and McAleer's direction, concluded that the Hall/Call Now loans were fully collectable and not impaired because they expected, without adequate basis, that (a) the real estate market would recover in 2010, or (b) the Texas Legislature likely would pass enhanced gambling legislation in 2011, either of which would cause the Hall/Call Now accounts' collateral value to improve and, at some point in the future, allow the customers to pay back their loans. For the same reasons, PWI and PFSI concluded that loss recognition and the establishment of an allowance for doubtful accounts for the Hall/Call Now loans was not necessary. PWI's Audit Committee and auditor concurred with these conclusions.

44. But these conclusions did not comply with GAAP. Because the Hall/Call Now accounts failed to meet their outstanding margin calls upon demand, it was at least probable at yearend 2009 that PWI and PFSI would be unable to collect all amounts due in accordance with the contractual terms of the margin loans. Neither the possible recovery of the real estate market, the possible enactment of gambling legislation, nor the additional collateral pledged in the restructuring transaction affected PWI and PFSI's inability to collect all amounts when due from the customers at yearend 2009. Further, PWI and PFSI failed to record a bad debt expense for the Hall/Call Now loans, or even to disclose that the loans were past due for more than ninety days and still accruing.

45. As a result, PWI and PFSI failed to properly identify the loans to Hall/Call Now as impaired, and to measure and recognize the amount of impairment in conformity with GAAP. Had PWI and PFSI properly identified the loans as impaired and measured the amount of impairment according to their own internal policies, they would have recorded a loss in the amount of approximately $19 million for the period ended December 31, 2009. Such a loss would have been material to PWI and PFSI's net income of $16 million and $35.3 million, respectively, for the same period. By failing to recognize this impairment charge, PWI and PFSI's financial statements, included in PWI's 2009 Form 10-K and PFSI's 2009 annual audited report, were not presented in conformity with GAAP, and were materially misstated and inaccurate for the period ended December 31, 2009. Because PWI's 2009 Form 10-K was incorporated by reference in the offering memorandum for PWI's April 2010 unregistered offering of $200 million in Senior Second Lien Secured Notes Due 2017 ("2010 Offering Memorandum"), PWI's 2010 Offering Memorandum also was materially misstated.

<u>Penson's Misleading Related Party Disclosures in Yearend 2009 Filings</u>

46. Under Item 404(a) of Regulation S-K, PWI was required to disclose any transaction in which PWI was a participant and the amount involved exceeded $120,000, and in which any related person of PWI had a direct or indirect material interest. Item 404(a) also required PWI to disclose any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction. Similarly, GAAP required PWI and PFSI to disclose material related party transactions, including the nature of the relationship involved, a description of the transactions, and such other information

deemed necessary to an understanding of the effects of the transactions on their financial statements.[9]

47. PWI's 2009 Form 10-K included the following disclosure in a note to the financial statements about the February 2010 Hall/Call Now restructuring transaction:

> Over the past several years, the Company has, through PFSI, its U.S. securities clearing broker-dealer subsidiary, extended margin credit to Call Now, among other of the Company's related parties. Such credit has been extended in the ordinary course of business, on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with unaffiliated third parties and had not involved more than normal risk of collectability or presented other unfavorable features.
>
> The Company's management recently determined that certain municipal bonds underlying Call Now's margin position had suffered reduced liquidity, and began working with Call Now to restructure the margin loan. As part of the restructuring, on February 25, 2010, Call Now converted $[13,922,000] of its outstanding margin loan into a Promissory Note in favor of the Company accumulating interest at a rate of 10% per year. The Company's management currently believes that all amounts due under the Promissory Note will be collected pursuant to the terms of the Promissory Note. . . . Mr. Thomas Johnson has no interest in the Call Now margin account or the Promissory Note, except to the extent of his approximately 3.2% ownership interest in Call Now. Mr. Johnson abstained from voting on all matters on behalf of the Company.

48. This disclosure did not comply with GAAP and was materially misleading in numerous ways. First, it failed to disclose that the true purpose of the transaction was to obtain as much collateral as possible for Hall's unsecured debt. Second, it failed to disclose that Call Now had failed to pay margin calls issued by PFSI because it determined, at FINRA's instruction, that the Retama B Bonds held by Call Now were not marginable collateral. Third, the loans to Call Now were not made in the ordinary course—Call Now received favorable treatment from Penson because it was a related party. Fourth, it omitted the fact that Penson premised collectability of the loan on speculation as to the recovery of the real estate market and gambling legislation. Finally, it omitted the fact that Johnson, on behalf of Call Now, had obtained loans from PFSI to Call Now to fund its operating expenses, including portions of his and Hall's annual $200,000 salaries.

49. These materially misleading disclosures were also substantially included in PFSI's 2009 annual audited report, and PWI's 2010 definitive Proxy Statement on Schedule 14A, which was used to solicit votes to reelect Pendergraft and Johnson as PWI Directors through 2013. The disclosures also were incorporated by reference in PWI's April 2010 Offering Memorandum. As a result, PFSI's 2009 annual audited report, and PWI's 2010 Schedule 14A and April 2010 Offering Memorandum also contained materially misleading disclosures and were inaccurate.

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9 ASC 850-10-50.

Penson's Accounting and Disclosure Errors in 2010

50. In PWI's quarterly reports on Forms 10-Q for the periods ended from March 31, 2010 to September 30, 2010, PWI continued to fail to identify the Hall/Call Now loans as impaired and to measure and recognize impairment losses on those loans. PWI also continued to fail to disclose the amount of loans over ninety days past due and still accruing. As a result, PWI's quarterly financial statements for these periods were not presented in conformity with GAAP and were materially misstated.

51. By yearend 2010, Penson's loans to Hall/Call Now had reached $95 million, and the customers continued to fail to meet outstanding margin calls. The real estate market did not recover in 2010 to improve the collateral value underlying the loans. The possibility of gambling legislation in 2011 was Penson's main hope for collecting on the loans.

52. Penson placed Hall and Hemisphere's loans on nonaccrual status and ceased to accrue interest on them beginning in March 2010. Effective January 1, 2011, Penson placed all of the Hall/Call Now loans on nonaccrual status and ceased to accrue interest on them, indicating that Penson no longer believed that it would collect all amounts due under the terms of the loan agreements with these customers.

53. In its 2010 Form 10-K, PWI disclosed that it had $97.4 million in loans or receivables "primarily from customers and correspondents" for which interest income was recorded when received. PWI did not disclose that the vast majority of these receivables were the $95 million in loans to Hall/Call Now, who were direct customers of PFSI not introduced through a correspondent broker-dealer. Even though Penson ceased to accrue interest on the Hall/Call Now loans, Penson continued to treat the loans as fully collectable. PFSI's 2010 annual audited report did not make any disclosures about these loans being placed on nonaccrual status.

54. As a result, PWI and PFSI failed to properly identify the loans to Hall/Call Now as impaired, and to measure and recognize the amount of impairment of the loans as required by GAAP. Had PWI and PFSI properly identified the loans as being impaired and measured the amount of impairment according to their own internal policies, they would have recorded cumulative losses of at least $18 million for the period ended December 31, 2010. This amount would have been material to both PWI's reported net loss of $19.8 million and PFSI's reported net income of $23.6 million for the same period. By failing properly to account for and adequately to disclose the nature of the Hall/Call Now loans, PWI and PFSI's financial statements, included in PWI's 2010 Form 10-K and PFSI's 2010 annual audited report, were not presented in conformity with GAAP and were materially misstated and inaccurate for the period ended December 31, 2010.

55. PWI's 2010 Form 10-K, PWI's 2011 definitive Proxy Statement on Schedule 14A, and PFSI's 2010 annual audited report contained essentially the same related party disclosure about the Call Now loan as in their respective 2009 Form 10-K, 2010 Schedule 14A, and 2009 annual audited report. For the reasons described above in connection with the disclosures in PWI's

2009 Form 10-K, PWI's 2010 Form 10-K and Schedule 14A, and PFSI's 2010 annual audited report were materially misleading and inaccurate.

PWI's Accounting Errors in its 2011 Quarterly Reports

56. In its Form 10-Q for the period ended March 31, 2011, PWI again failed to identify and measure any impairment on the loans to Hall/Call Now as required by GAAP. Had PWI done so, it would have recorded cumulative losses totaling at least $20 million for the period.

57. But PWI did, in its Form 10-Q, disclose that it had approximately $97 million in "Nonaccrual Receivables" —almost entirely the Hall/Call Now loans—of which approximately $43 million were collateralized by RDC bonds and related assets. The Form 10-Q further disclosed that, should expanded gambling legislation not be enacted in 2011, it is possible that the collateral underlying the receivables might be impaired, resulting in a write down of a portion of the receivables that could be material in amount. The Form 10-Q, however, failed to disclose the nature of the remaining $54 million in Nonaccrual Receivables and whether they were adequately collateralized. Nevertheless, three days after this Form 10-Q was filed, PWI's stock price had dropped by approximately 40%, and Johnson resigned as a Director of PWI.

58. Three months later, in its Form 10-Q for the period ended June 30, 2011, PWI finally disclosed that the carrying value of the Nonaccrual Receivables collateralized by the RDC bonds and related assets were not fully collectable and recorded an impairment charge of $43 million—PWI's biggest losses ever. However, PWI should have recognized in prior periods at least $20 million of impairment losses on the Hall/Call Now loans. PWI disclosed that one factor underlying the decision to record an impairment charge was the Texas Legislature's adjournment in June 2011 without passing enhanced gambling legislation. PWI also began to foreclose on certain collateral underlying the Hall/Call Now accounts. PWI ultimately recorded approximately $60 million in losses on these loans by the first quarter of 2012.

59. Pendergraft, McAleer, and Johnson each signed PWI's annual reports on Forms 10-K for the periods ended December 31, 2009, and December 31, 2010. Pendergraft and McAleer also signed PWI's quarterly reports on Forms 10-Q for the periods ended from March 31, 2010 to June 30, 2011, and certified each periodic report identified above.

Penson's Demise

60. In PWI's August 5, 2011 earnings conference call, Pendergraft admitted that the company had made mistakes in extending credit to Hall/Call Now: "Our mistake—really a couple of mistakes here—one was not bringing these accounts into line with our new policies and procedures [on credit extension]. And second—was not just going out and liquidating the accounts when we [began] to see illiquidity in the underlying assets."

61. PWI's disclosures and impairment of the loans to Hall/Call Now in 2011 contributed to a series of events that ultimately led to Penson's demise in 2013. In 2011, PWI's

clearing businesses were already experiencing lower trading commissions and interest revenues due to the weak global economy and market volatility. The losses on the loans to Hall/Call Now in 2011 seriously undermined confidence in PWI's ability to operate as a going concern. PWI's creditors restricted credit lines that were vital to its operations, correspondents and customers ceased doing business with PFSI, and investors sold millions of PWI shares at depressed prices. These events caused a liquidity crisis that prohibited PWI from servicing or restructuring more than $260 million in outstanding debts. As a result, PWI was forced to sell its clearing broker-dealer subsidiaries, including PFSI's clearing business, and file for bankruptcy protection in 2013.

E. <u>Violations</u>

62. Securities Act Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Securities Act Section 17(a)(3) prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.

63. Exchange Act Section 7(c) prohibits a broker or dealer, directly or indirectly, from extending or maintaining credit or arranging for the extension or maintenance of credit to or for any customer in violation of rules and regulations prescribed by the Federal Reserve Board. Regulation T, prescribed under Section 7(c), prohibits, among other things, the withdrawal of cash or securities from a margin account that creates or increases a margin deficiency. 12 C.F.R. § 220.4(e)(1)(ii).

64. Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 require every issuer of a security registered pursuant to Exchange Act Section 12 to file with the Commission annual and quarterly reports as the Commission may require. Rule 13a-14 mandates, among other things, that an issuer's principal executive and financial officers certify each periodic report. Rule 12b-20 requires that the issuer's filings contain such further material information as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

65. Exchange Act Section 13(b)(2)(A) requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded to permit the preparation of financial statements in conformity with GAAP. Section 13(b)(5) prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls, and from knowingly falsifying any book, record, or account under Section 13(b)(2). Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A).

66. Exchange Act Section 14(a) requires issuers that solicit any proxy or consent or authorization in connection with any security registered pursuant to Section 12 of the Exchange Act (other than an exempted security) to comply with such rules as the Commission may promulgate. Rule 14a-9 prohibits the use of proxy statements containing materially false or misleading statements or materially misleading omissions.

67. Exchange Act Section 15(b)(4)(E) requires a broker or dealer reasonably to supervise, with a view to preventing violations of the federal securities laws, another person who commits such violation, if such other person is subject to its supervision. Exchange Act 15(b)(6) incorporates by reference Section 15(b)(4)(E) and allows for the imposition of sanctions against persons associated with a broker or dealer for failing reasonably to supervise.

68. Exchange Act Section 17(a) requires each broker-dealer to make and keep records and make and disseminate such reports as the Commission may prescribe. Rule 17a-3(a)(2) requires broker-dealers to maintain ledgers reflecting assets and liabilities, income and expense and capital accounts. Exchange Act Section 17(e) and Rule 17a-5 require broker-dealers to file with the Commission annual audited reports containing, among other things, financial statements prepared in conformity with GAAP. The records and reports required by these rules must be accurate.

69. Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) of the Commission's Rules of Practice provide, in pertinent part, that "[t]he Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . [t]o have willfully violated . . . any provision of the Federal securities laws or the rules and regulations thereunder." 17 C.F.R. § 201.102(e)(1)(iii).

70. As a result of the conduct described above, Pendergraft willfully[10] violated Securities Act Sections 17(a)(2) and 17(a)(3), Exchange Act Section 13(b)(5), and Exchange Act Rules 13a-14 and 13b2-1. Pendergraft also willfully aided and abetted and caused PWI's violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a), and Rules 12b-20, 13a-1,13a-13, and 14a-9. Pendergraft also willfully aided and abetted and caused PFSI's violations of Exchange Act Sections 7(c), 17(a), and 17(e), Exchange Act Rules 17a-3(a)(2) and 17a-5, and Regulation T.

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[10] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. S.E.C.*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. S.E.C.*, 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. S.E.C.*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

71. As a result of the conduct described above, McAleer willfully[11] violated Exchange Act Section 13(b)(5), and Rules 13a-14 and 13b2-1 within the meaning of Section 4C(a)(3) and Rule 102(e)(1)(iii). McAleer also caused PWI's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B), and Rules 12b-20, 13a-1, and 13a-13.

72. As a result of the conduct described above, Johnson caused PWI's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 14(a), and Rules 12b-20, 13a-1, and 14a-9.

73. As a result of the conduct described above, Yancey failed reasonably to supervise Pendergraft, an associated person of PFSI, within the meaning of Exchange Act Section 15(b)(6), incorporating by reference Section 15(b)(4)(E), with a view to preventing and detecting Pendergraft's aiding and abetting and causing PFSI's violations of Exchange Act Sections 7(c), 17(a), and 17(e), Exchange Act Rules 17a-3(a)(2) and 17a-5, and Regulation T.

F. <u>Undertakings</u>

74. Respondents Pendergraft, McAleer, Johnson, and Yancey have undertaken to cooperate fully with the Commission in any and all investigations, litigation, administrative or other proceedings commenced by the Commission or to which the Commission is a party relating to or arising from the matters described in the Order. In connection with such investigations, litigation, administrative or other proceedings, Respondents agree to the following: (i) to produce, without service of a notice or subpoena, any and all documents and other materials and information as reasonably requested by the Commission; (ii) to appear and testify without service of a notice or subpoena in such investigations, interviews, depositions, hearings and trials, at such times and places as reasonably requested by the Commission; and (iii) to respond promptly to all inquiries from the Commission. Respondent Yancey also has undertaken to provide to the Commission, within fifteen (15) days after the end of the six-month suspension period described below, an affidavit that he has complied fully with the sanctions applicable to him described in Section IV below.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 4C, 15(b), and 21C of the Exchange Act, Section 9(b) of the Investment Company Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

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[11] *See id.*

A. Philip A. Pendergraft

1. Respondent Pendergraft shall cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3), and Exchange Act Sections 7(c), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), 14(a), 17(a), and 17(e), Exchange Act Rules 12b-20, 13a-1, 13a-13, 13a-14, 13b2-1, 14a-9, 17a-3(a)(2), and 17a-5, and Regulation T.

2. Pendergraft be, and hereby is:

a. barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

b. prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

c. barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

3. Any reapplication for association by Pendergraft will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Pendergraft, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

4. Pendergraft shall pay a civil money penalty in the amount of $100,000 to the Commission. Payment shall be made in $20,000 installments within 15, 90, 180, 270, and 360 days of the date of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments must be made as set forth in paragraph E below.

5. Pendergraft shall comply with the undertaking in Section III, paragraph 74, above.

B. Kevin W. McAleer

1. Respondent McAleer shall cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5), and Exchange Act Rules 12b-20, 13a-1, 13a-13, 13a-14, and 13b2-1.

2. McAleer is denied the privilege of appearing or practicing before the Commission as an accountant.

3. After one year from the date of this Order, McAleer may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

a. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that McAleer's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

b. an independent accountant. Such an application must satisfy the Commission that:

1) McAleer, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

2) McAleer, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

3) McAleer has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

4) McAleer acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews, and quality control standards.

4. The Commission will consider an application by McAleer to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to McAleer's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

5. McAleer shall pay a civil money penalty in the amount of $25,000 to the Commission. Payments shall be made in $5,000 installments within 15, 90, 180, 270, and 360 days of the date of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments must be made as set forth in paragraph E below.

6. McAleer shall comply with the undertaking in Section III, paragraph 74, above.

C. Thomas R. Johnson

1. Respondent Johnson shall cease and desist from committing or causing any violations and any future violations of Exchange Act Section 13(a), 13(b)(2)(A), 14(a), and Exchange Act Rules 12b-20, 13a-1, and 14a-9.

2. Johnson shall pay a civil money penalty in the amount of $25,000 to the Commission. Payment shall be made in $5,000 installments within 15, 90, 180, 270, and 360 days of the date of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments must be made as set forth in paragraph E below.

3. Johnson shall comply with the undertaking in Section III, paragraph 74, above.

D. Charles W. Yancey

1. Respondent Yancey be, and hereby is, suspended from association in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of six (6) months, effective on the date of entry of this Order.

2. Yancey, shall, within fifteen (15) days of the entry of this Order, pay a civil money penalty in the amount of $25,000 to the Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made as set forth in paragraph E below.

3. Yancey shall comply with the undertakings in Section III, paragraph 74, above.

E. Respondents may make payments in the following ways:

1. By transmitting payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

2. By making direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

3. 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

4. Payments by check or money order must be accompanied by a cover letter identifying each payor by name as a 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 Gerald W. Hodgkins, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. The Commission will hold funds paid pursuant to this Section in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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 Respondents 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 Respondents 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