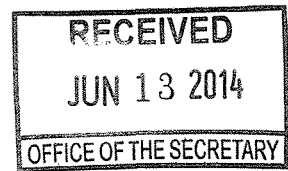


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1444/June 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15873

In the Matter of

THOMAS R. DELANEY II and
CHARLES W. YANCEY

RESPONDENT THOMAS R. DELANEY II'S
ANSWER TO ORDER INSTITUTING
PROCEEDINGS

COMES NOW Respondent Thomas R. Delaney II (the "Respondent"), and files this Answer to the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 (the "OIP") and pursuant to 17 C.F.R. § 201.220 answers as follows. To the extent the headings or subheadings in the OIP are construed as allegations, Respondent denies the same. Likewise, to the extent Respondent does not admit explicitly the allegations, all allegations are denied. Further, by answering the allegations in the OIP, Respondent does not waive any argument that the OIP is insufficient or that the Commission should be required to provide a more definite statement of the allegations generally described in the OIP, including as set forth in the concurrently filed Motion for More Definite Statement filed pursuant to 17 C.F.R. § 201.220(d).

ANSWER TO PARAGRAPH 1

Respondent admits the allegations in the first sentence one of Paragraph 1. Respondent admits that Rules 204 and 204T of Regulation SHO, 17 C.F.R. § 242.204 (the "Rules")¹ were among the thousands of laws and regulations that governed aspects of Penson Financial Services, Inc.'s ("Penson") business and admits that they were, at specific times, in force. Respondent avers that the Rules speak for themselves but denies that the Securities and Exchange Commission (the "Commission") has accurately described the specific obligations imposed by the Rules in the second sentence of Paragraph 1. As to sentences 3 and 4 of Paragraph 1, Respondent avers that the Rules speak for themselves and denies that the Commission's summary of the Rules accurately reflects the distinctions and obligations of the Rules it purports to describe.

¹ All references to rules under 17 C.F.R. § 242.204 are defined herein as the Rules, whether a specific rule, ie., 204(a), or Regulation SHO generally.

ANSWER TO PARAGRAPH 2

Respondent avers that there were hundreds of millions of transactions cleared by Penson and he believes that in most instances Penson operated as described in Paragraph 2. However, Respondent does not have sufficient information and knowledge to know whether it operated as described in Paragraph 2 in each instance and therefore denies the same. Respondent further avers that the only way for him to verify the truth of the Commission's allegations and therefore adequately defend himself is to be allowed sufficient time to have experts review the millions of transactions allegedly at issue. The investigative record to date indicates that the Commission engaged experts to analyze data long before instituting this proceeding and Respondent will need a similar amount of time to allow his experts the time needed to fully process and analyze the large amounts of data relevant to the Commissions allegations.

ANSWER TO PARAGRAPH 3

Respondent does not have information and knowledge regarding whether and if so on how many occasions Penson caused a failure to deliver and therefore denies the allegations of the first sentence of Paragraph 3. Respondent admits that Stock Loan generated revenue by loaning out shares but lacks knowledge of the source of shares loaned out by Stock Loan in each instance and further lacks knowledge of whether the revenue generated by Stock Loan financed Penson's operations and therefore denies the remaining allegations of Paragraph 3. Respondent does not have information and knowledge of whether in each instance in which Stock Loan had loaned out shares held in a customer account Penson did not have shares on hand with which to fulfill the delivery obligation, but doubts that this allegation is categorically true as asserted by the Commission and in any event lacking knowledge denies the allegations in the third sentence of Paragraph 3. Respondent avers that the fourth sentence of Paragraph 3 makes no factual allegation and therefore does not require an answer. To the extent an answer is required, Respondent denies the allegations. Respondent denies that Penson frequently failed to deliver shares as required and lacks knowledge of how often Penson failed to deliver shares but avers that failures to deliver occurred in less than one in one thousand transactions cleared by Penson but acknowledges that the term used by the Commission, "frequently," is ambiguous and therefore denies the allegations of the fifth sentence of Paragraph 3.

ANSWER TO PARAGRAPH 4

Respondent admits that Stock Loan and Buy Ins were responsible for compliance related to loaned securities and buying in loaned securities but does not have information and knowledge of the precise division of labors related to these functions and therefore denies the specific allegations of Paragraph 4.

ANSWER TO PARAGRAPH 5

Respondent does not have information and knowledge of what unidentified "Senior Officers" of Stock Loan knew and whether any hypothetical failure to comply with any rule by those unidentified "Senior Officers" was willful or what the motivations for such a willful failure would have been. Consequently, Respondent denies the allegations of Paragraph 5.

ANSWER TO PARAGRAPH 6

Respondent admits that Penson WSPs exist and speak to the subject of responsibility for compliance, but avers that such WSPs speak for themselves and denies that the Commission's characterizations of these WSPs in the first sentence of Paragraph 6 accurately reflects the nuances and obligations of the WSPs it purports to describe. Respondent denies that the obligations of the Rules were as claimed in the second sentence of Paragraph 6, and sought advice from company counsel on the topic, and therefore denies the allegations of the second sentence of Paragraph 6. Respondent denies the allegations of the third sentence of Paragraph 6.

ANSWER TO PARAGRAPH 7

Respondent denies the allegations of the first sentence of Paragraph 7 and affirmatively avers that there were no "financial considerations" or incentives that could have hypothetically motivated Respondent to assist Stock Loan or any other business unit within Penson to violate any law, rule or regulation. Respondent denies the remaining allegations of Paragraph 7.

ANSWER TO PARAGRAPH 8

Respondent denies the allegations of Paragraph 8.

ANSWER TO PARAGRAPH 9

Respondent admits that respondent Yancey was President and Chief Executive Officer of Penson but does not have information and knowledge sufficient to admit or deny the remaining allegations contained in Paragraph 9 and therefore denies the same.

ANSWER TO PARAGRAPH 10

Respondent denies the allegations of Paragraph 10.

ANSWER TO PARAGRAPH 11

Respondent admits the allegations of Paragraph 11.

ANSWER TO PARAGRAPH 12

Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 12 and therefore denies the same.

ANSWER TO PARAGRAPH 13

Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 13 and therefore denies the same.

ANSWER TO PARAGRAPH 14

Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of the first sentence of Paragraph 14 and therefore denies the same. Respondent admits the balance of the allegations in Paragraph 14.

ANSWER TO PARAGRAPH 15

Paragraph 15 does not contain any factual allegations and therefore does not require an answer. To the extent an answer is required, Respondent avers that the Rules speak for themselves and denies that the Commission's summary of the Rules accurately reflects the distinctions and obligations of the Rules it purports to describe and further denies any factual allegations contained in Paragraph 15.

ANSWER TO PARAGRAPH 16

Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 16 and therefore denies the same.

ANSWER TO PARAGRAPH 17

Respondent admits the allegations of the first sentence of Paragraph 17. As to the second sentence, Respondent avers that the Rules speak for themselves and denies that the Commission's summary of the Rules accurately reflects the distinctions and obligations of the Rules it purports to describe.

ANSWER TO PARAGRAPH 18

Respondent denies the allegations of the first and second sentences of Paragraph 18. As to the remaining allegations of Paragraph 18, Respondent avers that the relevant rules, laws and the Master Securities Lending Agreement ("MSLA") speak for themselves and denies that the Commission's summary of the rules, laws, and MSLA accurately reflect the distinctions and obligations of the sources they purport to describe.

ANSWER TO PARAGRAPH 19

Respondent avers that in Paragraph 19 the Commission attempts to describe generally the handling of a category of transactions without identifying whether it alleges that the procedure described in Paragraph 19 ever took place, in which particular instances, and whether this procedure was universally followed. Because Respondent is not certain whether the Commission is alleging that the procedures described in Paragraph 19 ever took place or in which instances, or whether the Commission is merely describing a hypothetical transaction, Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 19 and therefore denies the same.

ANSWER TO PARAGRAPH 20

Respondent admits the allegations of the first sentence of Paragraph 20. As to the allegations of the second sentence of Paragraph 20, Respondent avers that the policies speak for themselves and denies that the Commission's summary of the Rules accurately reflects the distinctions and obligations of the policies it purports to describe

ANSWER TO PARAGRAPH 21

Respondent avers that in Paragraph 21 the Commission attempts to describe generally the handling of a category of transactions without identifying whether it alleges that the procedure described in Paragraph 21 ever took place, in which particular instances, and whether this procedure was universally followed. Because Respondent is not certain whether the Commission is alleging that the procedures described in Paragraph 21 ever took place or in which instances, or whether the Commission is merely describing a hypothetical transaction, Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 21 and therefore denies the same.

ANSWER TO PARAGRAPH 22

Respondent avers that in Paragraph 22 the Commission attempts to describe generally the handling of a category of transactions without identifying whether it alleges that the procedure described in Paragraph 22 ever took place, in which particular instances, and whether this procedure was universally followed. Because Respondent is not certain whether the Commission is alleging that the procedures described in Paragraph 22 ever took place or in which instances, or whether the Commission is merely describing a hypothetical transaction, Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 22 and therefore denies the same.

ANSWER TO PARAGRAPH 23

Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 23 and therefore denies the same.

ANSWER TO PARAGRAPH 24

Respondent does not have information and knowledge sufficient to form a belief about the accuracy of the allegations of Paragraph 24 and therefore denies the same.

ANSWER TO PARAGRAPH 25

Respondent admits the allegations of Paragraph 25.

ANSWER TO PARAGRAPH 26

Respondent admits that he has summarily described his understanding of his general duties using the language included in Paragraph 26 of the OIP but avers that a formal description of his duties can be found in the laws and policies, including Penson's WSPs applicable to his position as CCO, which fully defined his responsibilities. Respondent avers that these laws and policies speak for themselves and are the best source of information regarding his duties in various situations.

ANSWER TO PARAGRAPH 27

Respondent admits that he participated in Penson's efforts to implement procedures in response to the Rules but denies that those efforts were confined to October 2008 and July 2009. Respondent avers that as to the content of the Rules, the Rules speak for themselves and denies that the Commission's summary of the Rules accurately reflects the nuances and obligations of the Rules it purports to describe. Furthermore, Respondent admits that he consistently informed Penson employees that close out of fail-to-delivers was required by market open on T+6 but denies the remaining factual allegations of Paragraph 27.

ANSWER TO PARAGRAPH 28

Respondent denies the allegations of Paragraph 28 and further observes that the allegations therein are deficiently vague and ambiguous with respect to the meetings alleged therein.

ANSWER TO PARAGRAPH 29

Respondent denies the allegations of Paragraph 29 and further observes that the allegations therein are deficiently vague and ambiguous with respect to the discussions alleged therein.

ANSWER TO PARAGRAPH 30

Respondent admits that a Rule 3012 audit was conducted in December 2009, avers that the results of the audit speak for themselves, and denies the allegations in Paragraph 30 insofar as they are inconsistent with the actual results of the audit.

ANSWER TO PARAGRAPH 31

Respondent does not have sufficient information and knowledge to form a belief about the truth of many of the allegations, including due to ambiguity in terminology, and others of the allegations are untrue; accordingly Respondent denies all of the allegations of Paragraph 31.

ANSWER TO PARAGRAPH 32

Respondent does not have sufficient information to identify which email discussions the allegations in Paragraph 32 refers to and therefore denies the allegations of Paragraph 32.

ANSWER TO PARAGRAPH 33

Respondent does not have sufficient information to identify which conversations the allegations in Paragraph 33 refer to and therefore denies the allegations of Paragraph 33.

ANSWER TO PARAGRAPH 34

Respondent denies the allegations of Paragraph 34.

ANSWER TO PARAGRAPH 35

Respondent denies the allegations of Paragraph 35.

ANSWER TO PARAGRAPH 36

Respondent denies the allegations of Paragraph 36, and further observes that the allegations therein are deficiently vague and ambiguous.

ANSWER TO PARAGRAPH 37

Respondent does not have sufficient information and knowledge to form a belief about the truth of the allegations, including due to the ambiguity and vagueness of the allegations, and others of the allegations are untrue; accordingly Respondent denies the allegations of Paragraph 37.

ANSWER TO PARAGRAPH 38

Respondent denies the allegations of Paragraph 38, and further observes that the allegations therein are deficiently vague and ambiguous.

ANSWER TO PARAGRAPH 39

Respondent denies the allegations of Paragraph 39, and further observes that the allegations therein are deficiently vague and ambiguous.

ANSWER TO PARAGRAPH 40

Respondent admits the allegations of the first sentence of Paragraph 40. Respondent avers that the remaining allegations of Paragraph 40 contain factual allegations that are so rife with argumentation, false conclusions, and unsupported innuendo that he cannot adequately

separate the factual allegations from the argumentative ones and therefore denies all of the remaining allegations of Paragraph 40.

ANSWER TO PARAGRAPH 41

Respondent admits that he was copied on emails delivering WSPs to FINRA and avers that the emails and WSPs speak for themselves. Respondent further avers that the remaining allegations of Paragraph 41 contain factual allegations that are so rife with argumentation, false conclusions, and unsupported innuendo that he cannot adequately separate the factual allegations from the argumentative ones and therefore denies all of the remaining allegations of Paragraph 41.

ANSWER TO PARAGRAPH 42

Respondent denies the allegations of Paragraph 42, and further observes that the allegations therein are deficiently vague and ambiguous.

ANSWER TO PARAGRAPH 43

Respondent admits that he met with Yancey to discuss the annual certification of the compliance testing procedures and to discuss the December 2009 audit. Respondent denies the remaining allegations of Paragraph 43.

ANSWER TO PARAGRAPH 44

Respondent avers that the 2010 Annual Report speaks for itself and denies the remaining allegations of Paragraph 44.

ANSWER TO PARAGRAPH 45

Respondent admits that he sent emails to FINRA and that the emails and their attachments speak for themselves. Respondent lacks sufficient information to form a belief about the remaining allegations of Paragraph 45 and therefore denies the same.

ANSWER TO PARAGRAPH 46

Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the allegations of Paragraph 46 and therefore denies the same.

ANSWER TO PARAGRAPH 47

Respondent denies the allegations of Paragraph 47, and further observes that the allegations therein are deficiently vague and ambiguous.

ANSWER TO PARAGRAPH 48

Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the allegations of Paragraph 48, and further observes that the allegations therein are deficiently vague and ambiguous, and therefore denies the same.

ANSWER TO PARAGRAPH 49

Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the allegations of Paragraph 49, and further observes that the allegations therein are deficiently vague and ambiguous, and therefore denies the same.

ANSWER TO PARAGRAPH 50

Respondent does not have sufficient information and knowledge to identify the email at issue in Paragraph 50 and therefore does not have sufficient information and knowledge to form a belief about the accuracy of the allegations of Paragraph 50. Accordingly, Respondent denies the same.

ANSWER TO PARAGRAPH 51

Respondent denies the allegations of Paragraph 51.

ANSWER TO PARAGRAPH 52

Respondent admits that he coordinated with staff to prepare an updated set of WSPs and avers that the WSPs speak for themselves. Respondent denies the remaining allegations of Paragraph 52.

ANSWER TO PARAGRAPH 53

Respondent admits that OCIE conducted a review of Penson's Rule 204T procedures and that OCIE issued a deficiency letter. Respondent avers that the letter speaks for itself and denies the remaining allegations of Paragraph 53.

ANSWER TO PARAGRAPH 54

Respondent avers that the response to OCIE speaks for itself and denies the remaining allegations of Paragraph 54.

ANSWER TO PARAGRAPH 55

Paragraph 55 contains argument and does not contain factual allegations to which a response is required. To the extent an answer is required, Respondent denies the allegations of Paragraph 55.

ANSWER TO PARAGRAPH 56

Respondent admits that drafts of documents were circulated within Penson, including to him, avers that those drafts and emails speak for themselves, and denies the remaining allegations of Paragraph 56.

ANSWER TO PARAGRAPH 57

Respondent admits that drafts of documents were circulated within Penson, including to him, avers that those drafts and emails speak for themselves, and denies the remaining allegations of Paragraph 57.

ANSWER TO PARAGRAPH 58

Respondent admits that drafts of documents were circulated within Penson, including to him, avers that those drafts and emails speak for themselves, and denies the remaining allegations of Paragraph 58.

ANSWER TO PARAGRAPH 59

Respondent admits that drafts of documents were circulated within Penson, including to him, avers that those drafts and emails speak for themselves, and denies the remaining allegations of Paragraph 59.

ANSWER TO PARAGRAPH 60

Paragraph 60 contains argument and does not contain factual allegations to which a response is required. To the extent an answer is required, Respondent denies the allegations of Paragraph 60.

ANSWER TO PARAGRAPH 61

Respondent admits that Penson's WSPs addressed various areas of responsibility for the Chief Compliance Officer and avers that the WSPs speak for themselves. Further, Respondent admits that the Supervisory Matrix assigns responsibility to various individuals and that it speaks for itself. Respondent denies the remaining allegations of Paragraph 61.

ANSWER TO PARAGRAPH 62

Respondent admits that Yancey occasionally expressed frustration that Mike Johnson, the Senior Vice President of Stock Loan, reported to Phil Pendergraft instead of Yancey, and also expressed distrust for Mike Johnson, but otherwise denies the allegations of Paragraph 62.

ANSWER TO PARAGRAPH 63

Respondent denies the allegations of Paragraph 63, and further observes that the allegations therein are deficiently vague and ambiguous.

ANSWER TO PARAGRAPH 64

Respondent admits that he met with Yancey numerous times to discuss compliance on various topics, including the Rules. Respondent states, however, that the no details are given for the “interactions” referenced in Paragraph 64, rendering them deficiently vague, and thus Respondent denies the remaining allegations of Paragraph 64.

ANSWER TO PARAGRAPH 65

Respondent admits that he was copied on emails and that the emails speak for themselves but does not have sufficient information and knowledge to identify which emails are being discussed in Paragraph 65 and therefore denies the allegations of Paragraph 65.

ANSWER TO PARAGRAPH 66

Respondent denies the allegations of Paragraph 66.

ANSWER TO PARAGRAPH 67

Respondent admits that he met with Yancey on or about August 2, 2010 but otherwise denies the allegations of Paragraph 67.

ANSWER TO PARAGRAPH 68

Respondent denies the allegations of Paragraph 68.

ANSWER TO PARAGRAPH 69

Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the allegations of Paragraph 69 and therefore denies the same.

ANSWER TO PARAGRAPH 70

Respondent admits that Penson’s WSPs designate Yancey as supervisor of various people, and that the WSPs speak for themselves as to whom exactly Yancey supervises. Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the remaining allegations of Paragraph 70 and therefore denies the same.

ANSWER TO PARAGRAPH 71

Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the allegations of Paragraph 71 and therefore denies the same.

ANSWER TO PARAGRAPH 72

Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the allegations of Paragraph 72 and therefore denies the same.

ANSWER TO PARAGRAPH 73

Respondent admits the allegations of Paragraph 73.

ANSWER TO PARAGRAPH 74

Respondent denies the allegations of Paragraph 74, and further observes that the allegations therein are deficiently vague and ambiguous as to the meaning of the term “direct nexus.”

ANSWER TO PARAGRAPH 75

Respondent does not have sufficient information and knowledge to form a belief about the accuracy of the many of the allegations of Paragraph 75 and denies the accuracy of others and therefore denies all of the allegations of Paragraph 75.

ANSWER TO PARAGRAPH 76

Respondent admits that the WSPs effective as of March 31, 2010 contain a section related to the CEO certification and further avers that the WSPs speak for themselves. Respondent denies the allegations of Paragraph 76 insofar as they are inconsistent with the WSPs.

ANSWER TO PARAGRAPH 77

Respondent admits that he and Yancey met on or about March 31, 2010 and that they discussed compliance issues. Respondent denies the remaining allegations of Paragraph 77.

ANSWER TO PARAGRAPH 78

Respondent admits that it appears Yancey signed CEO certifications but does not have sufficient knowledge that Yancey did sign them. Respondent avers that those certifications and their inclusions speak for themselves. Respondent denies the remaining allegations of Paragraph 78.

ANSWER TO PARAGRAPH 79

Respondent denies the allegations of Paragraph 79.

ANSWER TO PARAGRAPH 80

Respondent lacks knowledge sufficient to form a belief about the accuracy of many of the allegations of Paragraph 80 and denies the accuracy of others and therefore denies all of the allegations of Paragraph 80.

ANSWER TO PARAGRAPH 81

Respondent denies the allegations of Paragraph 81.

ANSWER TO PARAGRAPH 82

Respondent admits that he was copied on emails related to the OCIE exam and responses by Penson but denies the remaining allegations of Paragraph 82.

ANSWER TO PARAGRAPH 83

Respondent denies the allegations of Paragraph 83.

ANSWER TO PARAGRAPH 84

Paragraph 84 contains argument and legal conclusions and does not contain factual allegations to which a response is required. To the extent an answer is required, Respondent denies the allegations of Paragraph 84.

ANSWER TO PARAGRAPH 85

Paragraph 85 contains argument and legal conclusions and does not contain factual allegations to which a response is required. To the extent an answer is required, Respondent denies the allegations of Paragraph 85.

ANSWER TO PARAGRAPH 86

Paragraph 86 contains argument and legal conclusions and does not contain factual allegations to which a response is required. To the extent an answer is required, Respondent denies the allegations of Paragraph 86.

ANSWER TO PARAGRAPH 87

Paragraph 87 contains argument and legal conclusions and does not contain factual allegations to which a response is required. To the extent an answer is required, Respondent denies the allegations of Paragraph 87.

AFFIRMATIVE DEFENSES

FIRST (FAILURE TO STATE A CAUSE OF ACTION)

The allegations of the OIP fail to state a cause of action under, or a violation of, the cited rules, laws, and provisions.

SECOND (FAILURE TO PROVIDE FAIR NOTICE)

The text of the OIP fails to honor the mandate, set forth in Rule 200(b), 17 C.F.R. § 201.200(b), that where an answer is required by the Commission, the order “shall set forth the factual and legal basis alleged therefore in such detail as will permit a specific response thereto.”

THIRD (DUE PROCESS/RETROACTIVITY)

The OIP denies Respondent due process and fair notice as provided in the Fifth Amendment to the United States Constitution and the Administrative Procedures Act because the OIP seeks to retroactively apply new interpretations of the plain language of applicable rules and professional standards existing at the time Respondent performed the work that is the subject of the OIP.

FOURTH (DUE PROCESS/VAGUENESS)

The OIP contravenes Respondent’s right to due process as provided in the Fifth Amendment to the United States Constitution because it seeks to enforce vague and overbroad laws based on rules and professional standards, or interpretations thereof, that are unduly vague and subjective.

FIFTH (DUE PROCESS/PROCEDURE)

The OIP and these proceedings contravene Respondent’s rights to due process as provided in the Fifth Amendment to the United States Constitution because the proceedings do not afford an adequate opportunity to defend the charges and deprive Respondent of access to information and evidence relevant to his defense that would be available to him in the ordinary discovery process.

SIXTH (ARBITRARY AND CAPRICIOUS)

The Commission’s authorization of these proceedings was arbitrary and capricious in that the allegations in the OIP lack support either in the record or in applicable rules and professional

standards, and are contrary to allegations made by the Division of Enforcement (“Division”) in related proceedings.

SEVENTH
(PENALTIES)

The penalties sought violate the Eighth Amendment of the United States Constitution and Respondent’s right to due process as provided in the Fifth Amendment to the United States Constitution because the standards of improper professional conduct and the standards for determining resulting penalties are unduly vague and subjective, and permit arbitrary, capricious, excessive, and disproportionate punishment that serves no legitimate governmental interest.

EIGHTH
(FRAUD/INTERFERENCE)

Respondent was the victim of a collusive fraud by Stock Loan and others that was designed to deceive him and the Penson compliance team with respect to the actual practices of Stock Loan’s close out procedures which were calculated to frustrate the compliance policies and WSPs reasonably designed to assure compliance with all applicable rules and regulations.

NINTH
(ESTOPPEL/FRAUD ALLEGATIONS)

The Commission is estopped from finding that Respondent engaged in improper conduct because the Commission itself has charged others with violations in the very same matter at issue here and has adopted positions contrary to those asserted in this proceeding.

TENTH
(RELIANCE ON COUNSEL)

Respondent has a complete defense to the allegations of this OIP because he requested advice from Penson’s legal counsel on this matter and relied on counsel’s advice in forming his conduct.

ELEVENTH
(RELIANCE ON COUNSEL/DUE PROCESS)

Respondent has a complete defense to the allegations of this OIP because he requested advice from Penson’s legal counsel on this matter and relied on counsel’s advice in forming his conduct. To the extent Respondent is unable to obtain his communications with counsel because they are covered by the attorney client privilege owned by the successor in interest to Penson and to the extent the successor in interest to Penson has selectively chosen to waive privilege including to provide selective documents to the Commission, these proceedings contravene Respondent’s rights to due process as provided in the Fifth Amendment to the United States Constitution because the proceedings do not afford an adequate opportunity to defend the charges and deprive Respondent of access to information and evidence relevant to his defense.

TWELFTH
(RELIANCE ON COUNSEL/ NEGATION OF SCIENTER)

To the extent that Respondent cannot establish a complete defense of advice of counsel due to the inability to gather information through ordinary discovery channels inherent in this administrative proceeding or for other reasons, his efforts to seek and follow advice of legal counsel regarding the matters at issue in this OIP negate the inference of scienter which is required for Respondent to be liable for violations alleged by the Commission in its OIP.

THIRTEENTH
(DUE PROCESS/ "AGE OF CASE" PRINCIPLES)

The allegations of the OIP concern compliance procedures that were implemented as much as six years ago. As such, the OIP 's entry as of May 19, 2014, violates fundamental notions of fairness and due process in that the Commission has unjustifiably delayed issuance of the OIP until such a significant amount of time has elapsed that Respondent's ability to summon witnesses and produce testimony is significantly and adversely affected. Given the age of events in this matter, it is "inherently unfair" and violative of due process to proceed against Respondent.

FOURTEENTH
(ENFORCEMENT ACTION DEADLINE)

The OIP is untimely under 15 U.S.C. § 78d-5, and the Commission's approval of the institution of these proceedings was therefore arbitrary, capricious and contrary to law.

FIFTEENTH
(UNCONSTITUTIONALLY VAGUE)

The allegations and remedies sought in the OIP are barred because the statutes and regulations the Commission seeks to enforce are unconstitutionally vague under the United States Constitution. Accordingly, on such constitutional grounds, the counts against Respondent are unenforceable and fail to state a cause of action in that there is no reasonable basis upon which Respondent would have known in advance that the conduct alleged by the Commission was allegedly unlawful and/or otherwise proscribed by law.

SIXTEENTH
(ACTIONS OF OTHERS/INTERVENING LEGAL CAUSE)

The claims in the OIP are barred in whole or in part because the conduct of parties other than Respondent proximately caused the alleged harm, if any, complained of in the OIP, and other parties were responsible for supervision and oversight of the alleged violative conduct. The damages and violations alleged were the result of negligent, willful, and/or intentional acts or

omissions of, or failures by, persons other than Respondent. The acts of such third parties constitute intervening and superseding causes of any alleged violations of the securities laws.

SEVENTEENTH
(CLAIM SPLITTING/MERGER)

The claims in the OIP are barred, in whole or part, by the doctrine of claim splitting. To the extent the Commission has not brought all possible and extant claims against Respondent, including based on all active investigations in this action, their claims herein are barred, in whole or part, by the doctrine of claims splitting or merger.

EIGHTEENTH
(STATUTE OF LIMITATIONS)

The claims in the OIP are barred in whole or in part because the relevant five-year statute of limitations, 28 U.S.C. § 2462, and/or such other limitations periods as may be applicable, have expired. The conduct alleged in the OIP spans back to 2008, and the instant action was not commenced until May 19, 2014.

NINETEENTH
(ADDITIONAL DEFENSES)

Respondent expressly and specifically reserves the right to amend this Answer to add, delete, and/or modify defenses based upon legal theories, facts, and circumstances that may or will be divulged through discovery and/or further legal analysis of the Division's position in this litigation. Respondent adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other respondent to this action to the extent Respondent may share in such defense.

DATED this 12th day of June, 2014.

CLYDE SNOW & SESSIONS



BRENT R. BAKER

ATTORNEYS FOR RESPONDENT THOMAS R. DELANEY, II