

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-1587

In the Matter of

THOMAS R. DELANEY II and
CHARLES W. YANCEY

Respondents.

**RESPONDENT CHARLES W. YANCEY'S RESPONSE TO RESPONDENT DELANEY'S
POST HEARING PROPOSED CONCLUSIONS OF LAW**

Pursuant to the Court's post-hearing order (*Thomas R. Delaney II*, Admin. Proc. Rulings Release No. 2011, 2014 SEC LEXIS 4305 (Nov. 13, 2014)), Respondent Charles W. Yancey ("Yancey"), by and through counsel, submits this Response to Respondent Delaney's ("Delaney") Post Hearing Proposed Conclusions of Law. As indicated below, Yancey does not dispute any of Delaney's Proposed Conclusions of Law.

CONCLUSIONS OF LAW

1. The Division of Enforcement has the "burden of demonstrating by a preponderance of evidence any wrongdoing" by Respondents.
 - Response: *No Dispute*
2. The elements of aiding and abetting are: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of any overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation.
 - Response: *No Dispute*
3. "[A]iding and abetting liability cannot rest on the proposition that the person 'should have known' he was assisting violations of the securities laws."
 - Response: *No Dispute*
4. "A plaintiff's case against an aider, abettor, or conspirator may not rest on a bare inference that the defendant 'must have had' knowledge of the facts." The Division "must support the inference with some reason to conclude that the defendant has thrown in his lot with the primary violators."
 - Response: *No Dispute*
5. To establish the necessary mental state for aiding and abetting, the Division must show a personal incentive to the alleged aider and abettor.
 - Response: *No Dispute*

6. “[A]wareness or knowledge by the aider and abettor that his or her role was part of any overall activity that was improper.”
 - Response: *No Dispute*
7. For the purposes of aiding and abetting liability, “[a]wareness of wrongdoing means knowledge of wrongdoing.”
 - Response: *No Dispute*
8. Satisfaction of the knowledge requirement for aiding and abetting depends on the theory of primary liability.
 - Response: *No Dispute*
9. In analyzing the awareness element, “the surrounding circumstances and expectations of the parties are critical. If the alleged aider and abettor conducts what appears to be a transaction in the ordinary course of his business, more evidence of his complicity is essential.”
 - Response: *No Dispute*
10. The “awareness of wrong-doing requirement” in aiding and abetting disciplinary cases was designed to insure that innocent, incidental participants in transactions later found to be illegal are not subjected to harsh administrative penalties.
 - Response: *No Dispute*
11. “‘Extreme recklessness’ is neither ordinary negligence nor ‘merely a heightened form of ordinary negligence,’” and cannot be “derived from inexcusable neglect.”
 - Response: *No Dispute*
12. Extreme recklessness may be found if the alleged aider and abettor encountered “red flags,” or “suspicious events creating reasons for doubt” that should have alerted him to the improper conduct of the primary violator, or if there was a danger so obvious that the actor must have been aware of the danger.
 - Response: *No Dispute*
13. A finding of recklessness requires an abundance of red flags and suggestions of irregularities that demanded inquiry.
 - Response: *No Dispute*

14. The Administrative Procedures Act requires the Division of Enforcement to provide a respondent with timely notice of the matters of fact and law asserted.

- Response: *No Dispute*

15. “[I]t is well settled that an agency may not change theories in midstream without giving respondents reasonable notice of the change.”

- Response: *No Dispute*

16. To establish liability for “causing” in the absence of aiding and abetting, the Division must prove three elements: (1) “a primary violation”; (2) an act or omission by the respondent that was a cause of the violation”; and (3) that “the respondent knew, or should have known, that his conduct would contribute to the violation.”

- Response: *No Dispute*

17. Negligence is sufficient to establish “causing” liability under Exchange Act Section 21C(a), unless the person is alleged to ‘cause’ a primary violation that requires scienter.

- Response: *No Dispute*

DATED this 20th day of January 2015.

Respectfully Submitted,



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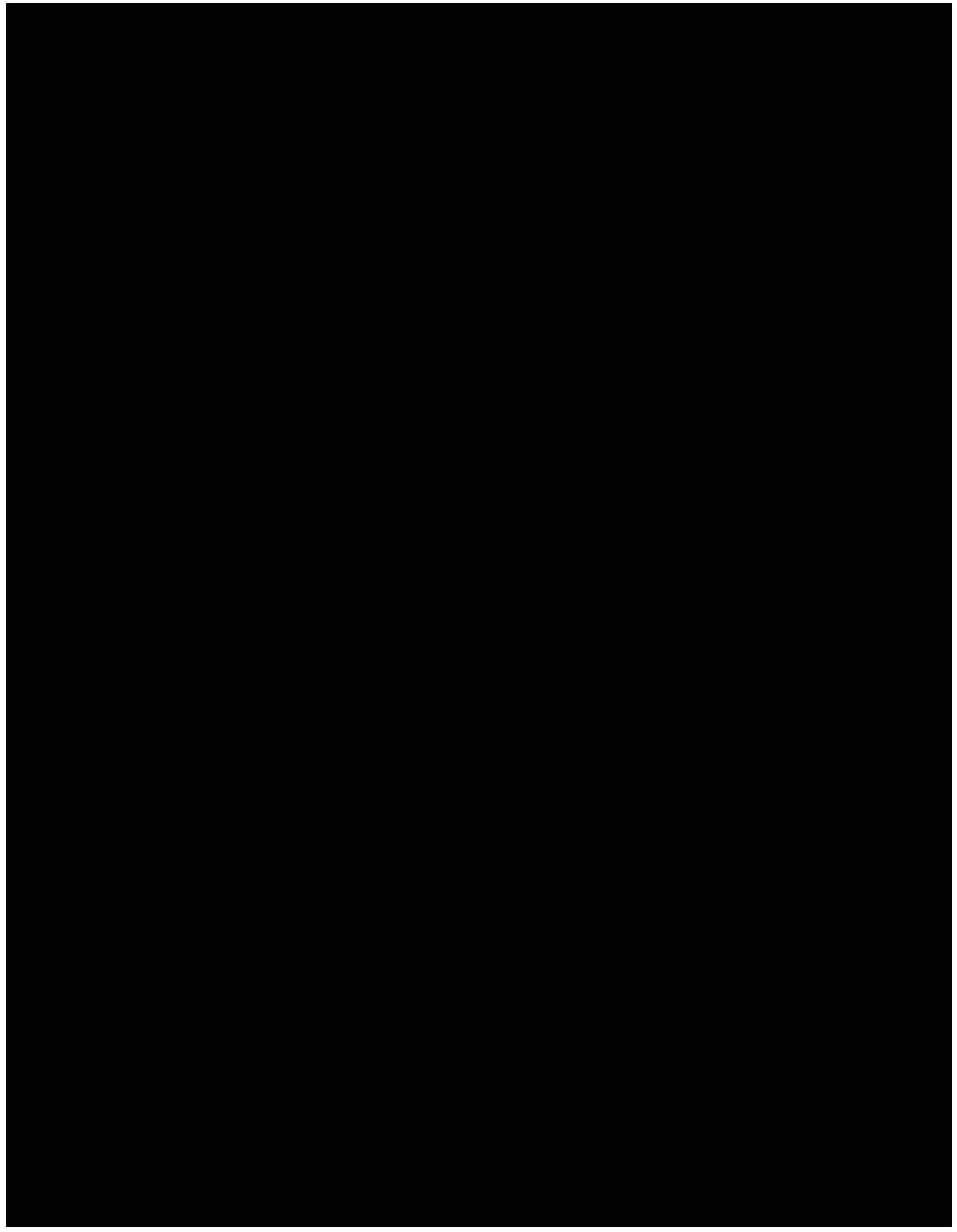
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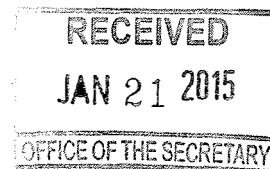
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**ATTORNEYS FOR RESPONDENT
CHARLES W. YANCEY**





January 20, 2015

Via Hand Delivery

Lynn M. Powalski, Deputy Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549

Re: *In The Matter of Thomas R. Delaney II and Charles W. Yancey*, Administrative
Proceeding File No. 3-15873

Dear Ms. Powalski:

Enclosed for filing are originals and three copies of Respondent Charles W. Yancey's:

- (1) Responsive Post-Hearing Brief;
- (2) Response to Division of Enforcement's Post Hearing Proposed Findings of Fact;
- (3) Response to Division of Enforcement's Post Hearing Proposed Conclusions of Law;
- (4) Response to Respondent Delaney's Post Hearing Proposed Findings of Fact; and
- (5) Response to Respondent Delaney's Post Hearing Proposed Conclusions of Law.

By copy of this letter, I have served all parties of record. If you have any questions, do not hesitate to contact me at the number below. Thank you.

Sincerely yours,

A handwritten signature in cursive script that reads "Sarah S. Mallett".

Sarah S. Mallett
Haynes and Boone, LLP
Direct Phone Number: [REDACTED]
sarah.mallett@haynesboone.com

Encls.

cc: (w/enclosures)
Honorable Jason S. Patil, Administrative Law Judge (courtesy copy via email)
Polly Atkinson, Division of Enforcement, U.S. Securities and Exchange Commission (via email)
Brent Baker, Clyde Snow, Counsel to Delaney (via email)