UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15873

In the Matter of

THOMAS R. DELANEY II and
CHARLES W. YANCEY

Respondents.

RESPONDENT THOMAS R. DELANEY II's REPLY TO CHARLES W. YANCEY'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

	YANCEY'S PROPOSED FINDING OF FACT	DELANEY'S RESPONSE
1	Reg SHO Rule 204 is a complex, technical, and operational rule.	**Response** No dispute.
2	Frequent testing by regulators on the same or similar issues or regulatory rule is not necessarily indicative of systemic compliance issues.	**Response** No dispute.
3	Stock Loan's Sendero system was reliable and accurate.	**Response** No dispute.
4	Sendero was updated around 2010.	**Response** No dispute.
5	The June 2010 follow-up Rule 204 testing showed significant improvement. Alaniz also conducted a spot check with Summer Poldrack, and the results indicated 100% compliance.	**Response** No dispute.
6	Bill Yancey delegated supervision of Michael Johnson to Phil Pendergraft in approximately August 2008.	**Response** No dispute.
7	Employees at Penson relied on Penson's organizational charts, not the Registered Representative Supervisory Matrix, to determine supervisors and supervisory relationships.	**Response** No dispute.
8	After Tom Delaney became aware of the Rule 204 issues related to the Stock Loan Department in early 2011, he escalated the issues to outside counsel.	**Response** No dispute.
9	During the period 2008-2011 and for the period that Mike Johnson reported to Phil Pendergraft, Phil Pendergraft supervised Mike Johnson with respect to the following activities: A) Evaluated and review performance of Mike Johnson; B) Disciplined Mike Johnson; C) Determined, with input from others, Mike Johnson's base	**Response** No dispute.

	compensation and bonus; D) Approved, with input from others, Mike Johnson's budget for the compensation of all PWI subsidiary stock lending groups; E) Received input on issues with respect to staffing regarding Mr. Brian Hall and Mr. Rudy DeLaSierra; F) Maintained authority to overrule or override any decisions of Mike Johnson; G) Had authority to advise regarding customer relations issues; H) Instructed Mike Johnson regarding PFSI firm financing and lending balances; I) Instructed Mike Johnson to report on revenue and expenses of PFSI stock loan; J) Approved business development and client relation plans and budgets of Mike Johnson; K) Approved Mr. Johnson's travel budget and question his expenses; L) Received information regarding Mike Johnson's need for time off and vacation schedule.	
10	Phil Pendergraft approved Mr. Johnson's activities related to regulatory and compliance issues, including Regulation SHO.	**<u>Response</u>** No dispute.
11	Bill Yancey routinely checked in with Phil Pendergraft regarding the issues described in items A-L in Proposed Finding of Fact #9 and acted reasonably in ensuring that the stock lending group and Mr. Johnson were properly conducting business in accordance with	**<u>Response</u>** No dispute.

	the securities laws.	
12	Mr. Pendergraft had the authority to promote Mr. Johnson and other Stock Loan Personnel.	**Response** No dispute.
13	Mr. Pendergraft had the authority to hire and fire stock loan personnel.	**Response** No dispute.
14	Phil Pendergraft supervised Mike Johnson.	**Response** No dispute.
15	Penson's Stock Loan Department and the Buy-Ins Department were separate departments, and a problem in one department did not suggest that there was an issue in the other department.	**Response** No dispute.
16	The registered representative supervisory matrices that reflected Bill Yancey as Michael Johnson's supervisor were wrong.	**Response** No dispute.
17	Kim Miller was directed to replace Phil Pendergraft's name with Bill Yancey's name for Michael Johnson's supervisor in the Registered Representative Supervisory Matrix.	**Response** No dispute.
18	Employees at Penson understood Michael Johnson reported to and was supervised by Phil Pendergraft.	**Response** No dispute.
19	Tom Delaney, Bill Yancey, and Holly Hasty believed the November 2010 OCIE response, which stated: "Penson believes that the reasonable processes employed to close out positions that were allegedly in violation of rule 204T were effective and performed as designed" was accurate.	**Response** No dispute.
20	Pendergraft selected Johnson as his direct report and consulted Yancey as to the change.	**Response** No dispute.
21	Phil Pendergraft accepted supervision of Michael Johnson unconditionally.	**Response** No dispute.
22	Employees at Penson observed Phil Pendergraft supervising and giving direction to Michael Johnson, including	**Response** No dispute.

	on issues related to PFSI stock lending.	
23	Bill Yancey conducted weekly group and one-on-one meetings with his direct reports.	**Response** No dispute.
24	A representative from the Stock Loan department attended the March 31, 2010 Rule 3012 meeting.	**Response** No dispute.
25	PFSI's Compliance department did not believe that the December 2009 Audit warranted explicit reference in the CEO Certification Summary Report.	**Response** No dispute.
26	Files containing all 3012 testing results, including the December 2009 Audit results, were made available to regulators for their review.	**Response** No dispute.
27	The information in the Registered Representative Supervisory Matrix did not reflect the actual or day-to-day supervisory responsibilities.	**Response** No dispute.
28	Michael Johnson had one supervisor; he did not have a dual-reporting supervisory structure.	**Response** No dispute.
29	Supervision must include regulatory compliance.	**Response** No dispute.
30	Employees at Penson believed that Bill Yancey was an accessible and engaged supervisor.	**Response** No dispute.
31	Eric Alaniz, and the Compliance Department, decided who to invite to the March 31, 2010 Rule 3012 Meeting.	**Response** No dispute.
32	Bill Yancey received a separate calendar invitation to the March 31, 2010 Rule 3012 Meeting that did not include the other invitees.	**Response** No dispute.
33	Eric Alaniz prepared the initial draft of the 3012 Summary Report attached to the March 31, 2010 CEO Certification.	**Response** No dispute.
34	Penson subscribed to a training package from FINRA that allowed its personnel	**Response** No dispute.

	access to all available FINRA training series or webinars.	
35	Bill Yancey and Tom Delaney worked together to develop Penson's quarterly 3012 testing regime and meetings.	**Response** No dispute.
36	Bill Yancey approved many compliance measures, including expanding the compliance staff and implementing a compliance system called Actimize, which cost nearly $500,000.	**Response** No dispute.
37	The November 24, 2010 OCIE response was drafted by Mr. Gover, and reviewed by Ms. Hasty and Mr. Delaney.	**Response** No dispute.
38	Delaney believed that there was no reason for Bill Yancey to question the truthfulness or accuracy of Penson's 2010 OCIE response.	**Response** No dispute.
39	Bill Yancey had no reason to overrule the judgment of the compliance department regarding the contents of the 3012 Summary Report attached to the 3130 CEO Certification.	**Response** No dispute.
40	Penson was not required to explicitly reference the December 2009 Rule 204 Audit in the 3012 Summary Report attached to the CEO certification.	**Response** No dispute.
41	Penson tracked and assigned to the appropriate business units remediation of all deficiencies from internal and external audits.	**Response** No dispute.
42	Penson consistently closed out or cleared the overwhelming majority of its CNS fail positions.	**Response** No dispute.
43	Mr. Paulukaitis's written expert report does not mention dual supervision.	**Response** No dispute.
44	Michael Johnson did not refuse to attend the March 31, 2010 meeting regarding the December 2009 audit.	**Response** No dispute.
45	When Bill Yancey asked if Michael Johnson was needed to discuss the	**Response** No dispute.

	December 2009 Audit, he was told that Michael Johnson was not necessary because it was a Buy-Ins issue.	
46	In Penson's 3012 testing and 3130 certification meetings, Yancey was generally provided with a high-level summary.	**Response** No dispute.
47	Penson's 3012 testing and remediation plans were a collaborative process, which required Eric Alaniz to rely on the business units as the "subject matter experts" or "specialists" in each department.	**Response** No dispute.
48	In its 3012 testing process, Penson's compliance department identified regulatory issues and/or problems, and the business units provided solutions.	**Response** No dispute.
49	The 3012 topics/items selected for testing did not necessarily reflect potential regulatory issues.	**Response** No dispute.
50	Penson's implementation process for new rules and regulations was as follows: In response to a new rule, the Compliance Department held initial meetings with the affected business units and management to determine what procedural changes, development efforts, technology resources, or training is required, as well as to create a roadmap for compliance deadlines and testing. Penson also distributed special compliance memorandums both internally and externally to keep employees and correspondents abreast of the recent regulations. A similar process was used with the implementation of Reg SHO and Rule 204T/Rule 204.	**Response** No dispute.
51	Brian Hall told the Division that Michael Johnson reported to Phil Pendergraft.	**Response** No dispute.
52	Penson provided compliance training to its employees, including training on Regulation SHO and Rule 204.	**Response** No dispute.
53	Penson regularly updated its Written	**Response**

	Supervisory Procedures (WSPs) through a collaborative process across the various departments, as well as maintained other localized checklists.	No dispute.
54	Rule 204 contains a "safety valve" in the form of the penalty box because no system can guarantee perfect settlement. The penalty box allows the capital markets to continue operations related to short selling.	**Response** No dispute.
55	"Penson Financial," "Penson," or "PFSI" refers to the U.S. broker-dealer, a subsidiary of Penson Worldwide ("PWI").	**Response** No dispute.
56	The relevant time period at issue in this case for alleged violations of Rule 204(a) relating to long sales of loaned securities is October 2008 through November 2011; however, with respect to Mr. Delaney's alleged aiding and abetting violations of Rule 204(a) the time period is October 1st, 2008 until approximately February 15th, 2011.	**Response** No dispute.
57	"Stock Lending," "Stock Loan," or "Securities Lending" refers to Penson's Stock Loan Department.	**Response** No dispute.
58	Bill Yancey was not aware that the Registered Representative Supervisory Matrix was sent to regulators.	**Response** No dispute.
59	It was not uncommon for Phil Pendergraft to be invited to meetings with regulators.	**Response** No dispute.
60	Delaney was a conscientious, qualified, and engaged CCO.	**Response** No dispute.
61	Delaney was unaware of Rule 204 issues related to the Stock Loan Department until early 2011.	**Response** Dispute: Accuracy of statement. **Support** Delaney Test. at 699:24-700:18 ("Q: When did you first find out that Stock Loan had a role in closing out long sales? A: . . . it would have been **no earlier than that February or that March 2011 letter**."). **Proposed Counterstatement** Delaney was unaware of Rule 204 issues related to

		the Stock Loan Department until **March 2011.**
62	Delaney considered Yancey as more than just a manager or supervisor; Delaney considered Yancey a mentor and friend to the Compliance Department.	**Response** No dispute.
63	Delaney was honest, transparent, and full of integrity.	**Response** No dispute.
64	In a January 28, 2010 quarterly 3012 meeting, Mr. Yancey was told that compliance was receiving cooperation from the relevant business units for Rule 204 remediation.	**Response** No dispute.
65	Yancey had approximately eight (8) direct reports during the relevant time period, one of whom was Delaney.	**Response** No dispute.
66	The Compliance Department conducted approximately twenty (20) Rule 3012 audits per year.	**Response** No dispute.
67	Alaniz was experienced and well-trained in compliance.	**Response** No dispute.
68	In his compliance role at Penson, Alaniz created and administered a comprehensive and robust 3012 testing program.	**Response** No dispute.
69	In December 2009, Alaniz conducted an NASD Rule 3012 test ("the December 2009 Audit"), which tested Rule 204 close-out procedures.	**Response** No dispute.
70	Penson's Stock Loan department handled Rule 204(a) close out obligations for long sales of loaned securities.	**Response** No dispute.
71	Alaniz did not use the term "99% violation rate" in describing the December 2009 Audit results with Yancey in the January 28, 2010 quarterly 3012 meeting.	**Response** No dispute.
72	Penson's Buy-Ins department and Penson's Stock Loan department had separate and distinct close-out obligations.	**Response** No dispute.
73	Penson cleared between three (3) and five (5) million trades per day.	**Response** No dispute.

74	Alaniz's December 2009 Audit only tested the customer fail that could not be borrowed before market open and needed to be bought in.	**Response** No dispute.
75	The December 2009 Audit did not contain any language regarding a "99%" fail rate.	**Response** No dispute.
76	The Division did not ask Mr. Johnson any questions regarding his attendance at the March 31, 2010 meeting.	**Response** No dispute.
77	Alaniz had the ability to suggest to Delaney areas or topics to include in the summary reports attached to the annual CEO certifications.	**Response** No dispute.
78	Alaniz, Delaney, and other members of the Compliance department compiled and reviewed the Summary Report appended to the CEO Certification.	**Response** No dispute.
79	Delaney had ultimate responsibility to determine the contents of the Summary Report, including what constituted a "key compliance issue."	**Response** Dispute: Incomplete recitation of the record. **Support** • Tr. 1886:17 – 1887:4 [Yancey] Q Who prepares it? A The Chief Compliance Officer. Q At this time, who was the Chief Compliance Officer? A Tom Delaney. Q And who decides what to include on this Summary Report? A Tom Delaney. Q Is it his judgment alone about what to include? A I believe that **Tom takes input from the staff, from the department heads, so ultimately, it is his decision, but I think he take inputs.** • Delaney FOF 46. Alaniz included what he thought were key issues on the 3012 summary report. Delaney generally took Alaniz's suggestions on what to include. Tr. 858:20-25 [Alaniz] 20 **Q So if you had thought it was an important issue** **21 and should have been included, you had the ability to** **22 tell him to include it?**

		23 A Yes. **24 Q Or suggest it anyway?** **25 A Suggest it, yes.** **<u>Proposed Counterstatement</u>** Delaney had ultimate responsibility to determine the contents of the Summary Report, **and he took input from the staff and department heads to determine** what constituted a "key compliance issue."
80	At the March 31, 2010 meeting, John Kenny and Brian Gover engaged in a discussion lasting approximately fifteen (15) minutes regarding Rule 204 remediation efforts.	**<u>Response</u>** No dispute.
81	The Division did not ask Mr. Gover any questions regarding the November 2010 OCIE response language that he authored.	**<u>Response</u>** No dispute.
82	Delaney did not intend to change the meaning of the language in Brian Gover's original draft of Penson's November OCIE response when he modified the statement to read: "Penson believes that the reasonable processes employed to close-out positions that were allegedly in violation of Rule 204T were effective and performed as designed."	**<u>Response</u>** No dispute.
83	When Penson prepared examination responses, the Compliance department relied on input from the business units and the "subject matter experts" in each department.	**<u>Response</u>** No dispute.
84	Holly Hasty, Penson's Deputy CCO, signed Penson's November 24, 2010 OCIE response.	**<u>Response</u>** No dispute.
85	Bill Yancey is honest, ethical, and full of integrity.	**<u>Response</u>** No dispute.
86	Delaney, Alaniz, and other members of the Compliance department were more knowledgeable than Yancey regarding Penson's 3012 testing process and testing results.	**<u>Response</u>** No dispute.
87	Alaniz and Delaney testified that none of the 3012 tests conducted for that year	**<u>Response</u>** No dispute.

	were explicitly included in the Summary Report attached to the March 31, 2010 CEO certification.	
88	Other than the current action, Tom Delaney has a clean record and Form U4.	**Response** No dispute.
89	Other than the current action, Michael Johnson has a clean record and Form U4.	**Response** No dispute.
90	Michael Johnson was qualified and experienced with respect to his role at Penson.	**Response** No dispute.
91	As a Series 27 license-holder, Phil Pendergraft was the best-qualified person to supervise Michael Johnson and Stock Lending activities.	**Response** No dispute.
92	Penson's Reg SHO and Rule 204 policies and procedures addressed (1) all elements of the rule, (2) set out specific procedures to follow, and (3) identified individuals and supervisors responsible for compliance.	**Response** No dispute.
93	Penson's departments, including Stock Loan, maintained checklists and desk procedures.	**Response** No dispute.
94	Penson distributed special compliance memorandums and alerts both internally to employees and externally to correspondents regarding Regulation SHO and Rule 204T/204(a).	**Response** No dispute.
95	As part of its efforts to comply with new rules, including Rule 204, Penson updated and modified its procedures through technology efforts and developments. The "IT steering committee," assisted with technology resources at Penson. Penson prioritized technology efforts and resources dedicated to regulatory compliance, such as Rule 204 compliance.	**Response** No dispute.
96	Penson's Compliance department conducted several 3012 tests each quarter, which spanned a variety of regulatory areas.	**Response** No dispute.

97	Penson employees observed that Bill Yancey was attentive during the quarterly 3012 meetings and asked detailed questions.	**Response** No dispute.
98	In 2008, Pendergraft directed the Vice President of Human Resources, Dawn Gardner, to move Johnson from PFSI to PWI.	**Response** No dispute.
99	Before August 2008, Penson's organization charts listed Johnson as a PFSI employee reporting to Yancey.	**Response** No dispute.
100	After August 2008, Penson's organization charts listed Johnson on the same level as Yancey, reporting to Pendergraft, Engemoen, and Son.	**Response** No dispute.
101	Johnson told Penson employees that he reported to Pendergraft.	**Response** No dispute.
102	Penson employees were not confused about who Johnson reported to.	**Response** No dispute.
103	During at least a portion of the relevant time period, Holly Hasty supervised Kim Miller.	**Response** No dispute.

	YANCEY'S PROPOSED CONCLUSION OF LAW	DELANEY'S RESPONSE
1	Section 15(b)(4)(E) of the Securities and Exchange Act authorizes the Securities and Exchange Commission to impose sanctions on an associated person if that person has failed to reasonably supervise, with a view to preventing violations of the federal securities statutes, rules, and regulations, another person who commits such a violation, and if such other person is subject to his supervision.	**Response** No dispute.
2	In satisfying its burden on a failure to supervise claim, the Division must prove each of the following elements: (1) an underlying securities law violation by another person; (2) association of the registered representative or person who	**Response** No dispute.

	committed the violation; (3) supervisory jurisdiction over that person; and (4) failure to reasonably supervise the person committing the violation.	
3	While neither scienter nor willfulness is an element of a failure to supervise charge, "scienter may be considered in evaluating the reasonableness of supervision."	**<u>Response</u>** No dispute.
4	Where the Division fails to satisfy its burden that an underlying violation of the securities laws occurred, a failure to supervise claim predicated on that same underlying violation must likewise fail.	**<u>Response</u>** No dispute.
5	There are three essential elements to an aiding and abetting claim: (1) the existence of a securities law violation by the primary party; (2) awareness or knowledge by the aider and abettor that his role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted in the conduct that constituted the primary violation.	**<u>Response</u>** No dispute.
6	Mr. Yancey does not dispute that both Mr. Johnson and Mr. Delaney were registered representatives and associated persons of PFSI.	**<u>Response</u>** No dispute.
7	For purposes of Section 15(b)(4)(E), a supervisor has been defined as: A person at the broker-dealer who has been given (and knows or reasonably should know he has been given) the authority and the responsibility for exercising such control over one or more specific activities of a supervised person . . . so that such person could take effective action to prevent a violation of the Commission's rules which involves such activity or activities by such supervised person.	**<u>Response</u>** No dispute.
8	A supervisory relationship "can only be	**<u>Response</u>**

	found in those circumstances when, among other things, it should have been clear to the individual in question that he was responsible for the actions of another and that he could take effective action to fulfill that responsibility."	No dispute.
9	A president and CEO of a firm "is responsible for the firm's compliance with all applicable requirements unless and until he reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such person is not properly performing his or her duties."	**Response** No dispute.
10	"A firm's president is not automatically at fault when other individuals in the firm engage in misconduct of which he has no reason to be aware."	**Response** No dispute.
11	The Commission "has long recognized that individuals . . . who may have overarching supervisory responsibilities for thousands of employees must be able to delegate supervisory responsibility . . . ."	**Response** No dispute.
12	The act of delegation need not be formal or written.	**Response** No dispute.
13	Delegation can take place through the actions and words of the parties involved, which include the delegator, delegatee, and supervisee.	**Response** No dispute.
14	A delegation occurs when, through the actions and words of the involved parties, the involved parties understand that supervision has been delegated.	**Response** No dispute.
15	The testimony of those other than the delegator, delegatee, and supervisee may be relevant in deciding whether delegation has occurred.	**Response** No dispute.
16	The *Gutfreund* facts and circumstances test is relevant in deciding whether delegation has occurred.	**Response** No dispute.
17	Under *Gutfreund*, "determining if a particular person is a supervisor depends	**Response** No dispute.

	on whether, under the facts and circumstances of a particular case, that person has a requisite degree of responsibility, ability, or authority to affect the conduct of the employee whose behavior is at issue."	
18	Under *Gutfreund*, non-exclusive indicia of supervisory authority include the ability to: • Discipline; • Advise about the specific regulatory rule at issue; • Authority to affect conduct at issue; • Fire; • Assess performance; • Assign, direct, or approve activities; • Promote; and • Approve leave.	**Response** No dispute.
19	Contradictory evidence as to delegation does not demonstrate that there was confusion in the supervisory structure.	**Response** No dispute.
20	No one piece of evidence, including a specific document or specific witness testimony, is dispositive of delegation.	**Response** No dispute.
21	*See* Conclusion of Law No. 9 for the standard for reasonable delegation.	**Response** No dispute.
22	A president of a broker-dealer may reasonably rely on his or her qualified supervisory delegatees to properly supervise individuals. Follow-up is reasonable where the president has in person or other meetings or communications with the delegatee, and receives no indication of wrongdoing.	**Response** No dispute.
23	A delegator's follow-up need not be so robust that it would fall into the category of actual supervision.	**Response** No dispute.
24	The standard for supervision is whether a person exercises "reasonable supervision under the attendant circumstances."	**Response** No dispute.
25	Negligence is the applicable standard in assessing whether supervision was reasonable under the prevailing circumstances.	**Response** No dispute.

26	"Negligence is defined as: '[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of others' rights. The term connotes culpable carelessness.'"	**Response** No dispute.
27	"The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions."	**Response** No dispute.
28	The standard for supervision is not perfection. Even if supervision "was not perfect," or a factual analysis indicates that a more thorough investigation might have revealed a supervised employee's misconduct, liability does not exist in the absence of unreasonable supervision.	**Response** No dispute.
29	"The evolution of the supervision standards is a triumph of common sense that makes oversight of the market more responsible, more accountable, and more practical."	**Response** No dispute.
30	"The Commission, like virtually all institutions, both public and private, is not immune from the tendency of organizations to stagnate over time. Government institutions, in particular, need to guard against the stagnation born of mindless recitation of rules."	**Response** No dispute.
31	Whether supervision is reasonable depends on the particular circumstances of each case.	**Response** No dispute.
32	Rule 3010's "reasonably designed" standard "recognizes that a supervisory system cannot guarantee firm-wide compliance with all laws and regulations," only that the system "be a product of sound thinking and within the bounds of common sense, taking into consideration the factors that are unique to a member's business."	**Response** No dispute.
33	Section 15(b)(4)(E) of the Exchange Act	**Response**

	and Section 203(e)(6) of the Advisers Act provides an affirmative defense to a failure to supervise claim: no person may be deemed to have failed to reasonably supervise if (1) there have been established procedures, and a system for applying such procedures, to prevent and detect any violation; and (2) the person has reasonably satisfied his duties and obligations without reasonable cause to believe that the procedures and system were not being followed.	No dispute.
34	The respondent has the burden to prove Section 15(b)(4)(E)'s affirmative defense by a preponderance of the evidence.	**Response** No dispute.
35	There is no definition or description of a "perfect" supervisory system, nor is that the standard. Just because a system could have been "more reasonably designed" does not mean that it is unreasonable as designed.	**Response** No dispute.
36	The reasonableness standard recognizes that "a supervisory system cannot guarantee firm-wide compliance with all laws and regulations. However, this standard does require that the system be a product of sound thinking and within the bounds of common sense, taking into consideration the factors that are unique to a [firm's] business."	**Response** No dispute.
37	A firm's written supervisory procedures should put registered personnel on notice of regulatory requirements and Firm practices, clearly vest supervisory responsibility in specific individuals, and address an array of subjects consistent with what the SEC and FINRA would reasonably expect the WSPs to contain.	**Response** No dispute.
38	To appropriately assess sanctions, a court should conduct a public interest analysis, which takes into consideration the following nonexclusive factors: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infractions;	**Response** No dispute.

	(3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that his or her occupation will present opportunities for future violations.	
39	The primary purpose in imposing sanctions is not to punish a respondent, but rather to protect the public.	**<u>Response</u>** No dispute.
40	The severity of sanctions depends of the facts of each case and the value of the sanctions in preventing a recurrence of the violative conduct.	**<u>Response</u>** No dispute.
41	Supervision must include regulatory compliance.	**<u>Response</u>** No dispute.
42	In determining what sanctions to impose, Courts also consider: the age of the violation; the degree of harm to investors and the marketplace resulting from the violation; the deterrent effect of the sanction; the public-at-large; the welfare of investors; and standards of conduct in the securities industry business generally.	**<u>Response</u>** No dispute.

DATED this 20th day of January 2015.

CLYDE SNOW & SESSIONS

Brent R. Baker

BRENT R. BAKER
D. LOREN WASHBURN
AARON D. LEBENTA

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OFFICE OF THE SECRETARY

January 20, 2015

Via Federal Express

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 please find the originals and three copies each of Respondent Thomas R. Delaney II's: (1) Responsive Post-Hearing Brief; (2) Responses to the Division's Proposed Findings of Fact and Conclusions of Law; and (3) Responses to Respondent Yancey's Proposed Findings of Fact and Conclusions of Law.

By copy of this letter, I have served all parties of record. If you have any questions or need additional information, please do not hesitate to contact our office.

Sincerely,

CLYDE SNOW & SESSIONS

Aaron D. Lebenta

Encls.

cc: Honorable Jason S. Patil, Administrative Law Judge, U.S. Securities and Exchange Commission (via email)
Polly Atkinson, Division of Enforcement, U.S. Securities and Exchange Commission (via email)
Sarah S. Mallett, Haynes and Boone, Counsel to Yancey (via email)