

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72187 / May 19, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15875

In the Matter of

Lindsey Alan Wetzig

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Lindsey Alan Wetzig (“Wetzig” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that: This proceeding arises out of securities lending practices at Penson Financial Services, Inc. ("Penson") that resulted in systematic violations of Rules 204T and 204 of Regulation SHO (respectively "Rule 204T" and "Rule 204"). Wetzig, acting under the direction of more senior officers in the Securities Lending Department, implemented procedures that he knew or should have known did not comply with Rule 204. In so doing, Wetzig caused Penson to violate Rules 204T(a) and 204(a) from October 2008 through November 2011.

Respondent

1. Wetzig, of Keller, Texas, was one of the managers in Global Equity Finance, Penson Worldwide, Inc. ("PWI") from October 2008 through November 2011. Wetzig currently works in the securities lending department of Apex Clearing Corporation. He holds Series 7, 24, 55, and 63 licenses.

Other Relevant Entity

2. Penson was a North Carolina corporation with a principal place of business in Dallas, Texas. It was a registered broker-dealer that, from at least 2010 to 2012, was the second-largest clearing firm in the United States as measured by the number of correspondent broker-dealers for which it cleared. Penson was a wholly-owned subsidiary of SAI Holdings, Inc., which in turn was a wholly-owned subsidiary of PWI. Penson filed a Form BDW, which became effective in October 2012, and then declared bankruptcy in January 2013. A bankruptcy plan implementing Penson's liquidation was approved in July 2013.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

3. In September 2008, the Commission implemented Rule 204T of Regulation SHO, which required, among other things, clearing firms to close out Continuous Net Settlement (“CNS”) failures to deliver in all sales of equity securities that they cleared. In July 2009, the Commission made those requirements permanent in adopting Rule 204 of Regulation SHO. The Commission adopted Rule 204 of Regulation SHO to address, among other things, abusive “naked” short selling and failures to deliver.

4. Rule 204(a) requires participants of a registered clearing agency (generally, clearing firms) to deliver equity securities to a registered clearing agency when delivery is due, i.e., by settlement date, or close out fails to deliver resulting from long or short sales within certain timeframes. Settlement date is generally three days after the trade date (“T+3”). For short sales, if the clearing firm has a failure-to-deliver position at the clearing agency, it must close out the CNS failure-to-deliver position by purchasing or borrowing securities of like kind and quantity by no later than the beginning of regular trading hours (i.e., market open) on the settlement day following the settlement date (“T+4”). For long sales, if the clearing firm has a failure-to-deliver position at the clearing agency, it must close out the CNS failure-to-deliver position by purchasing or borrowing securities of like kind and quantity by no later than the beginning of regular trading hours on the third day following the settlement date (“T+6”).

Penson Violates Rule 204(a) of Exchange Act Regulation SHO

5. At all relevant times, Penson was a clearing firm and a member of the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission that clears and settles the majority of United States transactions in equities. From October 2008 through November 2011, Penson systematically failed to close out CNS failures to deliver resulting from certain long sales by market open T+6. The relevant long sales originated with securities held in customer margin accounts. Under the Commission’s customer protection rule, Penson was permitted, subject to certain conditions and limitations, to re-hypothecate margin securities to third parties. Penson re-hypothecated margin securities according to the terms of the Master Securities Lending Agreement (“MSLA”) developed by the Securities Industry and Financial Markets Association (“SIFMA”). Penson’s Securities Lending Department generated revenue and helped to finance Penson’s operations by loaning out shares held in customer margin accounts.²

6. When a margin customer sold the hypothecated securities that were out on loan, Penson issued account-level recalls to the borrowers on T+3, i.e., three business days after execution of the margin customer’s sale order. If the borrowers did not return the shares by the close of business T+3 and Penson did not otherwise have enough shares of the relevant security to meet its CNS delivery obligations, Penson incurred a CNS failure to deliver in the relevant

² The circumstances in which margin customers sold securities that were on loan will be referred to as “long sales of loaned securities.”

security. When the open stock loan continued to cause a CNS failure to deliver as of market open T+6, it was Penson's procedure not to purchase or borrow shares by market open sufficient to close out its failure to deliver position. Instead, Penson systematically violated Rule 204(a) by allowing its CNS failure to deliver position to persist beyond market open T+6.

7. When closing out CNS fails to deliver resulting from short sales, Penson frequently located sources that could provide borrowable securities, or made arrangements to borrow, instead of actually borrowing (or purchasing) securities sufficient to close out the CNS fail position.

Penson's Securities Lending Department Adopts Procedures for Long Sales of Loaned Securities that Violate Rule 204(a)

8. At all relevant times, Wetzig was a manager in the Securities Lending Department. The Securities Lending Department was included on the organizational charts of PWI, the parent company, rather than within Penson, which was then a registered broker-dealer. However, the policies and procedures of Penson treated the Securities Lending Department as part of the broker-dealer and the employees of the Securities Lending Department as associated persons of the broker-dealer. Securities Lending Department personnel had direct access to Penson's account with NSCC and conducted all securities lending activity on behalf of Penson. The Securities Lending Department had primary responsibility at Penson for effecting Rule 204(a) close outs of Penson's CNS failures to deliver resulting from long sales of loaned securities.

9. In September 2008, the Securities Lending Department initially attempted to comply with Rule 204 for long sales of loaned securities by recalling loans at the account level on T+3 and buying in borrowing counterparties at market open T+6. However, under the MSLA applicable to the loans, the borrowing counterparties had three full business days from the T+3, account-level recall – i.e., until close of business T+6 – to return the shares. Because the MSLA provided for three full business days for the borrowing counterparties to return the shares, those counterparties often pushed back against Penson's attempted market-open T+6 buy ins.

10. In response to this push back, Wetzig met with more senior Securities Lending Department supervisors to discuss Penson's compliance with Rule 204. The Securities Lending Department supervisors agreed that, due to their view of industry practices, they would not close out Penson's CNS failures to deliver resulting from long sales of loaned securities by market open of T+6. They further agreed that, in certain circumstances, they would allow the CNS failures to deliver to persist beyond close-of-business T+6.

11. Wetzig knew or should have known that the procedures the Securities Lending Department implemented as a result of these discussions did not comply with Rule 204.

12. The non-compliant Rule 204 procedures were in effect at Penson from at least October 2008 through November 2011.

Penson's Securities Lending Department Implements Procedures for Short Sales That Violate Rule 204(a)

13. Rule 204(a) required Penson to close out CNS failures to deliver resulting from short sales by borrowing or purchasing securities by market open T+4. Merely obtaining a "locate" or arranging to borrow shares was not sufficient to meet the close-out requirement of Rule 204(a).

14. Penson's Securities Lending Department implemented Rule 204(a) procedures for close outs of CNS failures to deliver resulting from short sales under which Wetzig or other Securities Lending personnel contacted other broker-dealers prior to market open T+4 to determine whether they had shares available for lending. The Securities Lending personnel, including Wetzig, deemed the close out completed, and instructed Penson's Buy Ins Department personnel to take no further close-out action, if the other broker-dealers stated they had shares available. This may have resulted in Penson obtaining a "locate," but did not constitute borrowing of shares.

15. In other cases, Wetzig or other Securities Lending personnel "booked" the "locates" in Penson's electronic lending platform prior to market open – a more definitive, but not final, stage in the borrow process. But Wetzig and the other personnel did not confirm whether the potential lender booked a reciprocal transaction or actually delivered securities by market open. In so doing, Penson did not borrow the shares.

16. In many cases, these "locates" and/or arranged borrows ultimately "dropped," i.e., were never completed, because the potential lender never delivered the shares. This caused failures to deliver to persist beyond T+4.

17. Wetzig knew or should have known these procedures amounted to arranged borrows and/or "locates" for Rule 204(a) close-out purposes, and that, as a result, Wetzig caused Penson to violate Rule 204(a) from October 2008 through November 2011.

Violations

18. As a result of the conduct described above, Wetzig caused Penson's violations of Rules 204T(a) and 204(a). Wetzig knew or should have known his acts or omissions as described above would contribute to these violations.

Undertakings

19. Wetzig shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order.

20. In connection with such cooperation, Wetzig shall (a) produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission's staff; (b) be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify without service of a notice or subpoena in such investigations, litigations, hearings or trials as may be requested by the Commission's staff; and (c) in connection with any testimony of Wetzig to be conducted at deposition, hearing or trial pursuant

to a notice or subpoena, agree that any such notice or subpoena for Wetzig's appearance and testimony may be served by regular mail on his counsel.

21. In determining whether to accept Wetzig's Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Wetzig's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Wetzig cease and desist from committing or causing any violations and any future violations of Rule 204(a) of Regulation SHO.

B. Respondent Wetzig is censured.

By the Commission.

Lynn M. Powalski
Deputy Secretary