

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 75939 / September 17, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16817**

**In the Matter of**

**BRIAN DAVID HALL**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, 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 Sections 15(b), and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Brian David Hall (“Hall” 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

This proceeding arises out of securities lending practices at Penson Financial Services, Inc. ("Penson"), a former registered broker-dealer, that resulted in its systematic violations of Rule 204 of Regulation SHO.<sup>2</sup> From October 2008 through November 2011, Hall and other individuals in the Securities Lending Department implemented procedures that they knew, or were reckless in not knowing, did not comply with Rule 204 of Regulation SHO. In so doing, Hall willfully aided and abetted and caused Penson's violations.

#### Respondent

1. Hall, 40, of Pantego, Texas, was a Vice President of Penson from at least October 2008 until June 2012. In that position, Hall was responsible for securities lending activities at Penson. Hall was associated with Penson between June 2001 and June 2012. Hall holds Series 7 and 63 licenses.

#### Other Relevant Entity

2. Penson was a registered broker-dealer incorporated in North Carolina with a principal place of business in Dallas, Texas. From at least 2010 to 2012, Penson 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 Penson Worldwide Inc. ("PWT"). 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.

#### Background

3. In September 2008, the Commission implemented Rule 204T of Regulation SHO, which required, among other things, clearing firms such as Penson 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

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<sup>1</sup> 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.

<sup>2</sup> Rule 204 was initially implemented as a temporary rule, Rule 204T. Generally, Rule 204T and Rule 204 will be collectively referred to as Rule 204.

SHO. The Commission adopted Rule 204 of Regulation SHO to address, among other things, abusive “naked” short selling and failures to deliver.<sup>3</sup>

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 Violated Rule 204 of 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.<sup>4</sup> 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”). The Securities Lending Department generated revenue and helped to finance Penson’s operations by loaning out shares held in customer margin accounts.<sup>5</sup>

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

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<sup>3</sup> Rule 204T and Rule 204 will be collectively referred to as Rule 204.

<sup>4</sup> Re-hypothecation involves a broker-dealer’s use of customer margin securities as collateral for its own securities lending activities.

<sup>5</sup> The circumstances in which margin customers sold securities that were on loan will be referred to as “long sales of loaned securities.” This proceeding focuses solely on Penson’s close-out practices and neither this proceeding nor the related, settled proceedings (*Michael H. Johnson*, Exch. Act Rel. No. 72186 (May 19, 2014) and *Lindsey Alan Wetzig*, Exch. Act Rel. No. 72187 (May 29, 2014)) should be interpreted as finding that the sale transactions were properly marked as “long” sales under Rule 200 of Regulation SHO.

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 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.

**The Securities Lending Department Adopted Procedures for Long Sales of Loaned Securities that Violated Rule 204(a)**

7. At all relevant times, 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.

8. In September 2008, the Securities Lending Department initially attempted to comply with Rule 204 for long sales of loaned securities by (1) continuing to use its existing systems that were programmed to issue recall notices to borrowing counterparties on T+3; and (2) attempting to buy in the counterparties at market open T+6 if they had not yet returned the borrowed shares. . However, this approach did not result in compliance because the counterparties refused to accept the buy ins. 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 resisted Penson's attempted market open T+6 buy ins.

9. After discussing the matter with the compliance department, Hall's supervisor decided to continue issuing recall notices on T+3 and to have Securities Lending personnel do their best to convince counterparties to return the loaned securities before market open T+6. However, if the counterparties did not return the loaned securities by market open T+6, Penson would not fulfill its Rule 204 obligations by purchasing or borrowing securities. Under these procedures, Penson would sometimes allow the relevant CNS failures to deliver to persist beyond close-of-business on T+6. Hall discussed these issues with his supervisor and agreed with these procedures.

10. Hall knew or was reckless in not knowing that these procedures would cause Penson to violate Rule 204. Nevertheless, from October 2008 until November 2011, Hall and other employees of the Securities Lending Department followed the procedures. As a result, Penson violated Rule 204 at least 1,500 times.

11. Hall played a significant role in bringing the violations to the attention of regulators. Penson failed to disclose the non-compliant procedures over the course of more than two years even though examiners from the Commission's Office of Compliance Inspections and Examinations and the Financial Industry Regulatory Authority ("FINRA") were continuously reviewing Penson's Rule 204 practices from November 2008 through the end of 2010. Penson finally disclosed the non-compliant procedures to FINRA in a March 2011 letter responding to FINRA examination findings. Early drafts of the letter prepared by Penson personnel other than Hall did not disclose the non-compliant procedures. Mid-way through the drafting process, Hall took over responsibility for drafting the relevant portion of Penson's response, and drafted the language disclosing Penson's non-compliant procedures.

### **Violations**

As a result of the conduct described above, Hall willfully aided and abetted and caused Penson's violations of Rules 204(a) of Regulation SHO, which requires registered participants of clearing agencies to close out CNS failures to deliver resulting from long sales by market open T+6 and to close out CNS failures to deliver resulting from short sales by market open T+4.

### **IV.**

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent Hall shall cease and desist from committing or causing any violations and any future violations of Rule 204(a) of Regulation SHO.
- B. Respondent Hall is censured.
- C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon his cooperation in a Commission investigation and related enforcement proceeding. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false or misleading information, but may not: (1) contest the findings in the

Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields  
Secretary