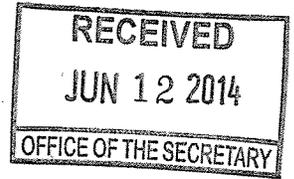


UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15873

In the Matter of

Thomas R. Delaney II and
Charles W. Yancey

Respondents

RESPONDENT CHARLES W. YANCEY'S ANSWER AND AFFIRMATIVE DEFENSES

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CHARLES W. YANCEY**

PRELIMINARY STATEMENT

Respondent Charles W. Yancey (“Respondent Yancey”) incorporates by reference the requests and supporting arguments made in his contemporaneously-filed Motion for More Definite Statement. A number of the allegations made by the Division of Enforcement (the “Division”) in its Order Instituting Administrative and Cease-and-Desist Proceedings (the “OIP”) lack sufficient detail so as to allow Respondent Yancey to provide substantive answers. By answering, or attempting to answer, the allegations below, Respondent Yancey does not intend to forfeit or waive his argument that the Division should provide a more definite statement regarding the allegations identified in Respondent Yancey’s Motion for More Definite Statement.

ANSWER

Respondent Yancey denies that the Division is entitled to the relief that it seeks, answers the specific allegations of the OIP, and states his defenses as follows:

1. Respondent Yancey admits that Penson Financial Services, Inc. was one of the largest independent clearing firms in the United States. To the extent the allegations in Paragraph 1 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the allegations in Paragraph 1.

2. Respondent Yancey admits that when Penson’s customers caused a CNS failure to deliver, Penson purchased or borrowed shares to fulfill its close-out obligations and that a fee was ordinarily charged for this service. Except as set forth above, Respondent Yancey denies the allegations of Paragraph 2.

3. Respondent Yancey admits that Penson’s Stock Loan department generated revenue. The OIP does not contain sufficient information for Respondent Yancey to admit or

deny the allegations of paragraph 3 as they relate to “thousands of occasions.” Except as set forth above, Respondent Yancey denies the allegations of Paragraph 3.

4. Respondent Yancey admits that the Stock Loan and Buy Ins departments had primary responsibility for fulfilling Penson’s obligations under Rule 204T/204. Respondent Yancey further admits that individuals within Penson’s Buy Ins department reviewed reports of long sale CNS level fails. Respondent Yancey further admits that Penson’s Buy Ins department had primary responsibility for closing out failures to deliver that resulted from customer failures to deliver and that Penson’s Stock Loan department had primary responsibility for closing out failures to deliver that resulted from long sales of loaned securities. Except as set forth above, Respondent Yancey denies the allegations of Paragraph 4.

5. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the allegations of Paragraph 5.

6. Respondent Yancey admits that Penson’s WSPs delegated responsibility for the supervisory structure at Penson, including responsibility for designating supervisors and allocation of supervisory responsibilities, to Penson’s Chief Compliance Officer (“CCO”). To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the allegations of Paragraph 6.

7. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief

about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the allegations of Paragraph 7.

8. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the allegations of Paragraph 8.

9. Respondent Yancey denies the allegations in Paragraph 9.

10. To the extent the allegations in Paragraph 10 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the allegations in Paragraph 10.

11. Respondent Yancey admits that Delaney was the Chief Compliance Officer at Penson from at least October 2008 through April 2011. With respect to the remaining allegations, Respondent Yancey is without sufficient knowledge to admit or deny.

12. Respondent Yancey admits the allegations in Paragraph 12.

13. Respondent Yancey admits the allegations in Paragraph 13.

14. Respondent Yancey admits that Rule 204T became effective on September 18, 2008, and Rule 204 became effective on July 31, 2009. To the extent the allegations in Paragraph 14 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations of Paragraph 14.

15. To the extent the allegations in Paragraph 15 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations of Paragraph 15.

16. Respondent Yancey admits that the Depository Trust and Clearing Corporation operates the National Securities Clearing Corporation. To the extent the allegations in Paragraph 16 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations of Paragraph 16.

17. Respondent Yancey admits that Penson was a clearing firm. To the extent the allegations in Paragraph 17 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations of Paragraph 17.

18. To the extent the allegations in Paragraph 18 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations of Paragraph 18.

19. Respondent Yancey admits that when a margin customer sold a hypothecated security that was out on loan, Penson issued an account-level recall to the borrower. To the extent the allegations in Paragraph 19 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations of Paragraph 19.

20. Respondent Yancey admits that Stock Loan was included on the organizational charts of PWI, Penson's parent company, rather than within Penson. Respondent Yancey further admits that Penson's Stock Loan department had primary responsibility for closing out failures to deliver that resulted from long sales of loaned securities. To the extent the allegations in Paragraph 20 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations of Paragraph 20.

21. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief

about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 21.

22. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 22 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 22.

23. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 23.

24. To the extent the allegations in Paragraph 24 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 24.

25. Respondent Yancey admits the allegations in Paragraph 25.

26. To the extent the allegations in Paragraph 26 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 26.

27. Respondent Yancey admits that Delaney participated in Penson's efforts to implement procedures in response to Rule 204T in October 2008 and to Rule 204 in July 2009. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the

truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 27.

28. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 28 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 28.

29. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 29 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 29.

30. Respondent Yancey admits that in December 2009, Penson's Compliance Department conducted a NASD Rule 3012 internal audit of the Rule 204T/204 close-out procedures for Buy Ins. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 30 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 30.

31. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the

allegations in Paragraph 31 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 31.

32. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 33 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 32.

33. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 33 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 33.

34. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 34 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 34.

35. Respondent Yancey admits that Delaney did not communicate any knowledge of violations of Rule 204T(a)/204(a) relating to long sales of loaned securities. Respondent Yancey further admits that he attended meetings in 2010 related to Rule 204(a) procedures for the Buy Ins department at which Tom Delaney was present. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on

that basis, denies the allegations. To the extent the allegations in Paragraph 35 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 35.

36. Respondent Yancey admits that Penson's Buy Ins department reviewed long sale CNS fails to determine the reason for the fail and that Penson's Buy Ins department had primary responsibility for close outs of CNS failures to deliver resulting from transactions initiated by customers who sold short or customers who sold long but failed to provide the shares to Penson by settlement date. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 36 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 36.

37. Respondent Yancey admits that Penson's Stock Loan department had primary responsibility for closing out failures to deliver that resulted from long sales of loaned securities. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 37 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 37.

38. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the

allegations in Paragraph 38 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 38.

39. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 39 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 39.

40. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 40 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 40.

41. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 41 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 41.

42. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 42 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 42.

43. Respondent Yancey admits that on March 31, 2010, he met with Delaney to discuss Yancey's Annual Certification of Compliance and Supervisory Processes pursuant to FINRA Rule 3130. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 43 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 43.

44. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 44 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 44.

45. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 45.

46. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 46.

47. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the

allegations in Paragraph 47 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 47.

48. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 48 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 48.

49. Respondent Yancey admits that the results of the December 2009 NASD Rule 3012 internal audit of Penson's Rule 204T/204 close-out procedures for Buy Ins were memorialized in a memorandum and refers to that document for a complete and accurate recitation of its contents. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 49 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 49.

50. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 50 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 50.

51. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the

allegations in Paragraph 51 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 51.

52. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 52 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 52.

53. Respondent Yancey admits that in late 2008 or early 2009, the Commission's Office of Compliance, Inspections and Examinations ("OCIE") began conducting a review of Penson's Rule 204T procedures and that in October 2010, OCIE issued Penson a deficiency letter reporting that OCIE had found Rule 204T(a) violations. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 53 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 53.

54. Respondent Yancey admits that Penson provided OCIE with a written response to its October 2010 deficiency letter and refers to that document for a complete and accurate recitation of its contents. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 54.

55. To the extent the allegations in Paragraph 54 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 55.

56. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 56 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 56.

57. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 57.

58. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 58.

59. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 59.

60. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 60 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 60.

61. Respondent Yancey admits that Penson's Written Supervisory Procedures assigned the Chief Compliance Officer with responsibility for establishing and maintaining Penson's Supervisory System and refers to that document for a complete and accurate recitation of its contents. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 61 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 61.

62. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 62 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 62.

63. Respondent Yancey admits that Delaney did not communicate to him that the Senior Vice President of Stock Loan had been intentionally causing Penson to violate Rule 204T(a)/204(a) relating to long sales of loaned securities or that Delaney and the Senior Vice President of Stock Loan had considered and rejected procedures that would have brought Penson into compliance with Rule 204(a). To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 63 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 63.

64. Respondent Yancey admits that on March 31, 2010, he met with Delaney to discuss Yancey's Annual Certification of Compliance and Supervisory Processes pursuant to FINRA Rule 3130. Respondent Yancey further admits that at this meeting he spoke with Delaney about remediation efforts relating to the Buy Ins department's responsibilities to close out failures to deliver that resulted from customer failures. Respondent Yancey further admits that during this meeting Delaney did not discuss any Rule 204T(a)/204(a) violations relating to Penson's Stock Loan department and long sales of loaned securities. Respondent Yancey further admits that during this meeting Delaney did not discuss any agreement between Delaney and the Senior Vice President of Stock Loan regarding purported violations of Rule 204(a) relating to long sales of loaned securities. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 64 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 64.

65. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 65. purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 65.

66. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the

allegations in Paragraph 66 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 66.

67. Respondent Yancey admits that in early August 2010 he met with Delaney to discuss remediation efforts relating to the Buy Ins department's responsibilities to close out failures to deliver that resulted from customer failures. Respondent Yancey further admits that during this meeting Delaney did not discuss any Rule 204T(a)/204(a) violations relating to Penson's Stock Loan department and long sales of loaned securities. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 67 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 67.

68. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 68 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 68.

69. Respondent Yancey admits that the Senior Vice President of Stock Loan had primary authority and responsibility within the Stock Loan department for its operational practices and for the Written Supervisory Procedures related to the Stock Loan Department. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations

in Paragraph 69 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 69.

70. Respondent Yancey denies the allegations in Paragraph 70.

71. Respondent Yancey denies the allegations in Paragraph 71.

72. To the extent the allegations in Paragraph 72 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 72.

73. Respondent Yancey admits that Penson's Written Supervisory Procedures designated Penson's President and Chief Executive Officer as the supervisor of the Chief Compliance Officer. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 73.

74. To the extent the allegations in Paragraph 74 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 74.

75. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 75 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 75.

76. Respondent Yancey admits that Penson's Written Supervisory Procedures, effective as of March 31, 2010, contained a section titled "Annual CEO Certification (RULE 3130): CEO and CCO Mandated Meeting," and refers to that document for a complete and

accurate recitation of its contents. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 76.

77. Respondent Yancey admits that on March 31, 2010, he met with Delaney to discuss Yancey's Annual Certification of Compliance and Supervisory Processes pursuant to FINRA Rule 3130. Respondent Yancey further admits that at this meeting remediation efforts were discussed relating to the Buy Ins department's responsibilities to close out failures to deliver that resulted from customer failures. To the extent the allegations in Paragraph 77 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 77.

78. Respondent Yancey admits that on March 31, 2010, he signed a document titled, "Annual Certification of Compliance and Supervisory Processes" pursuant to FINRA Rule 3130, and refers to that document for a complete and accurate recitation of its contents. Respondent Yancey further admits that a document titled, "NASD Rule 3012 Summary Report" was attached to the Annual Certification, and refers to that document for a complete and accurate recitation of its contents. To the extent the allegations in Paragraph 78 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 78.

79. To the extent the allegations in Paragraph 79 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 79.

80. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the

allegations in Paragraph 80 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 80.

81. To the extent the allegations in Paragraph 81 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 81.

82. To the extent the allegations in Paragraph 82 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 82.

83. To the extent the allegations in Paragraph 83 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 83.

84. To the extent the allegations in Paragraph 84 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 84.

85. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 85 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 85.

86. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the

allegations in Paragraph 86 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 86.

87. To the extent a response is deemed necessary concerning allegations directed to other parties, Respondent Yancey is without sufficient knowledge or information to form a belief about the truth of those allegations and, on that basis, denies the allegations. To the extent the allegations in Paragraph 87 purport to state legal conclusions, no response is required. Except as set forth above, Respondent Yancey denies the remaining allegations in Paragraph 87.

AFFIRMATIVE DEFENSES

1. The claims in the OIP are barred in whole or in part because the conduct of parties other than Respondent Yancey 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 Yancey. The acts of such third parties constitute intervening and superseding causes of any alleged violations of the securities laws.

2. Respondent Yancey performed his supervisory responsibilities in accordance with the scope of his authority and did so in a reasonable and diligent fashion.

3. Respondent Yancey exercised reasonable supervision under the attendant circumstances.

4. Penson had established procedures, and a system for applying such procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation.

5. Respondent Yancey reasonably discharged his duties and obligations by reason of Penson's procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

6. Respondent Yancey did not have direct supervisory responsibility or authority over the Senior Vice President of Penson's Stock Loan Department, and Respondent Yancey reasonably delegated and discharged the duties of supervision without reasonable cause to believe the delegation was ineffective or that such procedures and systems were not being complied with.

7. The OIP fails to state a claim upon which relief can be granted.

8. The OIP fails to identify any specific violation of Rule 204T(a) or Rule 204(a).

9. The claims set forth in the OIP are barred in whole or in part because Respondent Yancey relied in good faith upon the judgment of professionals, including Penson's in-house counsel, outside counsel, and legal consultants as to matters that he reasonably believed were within such person's professional or expert competence.

10. The claims set forth in the OIP are barred in whole or in part because Respondent Yancey relied in good faith upon the information, opinions, reports and or/statements prepared or presented by one or more officers, employees, or directors of Penson whom Respondent Yancey reasonably believed to be reliable and competent in the matters presented.

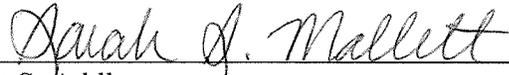
11. The claims set forth in the OIP against Respondent Yancey are barred by the doctrines of waiver, estoppel, and laches.

12. Respondent Yancey hereby adopts and incorporates by reference any and all other affirmative defenses to be asserted by any other defendant in this action to the extent that Yancey may share in such affirmative defenses. Yancey also hereby gives notice that he intends to rely

upon such other and further defenses as may become available or apparent during pre-hearing proceedings in this action.

13. Respondent Yancey reserves the right to amend his answer as the matter proceeds and additional information becomes available.

Dated: June 11, 2014



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