

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080126810-01**

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Pension Financial Services, Inc., Respondent
Broker-Dealer
CRD No. 25866

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Pension Financial Services, Inc. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

The firm has been a member of FINRA since November 27, 1990 and its registration remains in effect. The firm has the following relevant prior disciplinary history:

On April 27, 2004, FINRA accepted an AWC in which the firm was censured and fined \$22,500 including a \$5,000 fine for deficient supervisory procedures related to trade reporting.

SUMMARY

In connection with the 2008 Trading and Market Making Surveillance ("TMMS") examination, 20080126810, the staff reviewed the items set forth on Exhibit A, which is attached and incorporated by reference, primarily for trade dates March 4 and 5, 2008 (the "TMMS review period").

In connection with matter 20080136989, the staff reviewed the firm's compliance with short interest reporting requirements during the period July 2008 through January 2009.

FACTS AND VIOLATIVE CONDUCT

20080126810

1. During the TMMS review period, the firm failed in 10 instances to properly adjust open orders. The firm failed, prior to executing or permitting the orders to be executed, to reduce, increase or adjust the price and/or number of shares of such orders by an amount equal to the dividend, payment or distribution, on the day that the security was quoted ex-dividend, ex-rights, ex-distribution or ex-interest. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 and 3220.
2. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: SEC Rule 606 [b]; Trade Reporting – trade reporting facility (“TRF”) reporting [a, b, c and d], trade modifiers [a, b, c, and d], matching trades [a, b, c and d]; Sales Transactions – determining and marking a sale as “long,” or “short” [a and b], locate requirement [a and b], accepting short sales for threshold securities [a, b, c and d], reporting sales to TRF [a, b, c and d]; Order Audit Trail System (“OATS”) reporting – ensuring reported OATS data is accurate [a, b, c and d], consistency of OATS information with TRF [a, b, c and d]; and use of multiple market participant identifiers [a, b, c and d]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

3. The firm failed to provide documentary evidence that on the trade dates reviewed in the TMMS examination it performed the supervisory reviews set forth in its written supervisory procedures concerning SEC Rule 606; best execution regular and rigorous reviews; determining and marking a sale as “long,” or “short”, Locate requirements; OATS – reject repairs, synchronize clocks, ensuring

reported OATS data is timely, and consistency of OATS information with routed orders. The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.

20080136989

4. For six settlement dates during the period July 2008 through December 2008, the firm submitted to FINRA its short interest position report. This report included 2,961 short interest positions totaling 62,857,617 shares when it should have reporting 2,337 short interest positions totaling 425,262,422 shares. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360 and FINRA Rule 4560.
5. The firm failed to report its short interest positions to FINRA in DigitalFX International, Inc. ("DXN"), Direxion Funds ("TZA"), and Western Pacific Minerals, Ltd. ("WPMLF") for the month of January 2009. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.
6. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning short interest reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) a statement of the supervisory step(s) to be taken by the identified person(s); and (2) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of FINRA Rule 2010 and NASD Rule 3010.

B. The firm also consents to the imposition of the following sanctions:

A censure and fine of \$65,000 comprised of:

- \$10,000 fine for matter 20080126810 comprised of a \$5,000 fine for the NASD Rule 3220 violations and a \$5,000 fine for deficient supervisory procedures and failure to provide evidence of supervisory review;
- \$55,000 fine for matter 20080136989 comprised of a \$50,000 fine for short interest reporting violations and a \$5,000 fine for deficient supervisory procedures; and

an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs two and six. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the

firm has revised its written supervisory procedures to address the deficiencies described in paragraphs two and six; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

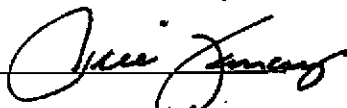
The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

7/28/2010
Date

Penson Financial Services, Inc.

By: 

Name: Bill GANCEY

Title: PRESIDENT

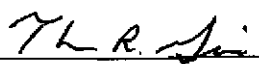
Reviewed by:

Attorney Name
Counsel for Respondent

Accepted by FINRA:

9/23/10
Date

Signed on behalf of the
Director of ODA, by delegated authority


Thomas R. Gira
Executive Vice President
Department of Market Regulation

2008 TMMS Exam Samples
Penson Financial Services, Inc.
Exam No.: 20080126810

<u>Sample Size</u>	<u>Sample Description</u>
44	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
72	Trades reported to a TRF or OTCTRF for compliance with NASD Rule 6130
72	for general trade reporting requirements
	0 for Cancellation of reported trade requirements
	42 for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange
	0 for compliance with the use of the .PRP (Prior Reference Price) trade modifier
	30 for compliance with the use of the Transaction Fee odd-lot indicator
	0 for compliance with the use of the .RA trade modifier (prices away from the market)
	0 for compliance with the use of the .RX trade modifier (exercise OTC options contract)
	0 for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
50	Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755 and 2110
10	Open Limit order to buy and/or open Stop order to sell securities that traded ex-dividend on March 20, 2008 for compliance with NASD Rule 3220 and Nasdaq Rule 4761
61	Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements
As Published	Quarterly Routing Report for compliance with SEC Rule 606 requirements for the Quarter ended March 31, 2008
16	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements
131	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110