

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090170115-01

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:

RELEVANT DISCIPLINARY HISTORY

On June 10, 2009, FINRA accepted an AWC in which the firm was censured and fined \$27,500 including a \$20,000 fine for Order Audit Trail System ("OATS") reporting violations during the period from October 1, 2005 through July 1, 2006.

On May 21, 2008, FINRA accepted an AWC in which the firm was censured and fined \$15,000 for OATS violations during the period June 1, 2006 through October 13, 2006.

On June 6, 2006, FINRA accepted an AWC in which the firm was censured and fined \$10,000 for OATS violations during the period October 1, 2004 through December 31, 2004.

On October 13, 2005, FINRA accepted an AWC in which the firm was censured and fined \$10,000 for OATS reporting violations during the period April 1, 2004 through June 30, 2004.

SUMMARY

In connection with the 2009 Trading and Market Making Surveillance ("TMMS") examination, 20090170115, the staff reviewed the items set forth on Exhibit A, which is attached and incorporated by reference, primarily for trade date September 8, 2009 (the "review period").

FACTS AND VIOLATIVE CONDUCT

1. During the review period, the firm, on 30 occasions, accepted a short sale order in an equity security from another person, or effected a short sale in an equity security for its own account, without (1) borrowing the security, or entering into a bona-fide arrangement to borrow the security; or (2) having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (3) documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(1) of Regulation SHO.
2. During the review period, the firm failed in 46 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 FINRA Rule 2010 and NASD Rule 3220.
3. During the review period, the firm transmitted to OATS 13 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, one report did not include the special handling code and 12 reports contained inaccurate account type and member type codes. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

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

A censure and fine of \$27,500 comprised of a \$7,500 fine for the SEC Rule 203(b) violations; a \$12,500 fine for NASD Rule 3220 violations and a \$7,500 fine for the OATS reporting violations.

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.

3-17-11
Date

Penson Financial Services, Inc.

By: Bart McCain

Name: BART MCCAIN

Title: EVP/CAO

Reviewed by:

Timothy P. Davis
Attorney Name
Counsel for Respondent

Accepted by FINRA:

5/12/11
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

Exhibit A

2009 TMMS Exam Samples
Penson Financial Services, Inc.
Exam No.: 20090170115

<u>Sample Size</u>	<u>Sample Description</u>
566	Sale orders reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements (551 customer/sponsored access client sale orders and 15 proprietary sales)
223	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements (218 customer/sponsored access client short sales and 5 proprietary short sales)
97	Sell orders entered into the Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements (86 customer/sponsored access orders and 11 proprietary orders)
16	Buy and Sell orders entered into the Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements (16 sponsored access client orders)
15	Orders for compliance with best execution requirements of NASD Rule 2320
81	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
66	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
62	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
As published	Quarterly Routing Report for compliance with SEC Rule 606 requirements for the Quarter ended June 30, 2009
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; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
3,139	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110

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 and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611