

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120346812 - 01**

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

RE: Apex Clearing Corporation, Respondent
Broker-Dealer
CRD No. 13071

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Apex Clearing Corporation ("Apex" or 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

Apex, through its predecessor firm Ridge Clearing & Outsourcing Solutions, Inc. ("Ridge Clearing"), has been a FINRA member since March 14, 1983. On or about June 5, 2012, the firm was renamed Apex Clearing Corporation¹ and its registration remains in effect. The firm does not have any relevant disciplinary history.

¹ While the broker-dealer that is now Apex has a long history, the present firm was formed in 2012 as a result of an assignment and assumption agreement by which the non-registered entity that owns Apex acquired certain assets of Penson Financial Services, Inc. ("Penson"). Penson provided clearance and settlement services to several hundred introducing brokerage firms. In May 2012, Penson was experiencing ongoing severe financial issues and on the verge of collapse. To avoid financial damage to introducing brokerage firms that cleared through Penson and other market participants, Apex was created to assume the majority of the Penson accounts and stabilize the business. Apex thus began operations as a company entirely separate from the control of Penson. Moreover, Apex immediately began efforts to assess and correct the problems that existed at Penson to ensure the protection of customers that had cleared through Penson.

SUMMARY

This matter involves a review conducted by the Short Sales Team of FINRA's Department of Market Regulation concerning the firm's compliance with Rule 204 of Regulation SHO and related supervisory requirements between August 1, 2012 and September 30, 2012 (the "Review Period").

FACTS AND VIOLATIVE CONDUCT

1. During the Review Period, in five instances, the firm had fail to deliver positions at a registered clearing agency in equity securities that resulted from long sales, and did not close the fail to deliver positions by purchasing or borrowing securities of like kind and quantity within the time frame prescribed by Rule 204(a)(1) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of Rule 204(a)(1) of Regulation SHO.
2. During the Review Period, in two instances, the firm had fail to deliver position at a registered clearing agency in equity securities that resulted from sales of securities that the seller was deemed to own pursuant to §242.200 of Regulation SHO and intended to deliver once all restrictions on delivery had been removed, and did not close the fail to deliver positions by purchasing or borrowing securities of like kind and quantity within the timeframe prescribed by Rule 204(a)(2) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of Rule 204(a)(2) of Regulation SHO.
3. During the Review Period, in three instances, the firm had fail to deliver position at a registered clearing agency in equity securities that was attributable to market making activities, and did not close out the fail to deliver positions by purchasing or borrowing securities of like kind and quantity within the time frame prescribed by Rule 204(a)(3) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of Rule 204(a)(3) of Regulation SHO.
4. During the Review Period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to Rule 204 of Regulation SHO. The conduct described in this paragraph constitutes violations of NASD Rule 3010 and FINRA Rule 2010.

OTHER FACTORS

5. In determining to resolve this matter as set forth below, Market Regulation gave significant consideration to the fact that the conduct involved in this matter occurred during the initial months following the formation of the firm, and that Apex subsequently undertook efforts to remediate the issues that led to the violations in this matter. Moreover, as Apex assumed the majority of the accounts and systems of Penson, a failing business, additional consideration was given to the fact that Apex had to exert considerable efforts to correct that business in order to protect customers' assets.

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

A censure and a fine of \$12,500.

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

Respondent 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Respondent 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

Respondent 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 Respondent; 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 accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent 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.

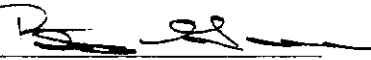
The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, 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.

9/2/2015

Date

Respondent

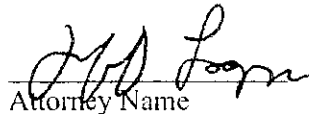
Apex Clearing Corporation

By: 

Name: Brian Gove

Title: Chief Compliance Officer

Reviewed by:



Attorney Name

Counsel for Respondent

Firm Name

Address

City/State/Zip

Phone Number

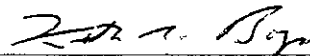
Accepted by FINRA:

9/15/15

Date

Signed on behalf of the

Director of ODA, by delegated authority



Kenneth R. Bozza, Chief Counsel

Legal Section

Department of Market Regulation