

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019061642801**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Apex Clearing Corporation, Respondent
Member Firm
CRD No. 13071

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Apex Clearing Corporation ("Apex" or "Respondent") 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 has been a FINRA member firm since March 1983, and its registration remains in effect. Apex conducts a full service retail brokerage business and provides correspondent clearing services to, and carries customer accounts for, approximately 66 introducing firms on a fully disclosed basis. Apex's headquarters is in Dallas, Texas. It employs approximately 137 registered persons and 151 non-registered persons across four offices.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

The Securities and Exchange Commission adopted Rule 10b-16 (17 C.F.R. § 240.10b-16) to require that broker-dealers extending credit in margin transactions have "established procedures to assure that each customer" receives certain initial and periodic disclosures.

Rule 10b-16(a)(1) requires that the initial disclosure include a “written statement or statements disclosing . . . the annual rate or rates of interest that can be imposed.” The initial disclosure is designed to ensure that a customer, before account opening, understands the terms and conditions under which margin interest charges will be made, and to enable the customer to compare the various credit terms available.

From January 2015 through November 2019 (the “Relevant Period”), Apex failed to establish procedures reasonably designed to assure that introduced customers received the initial margin interest rate disclosures and failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Rule 10b-16(a)(1). Apex did not have procedures to assure that introduced customers received margin interest disclosures at the time of account opening. And certain customers of Apex’s introducing firms did not receive the initial disclosure stating the annual rate or rates of margin interest that could be imposed. As a result, Apex violated SEC Rule 10b-16(a)(1) and FINRA Rules 3110(a) and (b) and 2010.

FACTS AND VIOLATIVE CONDUCT

SEC Rule 10b-16(a)(1) states, in relevant part:

(a) It shall be unlawful for any broker or dealer to extend credit, directly or indirectly, to any customer in connection with any securities transaction unless such broker or dealer has established procedures to assure that each customer: (1) [i]s given or sent at the time of opening the account, a written statement or statements disclosing . . . the annual rate or rates of interest that can be imposed.

FINRA Rules 3110(a) and (b) require each member to establish, maintain, and enforce a supervisory system, including written supervisory procedures, related to its business that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. A violation of SEC Rule 10b-16(a)(1) and FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires member firms in the conduct of their business to “observe high standards of commercial honor and just and equitable principles of trade.”

During the Relevant Period, Apex and each introducing firm coordinated to set the margin interest rate that would be charged to customers of the introducing firm. The rate therefore was introducing firm-specific.

During the Relevant Period, Apex provided its introducing firms with a Margin Disclosure Statement document, which Apex understood its introducing firms provided to customers prior to Apex opening a margin account for the customer. While Apex had a process in place to assure that the Margin Disclosure Statement was provided by the introducing firm, the Margin Disclosure Statement did not disclose the introducing firm-specific margin interest rate. Most of Apex’s introducing firms were online retail firms

which disclosed, on their online web portals, the margin interest rate that their customers would pay. But Apex did not have adequate procedures to assure that its introducing firms made such disclosures. Some of Apex's introducing firms did not make margin interest rate disclosures at the time of account opening. As the broker extending credit, Apex was responsible for establishing procedures to assure that the margin rates were disclosed to customers at the time they opened margin accounts.

Apex's supervisory system and written supervisory procedures were not reasonably designed to assure that each customer was provided, at the time of account opening, the rate or rates of margin interest that Apex could charge. Although Apex's supervisory system was designed to assure that customers be provided with the Margin Disclosure Statement upon opening a margin account and although Apex disclosed the rate of interest charged in periodic account statements, Apex's supervisory system was not designed to assure, and its written supervisory procedures did not require, that the Margin Disclosure Statement included the interest rate disclosure required by SEC Rule 10b-16(a)(1), or that customers of the introducing firms opening margin accounts otherwise received margin interest rate disclosure at the time of account opening.

As a result of the foregoing conduct, Apex violated SEC Rule 10b-16(a)(1) and FINRA Rules 3110 (a) and (b) and 2010.

B. Respondent(s) also consent(s) to the imposition of the following sanctions:

- a censure;
- a \$250,000 fine; and
- within 90 days of Notice of Acceptance of this AWC, or such additional period as agreed to by a FINRA staff member in writing, a registered principal on behalf of Apex shall submit to Kevin Hartzell, Director, FINRA, at the address set forth below, a written certification that (i) Apex has completed a review of its systems and procedures regarding SEC Rule 10b-16(a)(1), and (ii) as of the date of the certification, the Firm's policies, systems and procedures are reasonably designed to achieve compliance with SEC Rule 10b-16(a)(1).

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time hereafter, the monetary sanction 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 it;
- 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 Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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(s) 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 Respondent'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. Respondent 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 Respondent 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 it to submit it.

Apex Clearing Corporation
Respondent

12/20/19

Date

By: William Brennan

Print Name: William Brennan

Title: CAO

Reviewed by:

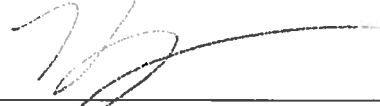
John I. Sakheh

John I. Sakheh
Counsel for Respondent
Sidley Austin LLP
1501 K Street N.W.
Washington, D.C. 20005

Accepted by FINRA:

12-31-2019
Date

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



Kevin Hartzell
Director
FINRA
Department of Enforcement
581 Main Street, 7th Floor
Woodbridge, NJ 07095