

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20160494483 - 01**

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 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 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 became a FINRA member on March 14, 1983, and its registration remains in effect. The firm is headquartered in Dallas, Texas. As of September 16, 2019, the firm has one branch office and a total of 143 registered individuals.

RELEVANT DISCIPLINARY HISTORY

Apex 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

During the period June 2012 through April 2016 (the "review period"), the firm failed to comply with FINRA's short interest reporting requirements and related supervision obligations. As a result, Apex violated FINRA Rule 4560, NASD Rule 3010 (for conduct prior to December 1, 2014) and FINRA Rule 3110 (for conduct on and after December 1, 2014), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Short Interest Reporting Violations

1. FINRA Rule 4560 requires firms to maintain a record of total short positions in all customer and proprietary firm accounts in all equities securities (with certain exceptions that are not applicable here), and regularly report such information to FINRA in such a manner as may be prescribed by FINRA.
2. During the review period, the firm experienced an issue in its short interest reporting logic that excluded certain short interest positions from the firm's submissions to FINRA. Specifically, Apex instructed its correspondent broker-dealer customers to book short positions into either the Type 1 (cash) or Type 5 (short margin) accounts. Unbeknownst to Apex, certain correspondent broker-dealers were booking short positions into another account available to them – Type 2 (margin) account. The short positions booked into this account were not included in the firm's submissions to FINRA. For two sample settlement dates during the 47-months review period the firm failed to report 256 short interest positions totaling 481,195 shares, and inaccurately reported 130 short interest positions totaling 1,648,923 shares, when it should have reported 130 short interest positions totaling 2,528,244 shares.
3. By virtue of the foregoing, the firm violated FINRA Rules 4560 and 2010.¹

Supervision Violation

4. FINRA Rule 3110(a) provides, “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”² Further, subsection (b) provides, “[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”
5. During the review period, the firm's supervisory system was not reasonably designed to achieve compliance with its short interest reporting obligations under FINRA Rule 4560. Specifically, the firm failed to establish and maintain a supervisory system, including written supervisory procedures, to confirm that its reporting system captured all reportable short interest positions. Moreover, the firm did not have a supervisory system to review for the accuracy of the firm's short interest positions reported to FINRA.

¹ FINRA Rule 2010 provides, “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of a FINRA rule constitutes a violation of Rule 2010.

² On December 1, 2014, FINRA Rule 3110 replaced NASD Rule 3010.

6. By virtue of the foregoing, the firm violated NASD Rule 3010 (for conduct prior to December 1, 2014) and FINRA Rule 3110 (for conduct on and after December 1, 2014), and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

- Censure; and
- A fine of \$140,000 (comprised of \$100,000 for the short interest reporting violations and \$40,000 for the related supervision violations).

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It 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 that it is unable 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 prejudice 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 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

9-30-19
Date

By: Robert C Doebler

Print Name: Robert C. Doebler

Title: CHIEF OPERATIONS OFFICER

Accepted by FINRA:

10/15/2019
Date

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

Luis A. Prieto

Luis A. Prieto

Counsel

FINRA

Department of Enforcement

15200 Omega Drive, Suite 300

Rockville, MD 20850