



VIA CERTIFIED MAIL

December 19, 2018

Mr. William Capuzzi
Chief Executive Officer
Apex Clearing Corporation
One Dallas Center
350 N. St. Paul
Suite 1300
Dallas, TX 75201

RE: Payment of Fine in Connection with Executed Letter of Consent
FINRA Matter No. 2014042222602

Dear Mr. Capuzzi:

Enclosed is an executed copy of the Letter of Consent (“LOC”), signed by you as Chief Executive Officer at Apex Clearing Corporation (the “Firm”), and countersigned by Edward Deitzel, Executive Vice President and Chief Regulatory Officer, for the Business Conduct Committee, at the Miami International Securities Exchange, LLC (“MIAX” or the “Exchange”) on December 12, 2018. Please consider this correspondence as notice to the Firm that this LOC has been accepted, and as a result, the Firm must promptly remit payment of the agreed upon sanction. Please make the payment to Miami International Securities Exchange, LLC.

Since the Firm has indicated it intends to pay the fine via wire transfer, please wire payment to the following:


JP Morgan Chase

Pursuant to MIAX Rule 1011, after seven calendar days’ notice in writing, the Exchange may summarily suspend a Member that fails to pay promptly a fine when such fine becomes finally due and payable.

Mr. William Capuzzi
Apex Clearing Corporation
December 19, 2018
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If you have any questions concerning this matter, please contact me at (646) 430-7032.

Very truly yours,



Michael Bautz
Senior Counsel
Department of Enforcement, FINRA

Enclosure

cc: Larry O'Leary, VP Regulation, Miami International Securities Exchange, LLC
(via e-mail to loleary@miaxoptions.com)

FINRA District 6 – Dallas
Tom Nelli
Senior Vice President and Regional Director
(Via email)

*This letter is issued on behalf of the Miami International Securities Exchange, LLC, by
FINRA Department of Enforcement pursuant to a grant of authority to FINRA.
Accordingly, this constitutes a letter by the Miami International Securities Exchange,
LLC.*

MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC
LETTER OF CONSENT
NO. 2014042222602

TO: Miami International Securities Exchange, LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 1003 of the Rules of the Miami International Securities Exchange, LLC (“MIAX”), Apex Clearing Corporation (the “Firm”) submits this Letter of Consent (“LOC”) for the purpose of proposing a settlement of the alleged rule violations described below. This LOC is submitted on the condition that, if accepted, MIAX 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 MIAX, or to which MIAX 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 MIAX:

BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

The Firm became a member of FINRA on March 14, 1983, and a MIAX member on November 18, 2015. Its registrations remain in effect. The Firm has no relevant prior disciplinary history.

SUMMARY

In Matter No. 20160504011, the Department of Market Regulation’s Options Regulation Staff, on behalf of MIAX, conducted a review of the Firm’s compliance with MIAX rules related to Large Option Position Reporting (“LOPR”) and related supervisory obligations for the period of November 18, 2015 through September 12, 2017 (the “Review Period”).

LOPR data is used extensively by self-regulatory organizations to identify holders of large option positions who may be, among other things, attempting to manipulate the market or otherwise violate securities rules and regulations. The accuracy of LOPR data is essential for analysis of potential violations, including insider trading, position limits, exercise limits, front-running capping and pegging, mini-manipulation, and marking-the-close.

As described below, the Firm failed to report and inaccurately reported positions to the LOPR in thousands of instances.¹ In addition, the Firm failed to develop and maintain adequate controls over its LOPR reporting obligations.

FACTS AND VIOLATIVE CONDUCT

Reporting of Options Positions

1. Pursuant to MIAX Rule 310(a), each Member shall file with the Exchange the name, address and social security or tax identification number of any customer, as well as any Member, any general or special partner of the Member, any officer or director of the Member or any participant, as such, in any joint, group or syndicate account with the Member or with any partner, officer or director thereof, who, on the previous business day held aggregate long or short positions of 200 or more option contracts of any single class of options traded on the Exchange.
2. In 34,433 instances from November 18, 2015 through June 3, 2016, the Firm erroneously reported positions to the LOPR under one Clearing Member ("CM") number while the positions resided at Options Clearing Corporation under a different CM number. The conduct described in this paragraph constitutes separate and distinct violations of MIAX Rule 310.²
3. In numerous instances from May 20, 2016 through May 26, 2016, the Firm failed to resubmit rejected LOPR records with the correct effective date. The conduct described in this paragraph constitutes separate and distinct violations of MIAX Rule 310.
4. From November 18, 2015 through June 3, 2016, the Firm failed to mark certain accounts as acting-in-concert resulting in certain positions not being reported to LOPR. For instance, a 125-contract position in ABC May 20, 2016 195 Puts was not marked as acting-in-concert with a position reported to the LOPR despite the fact that both positions were owned by individuals with the same last name and address. As a result, the 125-contract position was not reported to the LOPR. The conduct described in this paragraph constitutes separate and distinct violations of MIAX Rule 310.
5. In 842 instances from March 2017 through September 8, 2017, the Firm, as a result of a systemic issue with its third-party LOPR reporting service provider, failed to report customer positions to the LOPR. The conduct described in this paragraph constitutes separate and distinct violations of MIAX Rule 310.

¹ An "instance" is a single failure to report, or inaccurately report, for a given options position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position had not been reported or was reported inaccurately.

² The Firm corrected the reporting of these positions.

Supervision

6. During the Review Period, MIAX Rule 500(b) prohibited members from engaging in conduct (1) inconsistent with the maintenance of a fair and orderly market; (2) apt to impair public confidence in the operations of the Exchange; or (3) inconsistent with the ordinary and efficient conduct of business. Activities that may violate the MIAX Rule 500(b) include, but are not limited to, the failure of a Member to supervise a person employed by or associated with such Member adequately to ensure that person's compliance with this paragraph. Similarly, MIAX Rule 1308(c)(1) required members to develop and maintain adequate controls over each of its business activities, and that such controls must provide for the establishment of procedures for verification and testing of those business activities.
7. During the Review Period, the Firm's procedures did not include a review for the accuracy of its LOPR reporting. As a result, the Firm was unaware of the inaccuracies of its LOPR submissions and the systemic issue with its third-party service provide described above.
8. In addition, the Firm's procedures did not include a review of accounts potentially acting-in-concert. As a result, the Firm was unaware that it failed to report certain positions acting-in-concert.
9. The Firm has amended its systems and procedures to reasonably address the supervisory deficiencies described in Paragraphs 7 and 8.
10. The conduct described in Paragraphs 7 and 8 constitutes a violation of MIAX Rules 500(b) and 1308(c)(1).

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

Censure and fine of \$125,000, of which \$22,500 is payable to MIAX.³

The Firm agrees to pay the monetary sanction(s) upon notice that this LOC 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 MIAX.

³ The balance of the sanction will be paid to BOX Exchange LLC.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under MIAX Rules:

- A. To have a Statement of Charges issued specifying the allegations against the Firm;
- B. To be notified of the Statement of Charges 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 MIAX's Board of Directors 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 prejudice of the Chief Regulatory Officer ("CRO"), as well as the Business Conduct Committee ("BCC"), in connection with participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including acceptance or rejection of this LOC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of MIAX Rule 1006, in connection with such person's or body's participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including its acceptance or rejection.

III.

OTHER MATTERS

The Firm understands that:

- A. Submission of this LOC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO and the BCC, pursuant to MIAX Rule 1003;
- B. If this LOC 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 LOC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by MIAX or any other regulator against the Firm;
 - 2. This AWC will be published on a website maintained by MIAX; and
 - 3. 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 LOC or create the impression that the LOC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of MIAX, or to which MIAX is a party, that is inconsistent with any part of this LOC. 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 MIAX is not a party.

- D. The Firm may attach a Corrective Action Statement to this LOC 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 LOC in this Statement. This Statement does not constitute factual or legal findings by MIAX, nor does it reflect the views of MIAX 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 LOC and has been given a full opportunity to ask questions about it; that it has agreed to the LOC'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.

December 3, 2018
Date

Apex Clearing Corporation, Respondent

DocuSigned by:

By: _____
Name: William Capuzzi
Title: Chief Executive Officer

Accepted by Miami International Securities Exchange, LLC:

12-12-18
Date


Edward Deitzel
Executive Vice President and
Chief Regulatory Officer
Miami International Securities Exchange, LLC

Decision of the Business Conduct Committee:

Accept Decline

12-12-18
Date


By: Edward Deitzel
For the Business Conduct Committee

ELECTION OF PAYMENT FORM

The Firm intends to pay the fine proposed in the attached Letter of Consent by the following method (check one):

- A firm check or bank check for the full amount
- Wire transfer

Respectfully submitted,
Respondent
Apex Clearing Corporation

December 3, 2018

Date

DocuSigned by:
William Capuzzi
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By: _____

Name: william Capuzzi

Title: Chief Executive Officer