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**Via Certified Mail, Return Receipt Requested (7015 0640 0005 9258 6213), First Class Mail and Email (susan.light@katten.com)**

April 19, 2023

Katten Muchin Rosenman LLP  
Attn: Susan Light, Esq.  
50 Rockefeller Center  
New York, NY 10020

**RE: Payment of Fine in Connection with Executed Letter of Consent  
FINRA Matter No. 2021070475701**

Dear Ms. Light:

Enclosed is an executed copy of the Letter of Consent (“LOC”), signed by William Brennan, Chief Administrative 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 MIAX PEARL, LLC (“PEARL”) on **April 19, 2023**. 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 MIAX PEARL, LLC.

By Mail:

Make a Firm check or bank check payable to “MIAX PEARL, LLC” and return your payment to the following address:

MIAX PEARL  
Attn: Tia Toms  
7 Roszel Road, Suite 1A  
Princeton, NJ 08540  
Reference Number: MIAX PEARL, LLC Matter No. 2021070475701

By Wire:

If payment is by wire, wiring instructions are as follows:

Apex Clearing Corporation  
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Pursuant to MIAX PEARL 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.

If you have any questions regarding this matter, please contact me at 312-230-5209.

Sincerely,



Nicole Waksmundzki  
Counsel

Enclosure

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

*This letter is issued on behalf of the MIAX PEARL, LLC, by FINRA's Department of Enforcement pursuant to a grant of authority to FINRA. Accordingly, this constitutes a letter by the MIAX PEARL, LLC.*

**MIAX PEARL, LLC  
LETTER OF CONSENT  
NO. 2021070475701**

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 MIAX PEARL, LLC (“MIAX PEARL”), Apex Clearing Corporation (“Apex” or 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 PEARL 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 PEARL, or to which MIAX PEARL 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 PEARL:

**BACKGROUND**

The firm has been a member of MIAX PEARL since February 2017. Its registration remains in effect. Apex does not have any relevant disciplinary history.

**SUMMARY**

This matter arose from a review conducted by FINRA’s Department of Market Regulation concerning Apex’s contrary exercise advice (“CEA”) submissions. The investigation revealed that on February 19, 2021, in assisting an introducing firm with a technology failure, Apex submitted duplicate instructions to not exercise in four options series to the Options Clearing Corporation (“OCC”) and failed to correct the errors prior to the relevant cutoff time, which resulted in 125 contracts erroneously not being exercised at the OCC, in violation of MIAX PEARL Rule 700.<sup>1</sup> To offset the contracts that were not properly exercised, Apex manually assigned the exercises outside the OCC assignment process for

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<sup>1</sup> During the relevant period, Chapter VII of the MIAX PEARL Rules incorporated by reference the Miami International Securities Exchange, LLC’s Chapter VII, including Rule 700.

three of the options series, in violation of MIAX PEARL Rule 301.<sup>2</sup> In addition, Apex failed to establish and maintain written supervisory procedures (“WSPs”) that were reasonably designed to achieve compliance with its obligations relating to CEAs, in violation of MIAX PEARL Rule 2300.

## **FACTS AND VIOLATIVE CONDUCT**

### *CEA Violations*

1. MIAX PEARL Rule 700 requires an option holder with an expiring option to either: “(1) take no action and allow exercise determinations to be made in accordance with the Clearing Corporation’s Ex-by-Ex procedure where applicable; or (2) submit a [CEA] to the Exchange.” A CEA is “a communication either: (1) to not exercise an option that would be automatically exercised under the Clearing Corporation’s Ex-by-Ex procedure, or (2) to exercise an option that would not be automatically exercised under the Clearing Corporation’s Ex-by-Ex procedure.” A CEA may be canceled by filing an “Advice Cancel” with the Exchange or resubmitted at any time up to the submission cutoff times. For customer accounts, Members have until 7:30 p.m. to submit CEAs to the OCC. A Member that has accepted the responsibility to indicate final exercise decisions on behalf of another Member or non-member broker-dealer shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange.
2. MIAX PEARL Rule 301 provides that no Member shall engage in acts or practices inconsistent with just and equitable principles of trade.
3. On February 19, 2021, Apex received a request from one of its introducing firms to submit the introducing firm’s 210 options instructions on its behalf, since its options instructions froze during transmittal. Apex agreed and timely submitted the options instructions. Twenty out of the 210 options instructions had already been submitted by the introducing firm prior to the technology freeze. These 20 options instructions were instructions to not exercise, which became duplicative upon Apex’s submission of the file. As a result, Apex submitted duplicate instructions to not exercise in four options series to the OCC and failed to correct the errors prior to the relevant cutoff time, which caused 125 contracts to erroneously not be exercised at the OCC.
4. As a result, Apex violated MIAX PEARL Rule 700.
5. On February 20, 2021, to offset the contracts that were not properly exercised in three of the options series, Apex manually assigned 11 contracts outside the OCC assignment process to customers at the firm with short options positions in the applicable securities.<sup>3</sup>

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<sup>2</sup> During the relevant period, Chapter III of the MIAX PEARL Rules incorporated by reference the Miami International Securities Exchange, LLC’s Chapter III, including Rule 301.

<sup>3</sup> For the remaining options series, Apex purchased shares of the underlying security in the open market using the firm’s error account on February 23, 2021 for \$14,136.00. Those shares were subsequently sold to make the long options holders whole for \$17,099.62, resulting in a net profit of \$2,963.62.

6. As a result, Apex violated MIAX PEARL Rule 301.

*Supervision*

7. MIAX PEARL Rule 2300 requires every Member to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with applicable securities laws and regulations.
8. Between January 2021 and the present, Apex failed to establish and maintain WSPs that were reasonably designed to achieve compliance with its obligations relating to CEAs. Specifically, Apex's WSPs did not identify the 5:30 p.m. ET cutoff time for accepting CEAs nor the 7:30 p.m. ET cutoff time for submitting CEAs to the OCC. Although the WSPs mentioned the requirement to retain a memorandum for instances when the firm received and acted on exercise instructions after the cutoff times due to unusual circumstances, they did not mention the requirement to file the memorandum with the applicable SROs prior to 12:00 p.m. ET on the next business day after expiration, or that instructions after the 5:30 p.m. ET cutoff are only acceptable due to a bona-fide error. In addition, although the firm outsourced the processing of CEAs, Apex's WSPs did not identify how the firm would supervise its outsourced vendor to ensure compliance with the CEA rules.
9. As a result, Apex violated MIAX PEARL Rule 2300.

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

1. A censure;
2. A total fine of \$25,000;
3. Disgorgement of unlawful profits, which is ordered to be paid to MIAX PEARL in the amount of \$2,964, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from the date of the violative conduct until the date this LOC is accepted by the Business Conduct Committee; and
4. A certification from the firm that it has remediated its WSPs to address the deficiencies described herein.

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 PEARL.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

The firm specifically and voluntarily waives the following rights granted under MIAX PEARL 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 PEARL'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 prejudgment 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 PEARL 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 PEARL 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 PEARL or any other regulator against the firm;
  - 2. This LOC will be published on a website maintained by MIAX PEARL; 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 PEARL, or to which MIAX PEARL 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 PEARL 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 PEARL, nor does it reflect the views of MIAX PEARL 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.

March 3, 2023

\_\_\_\_\_  
Date

Respondent  
Apex Clearing Corporation

By: William Brennan

Name: William Brennan

Title: Chief Administrative Officer

Reviewed by:

Susan Light

Susan Light  
Counsel for Respondent  
Katten Muchin Rosenman LLP  
50 Rockefeller Plaza  
New York, New York 10020  
(212) 940-8599

Accepted by MIAx PEARL, LLC:

April 19, 2023

\_\_\_\_\_  
Date

Ed Deitzel

Edward Deitzel  
Executive Vice President and  
Chief Regulatory Officer  
MIAx PEARL, LLC

Decision of the Business Conduct Committee:

Accept       Decline

April 19, 2023

\_\_\_\_\_  
Date

Ed Deitzel

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

March 3, 2023

\_\_\_\_\_  
Date

By: William Brennan

Name: William Brennan

Title: Chief Administrative Officer