

# **IMPORTANT DISCLOSURES REGARDING RISKS AND CHARACTERISTICS OF PARTICIPATING IN APEX CLEARING CORPORATION'S FULLY-PAID SECURITIES**

## **LENDING PROGRAM**

Please read these important disclosures carefully before deciding whether to participate in Apex Clearing Corporation's Fully-Paid Securities Lending Program and before signing a Master Securities Lending Agreement for Apex Clearing Corporation's Fully-Paid Securities Lending Program. These disclosures describe important characteristics of, and risks associated with engaging in, securities lending transactions.

### **I. Introduction**

Apex Clearing Corporation ("Apex") offers eligible customers the ability to lend out certain of their fully paid and excess margin securities to Apex, which Apex may then lend to other Apex customers or to other market participants who wish to use these shares for short selling or other purposes. "Fully-paid securities" are securities in a customer's account that have been completely paid for. "Excess-margin securities" are securities that have not been completely paid for, but whose market value exceeds 140% of the customer's margin debit balance. In this disclosure and in the relevant agreements, we collectively refer to fully-paid and excess margin securities as "Fully-Paid Securities" or "Fully-Paid Shares". Lending out your Fully-Paid Shares may be a way to increase the yield on your portfolio, because some shares are in high demand in the securities lending market and borrowers are willing to pay a loan fee for the use of your shares.

In the Apex Fully-Paid Securities Lending Program (the "Program"), you permit Apex to borrow from you any Fully-Paid Securities in your portfolio and loan these securities out in the securities lending market. Apex will have the discretion to initiate loans of your securities. You will not be asked to approve each loan before it is initiated, but you can sell your shares at any time or terminate your participation in the program. Cash payments in lieu of dividends are not the same as qualified dividends for tax purposes and are taxed as normal ordinary income (up to 37%) instead of the preferential qualified dividend rate of 20% (U.S. federal income tax rates quoted here are for 2022 and are subject to change). If you are not a U.S. taxpayer, Apex may be required to withhold tax on payments in lieu of dividends and any loan fees due to you, if applicable, at 30% unless an exception applies.

It is solely within Apex's discretion whether to recall loaned shares from a borrower prior to a dividend, and Apex makes no guarantee to recall a loan prior to a dividend. With respect to other corporate actions affecting loaned shares, non-cash distributions that you are entitled to receive in connection with ownership of loaned securities will be added to the loaned securities on the date of distribution and will be transferred to you at termination of the loan.

Other special tax considerations could arise, and you are encouraged to consult a tax advisor for further information.

**X. Apex has a right to terminate any borrow transaction in the event of a condition of the kind specified in FINRA Rule 4314(b).**

Apex has a right to terminate any borrow transaction if you: (1) apply for or consent to, or are the subject of an application for, the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of you or of all or a substantial part of your property; (2) admit in writing your inability, or become generally unable, to pay your debts as such debts become due; (3) make a general assignment for the benefit of your creditors; or (4) file, or have filed against you, a petition under Title 11 of the United States Code, or have filed against you an application for a protective decree under Section 5 of the Securities Investor Protection Act of 1970 ("SIPA"), unless the right to liquidate such transaction is stayed, avoided, or otherwise limited by an order authorized under the provisions of SIPA or any statute administered by the SEC.

**XI. Factors that Determine the Amount of Compensation Received by Apex and Amount of Compensation to be Paid to You and Your Introducing Broker, and the Ability of Those to Change.**

1. Fees Paid to Borrow Securities (and therefore the Fees You Will Receive) Are Subject to Frequent Change and Can Go Down (or Up) by 50% or More.  
The fees paid to borrow shares change frequently, even daily, in the securities lending market and this can reduce (or increase) the fees that you and your Introducing Broker receive for loans of your Fully-Paid Securities. You will not have direct control over when to initiate or terminate loans of specific shares (including based on fee changes). However, you can always terminate your participation in the Program (which will terminate all of your lending transactions) if you are unhappy with the fees you are receiving or the nature or frequency of fee changes. Please note, though, that if you terminate your participation in the Program, you may not be permitted to re-join the Program, or you may have to wait a certain length of time to re-join.
2. Apex is the Counterparty to All Fully-Paid Lending Transactions with You. Apex May Profit or Lose in Connection with the Transaction or Other Transactions in the Same Securities. Apex May Pay Part of the Loan Fees to Third Parties, Which Will Reduce the Rate You Receive. Apex will be the counterparty (borrower) when you permit borrowing of your Fully-Paid Shares. Any transactions that Apex may or may not do on any securities lending markets are completely independent of your loan transaction with Apex. Thus, after Apex borrows shares from you for a given fee, Apex may or may not then lend those shares to another party or to or through an affiliate or third party. Likewise, Apex may terminate a loan with you and return shares to you while at the same time Apex continues to lend shares of the same stock out to the marketplace. In short, Apex's obligation to you is to pay you and your Introducing Broker the specified fee on ongoing loan transactions until such transactions are terminated by you or by Apex. Nothing in the Program restricts Apex's ability to conduct stock lending and borrowing transactions with third parties who may profit or lose in connection with the transactions. Apex may borrow shares from you and then lend those shares to one of its affiliates or other customers.

3. There Is No Guarantee That You and Your Introducing Broker Will Receive the Best Loan Fees Available for Your Shares. The securities lending market is not a standardized and transparent market. Securities lending transactions generally take place "over the counter" rather than on organized exchanges where prices and transactions are transparent. There are no rules or mechanisms that guarantee or require that any given participant in the marketplace will receive the best fees for lending shares, and Apex cannot and does not guarantee that you and your Introducing Broker will receive the most favorable fees with respect to shares of your securities that Apex loans to third parties. Apex may not have access to the markets or counterparties that are offering the most favorable fees or may be unaware of the most favorable rates.
4. Commissions and Other Charges You and your Introducing Broker will receive a Loan Fee, which will accrue daily. As described in the Schedule to the Master Securities Lending Agreement, the Loan Fee equals a percentage, referred to as the "Percentage Rate," of the "Loan Proceeds." The "Loan Proceeds" are (1) the net proceeds Apex receives for relending your Fully-Paid Shares, and/or (2) at the discretion of Apex and depending on the interest rate environment, a share of the interest that Apex receives on the collateral it deposits to secure the shares that it borrows from you.

The Percentage Rate may be changed by your Introducing Broker in its sole discretion, but will not be less than the Minimum Percentage Rate set out in the Schedule to the Master Securities Lending Agreement. Likewise, the Loan Fee may vary based on the demand for borrowing the types of Fully-Paid Securities available in the customers' accounts and other factors. Similarly, the bank may change the interest rate it pays on collateral that Apex deposits with that bank to secure the shares Apex borrows from you. You may always terminate your participation in the Program if you are unhappy with the Percentage Rate you are receiving from the Introducing Broker.

## **XII. Loans May Be Terminated at Any Time By Apex**

When you lend your Fully-Paid Shares, the loan may be terminated, and the shares returned to your Apex account at any time. The loan may be terminated because a party that borrowed the shares from Apex (after Apex borrowed them from you) chose to return the shares, or because Apex received a rerate request and rejected the rerate request, or for other reasons. Apex also has the right to terminate its borrowing of shares from you even if Apex continues to lend the same stock through another market. When the loan is terminated, shares will no longer be designated as on loan, you and your Introducing Broker will stop receiving the Loan Fees, and the collateral will no longer be held for your benefit. You will not have direct control over when to initiate or terminate loans of specific shares. Please note, however, that you can always terminate your participation in the Program, which will terminate all of your lending transactions.

**XIII. Selling Your Shares or Borrowing Against Them Will Terminate the Loan Transaction.**

If you sell the Fully-Paid Shares you have lent out, or if you borrow against the shares (such that the securities become margin securities and are no longer fully-paid or excess margin securities), the loan will terminate, and you and your Introducing Broker will stop receiving the Loan Fee.

**XIV. There Is No Guarantee That Apex Can or Will Borrow, or Will be Able To Lend, Your Fully-Paid Shares**

There is no guarantee that you will be able to lend (or that Apex will want to borrow) your Fully-Paid Shares. There may not be a market to lend your Fully-Paid Shares in a particular security at a fee that is advantageous, or Apex may not have access to a market with willing borrowers. Apex, or other Apex customers or Apex's affiliates, might have shares that may be loaned out that will satisfy available borrowing interest and, therefore, Apex may not borrow shares from you. There is no rule or requirement, nor is there anything in the applicable agreements between you and Apex, that requires Apex to borrow shares from you or requires Apex to place your interest in lending shares of a particular security ahead of Apex's own interests, or those of other Apex customers or those of Apex's affiliates. Apex cannot and does not guarantee that all your Fully-Paid Shares that possibly could be loaned out to generate Loan Fees will be loaned out.

**Important Note: In the event of a conflict between the terms of this disclosure document and the terms of the Master Securities Lending Agreement that you signed, the terms of the Master Securities Lending Agreement shall govern.\*\***