

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20050018123-01

TO: Department of Market Regulation
NASD

RE: Cantor Fitzgerald & Co., Respondent
Broker/Dealer
CRD No. 134

Pursuant to Rule 9216 of NASD Code of Procedure, Cantor Fitzgerald & Co. ("CANT") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against CANT alleging violations based on the same factual findings.

CANT understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against CANT; and
3. If accepted:
 - a. this AWC will become part of CANT's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against CANT;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about CANT's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. CANT 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. Nothing in this provision affects CANT's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

CANT also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

CANT has been a member of NASD since February 16, 1945 and its registration remains in effect. On October 15, 2005, NASD accepted an AWC that imposed a censure and a \$39,500 fine (consisting of a \$10,000 fine for limit order display violations, a \$7,500 fine for OATS violations, a \$10,000 fine for SEC Rule 10b-10 violations, a \$5,000 for SEC Rule 11Ac1-5 violations, a \$2,000 fine for record keeping violations, and \$5,000 for a supervision violation), and an undertaking to revise the firm's written supervisory procedures). On January 15, 2004, NASD accepted an AWC that: (1) found that the firm committed limit order protection, short sale, trade reporting, ACT reporting, SEC Rule 10b-10, SEC Rule 11Ac1-5, limit order display, record keeping, three quote rule, firm quote, SEC Rule 15c2-11, and NASD Rule 6740 violations, and a supervision violation; and (2) imposed a censure, a \$29,000 fine, and an undertaking to revise the firm's written supervisory procedure.

I.

WAIVER OF PROCEDURAL RIGHTS

CANT specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against CANT;
- B. To be notified of the Formal 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, CANT specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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.

CANT further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

In connection with 20050018123, the staff reviewed the firm's compliance with the Order Audit Trail System ("OATS") rules during the period January 1, 2005 through March 31, 2005.

In connection with 20050021117, the staff investigated CANT's quotation activity in the Pink Sheets on July 18, 2005.

- A. CANT 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 NASD, or to which NASD 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 NASD:
1. During the review period, the firm submitted to OATS 33,561 reports with respect to equity securities traded on the Nasdaq Stock Market (the "subject reports") that were not in the electronic form prescribed by NASD and were repairable. The subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS website. The firm did not correct or replace 25,630 of the subject reports, or 76 percent of the subject reports.
 2. The conduct described in paragraph one above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
 3. On July 18, 2005, CANT published 36 quotations in the thirteen OTC Equity Securities, or, directly or indirectly, submitted such quotations for publication, in a quotation medium, the Pink Sheets, and: (i) did not have in its records the documentation required by SEC Rule 15c2-11(a) ("Paragraph (a) information"); (ii) did not have a reasonable basis under the circumstances for believing that the

Paragraph (a) information was accurate in all material respects; or (iii) did not have a reasonable basis under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The quotations did not represent a customer's indication of unsolicited interest.

4. The conduct described in paragraph three constitutes separate and distinct violations of SEC Rule 15c2-11.
5. For each quotation described in paragraph three, CANT failed to file a Form 211 with NASD at least three business days before CANT's quotations were published or displayed in a quotation medium.
6. The conduct described in paragraph five constitutes separate and distinct violations of NASD Marketplace Rule 6740.
7. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with SEC Rule 15c2-11 and NASD Marketplace Rule 6740. The firm's supervisory system did not include written supervisory procedures providing for: (1) identification of the persons responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory steps to be taken by the identified persons; (3) a statement as to how often such persons should take such steps; and (4) a statement as to how the completion of the steps included in the written supervisory procedures should be documented.
8. The conduct described in paragraph seven constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. CANT also consents to the imposition, at a maximum, of the following sanctions:

A censure and a \$25,000 fine (consisting of a \$10,000 fine for OATS violations in 20050018123 and a \$10,000 fine for SEC Rule 15c2-11 and NASD Rule 6740 violations and a fine of \$5,000 for a supervision violation in 2005001117).

The sanctions imposed herein shall be effective on a date set by NASD staff.

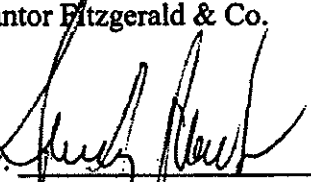
III.

OTHER MATTERS

- A. CANT understands that CANT may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. CANT understands that CANT 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 NASD, nor does it reflect the views of NASD or its staff.
- B. CANT agrees to pay any monetary sanctions imposed on CANT upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which CANT proposes to pay any fine imposed.
- C. CANT specifically and voluntarily waives any right to claim that CANT is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

CANT certifies that CANT has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce CANT to submit it.

Cantor Fitzgerald & Co.

By: 

Name: Philip A. Amato

Title:

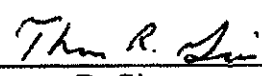
President C.F.C.

Reviewed by:


Counsel for Respondent

Accepted by NASD:

Date


Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation

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