

FINRA

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20060061440-01**

JUN -9 AM 11:58

TO: Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Cantor Fitzgerald & Co. (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 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 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**

The firm has been a member of FINRA since February 16, 1945, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

On October 13, 2005, FINRA 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 Order Audit Trail System violations; a \$10,000 fine for SEC Rule 10b-10 violations; a \$5,000 fine for SEC Rule 11Ac1-5 violations; a \$2,000 fine for recordkeeping violations, and a \$5,000 fine for a supervision violation), and an undertaking to revise the firm's written supervisory procedures.

000003230 2011

### **SUMMARY**

In connection with 20060061440, the Short Sales staff of FINRA's Department of Market Regulation (the "staff") reviewed the firm's compliance with Regulation SHO during the period July 6, 2006 through September 5, 2006.

In connection with 20070108582, the staff reviewed the firm's compliance with Regulation SHO during the period January 11, 2007 through July 5, 2007.

In connection with 20080124839, the staff reviewed the firm's compliance with the rules applicable to short interest reporting during the period October 15, 2007 through March 31, 2008.

In connection with 20080124997, the staff reviewed the firm's compliance with Regulation SHO during the period October 31, 2007 through December 3, 2007.

In connection with 20080131378, the staff reviewed the firm's compliance with Regulation SHO during the period March 21, 2007 through May 9, 2007.

### **FACTS AND VIOLATIVE CONDUCT**

#### **20060061440**

1. During the review period, the firm executed 32 short sale orders and failed to properly mark the orders as short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
2. During the review period, the firm had a fail-to-deliver position at a registered clearing agency in Telkonet Inc. ("TKO"), a threshold security, for 13 consecutive settlement days beginning July 24, 2006, and failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3) of Regulation SHO.
3. The firm failed on 13 occasions to provide written notification disclosing to its customer the correct settlement date(s) for the transaction. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

#### **20070108582**

4. During the review period, the firm, on 12 occasions, accepted a short sale order in an equity security from another person, or effected a short sale in an equity security for its own account, without (1) borrowing the security, or entering into a bona-fide arrangement to borrow the security; or (2) having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (3) documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The conduct

described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(1) of Regulation SHO.

5. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
  - (a) specific identification of the individual(s) responsible for supervision;
  - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
  - (c) the frequency of such reviews; and
  - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: SEC Rule 203(a) of Regulation SHO [(a); (b); (c); and (d)] and SEC Rule 203(b)(3) of Regulation SHO [b]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

**20080124839**

6. During the review period, the firm submitted reports to FINRA concerning NYSE, NYSE AMEX, and Nasdaq short interest positions at the firm. These reports included 101 short interest positions totaling 5,756,014 shares, when the firm should have reported 12 short interest positions totaling 38,343 shares. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360.

**20080124997**

7. During the review period, the firm had a fail-to-deliver position at a registered clearing agency in InterOil Corporation ("IOC"), a threshold security, for 13 consecutive settlement days beginning November 19, 2007, and failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3) of Regulation SHO.

**20080131378**

8. During the review period, the firm had a fail-to-deliver position at a registered clearing agency in Syntax-Brilliant Corporation ("BRLC"), a threshold security, for 13 consecutive settlement days beginning April 9, 2007, and failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3) of Regulation SHO.

9. During the review period, the firm had a fail-to-deliver position at a registered clearing agency in BRLC, a threshold security, for 13 consecutive settlement days beginning April 9, 2007, and, without closing out the fail-to-deliver position by purchasing securities of like kind and quantity, it failed to borrow the security or enter into a *bona fide* arrangement to borrow the security before executing 1,724 proprietary short sales in BRLC. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3) of Regulation SHO.

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

**A censure, a fine of \$125,000 (consisting of a \$10,000 fine for order marking violations, a \$20,000 fine for close-out violations, and a \$7,500 fine for SEC Rule 10b-10 violations in 20060061440; a \$5,000 fine for locate violations and a \$5,000 fine for supervision violations in 20070108582; a \$17,500 fine for short interest reporting violations in 20080124839; a \$10,000 fine for close-out violations in 20080124997; and a \$10,000 fine for close-out violations and a \$40,000 fine for pre-borrow violations in 20080131378), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.5.**

Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph I.A.5; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC 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 FINRA staff.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- 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, the firm 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.

The firm 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**

The firm 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 the firm; and

**C. If accepted:**

1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. 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 AWC or create the impression that the AWC is without factual basis. The firm 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 the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

**D. The firm may attach a Corrective Action Statement to this AWC 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 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 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 the firm to submit it.

6/8/11  
Date

**Respondent**  
**Cantor Fitzgerald & Co.**

By: [Signature]

Name: John P. Math

**Title:** CE

Reviewed by:

Attorney Name

**Accepted by FINRA:**

8/14/11  
Date

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

*Thomas R. Gira*  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation

