

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070073097-01

RECEIVED

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REGISTRATION & DISCLOSURE

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

RE: Cantor Fitzgerald & Co. (BD No. 134),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

Cantor has been a member of FINRA since February 16, 1945. The firm is also a member of the ISE, NSX and NYSE Arca. The firm's primary business activities include trading in equity, corporate, government, mortgage-backed and municipal securities and financial futures.

Cantor employs approximately 513 registered persons operating out of 24 branch offices.

RELEVANT DISCIPLINARY HISTORY

On October 13, 2005, the firm entered into an AWC with NASD through which the firm was censured, fined \$39,500, and agreed to undertakings to revise its supervisory procedures in connection with various violations including violations of Securities Exchange Act Rule 10b-10, violations of the NASD's affirmative determination rule and books and records violations.

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On October 15, 2004, Cantor entered into an AWC with NASD through which the firm was censured and fined \$7,500 fine on for violations of Securities Exchange Act Rule 10b-10.

On January 15, 2004, Cantor entered into an AWC with NASD through which the firm was censured and fined \$29,000 for several violations including a violation of Securities Exchange Act Rule 10b-10.

FACTS AND VIOLATIVE CONDUCT

1. Violation of Securities Exchange Act Rule 203(b)(1) and NASD Conduct Rule 2110

Between December 2006 and November 2007 Cantor executed 2,401 listed, non-market-making proprietary short sales using a third party trading system. No locates were performed on these 2,401 transactions prior to execution.

By reason of the foregoing, Cantor violated Securities Exchange Act Rule 203(b)(1) and NASD Conduct Rule 2110.

2. Violation of Securities Exchange Act Rule 203(b)(3) and NASD Conduct Rule 2110

A review of Cantor's aged threshold fails to deliver from July 2, 2007 through October 1, 2007 disclosed that on October 1, 2007, the firm had open fail positions in three threshold securities aged 36, 34 and 32 days, respectively, as of that date. Cantor had not closed the aged threshold fail positions out after 13 days, as required under Rule 203(b)(3).

Additionally, Cantor accepted three orders for customer short sales in two of these three threshold securities after its fail positions were aged more than thirteen consecutive settlement days in violation of Rule 203(b)(3).

By reason of the foregoing, Cantor violated Securities Exchange Act Rule 203(b)(3) and NASD Conduct Rule 2110.

3. Violation of Securities Exchange Act Rule 10b-10 and NASD Conduct Rule 2110

Cantor failed to disclose required yield information on customer confirmations for 4,919 of 25,958 corporate bond transactions (19%) the firm effected between December 10, 2005 and September 21, 2007.

By reason of the foregoing, Cantor violated Securities Exchange Act Rule 10b-10 and NASD Rule 2110.

4. Violation of MSRB Rule G-15

Cantor failed to disclose required yield information on customer confirmations for 192 out of 1,741 municipal bond transactions (11%) between December 10, 2005 and September 21, 2007.

By reason of the foregoing, Cantor violated MSRB Rule G-15.

5. **Violation of MSRB Rule G-8**

MSRB Rule G-8 requires, *inter alia*, that order memorandum for principal transactions in municipal securities show the time of order receipt and time of order execution. A review of a sample of 38 municipal securities transactions Cantor effected between December 2005 and September 2007 disclosed that in 100% of the sampled transactions the firm failed to record time of receipt on the order memoranda.

By reason of the foregoing, the firm violated MSRB Rule G-8.

6. **Violation of Securities Exchange Act Rule 17a-3, NASD Conduct Rules 3110 and 2110**

Securities Rule 17a-3 requires, *inter alia*, that a firm maintain a memorandum of each brokerage order that shows time of order receipt and time of order execution. A review of a sample of 60 corporate bond transactions the firm effected between December 2005 and September 2007 revealed that in 100% of the sampled transactions the firm failed to record the time of receipt on the order memoranda.

By reason of the foregoing, Cantor violated Securities Exchange Act Rule 17a-3 and NASD Rules 3110 and 2110.

B. Respondent also consents to the imposition of the following sanctions:

- a censure; and
- a fine of \$140,000.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that Respondent 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

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

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

- 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, Respondent 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.

Respondent 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

Respondent 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. Respondent 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. Respondent 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Respondent has agreed to its 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 Respondent to submit it.

7/17/09
Date

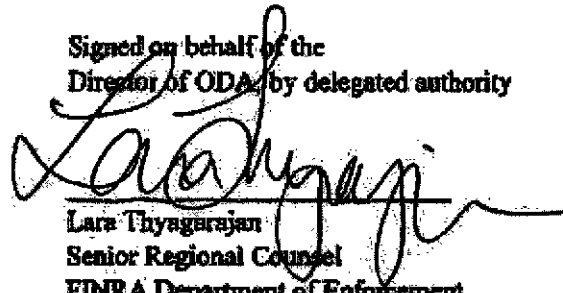

Respondent, Cantor Fitzgerald & Co. (BD No. 134)
By: Sharon P. Matthews

Accepted by FINRA:

July 22, 2009

Date

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

A handwritten signature in black ink, appearing to read 'Lara Thyagarajan', is written over a horizontal line.

Lara Thyagarajan
Senior Regional Counsel
FINRA Department of Enforcement
One Liberty Plaza
New York, NY 10006