

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080123329-02**

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 ("OATS") violations, a \$10,000 fine for SEC Rule 10b-10 violations, a \$5,000 fine for SEC Rule 11a1-5 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 ("WSPs").

On October 5, 2006, FINRA accepted an AWC that imposed a censure and a \$25,000 fine (consisting of a \$10,000 fine for OATS violations, a \$10,000 fine for SEC Rule 15c2-11 and NASD Rule 6740 violations, and a \$5,000 fine for a supervision violation).

On August 11, 2009, FINRA accepted an AWC that imposed a censure and a \$10,000 fine for OATS violations.

On August 11, 2009, FINRA accepted an AWC that imposed a censure, a \$135,000 fine, and an undertaking to revise the firm's WSPs. The fine consisted of the following:

- a \$20,000 fine for OATS violations in 20050031328 (including 20050035391 and 20060044669);
- a \$10,000 fine for late trade reporting violations in 20060064922;
- a \$10,000 fine for the OATS violations in 20060047031;
- a \$10,000 fine for the short sale violations in 20060048103;
- a \$10,000 fine for the trade reporting violations in 20070080473;
- a \$5,000 fine for the OATS violations, a \$10,000 fine for the short sale trade reporting violations; a \$5,000 fine for the inadequate WSP violation and a \$15,000 fine for the failure to supervise violation in 20050017967;
- a \$15,000 fine for the OATS violations, a \$5,000 fine for the SEC Rule 10b-10 violations, and a \$5,000 fine for the supervision violation in 20060067832; and
- a \$5,000 fine for the SEC Rule 10b-10 violations and a \$10,000 fine for the OATS violations in 20070111207.

SUMMARY

In connection with 20080123329, the staff of FINRA's Department of Market Regulation (the "staff") reviewed the firm's compliance with the rules applicable to OATS reporting during the period July 1, 2007 through September 30, 2007 (the "OATS review period").

In connection with the 2008 Trading and Market Making Surveillance ("TMMS") Examination, 20080150454, the staff reviewed the items set forth on Exhibit A, which is attached and incorporated by reference, primarily for trade dates September 24 and 25, 2008.

In connection with the 2009 TMMS Examination, 20090170059, the staff reviewed the items set forth on Exhibit B, which is attached and incorporated by reference, primarily for trade dates August 24 and 25, 2009.

FACTS AND VIOLATIVE CONDUCT

20080123329

1. During the OATS review period, the firm transmitted to OATS 4,328 Reportable Order Events ("ROEs") that were rejected by OATS for context or syntax errors and were repairable. The firm failed to repair 2,799 of these rejected ROEs during the review period, representing approximately 64 percent of all rejected repairable ROEs. As a result of the firm's failure to repair these ROEs, the firm failed to transmit 2,799 ROEs to OATS during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20080150454

2. During the review period, the firm transmitted to OATS 17 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports omitted accurate share quantities and desk route information; contained inaccurate exception codes and inaccurate timestamps; and omitted special handling instructions and a required desk report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning sales transactions. Specifically, the firm's supervisory system did not include written supervisory procedures providing for a statement of the supervisory step(s) to be taken by the identified person(s). The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

20090170059

4. During the review period, the firm transmitted to OATS eight reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate desk and cancel/replace reports, inaccurate timestamps, inaccurate special handling codes, and omitted a special handling code. In addition, the firm failed to transmit data to OATS for one order. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
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: best execution [(c) and (d)]; entering quotes into multiple real-time quotation systems [(a), (b), (c), and (d)]; and the Sub Penny Rule [(a), (b), (c), and (d)]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

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

A censure, a fine of \$45,000 (consisting of a \$15,000 fine for the OATS violations in 20080123329; a \$7,500 fine for the OATS violations and a \$7,500 fine for the supervision violations in 20080150454; and a \$10,000 fine for the OATS violations and a \$5,000 fine for the supervision violations in 20090170059), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs I.A.3 and 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 paragraphs I.A.3 and 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.

Date 11/19/10

Respondent
Cantor Fitzgerald & Co.

By: 

Name: **HEIDI OLSON**
CHIEF OPERATING OFFICER
 Title: **EQUITY CAPITAL MARKETS**

Reviewed by:

Attorney Name

Accepted by FINRA:

12/21/10
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

2008 Market Regulation Examination Samples
Cantor Fitzgerald and Co. ("CANT")
Exam No. 20080150454
Sample Source/Period*: September 24 and 25, 2008

<u>Sample Size</u>	<u>Sample Description</u>
738	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
15	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
2192	Trades reported to a TRF or OTCTRF for compliance with NASD Rule 6130
<u>2191</u>	for general trade reporting requirements
<u>40</u>	for Cancellation of reported trade requirements
<u>2192</u>	for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange
<u>104</u>	for compliance with the requirements of odd-lot trade reporting
<u>48</u>	for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
<u>1137</u>	for Sale Indicator requirements
0	Disclosures to customers relating to trading in the Extended Hours session for compliance with Nasdaq Rule 4631
713	Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755 and 2110
18	Orders for compliance with best execution requirements of NASD Rule 2320
<u>10</u>	'Not Held' orders for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements
<u>8</u>	Customer orders in OTC equity securities for compliance with NASD Rules 2320 and 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
2	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
50	Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements
134	Customer confirmations prepared and maintained in connection with select samples
<u>134</u>	for compliance with SEC Rule 10b-10 disclosure requirements
<u>15</u>	for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements

2008 Market Regulation Examination Samples
Cantor Fitzgerald and Co. ("CANT")
Exam No. 20080150454
Sample Source/Period*: September 24 and 25, 2008

<u>Sample</u>	<u>Size</u>	<u>Sample Description</u>
	15	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
All Provided		Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided		Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements
All Provided		Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rules 610, 611, and 612
	851	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110

2009 Market Regulation Examination Samples
Cantor Fitzgerald and Co. ("CANT")
Exam No. 20090170059
Sample Source/Period*: Trade Dates August 24-25, 2009

<u>Sample Size</u>	<u>Sample Description</u>
76	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
9	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
71	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
100	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
100	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into BATS Exchange execution system for compliance with BATS Rule 11.19 long/short reporting requirements
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
20	Orders for compliance with best execution requirements of NASD Rule 2320
0	Held orders from the Held Order Protection Review
12	Not Held orders from the Not Held Order Review
0	Order executed with a .PRP (Prior Reference Price) trade modifier
8	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
0	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
0	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
45	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
173	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10

2009 Market Regulation Examination Samples

Cantor Fitzgerald and Co. ("CANT")

Exam No. 20090170059

Sample Source/Period*: Trade Dates August 24-25, 2009

<u>Sample Size</u>	<u>Sample Description</u>
23	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
N/A	Data sets published for Month Year monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
17	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
8	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
0	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
710	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
148	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements