

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011026837401**

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

RE: Cantor Fitzgerald & Co. ("Cantor" or the "Firm"), Respondent
BD No. 134

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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Cantor 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 FINRA member since February 16, 1945. The Firm is headquartered in New York, New York. Its business activities include market making and proprietary trading. Cantor employs approximately 700 registered persons operating out of 26 branch offices.

RELEVANT DISCIPLINARY HISTORY

Cantor has the following relevant disciplinary history in connection with Regulation SHO ("Reg SHO") violations:

- In June 2011, Cantor entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA through which the Firm was censured and fined \$125,000 for various violations – including several threshold security close-out violations under Reg SHO – during the period 2006 –

2007. The Firm also consented to findings that the Firm failed to maintain an adequate supervisory system and adequate supervisory procedures regarding compliance with Reg SHO Rule 203. The AWC also imposed an undertaking to revise the Firm's written supervisory procedures for compliance with Reg SHO Rule 203 to include, among other things, "specific identification of the individual(s) responsible for supervision" and "the supervisory steps and reviews to be taken by the appropriate supervisor." (AWC No. 20060061440).

- In August 2009, Cantor entered into an AWC with FINRA through which it was censured and fined \$135,000 for, among other violations, failures to perform locates and affirmative determinations that occurred from November 2004 through May 2005. (AWC No. 20050017967).
- In July 2009, Cantor entered into an AWC with FINRA through which the Firm was censured and fined \$140,000 fine for various violations, including Reg SHO violations, that occurred from December 2006 through November 2007. (AWC No. 20070073097).
- In October 2005, Cantor entered into an AWC with FINRA through which the Firm was censured and fined \$39,500 for various violations including supervisory violations involving affirmative determinations. FINRA also imposed an undertaking to revise the Firm's written supervisory procedures to require a description of steps to be taken by the person responsible for ensuring compliance with the affirmative determination rule. (AWC No. 20042000063).

OVERVIEW

Between January 1, 2010 and March 31, 2010 (the "Relevant Period"), Cantor violated Securities and Exchange Act Rule 204 [Delivery and Close-Out Requirements] ("Rule 204") of Reg SHO in that it failed to close-out CNS¹ failures to deliver² resulting from proprietary short sales and bona-fide market making activities in the requisite time frame. The Firm also executed proprietary short sales during the Relevant Period without performing a pre-borrow when a security was failing at CNS, in further violation of Rule 204 of Reg SHO. Finally, Cantor failed to establish and maintain a supervisory system, including written policies and procedures, reasonably designed to achieve compliance with Rule 204 of Reg SHO during the Relevant Period. As such, Cantor also violated NASD Rule 3010 and FINRA Rule 2010.

¹ CNS is the "Continuous Net Settlement" system by which the National Securities Clearing Corp. nets, allocates, and allots securities and money positions.

² When a seller does not deliver the securities sold to the buyer by settlement date as required, it is called a "failure to deliver," a "fail to deliver," or a "fail."

FACTS AND VIOLATIVE CONDUCT

Rule 204 of Reg SHO

On September 17, 2008, the Securities and Exchange Commission ("SEC"), through an emergency order, adopted Rule 204T, a temporary rule that imposed enhanced delivery requirements on sales of all equity securities. In October 2008, the SEC adopted temporary Rule 204T (with certain modifications) as an interim final temporary rule with an expiration date of July 31, 2009 ("Rule 204T"). Effective July 31, 2009, the SEC made permanent the requirements of temporary Rule 204, with additional modifications. *See* Exchange Act Release No. 34-60388 (July 27, 2009), 74 FR 38266 (July 31, 2009).

Rule 204 of Reg SHO requires broker-dealers to close-out any failure to deliver that exists on settlement date by the opening of trading on T+4 in the case of proprietary short sales (or by the opening of trading on T+6 in the case of market-making long sales).

Violation of NASD Rule 3010 and FINRA Rule 2010

During the Relevant Period, Cantor maintained its Reg SHO-related policies and procedures in three separate manuals: (a) its Equity Trading and Market Making Manual, (b) its Compliance and Supervisory Manual, and (c) its Operations Manual.

The Equity Trading and Market Making Manual in effect during the Relevant Period contained no procedures regarding either Rule 204T or 204. Similarly, the Compliance and Supervisory Manual contained no compliance or supervisory procedures for compliance with Rule 204.

Although the Operations Manual contained certain Rule 204 procedures, it failed to set forth procedures to monitor fails to deliver in proprietary transactions. Additionally, the procedures did not provide guidance on action(s) to be taken to close-out proprietary fails. Moreover, the operational procedures failed to identify the specific individual(s) responsible for: (1) identifying securities that needed to be closed-out, and (2) effecting the necessary close-outs and/or buy-ins. By reason of the foregoing, Cantor violated NASD Rule 3010 and FINRA Rule 2010.

Violation of Rule 204 of Reg SHO

Reg SHO was designed to establish uniform delivery and close-out requirements in order to address problems associated with fails to deliver, including potentially abusive "naked" short selling. Cantor failed to close out proprietary and market making fail positions within the timeframes provided by Rule 204 of Reg SHO during the Relevant Period. In addition, the Firm executed additional proprietary

short sales without performing a pre-borrow when a security was failing to deliver at CNS. More specifically,

- The Firm did not close-out six CNS fails resulting from proprietary short sales by the beginning of regular trading hours on the settlement day following the settlement date (T+4);
- The Firm did not close-out two CNS fails resulting from bona-fide market making activities by the beginning of regular trading hours on the third consecutive settlement day following the settlement date (T+6); and
- The Firm executed additional proprietary short sales without performing a pre-borrow when a security was still failing at CNS.

While Cantor maintained two reports to track CNS fails during the Relevant Period: (1) the Inventory Shorts v. CNS Report; and (2) the Items Due For Buy-In Report, the Firm failed to monitor these reports in order to identify proprietary fails for close-outs. Moreover, the Firm failed to ensure that traders were instructed to close-out their proprietary positions. As a result, during the Relevant Period, the Firm's proprietary fail positions routinely remained open past T+4 (and market making fails remained open past T+6), in violation of rule requirements. Accordingly, Cantor violated Rule 204 of Reg SHO during the Relevant Period.

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

1. A Censure;
2. A fine in the amount of \$150,000;
3. An Undertaking. The Firm shall, within 60 days of the issuance of this AWC, revise its written supervisory procedures to include: (1) the identification of the person(s) responsible for supervision with respect to compliance with Reg SHO; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement reflecting the frequency with which such person(s) shall take such step(s); and (4) a statement explaining how the completion of the step(s) included in the written supervisory procedures will be documented. As part of this undertaking, the Firm's written supervisory procedures shall identify the person(s) responsible for identifying securities positions resulting from proprietary and market making transactions that are required to be closed-out and for performing the necessary close-outs and/or buy-ins in connection therewith; and

4. A Certification. A duly authorized senior officer of the Firm (such as the Chief Compliance Officer) must certify in writing to Enforcement within 90 days of the issuance of this AWC that the Firm has adopted and implemented supervisory systems and written procedures reasonably designed to achieve compliance with current Reg SHO requirements. In addition, the certification shall attest to, contain documentation of, and set forth the details of the Firm's implementation of the undertaking set forth above.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

Cantor 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, Cantor 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.

Cantor 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

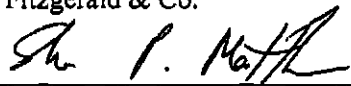
Cantor understands that:

- 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. Cantor 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. Cantor 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 Cantor's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Cantor may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Cantor 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 such person 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 the Firm to submit it.

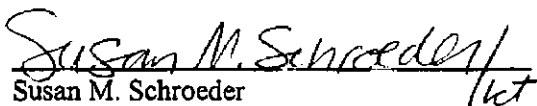
8/13/12
Date (mm/dd/yyyy)


Respondent
Cantor Fitzgerald & Co.
By: 
Title: CEO

Accepted by FINRA:

8/21/12
Date

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


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