

FINRA

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

2013 NOV 14 PM 11:47

NO. 20120316469-01

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 September 7, 2012, FINRA accepted an AWC in connection with 20090201999 in which the firm was fined \$53,500, of which \$11,000 was for late and inaccurate Trade Reporting and Compliance Engine ("TRACE") reports from July 1, 2009 through September 30, 2009; and \$5,000 was for OATS reporting violations identified in the firm's 2010 Trading and Market Making Surveillance ("TMMS") examination.

On February 17, 2011, FINRA accepted an AWC in connection with 20080163841 in which the firm was fined \$15,000, of which \$7,500 was for TRACE reporting violations that occurred from July 1, 2007 through September 30, 2007.

On December 23, 2010, FINRA accepted an AWC in connection with 20080123329 in which the firm was fined \$45,000 for OATS reporting violations that occurred from September 1, 2007 through December 31, 2007, on September 24-25, 2008, and on August 24-25, 2009.

On August 11, 2009, FINRA accepted an AWC in connection with 20050017967 in which the firm was fined \$135,000, of which \$15,000 was for SEC Rule 10b-10 violations identified in the firm's 2006 TMMS examination; and \$30,000 was for OATS reporting violations that occurred in 2005 and 2006.

Also on August 11, 2009, FINRA accepted an AWC in connection with 20060062887 in which the firm was fined \$10,000 for OATS reporting violations that occurred from January 1, 2006 through March 31, 2006.

SUMMARY

In TMMS Examination No. 20120316469, the staff of FINRA's Department of Market Regulation (the "staff") reviewed, in connection with the firm's 2012 Trading and Market Making Surveillance ("TMMS") examination, the items set forth on Exhibit 1, which is attached hereto and incorporated herein by reference, for trade dates September 12-13, 2012, unless otherwise noted (the "2012 TMMS review period").

In Matter No. 20120347317, the staff reviewed the firm's compliance with TRACE reporting requirements for corporate bond transactions from July 1, 2012 through September 30, 2012 (the 3Q12 review period).

In Matter No. 20120346996, the staff reviewed the firm's compliance with TRACE reporting requirements for agency bond transactions during the 3Q12 review period.

In Matter No. 20130366971, the staff reviewed the firm's compliance with TRACE requirements for agency bond new issue offerings during the period October 1, 2012 through March 31, 2013 (the 4Q12/1Q13 review period).

FACTS AND VIOLATIVE CONDUCT

20120316469 – 2012 TMMS Examination

1. During the 2012 TMMS review period, the firm failed on 24 occasions to provide written notification to its customer that the transaction was executed at an average price. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
2. During the 2012 TMMS review period, the firm transmitted to OATS 10 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, in five instances the firm incorrectly populated the customer instruction flag; in two instances the firm incorrectly reported the capacity of a principal execution; in one instance the firm incorrectly populated the desk type code within a Desk Report; in one instance the firm incorrectly submitted a Desk Report; and in one instance the firm incorrectly populated the customer instruction flag and desk type code with a Desk Report. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
3. During the 2012 TMMS review period, in six instances, the firm failed to document all required route information for an OATS order. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7440.
4. During September 2012, 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 FINRA and the SEC. At a minimum, adequate written supervisory procedures ("WSPs") addressing trading and market making 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 WSPs failed to provide for one or more of the four above-cited minimal requirements for adequate WSPs in the following subject areas: supervisory system, procedures, and qualifications (ensuring personnel are properly registered) [b, c]; order handling (disclosure of order execution information) [b]. The conduct described in this paragraph constitutes violations of NASD Rule 3010 and FINRA Rule 2010.

20120347317 – 3Q12 TRACE Corporate Review

5. During the 3Q12 review period, the firm failed to report to TRACE 335 S1 transactions in TRACE-eligible corporate debt securities within 15 minutes of the time of execution. These transactions constituted 4.4% of the transactions in TRACE-eligible corporate debt securities that the firm was required to report to TRACE during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.

20120346996 – 3Q12 TRACE Agency Review

6. During the 3Q12 review period, the firm failed to report to TRACE the correct market identifier in 42 S1 transactions in TRACE-eligible agency debt securities, and failed to report the correct contra-party identifier for 53 such transactions. These 95 transactions constituted 6.9% of the inter-dealer transactions in TRACE-eligible agency debt securities that the firm reported to TRACE during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rules 6730(d)(4)(C) (for the incorrect market identifiers) and 6730(c)(6) (for the incorrect contra-party identifiers).

20130366971 – 4Q12/1Q13 TRACE Agency New Issue Review

7. During the 4Q12/1Q13 review period, the firm failed to report 11 new issue offerings in TRACE-eligible agency debt securities to FINRA according to the time frames set forth in FINRA Rule 6760. These 11 offerings constituted 34% of the new issue submissions in TRACE-eligible agency debt securities that the firm submitted to FINRA Market Operations pursuant to a FINRA Rule 6760 obligation during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6760.
8. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to FINRA Rule 6760. Specifically, the Firm's supervisory system did not include WSPs providing for: (1) the identification of the person(s) responsible for supervision with respect to the rule; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.

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

A censure and a \$37,500 fine (\$2,500 for the SEC Rule 10b-10 violations in 20120316469; \$10,000 for the OATS reporting violations in 20120316469; \$5,000 for the deficient WSPs in 20120316469; \$10,000 for the TRACE reporting violations in 20120347317 and 20120346996; \$5,000 for the TRACE reporting violations in 20130366971, and \$5,000 for the deficient WSPs identified in 20130366971), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs 4 and 8 in Section A above. Within 90 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 this paragraph; 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.

11/13/13
Date

CANTOR FITZGERALD & CO.
Respondent

(GND) By: [Signature]
Name: Sh. P. Nettle
Title: CEO

Reviewed by:

Counsel for Respondent
Firm Name
Address
Phone Number

Accepted by FINRA:

12/9/13
Date

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

[Signature]
Gerard P. Finn
Chief Counsel
Department of Market Regulation

2012 Market Regulation Examination Samples
Firm Name ("CANT")
Exam No. 20120316469
Sample Source/Period*: September 12-13, 2012

<u>Sample Size</u>	<u>Sample Description</u>
155	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
7	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
308	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
40	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
41	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into Nasdaq OMX BX execution system for compliance with Nasdaq OMX BX Rule 4755 long/short reporting requirements
0	Sell orders entered into Nasdaq OMX PHLX execution system for compliance with Nasdaq OMX PSX Rule 3305 long/short reporting requirements
46	Sell orders entered into DirectEdge Exchange execution systems for compliance with EDGA/EDGX Rule 11.15 long/short reporting requirements
46	Buy and Sell orders entered into DirectEdge Exchange execution systems for compliance with EDGA/EDGX Rule 11.22 capacity reporting requirements
40	Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equities Rule 7.16 long/short reporting requirements
40	Buy and Sell orders entered into NYSE-Arca execution system for compliance with NYSE Arca Equities Rule 7.33 capacity 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
30	Orders for compliance with best execution requirements of FINRA Rule 5310: 6 Orders from the Order Protection Review 0 Order executed with a .PRP (Prior Reference Price) trade modifier 24 Customer orders in OTC equity securities
6	Orders for compliance with order protection requirements of FINRA Rule 5320
10	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with FINRA Rule 5330
51	Non-tape reports to a TRF or OTCRF for compliance with the Related Market Center Indicator requirements of FINRA Rules 7230A and 7330
0	Order memoranda and Net Trading agreements for compliance with FINRA Rule 2124 requirements
50	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450 requirements
84	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements

* unless otherwise noted

2012 Market Regulation Examination Samples
 Firm Name ("CANT")
 Exam No. 20120316469
 Sample Source/Period*: September 12-13, 2012

<u>Sample Size</u>	<u>Sample Description</u>
4	Data sets published for [July 2012] 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
24	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020-1040; Nasdaq Rule Series 1020-1040, Nasdaq OMX BX Rule Series 1020-1040; Nasdaq OMX PHLX Rule Series 600-604; EDGA/EDGX Rules 2.3, 2.5 and 11.4 and NYSE-Arca Rules 2.4, 6.18 and 7.21
24	Customer orders in OTC equity securities for compliance with FINRA Rule 5310, Supplementary Material .06: Securities with Limited Quotation or Pricing Information
1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265
7750	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4
613	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
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, Nasdaq OMX BX Rule 3010, Nasdaq OMX PHLX Rule 748, EDGA Rule 5.1, EDGX Rule 5.1 or NYSE-Arca Rule 6.18 requirements