

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046800201**

TO: Department of Enforcement
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" or "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. 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

The firm became a member of FINRA on February 16, 1945, and its registration remains in effect. The firm's headquarters are in New York City, and the firm currently employs a total of 848 registered representatives at its headquarters and its 29 branch office locations. The firm engages in institutional equity, fixed income sales and trading, as well as investment banking and prime brokerage services.

RELEVANT DISCIPLINARY HISTORY

On December 9, 2013, FINRA accepted an AWC in which the firm was censured, fined \$37,500 (including \$10,000 for Order Audit Trail System ("OATS") reporting violations, and \$5,000 for related supervisory deficiencies), and required to complete a supervisory undertaking for OATS reporting violations that occurred during a two-day review period in September 2012. The firm violated FINRA Rules 7440, 7450, 3010, and 2010.

OVERVIEW

In the period from October 1, 2015 through October 16, 2018, in more than 182 instances, the firm failed to include a code that reflected its reliance on an information

barrier when appropriate in its submissions to OATS. This conduct violated FINRA Rules 7440 and 7450.

In the periods May 17, 2016 through May 18, 2016, and January 19, 2017 through March 1, 2017, in at least 112 instances, the firm failed to submit an execution report to OATS. This conduct violated FINRA Rule 7450.

In the period October 1, 2015 through October 16, 2018, the firm failed to establish and maintain a system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules, including OATS reporting requirements. This conduct violated FINRA Rules 3110 and 2010.

From January 1, 2015 through June 30, 2016, the firm, on approximately 9,062 occasions, violated Rule 611(c) of Regulation NMS ("Reg NMS") of the Securities Exchange Act of 1934 by routing a intermarket sweep order ("ISO") to a covered exchange priced outside of at least one protected quotation without simultaneously routing additional limit orders to execute against the full displayed size of any protected bid. In addition, the firm violated FINRA Rules 3110 and 2010 in that it did not have a reasonable supervisory system to achieve compliance with Rule 611(c) of Reg NMS.

FACTS AND VIOLATIVE CONDUCT

OATS Reporting Violations

Relevant Rules

1. FINRA Rule 7440 lays out the requirements for the recording of order information that will ultimately be reported to OATS. FINRA Rules 7440(b)(19) (for conduct prior to August 1, 2016), and 7440(b)(20) (for conduct on and after August 1, 2016) state that "if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated" must be recorded.
2. FINRA Rule 7450(a) states, in relevant part, that "[a]ll applicable order information required to be recorded under Rule 7440 shall be transmitted to the Order Audit Trail System by each Reporting Member or by a Reporting Agent...."
3. FINRA Rule 7450(b)(2) states, in relevant part, that "[e]ach Reporting Member shall transmit to the Order Audit Trail System a report containing each applicable item of order information identified in Rule 7440(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed."
4. FINRA Rule 3110(a) states, in relevant part, that member organizations shall establish and maintain a supervisory system "that is reasonably designed to achieve

compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

5. FINRA Rule 2010 states that “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

Violative Conduct

6. FINRA uses OATS data as an integral part of its automated market surveillance program to detect potentially manipulative activity and other significant violations of FINRA rules and the federal securities laws. The failure to file an execution report results in an incomplete lifecycle, and can prevent FINRA from determining if an order was handled and executed according to its terms and conditions. Without the ability to accurately identify when an order event took place, surveillance patterns that look for timeliness and where events took place relative to other market information, such as a change to the national best bid and offer, are negatively impacted. Therefore, the failure to submit required reports to OATS, and the transmission of inaccurate or incomplete OATS data, can impede FINRA’s ability to detect potentially violative conduct and/or create false positive alerts.

Inaccurate OATS Submissions

7. During the period between October 1, 2015 and October 16, 2018, the firm’s information barriers prevented its market making desk from having knowledge of customer orders received by its broker-dealer desk. These information barriers were designed to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, and enable those other trading units to trade in a proprietary capacity at prices that would satisfy the customer orders held by another trading unit. A firm that uses such barriers is required to include an information barrier identifier when relevant in its submissions to OATS. On the sample date of September 20, 2017, the firm failed to include the required information barrier identifier in its submissions to OATS on 182 occasions.
8. These violations occurred because the firm’s Order Management System (“OMS”) was designed to report the required information barrier identifier only for activity between different aggregation units at the firm. However, because the firm’s Broker-Dealer Desk and Market Making Desk operated within the same aggregation unit, the necessary information barrier identifier was not included in those 182 OATS submissions even though such an identifier was required.
9. The conduct described in paragraphs seven and eight constitutes separate and distinct violations of FINRA Rules 7440(b)(19) (for conduct prior to August 1, 2016), 7440(b)(20) (for conduct on and after August 1, 2016) and 7450.

Failures to Submit Reportable Order Events to OATS

10. A review of a sample of orders from May 17 and 18, 2016 revealed that in twelve instances, the firm failed to submit execution reports, which are Reportable Order Events, to OATS. A limitation in the firm's OMS that handles OATS reporting caused these violations. In certain instances when a firm trader combined multiple orders from the same client before routing that combined order to the trading desk, instead of reporting the riskless principal leg of a trade, as required in FINRA's OATS reporting specifications, the firm's OMS reported the principal execution, which is an optional submission to OATS.
11. This OMS limitation was not limited to the two trade dates originally reviewed. After conducting an internal investigation to provide greater context of the scope of this limitation, the firm identified that approximately 100 such executions during the 30 trading days prior to March 2, 2017 were not reported to OATS as required.
12. The conduct described in paragraphs ten and 11 constitutes separate and distinct violations of FINRA Rule 7450.

Supervisory Deficiencies

13. During the period between October 1, 2015 and October 16, 2018, the firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable FINRA rules with regard to the information barrier identifier issue described above. As previously noted, limitations in the firm's OMS prevented the firm from appending the appropriate information barrier modifier when submitting execution reports to OATS in certain circumstances. The firm's failure to identify this issue was caused, at least in part, because its OATS review did not include a component designed to determine whether the information barrier identification was being properly reported. In addition, although the firm learned of this issue in July 2017, the firm failed to subsequently implement any reviews to determine whether the information barrier identification was being properly reported and failed to correct the issue until October 2018. For these reasons, the firm's supervisory system was not reasonably designed to achieve compliance with respect to FINRA rules relating to OATS reporting requirements. The conduct described in this paragraph constitutes violations of FINRA Rules 3110 and 2010.

Regulation NMS Violations

14. Rule 611 of Reg NMS, also known as the Order Protection Rule, was established to prevent the execution of trades at prices inferior to protected quotations displayed by automated trading centers, subject to applicable exceptions. ISOs are one such exception. The ISO exception contemplates a market participant seeking to access multiple price levels at different trading centers at the same time.

15. Accordingly, Rule 611(c) of Reg NMS requires broker-dealers to take reasonable steps to establish that ISOs meet the requirements of Rule 600(b)(30). Rule 600(b)(30) of Reg NMS requires that simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as an ISO.
16. From January 1, 2015 through June 30, 2016, the firm failed to take reasonable steps to establish that approximately 9,062 ISOs it routed met the definitional requirements set forth in Rule 600(b)(30) of Reg NMS. Specifically, due to a system error, when routing short sale ISOs during a short sale circuit breaker, the firm failed to simultaneously route additional limit orders to execute against the full displayed size of protected bids. The short sale ISOs that the firm did route were not executed, as a result of the short sale circuit breaker, and they were priced outside of at least one protected quotation resulting in a "route-through." The conduct described in this paragraph constitutes a violation of Rule 611(c) of Reg NMS and FINRA Rule 2010.
17. From January 1, 2015 through June 30, 2016, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with Rule 611(c) of Reg NMS. Specifically, while the firm had three surveillance reports to address Reg NMS and ISOs, the firm's supervisory review did not include a review for unexecuted ISOs. As a result, the firm was not aware that it was not routing secondary ISOs. The conduct described in this paragraph constitutes a violation of FINRA Rules 3110 and 2010.

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

1. A censure;
2. A fine of \$105,000 (consisting of \$40,000 for violating FINRA Rules 7440 and 7450, \$15,000 for violating FINRA Rules 3110 and 2010 in connection with the OATS reporting requirements, and \$50,000 for violating Reg NMS Rule 611(c) and FINRA Rules 3110 and 2010 in connection with Reg NMS Rule 611(c)); and
3. An undertaking requiring the firm to address the Reg NMS Rule 611(c) and supervisory deficiencies described in this AWC and to ensure that it has implemented controls and procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein.
 - a. Within 60 days of the date of the issuance of the Notice of Acceptance of this AWC, the firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF

**ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300,
ROCKVILLE, MD 20850, a written representation from a senior
management firm executive, to MarketRegulationComp@finra.org
that provides the following information:**

- i. A reference to this matter;**
 - ii. A representation that the firm: (a) has revised its written
supervisory procedures as indicated above, and (b) for
those deficiencies requiring technology and/or system
changes, has implemented such changes; and**
 - iii. The date(s) this was completed.**
- b. The Department of Enforcement may, upon a showing of good
cause and in its sole discretion, extend the time for compliance
with these provisions.**

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

**Respondent 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

**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 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 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 Chief Legal Officer, 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 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 accordance with FINRA Rule 8313;
 - 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 the firm's: (i) testimonial obligations; or (ii) 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. 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.

3/11/19
Date

Respondent

Cantor Fitzgerald & Co.

By: 

Name: MARK KAPLAN

Title: CHIEF OPERATING OFFICER

Accepted by FINRA:

4/11/19
Date

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


Steven M. Tanner
Senior Counsel
FINRA Department of Enforcement