

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016050863601**

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

RE: Cantor Fitzgerald & Co., Respondent
Member Firm
CRD No. 134

Pursuant to FINRA Rule 9216, Respondent Cantor Fitzgerald & Co. (Respondent or 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 Respondent alleging violations based on the same factual findings described in this AWC.

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 FINRA member in February 1945, and its registration remains in effect. The firm is headquartered in New York, New York, and it currently employs approximately 700 registered representatives at its 30 branch offices. The firm engages in trading for institutional customers, fixed income sales and trading, and investment banking and prime brokerage services.¹

OVERVIEW

From April 1, 2016 through December 31, 2018 (the Review Period), the firm failed to implement policies and procedures that reasonably avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in over-the-counter (OTC) Equity Securities, in violation of FINRA Rules 6437 and 2010.

Moreover, during the Review Period and through May 15, 2019, the firm failed to establish, maintain, and enforce written supervisory procedures (WSPs) reasonably designed to achieve compliance with FINRA Rule 6437, in violation of FINRA Rules 3110 and 2010.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

Relevant Rules

FINRA Rule 6437 (the Locked/Crossed Rule) requires FINRA members to implement policies and procedures that reasonably avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in any OTC Equity Security.

The Locked/Crossed Rule defines a “crossing quotation” as “the display of a bid for an OTC Equity Security at a price that is higher than the displayed price of an offer for such OTC Equity Security in the same inter-dealer quotation system, or the display of an offer for an OTC Equity Security at a price that is lower than the displayed price of a bid for such OTC Equity Security in the same inter-dealer quotation system.” The term “locking quotation” is defined as “the display of a bid for an OTC Equity Security at a price that equals the displayed price of an offer for such OTC Equity Security in the same inter-dealer quotation system, or the display of an offer for an OTC Equity Security at a price that equals the displayed price of a bid for such OTC Equity Security in the same inter-dealer quotation system.”

FINRA Regulatory Notice 10-42 provides guidance concerning policies and procedures to avoid displaying a quotation that would lock or cross the market and to resolve a locked or crossed market. Frequently Asked Questions (FAQ) Response # 8 in Regulatory Notice 10-42 states that “FINRA expects firms’ policies and procedures to require the quoting participant to make ‘reasonable efforts’ to first contact or route an order to execute against the full displayed size of any quotation before locking and crossing that quotation.”

FINRA Rule 3110(b)(1) requires a member organization to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

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.” A violation of FINRA Rules 6437 or 3110 constitutes a violation of FINRA Rule 2010.

Violative Conduct

During the Review Period, the firm entered quotations that locked or crossed the market in OTC Equity Securities. In certain situations, the firm locked or crossed quotations in OTC Equity Securities, and either did not contact other market participants prior to locking or crossing the market, or otherwise failed to take reasonable steps to unlock or uncross the market after it displayed a quotation that locked or crossed the market.

Although the firm had in place certain policies and procedures designed to avoid locking and crossing quotations in OTC Equity Securities, those policies and procedures did not

provide the firm's traders with reasonable guidance for how to avoid or resolve a locked or crossed market. For example, the firm employed a system-generated warning that appeared if a quotation entered by a firm trader would lock or cross the market. Although its traders had the ability to manually override this warning system, the firm did not provide reasonable guidance to its traders regarding their obligations in entering quotations that may lock or cross markets, or what actions to take after entering quotations that locked or crossed the market. Other efforts by the firm to remind its traders of the prohibition against displaying quotations that would lock or cross the market similarly lacked reasonable guidance as to how the traders were to avoid or resolve such situations.

Thus, during the Review Period, the firm failed to implement policies and procedures that were reasonably designed to avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in OTC Equity Securities. Therefore, Respondent violated FINRA Rules 6437 and 2010.

Moreover, from April 1, 2016 through May 15, 2019, the firm also failed to establish, maintain, and enforce WSPs that were reasonably designed achieve compliance with FINRA Rule 6437. Specifically, although the firm had issued a supervisory manual that required a supervisor to review a report that identified each instance of locked or crossed markets in OTC Equity Securities, it did not specify the process by which the supervisor was required to review the instances that were identified by the firm's supervisory system. Additionally, while the firm updated its WSPs in June 2017, they still failed to provide any guidance on how to perform a supervisory review for whether a trader was locking or crossing the market. On May 15, 2019, the firm sold its wholesale OTC market making business, which was the business that implicated the requirements of FINRA Rule 6437. As of that date, the firm ceased conducting business that would require compliance with FINRA Rule 6437.

As a result, the firm failed to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with the firm's obligations to avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in OTC Equity Securities. Therefore, Respondent violated FINRA Rules 3110 and 2010.

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

1. A censure; and
2. A fine of \$50,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent 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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 it;
- 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 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 its acceptance or rejection.

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 action brought by FINRA or any other regulator against Respondent;
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 its subject matter 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 Respondent's testimonial obligations or 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

May 27, 2021

Date

William Shields

Cantor Fitzgerald & Co.
Respondent

Print Name: William Shields

Title: Chief Compliance Officer

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

June 15, 2021
Date

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

Steven M. Tanner

Steven M. Tanner
Senior Counsel
FINRA
Department of Enforcement
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