

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017052741001**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent 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 FINRA member in February 1945. The firm's headquarters are in New York, New York, and the firm currently employs approximately 837 registered representatives at its headquarters and its 30 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 8, 2015, FINRA accepted an AWC in which the firm was censured and fined \$30,000 for failing to publish immediately bids or offers that reflected the price and the full size of 27 customer limit orders for Over-the-Counter ("OTC") Equity Securities held by the firm that were at a price that would have improved the bid or offer of the firm in such security during the periods of January 1, 2014 through March 31, 2014, and October 1, 2014 through December 31, 2014, in violation of FINRA Rule 6460.

OVERVIEW

During the period of April 1, 2016 through March 31, 2019 (the “Review Period”) the firm failed to immediately execute, route or display 152 customer limit orders in OTC Equity Securities when the price and the full size of each customer limit order would have improved the firm’s bid or offer in such security, in violation of FINRA Rules 6460 and 2010.

During the period of April 1, 2016 through May 15, 2019, the firm failed to establish and maintain a supervisory system and written supervisory procedures (“WSPs”) reasonably designed to achieve compliance with FINRA rules relating to the display of customer limit orders, in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

Relevant Rules

FINRA Rule 6460 (the “Limit Order Display Rule”) requires each OTC Market Maker displaying a priced quotation in any OTC Equity Security in an inter-dealer quotation system to publish immediately a bid or offer that reflects: (1) the price and the full size of each customer limit order held by the OTC Market Maker that is at a price that would improve the bid or offer of such OTC Market Maker in such security; and (2) the full size of each customer limit order held by the OTC Market Maker that: (A) is priced equal to the bid or offer of such OTC Market Maker for such security, (B) is priced equal to the best bid or best offer of the inter-dealer quotation system in which the OTC Market Maker is quoting, and (C) represents more than a *de minimis*¹ change in relation to the size associated with the OTC Market Maker’s bid or offer.

FINRA’s Regulatory Notice 10-42, FAQ Response # 4 provides guidance concerning the definition of “immediately” within the Limit Order Display Rule. It provides that absent an exception, firms must display customer limit orders as soon as practicable after receipt, which under normal market conditions would require display no later than 30 seconds after receipt.² It further states that OTC market openings should not be viewed

¹ FINRA’s Regulatory Notice 10-42, FAQ Response # 1 defines *de minimis* in this context: “In connection with all of FINRA’s NMS-Principled Rules, FINRA generally intends to adopt the same interpretive positions taken by the SEC in connection with the comparable provisions of Regulation NMS, unless explicitly noted otherwise. Thus, the size of a customer limit order is considered *de minimis* for purposes of Rule 6460 if it is less than or equal to 10 percent of the displayed size associated with an OTC Market Maker’s bid or offer.”

² While 30 seconds after the receipt of an order is generally considered as soon as practicable to route, execute, cancel, or display an order, NASD Notice to Members 98-78, *NASD Clarifies Operation of the Limit Order Protection Rule During Unusual Market Conditions* (September 1998), states that during “unusual market conditions,” such as market opening, the time limit would be one minute.

as “normal market conditions” for the purposes of the Limit Order Display Rule. However, limit orders held at the open should be displayed “as soon as practicable under the circumstances.”

FINRA Rule 3110(a) states, in relevant part, that member organizations shall establish and maintain a system to supervise “that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

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 6460 or 3110 constitutes a violation of FINRA Rule 2010.

Violative Conduct

1. FINRA reviewed a sample of 220 customer limit orders received by the firm during the Review Period. In 152 of those 220 instances, the customer limit order received by the firm would have improved the quoted market’s price or represented more than a *de minimis* size change, but the firm failed to take immediate action to display the order.
2. In 102 of these instances, if the firm had displayed the orders they would have locked or crossed another market maker’s quotation. In these instances, the firm either failed to send, or failed to timely send, an OTC Link message to access another market maker’s quote, or take any other action to fully route, display, or execute the orders within 30 seconds of the receipt of the order.
3. In 36 other instances, if the firm had displayed the orders they would have locked or crossed another market maker’s quotation. In these instances, although the firm initially took timely action, it failed to make subsequent steps to fully route, display, execute or cancel the customer limit order within 30 seconds of its initial attempts to do so.
4. In 14 other instances, the orders would not have locked or crossed another market maker’s quote, but failed to fully route, display, or execute the orders within 30 seconds of the receipt of the order.
5. The firm’s failures to immediately display these limit orders primarily resulted from delays caused by the manual handling of orders, or the firm’s

misunderstanding of its responsibilities when only a portion of a customer limit order was executed within 30 seconds of its receipt, as described below.

6. During the Review Period, there were instances in which the firm's order management system sent an order to a trader at its market making desk for manual handling, such as when there was limited liquidity in the security, or when there was only a partial execution of the order. In such instances, the trader on the firm's market making desk typically sent an OTC link message, crossed the order with another order, or committed capital and took the other side of the order. Since traders often handled multiple orders simultaneously while engaged in other actions, such as contacting potential counterparties, delays in display, routing, and execution could occur.
7. On May 15, 2019, the firm sold its wholesale OTC market making business, and as of that date no longer conducted a business that implicates the requirements of FINRA Rule 6460.
8. The conduct described in Paragraphs I.A.1 through I.A.4 constitutes separate and distinct violations of FINRA Rules 6460 and 2010.
9. During the Review Period, and through May 15, 2019, the firm failed to establish and maintain WSPs and a supervisory system that were reasonably designed to achieve compliance with FINRA Rule 6460.
10. The firm's system of supervision relating to Limit Order Display obligations required that firm personnel review samples of exceptions that appeared on the firm's surveillance reports, which were designed to detect orders that might not have been handled in accordance with the Limit Order Display Rule. However, in certain instances, the firm's review mistakenly concluded that because there was at least a partial execution within 30 seconds of initial receipt of a customer limit order and additional partial executions and/or efforts to execute it continuously thereafter, there was no Limit Order Display Rule violation. The firm's review of the exceptions was based upon a misunderstanding of the interpretative guidance to FINRA Rule 6460 in FINRA's Regulatory Notice 10-42, FAQ Response # 4. Therefore, the firm did not recognize Limit Order Display Rule violations in such circumstances that were brought to its attention. As a result, the firm's supervisory system was not reasonably designed to achieve compliance with the Limit Order Display Rule and interpretive guidance.
11. The firm's WSPs relating to the Limit Order Display Rule specified the group within the firm that was responsible for conducting the review designed to comply with FINRA Rule 6460, and also identified the sample size of customer limit orders to be reviewed that had appeared on the firm's surveillance reports.

However, the WSPs did not describe what constitutes a Limit Order Display Rule violation, nor did they specify the process by which firm personnel are required to review the exceptions that were identified by the firm's supervisory system. As a result, the firm failed to establish, maintain and enforce WSPs reasonably designed to achieve compliance with the firm's limit order display obligations.

12. The conduct described in paragraphs I.A.10 and I.A.11 constitute a violation of FINRA Rules 3110 and 2010.

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

1. A censure; and
2. A fine of \$85,000 (\$70,000 for FINRA Rule 6460 violations, and \$15,000 for the supervisory system and WSP violations).

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 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 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 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 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 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 Respondent'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. 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 or its staff.

The undersigned, on behalf of the Respondent 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 it to submit it.

5/26/20
Date

Respondent

Cantor Fitzgerald & Co.

By: [Signature]

Name: William Shklov

Title: CCO

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

June 2, 2020
Date

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

Steven Tanner