

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2018057892601**

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. 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 accepts and consents to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

Cantor Fitzgerald has been a FINRA member since February 1945. The firm is headquartered in New York, New York and has 29 branch offices. Cantor Fitzgerald's business includes institutional brokerage, underwriting, trading, and market-making.<sup>1</sup> Cantor Fitzgerald has approximately 675 registered individuals.<sup>2</sup>

**OVERVIEW**

From July 2017 through May 2019, Cantor Fitzgerald failed to provide best execution with respect to 2,395 customer orders in OTC securities that it received from other broker-dealers by failing to use reasonable diligence to ascertain the best market for the subject securities and by failing to buy or sell in such market so that the resultant prices to the customers were as favorable as possible under prevailing market conditions. As a result, Cantor Fitzgerald violated FINRA Rules 5310 and 2010.

From July 2017 through May 2019, the firm also failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA Rule 5310

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<sup>1</sup> During the period relevant to this AWC, Cantor Fitzgerald received approximately 5 million orders in OTC securities.

<sup>2</sup> For more information about the firm, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

best execution obligations for customer orders in OTC securities in violation of FINRA Rules 3110 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Cantor Fitzgerald failed to meet its best execution obligation for certain customer orders in OTC securities.**

This matter originated from FINRA's surveillance for potential best execution violations in OTC securities.

FINRA Rule 5310 states, in relevant part, that "[i]n any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions."

FINRA Rule 2010 requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade. A violation of FINRA Rule 5310 constitutes a violation of FINRA Rule 2010.

From July 2017 through May 2019, Cantor Fitzgerald acted as a market-maker in OTC securities, including securities quoted on OTC Link LLC, an inter-dealer quotation system formerly referred to as the "Pink Sheets." As a market-maker that quoted on OTC Link, the firm had access to, and regularly used, an electronic messaging service. This electronic messaging service enabled the firm and other individual market-makers to send each other messages (OTC Link messages) indicating an interest to buy or sell a specific number of shares of a security at a particular price.

During this period, Cantor Fitzgerald's market-making desk sent and received OTC Link messages to and from other dealers. Cantor Fitzgerald, however, did not integrate the OTC Link messages that it received into its order management system used to execute orders. As a result, on certain occasions, due to the firm's manual process, Cantor Fitzgerald did not execute an order received from a customer at another broker-dealer at the better available price as reflected in an OTC Link message received.

For example, on one day during the relevant period, Cantor Fitzgerald received a market order from a customer of another broker-dealer at 09:41:41.280 to sell 100 shares of a stock, which was executed at 09:42:31.914 at \$54.85 per share. From 09:41:45.170 to 09:41:55.170, the firm's market-making desk was in receipt of an OTC Link message from another broker-dealer to purchase 2500 shares of the stock at \$54.99. Cantor Fitzgerald, however, failed to provide to the customer the better price of \$54.99 that was available in the OTC Link message received.

From July 2017 through May 2019, as a result of the manual process described above, Cantor Fitzgerald did not provide best execution in connection with 2,395 orders in OTC securities by failing to use reasonable diligence to ascertain the best market for the

subject securities and to buy or sell in such market so that the resultant prices to the customers were as favorable as possible under prevailing market conditions.

Therefore, Cantor Fitzgerald violated FINRA Rules 5310 and 2010.<sup>3</sup>

**Cantor Fitzgerald’s supervisory system was not reasonably designed to achieve compliance with its best execution obligations.**

FINRA Rule 3110(a) provides, in relevant part, that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

From July 2017 through April 2018, Cantor Fitzgerald’s supervisory system for best execution in OTC securities failed to account for price opportunities available through OTC Link messages when evaluating the execution quality of customer orders received from other broker-dealers. Because the firm’s supervisory system excluded reviews of prices available in OTC Link messages, it had no way to determine whether such orders received an inferior execution price to that available via OTC Link messages.

In May 2018, Cantor Fitzgerald incorporated OTC Link messages into its best execution supervision review, and required price adjustments for customers when warranted. The review, however, had unreasonably narrow parameters and was not functional for the entire period. Specifically, the firm only reviewed trades that were executed from 9:45 a.m. to 3:45 p.m., when the customer order and OTC Link message were executable for at least five seconds, and when the potential price improvement was at least \$10. These parameters resulted in numerous customer transaction prices in OTC securities not being compared to potentially better priced OTC Link messages. Moreover, a technical issue during the period caused the exception report to generate no data for 75 trading days, further causing the firm to miss potentially better priced OTC Link messages.

As a result, the firm did not have a supervisory system reasonably designed to achieve compliance with its best execution obligations for customer orders in OTC securities.

Therefore, Cantor Fitzgerald violated FINRA Rules 3110(a) and 2010.

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

- a censure;
- a \$100,000 fine; and
- restitution of \$51,214.16 plus interest as described below.

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<sup>3</sup> In May 2019, Cantor Fitzgerald sold its OTC securities business that gave rise to this matter.

Restitution is ordered to be paid to the corresponding broker-dealers for payment to their customers in the total amount of \$51,241.16, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of execution of each corresponding broker-dealer's customer order until the date this AWC is accepted by the National Adjudicatory Council (NAC).

Within 60 days of the notice of acceptance of this AWC, the firm will submit to FINRA a schedule of the customer orders eligible for restitution, the corresponding broker-dealer for each order, and the total dollar amount of restitution and interest per broker-dealer using a methodology not unacceptable to FINRA. The firm will provide the total dollar amount to each broker-dealer and inform them that they are to use these funds solely to pay restitution and interest to its customers.

A registered principal on behalf of Cantor Fitzgerald shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount paid to each broker-dealer for each order) or of reasonable and documented efforts undertaken to effect such payment. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Cantor Fitzgerald. The email must identify Cantor Fitzgerald and the case number, and include a copy of the check, money order or other method of payment. This proof shall be provided to EnforcementNotice@FINRA.org no later than 120 days after the notice of acceptance of the AWC.

Cantor Fitzgerald shall provide each broker-dealer with a letter, not unacceptable to FINRA staff, (1) describing the reason for the restitution payments to the broker-dealer's customers and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC; (2) requesting that a registered principal on behalf of the broker-dealer (a) submit to FINRA satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each customer of the broker-dealer) or of reasonable and documented efforts undertaken to effect restitution; (b) submit such proof to FINRA by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of the broker-dealer within 120 days after the date of Cantor Fitzgerald's payment to the broker-dealer; and (c) identify in the email the broker-dealer and the case number and include a copy of the check, money order, or other method of payment; and (3) requesting that (a) the restitution amount plus interest to be paid to each customer of a broker-dealer be treated by the broker-dealer as the customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws; and (b) if after reasonable and documented efforts undertaken to effect restitution the broker-dealer is unable to pay all customers within 120 days after the date of Cantor Fitzgerald's payment to the broker-dealer, the broker-dealer shall submit to FINRA in the manner described above a list of the unpaid customers and a description of the broker-dealer's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each customer.

The imposition of a restitution order or any other monetary sanctions in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Respondent agrees to pay the monetary sanctions 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 sanctions 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

August 14, 2024

Date

*Mark Kaplan*

Cantor Fitzgerald & Co.  
Respondent

Print Name: Mark Kaplan

Title: Chief Operating Officer

Accepted by FINRA:

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

August 20, 2024

Date

*James Bowden, Jr.*

James Bowden, Jr.  
Counsel  
FINRA  
Department of Enforcement  
1700 K Street, NW  
Washington, DC 20006