

## FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the  
Continued Membership  
of  
Cantor Fitzgerald & Co.  
(CRD No. 134)

Notice Pursuant to  
Rule 19h-1  
Securities Exchange Act  
of 1934

SD-2340

**December 14, 2023**

### **I. Introduction**

On October 14, 2022, Cantor Fitzgerald & Co. (“Cantor” or “Firm”) submitted a Membership Continuance Application (“MC-400A Application” or “Application”) to FINRA’s Credentialing, Registration, Education, and Disclosure Department (“CRED”).<sup>1</sup> The Application seeks to permit the Firm, a FINRA member, to continue its membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA,” “Member Supervision,” or “Department”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

### **II. The Statutorily Disqualifying Event**

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D) and (E), as a result of a September 2022 Order issued by the Securities and Exchange Commission (“SEC” or “Commission”) finding that Cantor willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder (“SEC Order”).<sup>2</sup>

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<sup>1</sup> See MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 24, 2022, attached as Exhibit 1.

<sup>2</sup> See SEC Order, *In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 95927 (Sept. 27, 2022), attached as Exhibit 2.

The SEC Order also triggered disqualification under Rules 262(a)(4), 506(d)(1)(iv), and 602(c)(3) of the Securities Act of 1933 and Rule 503(a)(4)(ii) of Regulation Crowdfunding. On September 27, 2022, the SEC granted a waiver from the application of the disqualification provisions of these Rules. See *In re Certain Broker-Dealer Practices*, Securities Act Release No. 11109 (Sept. 27, 2022), attached as Exhibit 3.

According to the SEC Order, from at least January 2018 to September 2021, Cantor employees sent and received off-channel communications that related to the Firm's business, and a majority of these written communications was not maintained or preserved by the Firm.<sup>3</sup> Further, supervisors who were responsible for preventing this misconduct among junior employees routinely communicated off-channel using their personal devices and in so doing, failed to comply with Firm policies by communicating using non-Firm approved methods on their personal devices about the Firm's broker-dealer business.<sup>4</sup>

The Firm was ordered to cease and desist from committing or causing any future violations, censured, ordered to pay a civil money penalty of \$10,000,000, and ordered to comply with undertakings.<sup>5</sup>

### **III. Remedial Measures**

In the Application, the Firm represented that it has undertaken remedial measures in response to the SEC's findings, including making enhancements to its policies and procedures regarding sending and receiving business-related communications, improving training about the approved communications methods, and updating technology used for retention and surveillance.<sup>6</sup> Specifically, the Firm revised its global electronic communications policy with an added section specific to discipline; created compliance reminders; developed a training initiative for employees, including supervisors; and is implementing bi-annual certifications in addition to annual attestations regarding compliance with the Firm's electronic communications policies and procedures.<sup>7</sup> According to the SEC Order, the SEC considered the Firm's prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement.<sup>8</sup>

### **IV. Firm Background**

The Firm has been a FINRA member since February 1945.<sup>9</sup> It is headquartered in New York, New York with 29 branches (21 of which are Offices of Supervisory Jurisdiction).<sup>10</sup> The Firm employs approximately 1,285 individuals, which includes 560 registered representatives (of which 171 are registered principals), 654 non-registered fingerprint

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<sup>3</sup> See Exhibit 2 at p. 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at pp. 6-10. The Firm paid the civil penalty on October 6, 2022. See Exhibit 1 at FINRA p. 3. See also Correspondence from Mark Impellizeri to FINRA dated April 25, 2023 (with exhibits), collectively attached as Exhibit 4 at FINRA p. 1, Response 1, Ex. C at FINRA p. 4.

<sup>6</sup> See Exhibit 1 at p. FINRA p. 28.

<sup>7</sup> *Id.*

<sup>8</sup> See Exhibit 2 at p. 5.

<sup>9</sup> See Cantor Central Registration Depository ("CRD") Excerpt: Registration Status, attached as Exhibit 5 at p. 1.

<sup>10</sup> FINRA confirmed this through analysis of the Firm's information contained in CRD, last performed on October 18, 2023.

employees, and 71 operations professionals.<sup>11</sup> Cantor does not employ any statutorily disqualified individuals.<sup>12</sup>

Cantor is approved to engage in the following lines of business: broker or dealer making inter-dealer markets in corporate securities over-the-counter; broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); U.S. government securities dealer; U.S. government securities broker; municipal securities dealer; municipal securities broker; put and call broker or dealer or option writer; non-exchange member arranging for transactions in listed securities by exchange member; trading securities for own account; private placements of securities; effects transactions in commodity futures, commodities, and commodity options as broker for others or dealer for own account.<sup>13</sup>

The Firm is a member of the following self-regulatory organizations (“SROs”): Cboe BYX Exchange, Inc. (“BYX”); Cboe EDGA Exchange, Inc. (“EDGA”); Cboe EDGX Exchange, Inc. (“EDGX”); Investors’ Exchange LLC (“IEX”); NYSE Arca, Inc. (“NYSE Arca”); Nasdaq ISE, LLC (“ISE”); The Nasdaq Stock Market LLC (“Nasdaq”);<sup>14</sup> Municipal Securities Rulemaking Board (“MSRB”); The Depository Trust Company (“DTC”); the Fixed Income Clearing Corporation - Government Securities Division (“FICC-GOV”); the Fixed Income Clearing Corporation - Mortgage-Backed Securities Division (“FICC-MBS”); and the National Securities Clearing Corporation (“NSCC”).<sup>15</sup>

### **Recent Examinations**

In approximately the past two years, FINRA completed four routine examinations of the Firm, one of which was conducted on behalf of other SROs including BZX, EDGA, EDGX, IEX, Nasdaq, and NYSE Arca, and five non-routine examinations resulting in Cautionary Action Letters.

#### **A. Routine FINRA Examinations**

In October 2023, FINRA issued a Cautionary Action to Cantor with respect to nine exceptions related to the Firm’s failures to: identify and assign an unidentified large trader identification number (“ULTID”) for 16 large traders in the LargeTrdIdDaily report; assign a ULTID to 10 large traders identified by the LargeTrdIdDaily report the day after the report was generated; update the Firm’s Central Compliance Manual to remove retired reports; follow its written supervisory procedures (“WSPs”) with respect to supervising

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See CRD Excerpt: Types of Business, attached as Exhibit 6.

<sup>14</sup> See Exhibit 5.

<sup>15</sup> Membership in these organizations was verified by FINRA staff through a search of public member directories, last performed on October 18, 2023.

accounts held by Cantor's CEO and Chairman; maintain an adequate process or systems prior to onboarding customer accounts from its affiliates; maintain adequate WSPs governing a process to detect and prevent possession or control deficits; maintain adequate procedures, systems, or controls to ensure the appropriate treatment of customer and PAB accounts for reserve formula computation purposes; maintain WSPs adequately addressing account coding classification during the client onboarding process; accurately code 42 accounts as either non-customer DVP accounts or as a PAB account; accurately code one account as a customer account; establish credit limits prior to trading for one counterparty; maintain WSPs designed to address and resolve credit limit breaches; maintain a supervisory system, including WSPs, regarding compliance with SEA Rule 15c2-11; maintain an adequate supervisory system, including WSPs, designed to ensure that the Firm's Municipal Securities activities were in compliance with MSRB Rule G-14, in violation of MSRB Rule G-27(b); and accurately report at least 94 securities product transactions to TRACE.<sup>16</sup> The Firm responded in writing that it updated various WSPs and internal processes, committed to conducting a Testing and Monitoring Review of the LTID supervisory and control framework as well as review by the Firm's Internal Audit Department, and stopped the process of migrating customer margin accounts from an affiliate until the Firm has completed an ongoing project to install a system that would mitigate onboarding issues from the affiliate.<sup>17</sup> Two other exceptions for the October 2023 exam were referred to FINRA's Department of Enforcement ("Enforcement") for review and disposition.<sup>18</sup> These two exceptions related to Cantor's failure to maintain adequate processes and controls for compliance related to Financial Operational testing and to establish adequate procedures and controls designed to supervise the activities of its repo trading desk.<sup>19</sup> The Firm responded in writing that it made enhancements to its relevant procedures, processes, and policies.<sup>20</sup>

In May 2022, FINRA issued a Cautionary Action to Cantor with respect to two exceptions related to the Firm's failure to have a reliable system in place to track the cadence of, and to conduct, timely vendor assessments in accordance with its WSPs and its failure to follow its WSPs related to its heightened supervision program.<sup>21</sup> The Firm responded in writing that during the examination it was transitioning between third-party vendor risk

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<sup>16</sup> See Disposition Letter for Examination No. 20220732963 dated October 13, 2023, Examination Report dated July 28, 2023, and the Firm's Responses submitted on August 25 and September 18, 2023 (without exhibits, with redactions added by FINRA), collectively attached as Exhibit 7, at Examination Report, FINRA pp. 1-15 . The Firm's September 18, 2023 supplemental response is an undated document located in Exhibit 7 at FINRA p. 35.

<sup>17</sup> *Id.* at Firm Response, FINRA pp. 16-35.

<sup>18</sup> *Id.* at Disposition Letter, FINRA p. 1 and Examination Report, FINRA pp. 5-6. As of the date of this Notice, the exceptions referred to Enforcement remain open.

<sup>19</sup> *Id.* at Examination Report, FINRA pp. 5-6.

<sup>20</sup> *Id.* at Firm Response, FINRA pp. 17-19.

<sup>21</sup> See Disposition Letter for Examination No. 20210693414 dated May 19, 2022, Examination Report dated April 29, 2022, and the Firm's Response dated May 13, 2022, collectively attached as Exhibit 8, at Disposition Letter, FINRA p. 1 and Examination Report, FINRA pp. 5-6.

management systems, and it is now exploring ways to use the new system to improve its vendor risk management.<sup>22</sup> In addressing the exception related to its heightened supervision program, the Firm stated that it has updated its WSPs and will provide additional detail of the supervisory reviews on each notice of heightened supervision going forward.<sup>23</sup>

In September 2021, FINRA issued a Cautionary Action to Cantor with respect to one exception for its failure to use single-order or daily share quantity limits when accepting customer orders, setting its market-wide single-order notional limits at unreasonably high levels, and its failure to implement single-order notional limits at the user specific level.<sup>24</sup> The Firm responded in writing that it would review its instrument-based notional thresholds and re-calibrate the notional value controls, as well as update its policies and procedures to incorporate an annual review of instrument thresholds and user-limits.<sup>25</sup> Two other exceptions for the September 2021 exam were referred to Enforcement for review and disposition.<sup>26</sup> These two exceptions related to Cantor's failure to disclose in public reports the exchanges where options orders were routed for execution and its failure to supervise the order flow.<sup>27</sup> The two exceptions referred to Enforcement resulted in another Cautionary Action to the Firm on August 17, 2023 and a Letter of Acceptance, Waiver, and Consent ("AWC") entered between the Firm and FINRA on August 17, 2023.<sup>28</sup>

In September 2021, FINRA also completed an examination on behalf of BZX, EDGA, EDGX, IEX, Nasdaq, and NYSE Arca which resulted in a Cautionary Action to the Firm with respect to two of four noted exceptions, while the other two exceptions were referred to NYSE Regulation for its review and disposition on behalf of NYSE Arca.<sup>29</sup> Cantor was cautioned with respect to two exceptions for the lack of description in the Firm's procedures of how a reviewer of reports for potential self-trades validates that the orders are from different beneficial owners, the lack of sufficient details in the procedures to describe when escalations of exceptions were needed, and the failure of the procedures to sufficiently address a supervisory process to determine if sell orders are entered accurately into the exchange as long or short sales.<sup>30</sup> Cantor responded in writing that it amended its

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<sup>22</sup> *Id.* at Firm Response FINRA pp. 7-9.

<sup>23</sup> *Id.* at Firm Response FINRA p. 10.

<sup>24</sup> See Disposition Letter for Examination No. 20200651047 dated September 15, 2021, Examination Report dated January 19, 2021 (amended April 26, 2021), and the Firm's Response dated February 19, 2021, collectively attached as Exhibit 9.

<sup>25</sup> *Id.* at Firm Response, FINRA pp. 9-11.

<sup>26</sup> *Id.* at Disposition Letter, FINRA p. 1 and Examination Report, FINRA pp. 6-8.

<sup>27</sup> *Id.* at Examination Report, FINRA pp. 6-8.

<sup>28</sup> See Cautionary Action Letter for Examination No. 20200651047 dated August 17, 2023, attached as Exhibit 10. See also FINRA AWC No. 2020065104701, dated August 17, 2023, attached as Exhibit 11.

<sup>29</sup> See Disposition Letter for Examination No. 20200651048 dated September 15, 2021, Examination Report dated January 19, 2021, and the Firm's Response dated February 19, 2021, collectively attached as Exhibit 12.

<sup>30</sup> *Id.* at Examination Report, FINRA pp. 6-8.

Self-Trade Review manual and its order capacity review.<sup>31</sup> The two exceptions referred to NYSE Regulation related to the Firm's price tolerance thresholds not adequately preventing erroneous orders from reaching the market and the Firm's annual review of its market access program not adequately documenting rationales to demonstrate the reasonability of its 15c3-5 thresholds.<sup>32</sup>

#### **B. Non-Routine FINRA Examinations**

In February 2023, FINRA issued a Cautionary Action to the Firm for failing to report unregistered secondary distribution notices within three business days and for failing to design WSPs that would reasonably ensure compliance with the trade reporting exception in relation to unregistered secondary distributions.<sup>33</sup> The Firm responded in writing that it had submitted the missing unregistered secondary distribution notices and would revise its WSPs to address the corresponding deficiency.<sup>34</sup>

In November 2022, FINRA issued a Cautionary Action to the Firm for failing to have reasonably designed policies and procedures to achieve compliance with FINRA's Best Execution and Interpositioning Rule.<sup>35</sup> The Firm responded in writing that it would update its WSPs to add language explaining how registered representatives can determine the best inter-dealer market for securities in the absence of pricing information or multiple quotations, and how registered representatives can evidence compliance with this policy, to address the described deficiency.<sup>36</sup>

In May 2022, FINRA Enforcement issued a Cautionary Action to the Firm for failing to have a reasonably designed supervisory system, including WSPs, to identify and review potential instances of marking the close.<sup>37</sup>

In August 2021, FINRA issued a Cautionary Action to the Firm for failing to: establish and maintain adequate policies and procedures to validate orders marked as short exempt, correctly conduct and report short sale transactions, and provide reasonable supervision designed to achieve compliance with certain requirements of Regulation SHO and FINRA Trade Reporting Rules.<sup>38</sup> The Firm responded in writing that it had changed its order flow

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<sup>31</sup> *Id.* at Firm Response, FINRA p. 11.

<sup>32</sup> *Id.* at Examination Report, FINRA pp. 5-6.

<sup>33</sup> See Cautionary Action Letter for Examination No. 20200687021 dated February 6, 2023, and Firm Response dated February 27, 2023, collectively attached as Exhibit 13.

<sup>34</sup> *Id.* at Firm Response, FINRA pp. 3-4.

<sup>35</sup> See Cautionary Action Letter for Examination No. 20210702902 dated November 28, 2022, and Firm Response dated December 7, 2022, collectively attached as Exhibit 14.

<sup>36</sup> *Id.* at Firm Response, FINRA pp. 3-4.

<sup>37</sup> See Cautionary Action Letter for Examination No. 20140408212 dated May 6, 2022, attached as Exhibit 15. The Firm was not required to submit a response to FINRA's Cautionary Action Letter for this matter.

<sup>38</sup> See Cautionary Action Letter for Examination No. 20200672943 dated August 17, 2021, and Firm Response dated September 8, 2021, collectively attached as Exhibit 16.

process to comply with Regulation SHO, reviewed its WSPs, and issued a Supervision Reminder for Sales & Trading personnel concerning Regulation SHO and FINRA Trade Reporting Rules.<sup>39</sup>

In July 2021, FINRA issued a Cautionary Action to the Firm for failing to establish, maintain, and enforce policies and procedures reasonably designed to ensure compliance with the Benchmark exception in SEC Rule 611(b)(7).<sup>40</sup> The Firm responded in writing that it had changed how the order flow was processed to correct its use of the Benchmark exception.<sup>41</sup> Additionally, the Firm responded that it had issued guidance on how to properly determine the applicability and proper use cases for the exception, and it reviewed its WSPs to address the described deficiency.<sup>42</sup>

### **Regulatory Actions**

In approximately the past two years, Cantor has been the subject of disciplinary matters resulting in one AWC entered into with FINRA, two AWCs entered into with NYSE Arca, one order issued by the CFTC, and one additional SEC action. That additional SEC action, plus three other recent SEC orders, caused the Firm to be statutorily disqualified, but did not require the filing of a SEA Rule 19h-1 Notice with the Commission.

#### **A. FINRA Action**

In August 2023, the Firm entered into an AWC with FINRA in connection with the Firm's failure to disclose in public reports the material aspects of Cantor's relationship with one of its specified execution venues, including a description of Cantor's payment for order flow and profit-sharing relationship with the venue.<sup>43</sup> The Firm also failed to establish and maintain a system, including WSPs, reasonably designed to achieve compliance with Rule 606(a) of Regulation NMS because its WSPs only addressed its obligation to report orders in listed options, not NMS stocks.<sup>44</sup> The Firm consented to a censure and a \$100,000 fine.<sup>45</sup>

#### **B. NYSE Arca Actions**

In September 2023, the Firm entered into an AWC with NYSE Arca ("NYSE Arca 2023 AWC") to settle allegations that the Firm failed to establish, document, and maintain a

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<sup>39</sup> *Id.* at Firm Response, FINRA pp. 4-5.

<sup>40</sup> See Cautionary Action Letter for Examination No. 20200666505 dated July 29, 2021, and Firm Response dated August 26, 2021, collectively attached as Exhibit 17.

<sup>41</sup> *Id.* at Firm Response, FINRA pp. 3-4.

<sup>42</sup> *Id.*

<sup>43</sup> See FINRA AWC No. 2020065104701 dated August 17, 2023, attached as Exhibit 11.

<sup>44</sup> *Id.* at pp. 3-4.

<sup>45</sup> *Id.* at p. 4. FINRA confirmed that the Firm paid the fine on September 21, 2023. See CRD Disclosure Occurrence Composite for Occurrence 2289922 pertaining to FINRA AWC No. 2020065104701, attached as Exhibit 18 at p. 2.

system of risk management controls and supervisory procedures reasonably designed to manage the financial and regulatory risks of its business activities.<sup>46</sup> According to the NYSE Arca 2023 AWC, the Firm maintained unreasonable erroneous order controls and was deficient in its required annual reviews of the effectiveness of its risk management controls and supervisory procedures.<sup>47</sup> The NYSE Arca 2023 AWC further found that the Firm failed to establish and maintain a supervisory system and WSPs reasonably designed to ensure compliance with the Market Access Rule.<sup>48</sup> The Firm was censured and agreed to pay a \$90,000 fine.<sup>49</sup>

In October 2021, the Firm entered into an AWC with NYSE Arca (“NYSE Arca 2021 AWC”) to settle allegations that the Firm failed to maintain and enforce written policies and procedures reasonably designed to prevent the potential misuse of customer order information and to supervise and enforce reasonable information barriers in connection with its stock buyback trading activity in violation of NYSE Arca and Exchange Act rules.<sup>50</sup> According to the NYSE Arca 2021 AWC, the Firm failed to block its employees and traders from accessing and potentially misusing customer order information concerning the repurchase of shares by issuers.<sup>51</sup> The Firm consented to a censure and a \$200,000 fine.<sup>52</sup>

### C. CFTC Order

In September 2022, the CFTC issued an order finding that Cantor violated Section 4g of the Commodity Exchange Act (7 U.S.C. § 6g) and Commission Regulations 1.31, 1.35, and 166.3 (17 C.F.R. §§ 1.31, 1.35, 166.3 (2021)).<sup>53</sup> These violations were based on the same misconduct underlying the SEC Order that is the subject of the Firm’s Application. The Firm was ordered to cease and desist from violating the cited sections of the Commodity Exchange Act and Commission Regulations, to pay \$6,000,000 as a civil penalty, and to comply with certain undertakings to conduct a comprehensive overview of its supervisory, compliance, and other policies and procedures designed to ensure that Cantor’s electronic communications are preserved in accordance with requirements of the

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<sup>46</sup> See NYSE Arca AWC No. 2021-08-13-00020 accepted by NYSE Regulation on September 6, 2023, attached as Exhibit 19.

<sup>47</sup> *Id.* at p. 1.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at p. 4. The Firm paid its fine on September 19, 2023. See Correspondence from Cantor Fitzgerald to FINRA dated October 20, 2023 Containing Proof of Payment (with redactions by FINRA), attached as Exhibit 20.

<sup>50</sup> See NYSE Arca AWC No. 2020-02-00111 accepted by NYSE Regulation on October 25, 2021, attached as Exhibit 21.

<sup>51</sup> *Id.* at p. 2.

<sup>52</sup> *Id.* at p. 8. The Firm paid its fine on November 18, 2021. See Exhibit 4 at FINRA p. 2, Response 4, Exhibit G at FINRA p. 113.

<sup>53</sup> See CFTC Order, *In re Cantor Fitzgerald & Co.*, CFTC Docket No. 22-45 (Sept. 27, 2022), attached as Exhibit 22. FINRA has determined that this is not a disqualifying event.

Act, regulations, and Cantor's own policies and procedures.<sup>54</sup>

#### D. SEC Actions and Disqualifying Events

In July 2023, the SEC issued an order finding that Cantor willfully violated Exchange Act Section 13(h) and Rules 13h-1(b), 13h-1(d), and 13h-1(e) thereunder by repeatedly failing to identify and report customers as large traders and to make required filings on its own behalf as a Large Trader.<sup>55</sup> The Firm was ordered to cease and desist from committing or causing any violations of Section 13(h) of the Exchange Act and Rules 13h-1(b), 13h-1(d), and 13h-1(e) thereunder, was censured, and was ordered to pay a civil money penalty of \$1,400,000.<sup>56</sup>

In April 2020, the SEC issued an order finding that Cantor willfully violated Exchange Act Section 17(a)(1) and Rules 17a-25 and 17a-4(j) thereunder, among other violations, by failing to electronically submit certain securities transaction information to the Commission through the EBS system in response to requests made by the Commission.<sup>57</sup> Consequently, the Firm was ordered to cease and desist from committing or causing any violations of Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder, was censured, and was ordered to pay a civil money penalty of \$3,200,000.<sup>58</sup>

In August 2019, the SEC issued an order finding that Cantor failed reasonably to fulfill its supervisory responsibilities within the meaning of Section 15(b)(4)(E) of the Exchange Act because the Firm failed to establish reasonable policies and procedures, and a system for implementing such policies and procedures, that would reasonably be expected to prevent and detect the violations of Section 17(a)(3) of the Securities Act of 1933 ("Securities Act") by the associated persons on the securities lending desk.<sup>59</sup> As a result, the Firm was ordered

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<sup>54</sup> *Id.* at pp 7-11. The Firm paid its fine on October 6, 2022 and represented that it is otherwise in compliance with the undertakings laid out in the CFTC Order. *See Exhibit 4 at FINRA p. 2, Response 3, Exhibit C at FINRA p. 5.*

<sup>55</sup> *See In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 97906 (July 14, 2023), attached as Exhibit 23. This order subjects the Firm to a statutory disqualification as defined in Exchange Act Section 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

<sup>56</sup> *Id.* at p. 6. On August 4, 2023, the Firm submitted an affirmation to FINRA that the penalty was paid and the sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. *See FINRA Regulatory Notice 09-19* (June 15, 2009). As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>57</sup> *See In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 88567 (Apr. 6, 2020), attached as Exhibit 24. This order subjects the Firm to a statutory disqualification as defined in Exchange Act Section 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

<sup>58</sup> *Id.* at p. 5. On May 12, 2020, the Firm submitted an affirmation to FINRA that the penalty was paid and the sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>59</sup> *See In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 86694 (Aug. 16, 2019), attached as Exhibit 25. This order subjects the Firm to a statutory disqualification as defined in Exchange Act Section

to cease and desist from committing or causing violations of Section 17(a)(3) of the Securities Act, was censured, and was ordered to pay disgorgement, prejudgment interest, and a civil money penalty totaling \$647,911.19.<sup>60</sup>

In June 2018, the SEC issued an order finding that Cantor willfully violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(19) thereunder by failing to make and keep current a record listing each purchase and sale of a security attributable to each associated person, for compensation purposes, and the amount of the compensation received.<sup>61</sup> As a result, the Firm was ordered to cease and desist from committing or causing violations of 17(a) of the Exchange Act and Rule 17a-3(a)(19) thereunder, was censured, and was ordered to pay a civil money penalty of \$1,250,000.<sup>62</sup>

## **V. Prior SEA Rule 19h-1 Notices**

Cantor has not previously been subject to a 19h-1 Notice.

## **VI. The Firm’s Proposed Continued Membership with FINRA Plan of Heightened Supervision**

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision (“Supervision Plan” or “Plan”) as a condition of its continued membership with FINRA.<sup>63</sup>

Cantor Fitzgerald & Co. (the “Firm”) is subject to statutory disqualification pursuant to 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission dated September 27, 2022, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder. The Order also found that the Firm failed to reasonably supervise its employees within the meaning of Section 15(b)(4)(E).

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<sup>60</sup> 3(a)(39)(F), incorporating by reference Section 15(b)(4)(E).

<sup>61</sup> *Id.* at p. 8. On September 12, 2019, the Firm submitted an affirmation to FINRA that the amounts were paid and the sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>62</sup> *See In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 83565 (June 29, 2018), attached as Exhibit 26. This order subjects the Firm to a statutory disqualification as defined in Exchange Act Section 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

<sup>63</sup> *Id.* at p. 5. On July 17, 2018, the Firm submitted an affirmation to FINRA that the penalty was paid and the sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>64</sup> *See Executed Consent to Plan of Heightened Supervision dated October 11, 2023, attached as Exhibit 27.*

For the purpose of this Supervision Plan, the term “Digital Communication Channels” means all written electronic methods of communication used to conduct Firm business, including but not limited to, text message platforms, whether via SMS messaging, iMessage, or other messaging services such as WhatsApp; direct messaging platforms including X f/k/a “Twitter,” Instagram, LinkedIn, Slack, or Bloomberg Messaging; non-firm domain email accounts; and any other written electronic business-related correspondence. “Digital Communication Channels” encompass platforms used to exchange messages with internal or external stakeholders using either a personal or Firm-provided device.

For the purpose of the Supervision Plan, the term “Off-Channel Communications” means all business-related written electronic messages sent on Digital Communication Channels that are not captured by Firm surveillance and record-keeping systems.

In consenting to this Supervision Plan, the Firm agrees to the following:

1. The Firm shall comply with all of the undertakings outlined in the Securities and Exchange Commission (“SEC” or “Commission”) Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) and 21(C) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, *In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 95927 (September 27, 2022) (“SEC Order”).
2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a readily accessible place for ease of review by FINRA staff.
3. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified in the SEC Order. The Firm shall maintain copies of all certifications in a readily accessible place for ease of review by FINRA staff.
4. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a readily accessible place for ease of review by FINRA staff.
5. Within six months of the SEC’s Letter of Acknowledgement in this matter (“LOA”), to the extent that it has not already done so within the past six months, and on at least an annual basis thereafter, for a term of six years from the date of the LOA, the Firm shall conduct training for all associated persons regarding the Digital Communication Channels that the Firm has approved for business communication, along with the Firm’s current policies regarding retention of business-related electronic communications. The Firm shall maintain a record of

individual completion of said training and a copy of said training materials in a readily accessible place for ease of review by FINRA staff.

6. The Firm shall conduct the training described in item number 5 above for all new hires, within sixty-five days from the date of commencement of new hire training, for a term of six years from the date of the LOA. The Firm shall retain a record of all new hire training, including a copy of all written training materials, and keep said record(s) in a readily accessible place for ease of review by FINRA staff.

7. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, establish and maintain a written list(s) of all Digital Communication Channels that its associated persons are permitted to use to communicate about Firm business. The list(s) shall be circulated to all of the Firm's associated persons at least on a semi-annual basis, for a term of six years from the date of the LOA. The Firm shall require that all associated persons obtain written approval for use of any Digital Communication Channels to communicate about Firm business that are not already on the approved list(s) maintained by the Firm. The Firm shall maintain a record of all requests and approvals or rejections of each request, including the date of the requests and the Firm's decision. The Firm shall maintain copies of such requests and decisions in a readily accessible place for ease of review by FINRA staff.

8. The Firm shall require all associated persons to disclose on at least a semi-annual basis, for a term of six years from the date of the LOA, any unapproved Digital Communication Channels he/she is using to communicate about Firm business. The Firm shall retain records of such disclosures in a readily accessible place for ease of review by FINRA staff.

9. Subject to Paragraph 7 above, the Firm shall prohibit associated persons from using Off-Channel Communications.

10. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop a process whereby, in the event that an associated person sends or receives an Off-Channel Communication, the Off-Channel Communication is submitted to the Firm and retained in compliance with relevant securities laws and regulations. For a term of six years from the date of the LOA, the Firm shall maintain a record of all such Off-Channel Communications, including a record of the Firm's receipt of the communication, in a readily accessible place for ease of review by FINRA staff.

11. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop and maintain written supervisory policies and procedures detailing the Firm's processes for disciplining associated persons who use Off-Channel Communications to communicate about Firm business. When the Firm uses the disciplinary process, the Firm shall document each instance. The Firm shall retain records of such written supervisory policies and procedures and records of the disciplinary processes and each outcome.

12. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).

13. The Firm shall obtain written approval from FINRA's Statutory Disqualification Group prior to changing any provision of the Supervision Plan.

14. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).

## VII. Discussion

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating Cantor's Application, FINRA assessed whether the Firm demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, the Firm was not expelled or suspended, nor were any limitations placed on Cantor's securities activities. Although the SEC Order triggered certain disqualifications from exemptions from registration available under the Securities Act, specifically Regulations A, D, and E of the Securities Act and Regulation Crowdfunding, the SEC granted the Firm a waiver from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding.<sup>64</sup> Moreover, the Firm promptly paid the required monetary penalty to the SEC and monetary penalty imposed by the CFTC order with similar findings as the underlying disqualifying order.<sup>65</sup> Additionally, the Firm represented that it is in compliance with the ordered undertakings.<sup>66</sup>

Member Supervision also acknowledges that, within the SEC Order, the SEC considered the Firm's prompt remedial actions and cooperation with the Commission when

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<sup>64</sup> See Exhibit 3.

<sup>65</sup> See Exhibit 4 at FINRA p 1, Response 1' FINRA p. 2, Response 3, Ex. C at FINRA p. 5.

<sup>66</sup> *Id.* at FINRA p. 1, Response 1, Ex. D at FINRA pp. 7-27, and Ex. E at FINRA pp. 29-71.

determining to accept its Offer of Settlement.<sup>67</sup> The Firm has also represented that it has implemented new technology and enhanced policies and procedures to address the use of unapproved communications.<sup>68</sup> Specifically, the Firm has conducted a careful revision of its global electronic communications policy and added a section specific to discipline, made technological enhancements to improve retention and surveillance, implemented compliance reminders and re-training for employees including supervisors, and added bi-annual certifications for employees' compliance with the Firm's policies and procedures pertaining to electronic communications.<sup>69</sup>

It is well settled that a firm's regulatory history bears upon the assessment of its ability to comply with securities law and regulations. *See In the Matter of the Continued Association of Craig Scott Taddonio with Meyers Associate, L.P.*, SD-2117, slip op. at 24-25 (FINRA NAC March 8, 2017). However, the corrective measures taken by firms to address deficiencies are weighed in determining whether to approve applications. *See In the Matter of the Association of X with the Sponsoring Firm*, SD11007 (FINRA NAC 2011) (where a firm's corrective actions negated Member Regulation's assertion that the firm failed to appreciate or respect securities rules and regulations). FINRA has also previously approved applications for continued membership where the firms had extensive regulatory history, including disqualifying events. *See In the Matter of the Continued Membership of Deutsche Bank Securities, Inc.*, SD-2190 (FINRA Jan. 14, 2020) and *In the Matter of the Continued Membership of Citigroup Global Markets, Inc.*, SD-2082 (FINRA May 2, 2017) (approving continued membership where the firms had extensive regulatory history, including recent disqualifying events).

In its evaluation of the Firm's Application, FINRA acknowledges the Firm's recent regulatory and disciplinary history, including its additional statutory disqualifying events. Member Supervision also notes that, as of the date of this Notice, the Firm has paid all fines and complied with all undertakings ordered by regulators or demonstrated that it is currently complying with undertakings as applicable in the underlying SEC and related CFTC orders. None of these matters would prevent the continuance of the Firm as a FINRA member. With respect to the Firm's recent exam exceptions, the Firm took steps to resolve exceptions noted by FINRA staff, including updating its technology, working with third party vendors to obtain additional guidance, developing new data review procedures, enhancing existing WSPs and designing new ones, implementing additional education for Firm staff, and improving order flow processes.

FINRA is further reassured by the controls set in place by the Firm's Supervision Plan, which bolster the undertakings outlined in the SEC Order and will continue to provide oversight of the Firm and compliance with its remaining undertakings. In accordance with the Plan, the Firm agreed to conduct annual training for all associated persons, including new hires, regarding the Firm's approved digital communication methods and record retention policies. Further, the Plan calls for the Firm to maintain a list of approved digital

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<sup>67</sup> *See Exhibit 2 at p. 5.*

<sup>68</sup> *See Exhibit 1 at FINRA p. 28.*

<sup>69</sup> *Id.*

communication methods that associated persons are permitted to use for Firm business and to circulate that list to its associated persons semi-annually. The Plan requires the Firm's associated persons to obtain written approval to use digital communication channels not already approved. The Plan prohibits the use of off-channel communications and requires associated persons to semi-annually disclose any unapproved digital communication methods they are using for Firm business; they must also forward any off-channel communications that may have taken place to the Firm for retention purposes. These provisions will help to ensure that the Firm is aware of the communication methods being used by associated persons so that it can appropriately monitor, capture, and retain those communications. Additionally, the Plan mandates that the Firm develop policies and procedures for disciplining associated persons who use unapproved communication methods for Firm business and segregate all certifications, reports, and supporting documentation submitted to the SEC regarding compliance with the undertakings, for ease of review by FINRA staff to ensure ongoing compliance.

The Department is further reassured by the progress the Firm has made on the undertakings required by the SEC. Specifically, the Firm retained a compliance consultant, and that consultant has completed its comprehensive review of Cantor's policies, procedures, and training related to the use and preservation of electronic communications.<sup>70</sup>

Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Thus, FINRA is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Supervision Plan, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves Cantor's Application to continue its membership with FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other SROs including BYX, EDGA, EDGX, IEX, NYSE Arca, ISE, Nasdaq, DTC, FICC-GOV, FICC-MBS, and NSCC. The SROs have been provided with the terms and conditions of Cantor's proposed continued membership, and they concur with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

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<sup>70</sup> See Exhibit 4 at FINRA p. 1, Response 1, Ex D at FINRA pp. 7-27, and Ex. E at FINRA pp. 29-71.

On Behalf of FINRA,



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Marcia E. Asquith  
Executive Vice President & Corporate Secretary

### **Exhibits**

1. Cantor Fitzgerald's MC-400A Application and related attachments compiled by FINRA's CRED, with a cover memorandum dated October 24, 2022.
2. SEC Order, *In re Cantor Fitzgerald & Co.*, Exchange Act Release No., 95927 (Sept. 27, 2022).
3. *In re Certain Broker-Dealer Practices*, Securities Act Release No. 11109 (Sept. 27, 2022).
4. Correspondence from Mark Impellizeri to FINRA dated April 25, 2023 (with exhibits).
5. CRD Excerpt: Registration Status.
6. CRD Excerpt: Types of Business.
7. Disposition Letter for Examination No. 20220732963 dated October 13, 2023, Examination Report dated July 28, 2023, and the Firm's Responses submitted on August 25 and September 18, 2023 (without exhibits, with redactions by FINRA).
8. Disposition Letter for Examination No. 20210693414 dated May 19, 2022, Examination Report dated April 29, 2022, and the Firm's Response dated May 13, 2022.
9. Disposition Letter for Examination No. 20200651047 dated September 15, 2021, Examination Report dated January 19, 2021 (amended April 26, 2021), and the Firm's Response dated February 19, 2021.
10. Cautionary Action Letter for Examination No. 20200651047 dated August 17, 2023.
11. FINRA AWC No. 2020065104701, dated August 17, 2023.
12. Disposition Letter for Examination No. 20200651048 dated September 15, 2021, Examination Report dated January 19, 2021, and the Firm's Response dated February 19, 2021.
13. Cautionary Action Letter for Examination No. 20200687021 dated February 6, 2023, and Firm Response dated February 27, 2023.

14. Cautionary Action Letter for Examination No. 20210702902 dated November 28, 2022, and Firm Response dated December 7, 2022.
15. Cautionary Action Letter for Examination No. 20140408212 dated May 6, 2022.
16. Cautionary Action Letter for Examination No. 20200672943 dated August 17, 2021, and Firm Response dated September 8, 2021.
17. Cautionary Action Letter for Examination No. 20200666505 dated July 29, 2021, and Firm Response dated August 26, 2021.
18. CRD Disclosure Occurrence Composite for Occurrence 2289922 pertaining to FINRA AWC No. 2020065104701.
19. NYSE Arca AWC No. 2021-08-13-00020 accepted by NYSE Regulation on September 6, 2023.
20. Correspondence from Cantor Fitzgerald to FINRA dated October 20, 2023 Containing Proof of Payment (with redactions added by FINRA).
21. NYSE Arca AWC No. 2020-02-00111 accepted by NYSE Regulation on October 25, 2021.
22. CFTC Order, *In re Cantor Fitzgerald & Co.*, CFTC Docket No. 22-45 (Sept. 27, 2022).
23. *In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 97906 (July 14, 2023).
24. *In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 88567 (Apr. 6, 2020).
25. *In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 86694 (Aug. 16, 2019).
26. *In re Cantor Fitzgerald & Co.*, Exchange Act Release No. 83565 (June 29, 2018).
27. Executed Consent to Plan of Heightened Supervision dated October 11, 2023.

## Exhibit A

### Plan of Heightened Supervision

Cantor Fitzgerald & Co. (the “Firm”) is subject to statutory disqualification pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission (“SEC” or “Commission”) dated September 27, 2022, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder (“SEC Order”). The SEC Order also found that the Firm failed reasonably to supervise its employees within the meaning of Section 15(b)(4)(E).

In consenting to this Supervision Plan<sup>1</sup> (“Supervision Plan”), the Firm agrees to the following:

1. The Firm shall comply with all the undertakings outlined in the SEC Order.
2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a readily accessible place for ease of review by FINRA staff.
3. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a readily accessible place for ease of review by FINRA staff.
4. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified under paragraph 35 of the SEC Order.
5. This Supervision Plan shall take effect on the date the Firm executes its consent to this Supervision Plan. The Supervision Plan shall be in effect until FINRA’s receipt of the Firm’s final certifications required by the SEC Order, after which time the Supervision Plan and its provisions thereto will expire.
6. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA’s Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).
7. The Firm shall obtain written approval from FINRA’s Statutory Disqualification Group prior to changing any provision of the Supervision Plan.

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<sup>1</sup> This Supervision Plan supersedes the Firm’s previous Supervision Plan executed on October 11, 2023.

8. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).