

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059464001**

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

RE: Cantor Fitzgerald & Co. (Respondent or Cantor)
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 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

Cantor has been a FINRA member since February 1945. Cantor is headquartered in New York, New York, has 29 branch offices, and employs approximately 720 registered representatives. Cantor engages in trading for institutional customers, fixed income sales and trading, as well as investment banking and prime brokerage services. Respondent has no relevant formal disciplinary history.

OVERVIEW

Between January 12, 2018 and July 13, 2018 (review period), Cantor inaccurately reported to FINRA 25,434 short interest positions, totaling 65,710,567 shares, when it should have reported 743 short interest positions totaling 10,504,989 shares. The inaccurate reporting resulted from Cantor erroneously reporting positions that were custodied with and already reported by its clearing firm, with which Cantor maintains a fully disclosed clearing agreement (FDCA).¹ Additionally, Cantor failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve

¹ Cantor has maintained an FDCA with its clearing firm since February 2010. Cantor and its clearing firm amended the FDCA on September 5, 2017, to specify that the clearing firm would report short interest positions it custodied on Cantor's behalf. Cantor nonetheless continued reporting the short positions custodied with its clearing firm through the subject review period.

compliance with FINRA Rule 4560 as related to the accuracy of its reported short interest position data. As a result, Cantor violated FINRA Rules 4560, 3110, and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's routine review of the short interest reporting cycle ending July 13, 2018.

Cantor failed to report to FINRA accurate short interest position data as required by FINRA Rule 4560.

FINRA Rule 4560 requires members to maintain a record of total short interest positions in all customer and proprietary firm accounts in all equity securities, and to regularly report such positions in a manner as prescribed by FINRA.

FINRA Rule 2010 provides 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 Rule 4560 is also a violation of FINRA Rule 2010.

FINRA Regulatory Notice 12-38, Short-Interest Reporting (August 2012), states that, "[c]omplete and accurate short interest data should be reported to FINRA only once. Duplicate reporting results in inaccurate short-interest position information. A firm is responsible for determining whether its clearing firm is reporting short interest on its behalf and, if so, the firm should not submit a duplicate report."

During the review period, Cantor erroneously reported short interest positions custodied with and already reported by its clearing firm, resulting in duplicative and inaccurate reporting. Specifically, Cantor inaccurately reported 25,434 short interest positions, totaling 65,710,567 shares, when it should have reported 743 short interest positions totaling 10,504,989 shares during the review period.

Therefore, Cantor violated FINRA Rules 4560 and 2010.

Supervision

FINRA Rule 3110(a) requires members to, "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and with applicable FINRA rules." FINRA Rule 3110(a)(1) requires that the member's supervisory system shall provide, at a minimum, among other things, the establishment and maintenance of written procedures as required by the rule.

A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

During the review period, Cantor failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rule 4560. Specifically, Cantor's supervisory system, including written supervisory procedures, governing short interest reporting were operational in nature and failed to include any steps reasonably designed to ensure the accuracy of its short interest reporting by accounting for and excluding positions custodied and reported by its clearing firm.

Upon notification from FINRA that the firm was providing inaccurate short interest reports, Cantor revised its short interest reporting procedures to exclude from its reports positions custodied with and reported by its clearing firm.

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

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

- a censure
- a \$250,000 fine (comprised of \$150,000 for the short interest reporting violations and \$100,000 for the supervisory 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 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 4, 2021

Date

William Shields

Cantor Fitzgerald & Co.
Respondent

Print Name: William Shields

Title: Chief Compliance Officer

Accepted by FINRA:

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

May 6, 2021

Date

William Otto

William Otto
Counsel
FINRA
Department of Enforcement
15200 Omega Drive
Rockville, Maryland 20850