

**NYSE ARCA, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 2015045163502**

TO: NYSE Arca, Inc.  
c/o Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: Cantor Fitzgerald & Co., Respondent  
Broker-Dealer  
CRD No. 134

**During the period from March 3, 2015 through December 31, 2015, Cantor Fitzgerald & Co. violated Rule 15c3-5 of the Securities Exchange Act of 1934 by failing to implement risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders by the Firm's ETF Desk, and NYSE Arca Equities Rule 6.18 by failing to establish and maintain supervisory systems and written procedures reasonably designed to achieve compliance with Rule 15c3-5 by the Firm's ETF Desk. Consent to a censure and a total fine of \$450,000 (of which \$50,000 shall be paid to NYSE Arca, Inc.).**

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") Code of Procedure, Cantor Fitzgerald & Co. ("Cantor" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, NYSE Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The Firm 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 NYSE Arca, or to which NYSE Arca 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 NYSE Arca:

**BACKGROUND**

Cantor registered as an Equities Trading Permit ("ETP") holder with NYSE Arca, Inc. (the "Exchange")<sup>1</sup> on June 26, 2003, and its registration remains in effect. It has been a member of the Financial Industry Regulatory Authority ("FINRA") since February 16,

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<sup>1</sup> Prior to August 17, 2017, the Exchange rules involved in this matter were called NYSE Arca Equities rules, and that is how they are referred to in this AWC.

1945. Cantor is a U.S. broker-dealer that is headquartered in New York, New York. The firm engages in institutional equity, fixed income sales and trading, as well as investment banking and prime brokerage services. Cantor has twenty-nine branch offices and approximately 724 registered representatives.

### **RELEVANT DISCIPLINARY HISTORY**

On December 21, 2017 (NYSE Regulation Proceeding No. 2016-07-01081), an NYSE Arca Hearing Board Decision was issued in which the Firm consented to a censure and fine of \$155,000 and an undertaking imposed for violating: (i) Rule 15c3-5(c)(1)(ii) by failing to have controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time; (ii) Rule 15c3-5(c) by failing to adequately document the Firm's review of its controls and properly certify compliance with the Market Access Rule and preserve such certifications as required; and (iii) NYSE Arca Equities Rule 6.18(b) and (c) by failing to establish and maintain supervisory systems and written procedures that were reasonably designed to ensure compliance with Rule 15c3-5 during the period of August 1, 2014 through February 28, 2017.

### **SUMMARY**

1. On behalf of the Exchange, FINRA reviewed the Firm's compliance with Rule 15c3-5 of the Securities Exchange Act of 1934, and related Exchange supervisory requirements during the period March 3, 2015 through December 31, 2015 (the "Review Period"). Although the Firm implemented some financial controls intended to prevent the entry of erroneous orders, they were not reasonably designed. The Firm's written documentation of its market access supervisory system was also unreasonable. Therefore, during the Review Period, the Firm violated Rule 15c3-5 and NYSE Arca Equities Rules 6.18(b) and (c).
2. During the Review Period, Cantor triggered alerts for unusual quoting activity, including, for example, at least six symbols on three dates in April 2015. Based upon a review of a sample of alerts, the activity originated from the Firm's ETF Desk, which was engaging in market making activity in the securities.

## **FACTS AND VIOLATIVE CONDUCT**

### **Rule 15c3-5 Applied to Cantor's Business**

3. Cantor was a market maker in ETFs during the Review Period and directly routed orders to the Exchange for execution through a proprietary order routing system. As such, Cantor had market access to the Exchange and Rule 15c3-5 applied to Cantor's market making activities in ETFs, among other trading activities.

### **Cantor Failed to Implement Reasonable Market Access Controls**

4. Rule 15c3-5(b) required that "a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system ... establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity."
5. Rule 15c3-5(c)(1) required firms that provide market access to establish risk management controls and supervisory procedures that are "reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access."
6. Rule 15c3-5(c)(1)(ii) further required controls and procedures reasonably designed to "[p]revent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders."
7. During the Review Period, the Firm failed to implement risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders.
8. More specifically, the Firm employed a global messaging control that generated excessive messaging alerts in connection with its quoting parameters. A designated supervisor reviewed the alerts in "real time." But unless blocked by the supervisor, the quoting would continue.
9. The review of the alerts, however, was not reasonable. As an initial matter, the global messaging control parameters generated too many alerts for one supervisor to reasonably review in a timely manner. For example, for one sampled security, the Firm submitted on average 1,234 sell orders in four one-second periods on NYSE Arca, generating approximately 48 alerts in four seconds. Although the order messaging was intended, it was not feasible to evaluate the activity underlying the alerts to determine whether the messaging should be blocked in a timely manner. In addition, the Firm failed to provide written guidance that reasonably addressed how the supervisor should conduct a review of an alert to determine whether the messaging should be blocked. As of March 2015, Cantor had implemented an additional messaging control for its ETF Desk called the

Quote Reaction Threshold (“QRT”) with a threshold of 5,000 messages per order. The threshold was lowered to 2,500 messages per order in May 2015. When the QRT control was triggered and produced alerts, the messaging activity would be blocked and then be allowed to automatically restart.

10. In addition, the Firm failed to conduct a reasonable and meaningful review of the resulting QRT alerts. The Firm’s written policies and supervisory procedures also failed to provide guidance to Firm personnel as to whether a review of the resulting QRT alerts was required before messaging could resume, how to review QRT alerts or what criteria should be used, or when QRT alerts should be escalated.
11. The Firm’s failure to implement pre-trade erroneous order controls and procedures that were reasonably designed to prevent the entry of erroneous orders violated Rule 15c3-5(b) and (c)(1)(ii).

Cantor’s Supervisory System and Written Supervisory Procedures were not Reasonably Designed

12. During the Review Period, NYSE Arca Equities Rule 6.18(b)<sup>2</sup> required each member firm to “establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules.”
13. NYSE Arca Equities Rule 6.18(c) required each member firm to “establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the NYSE Arca Equities Rules.”
14. During the Review Period, as noted above the Firm failed to provide reasonable guidance as to how the supervisor should assess the underlying activity that caused the messaging alerts. The Firm also failed to provide reasonable guidance concerning the criteria a supervisor should use in determining when to escalate potential unintended excessive messaging.
15. Although the Firm utilized an End of Day Supervisory Checklist (“Checklist”) that generally discussed the monitoring of alerts generated by certain controls, including the global messaging and QRT controls, the Firm’s WSPs failed to address the Checklist or provide guidance as to how the supervisory review should be documented.

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<sup>2</sup> NYSE Arca Equities Rule 6.18 is now denominated NYSE Arca Rule 11.18.

16. As a result of the failures described above, the Firm violated NYSE Arca Equities Rules 6.18(b) and (c).

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

1. A censure.
2. A total fine of \$450,000 of which \$50,000 is payable to NYSE Arca.<sup>3</sup>
3. Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: (i) the NASDAQ Stock Market, LLC; (ii) Cboe BZX Exchange, Inc.; and (iii) Cboe EDGX Exchange.

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that Respondent pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the

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<sup>3</sup> The balance of the fine will be paid to the self-regulatory organizations referenced in paragraph I.B.3 below.

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 Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE Arca; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC") and Committee for Review ("CFR"); any Director, DAC member or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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

The Firm 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 Chief Regulatory Officer of NYSE Arca, pursuant to NYSE Arca Rule 10.9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
  - 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 25 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Arca Rule 10.9310(a)(1)(B).
  - 2. This AWC will become part of the the Firm's permanent disciplinary record

and may be considered in any future actions brought by NYSE Arca, or any other regulator against the Firm;

3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
  4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and
  5. The Firm 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. The Firm may not take any position in any proceeding brought by or on behalf of NYSE Arca, or to which NYSE Arca is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which NYSE Arca is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 NYSE Arca, nor does it reflect the views of NYSE Regulation or its staff.

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

2/18/20  
Date

Cantor Fitzgerald & Co.  
Respondent

By: Wendy Stewart

Name: [Signature]

Title: CCO

Reviewed by: [Signature]

Counsel for Respondent  
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Accepted by FINRA

February 20, 2020  
Date

Bryan C. Wallace by [Signature]  
Bryan C. Wallace by James J. Wilson  
Principal Counsel Senior Director  
Department of Enforcement

Signed on behalf of NYSE Area, Inc. by  
delegated authority from the Chief Regulatory  
Officer of NYSE Area, Inc.