NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020-02-00111

TO: NYSE Arca, Inc.

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

During the period from at least April 1, 2018 through December 31, 2018 (the "Relevant Period"), Cantor Fitzgerald & Co. ("CF&Co." or the "Firm") violated Section 15(g) of the Securities Exchange Act of 1934 and NYSE Arca Rule 11.18 by failing 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 their stock buyback trading activity. The Firm consents to a censure and a $200,000 fine.

* * *

Pursuant to Rule 10.9216 of NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") Code of Procedure, 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, the Exchange 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 the Exchange, or to which the Exchange 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 the Exchange:

BACKGROUND AND JURISDICTION

1. CF&Co. became an Equities Trading Permit ("ETP") holder with NYSE Arca on June 26, 2003 and its registration remains in effect. CF&Co. also is a broker-dealer registered with the U.S. Securities and Exchange Commission ("SEC") pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). The Firm has no relevant prior disciplinary history.

PROCEDURAL HISTORY

2. This matter arose from an inquiry into the use of information barriers by broker-dealers in connection with stock buyback trading activity.

VIOLATIONS

3. This matter concerns the Firm's failure to establish, maintain, and enforce policies and procedures reasonably designed to prevent the potential misuse of customer order information concerning the repurchase of shares by issuers ("customer buyback order information"), in violation of Section 15(g) of the Exchange Act and NYSE Arca Rule 11.18. Customer buyback order information could constitute material nonpublic information in certain circumstances. Although CF&Co. had established relevant policies and procedures, CF&Co. failed to maintain and enforce policies and procedures reasonably designed to prevent the Firm's traders from accessing and potentially misusing customer buyback order information from at least April 1, 2018 through December 31, 2018 (again, the "Relevant Period").

4. During the Relevant Period, certain CF&Co. employees had access to customer buyback order information beyond a need-to-know basis. This information could have been valuable to other market participants and created a risk that these employees could potentially misuse the customer buyback order information.

Corporate Stock Buybacks Generally

5. Issuer buybacks occur when a publicly traded company buys its shares back from its shareholders. Issuers may buy back their shares "through, among other means, open market purchases, tender offers, private negotiated transactions, and accelerated share repurchases. Most issuer buybacks are executed over time through open market purchases, which are commonly referred to as share repurchase or buyback programs. There are various reasons why an issuer might decide to buy back shares, including, among others: (1) signaling to the market that its stock is undervalued and is a good investment; (2) reducing the number of outstanding shares, thereby increasing earnings per share; (3) returning capital to shareholders in a more tax efficient manner than declaring dividends; (4) offsetting the dilutive impact of employee stock options; and (5) obtaining shares to distribute to employees in connection with employee compensation plans." *In the Matter of Mizuho Securities USA LLC*, Exchange Act Rel. No. 83685, at *3 (July 23, 2018).

6. Publicly traded companies typically disclose buyback programs when the buybacks are authorized, generally by issuing a press release which may be filed with the Commission on Form 8-K. These disclosures typically include: "(1) the maximum number of shares or maximum dollar amount of shares to be bought back; (2) the buyback methods that may be used (e.g., open market purchases, privately negotiated transactions, etc.); (3) the estimated duration of the buyback program; and (4) the objective of the buyback program. Publicly traded companies also have periodic disclosure obligations with regard to their buyback programs. Item 703 of Regulation S-K requires

retroactive quarterly disclosure of specific buyback trading information in annual reports on Form 10-K and quarterly reports on Form10-Q that are filed with the Commission. Among other items, the company must disclose in each of these periodic reports the total number of shares bought back during the prior quarter, the average price paid per share, and the maximum number or approximate dollar value of shares that may still be purchased pursuant to the publicly announced buyback program." *Mizuho*, Exchange Act Rel. No. 83685, at *3-4.

7. Issuers are not required to, and typically do not, disclose the specific dates on which they will execute trades pursuant to an announced buyback program. As a result, market participants "normally do not become aware of an issuer's actual buyback related trading activity until after the trades have been executed, and then, only on a quarterly basis. Moreover, not every company that announces a buyback program ultimately executes the program. Indeed, an issuer may decide to cancel a buyback program entirely before executing any trades. In addition, the actual number of shares bought back can be far fewer than publicly announced, thus converting a larger buyback into a smaller one. Thus, while the fact that the issuer is seeking to buy back shares is public information, the actual date they are buying back shares, the specific order size, and the price at which the company wishes to buy back shares may be considered material non-public information." *Mizuho*, Exchange Act Rel. No. 83685, at *4.

8. Issuers often enter into an arrangement with a broker-dealer to implement their buyback programs according to the issuers' instructions and in accordance with the requirements of Exchange Act Rule 10b-18.[1] In connection with executing these buyback programs, a broker-dealer routinely will receive customer buyback order information. Without effective information barriers or policies and procedures to reasonably prevent the misuse of customer buyback order information, there is a risk that broker-dealer traders will potentially access and share, either inadvertently or on purpose, customer buyback order information.

Relevant Exchange Act and NYSE Rules

9. Section 15(g) of the Exchange Act requires registered broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the broker-dealer's business, to prevent the misuse, in violation of the Exchange Act or the rules and regulations thereunder, of material nonpublic information by such broker or

[1] Rule 10b-18 provides an issuer with a non-exclusive safe harbor from manipulation liability under Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 when repurchases of the issuer's common stock satisfy the Rule's conditions, including that the issuer purchase all shares through only one broker-dealer on a given day.

dealer or any person associated with such broker or dealer. The internal controls requirements imposed by Section 15(g) are essential to protect against the risk of misuse of material nonpublic information, which can undermine investor confidence in the integrity of the markets. Section 15(g) is intended to guard against a broad range of potential market violations, including insider trading and frontrunning. *See Mizuho*, Exchange Act Rel. No. 83685, at *10-11 (*citing* 143 Cong. Rec. E3078-04, 1988 WL 180248 (Sept. 13, 1988)).

10. NYSE Arca Rule 11.18 requires that each ETP holder 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 Exchange rules. NYSE Arca Rule 11.18 further requires each ETP holder to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

CF&Co.'s Execution of Issuer Buyback Orders

11. CF&Co. did not maintain reasonable controls to prevent certain of its traders from potentially accessing and potentially misusing customer buyback order information. CF&Co. executed buyback orders in a decentralized manner therefore potentially not restricting customer buyback order information to only those who had a need-to-know. In addition, while CF&Co. traders were handling customer buyback orders, there were no restrictions prohibiting them from engaging in other trades.

12. During the Relevant Period, both CF&Co.'s US Cash Sales Desk ("Sales Desk") and US Cash Trading Desk ("Trading Desk") executed buyback trades on behalf of 14 issuers on multiple trade dates. In certain instances, CF& Co. and its issuer customers entered into written 10b5-1 repurchase plans specifying the general conditions under which the buyback orders would be executed. A primary focus of such agreements was to ensure that CF&Co. complied with the safe harbor provisions of Rule 10b-18 under the Exchange Act when it effected buyback trades on behalf of an issuer.

13. As of July 2018, CF&Co. had about 50 Sales Desk sales traders and about 12 Trading Desk traders in total. There was no one trader or set of traders on the Sales Desk or Trading Desk specifically assigned to handling the buyback orders. Instead, the Sales Desk trader who managed the relationship with the issuer seeking to buyback its stock would receive and potentially execute the buyback orders and/or more likely route the orders to the relevant sector traders on the Trading Desk for execution.

14. CF&Co.'s Sales Desk and Trading Desk operate separately. The former may engage in customer account related services, such as buybacks, and may provide execution services for clients or may route orders to the Trading Desk for execution. Sales Desk traders trade agency to facilitate customer orders but they generally do not trade principally. The Trading Desk focuses on facilitating executions for the Firm and its customers. Both Desks are on the "public" side of CF&Co., which means neither was designated as receiving material nonpublic information.

15. At CF&Co., buyback orders were entered into the Firm's OMS, Fidessa, by the relevant Sales Desk sales trader, with the Trading Desk traders typically using third party algorithms to execute the orders. The Sales Desk had one trading book in Fidessa and the Trading Desk had another trading book in Fidessa. Sales Desk traders did not have access to the Trading Desk's trading book in Fidessa and vice-versa. In addition, Sales Desk traders could not access other Sales Desk traders' orders in their trading book.

16. Trading Desk traders could, however, access buyback orders being worked by other traders on their desk intraday. Though they were not systematically made aware of and could not readily view other Trading Desk traders' buyback orders in the OMS, they could search for the information in the Trading Desk's trading book. Given the lack of information barriers and the unrestricted access to the OMS trading book on the Trading Desk, CF&Co. did not have reasonable controls in place to prevent traders on that desk from potentially accessing or potentially misusing customer buyback order information.

17. In addition to the searching capability that traders on the Trading Desk had in their OMS trading book, customer buyback order information at CF&Co. was potentially available beyond a need-to-know basis given the decentralized process CF&Co. had in place for executing buyback orders across both the Sales Desk and Trading Desk. For example, while on any given trading day only 1 or 2 traders typically held buyback orders, approximately 21 total Sales Desk traders and Trading Desk traders handled buyback orders at various points over the course of the Relevant Period. And for some of the issuer programs, several Sales Desk traders and Trading Desk traders were involved in handling buyback orders. Therefore, CF&Co. did not have reasonable controls or procedures in place to restrict access to the information to only those who had a need-to-know.

18. Moreover, when the Sales Desk traders or Trading Desk traders were handling buyback orders, each set of traders physically sat together on the same floor to the extent they were in the same office. For example, during the Relevant Period, all of CF&Co.'s Trading Desk traders sat on the same floor in NYC. In addition, while Sales Desk traders and Trading Desk traders were handling customer buyback orders, they also were facilitating equity trades for other

CF&Co. desks or customers. For example, on at least three trading dates during the Relevant Period, Trading Desk traders executed buyback orders while also executing orders in the same symbol for other customers.

CF&Co.'s Policies and Procedures

19. During the Relevant Period, CF&Co. had policies and procedures in place governing the conduct of its Sales Desk traders and Trading Desk traders, including general prohibitions on disclosing confidential client information and trading while in possession of material nonpublic information. However, these policies and procedures were not reasonably designed to prevent the potential misuse of customer buyback order information.

20. The Firm's buyback policies and procedures primarily concerned the requirements for satisfying the Rule 10b-18 safe harbor provisions, and failed to address supervision specific to buyback activity, including: (1) identifying customer buyback order information as potentially constituting material nonpublic information; and (2) potential frontrunning of buyback information. Although the Firm conducted daily frontrunning reviews to determine whether Firm accounts may be frontrunning customer orders, customer buyback order information was not evaluated to determine whether it should be treated as material nonpublic information and therefore buyback issuer stocks were not included on the Firm's watch lists. As such, for example, these reviews did not capture potential frontrunning of buyback transactions. Nor did the written supervisory procedures address how the Firm established or maintained information barriers to ensure the confidentiality of buyback related information.

21. To summarize, CF&Co. failed to establish, maintain, and enforce policies and procedures reasonably designed to prevent the potential misuse of customer buyback order information, and to establish and maintain a system to supervise the activities of their associated persons reasonably designed to achieve compliance with applicable securities laws and regulations and with Exchange rules because: (i) the Firm did not evaluate whether customer buyback order information should be treated as material nonpublic information; (ii) the Firm's Trading Desk traders could access customer buyback order information in that desk's OMS trading book; and (iii) the Firm failed to maintain and enforce effective information barriers to protect against the potential improper disclosure or potential misuse of customer buyback order information on the Firm's Sales Desk and Trading Desk. Therefore, customer buyback order information was available internally beyond a need-to-know basis, particularly given the decentralized process CF&Co. had in place for handling buyback orders.

22. Broker-dealers must be cognizant of their duties under Section 15(g) and the need to tailor their policies and procedures to the specific activities of the individual firm, particularly as their businesses evolve. The Commission has long held that the requirement that each broker-dealer implement and maintain policies and procedures consistent with the nature of its business "is critical to effectively preventing the misuse of material nonpublic information." *In re Gabelli & Co., Inc.*, Exchange Act Rel. No. 35057 (Dec. 8, 1994). The Commission also has consistently made clear that broker-dealers must take seriously their responsibilities to design and enforce sufficiently robust policies and procedures to prevent the misuse of material nonpublic information. *See, e.g., In re Deutsche Bank Securities Inc.*, Exchange Act Rel. No. 79083 (Oct. 12, 2016); *In re Goldman, Sachs & Co.*, Exchange Act Rel. No. 66791 (Apr. 12, 2012). Establishing policies and procedures, however, is not in itself sufficient to comply with Section 15(g). A broker-dealer also must maintain and enforce such policies and procedures by implementing measures to promote compliance with, and enforcement of, those policies and procedures. *See, e.g., In re Monness, Crespi, Hardt & Co., Inc*., Exchange Act Rel. No. 72886 (Aug. 20, 2014). The failure to establish, maintain, or enforce the requisite policies and procedures violates Section 15(g) even if, as in this case, no unlawful trading is alleged to have occurred.[2]

23. Accordingly, and for the aforementioned reasons, the Firm violated Section 15(g) of the Exchange Act and violated NYSE Arca Rule 11.18.

OTHER FACTORS

24. In resolving this matter, NYSE Arca took into account: (i) no customer buyback order information was found to have been improperly shared outside of the Firm and no frontrunning was identified regarding the buyback programs in the Relevant Period; (ii) the size of the Firm's buyback program; and (iii) the Firm voluntarily implemented subsequent remedial actions starting in 2019, including changes made to the Firm's buyback processes and enhancements to the Firm's policies, procedures, and reviews concerning buyback activity.

[2] Section 15(g) of the Exchange Act does not require proof that an underlying insider trading violation or any other violation of the Exchange Act or the rules thereunder had occurred as a result of the failure to establish, maintain, and enforce the requisite policies and procedures. *See Mizuho*, Exchange Act Rel. No. 83685, at *11 fn. 14.

SANCTIONS

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

Censure and fine of $200,000.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 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 amounsts. 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 the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca 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 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 the 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 communication 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 by NYSE Regulation, 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, 10 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 Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;

3. The Exchange shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;

4. The Exchange 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 the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange 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. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

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.

Cantor Fitzgerald & Co.
Respondent

By: William Shields
William Shields, Esq.
Chief Compliance Officer

Accepted by NYSE Regulation

October 25, 2021
Date

Tony Frouge
Deputy Head of Enforcement
NYSE Regulation

Signed on behalf of NYSE Arca, Inc., by delegated authority from its Chief Regulatory Officer