

**THE NASDAQ OPTIONS MARKET LLC  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: Cantor Fitzgerald & Co.  
Mr. Shawn P. Matthews  
Chief Executive Officer  
110 East 9<sup>th</sup> Street  
4<sup>th</sup> Floor  
New York, NY 10022**

**FROM: The NASDAQ Options Market LLC ("Nasdaq")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Market Regulation  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: September 12, 2014**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20110261143-01**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **September 11, 2014** by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or Nasdaq if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions, and Nasdaq's Finance Department will send you an invoice regarding the payment of any fine.

Cantor Fitzgerald & Co.  
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If you have any questions concerning this matter, please call Steven Tanner, Senior Counsel, at 646-430-7059.



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Eric S. Brown  
Chief Counsel, Legal Section  
Department of Market Regulation, FINRA

Signed on behalf of Nasdaq

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Senior Vice President and Regional Director  
(Via email)

**THE NASDAQ OPTIONS MARKET LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
NO. 20110261143-01

TO: The NASDAQ Options Market  
c/o Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq")<sup>1</sup> Code of Procedure, Cantor Fitzgerald & Co. (the "Firm" or "CANT") 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, Nasdaq will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. CANT 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

**BACKGROUND**

CANT has been a member of FINRA since February 16, 1945, and its registration remains in effect. The Firm was approved for NASDAQ Options Market, LLC ("NOM") membership on April 9, 2009, and its registration remains in effect.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

CANT does not have any relevant prior disciplinary history.

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<sup>1</sup> All NASDAQ Options Market disciplinary matters are governed by The Nasdaq Code of Procedure.

## SUMMARY

In connection with matter 20110261143, FINRA, on behalf of NOM, conducted a review of Options Clearing Corporation (“OCC”) adjustments to determine if the Firm had inappropriately used such adjustments. Inappropriate use of OCC adjustments could encompass many different underlying rule violations, including, but not limited to, the use of OCC adjustments to create transactions that should otherwise occur on an exchange, create a long call position with the intent to exercise and capture a dividend, or change transactions from opening to closing to reduce a position to ensure compliance with rules related to position limits.

As a result of such review, it was determined that CANT violated Chapter III, Section 1 of the NOM Rules, NASDAQ Rule 2320(a), and NASDAQ Rule 2110 by inappropriately effecting OCC adjustments in a customer’s account to the detriment of the customer. CANT also violated Chapter V, Section (1)(b)(iv) of the NOM Rules and Nasdaq Rules 3010(a) and 2110 by failing to maintain adequate procedures and controls to effectively monitor and supervise the entry of orders by users to prevent prohibited practices.

## FACTS AND VIOLATIVE CONDUCT

### Effecting OCC Adjustments

1. On October 15, 2010, an expiration Friday, at approximately 3:44 p.m., a Firm salesperson received a market order from a customer to purchase 2,500 XYZ Oct 14 calls, and sell 2,500 XYZ Jan 17.5 calls (the “XYZ call spread”).
2. A total of 1,222 contracts of the XYZ call spread were executed on two exchanges at the spread price of \$1.28.
3. Of the remaining 1,278 contracts, 500 contracts were crossed with an NYSE Amex<sup>2</sup> market maker at a price of \$1.34, and the remaining 778 contracts were facilitated by the Firm. These 1,278 contracts were executed on NYSE Amex through a cross with a third-party floor broker, and were printed to the tape at a price of \$1.28.
4. Although the XYZ call spread had been printed to the NYSE Amex tape at a spread price of \$1.28, the Firm improperly effected a price adjustment through the OCC, causing the Firm’s customer to pay \$1.36.
5. The conduct described in paragraphs one through four constitutes a violation of Chapter III, Section 1 of the NOM Rules, NASDAQ Rule 2320(a), and NASDAQ Rule 2110.

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<sup>2</sup> Subsequent to the addition of the OCC Adjustment review to the 17d-2 Agreement, the Firm was allocated to NOM effective January 1, 2010. Therefore, although the transactions at issue were effected on NYSE Amex (now known as NYSE MKT), the violations are of NOM and Nasdaq Rules.

### Supervision

6. CANT's written supervisory procedures ("WSPs") in effect during the period of review did not adequately discuss OCC adjustments. In connection with OCC adjustments, the WSPs stated that the number of shares or the exercise price are subject to adjustment by the OCC when the underlying shares are subject to events such as distributions, stock splits, and reorganizations. No reference was made to post-execution adjustments, and no reference was made to the review of adjustments.
7. The conduct described in paragraph six constitutes a violation of Chapter V, Section (1)(b)(iv) of NOM Rules and Nasdaq Rules 3010(a) and 2110.

### Other Considerations

8. In resolving this matter, FINRA took into consideration that the Firm provided restitution to its customer.
- B. The Firm also consents to the imposition of the following sanctions:

**A censure and a fine of \$25,000 (consisting of \$20,000 for improperly effecting OCC adjustments, and \$5,000 for supervisory violations).**

CANT agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. CANT has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

CANT 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 sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

CANT specifically and voluntarily waives the following rights granted under Nasdaq'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

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 Nasdaq Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, CANT specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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.

CANT further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

CANT 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 FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against CANT; and
- C. If accepted:
  - 1. This AWC will become part of CANT's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;
  - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about CANT's disciplinary record;

3. Nasdaq may make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
  4. CANT 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 Nasdaq, or to which Nasdaq 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 Nasdaq is not a party.
- D. CANT 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

The undersigned, on behalf of CANT, 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.

9/16/14  
Date

Cantor Fitzgerald & Co.   
Respondent

By:   
Name: Sh. P. Math  
Title: CEO

Accepted by Nasdaq:

9/11/2014  
Date

  
Eric S. Brown  
Chief Counsel, Legal Section  
Department of Market Regulation

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

ELECTION OF PAYMENT FORM

CANT intends to pay the fine proposed in the attached AWC by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan.<sup>3</sup>
  - Monthly
  - Quarterly

Respectfully submitted,  
Respondent  
Cantor Fitzgerald & Co.,

Date 9/10/14

By:   
Name: S.P. Mattel  
Title: CEO

<sup>3</sup> The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.