UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97906 / July 14, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21528

In the Matter of **Cantor Fitzgerald & Co.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the "Exchange Act"), against Cantor Fitzgerald & Co. ("Cantor" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise out of Cantor Fitzgerald's repeated failure to identify and report customers as large traders ("Large Traders"), and to make required filings on its own behalf in violation of Section 13(h) of the Exchange Act and Rules 13h-1(b), 13h-1(d), and 13h-1(e) thereunder, from at least August 9, 2017 to May 12, 2023 (the "Relevant Period").

2. Rule 13h-1 defines Large Traders as market participants that exercise investment discretion and effect transactions in a substantial amount of national market system ("NMS") securities,[1] as measured by volume or market value. Large Traders and broker-dealers are required to provide information to the Commission to facilitate its ability to assess the impact of their activity on the securities markets, to reconstruct trading activity following periods of unusual market volatility, and to analyze significant market events for regulatory purposes. Rule 13h-1 requires entities and individuals, whose transactions in NMS securities meet or exceed the daily or monthly thresholds identified by the Rule to self-identify to the Commission on Form 13H. Rule 13h-1 also requires certain recordkeeping, reporting, and monitoring responsibilities for broker-dealers. Cantor is both a longstanding Large Trader and has provided brokerage services to numerous Large Traders.

3. However, during the Relevant Period, Cantor violated Rule 13h-1(b) by failing to file Forms 13H on an annual basis or on a quarterly basis for any quarter in which information required by the form changed, or by filing Forms 13H that were inaccurate or incomplete. In fact, over a nine year period, from the Commission's implementation of Rule 13h-1(b) in October 2011 until March 28, 2021, Cantor only filed an initial Form 13H, on November 30, 2011 and did not file any subsequent required annual Forms 13H. Further, during the same period, Cantor only filed Form 13H on a quarterly basis for one quarter in April 2019.

4. Further, during the Relevant Period, Cantor also violated Rule 13h-1(d)'s requirement to maintain records for persons that it had reason to know met the definition of a Large Trader but were unidentified as one ("Unidentified Large Traders"). Specifically, Cantor failed to conduct daily and monthly reviews of Large Trader activity throughout the Relevant Period. As a result, Cantor failed to identify Unidentified Large Traders or maintain required records for those accounts. During the Relevant Period, Cantor failed to identify over 100 accounts with significant daily and monthly trading activity.

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[1] NMS securities refer to "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.600(b)(46). The term refers generally to exchange-listed securities, including equities and options.

5. Finally, Cantor violated Rule 13h-1(e) which requires broker-dealers to electronically report to the Commission upon request applicable information for all transactions in accounts for Large Traders and Unidentified Large Traders equal to or greater than the "reporting activity level." This level is defined in Rule 13h-1 to include each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares. During the Relevant Period, as a result of Cantor's failure to identify over 100 accounts discussed above and keep required records, Cantor failed to report the required information for Unidentified Large Traders when requested by the Commission. These failures negatively impacted the Commission's ability to analyze Large Trader activity and the accuracy and completeness of Cantor's submission of electronic blue sheet data ("EBS") to the Commission.

Respondent

6. Cantor Fitzgerald & Co. ("Cantor") is a general partnership headquartered in New York, New York, that with its predecessor, has been registered with the Commission as a broker-dealer since 1947 and previously was dually registered as a broker-dealer and investment adviser at various times between 1994 and 2007. On April 6, 2020, the Commission fined Cantor $3.2 million for failing to submit to the Commission true and complete data in response to 14,868 Electronic Blue Sheet ("EBS") requests during the period 2014 through 2019. *See In the Matter of Cantor Fitzgerald & Co.*, Administrative Proceeding File No. 3-19743 (April 6, 2020).

Background

7. The Commission adopted Rule 13h-1 and Form 13H under Section 13(h) of the Exchange Act in October 2011 to establish a Large Trader reporting system. Rule 13h-1 was adopted in order to assist the Commission in both identifying and obtaining trading information on market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets. Rule 13h-1(a)(7) defines a Large Trader to include a person whose transactions in NMS securities equal or exceed two million shares or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month. Rule 13h-1(b) requires a Large Trader to file Form 13H, which provides the Commission with general information about the Large Trader's business, regulatory status, affiliates, governance, and broker-dealers where the Large Trader has an account.

8. Upon receipt of Form 13H, the Commission assigns to each Large Trader an identification number that will uniquely and uniformly identify the trader ("LTID"), which the Large Trader must then provide to its broker-dealers. Such broker-dealers are then required to maintain records of transactions effected through accounts of such Large Traders. Broker-dealers also must maintain records for Unidentified Large Traders, which must include the following: the Unidentified Large Trader's name, address, date the account was opened, and tax identification number(s). In addition, the Commission requires that broker-dealers report Large Trader and Unidentified Large Trader transactions to the Commission upon request through the electronic blue sheets ("EBS") system currently used by broker-dealers for reporting trade information. Finally, a registered broker-dealer subject to the Rule may take advantage of a safe

harbor with respect to the identification of persons that the broker-dealer has reason to know is a Large Trader, but who have not furnished the broker-dealer with a LTID number, by performing limited monitoring of its customers' accounts for activity that may trigger the Large Trader identification requirements of Rule 13h-1.

9. Compliance with Rule 13h-1 is important to the reporting of information by broker-dealers into the Consolidated Audit Trail ("CAT"). Beginning in April 26, 2021, broker-dealers were required to report to the CAT certain account information regarding account holders with a LTID or an Unidentified LTID number. The reporting requirements and guidance for such reporting are set forth in the CAT Reporting Customer and Account Information Technical Specifications for Industry Members.

Cantor Fails to File Annual Forms 13H

10. Pursuant to Rule 13h-1(b), Cantor was required to make annual, and if required, quarterly, filings on its own behalf as a Large Trader. Form 13H is a short form, which requires basic information for a person to identify itself as a Large Trader. In addition to the annual filing requirement, Cantor was required to file Form 13H on a quarterly basis for any quarter in which information required by the form changed.

11. Despite Cantor being a longstanding Large Trader itself throughout the Relevant Period, Cantor repeatedly failed to file annual Forms 13H. In fact, since the inception of Rule 13h-1 in October 2011 through March 2021, Cantor filed only one initial Form 13H on November 30, 2011 and did not file any subsequent required annual Forms 13H until March 2021.

12. When Cantor began to file annual Forms 13H on March 28, 2021, Cantor repeatedly failed to include multiple affiliates of Cantor as Large Traders. Cantor did not correct this error until approximately May 12, 2023.

13. Further, since Rule 13h-1 was implemented in October 2011, Cantor did not file a Form 13H-Q for any quarter for the next eight years. In April 2019, after an inquiry from the Commission's Examination staff (the "April 2019 Exam"), Cantor filed a Form 13H-Q for the first time on April 16, 2019.

14. Despite deficiencies conveyed by the Examination staff after the April 2019 Exam to file Forms 13H, Cantor failed to make any Form 13H filings in 2020. In fact, since it first filed an initial Form 13H in November 2011, Cantor did not file an annual Form 13H until nine years later, on March 29, 2021. Cantor made this filing after receiving an additional inquiry from the Commission's Examination staff shortly before it made this filing.

Cantor Fails to Keep Records and Report Over 100 Large Traders

15. Rule 13h-1(d) requires broker-dealers to maintain specified records of transactions for Large Traders and Unidentified Large Traders. Specifically, Rule 13h-1(d) requires broker-dealers to maintain records of the information specified for all transactions (i) in an account a broker-dealer carries for a Large Trader or an Unidentified Large Trader; and (ii) any proprietary account of the broker-dealer if it is a Large Trader.

16. Rule 13h-1(e) requires every registered broker-dealer that is itself a Large Trader or carries an account for a Large Trader or an Unidentified Large Trader to report upon request the required transaction information on such persons.

17. During the Relevant Period, Cantor violated Rules 13h-1(d) and (e) by failing to keep records and report upon request information on over 100 Large Traders and Unidentified Large Traders. While acting outside the monitoring safe harbor in Rule 13h-1(f), Cantor failed to identify customers whose transactions at Cantor equaled or exceeded the identifying activity level, failed to treat such persons as Unidentified Large Traders, and failed to notify them of their potential reporting obligations under Exchange Act Section 13(h).

18. On June 7, 2019, Cantor informed the Commission's Examination staff that it would establish additional monitoring policies and procedures to comply with Rule 13h-1. However, when the Commission's Examination staff conducted a follow up review beginning in March 2021, Cantor still had not established the monitoring procedures in order to ensure compliance with Rules 13h-1(d) and 13h-1(e).

19. After several requests by the Commission's Examination and then Enforcement staff, Cantor conducted a multiyear lookback review for accounts that should have been assigned a LTID number or have been recognized as an Unidentified Large Trader. Based on this review, Cantor detected over 100 accounts that required remediation.

20. Cantor failed to establish policies and procedures reasonably designed to meet the monitoring safe harbor in Rule 13h-1(f) concerning its recordkeeping and reporting responsibilities. Cantor's policies and procedures required it to conduct daily and monthly reviews by generating a "LargeTrdrIdDaily Report" which "aggregated the customer's trading activity throughout the trading day" in order to appropriately surveil its customers' trading activity; and a "LargeTrdeldMonthly Report," which "identifie[d] all accounts that during a calendar month traded NMS securities of either twenty million shares or shares with a fair market value of $200 million." During the Relevant Period, Cantor generated these two reports but failed to monitor either report. Specifically, Cantor did not conduct any monthly reviews related to Rule 13h-1, and when conducting daily reviews, reviewed an incomplete report that did not capture a significant amount of Large Trader activity. As a result, Cantor had no mechanism to monitor or otherwise, ensure compliance with this procedure.

21. Cantor updated its policies and procedures concerning Rule 13h-1 in approximately December 2022 and May 2023. In addition, Cantor has remediated its record keeping, reporting and monitoring practices as related to Rule 13h-1 and implemented improved practices to ensure its compliance.

Violations

As a result of the conduct described above, Cantor willfully violated Section 13(h) of the Exchange Act and Rules 13h-1(b), 13h-1(d) and 13h-1(e) promulgated thereunder. Rule 13h-1(b) requires Large Traders to file Form 13H with the Commission on an annual and, as required, quarterly basis. Rules 13h-1(d) and 13h-1(e) require broker-dealers to maintain records and report to the Commission upon request specified information regarding Large Trader and Unidentified Large Trader transactions.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent Cantor's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act it is hereby ORDERED that:

A. Respondent Cantor cease and desist from committing or causing any violations and any future violations of Section 13(h) of the Exchange Act and Rules 13h-1(b), 13h-1(d), and 13h-1(e) promulgated thereunder.

B. Respondent Cantor is censured.

C. Respondent Cantor shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $1,400,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Cantor Fitzgerald & Co. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sheldon L. Pollock, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary