

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83565 / June 29, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18560

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 (“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 (the “Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. Cantor is a Delaware corporation with its principal place of business in New York, New York that is 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.

Other Relevant Parties

2. Adam Robert Mattessich became an associated person of Cantor in or about 1997. He briefly left Cantor in the summer of 2001 and rejoined the firm in or about October 2001. In February 2018, he was permitted to resign from the firm as a result of the conduct described herein. During his tenure with Cantor, Mattessich held Series 3, 7, 24, 55, and 63 licenses and had various supervisory positions, including global co-head of equities.

3. Joseph "Jay" Ludovico was an associated person of Cantor from in or about October 1998 through in or about February 2018, when he was permitted to resign from the firm as a result of the conduct described herein. During his tenure with Cantor, Ludovico held Series 7, 24, 55, and 63 licenses and was a sales trader on the international equities desk.

Background

4. From at least 2001 to the present, Cantor utilized a system of account executive or "AE" codes to monitor trading activity and apportion and track commission compensation for its associated persons. Each AE code was associated with at least one employee and indicated, for each employee, the percentage of commission to be received by such employee.

5. At the beginning of his second tenure at Cantor, Mattessich was an execution trader and, although he had an assigned AE code, he did not earn commissions on the accounts he serviced.

6. In or about 2002, Mattessich requested that the firm pay him commissions on transactions in accounts he serviced. Mattessich's superior denied the request and instructed him to transfer the accounts to more junior sales traders for coverage.

7. Following the denial of his request to receive commission compensation, Mattessich approached two of the sales traders on his desk, including Ludovico, and proposed an arrangement that would circumvent the firm's established procedures for

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

paying and recording commissions. The two sales traders were entitled under the firm's policies to receive commissions on accounts linked to their AE codes. Mattessich proposed that certain accounts he serviced be reassigned to the sales traders' AE codes so that they could receive commissions on them. In exchange, the sales traders would pay Mattessich a portion of the net commissions they received from the firm.

8. Ludovico and the other sales trader agreed to the plan and began paying Mattessich a portion of their net commissions by personal check. At the time, both sales traders were familiar with the firm's procedures for splitting and recording commissions because they shared certain AE codes with other employees.

9. Both sales traders gave personal checks to Mattessich on a monthly basis from approximately 2002 to 2010, and Ludovico continued the practice until December 2013. Typically, the sales traders would write these checks and hand them to Mattessich on the trading desk, without making any effort to conceal this activity from the other traders and desk head who sat in close proximity to them.

10. In or about 2004, Mattessich assumed supervisory responsibility over both of the individuals making payments to him and continued to receive payments from them in the same manner.

11. After Mattessich's arrangement with the two subordinates was established, in or about 2011, Mattessich also arranged for a junior execution trader to receive off-the-books commissions from the same subordinates who had been paying him. These payments to the junior execution trader were made in the same manner that Mattessich received his payments.

12. From May 2012 to December 2013, Ludovico gave Mattessich personal checks totaling \$105,800 in connection with the arrangement, and the junior execution trader received \$97,385.50 in unrecorded commissions. In addition to failing to report his receipt of these commissions to Cantor, Mattessich failed to report them as income to any taxing authorities.

13. The commission-sharing arrangement created a potential conflict of interest for Mattessich, who was responsible for supervising trading activity by the very subordinates who were making the payments to him.

14. During the timeframe in which the payments were occurring, Ludovico, acting on behalf of the firm's customers, engaged in numerous unregistered securities transactions, for which he was suspended for two months and fined \$25,000 by the Financial Industry Regulatory Authority ("FINRA") in December 2015.

15. None of the participants in the commission-sharing arrangement kept records of the compensation paid to Mattessich or the junior sales trader for the purchases and sales of securities that generated the commissions or provided any information to Cantor from which Cantor could have created such records. As a result, Cantor did not make records of the compensation that Mattessich or the junior execution trader received

through the arrangement and did not have information about such compensation available to provide to regulators if requested.

16. In late 2013 or early 2014, Mattessich and Ludovico's arrangement came to the attention of Cantor's legal and compliance personnel in connection with the FINRA regulatory matter described above. Once the arrangement came to light, the firm's chief compliance officer issued a memo stating that it was not permissible for one employee to pay another employee in connection with any trading activity. The memo also directed that all such arrangements be reported to the firm for regulatory and tax reasons. The firm did not, however, take any other remedial steps. Neither Mattessich nor Ludovico was disciplined for the conduct, and they were also subsequently promoted.

17. Near the conclusion of the Commission staff's investigation leading to this proceeding, Cantor gave Mattessich and Ludovico the option to resign from the firm or be terminated, based upon the conduct described herein.

18. As a result of the conduct described above, from at least May 2012 to December 2013, Cantor willfully² violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(19) thereunder, which requires registered broker-dealers to make and keep current a record as to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person, and the amount of the compensation received or, alternatively, to produce the required information promptly if requested by a representative of a securities regulatory authority.

IV.

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

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

A. Respondent Cantor shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(19) thereunder.

B. Respondent Cantor is censured.

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

C. Respondent Cantor shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$1,250,000.00 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 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

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.

Brent J. Fields
Secretary