

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2010024882202**

**TO:** Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

**RE:** Feltl & Company, Respondent  
CRD No. 6905

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Feltl & Company ("Feltl" 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, FINRA will not bring any future actions against Feltl alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Feltl 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 FINRA, or to which FINRA 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 FINRA:

**BACKGROUND**

Feltl has been a FINRA regulated broker-dealer since 1975. Feltl's headquarters is in Minneapolis, Minnesota. Feltl has eight branch offices and approximately 98 registered individuals associated with the Firm. Its revenue is derived from securities commissions, as well as underwriting and investment company activity.

**OVERVIEW**

From October 1, 2008 through October 26, 2010 (the "Relevant Period"), the Firm failed to establish and maintain a reasonable supervisory system, including written supervisory procedures, to monitor and review transactions executed in Firm accounts held by persons associated with the Firm for conflicts of interest. Additionally, the Firm failed to establish, maintain and enforce written supervisory procedures that were reasonably designed to supervise the personal trading activity of at least one registered representative associated with the Firm for conflicts of interest. As a result of this conduct, the Firm violated NASD Rules 3010(a) and 3010(b), NASD Rule 2110, and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

NASD Rule 3010(a) requires a member firm to establish a “system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable [FINRA] Rules.”

NASD Rule 3010(b) requires a member firm to “establish, maintain, and enforce written procedures to supervise ... the activities of registered representatives ... that are reasonably designed to achieve compliance with applicable securities laws and regulations....” The firm’s responsibility to supervise includes the duty to investigate and respond to “red flags” that suggest an associated person may be engaging in misconduct.

A violation of NASD Rule 3010 is also a violation of NASD Rule 2110 and FINRA Rule 2010, which require FINRA regulated broker-dealers to observe high standards of commercial honor and just and equitable principles of trade.<sup>1</sup>

During the Relevant Period, TC, a registered representative associated with the Firm, sold more than 900,000 shares in X Corp., a penny stock that he personally owned, at or around the same time he was recommending to his Firm customers that they purchase shares in X Corp. TC sold his X Corp. shares through a Firm account held in his own name. During the Relevant Period, 59 of TC’s Firm customers purchased approximately 1.27 million shares of X Corp. based on TC’s recommendation.

In several instances, TC sold his shares in X Corp. on the same date that one of his customers purchased shares in X Corp. pursuant to TC’s recommendation. TC failed to disclose to his customers that he was selling shares in X Corp. while recommending that his customers purchase X Corp. shares. TC’s association with the Firm terminated on October 25, 2010.

During the Relevant Period, the Firm lacked a supervisory system and written procedures reasonably designed to appropriately monitor trading by persons associated with the Firm in their personal Firm accounts. The Firm generated exception reports that identified trades involving securities held by Firm employees and Firm customers that occurred on the same date. However, during the Relevant Period these exception reports were primarily used to identify instances of “front-running.” The exception reports were not designed to detect or monitor for conflicts of interest arising out of instances where a Firm employee was selling a stock that he was recommending that his customers purchase. The Firm had no other system or procedure in place that was principally used to detect or monitor for conflicts of interest arising from transactions in Firm employee accounts, or to ensure that appropriate disclosures were made to Firm customers.

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<sup>1</sup> FINRA Rule 2010 superseded NASD Rule 2110 effective December 15, 2008.

The Firm's written supervisory procedures ("WSPs") in effect during the Relevant Period did not discuss exception reports or the process by which they would be reviewed. Additionally, although these WSPs required supervisors to review daily trading blotters and periodically review transactions effected in Firm employee accounts, the procedures provided inadequate guidance regarding the scope or nature of such reviews.

During the Relevant Period, the Firm also failed to timely respond to a number of "red flags" indicating that TC was selling X Corp. shares while recommending his Firm customers purchase the stock. By no later than April 2007, the Firm understood that TC was selling his shares in X Corp. Moreover, during the Relevant Period, evidence of TC's sales of the security also appeared on daily trading blotters. Exception reports generated by the Firm during the Relevant Period indicated that TC's customers were purchasing shares on the same date that a Firm employee had traded in the security. Despite having these items of information available, the Firm did not take timely appropriate steps to monitor TC's selling activity or ensure that adequate disclosures were made to TC's customers.

As a result of the aforementioned conduct, the Firm violated NASD Rule 3010(a) and 3010(b), NASD Rule 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring on or after December 15, 2008).

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

- a censure; and
- a fine of \$150,000.

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 an Election of Payment form showing the method by which it proposes to 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 sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under FINRA's Code

of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the 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 National Adjudicatory Council ("NAC") 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 prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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**

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 NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 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. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;


2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. 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 FINRA, or to which FINRA 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 FINRA is not a party.

D. 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 FINRA, nor does it reflect the views of FINRA or its staff.

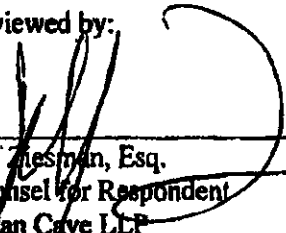
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, 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.

February 7, 2017  
Date (mm/dd/yyyy)

Feltl & Company

By:   
Thomas F. Steichen  
General Counsel, Feltl & Company


Reviewed by:

  
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Accepted by FINRA:

2/28/17  
Date

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

  
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FINRA Department of Enforcement  
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