

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2013036524902**

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") 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 registered with FINRA and the NASD since 1975. It is a full-service broker-dealer based in Minneapolis, Minnesota, with approximately 100 registered representatives and nine branch offices.

**RELEVANT DISCIPLINARY HISTORY**

In November 2015, Feltl entered into an AWC in which FINRA found that Feltl violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish, maintain, and enforce a supervisory system, including written supervisory procedures, regarding monitoring and detection of potential insider-trading activity. Feltl agreed to accept a censure and pay a \$50,000 fine.

In December 2014, Feltl and FINRA entered into an AWC in which FINRA found that, from January 2009 through September 2012, Feltl failed to establish and maintain a supervisory system reasonably designed to ensure that its sales of leveraged and inverse exchange-traded funds complied with applicable securities laws and FINRA rules, in violation of NASD Conduct Rule 3010 and FINRA Rule 2010, and that it made unsuitable recommendations of those products to

customers, in violation of NASD Conduct Rule 2310 and FINRA Rule 2010. Feltl agreed to accept a censure, pay a fine of \$225,000, and make restitution to customers of approximately \$13,000.

In September 2014, Feltl and FINRA entered into an AWC that imposed a censure and \$1.0 million fine on the firm. In the AWC, FINRA found multiple failures by Feltl between 2008 and 2012 concerning supervision of transactions in penny-stock securities and annual testing and verification of supervisory procedures. FINRA found that this conduct violated Section 15(g) of the Securities Exchange Act of 1934 and various SEC rules promulgated thereunder; NASD Conduct Rules 3010, 3012, 3110, and 2110; and FINRA Rules 3130 and 2010.

### **OVERVIEW**

From May 1, 2009 to April 30, 2014, Feltl failed to apply sales-charge discounts to certain customers' eligible purchases of unit investment trusts ("UITs"). Feltl also failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to ensure that customers received sales charge discounts on all eligible UIT purchases.

In addition, between January 2011 and December 2012, Feltl failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to prevent unsuitable short-term trading of UITs.

Through this conduct, Feltl violated NASD Conduct Rule 3010 and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

A UIT is a type of Investment Company that issues securities, typically called "units," representing undivided interests in a relatively fixed portfolio of securities. UITs are generally issued by a sponsor that assembles the UIT's portfolio of securities, deposits the securities in a trust, and sells units of the UIT in a public offering. UIT units are redeemable securities that are issued for a specific term, and entitle an investor to receive his or her proportionate share of the UIT's net assets on redemption or at termination.

UIT sponsors offer investors a variety of ways to reduce the sales fee charged on a UIT purchase. The two most common methods to reduce the fee are "breakpoints," which allow investors to reduce the sales fee by increasing the size

of their UIT investments, and discounts on “rollovers” and “exchanges”<sup>1</sup> (collectively “sales charge discounts”).

On March 31, 2004, FINRA issued Notice to Members 04-26, *Unit Investment Trust Sales*, which reminded broker-dealers that they should develop and implement procedures to ensure customers receive available sales charge discounts for UITs. The Notice further stated that UIT transactions must take place “on the most advantageous terms available to the customer” and that it is the firm’s responsibility to “take appropriate steps to ensure that they and their employees understand, inform customers about, and apply correctly any applicable price breaks available to customers in connection with UITs.”

Between May 1, 2009 and April 30, 2014, Feltl failed to identify and apply sales charge discounts to certain customers’ eligible purchases of UITs. Specifically, Feltl failed to apply sales-charge discounts to more than 1,100 eligible UIT purchases resulting in customers paying excessive sales charges of approximately \$261,873. Feltl has paid restitution to all affected customers. Based on the foregoing, Feltl violated FINRA Rule 2010.

During the same period, Feltl failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to ensure that customers received sales-charge discounts to which they were entitled on UIT purchases. The firm did not have a system or procedure, whether written or informal, to spot UIT switches and identify applicable sales-charge discounts.

Feltl also failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to prevent unsuitable short-term trading of UITs. The firm employed a decentralized system for its supervisory review of UIT transactions that relied on branch managers to detect potentially problematic transactions or patterns of transactions through daily reviews of trade blotters. Although Feltl had access to an exception report that identified, among other things, short-term trading in UITs, the firm viewed the report as flawed and did not share it with its branch-office managers.

This supervisory deficiency, moreover, allowed unsuitable UIT trading to go undetected. A registered representative of the firm, LZ, engaged in unsuitable short-term trading of UITs in two customer accounts during 2011 and 2012.

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<sup>1</sup> UIT rollover and exchange discounts are generally offered to investors who use the redemption or termination proceeds from one UIT to purchase another UIT, either from the same UIT series (rollover) or a different UIT (an exchange). Generally, in order to receive the rollover or exchange discount, proceeds used to purchase the UIT must have come from a UIT transaction that occurred within the previous 30 days. In both rollovers and exchanges, the customer generally receives a discount of 1% of the public offering price.

These customers paid a combined total of nearly \$65,000 in commissions and sustained additional losses on the unsuitable trades.<sup>2</sup>

Based on the foregoing, Feltl violated NASD Conduct Rules 3010(a) and (b) and FINRA Rule 2010.

B. Respondent consents to the imposition of the following sanctions:

- Censure
- A fine in the amount of \$250,000

Feltl agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Feltl has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

Respondent 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.

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<sup>2</sup> Both customers have settled their claims with the firm and the registered representative who recommended the unsuitable trading.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment 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.

Respondent 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

Feltl 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 Feltl;
- C. If accepted:
  1. This AWC will become part of Feltl's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
  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. Feltl 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. Feltl 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 its: (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; and

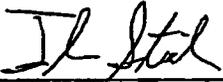
- D. Feltl may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of Feltl, 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.

04/12/2016  
Date (mm/dd/yyyy)

By:   
Thomas Steichen  
General Counsel

Reviewed by:

  
Thomas F. Steichen  
General Counsel

Accepted by FINRA:

5/9/2016  
Date

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

  
Adam B. Walker  
Senior Regional Counsel  
FINRA Department of Enforcement  
120 W. 12<sup>th</sup> Street  
Kansas City, Missouri 64105