

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20150480471-02**

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

RE: Richard Feldman, Respondent  
Financial and Operations Principal, General Securities Representative  
CRD No. 2273453

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Richard Feldman ("Feldman") 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 Feldman alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. I, Richard Feldman, hereby accept and consent, 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**

Feldman first became registered with FINRA as a Financial and Operations Principal in October 1992. Feldman also became registered with FINRA as a General Securities Representative on April 5, 1995. Between 1992 and 2011, Feldman maintained his registrations with FINRA through consecutive associations with 15 FINRA member firms. In June 2011, Feldman began to provide outsourced FINOP services to FINRA member firms. Feldman maintained his registrations with FINRA through his association with those broker-dealers. Feldman became associated with Betterment Securities ("Betterment" or the "Firm") in May 2012. Feldman currently maintains his registrations with the Firm and 10 other member firms. Feldman works for Betterment remotely from his Port Washington, New York office or in the Firm's New York, New York office.

**RELEVANT DISCIPLINARY HISTORY**

Feldman has no relevant disciplinary history with the Securities and Exchange

Commission (the “SEC”), FINRA, any other self-regulatory organization, or any state securities regulator.

## OVERVIEW

From June 2012 through January 2015 (the “Relevant Period”), Feldman was designated as Betterment’s qualified financial and operations principal (“FINOP”). Betterment is a carrying firm that currently has over \$10 billion in assets under management. As the Firm’s FINOP, Feldman was responsible for the Firm’s compliance with financial and operational rules. However, Feldman’s efficacy as FINOP was limited by the narrow scope of his involvement with the Firm’s day-to-day business and his insufficient access to the materials he needed to help the Firm comply with the rules. Despite his responsibilities as the Firm’s FINOP, Feldman did not insist on receiving more complete information or access from the Firm.

As a result, during the Relevant Period, Feldman caused the Firm to fail to properly make and keep certain of its books and records. For example, Feldman, on behalf of the Firm, did not create and maintain certain records of cash movements in the form required by SEC and FINRA rules. In addition, Feldman did not ensure that the Firm’s stock record was maintained on a settlement date basis. Instead, the Firm’s systems maintained its stock record on a trade date basis. By not ensuring the Firm’s compliance with applicable financial reporting requirements, Feldman caused the Firm to violate Section 17 of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rules 17a-3 and 17a-4 promulgated thereunder and FINRA Rules 4511 and 2010. As a result, Feldman violated FINRA Rules 4511 and 2010.

## FACTS AND VIOLATIVE CONDUCT

### **A. Background**

During the Relevant Period, Betterment was a rapidly growing carrying firm. The Firm had approximately \$120,000 in annual revenues in 2011 and more than \$1.2 million in annual revenues in 2014. Feldman was the Firm’s FINOP during this period. As such, he was the primary person responsible for the review and preparation of all of the Firm’s financial records. During the Relevant Period, Feldman was employed by the Firm part-time and worked primarily off-site. He was onsite at the Firm only once a month. He had limited responsibilities that did not include day-to-day compliance with key financial and operational rules. In addition, he only received monthly statements and record compilations from the Firm instead of more complete access to its bank accounts and omnibus accounts.

Pursuant to NASD Rule 1022, the duties of a firm's designated FINOP include final responsibility for financial reports submitted by the firm to securities regulators; supervision of and responsibility for individuals who are involved in the maintenance of the firm's books and records from which such reports are derived; and supervision or performance of the firm's responsibilities under all financial responsibility rules promulgated under the Exchange Act. As stated in Notice to Members 06-23, all FINOPs, including those who are employed off-site, work only part-time, or hold multiple registrations with different member firms, are fully responsible for the duties set forth in Rule 1022.

#### **B. Failure to Maintain Required Books and Records**

Section 17 of the Exchange Act and Rule 17a-3 promulgated thereunder require that broker-dealers make and keep current certain books and records, including, among others, blotters and ledgers of every receipt and disbursement of cash and securities records. Rule 17a-4 promulgated under the Exchange Act requires that broker-dealers preserve those records. FINRA Rule 4511 provides, in part, "[m]embers shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." The books and records rules "are an integral part of the investor protection function" because the "records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards."<sup>1</sup>

Rule 17a-3(a)/01,<sup>2</sup> states that subsidiary ledgers required by Rule 17a-3 relating to securities in transfer, dividends and interest received, and securities borrowed and loaned should be posted no later than two business days following the date of the securities or money movement. Rule 17a-3(a)/01 also states that ledger accounts itemizing each cash account of every customer for all credits and debits should be posted no later than the first business day following the transaction. Rule 17a-3(5) states that firms must make and keep "A securities record or ledger reflecting separately for each security as of the clearance dates all 'long' or 'short' positions...carried by such member, broker or dealer for its account or for the account of its customers."

FINRA Rule 2010 requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." A violation of another FINRA rule constitutes a violation of FINRA Rule 2010.

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<sup>1</sup> Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), SEC Interpretation Release No. 34-44238, 17 C.F.R. Part 241, at p. 3 of 15 (May 1, 2001).

<sup>2</sup> See Interpretations of Financial and Operational Rules, compiling interpretations provided by the staff of the SEC's Division of Trading and Markets and published by FINRA, Rule 17a-3(a)/01, available on FINRA's public website at <http://www.finra.org/industry/interpretationsfor>. See also SEC Release No. 34-10756, May 3, 1974.

Because Betterment was a rapidly growing carrying firm with a primary responsibility to protect its customers' assets, Feldman's obligation as FINOP to ensure that the Firm complied with all financial and operational rules was especially important. However, the Firm did not provide Feldman with sufficient access to the information or materials he needed to ensure that the Firm complied with the rules. And Feldman did not insist on receiving more complete information or access. As a result, Feldman caused the Firm to violate the Exchange Act and FINRA rules.

Specifically, during the Relevant Period, Feldman failed to ensure that the Firm timely created and maintained the records detailing cash movements relating to the purchase and sale of customer securities and the receipt and disbursement of dividends required by Rule 17a-3(a)/01. Although the Firm electronically captured daily records of cash movements, Feldman did not ensure that the Firm created and maintained records of those cash movements in the form required by FINRA and SEC Rules. As a result, the Firm would not have been able to timely provide those records to its auditors or the SEC. When FINRA examiners requested such records of daily cash movements, the Firm was unable to timely provide them.

In addition, between June 2012 and July 2014, Feldman did not ensure that the Firm kept a settlement date, rather than a trade date, stock record. As a result, although the Firm maintained and reviewed information relating to settlement of transactions, the Firm's stock record lacked information about transactions that were not completed as expected on settlement date. The stock records therefore did not comply with Rule 17a-3(5).

As Feldman failed to ensure that the Firm created these records required by Rule 17a-3, Feldman also caused the Firm to fail to maintain these records as required by Rule 17a-4.

By reason of the foregoing, Feldman violated FINRA Rules 4511 and 2010 by causing the Firm to violate Section 17 of the Exchange Act, Rules 17a-3 and 17a-4 promulgated thereunder.

B. I also consent to the imposition of the following sanctions:

1. a censure; and
2. a fine of \$5,000.

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

I specifically and voluntarily waive any right to claim that I am 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**

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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**

I understand 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;

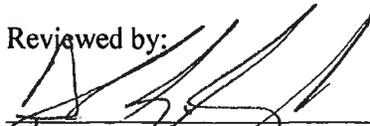
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
  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. I 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. I 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 my: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I, Richard Feldman, certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

5/31/18  
Date (mm/dd/yyyy)

  
Richard Feldman  
Respondent

Reviewed by:

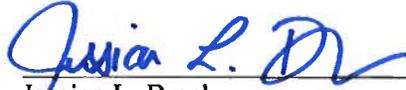


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Accepted by FINRA:

6/20/2018  
Date

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



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