

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5750/ June 11, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20365

In the Matter of

FELTL ADVISORS, LLC

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, 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 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Feltl Advisors, LLC (“Feltl” 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 203(e) and 203(k) of the Investment Advisers Act of 1940, 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:¹

Summary

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

1. Feltl Advisors, LLC (“Feltl”), a registered investment adviser, breached its fiduciary duty in connection with the mutual funds it recommended for clients that resulted in certain financial benefits for Feltl’s affiliated broker. First, from at least January 2014, Feltl purchased, recommended, or held for advisory clients mutual fund share classes that resulted in its affiliated broker receiving fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (“12b-1 fees”) instead of lower-cost share classes of the same funds that were available to clients. Feltl did not adequately disclose this conflict of interest to its clients. Feltl, although eligible to do so, did not self-report to the Commission pursuant to the Division of Enforcement’s (the “Division”) Share Class Selection Disclosure Initiative (“SCSD Initiative”).² Second, since September 2016, Feltl also purchased, recommended, or held for advisory clients cash sweep money market funds and FDIC-insured deposits for which its affiliated broker received revenue sharing payments from its clearing brokers. Up until June 2018, the money market fund share classes that resulted in Feltl’s affiliated broker receiving revenue sharing were more expensive than lower-cost share classes of the same funds that were available to clients through the clearing broker. In June 2018, Feltl’s affiliated broker changed clearing brokers, yet continued to receive revenue sharing on cash sweep products offered by the new clearing broker. Feltl did not fully and fairly disclose that its affiliated broker was receiving revenue sharing or the resulting conflicts of interest. Feltl also breached its duty to seek best execution by causing certain advisory clients to invest in these mutual fund and money market fund share classes when share classes of the same funds that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions were available to the clients. In June 2018, Feltl’s new clearing broker started rebating 12b-1 fees to Feltl’s clients.

2. From January 2015 to June 2018, Feltl also breached its fiduciary duty to clients by failing to disclose that clients in one of Feltl’s “wrap fee” programs incurred ticket charges on certain transactions and the conflict of interest created because its affiliated broker received a portion of those ticket charges.

3. Feltl failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund and cash sweep money market share class selection practices and its disclosures of conflicts of interest resulting from share class selection, its affiliated broker’s receipt of revenue sharing, and its affiliated broker’s receipt of a portion of client ticket charges.

Respondent

4. Feltl Advisors, LLC, a Minnesota limited liability company, headquartered in Minnetonka, Minnesota, has been registered with the Commission as an investment adviser since 2012. In its Form ADV dated March 31, 2021, Feltl reported that it had approximately \$92 million in regulatory assets under management.

² See Div. of Enforcement, U.S. Sec. & Exch. Comm’n, *Share Class Selection Disclosure Initiative*, <https://www.sec.gov/enforce/announcement/scsd-initiative> (last modified Feb. 12, 2018).

Related Entity

5. Feltl & Company (“F&C”), a Minnesota corporation headquartered in Minnetonka, Minnesota, has been registered with the Commission as a broker-dealer since 1975. F&C is affiliated with Feltl because the two firms have common ownership. Throughout the periods described herein, F&C acted as introducing broker for Feltl’s advisory clients.

Feltl’s Selection of Mutual Fund Share Classes That Charged 12b-1 Fees

6. Mutual funds typically offer investors different types of shares or “share classes.” Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

7. For example, some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are included in a mutual fund’s total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund’s assets on an ongoing basis and paid to the fund’s distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

8. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., “Institutional Class” or “Class I” shares (collectively, “Class I shares”).³ An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will generally earn higher returns – than one who holds a share class of the same fund that charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

9. Since at least January 2014, Feltl advised clients to purchase or hold⁴ mutual fund share classes that charged 12b-1 fees, including when lower-cost share classes of those same funds were available to those clients. F&C received those 12b-1 fees until F&C’s clearing broker started rebating 12b-1 fees to Feltl’s clients beginning in June 2018. As a result, F&C received 12b-1 fees that it would not have collected had Feltl’s advisory clients been invested in the available lower-cost share classes. F&C in turn paid to Feltl’s investment adviser representatives (“IARs”) who were also registered representatives of F&C, a portion of these fees according to the terms of the IARs’ agreements with F&C.

10. Feltl’s Form ADV Part 2A brochure (“Brochure”) during this period disclosed to clients that, “[o]n mutual funds, [Feltl] sells primarily ‘A shares’ and ‘no load’ funds to advisory

³ Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as “Class F2,” “Class Y” and “Class Z” shares. As used in this Order, the term “Class I shares” refers generically to share classes that do not charge 12b-1 fees.

⁴ In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

accounts. [Feltl] may receive ongoing payments from the mutual fund companies related to those purchases, which are commonly known as ‘12b-1 fees.’” Feltl further disclosed that, “Because [Feltl] and its IARs receive additional compensation on the products described in this subpart E, this presents a conflict of interest – F&C, [Feltl] and the IAR have a financial incentive to recommend these types of products, whether or not they are in the best interests of the customer.” Feltl stated, however, that, “[t]o deal with such actual and potential conflicts,” it trained its IARs “that they have a fiduciary duty to always act in the best interests of the customer, rather than their own personal interests or the interests of [Feltl]” and “[Feltl’s] supervisors review all trading in advisory accounts to assess whether the activity is in the customer’s best interests.”

11. As an investment adviser, Feltl was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and/or its IARs and its clients, which could affect the advisory relationship and how those conflicts could affect the advice Feltl provided its clients. To meet this fiduciary obligation, Feltl was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest concerning Feltl’s advice about investing in different classes of mutual funds and could have an informed basis on which they could consent to or reject the conflicts. Feltl did not adequately disclose all material facts regarding the conflict of interest that arose when it invested advisory clients in share classes of mutual funds that would generate 12b-1 fee revenue for F&C and the IARs, while a share class of the same fund was available that would not provide that additional compensation.

12. Feltl’s disclosures were also misleading during this period because they would lead a reasonable investor, incorrectly, to conclude that Feltl and its IARs always acted in the best interests of its clients and that Feltl had addressed the conflict through appropriate training and account reviews. None of the training or account reviews Feltl performed during this time specifically addressed the conflict of interest created by F&C’s receipt of 12b-1 fees.

Revenue Sharing from Cash Sweep Accounts

13. Since at least September 2016, Feltl purchased, recommended, or held for advisory clients certain money market funds and/or FDIC-insured deposits to hold uninvested cash (“Sweep Account Options”) that yielded revenue sharing to F&C. A sweep account is a money market mutual fund or bank account used by brokerages to hold uninvested cash (e.g., incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money (“Sweep Account”). A money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used as cash sweep account options. The investment yields and expense ratio of a money market fund will differ from fund to fund.

14. Between 2011 and June 2018, F&C’s agreement with its clearing broker (“Clearing Broker A”) provided for Clearing Broker A to share with F&C a portion of the revenue the clearing broker earned (if any) on money invested in either of two money market funds, each of which had similar share classes and revenue sharing terms. Under the agreement, F&C was

eligible to receive revenue sharing for customer assets invested in two available share classes (“Capital Reserves” and “Daily Money”) of the two money market funds. A third share class (“Retail”) of the same money market funds was also available to Feltl clients, but Clearing Broker A did not pay F&C any revenue sharing for Feltl’s client assets invested in the Retail class.

15. The three cash sweep money market fund share classes had three different annual expenses: (1) Capital Reserves had annual expenses of 0.95%, (2) Daily Money had annual expenses of 0.70%, and (3) Retail had annual expenses of 0.42%. Thus, Capital Reserves was the most expensive available share class, followed by Daily Money, and then Retail. The more expensive the share class, the lower the returns for investors.

16. F&C received differing amounts of revenue sharing depending on the money market fund share class Feltl selected for its clients. For example, as set forth in the chart below, for one of the money market funds, F&C received more revenue sharing when Feltl invested clients in Capital Reserves share class than when it invested clients in Daily Money share class, and it received no revenue sharing when clients invested in the Retail class. Thus, Feltl had an incentive to select the Capital Reserves share class for clients, which provided clients the lowest net performance.

| | Money Market Fund Share Classes | | |
|----------------------------------|---------------------------------|-------------|--------|
| | Capital Reserves | Daily Money | Retail |
| Total Fund Expenses | 0.95% | 0.70% | 0.42% |
| Revenue Shared with Feltl | 0.50% | 0.25% | X |
| Fund Performance Net of Expenses | | | |
| 2016 | 0.01% | 0.01% | 0.04% |
| 2017 | 0.09% | 0.24% | 0.51% |
| 2018 | 0.94% | 1.19% | 1.47% |

17. F&C first started receiving revenue sharing payments pursuant to this arrangement with Clearing Broker A in September 2016, and F&C continued to receive payments through June 2018. During this time, F&C received cash sweep revenue sharing by Feltl clients being placed in the Capital Reserves and Daily Money share classes. In June 2018, F&C stopped receiving cash sweep revenue sharing payments from Clearing Broker A when it changed to a new clearing broker (“Clearing Broker B”) and client assets were transferred out of Capital Reserves and Daily Money and into a new money market fund offered by Clearing Broker B.

18. Prior to 2016, Feltl had amended its Brochure to disclose generally that F&C had an arrangement with its clearing firm to receive revenue sharing on certain assets, but Feltl did not

fully and fairly disclose the associated conflicts of interest. Feltl also disclosed at the time the Brochure was amended that F&C was not then receiving any such revenue payments. In particular, Feltl's disclosures provided as follows:

Under F&C's clearing agreement with [the clearing broker], F&C may also receive from [the clearing broker] a payment based on a percentage of the free credit balances that [Feltl's] customers have on deposit with [the clearing broker]. In the current interest rate environment, no such payment is occurring, but if interest rates were to rise, F&C could receive compensation from [the clearing broker] under the aforementioned agreement. This compensation is not shared with [Feltl].

19. In September 2016, when F&C started receiving payments from Clearing Broker A for client money market fund investments, Feltl did not update its disclosures or otherwise tell its clients that F&C had begun receiving such payments, or the conflicts of interests associated therewith. Thus, between September 2016, when F&C began receiving cash sweep revenue sharing payments, and June 2018, when F&C switched to Clearing Broker B and stopped receiving those payments, Feltl failed to update its Brochure to fully and fairly disclose the conflicts associated with the revenue sharing, and its Brochure disclosures were materially misleading because they continued to state, incorrectly, that no such payments were occurring.

20. F&C's June 2018 clearing agreement with Clearing Broker B also provided for revenue sharing payments to F&C for the cash sweep money market fund that Clearing Broker B offered Feltl's existing clients to move to upon switching to Clearing Broker B. For new clients that became Feltl clients after June 2018, Clearing Broker B required that all cash sweep money be placed in an FDIC-insured deposit account sponsored by Clearing Broker B. Clearing Broker B also paid F&C revenue sharing based on those deposit account balances. F&C received revenue sharing payments from Clearing Broker B before Feltl provided any disclosure of the arrangement.

Undisclosed Brokerage Compensation Received from Ticket Charges

21. From January 2015 to June 2018, Feltl's Wrap Brochure described the various advisory account programs it offered to clients. The Wrap Brochure also disclosed, where applicable, any transactional fees that would be levied on certain specified account types in addition to the annual advisory fee based on assets under management. One of Feltl's offerings was the Actively Managed Account program ("AMA"), which Feltl described as a non-discretionary advisory account for which the firm provides on-going monitoring. In its Wrap Brochure, Feltl did not identify any transaction fees that would apply to AMA accounts in addition to the annual AMA advisory fee.

22. At F&C's request, its clearing broker charged AMA accounts a \$6.00 fee for each transaction. A portion of the \$6.00 fee was then used to reduce the transaction costs F&C would have otherwise paid to its clearing broker for executing transactions for clients with AMA accounts. As a result of this arrangement, between January 2015 and June 2018, the clearing

broker charged Feltl's AMA clients transaction fees totaling \$49,026, which in turn reduced the transaction charges F&C had to pay. Feltl did not disclose to its clients that they would be subject to these transaction fees, or that a portion of such fees benefited F&C. In June 2018, Feltl changed to a new clearing broker and stopped charging clients these transaction fees.

Best Execution Failures

23. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.

24. During the periods specified above and through June 2018, Feltl caused certain advisory clients to invest in fund share classes that paid 12b-1 fees and/or money market sweep revenue when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions. As a result, Feltl violated its duty to seek best execution for those transactions.

Compliance Deficiencies

25. Feltl failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund and money market fund share class selection practices, F&C's receipt of revenue sharing, and F&C's receipt of transaction-based revenue.

Violations

26. As a result of the conduct described above, Respondent willfully⁵ violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

27. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment

⁵ "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "means no more than 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." *Tagerv. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Disgorgement

28. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible pursuant to the respondent-administered distribution described in Section IV below. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 ("Exchange Act").

Undertakings

29. Respondent has undertaken to:

- a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning mutual fund share class selection and 12b-1 fees, revenue sharing, and transaction charges in advisory accounts.
- b. Within 30 days of the entry of this Order, evaluate whether existing clients should be moved to a lower-cost share class and move clients as necessary or, alternatively, rebate any 12b-1 fees to clients.
- c. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with mutual fund share class selection and cash sweep vehicle selection, transaction-based compensation in advisory accounts, and making recommendations of mutual fund share classes or cash sweep vehicles that are in the best interests of Respondent's advisory clients.
- d. Within 30 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who were financially harmed by the conduct detailed above) (hereinafter, "affected investors") of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
- e. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of

compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$333,971 as follows:

(i) Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$184,173, prejudgment interest of \$34,798, and a civil penalty of \$115,000 consistent with the provisions of this Subsection C.

(ii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest referenced in this Subsection C. 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.

(iii) Within ten (10) days of the entry of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil penalty (the “Fair Fund”), into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(iv) Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(v) Respondent shall distribute from the Fair Fund to each affected investor an amount representing: (a) the 12b-1 fees paid by the affected investor between January 2014 and June 2018; (b) excess fees paid by the affected investor in a more expensive money market fund share class between September 2016 and June 2018; (c) transaction charges paid by AMA clients, between January 2015 and June 2018; and (d) reasonable interest paid on such fees, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent or its past or present officers or directors have a financial interest.

(vi) Respondent shall, within ninety (90) days of the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent’s proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the

review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vii) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Fair Fund to each affected investor, (3) the amount of any *de minimis* threshold to be applied, and (4) the amount of reasonable interest paid.

(viii) Respondent shall complete the disbursement of all amounts payable to affected investors within ninety (90) days of the date the Commission staff approves the Payment File unless such time period is extended as provided in Paragraph (xii) of this Subsection C.

(ix) If Respondent is unable to distribute any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act, when the distribution of the funds is complete and before the final accounting provided for in Paragraph (xi) below is submitted to the Commission staff. Any such payment shall be made in accordance with Paragraph (xiii) below.

(x) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and any paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act ("FATCA"). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid by the Fair Fund.

(xi) Within one hundred fifty (150) days after Respondent completes the distribution of all amounts payable to the affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in Paragraph (ix) of this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair

Fund for Commission approval. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each affected investor, with reasonable interest, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred or credited to each affected investor; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an affected investor whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Payment File approved by the Commission staff. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies Feltl as the Respondent in these proceedings and the file number of these proceedings to Jeffrey Shank, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xii) The Commission staff may extend any of the procedural dates set forth in Paragraphs (i) through (xi) of this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

(xiii) Respondent's transfer of any undistributed funds to the Commission must be made in one of the following ways:

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

(b) 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

(c) 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 Respondent 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 Jeffrey Shank, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide.

E. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 29.a through 29.f above.

By the Commission.

Vanessa A. Countryman
Secretary