

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78114 / June 21, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17306

<p>In the Matter of</p> <p>Feltl & Company, Inc.,</p> <p>Respondent.</p>

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 15(b), 15B(c)(2) 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), 15B(c)(2) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Feltl & Company, Inc. (“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 15(b), 15B(c)(2) and 21C of the Securities Exchange Act of 1934, 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 finds¹ that:

Summary

These proceedings involve the sale of both non-investment grade or "junk" bonds, and unrated bonds by Feltl & Company, Inc. ("Feltl"), a registered broker-dealer and municipal securities dealer, to customers in amounts below the minimum denominations of the issues. Rule G-15(f) promulgated by the Municipal Securities Rulemaking Board ("MSRB") prohibits dealers from effecting customer transactions in municipal securities in amounts below the minimum denomination of the issue. Minimum denominations are generally intended to limit sales of municipal securities to retail investors for whom such bonds may not be suitable, but the proscriptions of Rule G-15(f) apply to all transactions with customers, regardless of whether the securities are suitable for the customer. Between November 2012 and March 2014, Feltl violated MSRB Rule G-15(f) by executing forty-three sales transactions in three different bond series with customers in amounts below the minimum denominations of those three issues. Feltl also violated MSRB Rule G-17 by failing to disclose to these customers, at or prior to the time of their trades, the fact that the bonds had minimum denominations, and to explain how this could affect the liquidity of their positions in the bonds. Additionally, Feltl violated MSRB Rule G-27 by failing to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure compliance with MSRB Rule G-15(f).

Respondent

1. Feltl is a Minnesota corporation that maintains principal offices in Minneapolis, Minnesota. It is a registered broker-dealer pursuant to Section 15(b) of the Exchange Act. It is also a municipal securities dealer and a municipal securities broker as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act.

MSRB Rule G-15(f): Minimum Denomination Requirements for Bond Sales to Customers

2. Section 15B(b) of the Exchange Act established the MSRB and empowered it to propose and adopt rules for transactions in municipal securities by brokers, dealers, and municipal securities dealers. Section 15B(c)(1) of the Exchange Act prohibits a broker, dealer, or municipal securities dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the MSRB. As a municipal securities dealer, Respondent is subject to Section 15B(c)(1) of the Exchange Act and MSRB rules.

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.

3. MSRB Rule G-15(f)(i) prohibits a broker, dealer, or municipal securities dealer from effecting a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue except pursuant to two limited exceptions. First, under MSRB Rule G-15(f)(ii), a dealer may purchase municipal securities from a customer in an amount below the minimum denomination of the issue if the dealer determines that the customer's position in the issue is already below the minimum denomination and the customer's entire position in the issue would be liquidated by the transaction. Second, under MSRB Rule G-15(f)(iii), a dealer may sell municipal securities to a customer in an amount below the minimum denomination of the issue if the dealer determines that the position being sold resulted from the liquidation of another customer's entire position in the issue which was below the minimum denomination of the issue. Additionally, a dealer selling under MSRB Rule G-15(f)(iii) must, at or before the completion of the transaction, notify the customer that the amount of the transaction is below the minimum denomination of the issue and that this may adversely affect the liquidity of the customer's position.

4. Under MSRB Rule G-15(f), brokers, dealers, and municipal securities dealers may not sell municipal securities in amounts below the minimum denomination of an issue to a customer regardless of whether the customer holds or would hold a position in the issue which is equal to or exceeds the minimum denomination of the issue. The rule also prohibits brokers, dealers, and municipal securities dealers from purchasing municipal securities in amounts below the minimum denomination of an issue from a customer whose position in the securities equals or exceeds the minimum denomination of the issue unless the customer's position is being liquidated in its entirety.

Commonwealth of Puerto Rico
General Obligation Bonds, Series 2014A
\$100,000 Minimum Denomination

5. In March 2014, Puerto Rico issued \$3.5 billion in General Obligation Bonds of 2014, Series A (CUSIP 74514LE86) (the "2014 Puerto Rico Bonds").

6. The 2014 Puerto Rico Bonds are non-investment grade securities and are considered "junk" bonds. Between March and May 2014, the 2014 Puerto Rico Bonds had a credit rating of "Ba2" by Moody's Investors Service, "BB+" by Standard & Poor's Rating Services, and "BB" by Fitch Ratings.

7. The Official Statement of the Commonwealth of Puerto Rico disseminated in connection with the issuance of the 2014 Puerto Rico Bonds specifies in pertinent part that the bonds "are issuable as registered bonds without coupons in denominations of \$100,000 and any multiple of \$5,000 in excess thereof." During the relevant period, MSRB Rule G-15(f) permitted dealers to effect customer transactions in the 2014 Puerto Rico Bonds in amounts equal to the \$100,000 minimum denomination of the issue or amounts greater than \$100,000 in increments of \$5,000. Dealers could therefore have effected customer transactions for \$105,000, \$110,000, and so forth.

Dealers were prohibited from effecting transactions with customers in the 2014 Puerto Rico Bonds in amounts below \$100,000, regardless of a customer's aggregate position in the bonds.²

Dakota County (Minnesota) Community Development Agency
Senior Housing Revenue Bonds, Series 2013A
\$25,000 Minimum Denomination

8. In November 2013, the Dakota County (Minnesota) Community Development Agency issued \$7,890,000 in Senior Housing Revenue Bonds (Ebenezer Ridges Assisted Living Project), Series 2013A (CUSIP 23410LAF6) (the "2013 Dakota County CDA Bonds").

9. The 2013 Dakota County CDA Bonds never had a credit rating.

10. The Official Statement of the Dakota County Community Development Agency disseminated in connection with the issuance of the 2013 Dakota County CDA Bonds specifies in pertinent part that the bonds "are issuable in fully registered form, in the denomination of \$25,000 and integral multiples of \$5,000 in excess thereof not exceeding the principal amount maturing in any year." During the relevant period, MSRB Rule G-15(f) permitted dealers to effect customer transactions in the 2013 Dakota County CDA Bonds in amounts equal to the \$25,000 minimum denomination of the issue or amounts greater than \$25,000 in increments of \$5,000. Dealers could therefore have effected customer transactions for \$30,000, \$35,000, and so forth. Dealers were prohibited from effecting transactions with customers in the 2013 Dakota County CDA Bonds in amounts below \$25,000, regardless of a customer's aggregate position in the bonds.

City of Rochester, Minnesota
Health Care and Housing Revenue Refunding Bonds, Series 2009A
\$25,000 Minimum Denomination

11. In December 2009, the City of Rochester, Minnesota issued \$29,680,000 in Health Care and Housing Revenue Refunding Bonds (Samaritan Bethany, Inc. Project), Series 2009A, and in particular serial bonds identified by CUSIP 771906BM5 in the amount of \$505,000 maturing on December 1, 2020 and serial bonds identified by CUSIP 771906BN3 in the amount of \$535,000 maturing on December 1, 2021 (the two maturities are collectively the "2009 Rochester Bonds").

12. The 2009 Rochester Bonds never had a credit rating.

13. The Official Statement of the City of Rochester, Minnesota disseminated in connection with the issuance of the 2009 Rochester Bonds specifies in pertinent part that the bonds "are issuable only in minimum denominations of \$25,000 and integral multiples of \$5,000 in excess thereof" During the relevant period, MSRB Rule G-15(f) permitted dealers to effect customer

² For example, a dealer could not have effected a customer transaction for \$100,000, followed by a separate below-minimum-denomination transaction for \$5,000, for a total of \$105,000. The second transaction would have violated MSRB Rule G-15(f). See [Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations](#), Exchange Act Release No. 45174, 66 Fed. Reg. 67342 at n.12 (Dec. 28, 2001).

transactions in the 2009 Rochester Bonds in amounts equal to the \$25,000 minimum denomination of the issue or amounts greater than \$25,000 in increments of \$5,000. Dealers could therefore have effected customer transactions for \$30,000, \$35,000, and so forth. Dealers were prohibited from effecting transactions with customers in the 2009 Rochester Bonds in amounts below \$25,000, regardless of a customer's aggregate position in the bonds.

The Purpose of Minimum Denominations

14. The purpose of MSRB Rule G-15(f) is to ensure municipal securities dealers observe the minimum denominations stated in the official documents of municipal securities issues.³ Official documents for municipal securities issues may state a "minimum denomination" larger than the normal \$5,000 par due to issuers' concerns that the securities may not be appropriate for those retail investors who would be likely to purchase securities in relatively small amounts.⁴

15. Non-investment grade bonds, such as the 2014 Puerto Rico Bonds, present substantial risks to retail investors. Risks of investing in non-investment grade bonds include liquidity risk (*i.e.*, risk that an investor will not be able to sell a bond quickly and at an efficient price), credit risk (*i.e.*, risk of loss due to an actual or perceived deterioration in the financial health of the issuer) and interest rate risk (*i.e.*, risk that rising interest rates may cause bond prices to decline). In addition, the market for non-investment grade bonds is constricted by the fact that many municipal bond mutual funds are prohibited by their prospectuses from purchasing non-investment grade bonds.

16. Bonds without credit ratings, such as the 2013 Dakota County CDA Bonds and 2009 Rochester Bonds, are in some respects comparable to non-investment grade bonds. Unrated bonds tend to be offered by small issuers and are thinly traded. They are also often repaid from the revenues of a project or system being financed by the bonds, rather than state or local government general funds. Unrated bonds have historically had higher default rates than bonds with credit ratings.

Bond Sales to Customers Below the Minimum Denominations of the Issues

17. In March 2014, Respondent executed twenty-three sales transactions in the 2014 Puerto Rico Bonds with customers in amounts below the \$100,000 minimum denomination of the issue established by the issuer and specified in the official statement for the bonds.

18. In November 2013, Respondent executed twelve sales transactions in the 2013 Dakota County CDA Bonds with customers in amounts below the \$25,000 minimum denomination of the issue established by the issuer and specified in the official statement for the bonds.

³ Order Granting Approval of Proposed Rule Change Relating to Minimum Denominations, Exchange Act Release No. 45338, 67 Fed. Reg. 6960 (Feb. 14, 2002); Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations, Exchange Act Release No. 45174, 66 Fed. Reg. 67342 (Dec. 28, 2001).

⁴ Id.

19. In November 2012, Respondent executed seven sales transactions in the 2009 Rochester Bonds with customers in amounts below the \$25,000 minimum denomination of the issue established by the issuer and specified in the official statement for the bonds. In September 2013, Respondent executed one additional sales transaction with a customer in the 2009 Rochester Bonds below the minimum denomination of the issue.

20. Respondent solicited all of the forty-three sales transactions that it executed with customers in the 2014 Puerto Rico Bonds, 2013 Dakota County CDA Bonds, and 2009 Rochester Bonds below the minimum denominations of the issues.

21. The limited exceptions provided under MSRB Rule G-15(f) for customer transactions in municipal securities below the minimum denomination of an issue did not apply to any of these forty-three transactions.

**Failure to Disclose to Customers at or Prior to the
Time of Trade that the Amounts of the Bonds that They Were
Purchasing Were Below the Minimum Denominations of the Issues**

22. MSRB Rule G-17 provides that, “[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.” During the time period of Feltl’s conduct, “[t]he MSRB [had] interpreted this rule to mean, among other things, that dealers are required to disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.” The MSRB has further stated: “[A]ny time a dealer is selling to a customer a quantity of municipal securities below the minimum denomination for the issue, the dealer should consider this to be a material fact about the transaction. The MSRB believes that a dealer’s failure to disclose such a material fact to the customer, and to explain how this could affect the liquidity of the customer’s position, generally would constitute a violation of the dealer’s duty under MSRB Rule G-17 to disclose all material facts about the transaction to the customer.”⁵

⁵ Id. See also MSRB Rule G-47, Supplementary Material §.03 (effective July 5, 2014) (providing examples of “information that may be material in specific instances and require time of trade disclosures to a customer,” including “fact that a sale of a quantity of municipal securities is below the minimum denomination authorized by the bond documents and the potential adverse effect on liquidity of a customer position below the minimum denomination”). Although MSRB Rule G-47 was not in effect at the time of Respondent’s conduct, it has since consolidated and codified prior interpretive guidance regarding MSRB Rule G-17 on this subject. See Order Granting Approval of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rule D-15 and G-48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance, Exchange Act Release No. 71665 (Mar. 7, 2014).

23. Customers who purchased the 2014 Puerto Rico Bonds, 2013 Dakota County CDA Bonds and 2009 Rochester Bonds from Respondent in amounts below the minimum denominations of the issues received confirmations of their purchases from Respondent's clearing firm. The confirmations stated "QUANTITY BELOW MINIMUM DENOMINATION. LIQUIDITY MAY BE IMPACTED." However, the confirmations were provided to customers only after Respondent had executed the sales transactions, and the Respondent did not otherwise disclose to its customers, at or prior to the time of their trades, that the amounts of the bonds they were purchasing were below the minimum denominations of the issues.

**Failure to Adopt and Maintain Written Supervisory Procedures
Reasonably Designed to Ensure Compliance with MSRB Rule G-15(f)**

24. MSRB Rule G-27(c) requires dealers to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with MSRB rules and the Exchange Act.

25. From at least November 2012 through March 2014, Respondent did not have any policies or procedures concerning MSRB Rule G-15(f), or policies or procedures concerning the disclosure of material information to customers at or prior to the time of any transaction in municipal securities below the minimum denomination of the issue.

Violations

26. As a result of the conduct described above, Respondent willfully⁶ violated MSRB Rules G-15(f), G-17 and G-27(c).

27. As a result of Respondent's willful violations of MSRB Rules G-15(f), G-17 and G-27(c), Respondent willfully violated Section 15B(c)(1) of the Exchange Act.

Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent. After it was made aware by Commission staff that it had effected customer transactions in the 2014 Puerto Rico Bonds below the minimum denomination of the issue, Respondent cancelled the transactions. In cancelling the transactions, Respondent incurred costs of \$22,032.

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.

⁶ A willful violation of the securities laws means "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)).

Accordingly, pursuant to Sections 15(b), 15B(c)(2) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Feltl cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act and MSRB Rules G-15(f), G-17, G-27(c) and G-47.

B. Respondent Feltl is censured.

C. Respondent Feltl will undertake to review the adequacy of its existing policies and procedures relating to compliance with MSRB Rules G-15(f), G-17, G-27 and G-47. After that review, Respondent will make such changes as are necessary to ensure compliance with MSRB Rules G-15(f), G-17, G-27 and G-47, including adopting new policies and procedures or supplementing existing policies and procedures. Respondent will implement these policies and procedures, and conduct training as to the policies and procedures and compliance with MSRB Rules G-15(f), G-17, G-27 and G-47. Respondent will inform Commission staff no later than six (6) months after the entry of this Order that it has complied with the above undertakings and shall provide the Commission staff with a copy of its existing policies and procedures as to MSRB Rules G-15(f), G-17, G-27 and G-47 at that time.

D. Respondent Feltl shall, within seven (7) days of the entry of this Order, pay a civil money penalty in the amount of \$183,128 to the Securities and Exchange Commission, of which \$91,564 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$91,564 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. 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 Feltl 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 LeeAnn G. Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

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