

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010020933302**

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

RE: Felix Investments LLC, Respondent
Member Firm
(BD No. 148441),

William L. Barkow, Respondent
General Securities Representative
(CRD No. 2660220),

Emilio A. DiSanluciano, Respondent
General Securities Representative
(CRD No. 2755224), and

Frank G. Mazzola, Respondent
General Securities Representative
(CRD No. 2371623).

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents Felix Investments LLC ("Felix" or the "Firm"), William L. Barkow ("Barkow"), Emilio A. DiSanluciano ("DiSanluciano") and Frank G. Mazzola ("Mazzola") submit 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 them alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A.** Respondents 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

Felix is a broker-dealer that has been registered with FINRA since June 12, 2009. The Firm remains subject to FINRA's jurisdiction. At all relevant times, Felix solicited and sold interests in private placements of securities from its office in New York City. The Firm currently employs approximately 13 registered representatives.

Barkow first become registered with FINRA as a General Securities Representative ("GSR") in October 1995, as a General Securities Sales Supervisor ("SU") in December 1999, and a Limited Representative – Investment Banking ("IB") in November 2009. From September 28, 2009 through June 13, 2011, Barkow was registered with FINRA through Felix as a GSR and SU. From November 3, 2009 through June 13, 2011, he also was registered through Felix as an IB. Barkow acquired an ownership interest in Felix in or around September 2009. Since July 6, 2011, Barkow has been registered as a GSR and SU through another member firm. He remains subject to FINRA's jurisdiction.

DiSanluciano first became registered with FINRA as a GSR in August 1996, as a General Securities Principal ("GSP") in August 2008, and as an IB in November 2009. He has been registered with FINRA through Felix as a GSR, GSP and an IB since November 19, 2009. He remains subject to FINRA's jurisdiction. DiSanluciano acquired an ownership interest in Felix in or before October 2010.

Mazzola first became registered with FINRA as a GSR in April 1995, as a SU in May 1999, and as an IB in November 2009. He has been registered with FINRA through Felix as a GSR and SU since September 28, 2009 and as an IB since November 3, 2009. He remains subject to FINRA's jurisdiction. Mazzola acquired an ownership interest in Felix in or around September 2009.

RELEVANT DISCIPLINARY HISTORY

Respondents have no disciplinary history.

OVERVIEW

From November 2009 through at least March 2010, Felix, acting through Barkow and Mazzola, marketed two unregistered offerings to hundreds of potential investors through general solicitations in contravention of Section 5 of the Securities Act of 1933 (the "Securities Act") and in violation of FINRA Rule 2010. The offerings were for interests in Facie Libre Associates I, LLC ("FL-I") and Facie Libre Associates II, LLC ("FL-II") (collectively, the "LLCs"), which private companies were formed to invest in shares of Facebook, Inc., another privately-held company. Barkow and Mazzola pitched the unregistered offerings to over 1,000 people, often through mass mailings of boiler-plate emails, without first establishing a substantive relationship with each person solicited. Mazzola

also pitched the offerings to individuals through cold-calls. As a consequence of their general solicitations, Felix, Barkow and Mazzola engaged in the improper public offering and sale of unregistered securities.

Felix also failed to enforce its written supervisory procedures against general solicitation, and accordingly, violated NASD Rule 3010(b) and FINRA Rule 2010.

In marketing the unregistered offerings, Felix, acting through Barkow, Emilio A. DiSanluciano and Mazzola, in over 2,000 emails to the public, and a telephonic presentation by Barkow, made exaggerated, unwarranted and misleading statements and claims, and omitted material facts in violation of NASD Rules 2210(d)(1)(A) and (B) and FINRA Rule 2010. The email communications to the public were not fair and balanced and did not provide a sound basis for evaluating the investment opportunities.

Additionally, in a February 2010 telephone presentation to prospective investors about the LLCs, Barkow made misleading and unwarranted claims and omitted material facts, as described at pages 10 and 11.

The vast majority of the emails constituted sales literature widely disseminated to the public without the pre-approval of a registered principal of the Firm. By allowing the brokers to email sales literature to the public, without pre-approval, Felix violated NASD Rules 2210(b)(1) and 3010(b) and FINRA Rule 2010.

Moreover, on five dates during the period January 15, 2010 through February 17, 2011, Felix conducted a securities business while below its net capital requirement, and violated Section 15(c) of the Exchange Act of 1934 (the "Exchange Act") and SEC Rule 15c3-1 promulgated thereunder, and also violated FINRA Rule 2010.

Felix also failed to retain email communications concerning the Firm's business. Specifically:

1. For the period July 4, 2009 through April 29, 2010, the Firm did not retain copies of all firm-related emails from an outside email account of one of its brokers.
2. For the period from at least January 13, 2010 through March 31, 2010, Felix also did not retain copies of all outgoing email communications with "bcc" information, reflecting all addressees whom the brokers blind-copied.

Additionally, Felix failed to adequately enforce its written supervisory procedures for maintaining and retaining all firm-related emails for the period July 4, 2009 through at least April 29, 2010. By reason of the foregoing, Felix violated

Section 17(a) of the Exchange Act, SEC Rules 17a-4(b)(4) and 17a-4(f) promulgated thereunder, and also violated NASD Conduct Rules 3010(b) and 3110, and FINRA Rule 2010.

For the period November 21, 2009 through March 31, 2010, Felix also failed to implement a reasonable supervisory system in connection with the review of email communications with the public relating to the Firm's securities business and failed to enforce the Firm's related written supervisory procedures. By reason of the foregoing, Felix violated NASD Rule 3010(d)(1) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

At all relevant times, Felix, acting through its brokers, including Barkow, DiSanluciano and Mazzola, offered and sold interests in various single purpose limited liabilities companies formed to invest in non-public companies.

Two of the limited liability companies in which Felix offered and sold interests were FL-I and FL-II, which LLCs were formed to invest in Facebook stock. Barkow and Mazzola, at all relevant times, were co-managers of Facie Libre Management Associates, LLC which, in turn, managed FL-I and FL-II.

The LLCs offered investors the opportunity to purchase interests in one or more series within those LLCs (the "LLC offerings"). The LLC Offering Memoranda expressly noted that the offerings were not for shares of Facebook stock.¹ The LLCs used funds raised in the offerings, after subtracting placement fees, to purchase Facebook stock, if available, which stock was then assigned to one or more series within FL-I and/or FL-II. Facebook and its assignee(s) had the right of first refusal to prevent any third-party transfer of Facebook stock to the LLCs.

The interests in FL-I and FL-II were securities and, at all relevant times, were not registered pursuant to the Securities Act. Shares of Facebook stock were securities, and at all relevant times, were not registered pursuant to the Securities Act.

When purchasing Facebook shares, each LLC agreed in Stock Transfer Agreements that it was "purchasing the Shares for [the LLC's] own account, for investment purposes only and not with a view to, or for sale" and that it "has no present intention of selling or otherwise disposing of all or any portion of the Shares and no one other than Purchaser has any beneficial ownership of any of the Shares."

¹ Felix and its brokers sent out emails soliciting prospective investors for the offerings without attaching the LLC Offering Memoranda and typically only sent the Memoranda to those persons who expressed an interest in investing.

At all relevant times, as set forth in the LLC Offering Memoranda, the LLCs offered investors only fractional interests, with limited liquidity, in a series within the LLCs. In addition to the legal restrictions on the transfer of unregistered securities interests, each LLC operating agreement prohibited any transfer of interests without the prior consent of the LLC manager (in effect, Barkow and Mazzola), "which consent the Manager may withhold in its sole discretion." Furthermore, the LLC Offering Memoranda provided that the LLC managers had sole discretion whether to make distributions to the investors of cash, Facebook stock or other LLC property.

Felix was the exclusive placement agent for the LLC offerings. Felix received a five percent placement fee from the gross proceeds raised from the LLC offerings, and Barkow, Mazzola and DiSanluciano each received a portion of the fees generated.

1. **Unregistered Public Offerings**

Section 5 of the Securities Act, in relevant part, makes it unlawful for any person to sell or offer to sell securities by use of any means or instruments of transportation or communication in interstate commerce or the mails unless a registration statement for the securities has been filed with the Securities and Exchange Commission.

The offering documents for FL-I and FL-II assert that the offerings are exempt from registration under Section 4(2) of the Securities Act (exempting transactions by an issuer not involving any public offerings) and Rule 506 to Regulation D of the Securities Act (exempting certain offers and sales meeting all terms and conditions of Rule 502 of Regulation D).

Section 502(c) of Regulation D of the Securities Act sets forth, as one of the conditions applicable to offers and sales made under Regulation D, that "neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation"

The LLC offerings were not exempt from registration because Felix, acting through Barkow and Mazzola, pitched the unregistered offerings through general solicitations.

During the period November 19, 2009 through at least March 25, 2010, as part of their general solicitation campaign, Barkow and Mazzola, solicited over 1,000 different people by email, touting the opportunity to own or invest in Facebook stock, without having first established a substantive relationship with each person solicited. The vast majority of the email solicitations were mass emails, disseminated on the same day or over the course of several days, with identical or similar, boiler-plate terms. Mazzola also used lead lists that he purchased to cold-call prospects about the specific investment opportunities.

By offering unregistered interests in FL-I and FL-II to prospective investors through general solicitations, Felix, Barkow and Mazzola, engaged in public offerings subject to the registration requirements of Section 5 of the Securities Act.

By reason of the foregoing conduct, Felix, Barkow and Mazzola acted in contravention of Section 5 of the Securities Act of 1933, and thereby violated FINRA Rule 2010.

2. Failure to Enforce Felix's Supervisory Procedures Prohibiting General Solicitations

NASD Conduct Rule 3010(b) requires each member firm to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable rules of [the Association]."

Felix's Compliance and Supervisory Procedures Manual, at all relevant times, stated, in connection with compliance with Section 5 of the Securities Act and applicable exemptions from registration, that "[t]he Firm may not engage in general solicitation . . . with respect to private placements[.]" The Firm's written procedures further provided:

"In order to avoid engaging in any such proscribed general solicitation or advertising, the Firm will not engage in any:

1. cold calling; . . .
2. seminars or meetings for offering a private placement unless each invitee is known and qualified in advance;
3. mass mailings to persons with whom the Firm or any of its registered persons do not have a pre-existing substantive relationship; . . ."

Additionally, the Firm's written supervisory procedures provided, in pertinent part:

"Prior to mentioning a given private placement to a prospective investor, the registered person must take certain steps to determine general suitability standards of the given offering for the prospective investor(s) and specific suitability relating to the prospective investor."

During the period November 19, 2009 through at least March 25, 2010, Felix failed to enforce its written supervisory procedures against general solicitations of private placements. Specifically, Felix failed to take adequate steps to ensure that brokers did not (a) cold call, (b) mass mail prospects with whom the Firm and its brokers had no pre-existing substantive relationship, (c) conduct meetings, including conference calls, offering a private placement unless each invitee is known and qualified in advance, or (d) mention an offering to a prospective investor without first considering the suitability of the investment and prospective investor.

Barkow and Mazzola repeatedly solicited prospects through mass emails, yet Felix did not require Barkow, Mazzola, or any of its brokers, to record or evidence what, if any, information they knew about each prospective investor's financials and sophistication before soliciting them. Felix also failed to inquire into whether or not the brokers had pre-existing substantive relationships with persons solicited. The Firm should have, but did not, investigate signs of improper solicitations through mass mailings.

Contrary to the Firm's procedures, Mazzola also cold-called various prospects about specific investment opportunities. The Firm's brokers each month also made hundreds of telephone calls to different numbers outside of New York, as reflected in the Firm's telephone records. The large number and pattern of telephone calls to different area codes outside of New York were warning signs that the brokers were cold-calling from lead lists or other directories. The Firm should have, but did not, investigate signs of cold-calling and failed to take adequate steps to enforce its prohibition against cold-calling.

By reason of the foregoing conduct, Felix violated NASD Rule 3010(b) and FINRA Rule 2010.

3. Misleading and Unwarranted Communications with the Public

At all relevant times, NASD Conduct Rule 2210(d)(1)(A) provided that:

"All member communications with the public shall be based on principles of fair dealing, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular, security, type of security, industry or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communication to be misleading."

Additionally, NASD Conduct Rule 2210(d)(1)(B), at all relevant times, prohibited a member from making "any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public." That Rule further prohibited a member from publishing, circulating or distributing "any public

communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.”

Misleading and Unwarranted Email Communications

In marketing the LLC offerings, during the period November 18, 2009 through at least March 30, 2010, in over 2,300 emails with the public, Felix, acting through Barkow, DiSanluciano and Mazzola, made exaggerated, unwarranted and misleading statements or claims, and omitted material facts. The communications were not fair and balanced and did not provide a sound basis for evaluating the investment opportunities.

Misleading and Unwarranted Claims about the Investment Opportunities

Over 2,000 of the emails from Barkow, DiSanluciano and Mazzola contained misleading and unwarranted statements that they were offering investors the opportunity to own or invest in Facebook stock before it goes public. Contrary to the email claims, the actual opportunity offered was to invest in LLCs that sought to acquire shares of Facebook, not to own or invest in Facebook stock directly. At all relevant times, pursuant to LLC Offering Memoranda, (i) the LLCs offered investors interests in a series within the LLCs only; and (ii) Barkow and Mazzola had sole discretion of whether to make distributions of cash, Facebook stock or other LLC property to the investors.

Misleading and Unwarranted Claims of Facebook Approval

In over 30 emails, the brokers improperly suggested to potential investors that Facebook endorsed their conduct, claiming that Felix and/or the LLC were approved as investors or buyers by Facebook. Facebook neither approved of the parties nor the transactions. Indeed, in an email on March 11, 2010, Facebook warned Mazzola that Felix must avoid giving the impression that Felix or Facie Libre is somehow “Facebook-approved, as that is certainly not the case.”

Misleading and Unwarranted Claims of Distribution of Facebook Stock

In over 25 emails, DiSanluciano and Mazzola represented “we distribute the stock.” In fact, there had been no such distribution of Facebook stock by Felix or the LLCs, and nothing compelled any future stock distribution.

Unwarranted Claim that Facebook Would Not Raise Additional Capital Pre-IPO

In over 100 emails, Barkow and DiSanluciano made unwarranted claims that Facebook did “not need capital and will not raise capital outside of an IPO.” They had no factual basis for that assertion, which turned out to be untrue, as Facebook, according to its Form S-1 Registration Statement (filed as of February 1, 2012), raised over \$1 billion in additional capital between December 2010 and January 2011.

Material Omissions in their Statements

Material omissions in all the above-referenced emails were as follows:

1. Failure to disclose or describe FL-I and/or FL-II as the actual product(s) offered; and
2. Failure to disclose the risks associated with each offering. Specifically, there was no disclosure of the following:
 - a. There was no guarantee that the LLCs would be able to purchase Facebook stock with the prospective investor's money, in that Facebook had a right of first refusal with respect to any proposed purchase of Facebook stock, which option, if exercised, would prevent the LLCs from acquiring additional Facebook shares;
 - b. The potential loss of investment;
 - c. The limited liquidity of LLC interests acquired; and
 - d. FL-I and FL-II have no control over Facebook's future valuation.

The factual omissions were material as they caused the email communications to be misleading in light of the context of the statements contained in the emails.

*Distribution of an Inaccurate and Misleading
"Due Diligence Report"*

From November 18, 2009 through March 8, 2010, Felix, acting through Barkow, Mazzola and DiSanluciano, distributed to over 125 members of the public, by email, a document entitled "Facebook Due Diligence Report Presented by Felix Investments" (the "Report"). The Report stated it was "created by Felix Investments" to provide the reader with "an overview of Facebook's financial and organizational health."

The Report was inaccurate and misleading, omitted material facts, was not fair and balanced, and did not provide a sound basis for evaluating the facts.

Although the Report expressly stated it was presented and created by Felix, no registered principal of Felix had approved the Report.

While the title of the Report was "Facebook Due Diligence Report," which implied that Report was based upon due diligence or a reasonable investigation of Facebook, it was only based upon favorable, publicly available information.

Although the Report stated it was to provide the reader with "an overview of Facebook's financial and organization health," the Report did not reflect a bona

vide review of Facebook's financials, as it only contained publicly available information.

The Report failed to disclose that Felix did not have access to Facebook's management, Facebook's financial statements, or its audited financials, and the Report did not disclose the risks arising from its lack of access.

The Report failed to identify FL-I and/or FL-II as the actual product(s) being promoted.

The Report failed to disclose that its dissemination was contrary to the FL-I and FL-II offering documents that stated, in pertinent part, "*investors will not be provided with any disclosure materials of any kind regarding Facebook or the Facebook Securities*" and that subscribers "*will be required to acknowledge and represent that such disclosure materials will not be provided, and that they are purchasing the Interests based on their own assessment and knowledge of Facebook and its securities.*" (Emphasis in original.).

The Report presented only positive information about Facebook without a balanced discussion and without disclosure of the following material risks associated with investing in FL-I and/or FL-II:

1. The potential loss of investment;
2. The limited liquidity of LLC interests; and
3. FL-I and FL-II have no control over Facebook's future valuation.

The facts undisclosed in the Report were material omissions as they caused the communication to be misleading in light of the context of the statements contained in the Report.

Improper Statements and Omissions by Barkow in a "Public Appearance" as Defined under NASD Rule 2210(a)(5)

On or about February 18, 2010, Felix, acting through Barkow, conducted a telephone conference for current and potential investors in FL-I and FL-II. The conference was referred to as the "Felix Facebook presentation." In the presentation, Barkow discussed and offered the opportunity to invest in Facebook through Facie Libre Associates LLC.

Barkow's presentation contained misleading statements and claims, omitted material facts, was not fair and balanced, and did not provide a sound basis for evaluating the facts.

In his presentation, Barkow made the following misleading and unwarranted claims:

1. Facie Libre Associates LLC was created to “facilitate your investments [i]n Facebook.” In fact, the LLCs were created to facilitate investments in Facebook stock by the LLCs and the offer of interests in the LLCs to potential investors;
2. Potential investors through Facie Libre Associates “can now invest in Facebook” and similar claims. In fact, (1) investors only received interests in the LLC(s), not Facebook stock, and (2) there was no guarantee that the LLCs would be able to purchase Facebook stock with the prospective investor’s money;
3. Facebook was not raising new money and was not interested in raising new capital. Barkow lacked a factual basis to make that assertion and Facebook did in fact raise new capital thereafter;
4. “We believe” Facebook “will file their S-1 within the next six months,” specifically, in the “first half of 2010,” and go public in “12 months” (in February 2011). Barkow made those statements without any factual basis. In fact, Facebook’s Form S-1 was not filed until February 2012 and Facebook still has not gone public as of the date of this AWC; and
5. “We would expect” a Facebook IPO at the “40 to 50 billion dollar level” and “we would expect to see it at a 140-150 billion [v]aluation, thereby showing us return of 10 times.” Barkow made those statements without any factual basis.

Barkow’s presentation to potential investors also was not fair and balanced, and did not provide a sound basis for evaluating the facts, as he failed to disclose: (1) Felix did not have access to Facebook’s management or its audited financials; and (2) FL-I and FL-II have no control over Facebook’s future valuation.

Barkow’s factual omissions were material as they caused his presentation to be misleading in light of the context of the statements that he made in his presentation.

By reason of the foregoing communications, each Respondent violated NASD Rules 2210(d)(1)(A) and (B) and FINRA Rule 2010.

4. **Failure to Pre-Approve Sales Literature and Enforce Related Supervisory Procedures**

NASD Conduct Rule 2210(b)(1) provides, in pertinent part, that a registered principal of the member firm must approve by signature or initial and date each

item of sales literature before its use or filing with the Advertising Regulation Department of NASD (now FINRA).

NASD Rule 2210(a)(2), at all relevant times, defined "sales literature," in pertinent part, to include:

"[a]ny written or electronic communication . . . that is generally distributed or made generally available to customers or the public, including circulars, research reports, market letters, performance reports or summaries, form letters, . . . or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member's products or services."

Felix's Compliance and Supervisory Procedures Manual, at all relevant times, stated that no sales literature may be used unless and until it has been approved in writing and dated by the CCO, who may "pre-approve the substantive content of any such materials and permit their use with non-substantive changes . . ."

From November 18, 2009 through at least March 30, 2010, no registered principal of Felix approved, by signature or initial and date, before their use, over 2,000 items of sales literature or their substantive content, including, but not limited to, the Felix sales literature referenced at pages 5, 8 and 9. By reason of the foregoing, Felix violated NASD Rules 2210(b)(1) and 3010(b) and FINRA Rule 2010.

5. Operating a Securities Business While Under Net Capital

From January 15, 2010 through June 12, 2010, Felix's minimum net capital requirement was the higher of \$5,000, or 12.5% of aggregate indebtedness pursuant to SEC Rule 15c3-1(a)(1)(i). From June 13, 2010 through February 17, 2011, Felix's minimum net capital requirement was the higher of \$5,000, or 6 2/3% of aggregate indebtedness pursuant to SEC Rule 15c3-1(a)(1)(i).

During the period January 15, 2010 through February 17, 2011, Felix conducted a securities business by effecting transactions in, and/or inducing, or attempting to induce, the purchase or sale of securities, while below its net capital requirement, on the following five dates:

1. January 15, 2010;
2. March 5, 2010;
3. March 31, 2010;
4. January 31, 2011; and
5. February 17, 2011.

On Friday, January 15, 2010, Felix had a minimum net capital requirement of \$5,000, a net capital of no more than (\$45,543.67), and a net capital deficiency of at least \$50,543.67.

On Friday, March 5, 2010, the Firm had a minimum net capital requirement of \$5,000, a net capital of no more than (\$30,714.72), and a net capital deficiency of at least \$35,714.72.

On Wednesday, March 31, 2010, the Firm had a minimum net capital requirement of \$5,000, a net capital of no more than (\$60,388.17), and a net capital deficiency of at least \$67,737.94.

On Monday, January 31, 2011, the Firm's minimum net capital requirement was approximately \$12,754.63 based upon 6 2/3% of the Firm's aggregate indebtedness. On that date, the Firm had net capital of no more than (\$80,366.66) and a net capital deficiency of at least \$93,121.29.

The four net capital deficiencies from January 15, 2010 through January 31, 2011 were due to the Firm failing to adequately track anticipated expenses (e.g., commissions, payroll, attorney's fees, rent and utility fees) and ensure an adequate capital reserve on each day that the Firm conducted a securities business to cover expenses incurred and remain capital compliant.

On Thursday, February 17, 2011, the Firm's minimum net capital requirement was approximately \$20,507.17 based upon 6 2/3% of the Firm's aggregate indebtedness. On that date, the Firm had net capital of no more than (\$80,764.07) and a net capital deficiency of at least \$101,271.24.

The net capital deficiency on February 17, 2011 was due to capital withdrawals by the Firm's owners of approximately \$996,156.18 on February 14, 2011, when the Firm did not have sufficient capital to maintain net capital compliance.

By reason of the foregoing net capital violations, Felix violated Section 15(c) of the Exchange Act, SEC Rule 15c3-1, and FINRA Rule 2010.

**6. Failure to Retain Emails and Enforce
Related Supervisory Procedures**

Felix failed to retain all email communications concerning the Firm's business, including (1) copies of all emails from the personal email account of a principal broker and an owner of Felix, regarding the Firm's business for the period June 17, 2009 through April 29, 2010, and (2) copies of email communications sent by brokers, with any and all blind-copy information, for the period from January 13, 2010 through at least March 31, 2010, to completely and accurately record the communications. Additionally, Felix failed, during the corresponding time

periods, to adequately enforce its written supervisory procedures for maintaining and retaining the emails, as required.

Section 17(a)(1) of the Exchange Act provides, in pertinent part, that brokers and dealers transacting a business in securities,

“shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the [Securities and Exchange] Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”

SEC Rule 17a-4(b)(4) requires that each broker and dealer

“preserve for a period of not less than three years, the first two years in an easily accessible place . . . [o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such”

This preservation requirement applies regardless of whether the records are stored in paper form or electronically.

Because Felix used electronic storage media to store records required to be maintained and preserved pursuant to SEC Rule 17a-4, such as email communications relating to the Firm’s business, it was subject to additional requirements set forth in SEC Rule 17a-4(f).

SEC Rule 17a-4(f)(2)(ii), among other things, provides that the electronic storage media must “preserve the records” required to be maintained “exclusively in a non-rewriteable, non-erasable format.” Additionally, NASD Conduct Rule 3110 requires, among other things, that FINRA members comply with SEC Rule 17a-4.

Felix’s Compliance and Supervisory Procedures Manual, at all relevant times, required that the Firm retain all emails related to the Firm’s business, “including, e-mail (both to and from third parties and internal e-mail by or between associated persons of the Firm)” The procedures also stated that “metadata,” including, “bcc” information, would be used, among other things to categorize and identify the parties to the emails, to meet the requirements of SEC Rule 17a-4.

From at least June 17, 2009 through at least April 29, 2010, a principal broker and an owner of Felix had a Felix email account, but used his own personal Yahoo email account, with Felix’s knowledge, to conduct Felix business. From at least July 4, 2009 through April 29, 2010, the broker used his personal Yahoo email account to correspond with Felix’s off-site Financial and Operations Principal

(“FINOP”) and/or the FINOP’s staff in connection with Felix’s financials. The email addresses of the FINOP and his staff were outside of Felix’s email domain. In over 100 instances, the broker failed to send or copy his Yahoo email correspondence with the FINOP (and the FINOP’s staff) to email addresses on Felix’s email domain and those emails were not retained in an easily accessible place by Felix, as required by SEC Rule 17a-4(b)(4). Felix did not take reasonable steps to ensure that all of the broker’s email communications relating to Felix business were in fact, being captured and preserved.

Additionally, from at least January 13, 2010 through March 31, 2010, Felix did not capture and/or preserve outgoing emails with “bcc” data showing addressees who were blind-copied and did not otherwise record who and how many people were blind-copied. Specifically:

1. DiSanluciano repeatedly sent out emails in connection with Felix business on which he blind-copied members of the public, including potential investors. When he did so, he listed himself in the recipient field and listed the email addresses of the persons blind-copied in the “bcc” field. During January 13, 2010 through March 30, 2010 alone, DiSanluciano blind-copied people on as many as 75 emails, if not more. Felix did not preserve the information as to the individuals who were blind-copied. Felix has identified approximately 300 persons outside of the Firm who were among groups of people that were blind-copied by DiSanluciano.
2. Mazzola repeatedly sent out emails in connection with Felix business on which he blind-copied members of the public, including potential investors, often indicating on the email that he distributed it to “undisclosed recipients.” During the period February 11, 2010 to March 31, 2010 alone, Mazzola sent as many as 60 emails, if not more, to “undisclosed recipients,” blind-copying the addressees. Felix did not preserve the information as to the individuals who were blind-copied.

Felix failed to adequately enforce its written supervisory procedures regarding retention of email communications concerning the Firm’s business by failing to maintain and retain (1) copies of all emails from the personal Yahoo account of a principal owner and broker of Felix regarding the Firm’s business, and (2) copies of email communications sent by brokers, with any and all blind-copy data, to completely and accurately record the communications. By reason of the foregoing, Felix violated Section 17(a) of the Exchange Act, SEC Rules 17a-4(b)(4) and 17a-4(f), NASD Conduct Rules 3010(b) and 3110, and FINRA Rule 2010.

7. Failure to Implement a Reasonable Supervisory System or Enforce Firm Procedures Regarding the Review of Email Communications

NASD Rule 3010(d)(1) requires each member to:

“establish procedures . . . for the review by a registered principal of incoming and outgoing written and electronic correspondence of its registered representatives with the public relating to the investment banking or securities business of such member. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association upon request.”

The Firm’s Compliance and Supervisory Procedures Manual provided, at all relevant times, in connection with incoming e-mail correspondence, as follows:

“The Chief Compliance Officer, or his or her appropriately licensed designee, . . . on a weekly basis shall review a random sample of all incoming e-mail correspondence to properly identify and handle customer complaints . . . and to look for compliance issues generally.”

In addition to the Firm’s requirement that a registered principal pre-approve the substantive content of all sales literature, at all relevant times, the Firm’s written supervisory procedures provided, in connection with outgoing e-mail correspondence, as follows:

“Outgoing mail, including e-mails and faxes, addressed to prospective investors initiated by a registered person, must be reviewed and approved the Chief compliance Officer in advance of being sent. If the Chief Compliance Officer deems the material to comply with the Firm’s policies and procedures, and with applicable rules and regulations generally, he will date, initial and preserve the dated file copy.”

For the period January 4, 2010 through April 5, 2010, Felix failed to adequately implement the Firm’s procedures, or implement a reasonable supervisory system, for the review of email communications of its registered representatives with the public relating to the Firm’s business.

For that time period, the Firm performed infrequent reviews of small, non-representative samples of emails, after they were sent or received. Specifically:

1. On or about February 15, 2010, the Firm reviewed under 2.2% of the email correspondence of Barkow, DiSanluciano and Mazzola for the prior period (of approximately 30 days). For Barkow, the Firm reviewed a sample of 17 emails (or 2.1%) of 518 emails that he sent and 280 emails that he received during January 4, 2010 to February 12, 2010. For DiSanluciano, the Firm reviewed a sample of 23 emails (or 2%) of at least 608 emails that he sent and 534 emails that he received during January 1, 2010 through February 12, 2010. For Mazzola, the Firm reviewed a sample of 13 emails (or 1.3%) of the 111 emails that he sent and 890 emails that he received during January 1, 2010 through February 12, 2010.
2. The Firm's next email review for the three brokers was on April 2 and 5, 2010, two months later. At that time, the Firm reviewed under 1.4% of the email correspondence of Barkow, DiSanluciano and Mazzola for the prior period (of approximately 45 days). For Barkow, the Firm reviewed three emails (or .24%) of 702 emails that he sent and 546 emails that he received during February 15, 2010 through March 31, 2010. For DiSanluciano, the Firm reviewed a sample of 33 emails (or 1.3%) of at least 727 emails that he sent and 1,873 emails that he received from others during February 11, 2010 through March 31, 2010. For Mazzola, the Firm reviewed a sample of 48 (or 0.93%) of at least 2,200 emails that he sent and 2,800 emails that he received during February 15, 2010 through March 31, 2010.

The Firm's email reviews were also inadequate in size and frequency based upon (1) the large volume of outgoing emails where Felix's business was limited to raising money for unregistered offerings, and (2) the prohibition against general solicitations.

In connection with the reviews of outgoing emails, the Firm's compliance officer failed to date, initial, and preserve the dated file copy of the emails reviewed. The Firm also failed to maintain any evidence clearly identifying the communications reviewed.

Additionally, in connection with the Firm's review of outgoing emails, the Firm failed to take reasonable steps to verify that the brokers had pre-existing relationships with the persons solicited by email. Moreover, the email reviews did not adequately scrutinize the statements and claims in the emails to ensure they were fair and balanced, and not misleading or unwarranted.

By reason of the foregoing, Felix violated NASD Rule 3010(d)(1) and FINRA Rule 2010.

B. Respondents consent to the imposition of the following sanctions:

I. Felix consents to:

- a. Censure;**
- b. Fine of \$250,000; and**
- c. The following undertaking:**

i. Felix shall:

- A. Retain, within 30 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to ensuring:
 - 1. Compliance with Section 5 of the Securities Act, in connection with solicitations of unregistered securities offerings;**
 - 2. All communications by Felix and its brokers with the public comply with the content standards set forth in NASD Rule 2210(d); and**
 - 3. Supervisory reviews of email communications, and documentation of such reviews, as required by NASD Rule 3010(d)(1).****
- B. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;**
- C. Cooperate with the Independent Consultant in all respects, including by providing staff support. Felix shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Felix shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Felix shall not be in and shall not have an**

attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;

- D. At the conclusion of the review, which shall be no more than 90 days after the date of the Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures, and training relating to ensuring (a) compliance with Section 5 of the Securities Act, in connection with solicitations of unregistered securities offerings, (b) all communications by Felix and its brokers with the public comply with the content standards set forth in NASD Rule 2210(d); and (c) supervisory review of email communications, and documentation of such reviews, as required by NASD Rule 3010(d)(1); (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and
 - E. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Felix, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Felix or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- ii. Within 60 days after delivery of the Written Report, Felix shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to

the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

- iii. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Felix shall provide FINRA staff with a written implementation report, certified by an officer of Felix, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
- iv. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

2. **Barkow consents to:**

- a. A fine of \$30,000;
- b. A suspension from associating with any member firm in all capacities for 15 business days.

3. **Mazzola consents to:**

- a. A fine of \$30,000;
- b. A suspension from associating with any member firm in all capacities for 15 business days.

4. **DiSanluciano consents to:**

- a. A fine of \$20,000;
- b. A suspension from associating with any member firm in all capacities for 10 business days.

Respondents agree to pay their respective monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have each submitted an Election of Payment form showing the method by which they propose to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Barkow, DiSanluciano and Mazzola understand that if they are suspended from associating with any FINRA member, they each become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Barkow, DiSanluciano and Mazzola may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of their respective suspension (see FINRA Rules 8310 and 8311).

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, 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.

Respondents 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

Respondents 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 the permanent disciplinary record of each Respondent and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about each Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondents 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. Respondents 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 each Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

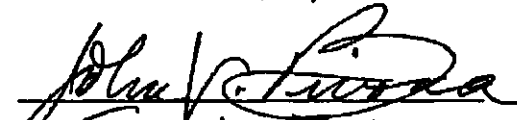
- D. Each Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This 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 Felix, 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 Felix agrees 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 Felix to submit it.

Felix Investments LLC, Respondent

03/07/2012
Date (mm/dd/yyyy)

By:


JOHN V. DIVANA
[Print Name]

EXEC. V-P
[Title]

Barkow, DiSanluciano and Mazzola each certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they 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 them to submit it.

Date (mm/dd/yyyy)

William L. Barkow, Respondent

Date (mm/dd/yyyy)

Emilio A. DiSanluciano, Respondent

Date (mm/dd/yyyy)

Frank G. Mazzola, Respondent

- D. Each Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 Felix, 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 Felix agrees 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 Felix to submit it.

Felix Investments LLC, Respondent

Date (mm/dd/yyyy)

By: _____

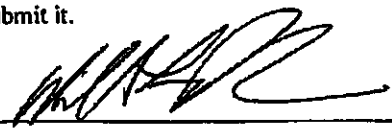
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[Title]

Barkow, DiSanluciano and Mazzola each certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they 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 them to submit it.

3-7-12

Date (mm/dd/yyyy)



William L. Barkow, Respondent

Date (mm/dd/yyyy)

Emilio A. DiSanluciano, Respondent

Date (mm/dd/yyyy)

Frank G. Mazzola, Respondent

- D. Each Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 Felix, 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 Felix agrees 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 Felix to submit it.

Felix Investments LLC, Respondent

Date (mm/dd/yyyy)

By: _____

[Print Name]

[Title]

Barkow, DiSanluciano and Mazzola each certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they 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 them to submit it.

Date (mm/dd/yyyy)

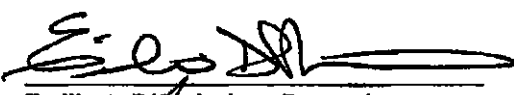
03/07/2012

Date (mm/dd/yyyy)

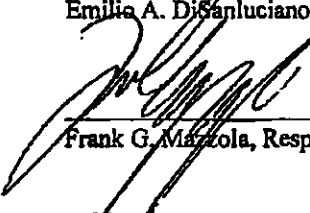
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Date (mm/dd/yyyy)

William L. Barkow, Respondent

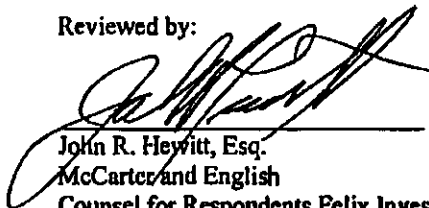


Emilia A. DiSanluciano, Respondent



Frank G. Mazzola, Respondent

Reviewed by:



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McCarter and English
Counsel for Respondents Felix Investments LLC and
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Katten Muchin Roseman LLP
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Tel. No.: (212) 940-6517

Accepted by FINRA:

Date

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

Gary A. Chodosh, Senior Regional Counsel
FINRA Department of Enforcement
One Liberty Plaza, 48th Floor
New York, New York 10006
212-858-4771; Fax: 202-721-6564
gary.chodosh@finra.org

Reviewed by:

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Accepted by FINRA:

3/14/2012
Date

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

Gary A. Chodos

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