

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF ENFORCEMENT
NO. 2010024882201**

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

RE: Thomas N. Charbonneau, Respondent
Former Registered Representative
CRD No. 44868

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Thomas N. Charbonneau ("Respondent" or "Charbonneau") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Charbonneau entered the securities industry in 1972, as a general securities representative with a FINRA-regulated broker-dealer, and worked at eight different FINRA-regulated broker-dealers during his career in the brokerage industry. In March 2005, Charbonneau became a registered representative of Feltl & Co. ("Feltl"), a FINRA-regulated broker-dealer, where he worked until October 2010, when his employment terminated. In a Form U-5 (Uniform Termination Notice for Securities Industry Registration) filed October 26, 2010, Feltl reported that Charbonneau had been under internal review for "conflicts of interest resulting from RR's liquidation of substantial amounts of [X Corp] stock while at the same time recommending that his customers buy and/or hold that same stock." Rather than comply with certain conditions placed on him by Feltl regarding his trading of X Corp. stock, Charbonneau resigned from employment at Feltl.

On October 28, 2010, Charbonneau joined Berthel Fisher & Company ("Berthel"), a FINRA-regulated broker-dealer, where he was employed until November 2013. In a Form 11-5 filing on December 2, 2013, Berthel reported that Charbonneau was discharged on November 13, 2013 for "allow[ing] a client to sign blank forms."

Charbonneau is not currently associated with a FINRA-regulated broker-dealer. However, FINRA retains jurisdiction over him pursuant to Article V, Section 4 of FINRA's By-Laws.

OVERVIEW

Between October 2008 and May 2013, while employed at two different broker-dealers, Charbonneau sold from his own accounts approximately 1.7 million shares of X Corp., a speculative penny stock. Having helped X Corp. emerge from bankruptcy in 2004, Charbonneau obtained a majority of his X Corp. shares at a cost basis of less than a penny a share, and his sales during this time period generated proceeds of approximately \$400,000. At the same time that Charbonneau was selling 1.7 million shares of X Corp. stock, he was recommending to his customers that they purchase approximately two million shares of X Corp. stock, which they did, at prices up to \$0.65 per share. At times during the review period, sales by Charbonneau and purchases by his customers constituted a significant percentage of the overall trading volume of X Corp. stock. Charbonneau's personal sales of X Corp. stock were contrary to his recommendations to his customers that they purchase X Corp. stock, and Charbonneau failed to disclose to his customers that he was selling X Corp. stock at the same time that he was recommending that his clients purchase the same stock. By failing to disclose this material fact to his customers, Charbonneau violated NASD Rule 2110 and FINRA Rule 2010.¹

In addition, in late 2013, while Charbonneau was employed by Berthel, he caused a customer to sign in blank an Alternative Investment Suitability Questionnaire and several related documents pertaining to a potential investment in a REIT. The customer signed the documents in blank, and Charbonneau then sent them to her broker and the documents were submitted to Berthel for approval. By causing the customer to sign the documents in blank, in contravention of Berthel's prohibition against such conduct, Charbonneau failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

¹ FINRA Rule 2010 replaced NASD Rule 2110 effective December 15, 2008. Most of the trading activity involved herein occurred after FINRA Rule 2010 became effective.

FACTS AND VIOLATIVE CONDUCT

Charbonneau Solicited the Purchase of X Corp. Stock By His Customers Without Disclosing That He Was Selling X Corp. Stock From His Personal Accounts

X Corp. is an issuer whose common stock was registered under Section 12(g) of the Securities Exchange Act of 1934 and quoted on the Over-the-Counter Bulletin Board ("OTCBB"). According to X Corp., it has developed a technology that enables it to more accurately determine whether human tissue is cancerous. X Corp. claims that the product has been used in two countries in Europe and in one country in the Middle East.

X Corp. filed for bankruptcy in 2002. At that time, Charbonneau and his clients owned X Corp. stock and, in some instances, owned X Corp. bonds as well. Charbonneau attempted to salvage the company from bankruptcy. Another registered representative who worked with Charbonneau, RS, introduced Charbonneau to a venture capitalist named JH, who was also RS's step-father. JH, at the suggestion of Charbonneau, raised money through a rights offering and brought the company out of bankruptcy in 2004. Charbonneau received approximately 2.5 million shares in the re-organized company in connection with the rights offering, although he paid only about \$20,000 in fees. As a result, the cost basis of those X Corp. shares was less than \$0.01 per share. The 2.5 million shares of X Corp. constituted virtually all of Charbonneau's net worth, apart from his home. Charbonneau subsequently paid \$140,000 to acquire an additional 1 million shares in a convertible preferred stock offering during the 2nd Quarter of 2009.

During the periods that he was at Feltl and Berthel, Charbonneau sold a large number of shares of X Corp. from his own accounts. From October 2008 through May 2013, he sold approximately 1.7 million shares of X Corp., generating proceeds of approximately \$400,000. He sold over 900,000 shares of X Corp. while employed at Feltl and over 750,000 shares of X Corp. while employed at Berthel.

During this same period of time, many of Charbonneau's customers bought X Corp. stock, pursuant to Charbonneau's recommendation. In total, his customers bought over 5.2 million shares of X Corp. stock. Approximately 2 million shares were solicited by Charbonneau and purchased by his customers - 1.27 million shares by a total of 59 customers at Feltl from October 2008 to October 2010, and approximately 690,000 shares by 12 customers at Berthel from October 2010 to May 2013. While Charbonneau's cost basis for the majority of the shares he sold was below a penny a share, his customers paid significantly more for X Corp. stock at his recommendation during this period. From October 2008 through May 2013, X Corp. traded at a high of \$1.77 per share on September 16, 2009 and a low price of \$0.03 per share on October 5, 2011. Charbonneau did not disclose to these customers, however, that he was personally selling X Corp. stock while he was recommending that they purchase X Corp. stock.

There were approximately 13 separate trading days on which Charbonneau sold shares of X Corp. in his personal accounts at Feltl *on the same day* that one of his customers bought shares of X Corp. pursuant to Charbonneau's recommendation. Over the course of those days,

Charbonneau sold a total of 120,800 shares from his personal accounts and bought a total of 201,465 shares for his customers' accounts.

When recommending that his customers purchase approximately two million shares of X Corp., Charbonneau failed to disclose a material fact—namely, that he was selling X Corp. shares from his own accounts. The customers were entitled to know that their broker, who recommended the purchase of the stock to them, was making decisions contrary to his own recommendations with regard to his own personal holdings. Charbonneau's conduct in failing to disclose his X Corp. sales to his customers prevented them from making an informed investment decision.

FINRA Rule 2010 (and its predecessor, NASD Rule 2110) require that a member or associated person, "in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade." Charbonneau violated NASD Rule 2110 and FINRA Rule 2010 by failing to disclose that he was selling X Corp. stock at the same time that he was soliciting his customers to purchase X Corp. stock.

Charbonneau Caused a Customer to Sign in Blank Investment Related Firm Documents

In mid-September 2013, Charbonneau met with TW, a customer of one of his colleagues at Berthel, RS. Charbonneau had never previously met TW. In the meeting, Charbonneau had TW sign and initial in blank in several places the paperwork for a potential REIT investment. The paperwork consisted of an "Alternative Investment Suitability Questionnaire," a "Subscription Agreement for the Lightstone Value Plus Real Estate Investment Trust II, Inc.," an "Alternative Investment Transaction Checklist," and an "Alternative Investment Addendum and Custody Agreement." Charbonneau told TW that he knew the documents were not completed but that she should sign the documents anyway, and they could complete the documents later, when RS was available. At Charbonneau's request, TW signed and initialed the forms in blank.

After she signed and initialed the documents, Charbonneau sent the documents, signed in blank, to RS, under cover of an email dated September 16, 2013. The email stated, "Attached is [TW's] signature page." The documents were later completed with the necessary information, and submitted to Berthel for approval. While TW did not purchase the REIT, Berthel does not permit (and did not permit, in September 2013) the signing of documents in blank.

Based on the foregoing, Charbonneau violated FINRA Rule 2010, in that he caused a customer to sign in blank investment related firm documents in contravention of Berthel's prohibition on such conduct.

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

A bar from association with any FINRA member firm in any capacity.

The sanction imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, Respondent may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about 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. Respondent 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. Respondent 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 Respondent's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, that he has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit it.

8-19-2014
Date

TH. Cross-Gonzalez
Respondent

Accepted by FINRA:

8-19-2014
Date

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

Richard Chin
Chief Counsel
FINRA Department of Enforcement
One World Financial Center, 11th floor
200 Liberty Street
New York, NY 10281-1003
(646) 315-7322