

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090162559

To: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

Re: Berthel, Fisher & Company Financial Services, Inc.
Member, CRD No. 13609

RECEIVED

OCT 21 2010

FINRA District 4

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Berthel, Fisher & Company Financial Services, Inc. (Berthel Fisher) 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 Berthel Fisher alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Berthel Fisher 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

Berthel Fisher has been a member of FINRA since August 1983. Berthel Fisher conducts a general securities business from its main office located in Marion, Iowa.

Relevant Disciplinary History

Berthel Fisher has been the subject of one prior disciplinary action by FINRA that is relevant in this matter:

AWC No. 2007009958101: Berthel Fisher was fined \$5,000 for failing to report to TRACE transactions within 15 minutes of the time of execution, failing to report to TRACE the correct time of execution for transactions, and failing to enter the correct execution times for trades into the trade entry system that processes its electronic order tickets, in violation of SEC Rule 17a-3 and NASD Rules 3110, 6230(a) and 6230(c)(8).

Overview

Berthel Fisher failed to report to the Trade Report and Compliance Engine (TRACE) system the correct time of execution for transactions in TRACE-eligible securities from April 1, 2009 through June 30, 2009 (the relevant period). This conduct violated FINRA Rule 6730(a)(6) and FINRA Rule 2010. Berthel Fisher also failed to show the correct time of execution on the memorandum of brokerage orders. This conduct violated SEC Rule 17a-3 and FINRA Rule 2010.

000041298 2010

Letter of Acceptance, Waiver and Consent No. 20090162559

Berthel, Fisher & Company Financial Services, Inc.

Page 2

Facts and Violative Conduct

During the relevant period, Berthel Fisher failed to report to TRACE the correct time of trade execution for certain transactions in TRACE-eligible securities. Specifically, Berthel Fisher failed to report to TRACE the correct time of trade execution for 17 transactions out of the sample of 60 transactions (28.3%) reviewed by FINRA staff for the relevant period. This conduct violated FINRA Rule 6730(a)(6) and FINRA Rule 2010.

Berthel Fisher is also required to show the correct time of execution on the memorandum of brokerage orders, under the requirements of SEC Rule 17(a). For each of the 17 transactions referenced above, Berthel Fisher failed to show the correct execution time on the memorandum of brokerage orders. This conduct violated SEC Rule 17a-3(a)(6) and FINRA Rule 2010.

B. Berthel Fisher also consents to the imposition of the following sanctions:

1. a censure; and
2. a fine of \$12,500.

Berthel Fisher agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Berthel Fisher has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Berthel Fisher specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II. WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against Berthel Fisher;
- 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

Letter of Acceptance, Waiver and Consent No. 20090162559
Berthel, Fisher & Company Financial Services, Inc.
Page 3

- 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, Berthel Fisher specifically and voluntarily waives 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.

Berthel Fisher 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

Berthel Fisher 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 Berthel Fisher; and
- C. If accepted:
1. this AWC will become part of Berthel Fisher's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Berthel Fisher;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Berthel Fisher'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. Berthel Fisher 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. Berthel Fisher 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 Berthel Fisher's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Letter of Acceptance, Waiver and Consent No. 20090162559
Berthel, Fisher & Company Financial Services, Inc.
Page 4

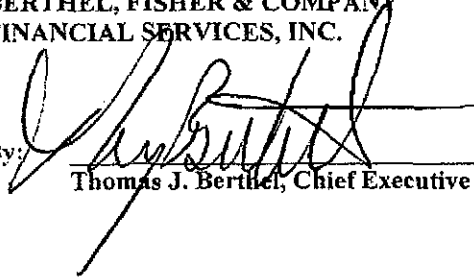
- D. Berthel Fisher may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Berthel Fisher understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This 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 Berthel Fisher, 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 it 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 Berthel Fisher to submit it.

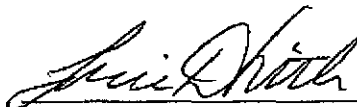
BERTHEL, FISHER & COMPANY
FINANCIAL SERVICES, INC.

Date: October 20, 2010

By:


Thomas J. Berthel, Chief Executive Officer

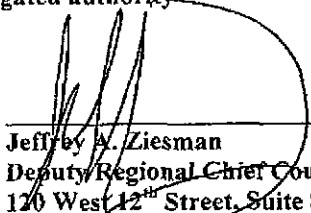
Reviewed by:


Counsel for Berthel Fisher
Accepted by FINRA:

Oct. 21, 2010
Date

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

By:


Jeffrey A. Ziesman
Deputy Regional Chief Counsel
120 West 12th Street, Suite 800
Kansas City, MO 64105
Telephone: (816) 802-4712
Facsimile: (816) 421-4519
Email: jeff.ziesman@finra.org.