

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Berthel, Fisher & Co. Financial Services,
Inc. (CRD No. 13609),

And

Jeffrey Paul Dragon (CRD No. 1874038),

Respondents.

DISCIPLINARY PROCEEDING

No. 2014039169601

HEARING OFFICER DIXON

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: January 8, 2018

INTRODUCTION

Disciplinary Proceeding No. 2014039169601 was filed on March 20, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Jeffrey Paul Dragon submitted an Offer of Settlement (Offer) to Complainant dated December 5, 2017. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent Dragon has consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement, 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, to the entry of findings and violations consistent with the allegations of the Complaint, as amended by the Offer of Settlement, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent Dragon's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Jeffrey Dragon first entered the securities industry in 1988, and was associated with six different broker-dealers from 1988 to 2007. Dragon registered as a General Securities Representative with Berthel, Fisher and Company Financial Services, Inc., in March 2007, and was employed by Berthel from March 2007 until September 2016.

Although Dragon is not currently registered or affiliated with a FINRA broker-dealer, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because: (1) the Complaint was filed within two years after September 23, 2016 – the effective date of termination of his registration with Berthel; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:¹

FACTS

Unit investment trusts

1. A UIT is one of three basic types of investment companies registered with the

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

Securities and Exchange Commission under the Investment Company Act of 1940, along with mutual funds and closed-end funds.

2. A UIT offers shares, called “units,” in a fixed portfolio of securities that has been assembled by a sponsor and offered publicly to investors through broker-dealers.

3. Units are offered to the public during an initial offering period and at the offering price stated in the offering materials.

4. UITs terminate on a specified date, generally between 12 and 24 months after the start of the initial offering period.

5. Investors who hold their units until the UIT’s termination receive a distribution following the liquidation of the trust’s remaining assets, less deductions for final trust expenses.

6. Investors may also liquidate units before the UIT terminates, either through a secondary market, if available, or by tendering units to the product’s sponsor. The liquidation price for units is equal to the net asset value per unit, less any uncollected sales charges.

7. Broker-dealers selling UITs to the public earn compensation for doing so, through a portion of the sales charges assessed on UIT purchases.

8. UIT purchases are subject to sales charges, which typically consist of:

- an initial sales charge,
- a deferred sales charge, and
- a creation-and-development fee.

9. These sales charges are based on a percentage of the public-offering price of each UIT, and the majority of a UIT’s total sales charge is paid as a “dealer concession” to the broker-dealer selling the units to the public.

10. Nearly all of the UITs at issue here carried sales charges totaling 3.95% before available discounts (“undiscounted sales charges”). The full range of undiscounted sales charges

for the UITs at issue was between 2.95% and 4.95%.

11. UIT sponsors, however, offer various discounts that can reduce the total sales charges paid in connection with a UIT investment.

12. For example, most UITs provide a 1.0% sales-charge discount for UIT “rollovers” or exchanges – i.e., UIT purchases made with the proceeds of a termination or liquidation of another UIT within the previous 30 days.

13. In addition, volume discounts – sometimes called “breakpoints” – are available for single-day UIT purchases, by the same customer and from the same sponsor, that exceed specific threshold amounts, usually beginning at \$50,000. Customers investing at or above an available breakpoint qualify for sales-charge discounts of 0.25% or more, depending on the breakpoint amount.

14. Sales-charge discounts, whether breakpoints, rollover discounts, or otherwise, reduce the costs that customers pay for their UIT investments and thereby reduce the dealer concession received by the selling broker-dealer and its registered representatives.

15. Rollover and breakpoint discounts were available for all of the UITs at issue here.

Dragon recommended and effected a pattern of unsuitable short-term UIT trading.

16. During the UIT Period, Jeffrey Dragon, acting as an agent of Berthel and within the scope of his duties, recommended and engaged in short-term UIT trading in 19 accounts belonging to 12 of his customers (“Customers”).

17. Over that two-year period, Dragon’s UIT trading in the Customers’ accounts involved a total of 666 UIT purchases in 84 distinct UITs, of which 73 were offered by

Guggenheim Funds Distributors, LLC.²

18. During that time, Berthel authorized Dragon and its other representatives to recommend and place trades in UITs offered by Guggenheim and two other sponsors: First Trust Portfolios L.P., and Advisors Asset Management, Inc.

19. Dragon's UIT recommendations to the Customers followed a consistent pattern:

- purchase UITs during their initial offering periods,
- liquidate those UITs before the end of their term – usually after holding them for six months or less, and
- use the proceeds from these liquidations to purchase other UITs, thereby incurring new sales charges.

20. For example:

a) Dragon recommended that AP, an 81-year-old customer, make 177 separate UIT purchases during the two-year UIT Period. Of those 177 purchases:

- four positions were held for 30 days or fewer,
- 76 additional positions were liquidated 60 or fewer days after purchase,
- another 89 positions were liquidated between 61 and 90 days after purchase,
- only four positions were held for longer than 120 days, and
- zero were held for longer than 294 days or to termination.

b) Similarly, 84-year-old AW, also acting on Dragon's recommendations, made a total of 82 UIT purchases in her trust and retirement accounts during the UIT Period. Of the discrete positions resulting from those purchases:

- two were sold after less than 30 days, including one that was held for only 12 days,

² This figure excludes two instances in which a Customer chose to reinvest monthly UIT dividends, which resulted in small additional purchases between the opening and closing of the position.

- 12 others were liquidated within 31-60 days after purchase,
- another 60 UIT positions were liquidated after being open 61-90 days,³
- Only three positions were held for longer than 120 days, and
- zero were held longer than 12 months or until termination.

c) Customer PC was 62 years old when she acted on Dragon's recommendations to purchase 92 UIT positions during the UIT period. Of those:

- nine were liquidated within 60 days of purchase,
- 56 others were liquidated within 61-90 days after purchase,
- 14 others were liquidated within 91-120 days months, and
- Only one was held longer than 12 months or to termination.

21. Nine of the other Customers, also acting on Dragon's recommendations, made a total of 315 UIT purchases during the two-year UIT period. Only 20 of the UIT positions that resulted from these purchases were held for longer than one year or to termination. By comparison, more than 220 positions were liquidated after being held for less than 120 days.

22. The short-term trading that Dragon recommended meant that the affected customers cycled the same funds through multiple rounds of UIT purchases – and the concomitant sales charges – in 2013 and 2014. For example:

- a) Customer LL invested \$33,801 in a UIT in January 2013 and, after liquidating the position four months later, used the same funds in six more rounds of UIT purchases and liquidations between May 2013 and July 2014. As a result, LL's initial investment was subject to seven separate sales charges in the course of 18 months.

³ For one of these liquidations, a portion of the original position was liquidated 67 days after purchase, while the remainder was held 126 days before liquidation.

b) Likewise, a \$106,000 UIT purchase by customer AP in February 2013 was liquidated in May 2013, and the proceeds were used to buy and sell seven other UIT positions by July 2014. Thus, in less than 18 months, AP incurred eight discrete UIT sales charges on her initial \$106,000 investment.

23. The total principal amount of the short-term UIT trades that Dragon recommended to the Customers during the UIT Period totaled \$19,559,666. And all of those purchases were subject to undiscounted sales charges of between 2.95% and 4.95%.

24. This resulted in the Customers paying more than \$421,000 in dealer concessions in connection with Dragon's short-term UIT trade recommendations.

25. The \$421,000 was initially paid to Berthel, which in turn paid to Dragon 90% of all dealer concessions received for UIT transactions placed by Dragon during the UIT Period.

Dragon structured UIT purchase recommendations in order to deprive the Customers of breakpoint discounts.

26. In addition to recommending that the Customers engage in short-term trading of UITs, Dragon also structured the Customers' transactions in order to prevent them from qualifying for breakpoint discounts.

27. During 2013 and 2014, Dragon was aware that the UITs he recommended to his Customers offered breakpoint discounts for purchases of \$50,000 or more.

28. Dragon was further aware that these discounts were available not only for individual transactions at or above breakpoint amounts, but also for multiple UIT purchases made by the same customer from the same product sponsor on a single day, if the aggregate principal amount of those purchases exceeded a breakpoint threshold.

29. Despite this knowledge, Dragon recommended transactions to the Customers in a manner that was intended to deprive them of available breakpoint discounts and to increase the

dealer concessions paid to Berthel and Dragon for those transactions.

30. Of the 666 UIT purchases that Dragon recommended to the Customers during 2013 and 2014, only three exceeded the \$50,000 breakpoint.

31. By contrast, Dragon recommended 143 UIT purchases in amounts just below this threshold, between \$44,999 and \$49,999 during the same time period.

32. Even when soliciting UIT investments that exceeded \$50,000 or \$100,000, Dragon consistently recommended that customers split the amounts invested into multiple, smaller purchases and place the trades on different days, which meant that none of the purchases qualified for breakpoint discounts.

33. For example:

a) Dragon recommended that 62-year-old customer PC purchase more than \$116,000 worth of four Guggenheim UITs in late March 2013.

- Dragon structured the investments to occur over the course of a four-business-day period, so that none of the purchases qualified for any breakpoint discount.
- Had PC made the four purchases on the same day, all four trades would have qualified for a 0.50% (or \$5,800) sales-charge discount.

b) Dragon recommended that 81-year-old customer AP liquidate three UIT positions on November 14, 2013, and reinvest the proceeds – approximately \$181,000 – in other UITs.

- Dragon structured the purchases to occur on four separate days over a six-day period, so that none of the purchases qualified for any breakpoint discount.
- Had AP reinvesting all the liquidation proceeds on a single day, the entire amount would have qualified for a sales-charge discount of 0.50% (or \$9,050).

34. This type of structuring was the norm for Dragon; approximately 40 times in 2013

and 2014, Dragon recommended that Customers purchase more than \$100,000 worth of UITs from a single sponsor, but spread those recommendations over multiple days, which made those purchases ineligible for a 0.50% breakpoint discount.

35. In more than 50 other instances during 2013 and 2014, Dragon recommended that his Customers purchase more than \$50,000 worth of UITs by a single sponsor, but structured those transactions so that none of the single-day purchases exceeded \$50,000.

36. Dragon engaged in this structuring in order to prevent Customers from qualifying for breakpoint discounts.

Based on the foregoing, Dragon violated FINRA Rules 2111 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent Dragon from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent Dragon be:

1. Suspended from associating with a FINRA member in any capacity for 21 months; and
2. Fined \$50,000.

The fine shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read 'A. Walker', is written over a horizontal line.

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