

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

DEPARTMENT OF ENFORCEMENT, COMPLAINANT, v. FARRUKH S. KAZMI (CRD NO. 2855915), RESPONDENT.	Disciplinary Proceeding No. 2014039169602 Hearing Officer Campbell <u>ORDER ACCEPTING OFFER OF SETTLEMENT</u> Date: March 22, 2019
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INTRODUCTION

Disciplinary Proceeding No. 2014039169602 was filed on August 1, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Farrukh Kazmi submitted an Offer of Settlement (Offer) to Complainant dated March 13, 2019. 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, Kazmi has consented, without admitting or denying the allegations of the Complaint, 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, and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of Kazmi's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Kazmi first became a General Securities Representative in May 1997 and was registered with four member firms between then and 2005. Kazmi has been registered as a General Securities Representative with Berthel Fisher & Co. Financial Services, Inc. ("Berthel Fisher" or "the firm") since January 4, 2010. The violations alleged herein occurred while Kazmi was associated with Berthel Fisher. FINRA has jurisdiction to file this Complaint against Kazmi pursuant to Article V, Section 2 of FINRA's By-Laws.

FINDINGS AND CONCLUSIONS

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

Kazmi used unapproved communications methods to conduct securities business

1. From 2010 through 2014, Berthel Fisher's WSPs contained an "Electronic Communications Policy" governing the use of electronic communications by Berthel Fisher personnel.

2. The Electronic Communications Policy stated:

Berthel electronic communications systems should be used for business purposes. Electronic communications with clients and/or the public are permitted only through company-sponsored or alternative approved facilities.

3. The Electronic Communications Policy singled out one form of electronic communications – instant messaging – and stated, "RRs are not permitted to use instant messaging to conduct securities business." The firm's WSPs regarding communications with the public

reiterated this prohibition: “Berthel does not permit the use of instant message by RRs for business use.”

4. The WSPs also stated that registered representatives could not use “Personal Digital Assistants” or similar devices for firm business unless the firm issued the devices, and stated, “No firm business may be conducted on non-Firm devices.”

5. When Kazmi became registered with Berthel Fisher in January 2010, he was provided with a firm email address.

6. Berthel Fisher did not issue Kazmi a Personal Digital Assistant, cellular telephone, or similar device at any time during the relevant period.

7. Thus, pursuant to the firm’s policies, Berthel Fisher did not permit Kazmi to communicate with his customers by text message.

8. On or before November 30, 2010, Kazmi’s supervisor at Berthel Fisher learned that Kazmi had been using instant messaging to communicate with a customer, VP, regarding transactions and holdings in VP’s brokerage account at Berthel Fisher.

9. Kazmi’s supervisor verbally informed Kazmi on November 30, 2010, that Berthel Fisher’s procedures strictly prohibited registered representatives from using instant messaging to conduct securities business with clients.

10. That same day, Kazmi confirmed in writing to his supervisor that he would no longer use instant messaging “to communicate with any of my clients in any fashion, not to solicit orders, and not even for basic communication.”

11. Despite the firm’s admonition and his own explicit agreement to cease using instant messaging to communicate with customers, Kazmi continued to use instant messaging in conducting securities business with VP and with two other Berthel Fisher customers, MD and RS.

12. In addition, during 2013 and 2014, Kazmi regularly corresponded with at least 11 Berthel Fisher customers via text messaging regarding securities activity in their accounts. Kazmi estimated that he sent to or received from customers 200-400 text messages *per month* during this time.

13. Kazmi did not inform Berthel Fisher that he used text messaging or instant messaging to conduct securities business between December 1, 2010 and December 31, 2014, nor did he provide copies of these communications to Berthel Fisher.

14. In doing so, Kazmi prevented the firm from reviewing and retaining correspondence with the public, as required by NASD Conduct Rule 3010(d), and making and preserving books and records, as required by NASD Rule 3110, FINRA Rule 4511, and Exchange Act Rule 17a-4(b)(4). Kazmi's use of instant messaging and text messaging to conduct securities business also violated Berthel Fisher's procedures.

Kazmi exercised discretion over customer accounts without written authorization

15. Between May 1, 2013 and July 31, 2014, the firm's WSPs prohibited the firm's representatives from exercising discretion in a customer's account unless (a) the customer provided written authorization for the exercise of discretion and (b) the firm approved this written authorization. Berthel Fisher's WSPs did not permit registered representatives to exercise discretion at any time, except under circumstances that were not applicable to Kazmi.

16. Although Kazmi received their verbal authorization, Kazmi never sought or obtained written authorization from customers KP, SF, MK, PD, NT, or ZR to exercise discretion in any of their accounts at Berthel Fisher. Likewise, Berthel Fisher never approved any of these customer accounts as discretionary accounts.

17. Notwithstanding this lack of written customer authorization and firm approval, Kazmi exercised discretion between May 1, 2013 and July 31, 2014, to effect numerous transactions in the accounts of at least six Berthel Fisher customers, including KP, SF, MK, PD, NT, and ZR.

Kazmi made false statements to FINRA and a FINRA member firm

18. In November 2012, April 2013, and June 2014, Kazmi signed and submitted compliance questionnaires to Berthel Fisher in which he denied using instant messaging related to his securities business.

19. Each of Kazmi's statements in the respective compliance questionnaires denying that he used instant messaging related to his securities business was false.

20. In subsequent sworn testimony before FINRA, Kazmi acknowledged that his responses regarding instant messaging on his 2012, 2013, and 2014 compliance questionnaires were false.

21. In October 2014, FINRA examination staff provided Berthel Fisher with a Personal Activity Questionnaire (PAQ) for Kazmi to complete in connection with FINRA's examination of the firm's Marlton, New Jersey, branch office.

22. Kazmi completed the PAQ and signed it on or about October 10, 2014. Directly below Kazmi's signature, the PAQ states, "By signing this document, I am attesting that the information provided is accurate and truthful."

23. Item 5 of the PAQ asked, "Do you utilize instant messaging, text messaging . . . and/or third-party applications and communication systems (e.g., Gmail, Snapchat, Yahoo, AOL) for business purposes? If yes, provide the details regarding the application utilized, user-name/email addresses, the frequency, and approximately how many customers."

24. Kazmi provided the following response to Item 5 of the PAQ:

Yahoo IM, just for communication with one client.
[REDACTED] This is clients preferred mode of communication. Text message [RL], [LO] per customer request.

25. This response was false, in that Kazmi used instant messaging to communicate with at least three Berthel Fisher customers and used text messaging to communicate with at least 11 Berthel customers. Moreover, in the three days preceding the date of his PAQ signature, Kazmi exchanged at least 90 text messages with a customer, LW, whom he did not identify in the PAQ as a client with whom he communicated by text message.

26. In addition to questions about the use of text and instant messaging, the PAQ asked about Kazmi's use of discretion when placing trades in customer accounts. Specifically, item 17 of the PAQ asked, "Do you service accounts on a discretionary basis?"

27. Item 18 of the PAQ asked the related question, "In the last 12 [months], have you utilized time and price discretion when entering customer transactions?"

28. Kazmi's response to both items 17 and 18 was "none n/a."

29. Kazmi's responses to items 17 and 18 were both false.

30. On December 18, 2014, Berthel Fisher's Chief Compliance Officer sent Kazmi a letter asking him to "respond in writing to the following questions stemming from your recent FINRA branch exam."

31. The letter referenced the firm's annual questionnaires, noted that Kazmi "stated on the annual questionnaire that [he did] not use instant messenger," and asked Kazmi to explain that answer, "[g]iven the findings of the FINRA auditor to the contrary."

32. The CCO's letter also directed Kazmi to explain his trading strategy for two clients in whose accounts he exercised discretion, and to provide "a list of any other clients where you have exercised discretion in their accounts."

33. Kazmi responded to the CCO's letter by email, also on December 18, 2014. In that response, Kazmi falsely stated that he only used instant messaging to communicate with one client

and asserted that Berthel Fisher's compliance department had approved his use of instant messaging with that client.

34. In the same response email, Kazmi also falsely stated that he did not use discretion with any other clients besides the two whom the CCO's letter identified.

Kazmi sold initial equity public offerings to a restricted person

35. At all times between June 2010 and November 2014, Berthel Fisher customer IBM was associated with a broker-dealer other than Berthel Fisher.

36. At all times between June 2010 and November 2014, Kazmi knew that IBM was associated with another broker-dealer.

37. Between June 2010 and November 2014, Kazmi placed 37 orders for IBM to purchase new issues in 36 separate initial public offerings.

38. Kazmi received a total of \$10,350.71 in commissions on these 37 purchases and the subsequent sale transactions by IBM.

Based on the foregoing, Kazmi violated NASD Conduct Rules 2510(b) and 3110, and FINRA Rules 4511, 5130(a)(1), 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 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 be:

- Suspended for five months from associating with any FINRA member in any capacity;
- Fined \$20,000; and

- Required to disgorge a portion of commissions received, which is ordered to be paid to FINRA in the amount of \$10,350.71, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from November 1, 2014, until the date this AWC is accepted by the NAC.

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 'Adam B. Walker', written over a horizontal line.

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