

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C040500_17

To: Department of Enforcement
NASD

Re: Berthel, Fisher & Company Financial Services, Inc.
Member (CRD No. 13609)
and
Craig Vincent Mineart
Registered Equities Trader, General Securities Principal,
and Options Principal
(CRD No. 2642191)

Pursuant to NASD Procedural Rule 9216, Berthel, Fisher & Company Financial Services, Inc. (Berthel Fisher) and Craig Vincent Mineart (Mineart) (collectively referred to as Respondents) submit this Letter of Acceptance, Waiver and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondents alleging violations based on the same factual findings.

Respondents understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and the National Adjudicatory Council (NAC) Review Subcommittee or the Office of Disciplinary Affairs (ODA), pursuant to NASD Procedural Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
3. If accepted:
 - a. This AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondents;
 - b. This AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Procedural Rule 8310 and IM-8310-2; and
 - d. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or rights to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Letter of Acceptance, Waiver and Consent No. C040500¹⁷
Department of Enforcement v. Berthel, Fisher & Company Financial Services, Inc.
and Craig Vincent Mineart
Page 2

Respondents also understand that their experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Berthel Fisher has been a member of NASD since August 1983. Berthel Fisher conducts a general securities business from its main office located in Marion, Iowa. Berthel Fisher has been the subject of prior disciplinary actions by NASD, as follows:

- AWC No. C04990026: Berthel Fisher was censured and fined \$10,000 for violations of NASD Conduct Rule 3070 for failing to report various written customer complaints and failing to file amended Forms U-4 and U-5 regarding those customer complaints
- AWC No. C04980046: Berthel Fisher was censured, fined \$7,500, and ordered to adequately revise its written supervisory procedures to detect and prevent rule violations
- AWC No. C04950062: Berthel Fisher was censured and fined \$2,500 for deficient net capital in violation of NASD Conduct Rule 2110 and SEC Rule 15c3-1(c)
- Offer of Settlement No. C8A930062: Berthel Fisher was censured and jointly and severally fined with one of its registered representatives \$5,000 for private securities transactions in violation of NASD Conduct Rules 2110 and 3040

In addition, Berthel Fisher has been the subject of various disciplinary actions by state regulatory agencies for supervisory deficiencies.

Mineart entered the securities industry in July 1995 when he associated with a member firm of NASD. From February 20, 2001 through the present, Mineart has been associated with Berthel Fisher as a trading supervisor. Mineart is registered with NASD as an equities trader, general securities principal and options principal, which registrations remain in full force and effect. Mineart has not been the subject of prior disciplinary action by NASD.

I. WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against Respondents;

Letter of Acceptance, Waiver and Consent No. C040500_17
Department of Enforcement v. Berthel, Fisher & Company Financial Services, Inc.
and Craig Vincent Mineart
Page 3

- B. To be notified of the Formal 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Furthermore, 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.

In addition, Respondents specifically and voluntarily waive any right to claim that a person violated the *ex parte* prohibitions of NASD Procedural Rule 9143 or the separation of functions prohibitions of NASD Procedural 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.

II. ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:

Inadequate Supervision
NASD Conduct Rules 3010(a) and 2110

- 1. From January 27, 2003 through September 25, 2003, registered representative S.W. recommended and executed options transactions in the accounts of five customers without having reasonable grounds for believing that these recommendations were suitable for the customers on the basis of the customers' investment experience, financial situation and/or age.¹
- 2. Mineart, acting as Berthel Fisher's registered options principal, was responsible for supervising the options transactions recommended and executed by S.W. Mineart failed to adequately supervise S.W. by allowing S.W. to recommend and execute these options

¹Separate disciplinary action has been taken against registered representative S.W.

Letter of Acceptance, Waiver and Consent No. C040500_17
Department of Enforcement v. Berthel, Fisher & Company Financial Services, Inc.
and Craig Vincent Mineart
Page 4

transactions when Mineart knew or should have known that these transactions were unsuitable for the customers.

3. Through these acts, Berthel Fisher and Mineart violated NASD Conduct Rules 3010(a) and 2110.

B. Respondents also consent to the imposition, at a maximum, of the following sanctions:

1. Berthel Fisher and Mineart are jointly and severally fined \$10,000; and
2. Mineart is suspended from associating with any NASD member in any principal or supervisory capacity for ten business days.

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

III. OTHER MATTERS

- A. Respondents understand that they may attach a Statement of Corrective Action to this AWC, which 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 NASD, nor does it reflect the views of NASD or its staff.
- B. Respondents agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have attached an Election of Payment form showing the method by which they propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondents certify that this AWC has been read and that all provisions of this AWC are understood, and that Respondents have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondents to submit it.

**BERTHEL, FISHER & COMPANY
FINANCIAL SERVICES, INC.**

4/25/05
Date

By: Dwight E. Wheelan
Dwight Wheelan, President

Letter of Acceptance, Waiver and Consent No. C040500_17
Department of Enforcement v. Berthel, Fisher & Company Financial Services, Inc.
and Craig Vincent Mineart
Page 5

4-25-05
Date

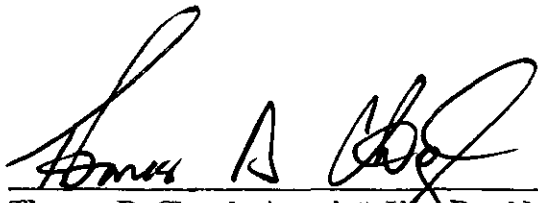

CRAIG VINCENT MINEART

Reviewed by:

Counsel for Respondents
Berthel Fisher and Mineart

Accepted by NASD:

May 10, 2005
Date


Thomas D. Clough, Associate Vice President
And District Director, signed on behalf of the
Director of ODA, by delegated authority

STATEMENT OF CORRECTIVE ACTION

This statement is submitted by the respondents. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.

Shortly after SW became associated with Berthel, Berthel prohibited SW from recommending calendar spread transactions (an options strategy that SW had apparently recommended to some of his clients). SW was verbally advised of this prohibition, and abided by it thereafter. In its confirming letter, however, Berthel inadvertently wrote that SW was prohibited from recommending any options transactions. It was never intended that SW would be prohibited from recommending options transactions other than calendar spreads.

In recognition of the importance of compliance, and not as a result of this investigation, Berthel has reorganized and increased the size of its Compliance Department, which is now headed by an individual with 14 years of experience in compliance. That individual reports to the Executive Vice President of Operations/Compliance, who in turn has 27 years of compliance experience in the securities industry. The Compliance Department is in the process of reviewing all aspects of Berthel's compliance procedures and manuals and is making significant changes/improvements.

In addition, to address its own concerns about the suitability of options transactions in some accounts, Berthel has again revised the Options trading criteria.