

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E04200500018-02

To: Department of Enforcement
NASD

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

Pursuant to NASD Procedural Rule 9216, Berthel, Fisher & Company Financial Services, Inc. (BFCFSI) submits 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 BFCFSI alleging violations based on the same factual findings.

BFCFSI understands 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 BFCFSI; and
3. If accepted:
 - a. This AWC will become part of BFCFSI's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against BFCFSI;
 - b. This AWC will be made available through NASD's public disclosure program in response to public inquiries about BFCFSI's 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. BFCFSI 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. Nothing in this provision affects BFCFSI's testimonial obligations or rights to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

BFCFSI also understands that its 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:

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

- AWC No. C04990026: BFCFSI 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: BFCFSI was censured, fined \$7,500, and ordered to adequately revise its written supervisory procedures to detect and prevent rule violations.
- AWC No. C04950062: BFCFSI 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: BFCFSI 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.
- AWC No. C04050017: BFCFSI was jointly and severally fined \$10,000 with one of its registered representative \$10,000 for inadequate supervision in violation of NASD Conduct Rules 2110 and 3010.

I. WAIVER OF PROCEDURAL RIGHTS

BFCFSI specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

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

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Furthermore, BFCFSI 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.

In addition, BFCFSI specifically and voluntarily waives 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. BFCFSI 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 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:

From July 1, 2003, through August 19, 2005, (the relevant period), BFCFSI participated in a number of private offerings of securities. However, during the relevant period, BFCFSI's written supervisory procedures were deficient relating to private offerings of securities. Among other things, the written procedures did not reference how BFCFSI would monitor for compliance with the applicable rules and regulations relating to private offerings of securities. Further, the written procedures did not provide any detail regarding the method or manner in which any supervision of private offerings of securities was to occur. The written procedures also did not identify any BFCFSI associated person responsible for compliance with respect to rules and regulations relating to private offerings of securities. Moreover, the written procedures failed to describe what steps a BFCFSI associated person, who would be responsible for monitoring for compliance with respect to private offerings, should take if potential violative activity was discovered. Finally, BFCFSI's written procedures failed to describe how a BFCFSI associated person, who would be responsible for monitoring for compliance with respect to private offerings, would document their oversight of private offerings of securities.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3010(b) and 2110 by BFCFSI.

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SANCTIONS

BFCFSI consents to the imposition, at a maximum, to the following sanctions of:

1. A censure; and
2. A fine of \$15,000.

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

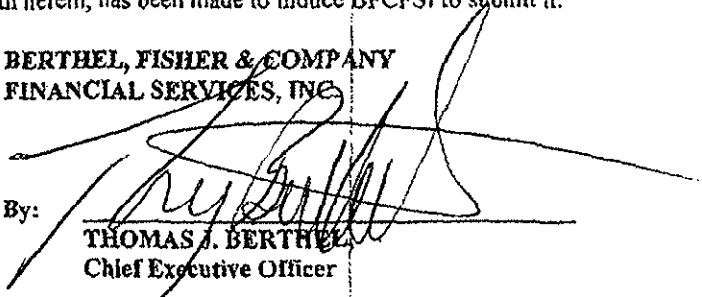
III. OTHER MATTERS

- A. BFCFSI understands that it may attach a Statement of Corrective Action to this AWC, which is a statement of demonstrable corrective steps taken to prevent future misconduct. BFCFSI 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 NASD, nor does it reflect the views of NASD or its staff.
- B. BFCFSI agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable. BFCFSI has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. BFCFSI specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

BFCFSI certifies that this AWC has been read and that all provisions of this AWC are understood, and that it has 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 BFCFSI to submit it.

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

11/3/06
Date

By: 

THOMAS J. BERTHEL
Chief Executive Officer

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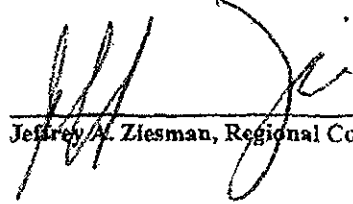
Reviewed by:


Counsel for BFCFSI

Accepted by NASD:

11-13-06
Date

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


Jeffrey A. Ziesman, Regional Counsel
NASD District Director

Thomas D. Clough
120 West 12th Street, Suite 900
Kansas City, MO 64105
(816) 802-4700

Statement of Corrective Action

This Statement of Corrective Action is submitted by the Respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.

In the ordinary course of Berthel Fisher & Company Financial Services' "BFCFS" business and as a part of its continued commitment to complying with all applicable rules and regulations, it has, since the staff's examination, updated and improved its supervisory procedures in the area of private placements in a manner it believes addresses all of the issues raised in this Letter of Acceptance, Waiver and Consent..