

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
25 CAPITOL STREET
CONCORD, NH 03301

CONSENT ORDER
IN THE MATTER OF:

Berthel Fisher & Company Financial Services, Inc. - CRD # 13609

I-2018000000

- I. For purposes of settling the above-captioned matter, and in lieu of administrative proceedings, Berthel Fisher & Company Financial Services, Inc. (“Berthel Fisher”) has submitted an offer of settlement which the State of New Hampshire, Department of State, Bureau of Securities Regulation (the “Bureau”) has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, Berthel Fisher does hereby consent to the following undertakings and sanctions:

THE FACTS

1. Berthel Fisher is a broker-dealer and investment adviser with its principal place of business at 4201 42nd St NE, Ste. 100, Cedar Rapids, IA 52402. According to the Financial Industry Regulatory Authority’s Central Registration Depository (“CRD”), Berthel Fisher has one (1) branch office within New Hampshire. Berthel Fisher has been registered as a broker-dealer with the U.S. Securities and Exchange Commission (“SEC”) since June 10, 1983 and has been licensed as a broker-dealer in New Hampshire since March 20, 1997. Berthel Fisher has been registered as an investment adviser with the SEC since August 27, 2003.
2. In spring 2018, the Bureau received a tip alleging a pattern of unsuitable investment recommendations by a broker-dealer representative of Berthel-Fisher named Jeffrey Paul Dragon (CRD #1874038). Based on the content of this tip, the Bureau initiated an investigation.
3. During the course of its investigation, the Bureau determined that, from 2010 to 2014, Jeffrey Paul Dragon engaged in numerous violations of New Hampshire securities laws by making unsuitable investment recommendations in Unit Investment Trusts (“UITs”) with eleven (11) New Hampshire clients. Certain deficiencies in Berthel Fisher’s supervision of its agents permitted Jeffrey Paul Dragon to make such unsuitable investment recommendations.

THE LAW

1. Berthel Fisher is a “person” within the meaning of N.H. RSA 421-B:2, XVI and 421-B:1-102(39) and a “broker-dealer” within the meaning of N.H. RSA 421-B:2, IX-a and 421-B:1-102(6).
2. Pursuant to N.H. RSA 421-B:4-412(c) and (d)(9), if the secretary of state finds that the order is in the public interest and subsection (d) other than subsection (d)(7), (d)(11) or (d)(14) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$2,500 for each violation on a registrant and if the registrant is a broker-dealer. Additionally, a person may be disciplined under subsections (a) through (c) if the person has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person’s supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act. The Bureau determined that Berthel Fisher failed to reasonably supervise Jeffrey Paul Dragon.
3. Pursuant to N.H. RSA 421-B:3-a and N.H. RSA 421-B:5-501(b)(1)(A), a broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to the customer’s other security holdings and as to the customer’s financial situation and needs. The Bureau determined that Jeffrey Paul Dragon is in violation of this provision.
4. Pursuant to N.H. RSA 421-B:6-604(a)(1), if the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, the secretary of state may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter. Berthel Fisher is subject to this provision.
5. Pursuant to N.H. RSA 421-B:6-604(d), in a final order, the secretary of state may impose a civil penalty up to a maximum of \$2,500 for a single violation. Berthel Fisher is subject to this provision.
6. Pursuant to N.H. RSA 421-B:6-604(e), after notice and hearing, the secretary of state may

enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter, or a rule or order under this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter. Berthel Fisher is subject to this provision.

7. Pursuant to N.H. RSA 421-B:6-604(g), in a final order, the secretary of state may charge the actual cost of an investigation or proceeding for a violation of this chapter or an order issued under this chapter. Berthel Fisher is subject to this provision.

II. In view of the foregoing, Berthel Fisher agrees to the following undertakings and sanctions:

1. Berthel Fisher agrees that they voluntarily consented to the entry of this Consent Order and represent and aver that no employee or representative of the Bureau has made any promise, representation, or threat to induce their execution.
2. Berthel Fisher agrees to waive their right to an administrative hearing and any appeal therein under this chapter.
3. Berthel Fisher agrees that this Consent Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Berthel Fisher or its agents that the Bureau has no knowledge of at the time of the date of final entry of this Consent Order.
4. Berthel Fisher agrees not to 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 regarding Berthel Fisher's broker-dealer and other activities in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects Berthel Fisher's testimonial obligations or right to take any legal positions in administrative proceedings or in litigation, in which the State of New Hampshire is not a party.
5. Berthel Fisher agrees to cease and desist from failing to reasonably supervise customer recommendations regarding Uniform Investment Trusts and cease and desist from other violations of NH RSA 421-B.
6. Berthel Fisher agrees to pay restitution totaling one hundred fifteen thousand four hundred seven dollars and twenty-five cents (\$115,407.25) to Investors #1-11 immediately upon execution of this Consent Order, in the amounts detailed in Exhibit A. Berthel Fisher shall

provide these checks to the Bureau for distribution to Investors #1-11 and the Bureau will include a copy of this Consent Order with each restitution check. Payments to Investor #1-11 shall be made by United States postal money order, certified check, bank cashier's check, or bank money order and made payable to the Investor.

7. Berthel Fisher agrees to pay a fine in the amount of two hundred and fifty thousand dollars (\$250,000.00) and the Bureau's costs in the amount of fifty thousand dollars (\$50,000.00).
8. Berthel Fisher agrees, immediately upon execution of this Consent Order, to pay thirty-five thousand eight hundred sixty-four dollars and eighty-six cents (\$34,592.75) towards the outstanding fine and the Bureau's costs, as agreed in undertaking number 7 above.
9. Berthel Fisher agrees, within one hundred eighty (180) days of the execution of this Consent Order, to pay one hundred and fifty thousand dollars (\$150,000.00) towards the outstanding fine and the Bureau's costs, as agreed in undertaking number 7 above.
10. Berthel Fisher agrees, by June 30, 2020, to pay the remaining balance of one hundred fifteen thousand four hundred seven dollars and twenty-five cents (\$115,407.25) towards the outstanding fine and the Bureau's costs, as agreed in undertaking number 6 above.
11. All payments to the Bureau outlined in number 8, 9, and 10 above shall be made by 1) United States postal money order, certified check, bank cashier's check, or bank money order; 2) made payable to the State of New Hampshire; and 3) hand-delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Berthel Fisher cease and desist from failing to reasonably supervise customer recommendations regarding Uniform Investment Trusts and cease and desist from other violations of NH RSA 421-B.
2. Berthel Fisher pay restitution totaling one hundred fifteen thousand four hundred seven dollars and twenty-five cents (\$115,407.25) to Investors #1-11, as outlined above.
3. Berthel Fisher pay a fine in the amount of two hundred and fifty thousand dollars (\$250,000) and the Bureau's costs in the amount of fifty thousand dollars (\$50,000), as outlined above.
4. Berthel Fisher comply with all other undertakings outlined herein.

SO ORDERED.

Executed this 23rd day of October 2019.

Ronald O. Brendengen, CFO
on behalf of Berthel Fisher

(Please print name below)

Ronald O. Brendengen CFO

Entered this 29th day of October 2019.

Barry J. Glennon

Barry Glennon, Director
N.H. Bureau of Securities Regulation

Exhibit A
Restitution Amounts

Investor #1: \$13,780.80

Investor #2: \$9,911.01

Investor #3: \$39,487.57

Investor #4: \$2,577.75

Investor #5: \$12,152.22

Investor #6: \$10,009.90

Investor #7: \$5,483.58

Investor #8: \$180.64

Investor #9: \$3,647.34

Investor #10: \$5,808.35

Investor #11: \$12,368.10

TOTAL: \$115,407.25