

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

FARRUKH S. KAZMI  
(CRD No. 2855915),

RESPONDENT.

DISCIPLINARY PROCEEDING  
No. 2014039169602

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between October 2010 and October 2014, while registered with Berthel, Fisher & Co. Financial Services, Inc. (“Berthel Fisher”), the Respondent, Farrukh Kazmi, regularly used instant messaging and text messaging to communicate with at least 14 Berthel Fisher customers to conduct securities business. By doing so, Kazmi violated Berthel Fisher’s written procedures and ignored the firm’s explicit instruction that he discontinue using instant messaging to communicate with his customers. Kazmi’s unauthorized use of instant messaging and text messaging circumvented Berthel Fisher’s supervisory review of his correspondence and resulted in the firm failing to preserve required records. Through this conduct, Kazmi violated NASD Conduct Rule 3110 (before December 5, 2011), and FINRA Rules 4511 (on and after December 5, 2011) and 2010.

2. In addition, between May 2013 and July 2014, Kazmi exercised discretion on hundreds of occasions when placing trades in the accounts of at least six customers, without prior written

authorization from the customers or written approval from Berthel Fisher. Through this conduct, Kazmi violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

3. Kazmi repeatedly made false statements to Berthel Fisher and to FINRA about using instant messaging to conduct securities business. He denied using instant messaging to communicate with customers in compliance questionnaires that he signed and submitted to Berthel Fisher in 2012, 2013, and 2014, and he falsely stated to FINRA in October 2014 and to Berthel Fisher in December 2014 that his use of instant messaging was limited to a single client. Kazmi also falsely denied exercising discretion in customer accounts in statements to both Berthel Fisher and FINRA. Through this conduct, Kazmi violated FINRA Rule 2010.

4. Between June 2010 and November 2014, Kazmi also placed 37 purchase orders for shares in initial public offerings on behalf of a customer whom Kazmi knew to be a registered representative of another broker-dealer. Through this conduct, Kazmi violated FINRA Rules 5130(a)(1) and 2010.

### **RESPONDENT AND JURISDICTION**

5. 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 since January 4, 2010. During his career in the securities industry, Kazmi also obtained his Series 31, 63, and 65 licenses.

6. At all times relevant to this Complaint, Kazmi conducted his securities business from a Berthel Fisher branch office in Marlton, New Jersey, and was the only registered person at that location.

7. 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.

**FIRST CAUSE OF ACTION**  
**USE OF UNAPPROVED COMMUNICATIONS METHODS TO CONDUCT SECURITIES BUSINESS**  
**(VIOLATION OF NASD CONDUCT RULE 3110 AND FINRA RULES 4511 AND 2010)**

8. The Department re-alleges and incorporates by reference all preceding paragraphs.

9. FINRA Rule 4511 and its predecessor, NASD Rule 3110, require that each member make and preserve books and records in conformity with Section 17 of the Securities Exchange Act of 1934 and applicable Exchange Act rules.<sup>1</sup> Exchange Rule 17a-4(b)(4) requires each member to preserve for a period of three years the originals of all communications received and copies of all communications sent by the member relating to its business.

10. FINRA Rule 2010 requires that registered representatives "shall observe high standards of commercial honor and just and equitable principles of trade." Among other things, this Rule requires that registered representatives abide by their firms' written supervisory procedures ("WSPs").

*Berthel Fisher's policies regarding electronic communications*

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

12. The Electronic Communications Policy stated:

Berthel electronic communications systems should be used for business purposes. Electronic communications with clients and/or

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<sup>1</sup> The effective date of FINRA Rule 4511 was December 5, 2011.

the public are permitted only through company-sponsored or alternative approved facilities.

13. 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.”

14. 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.”

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

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

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

*Kazmi used instant messaging to conduct securities business, even after his supervisor instructed him not to, and also communicated with his customers by text message.*

18. 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.

19. 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.

20. 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.”

21. 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.

22. 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.

23. 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.

24. 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.

25. Through the foregoing conduct, Kazmi violated NASD Rule 3110 (before December 5, 2011), and FINRA Rules 4511 (on and after December 5, 2011) and 2010.

**SECOND CAUSE OF ACTION  
EXERCISE OF DISCRETION WITHOUT WRITTEN AUTHORIZATION  
(VIOLATION OF NASD CONDUCT RULE 2510(b) AND FINRA RULE 2010)**

26. Enforcement realleges and incorporates by reference paragraphs 1-7.

27. NASD Conduct Rule 2510(b) states:

No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.

28. 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.

29. 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.

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

31. Through this conduct, Kazmi violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

**THIRD CAUSE OF ACTION  
MAKING FALSE STATEMENTS TO FINRA AND MEMBER FIRM  
(VIOLATION OF FINRA RULE 2010)**

32. Enforcement realleges and incorporates by reference all preceding paragraphs.

33. 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.

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

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

36. 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.

37. 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."

38. 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."

39. 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.

40. 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.

41. 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?"

42. 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?"

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

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

45. 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."

46. 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."

47. 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."

48. 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.

49. 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.

50. By providing false information to FINRA and to Berthel Fisher, Kazmi violated FINRA Rule 2010.

**FOURTH CAUSE OF ACTION  
SELLING INITIAL EQUITY PUBLIC OFFERINGS TO A RESTRICTED PERSON  
(VIOLATION OF FINRA RULES 5130 AND 2010)**

51. Enforcement realleges and incorporates by reference paragraphs 1-7.

52. FINRA Rule 5130(a)(1) states:

A member or a person associated with a member may not sell, or cause to be sold, a new issue to any account in which a restricted person has a beneficial interest, except as otherwise permitted herein.

53. For purposes of Rule 5130, a “new issue” is an initial public offering of an equity security, and any person associated with a FINRA broker-dealer is a “restricted person.”

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

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

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

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

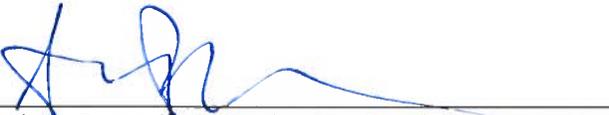
58. Through this conduct, Kazmi violated FINRA Rules 5130 and 2010.

**RELIEF REQUESTED**

WHEREFORE, Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains, with interest; and
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

Dated: August 1, 2018



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