

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009020149801**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Stifel, Nicolaus & Company, Incorporated, Respondent
CRD No. 793

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Stifel, Nicolaus & Company, Incorporated ("Respondent," "Stifel" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Respondent is a subsidiary of Stifel Financial Corp. and is a full-service regional brokerage and investment advisory firm based in St. Louis, Missouri. The Firm has been registered with FINRA since October 1936. It has approximately 3,245 registered representatives working out of approximately 300 branch offices. The Firm has no relevant disciplinary history.

OVERVIEW

From approximately March 2005 to January 2007 (the "relevant period"), Stifel failed to supervise Kenneth Neely, a former registered representative working at the Firm's St. Peters, Missouri branch office. While at Stifel, Neely engaged in a Ponzi scheme whereby he induced Stifel customers and others to participate in a fictitious "St. Louis Investment Club" and to invest in an equally fictitious real estate investment trust, the "St. Charles REIT." FINRA barred Neely in all capacities from associating with a member firm.¹

¹ Letter of Acceptance, Waiver and Consent, No. 20080157230901 (July 23, 2009).

While Neely was carrying out his fraudulent scheme, Stifel failed to respond adequately to warning signs relating to Neely's activities that should have alerted it to Neely's improper conduct, despite the efforts of Neely to hide them. Stifel failed to detect or respond adequately to evidence it received, including suspicious customer correspondence and a cashier's check, that should have alerted the Firm to Neely's misconduct. The Firm's supervisory failures constitute separate and distinct violations of NASD Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

When Stifel hired Neely, Neely had three pending customer complaints on record concerning his annuities business at his prior employer and the firm became aware of two other customer complaints, also arising from his prior business, while Neely was a Stifel broker. Additionally, the Firm was aware of evidence that Neely, throughout his tenure at Stifel, was experiencing severe financial difficulties, including a court order and subsequent notices to garnish his wages to satisfy certain of his personal debts. Despite the heightened compliance risk Neely presented, the Firm failed to respond adequately to subsequent red flags concerning two Stifel customers, RH and RM, who were investors in Neely's scheme.

1. Customer RH

In early 2005, Stifel became aware of two letters written by RH concerning an "Investment Club." In April 2005, Neely's supervisor reviewed an incoming letter to Neely from RH dated March 21, 2005, in which RH discusses the "Investment Club." This March 21, 2005 letter references an earlier letter, dated October 27, 2004, in which RH also discusses the "Investment Club." After reviewing the March 21, 2005 letter, Neely's supervisor asked Neely to bring the October 27th letter from RH into the office. In these letters, RH revealed Neely's role with the Investment Club. RH discussed in detail his investments in the Investment Club, including repeated and unfulfilled requests to Neely for certificates of ownership reflecting his investments. In both letters, RH also complained to Neely that the Investment Club's "dividend" payments were past due.

Neely's supervisor discussed both the March 21st and October 27th letters with Neely. Neely falsely explained that the letters reflected a "misunderstanding" with his client and that Neely had no financial involvement with the Investment Club.

By letter dated March 30, 2005, addressed to Neely's supervisor, RH stated that "Ken has made me aware that some of my wording in my March 21, 2005 and October 27, 2004 letters may cause some misunderstanding." RH went on to state that Neely merely acted as a go-between for RH and the Investment Club. He also stated that Neely had no financial involvement in the Club and that the \$6,000 check made out to Neely was actually RH's "dues to the Club, with the understanding that Ken would pass it on." Neely's supervisor accepted and relied on Neely's and RH's explanation without further inquiry.

The Firm also failed to detect or investigate adequately emails from RH to Neely concerning the same topic. In an email dated April 12, 2005, RH stated to Neely "I received NO call from your office. I guess the letter I sent was sufficient." RH further stated "NO certificate received YET

from Investment Club – NOR any dividend checks! The poor service continues!” RH ended the email by stating he wanted to buy four additional shares in the Investment Club at \$3,000 each for a total additional investment of \$12,000.

A subsequent email from RH to Neely concerning the Investment Club also escaped supervisory review. In this email, dated January 5, 2006, RH complains that he is “still waiting for \$\$ from Investment Club and my current certificate of ownership.” The correspondence from RH concerning the Investment Club, and the fact that Neely was involved in an undisclosed outside activity, should have sent a signal to the Firm that Neely was engaged in improper activities. The Firm, however, failed to act reasonably upon these warning signs thus enabling Neely to continue his fraudulent scheme.

2. Customer RM

Stifel also failed to adequately follow up and investigate a \$15,000 cashier’s check from customer RM which was hand-delivered to Stifel’s branch office in July 2005. On June 7, 2005, RM hand-delivered the cashier’s check to Neely made payable to Neely’s wife. RM asked the receptionist for an envelope. On the envelope RM wrote “Ken Neely, Personal & Confidential, from [RM].” The receptionist brought the envelope to Neely’s supervisor. Neely’s supervisor spoke with Neely who stated he did not know what the cashier’s check was for. Accordingly, Neely’s supervisor informed Neely that he would contact RM.

According to Neely’s supervisor, Neely abruptly left his supervisor’s office and “snuck” out to his car to use his cellular telephone. When Neely returned to his supervisor’s office they called RM. On this call, RM stated that the cashier’s check was a private matter concerning Neely’s wife and that he did not want to talk about it. When confronted, Neely falsely stated the check was for the purchase of a car which his wife had sold to RM.

At this point, Neely’s supervisor was concerned about the cashier’s check because he knew Neely had ongoing financial difficulties. Accordingly, Neely’s supervisor contacted the Firm’s Compliance Department again and was advised to (1) obtain a written statement from Neely regarding the check and (2) prepare a letter to RM asking him to sign-off on the transaction, as a precondition to releasing the check to Neely.

Neely’s supervisor asked Neely for a written explanation by 5:00 pm that day, June 7, 2005. Later that day, Neely responded in writing by email. In this email, Neely stated that he had called his wife and “asked her why someone would be writing a check for \$15,000. Then she told me she had sold [the Neely’s Ford Explorer] to one of my friends [RM] at [his country club].” Neely told his supervisor that Neely’s wife did not tell Neely about the transaction because she wanted to surprise Neely on Father’s Day.

In his notes for that day, Neely’s supervisor itemized three things “that didn’t add up,” including (1) RM’s use of a cashier’s check instead of a personal check; (2) RM’s delivery of the check to Neely when it was supposed to be a surprise; and (3) RM’s reluctance to discuss the transaction if, as was explained, it was only for the purchase of car: “Why the secrecy?” At the end of these

notes, Neely's supervisor wrote "[RH] - ?", thus recognizing that there was a possible connection between the RH and RM episodes.

On June 8, 2005, Neely's supervisor, following the advice of the Firm's compliance officials, sent a letter to RM seeking to verify Neely's story. In this letter, Neely's supervisor states that "It is a serious violation for a registered representative to borrow money from a client. As such, before releasing the referenced check to Mr. Neely" it is necessary to confirm that the \$15,000 check "was payment for a Ford Explorer you were purchasing from Ken Neely and [his wife]. These funds did not represent money that was being loaned to and/or given to the Neelys." RM signed the letter and returned it to Neely's supervisor.

On June 21, 2005, Neely's supervisor asked Neely by email whether he received a bill of sale for the car. Neely responded "No, [RM] decided not to buy the car, he thought he was causing me a problem at work. I gave him his money back." The Firm returned the \$15,000 cashier's check to Neely. Neely then informed his supervisor that he had returned the check to RM because they had decided not to go through with the sale of the Ford Explorer.

After Neely informed his supervisor that he had returned the check to RM, Neely's supervisor reported Neely's response to the Firm's Compliance team, asking whether he should follow up. On June 27, 2005, Neely's supervisor, after consulting with the Firm's Compliance team, had Neely sign the following attestation: "This letter is to confirm that I fully understand the rules prohibiting borrowing money from clients. I also confirm that I have not borrowed money from clients during my employment at Stifel, Nicolaus."

Despite concerns that Neely may have engaged in misconduct, neither Neely's supervisor nor the Firm's Compliance team took further action to investigate the red flags surrounding the \$15,000 cashier's check, thereby enabling Neely to continue his fraudulent scheme.

Based on the foregoing, Stifel violated NASD Rules 3010 and 2110 by failing to supervise Neely reasonably and by failing to detect or investigate adequately a series of warning signs which should have alerted the Firm to Neely's misconduct.

B. Respondent also consents to the imposition of the following sanctions:

1. A censure;
2. A fine in the amount of \$350,000; and
3. Restitution to Stifel customers affected by Neely's scheme from March 1, 2005 to January 12, 2007 ("affected customers") in an amount not to exceed \$250,000 plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct to the date this AWC is accepted by the NAC, subject to the following:
 - a. Within 30 days of the effective date of the AWC, a registered principal on behalf of the Firm shall submit to FINRA a proposed plan of how it

will compensate affected customers. At a minimum, the plan must include how the Firm, using reasonable and documented efforts, will (i) identify affected customers, (ii) determine the appropriate amount due to individual affected customers, (iii) notify affected customers that they are entitled to restitution, and (iv) forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided and provide to FINRA satisfactory proof of such action within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

- b. FINRA will review the plan submitted by the Firm. If the plan complies with the requirements set forth in this AWC, FINRA will not object to the plan. The date that FINRA notifies the Firm that it does not object to the plan shall be called the Notice Date.
- c. In the event FINRA does object to the plan, the Firm will have an opportunity to address FINRA's objections and resubmit the plan within 30 days. FINRA will discuss its objections with the Firm. However, a failure to resubmit to FINRA a plan that is reasonably designed to meet the specific requirements of the undertaking will be a violation of the terms of this AWC.
- d. Within 120 days of the Notice Date, a registered principal on behalf of the Firm shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to C. Anthony Trambley, Senior Counsel, at FINRA, 1801 K Street, NW, Suite 800, Washington, DC 20006 either by letter that identifies the Respondent and the FINRA case number or by email from a work-related account of the registered principal of the Firm to EnforcementNotice@FINRA.org.

The sanctions imposed herein shall be effective on a date set by FINRA staff. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Respondent agrees to pay the fine imposed herein upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The Firm understands that this settlement includes a finding that it failed to supervise an individual who violated Section 10(b) of the Securities Exchange Act of 1934 (the "Act") and SEC Rule 10b-5 and that under Section 3(a)(39)(F) of the Act, incorporating Section 15(b)(4)(E)

of the Act, and under Article III, Section 4 of FINRA's By-laws, this finding subjects the Firm to a statutory disqualification with respect to membership.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Respondent;
- B. To be notified of the 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule

9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. This AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that Respondent 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

3-23-12

Date

by: Bernard H Burkemper

Respondent

Stifel, Nicolaus & Company, Incorporated

Reviewed by:

Lisa A. Nielsen

Lisa Ann Nielsen

Greensfelder, Hemker & Gale, PC

10 South Broadway, Suite 2000

St. Louis, Missouri 63102

314-516-2669

Accepted by FINRA:

3/26/12

Date

Signed on behalf of the

Director of ODA, by delegated authority

James E. Day

James E. Day

Associate Vice President and Chief Counsel

FINRA Department of Enforcement

1801 K Street, NW

Washington, DC 20006

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