

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2009020810101**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, Stifel, Nicolaus & Company, Inc. ("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**

Stifel is a self-clearing broker-dealer that has been registered with FINRA – and, previously, the NASD – since 1936. Stifel has its main offices in St. Louis, Missouri. It has more than 3,900 registered representatives and more than 380 branch offices.

**RELEVANT DISCIPLINARY HISTORY**

The Firm has no relevant disciplinary history.

**OVERVIEW**

From September 1, 2009 through December 31, 2013 (the "Relevant Period"), Stifel failed to establish and implement an anti-money laundering ("AML") program reasonably designed to detect and cause the reporting of certain potentially suspicious activity. During the Relevant Period, the Firm executed, for its customers, unsolicited purchases and sales of at least 2.5 billion shares of

low-priced securities (“penny stocks”)<sup>1</sup> which generated at least \$320 million in proceeds.

Trading in penny stocks, often conducted through unsolicited transactions, typically poses a higher than average risk of manipulative trading activity because of the possibility of low trading volumes and relative lack of information regarding issuers.

During the Relevant Period, the Firm’s AML compliance program included suspicious activity surveillance through the routine monitoring of solicited penny stock trades executed through the Firm. However, the Firm’s AML compliance program did not routinely monitor unsolicited penny stock trades executed through the Firm.

As a result, Stifel violated NASD Rule 3011(a) (for conduct before January 1, 2010) and FINRA Rules 3310(a) (for conduct after December 31, 2009) and 2010.

During the Relevant Period, Stifel also failed to establish, maintain, and enforce a supervisory system reasonably designed to ensure compliance with Section 5 of the Securities Act of 1933 (“Section 5”) and the applicable rules and regulations with respect to the distribution of unregistered and non-exempt securities.

The Firm did not routinely conduct due diligence on penny stocks received through the Automated Customer Account Transfer Service (“ACATS”) system. Contrary to its obligations under FINRA rules, Stifel failed to conduct adequate supervisory reviews to determine whether such securities were registered or if an exemption to registration applied prior to the sale of such securities.

As a result, Stifel violated NASD Rule 3010 and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **1. Stifel Failed to Establish and Implement an Adequate AML Program, In Violation of NASD Rule 3011(a) and FINRA Rules 3310(a) and 2010.**

NASD Conduct Rule 3011(a), effected in April 2002, which was replaced by FINRA Rule 3310(a) on January 1, 2010, requires each member to “Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. § 5318(g) and the implementing regulations promulgated thereunder.”

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<sup>1</sup> Penny stocks include securities that trade at less than \$5 per share and are quoted over-the-counter. *See* SEC, Penny Stock Rules, available at <http://www.sec.gov/answers/penny.htm> (May 9, 2013).

In April 2002, Special NASD Notice to Members 02-21 stated that “each financial institution should have the flexibility to tailor its AML program to fit its business.” The Notice further stated that “each broker/dealer, in developing an appropriate AML program that complies with the Money Laundering Abatement Act, should consider factors such as its size, location, business activities, the types of accounts it maintains, and the types of transactions in which its customers engage.”

Throughout the Relevant Period, Stifel executed unsolicited penny stock trades on behalf of its customers who traded at least 2.5 billion shares of penny stocks generating at least \$320 million in proceeds. In addition, at least 27 securities traded through the Firm during this time were later suspended by the U. S. Securities and Exchange Commission (“SEC”) as part of an effort to cease trading activity in dormant shell companies that were ripe for abuse in the over-the-counter market.<sup>1</sup> Moreover, Stifel was aware of the heightened risks associated with penny stock activity during this time as it had terminated certain customer accounts that had deposited and shortly thereafter sold, large blocks of penny stocks.

During the Relevant Period, the Firm’s AML compliance program included suspicious activity surveillance of solicited penny stock trades executed through the Firm. However, the Firm’s AML compliance program did not routinely monitor unsolicited penny stock trades executed through the Firm. Despite the amount of unsolicited penny stock trading activity conducted through the Firm and the awareness of risks associated with such activity, Stifel failed to have an adequate surveillance system to review unsolicited penny stock transactions.

As a result, Stifel violated NASD Rule 3011(a) (for conduct before January 1, 2010) and FINRA Rules 3310(a) (for conduct after December 31, 2009) and 2010.

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<sup>1</sup>See SEC Press Release, SEC Continues Microcap Fraud Crackdown, Proactively Suspends Trading in 255 Dormant Shell Companies, available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540714936> (February 3, 2014).

2. Stifel Failed to Establish, Maintain and Enforce a Supervisory System to Achieve Compliance with Section 5 of the Securities Act of 1933, In Violation of NASD Rule 3010 and FINRA Rule 2010.

NASD Conduct Rule 3010(a) requires firms to “establish and maintain a system to supervise activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.” Under NASD Rule 3010(b), these systems must be documented in the firm’s written supervisory procedures. The procedures also must be tailored to the business lines in which the firm engages. They also must set out mechanisms for ensuring compliance and detecting violations, and must not merely set out what conduct is prohibited.

Section 5 of the Securities Act of 1933 prohibits the sale of any security through the mails or in interstate commerce, unless a registration statement is in effect as to the security or an applicable exemption from registration.

FINRA Regulatory Notice 09-05 reiterated members’ obligations to comply with securities laws as they relate to unregistered security distributions. The Notice states that “All firms must have procedures reasonably designed to avoid becoming participants in the potential unregistered distribution of securities” and, “firms may not rely solely on others, such as clearing firms, transfer agents, or issuers’ counsel, to fulfill these obligations.”

During the Relevant Period, Stifel customers deposited and sold penny stock shares through the Firm. During this time, the Firm did not routinely conduct due diligence on penny stocks received from customers through the ACATS system. Contrary to its obligations under FINRA rules, Stifel failed to ensure that adequate supervisory reviews were performed to determine whether such securities were registered or if an exemption to registration applied prior to the sale of such securities. As a result, Firm customers were able to deposit and liquidate penny stock shares that should have been subject to greater scrutiny by the Firm.

As a result, Stifel violated NASD Rule 3010 and FINRA Rule 2010.

- B. Respondent also consents to the imposition of the following sanctions:
- a. a censure; and
  - b. a \$300,000 fine.

Respondent agrees to pay the monetary sanction 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 Respondent 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 sanctions imposed herein shall be effective on a date set by FINRA staff.

## **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 the 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 the Respondent;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the 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: (i) testimonial obligations; or (ii) 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 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 FINRA, nor does it reflect the views of FINRA or its staff.

Respondent certifies that the undersigned is duly authorized to act on the Firm's behalf and that the Respondent 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 Respondent to submit it.

9/2/14  
Date (mm/dd/yyyy)

Stifel, Nicolaus & Company, Inc.

Garry J. Stegeland  
By: Garry J. Stegeland, Esq.  
General Counsel, Private Client Group &  
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Reviewed by:

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Accepted by FINRA:

9.22.14  
Date

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

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