

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012032945601**

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

RE: Stifel, Nicolaus & Company, Inc. (CRD No. 793)
Kurt A. LaLomia (CRD No. 1926472)
Respondents

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents submit 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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 Stifel, Nicolaus & Company, Inc. ("Firm" or "Stifel") is a full-service broker-dealer that has been a member of FINRA since 1936. Stifel has its main offices in St. Louis, Missouri. It has more than 4,300 registered representatives and more than 400 branch offices throughout the United States.

Respondent Kurt A. LaLomia ("LaLomia") began in the securities industry in 1989. He became registered with Legg Mason Limited in June 1994, which was acquired by Stifel in December 2005. In December 2005, LaLomia became registered with Stifel and has been registered with Stifel in a principal capacity since that time.

RELEVANT DISCIPLINARY HISTORY

Respondents have no relevant disciplinary history.

OVERVIEW

From January 2006 until February 2013, Respondents failed to adequately supervise the written communications of an institutional salesperson registered with Stifel, "A.L.", who circulated to institutional investors communications about companies which the Stifel research analysts discussed during morning calls and about which they wrote in their research reports. These communications violated several NASD rules in that they: (1) constituted "Research Reports" as defined by NASD Rule 2711(a)(9), but failed to meet the related requirements under Rule 2711; and (2) were not fair and balanced, did not provide a sound basis for evaluating the facts, and contained exaggerated, unwarranted and misleading statements, and therefore, violated NASD Rule 2210(d)(1).¹

The Firm violated NASD Rule 3010 because, with respect to A.L. and three others, it failed to implement a supervisory system that was reasonably designed to supervise the distribution, approval and maintenance of Research Reports and Institutional Sales Material, and because it failed to ensure compliance with NASD Rules 2711 and 2210 and its related written supervisory procedures. On the basis of these violations, as well as others set forth below, Respondents also violated NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

FACTS AND VIOLATIVE CONDUCT

1. A.L.'s Violative Communications

A.L. was a Managing Director and an Institutional Equity Salesman at Stifel's Cleveland, Ohio branch office from December 2005 until he resigned in March 2013. A.L. was not registered as a research analyst and did not work in Stifel's Equity Research department.

a. The Idea List

From January 2006 until February 2013, A.L. created and distributed a communication that was typically over 200 pages long called the "Idea List," which he provided to institutional clients during meetings. The Idea List represented A.L.'s top 10-20 stock picks as of the date of that particular Idea List. Each of the companies listed in the Idea List was also covered by Stifel's Research Department. The Idea List constituted "Institutional Sales Material" as defined in NASD Rule 2211(a)(2).² As such, pursuant to NASD Rule 2211(d)(1), the content standards of NASD Rule 2210(d)(1) applied. Several aspects of the Idea List violated NASD Rule 2210(d)(1), as described below.

First, A.L. provided a spreadsheet listing the stocks selected for the Idea List, along with financial information about each company, including most recent stock price, earnings per share ("EPS") data (actual and estimates), price per earnings ("P/E") data (actual and

¹ FINRA is also pursuing an action against A.L.

² As of February 4, 2013, NASD Conduct Rule 2211 was superseded by FINRA Rule 2210, relating to "Institutional Communications." The violations in this AWC are for the conduct through February 3, 2013.

estimates), price targets, and target P/E. The spreadsheet failed to provide the source(s) of the financial information listed. In addition, during certain periods of time, the Idea List contained A.L.'s personal price targets and target P/Es without expressly disclosing that the information was derived through A.L.'s own calculations, the manner in which he derived these figures, and the source of those figures. In addition, A.L. failed to disclose that there was no certainty that the estimates, target prices, or target P/Es would be achieved. Therefore, the spreadsheets failed to provide a sound basis for evaluating the facts with regard to the data provided for each stock.

A.L. also drafted a narrative summary and analysis of each company, including a discussion of recent trends and future forecasts. In these summaries, A.L. made a variety of claims without providing a sound basis for evaluating the facts with regard to them. For example, regarding one company, he wrote "[m]anagement . . . is solid and one of the best in the industry." In this, and many other instances, A.L. did not include the sources of the asserted claim or include any information about the bases for his statements. In addition, there were frequent references to "we", "I", "my" and "our," making it difficult to distinguish between A.L.'s own views versus those of Stifel's Research Department. Another section contained a summary describing the "key criteria for stock selection," with the ultimate goal "[t]o help clients focus on stock that may offer the best potential to outperform the market." These statements failed to disclose that there was no certainty of success in meeting the stated "ultimate goal."

In addition, A.L. provided information which purported to show trading activity and performance data for the Idea List portfolio and which disclosed that "these numbers are not AIMR-compliant. These results are calculated from the change in paper portfolio values from one year to the next." These communications failed to provide a sound basis for evaluating the stated investment performance because: (1) they failed to explain that past performance is not indicative of future performance, and (2) the explanations that performance data was "not AIMR-compliant" and was calculated from the change in values "from one year to the next" failed to provide the reader with sufficient information to understand the significance of the performance presented or the manner in which it was derived. In addition, the communications were unwarranted and misleading because they failed to disclose that the "portfolio" was a hypothetical portfolio based on hypothetical trades, and that the "performance" was not based on actual performance.

Finally, the bulk of the Idea List comprised approximately 200 pages of excerpts from the official Stifel Research Reports, which omitted material information about the stocks covered by the Research Report, did not include information relating to disclosures and certifications, and deleted extensive sections of analysis and supporting information. The excerpted pages also contained handwritten commentary by A.L., many which were misleading or unwarranted, improperly suggested that past performance could be predictive of future similar performance, and predicted future performance.

As a result of the above, Stifel violated NASD Rule 2210(d)(1)(A) and (B), as well as NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

b. Research Insights Emails

From January 2006 until February 2013, A.L. sent an email he titled "Stifel Research Insights by [A.L.]" ("Research Insights email"(s)) to dozens of institutional customers several times per week. Each of the Research Insights emails was sent to at least 15 recipients. Each email had the following general characteristics: (1) it was typically 1½-3 pages in length; (2) it contained a detailed discussion and analysis of several companies that Stifel research analysts covered, which discussion included the views of the analysts, as well as A.L.'s own views; (3) it listed "buy", "hold/neutral" and "sell" ratings; (4) it listed which stocks were on the Idea List; and (5) it listed current stock prices and market capitalization information. In addition, many of the Research Insights emails also identified A.L.'s own personal EPS estimates and price targets, which sometimes deviated from those of the Stifel research analysts. Later versions disclosed that "full research reports and models are available upon request."

The Research Insights emails violated NASD Rules 2711 and 2210(d)(1), as well as NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).³

i. NASD Rule 2711

NASD Rule 2711 contains specific requirements for communications that are deemed "Research Reports" under the rule. Rule 2711(a)(9) defines a "Research Report" as "any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision," unless it is distributed to fewer than 15 persons. The Research Insights emails constituted "Research Reports" under Rule 2711 and violated various aspects of Rule 2711.

The Research Insights emails provided ratings for specific stocks but did not define the meaning of each rating, thus violating Rule 2711(h)(4). They also failed to disclose the percentage of all securities rated by the member to which the member would assign a "buy," "hold/neutral," or "sell" rating, and the percentage of subject companies within each of these three categories for whom the member has provided investment banking services within the previous twelve months, in violation of Rule 2711(h)(5).

In addition, many of the Research Insights emails provided price targets (either those of Stifel's research analysts or A.L.'s) but failed to disclose the valuation methods used to determine the price target or the risks that may impede achievement of the price target, in violation of Rule 2711(h)(7).

³ As with the Idea List, the Research Insights emails constituted "Institutional Sales Material" under NASD Conduct Rule 2211(a)(2). As such, per NASD Rule 2211(d)(1), the content standards of NASD Rule 2210(d)(1) applied.

The emails also violated Rule 2711(h)(9), which mandates certain disclosures in Research Reports that are required by applicable law or regulation, including the analyst certification required by Regulation AC. Moreover, these emails failed to make the additional disclosures required Rule 2711(h)(1), (h)(2), (h)(3), (h)(6), and (h)(8).

Finally, under Rule 2711(h)(1), the Research Insights emails that discussed fewer than six stocks should have included all relevant disclosures in the body of the communication. For those that covered six or more companies, a/k/a “compendium reports,” Rule 2711(h)(11) allowed the reports to direct the reader “in a clear manner” to where they could obtain applicable current disclosures. The statement in the Research Insights emails that “Full research reports and models are available on request” was insufficient.

As a result of the above, Stifel violated NASD Rule 2711, as well as NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

ii. NASD Conduct Rule 2210(d)(1)

The Research Insights emails also violated NASD Rule 2210(d)(1). First, as with the Idea List, A.L.’s frequent references to “we,” “I,” and “our” made it difficult to distinguish the source of the information or opinion, thus failing to provide a sound basis for evaluating the statements and claims.

Second, statements A.L. made were often misleading or unwarranted. For example, in analyzing one company, A.L. discussed coal prices and stated “historically it takes about a year of pricing at the cost of production of coal . . . for production cuts to get large enough to drive up prices. We appear to be about at that spot.” This claim suggested that past performance could predict future similar performance. A.L. also made claims that predicted specific future performance or events. For instance, regarding one company, he stated “I think there is a high probability that we will increase earnings estimates and stock price targets as coal prices run up.”

Finally, as with the Idea List, to the extent A.L. provided personal EPS estimates and prices targets, those communications failed to provide a sound basis for evaluating the facts because they did not disclose the manner in which he derived the figures and the source of the figures.

As a result of the above, Stifel violated NASD Rule 2210(d)(1)(A) and (B), as well as NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

2. The Best Ideas Communications

Since at least January 2006 until February 2013, three Stifel representatives (only one whom was a registered research analyst) had been circulating to institutional investors a monthly communication entitled “Our Best Ideas” (“Best Ideas”). The Best Ideas was a

10-15 page document that listed the “best ideas” of the authors with respect to stocks (generally more than six) in certain sectors. For each, the Best Ideas provided current stock prices, EPS (actual and estimates), P/E ratio, ratings (*i.e.*, buy, hold/neutral or sell).

The Best Ideas met the definition of Research Report set forth in NASD Rule 2711(a)(9) as it provided analyses of equity securities of individual companies, provided information reasonably sufficient upon which to base an investment decision, and was distributed to at least 15 people. The Best Ideas violated Rule 2711(h)(10) and (11) because: (1) the disclosures were unclear in that they contained indefinite language regarding ownership of securities, and (2) as a “compendium report,” they were required to state in a clear manner where to obtain the applicable current disclosures, which they failed to do.

The Best Ideas also contained violations of NASD Conduct Rule 2210(d)(1).⁴ First, they failed to provide a sound basis for evaluating the facts with regard to the data provided for each stock, including sources of EPS and P/E estimates, and fair values. Second, they included the following claims regarding rankings which Stifel had received: (a) #1 IN THE *WALL STREET JOURNAL*’S 2010 BEST ON THE STREET SURVEY, (b) #2 IN *FT/STARMINE* WORLD’S TOP ANALYST SURVEY; and (c) #1 IN STOCK PICKING. These statements failed to provide a sound basis for evaluating the specific criteria on which these rankings were awarded, which was necessary for the readers to understand the significance of these rankings. Finally, the Best Ideas also contained claims that were exaggerated, unwarranted, or misleading. For example, the communication made claims that exaggerated the safety of investments, suggested past performance could be predictive of future performance, and made statements that predicted future performance.

As a result of the above, Stifel violated NASD Rules 2711 and 2210(d)(1)(A) and (B), as well as NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

3. Supervision of the Ideas List and Research Insights emails

LaLomia was a supervisor in the Equity Sales and Supervision group of Stifel’s Equity Capital Market division, and was responsible for supervising A.L. LaLomia was not registered or qualified as a research analyst principal. LaLomia, and others in senior management and compliance at Stifel, was aware of the Idea List and Research Insights emails since at least December 2006. By March 2007, due to concerns about potential Rule 2711 issues, Stifel had implemented restrictions on the content of the Idea List and Research Insights emails that were intended to avoid the communications being deemed “Research Reports” under Rule 2711. The restrictions included a prohibition on A.L. providing personal price targets and EPS estimates, as well as any personal opinions relating to the stocks. LaLomia was charged with implementing and enforcing these restrictions. Despite the restrictions, the Idea List continued to contain A.L.’s personal price targets and EPS estimates until at least December 2007, and the Research Insights

⁴ The Best Ideas constituted Institutional Sales Material as defined in NASD Conduct Rule 2211(a)(2).

emails contained this information, as well as other personal commentary, until at least June 2009.

The Firm and LaLomia failed to adequately supervise the Idea List, and Research Insights emails because they did not (1) adequately enforce the restrictions imposed on A.L. by the Firm, and (2) detect the Rule 2210(d)(1) violations contained in the communications, as set forth above. Therefore, the Firm and LaLomia violated NASD Rule 3010, as well as NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

4. The Firm's Inadequate Written Supervisory Procedures and Supervisory System

The Firm violated NASD Rule 3010 because it did not have a supervisory system that was reasonably designed to supervise the distribution, approval and maintenance of communications created by institutional salespeople, particularly A.L. and the Best Ideas authors. First, Stifel did not properly identify the Research Insights emails or the Best Ideas as "Research Reports" under Rule 2711, and allowed those communications to be circulated without the information and disclosures required under Rule 2711. Second, Stifel did not designate an appropriately registered principal to supervise and review the Research Insights emails and the Best Ideas as "Research Reports" under Rule 2711.

In addition, Stifel did not establish, maintain and enforce written procedures that were reasonably designed to supervise the distribution, approval and maintenance of communications created by institutional sales personnel and distributed to institutional customers. The written procedures did not adequately address the creation and distribution of Institutional Sales Material or the approval process for such materials because the procedure were confusing and ambiguous regarding what procedures applied to Institutional Sales Materials versus other communications. This violated both NASD Rule 3010 and NASD Rule 2211(b)(1)(B), the latter which specifically required the establishment of adequate written procedures governing Institutional Sales Material.

Moreover, Stifel failed to enforce certain of its WSPs in this area, in violation of NASD Rule 3010. Stifel had written procedures relating to Research Reports under Rule 2711, which provided *inter alia*, that "only those associated persons who are properly licensed are allowed to prepare research reports," and prohibited others from sending communications "that may be deemed 'research' since there are complex requirements that apply to the issuance of research reports." But, Stifel did not enforce these procedures by failing to prohibit A.L. from creating and distributing the Research Insights emails, or by prohibiting the circulation of the Best Ideas. These deficiencies also violated NASD Rule 2711(i), which required firms to adopt and implement reasonably designed written procedures to ensure compliance with Rule 2711.

Similarly, Stifel had written procedures that governed the content of outgoing communications, including NASD Rule 2210, which it failed to enforce in connection with the Idea List, the Research Insights emails and the Best Ideas, each which contained

Rule 2210 violations. Stifel also failed to enforce its procedures requiring pre-approval of Institutional Sales Material because the Idea List and the Research Insights emails did not require pre-circulation principal approval until February 2011 and July 2011 (respectively). Finally, Stifel did not enforce procedures requiring retention of the Idea List, as set forth below in section 5.

Finally, Stifel had specific written procedures requiring that “[a]ll information that is approved to be sent to clients . . . be sent in its entirety (including all disclosure pages and caveats) and not in pieces” and prohibiting representatives from “writing on the pieces, including underlining, circling, or otherwise drawing attention to one section of the information over another.” Yet, the Idea List contained 200 hundred pages of excerpts from Stifel’s official Research Reports which excluded many of the required disclosures and were replete with A.L.’s handwritten notes, and circling and highlighting of certain information.

As a result of the above, Stifel violated NASD Rules 3010, 2211(b)(1)(B), and 2711(i). The above conduct also violated NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

5. The Firm’s Books and Records Violations

NASD Conduct Rule 2211(b)(2) required all members to maintain all Institutional Sales Material in a file for a period of three years from the date of last use. The file was required to contain the name of the person who prepared each item of Institutional Sales Material, as well as information concerning the source of any statistical table, chart, graph or other illustration used in communications with the public. Similarly, NASD Rule 3110(a) (for the conduct before December 5, 2011) and FINRA Rule 4511 (for the conduct on or after December 5, 2011), and SEC Rule 17a-4 required that firms maintain copies of all business communications for at least three years. Stifel did not maintain copies of the Idea List as required, and failed to maintain information concerning the sources of the charts and data in the Ideas List. Therefore, Stifel violated SEC Rule 17a-4, NASD Rule 3110(a) (for the conduct before December 5, 2011), FINRA Rule 4511 (for the conduct on or after December 5, 2011), and NASD Rule 2211(b)(2). This conduct also violated NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

6. The Firm’s Registration Violations

As set forth above, the Research Insights emails and the Best Ideas constituted Research Reports under NASD Rule 2711. A.L. was not properly licensed or registered as a research analyst, therefore, should not have been circulating the Research Insights emails. Similarly, two of the authors of the Best Ideas were not licensed research analysts, and should not have been circulating the Best Ideas. LaLomia was supervising the Research Insights emails and the Best Ideas, but he was not licensed or registered to supervise the conduct of representatives acting as “research analysts.” As a result, the Firm violated NASD Rules 1022(a)(5) and 1050(a), as well as NASD Rule 2110 (for the conduct

before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

B. Respondents also consent to the imposition of the following sanctions:

1. Stifel: a fine of \$200,000 and a censure; and
2. LaLomia: a fine of \$15,000 and a 31 calendar day suspension from associating with any FINRA registered firm in a principal capacity.

Respondents agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondents have each submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

Respondent LaLomia understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, LaLomia may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because he is subject to a statutory disqualification during the principal suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Respondents further specifically and voluntarily waive 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

Respondents understand 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 them; and
- C. If accepted:
 - 1. this AWC will become part of their permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondents 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. Respondents 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 Respondents': (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 this AWC, and Respondent LaLomia certifies that he has read this AWC, and both understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they have 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 Respondents to submit it.

1/4/2016
Date (mm/dd/yyyy)

Kurt A. LaLomia
Respondent, Kurt A. LaLomia

12/30/15
Date (mm/dd/yyyy)

Stifel, Nicolaus & Company, Inc.
Respondent, Stifel, Nicolaus & Company, Inc.

By: Gary J. Siegel
S.E. P.F. CCC

Reviewed by:



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Accepted by FINRA:

1/5/16
Date

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



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