

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016050948201**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Stifel, Nicolaus & Company, Incorporated ("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 has been a FINRA member since 1936. The Firm is a full-service broker-dealer that is headquartered in St. Louis, Missouri. Stifel has approximately 431 branch offices and 4,968 registered representatives.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

From January 2012 through December 2016 (the "Relevant Period"), Stifel failed to establish and maintain a supervisory system, and failed to establish, maintain, and enforce written supervisory procedures ("WSPs"), that were reasonably designed to achieve compliance with FINRA's suitability rule as it pertains to early rollovers of Unit Investment Trusts. Based on the foregoing, Stifel violated NASD Rule 3010 (for conduct before December 1, 2014) and FINRA Rule 3110 (for conduct on or after December 1,

2014) and FINRA Rule 2010.

In addition, during the Relevant Period, Stifel sent approximately 600 switch letters to customers that contained inaccurate or missing information about the costs that they incurred as a result of early rollovers of Unit Investment Trusts, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

A. Unit Investment Trusts

A Unit Investment Trust (“UIT”) is a SEC-registered investment company that offers investors shares or “units” in a fixed portfolio of securities in a one-time public offering. A UIT terminates on a specified maturity date, often after 15 or 24 months, at which point the underlying securities are sold and the resulting proceeds are paid to the investors. Generally, a UIT’s portfolio is not actively managed between the trust’s inception and its maturity date.

UIT sponsors typically offer UIT product lines in successive “series,” with the offering periods for new series usually coinciding with the maturity date of prior series. Successive series of UITs often have the same or similar investment objectives and investment strategies as the prior series, even if the portfolio of securities held by the UIT changes from series to series.

UITs impose a variety of upfront sales charges. For example, during the Relevant Period, a typical 24-month UIT contained three separate charges: (1) an initial sales charge, which was generally 1% of the purchase price; (2) a deferred sales charge, which was generally up to 2.5% of the offering price; and (3) a creation and development fee (“C&D fee”), which was generally 0.5% of the offering price.¹ If the proceeds from the sale of a UIT were “rolled over” to fund the purchase of a new UIT, UIT sponsors often waived the initial sales charge, but still applied the deferred sales charge and C&D fee.

A registered representative who recommended the sale of a customer’s UIT before its maturity date and used the sale proceeds to purchase a new UIT would cause the customer to incur greater sales charges than if the customer had held the UIT until maturity. For example, a hypothetical customer who purchased a 24-month UIT and held it until maturity would have paid a sales charge of about 3.95%. However, if after six months, the customer rolled over the UIT into a new UIT, he or she would have paid an additional 2.95% in sales charges. And, if the customer repeatedly rolled over the existing UIT into a new UIT every six months, he or she would have paid total sales charges of approximately 12.8% over a two-year period.

¹ In addition to these charges, most UITs charged annual operating expenses that were paid to the sponsor out of the assets of the UIT.

Because of the long-term nature of UITs, their structure, and their costs, short-term trading of UITs may be unsuitable.

B. Stifel Failed to Reasonably Supervise Trading of UITs

FINRA Rule 3110 and its predecessor, NASD Rule 3010, require that each member firm establish and maintain a supervisory system, and establish, maintain, and enforce WSPs, that are reasonably designed to supervise the activities of each registered representative, registered principal, and other associated person of the firm and achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA rules.

FINRA Rule 2111 and its predecessor, NASD Rule 2310, require member firms or their associated persons to have a reasonable basis to believe that a recommended securities transaction is suitable for the customer, based on the information obtained through the reasonable diligence of the firm or associated person. A firm's or associated person's reasonable diligence must provide the firm or associated person with an understanding of the potential risks and rewards associated with the recommended security.

During the Relevant Period, Stifel executed approximately \$10.9 billion in UIT transactions that generated approximately \$206.3 million in sales charges. The \$10.9 billion in UIT transactions included approximately \$935.2 million in proceeds from transactions in which UITs were sold more than 100 days before their maturity dates and some or all of the proceeds were used to purchase one or more new UITs ("early rollovers"). Approximately \$186.7 million of the proceeds were for transactions in which customers sold UITs more than 100 days prior to their maturity dates and used some or all of the proceeds to purchase a subsequent series of the same UIT, which, as noted above, had, in many cases, the same or similar investment objectives and strategies as the prior series ("series-to-series early rollovers").

During the Relevant Period, Stifel failed to establish and maintain a supervisory system, and to establish, maintain, and enforce WSPs, reasonably designed to achieve compliance with FINRA's suitability rule as it pertains to early UIT rollovers. Stifel's WSPs recognized that "[s]witching from one UIT to another . . . before UIT maturity may subject the customer to incur a [new] sales charge." As a result, the WSPs referenced a "UIT Switch Letter," which representatives could use "when a client [sold] a position in a UIT before maturity to purchase another UIT or mutual fund." According to the WSPs, the purpose of the switch letter was to confirm a customer's "understanding of the transaction [switch] as well as the related risks and expenses." Nonetheless, the WSPs did not provide guidance about when switch letters should be sent or how Firm supervisors should monitor for potentially unsuitable patterns of early UIT rollovers.

Throughout the Relevant Period, Stifel used an automated surveillance alert to identify potential early UIT rollovers, as well as potential switches between UITs and mutual funds (the "Switch Alert"). Branch managers were responsible for reviewing the Switch Alert to determine if a switch letter should be sent to the customer, pursuant to the Firm's WSPs; this process was monitored by the Firm's compliance department. However, the

Switch Alert failed to flag UIT switches. In or around April 2012, personnel within Stifel's compliance department discovered that, although the Switch Alert flagged switches from one mutual fund to another, as well as switches between a mutual fund and a UIT, it did not identify switches from one UIT to another. Despite this knowledge, Stifel did not inform its branch managers at any point from April 2012 through the end of the Relevant Period that the Switch Alert was not functioning as intended.

The Firm's compliance department developed an alternative surveillance system to flag UIT-to-UIT switches, which became operational in April 2013. However, that alert was not reasonably designed to detect unsuitable UIT switches because it only flagged UITs that were held for less than a year even if the UIT had a long-term maturity date (e.g., the alternative system would not have flagged a UIT with a maturity period of up to four years that had been sold after 13 months). Furthermore, the alternative system stopped functioning as intended in May 2015, but the Firm did not discover that fact until mid-2016. As a result, although Stifel fixed the Switch Alert in August 2015, personnel in its compliance department continued to use the Firm's alternative system to identify UIT switches until at least mid-2016.

As a result, Stifel failed to identify that its representatives recommended potentially unsuitable early UIT rollovers, including series-to-series rollovers, which may have caused customers to incur \$1,891,188.13 in sales charges that they would not have incurred had they held the UITs until their maturity dates. By virtue of the foregoing, Stifel violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014), and FINRA Rule 2010.

C. Stifel Sent Switch Letters to Customers Containing Inaccurate Information about the Costs They Incurred as a Result of Early UIT Rollovers

FINRA Rule 2010 requires "a member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade." A negligent misstatement of material fact to a customer violates FINRA Rule 2010.

During the Relevant Period, Stifel sent more than 1,200 switch letters in connection with early UIT rollovers. The switch letters were intended to provide customers with necessary information about the switch transaction, and according to the Firm's WSPs, confirm a customer's "understanding of the transaction [switch] as well as the related risks and expenses." Customers were required to sign and return the letter to the Firm acknowledging the switch transaction. Nonetheless, the Firm did not verify the accuracy of the information contained in certain of the switch letters, apart from *ad hoc* reviews conducted as part of the Firm's branch inspection program.

Those reviews did not identify that approximately 639 of the 1,200 UIT switch letters sent by Stifel during the Relevant Period either contained inaccurate information regarding the costs incurred by customers in connection with the switch or failed to specify the costs. Specifically, approximately 639 of the UIT switch letters understated the sales charges associated with the switch by at least 25%, and approximately 141 of

those letters did not list any sales charge associated with the new UIT purchased by the customer, even though the switches resulted in the customers incurring new sales charges. On average, the 639 switch letters understated the sales charges by more than 49%, and several of the switch letters understated the sales charges by almost 100%. For example, one switch letter stated that the overall sales charges associated with the switch were \$1,000 when they were in fact \$1,969.

Collectively, the 639 switch letters disclosed sales charges of approximately \$330,440, when the actual sales charges incurred by customers were more than \$1,249,052.

As a result of the foregoing, Stifel violated FINRA Rule 2010.

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

- a censure;
- a fine of \$1,750,000; and
- restitution to the customers listed on Attachment A in the total amount of \$1,891,188.13, plus interest as further described below.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are 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 an inability to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid to the customers listed on Attachment A hereto in the total amount of \$1,891,188.13, 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 December 31, 2015 until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent Firm shall submit satisfactory proof of payment of restitution and pre-judgment interest (separately specifying the date and amount of each paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent Firm. This email must identify the Respondent and the case number and include a copy of the check, money order or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 180 days after acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 180 days from the date the AWC is accepted,

or such additional period agreed to by a FINRA staff member in writing, Respondent shall 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. Respondent shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

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.

Restitution payments to customers shall be preceded or accompanied by a communication, not unacceptable to FINRA staff, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

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 it;
- 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 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.

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

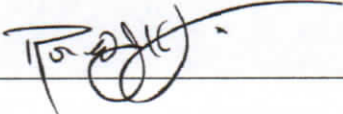
Respondent understands that:

- 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 action brought by FINRA or any other regulator against Respondent;
 - 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. 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.

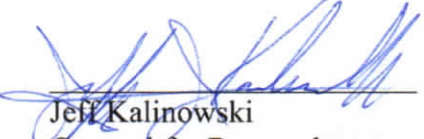
The undersigned, on behalf of the Respondent Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that 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 it to submit it.

Stifel, Nicolaus & Company, Inc.

5/8/20
Date


By: Ronald J. Kruszewski
Title: Chairman and CEO

Reviewed by:


Jeff Kalinowski
Counsel for Respondent
Bryan Cave
One Metropolitan Square,
211 North Broadway, Suite 3600
St. Louis, MO 63102

Accepted by FINRA:

05/27/20
Date

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

Michael J. Newman

Michael Newman
Senior Counsel
FINRA
Department of Enforcement
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