

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062348302**

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

RE: Stifel, Nicolaus & Company, Inc. (Respondent)
Member Firm
CRD No. 793

Pursuant to FINRA Rule 9216, Respondent Stifel, Nicolaus & Company, Inc. (Stifel) 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

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 450 branch offices and 5,200 registered representatives.

In May 2020, FINRA found that Stifel failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with FINRA's suitability rule pertaining to early rollovers of Unit Investment Trusts. The firm consented to a censure, a \$1.75 million fine and an order of restitution.

In March 2012, FINRA found that Stifel failed to reasonably respond to red flags that one of its registered representatives was selling interests in a fictitious investment. The firm consented to a censure, a \$350,000 fine and an order of restitution.¹

OVERVIEW

From at least April 2014 to February 2021, Stifel failed to (i) establish and maintain a system reasonably designed to supervise the transmittal of customer funds by representatives who had power of attorney over a customer's account and (ii) reasonably

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

respond to red flags of potential misconduct by a Stifel registered representative with power of attorney over a customer's account (Broker A). The firm did not have written policies and procedures addressing the review of accounts where representatives had power of attorney over a customer's account and failed to provide guidance or training specific to supervision in this context. As a result, the firm failed to detect misconduct by Broker A, who converted at least \$105,000 by writing checks payable to himself or for his benefit, despite the presence of red flags. As a result, Stifel violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

Separately, from August 2017 to March 2019, Stifel failed to reasonably respond to red flags that another representative (Broker B) engaged in a pattern of unsuitable recommendations to multiple customers involving options and a high-risk security. As a result, Stifel violated FINRA Rules 3110(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated after Stifel filed (i) a Uniform Termination Notice for Securities Industry Registration (Form U5) in January 2020 for Broker A, disclosing that he was terminated for taking "money from a client account for his personal use without authorization;"² and (ii) a Form U5 amendment in April 2019 for Broker B, disclosing a customer complaint that alleged that Broker B did not follow the customer's stated goals and did not disclose risks associated with options trading.³

FINRA Rule 3110(a) requires, like its predecessor NASD Rule 3010(a), a member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.⁴ The duty to supervise under Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation.

FINRA Rule 3110(b) requires, like its predecessor, NASD Rule 3010(b), a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

A violation of FINRA Rule 3110 or NASD Rule 3010 is also a violation of FINRA Rule 2010, which requires a firm to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

² Broker A was barred by FINRA in March 2020 for failing to cooperate with FINRA's investigation.

³ Broker B was barred by FINRA in June 2021 for failing to cooperate with FINRA's investigation.

⁴ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

1. Stifel failed to establish a supervisory system reasonably designed to review and monitor the transmittal of customer funds when a representative had power of attorney over a customer's account, and failed to reasonably follow up on red flags concerning Broker A.

In Regulatory Notice 09-64 (November 2009), FINRA reminded member firms that “[a]s part of their duty to safeguard customer assets and to meet their supervisory obligations, FINRA firms must have and enforce policies and procedures governing the withdrawal or transmittal of funds or other assets from customer accounts.” These policies and procedures “should be reasonably designed to review and monitor all instructions to transmit or withdraw assets from customer accounts.”

In addition, in a December 2015 Report on the FINRA Securities Helpline for Seniors™, FINRA noted the potential for abuse when registered representatives serve in a position of trust, including as power of attorney, for customers. Firms that allow such relationships “should consider adopting strong policies and supervisory procedures to protect clients who intend to—or do—grant [power of attorney], trusteeship of a client trust, or non-managed account discretionary control over their assets to any person associated with the firm.”

Broker A was the power of attorney on the brokerage account of a senior customer (Customer A). Broker A had been designated as Customer A's power of attorney since 2011, which provided Broker A the authority to write checks on Customer A's behalf. From April 2014 through October 2018, Broker A converted at least \$105,000 from Customer A by writing six checks on her account that he made payable to himself or to a bank account that he controlled.

Stifel had a policy generally prohibiting registered representatives from serving as power of attorney for a non-family member account. However, the firm could approve exceptions to the policy. In 2011, the firm approved Broker A to serve as power of attorney for Customer A. However, the firm did not have written policies and procedures specifically addressing review of accounts where representatives of the firm were serving as power of attorney, nor did the firm provide guidance or training specific to supervision of accounts where registered representatives served as power of attorney. Although the firm coded Customer A's account as an employee-related account due to Broker A's power of attorney over the account, which subjected it to a monthly supervisory review that Stifel conducted, this review did not include the payee for checks from Customer A's account signed by Broker A in his capacity as power of attorney. Consequently, the firm did not detect or investigate the six checks discussed above that were made payable to Broker A or to a bank account that he controlled.

In May 2019, during a retroactive review by the firm of all non-family power of attorney relationships, the firm identified one of the checks, a \$5,000 check dated August 9, 2018, payable from Customer A's account to Broker A. In response to the firm's inquiry, Broker A claimed that he was reimbursing himself for Customer A's nursing home expenses, despite the fact that, as power of attorney, Broker A had the ability to write checks directly to the nursing home. The firm then closed its investigation based on

Broker A's representations. In December 2019, after Broker A attempted to transfer the remaining balance in Customer A's account to himself, Stifel rejected the transfer request, investigated and uncovered Broker A's prior misconduct. Broker A was terminated shortly thereafter. In February 2021, the firm ceased granting exceptions to its prohibition on registered representatives from serving as power of attorney for a non-family member account and memorialized its prohibition without exceptions in July 2022. Customer A's estate was fully reimbursed for Broker A's misconduct.

Therefore, Stifel violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

2. The firm failed to reasonably follow up on red flags of unsuitable trading by Broker B in options and a high-risk microcap security.

During the period relevant to the below, FINRA Rule 2111 required member firms and associated persons to have a reasonable basis to believe that a recommended securities transaction is suitable in light of the customer's investment profile. Similarly, FINRA Rule 2360(b)(19)(A) required member firms and associated persons to have reasonable grounds for recommending the purchase or sale of an option contract based on the customer's investment objectives, financial situation and needs.

The firm failed to reasonably respond to red flags of Broker B's unsuitable option trading.

At all relevant times herein, the firm used automated reports to identify potentially unsuitable options trading. However, the firm failed to reasonably respond to certain alerts contained in those reports that Broker B's options trades were potentially unsuitable. The firm also regularly and unreasonably suppressed some alerts involving Broker B's trading.

Between August 2017 and June 2018, Broker B recommended more than 100 speculative options trades in one of the brokerage accounts of Customer B, who was a 64-year old retired schoolteacher with no options experience or knowledge. The majority of the trades were short-term, out-of-the-money calls or puts, many of which expired worthless and caused Customer B's account to lose nearly 80% of the funds deposited to the account in less than a year, prior to its being closed in July 2018. The firm was aware of the volume of options trading and discussed the trading in the account with Broker B. However, despite the fact that the trading generated more than 10 alerts, the firm failed to reasonably investigate whether the trading was consistent with Customer B's investment objectives and risk tolerance. Instead, Stifel approved a change in Customer B's investment objectives from "growth and income" to "speculative/active trading/complex strategies" based on Broker B's representations, and suppressed several subsequent options alerts involving Customer B's account.

Between February 15 and March 7, 2019, Broker B recommended speculative options trading in the brokerage account of Customer C, who had no options experience, a growth and income investment objective and a moderate growth risk tolerance. Despite

the fact that Customer C had no options experience, a growth and income investment objective and a moderate growth risk tolerance, Broker B recommended 37 call options in Customer C's account, most of which were out-of-the-money, and half of which expired in 10 days or less. On March 11, 2019, Broker B closed out the last remaining options positions in Customer C's account. This trading resulted in total losses of \$27,745.94. Although some of the trading was flagged by the firm's systems, the firm failed to reasonably respond.

Therefore, Stifel violated FINRA Rules 3110(a) and 2010.

The firm failed to reasonably respond to red flags of Broker B's unsuitable recommendations of a high-risk microcap security.

In addition to the options trading described above, beginning on August 2, 2018, Broker B recommended to five of his customers purchases in a security that, although listed on an exchange at the time, was priced under \$1 a share with a total market capitalization of less than \$250 million. The price of the stock had fallen substantially prior to the purchases due to (among other things) substantial doubts being raised in public reports about the company's ability to continue as a going concern. None of these customers had a speculative investment objective. After excessive commission alerts were generated regarding some of these trades, the firm noted that Broker B was purchasing a "collapsing equity" and flagged this trading activity for further monitoring; yet the firm failed to take steps other than asking Broker B about the customers' knowledge of and comfort with the purchases. The firm failed to reasonably investigate the red flags raised by the alerts, even though this high-risk trading was inconsistent with the customers' investment objectives. Broker B continued to recommend additional purchases of the stock as the price continued to fall throughout August. By the end of August 2018, the customers had incurred realized losses of \$53,498.00 due to this trading.

Therefore, Stifel violated FINRA Rules 3110(a) and 2010.

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

- a censure;
- a \$400,000 fine; and
- Restitution of \$59,360.43, plus interest as described below.⁵

⁵ The estate of Customer A was subsequently made whole for the amounts converted and will not be receiving restitution. Customer B, as well as one of the customers to whom Broker B recommended purchases in a high-risk, low-priced security, previously settled with the firm. Customer C and the four remaining customers to whom Broker B unsuitably recommended purchases in a high-risk microcap security (referred to as Customers D, E, F and G), will receive restitution pursuant to this AWC.

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 it proposes to pay the fine imposed.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$59,360.43, 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 March 11, 2019 until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) 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. The email must identify 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 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanction in this AWC, 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 letter, not unacceptable to FINRA, 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 in this AWC shall be effective on a date set by FINRA.

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 its acceptance or rejection.

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

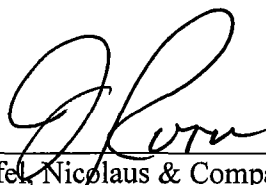
Respondent understands that:

- 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 its subject matter 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. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

3/11/24
Date



Stifel, Nicolaus & Company, Inc.
Respondent

Print Name: JOSEPH ROSA

Title: DEPUTY General Counsel

Reviewed by:



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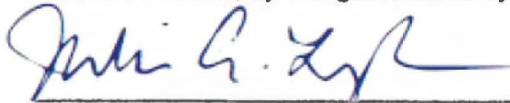


Kendra S. Canape, Esq.
Counsel for Respondent
Gordon Rees Scully Mansukhani LLP
5 Park Plaza, Suite 1100
Irvine, CA 92614

Accepted by FINRA:

March 15, 2024
Date

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



Julie A. Lenaghan, Principal Counsel
FINRA
Department of Enforcement
9509 Key West Ave.
Rockville, MD 20850

Attachment A

RESTITUTION SCHEDULE

Customer	Restitution Amount
Customer C	\$27,745.94
Customer D	\$8,242.62
Customer E	\$15,951.54
Customer F	\$4,547.52
Customer G	\$2,872.81