

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
CLG050006

TO: Department of Market Regulation
NASD

RE: **Stifel, Nicolaus & Company, Incorporated**, Respondent
Broker-Dealer
CRD No. 793

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

STFL understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against STFL; and
3. If accepted:
 - a. this AWC will become part of STFL's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against STFL;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about STFL's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. STFL 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects STFL's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

STFL also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

The firm has been a member of NASD since October 13, 1936 and its registration remains in effect. On October 10, 2002, an AWC became final in which STFL was censured and fined \$10,000 for violations of SEC Rule 11Ac1-4.

On March 20, 2001, an AWC became final in which STFL was censured and fined \$41,000, of which \$25,000 was joint and several with Respondent William J. Lasko, for violations of NASD Rules 1021, 2110, IM-2110-2, and 3010 and SEC Rule 11Ac1-4.

I.

WAIVER OF PROCEDURAL RIGHTS

STFL specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, STFL 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.

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

of NASD 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.

II.

ACCEPTANCE AND CONSENT

In MRD200235944, the staff of NASD's Department of Market Regulation reviewed STFL's compliance with the Limit Order Display Rule during the period January 2, 2002 through March 31, 2002 (the "review period").

- A. STFL hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:
1. On 43 occasions during the review period, STFL failed to display immediately 43 customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved STFL's bid or offer in each such security; or when the order was priced equal to STFL's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a *de minimis* change in relation to the size associated with STFL's bid or offer in each such security.
 2. The conduct described in paragraph one constitutes separate and distinct violations of SEC Rule 11Ac1-4.
 3. During the review period, STFL transmitted to OATS 64 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, STFL failed on 54 occasions to submit the correct limit price to OATS. In addition, STFL failed on 37 occasions to submit the correct order receipt time to OATS.
 4. The conduct described in paragraph three above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.
 5. STFL's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the Limit Order Display Rule. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) a statement of the step(s) that should be taken to ensure compliance therewith; and (2) a statement as to

how enforcement of such supervisory procedures should be documented at the firm.

6. The conduct described in paragraph five constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. STFL also consents to the imposition, at a maximum, of the following sanctions:

A censure and a \$20,000 fine (composed of \$10,000 for violations of Display Rule, \$5,000 for OATS violations and \$5,000 for supervision).

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

III.

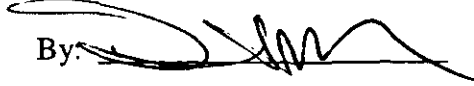
OTHER MATTERS

- A. STFL understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. STFL 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 NASD, nor does it reflect the views of NASD or its staff.
- B. STFL agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.

STFL certifies that it has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce STFL to submit it.

Stifel, Nicolaus & Company,
Incorporated

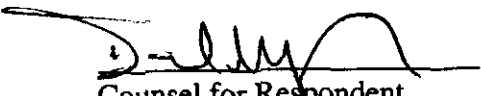
Date: 12/21/04

By: 

Name: David M. Hogan

Title: First Vice President
Deputy General Counsel
Director of Regulatory Affairs

Reviewed by:


Counsel for Respondent

Accepted by NASD:

1/30/05
Date

Thomas R. Gira
Thomas R. Gira
Senior Vice President
Department of Market Regulation

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

Corrective Action Statement
Letter of Acceptance, Waiver and Consent
Stifel, Nicolaus & Co., Inc.
December 21, 2004

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.

Stifel's responses to the NASD review and preliminary determination regarding Stifel's compliance with the Limit Order Display Rule during the period January 2, 2002 through March 31, 2002 outlined the efforts and several steps that were taken in order to address the issues. As a brief outline, Stifel had to purchase additional systems hardware, obtain pricing, purchase specialized software, with part of the configuration and installation of the software being performed by the vendor and the vendor had to provide training to Stifel's staff. Stifel's previous correspondence included details and supporting documentation of these efforts, which are incorporated herein by reference. This involved process was completed in November 2002. Stifel believes that the upgraded systems address the issues raised as a result of the NASD's review.