

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NOS. 2012034576901 & 2011025493401**

RECEIVED

JAN 2 2014

To: Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

Re: Stifel, Nicolaus & Company, Incorporated, Respondent
CRD No. 793

Century Securities Associates, Inc., Respondent
CRD No. 28218

FINRA District 4

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, the respondents, Stifel, Nicolaus & Company, Incorporated (“Stifel”) and Century Securities Associates, Inc. (“Century”), 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 either respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The 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

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 approximately 380 branch offices.

Century is an introducing broker-dealer that has been registered with FINRA and the NASD since 1991. Its main offices are in St. Louis, Missouri, and it has approximately 190 registered individuals and approximately 125 branch offices.

Both Century and Stifel are wholly owned by Stifel Financial Corp., a publicly traded financial-services holding company. Stifel provides administrative and regulatory support to Century through a shared-services agreement.

RELEVANT DISCIPLINARY HISTORY

In September 2010, pursuant to AWC No. 2008015700901, Stifel paid a \$100,000 fine to settle charges by FINRA that the firm failed to establish an effective supervisory system and written supervisory procedures reasonably designed to ensure that customers received appropriate “breakpoints” and “rollover and exchange” discounts on eligible unit investment trust purchases.

Century does not have a relevant disciplinary history.

OVERVIEW

Between January 1, 2009 and June 1, 2013, certain Stifel and Century registered representatives recommended leveraged and inverse exchange-traded funds (collectively, “nontraditional ETFs”) to certain customers without fully understanding the features and risks associated with them. Thus, Stifel and Century allowed certain of their respective registered representatives to make unsuitable recommendations of nontraditional ETFs to certain of their customers by failing to conduct adequate due diligence on the products. Through this conduct, Stifel and Century each violated NASD Conduct Rule 2310 and FINRA Rules 2111 and 2010.¹

During the same time period, Stifel and Century each failed to establish and maintain a supervisory system, including written procedures, reasonably designed to ensure that the firms’ sales of nontraditional ETFs complied with applicable securities laws and NASD and FINRA rules. Through this conduct, Stifel and Century each violated NASD Conduct Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

A. Nontraditional ETFs

Exchange-traded funds, or ETFs, are typically registered unit investment trusts or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Shares of ETFs are typically listed on national securities exchanges and trade throughout the day at prices established by the market.

Nontraditional ETFs differ from other ETFs in that they seek to return a multiple of the performance of the underlying index or benchmark, the inverse of that performance, or both. To accomplish their objectives, nontraditional ETFs use swaps, futures contracts, and other derivative instruments. In addition, nontraditional ETFs are designed to achieve their stated objectives only over the course of one trading session. Between one trading session and the next, the fund manager must generally rebalance the fund’s holdings in order to meet its

¹ On July 9, 2012, FINRA Rule 2111 superseded NASD Conduct Rule 2310.

objective. For most nontraditional ETFs, this happens on a daily basis, and is known as the “daily reset.”

For each day’s trading session, a nontraditional ETF may come close to achieving its intended return. But the correlation between a nontraditional ETF and its linked index or benchmark is inexact, and there is typically at least a small difference, or “tracking error,” between a fund and its benchmark, which may compound over longer periods of time. This effect becomes more pronounced during periods of volatility in the underlying index or benchmark. FINRA advised its membership in June 2009 in FINRA Regulatory Notice 09-31 concerning nontraditional ETFs that “[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time.”² Because of these risks and the inherent complexity of the products, FINRA Regulatory Notice 09-31 further advised broker-dealers that nontraditional ETFs “are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets.”

B. Stifel and Century, through certain of their registered representatives, violated NASD Conduct Rule 2310 and FINRA Rules 2111 and 2010 by recommending nontraditional ETFs to certain customers without certain of their representatives fully understanding the features and risks associated with the products.

NASD Conduct Rule 2310 required that, before recommending a security to any customer, a broker-dealer and its registered representatives must have an “adequate and reasonable basis” for any recommendation that they make.³ This is a prerequisite to any recommendation, because “a broker cannot determine whether a recommendation is suitable for a particular customer unless he has a ‘reasonable basis’ to believe that the recommendation could be suitable for at least some customers.”⁴

FINRA Rule 2111, which superseded NASD Rule 2310 on July 9, 2012, reiterates the longstanding “reasonable basis” suitability obligation. FINRA Rule 2111.05(a) “requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors.”

A broker-dealer lacks a reasonable basis to recommend a security to its customers if it or its representatives fail to investigate the security’s characteristics sufficiently to understand the potential risks and rewards of the transaction. Thus, to satisfy NASD Rule 2310 and FINRA Rule 2111, a broker-dealer and its registered representatives must exercise due diligence to understand the nature of

² FINRA Reg. Notice 09-31.

³ *FJ Kaufman and Co.*, 50 S.E.C. 164, 168 (1989).

⁴ *Id.*

the recommended security. With respect to nontraditional ETFs, “this means that a firm must understand the terms and features of the funds, including how they are designed to perform, how they achieve that objective and the impact that market volatility, the ETFs’ use of leverage, and the customer’s intended holding period will have on their performance.”⁵

As detailed below, Stifel and Century allowed certain of their registered representatives to recommend nontraditional ETFs to certain of their customers without their representatives conducting adequate due diligence on the products. Stifel and Century also did not provide adequate formal training to their representatives regarding nontraditional ETFs before permitting them to recommend the products to customers. As a result, certain registered representatives of both Stifel and Century were insufficiently informed regarding the unique features and specific risks associated with nontraditional ETFs.

Nonetheless, Stifel and Century, through their registered representatives, recommended nontraditional ETFs to their retail customers. From 2009 through the second quarter of 2013, these recommendations resulted in Stifel’s retail customers buying approximately \$641 million worth of nontraditional ETFs. During the same time period, these recommendations resulted in Century’s retail customers buying approximately \$31 million worth of nontraditional ETFs. Certain customers with conservative investment objectives who bought one or more nontraditional ETFs based on recommendations made by Stifel and Century registered representatives and who held those investments for longer periods of time experienced net losses.

For example, a Stifel registered representative recommended to a customer whose primary investment objective was income that he invest in a nontraditional ETF; the customer purchased the security and held it for at least 18 months, before selling the security for a loss of approximately \$41,000. A Century registered representative recommended to a customer whose primary investment objective was income that he invest in a nontraditional ETF; the customer bought the security and held it for at least two and a half years, before selling it for a loss of approximately \$13,600.

Through this conduct, Stifel and Century violated NASD Conduct Rule 2310 and FINRA Rules 2111 and 2010.

C. Stifel and Century each violated NASD Conduct Rule 3010 and FINRA Rule 2010 by failing to establish and maintain a reasonable supervisory system, including written procedures, concerning sales of nontraditional ETFs.

NASD Conduct Rule 3010(a) states in part that each member shall establish and maintain a system to supervise the activities of each of its registered

⁵ FINRA Reg. Notice 09-31.

representatives, registered principals, and other associated persons, and that this system must be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD and FINRA rules. Final responsibility for proper supervision rests with the member.

NASD Conduct Rule 3010(b)(1) states in part that each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its registered representatives, registered principals, and other associated persons, and that these procedures must be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD and FINRA rules.

Stifel and Century conducted due diligence regarding nontraditional ETFs and emailed two compliance bulletins to their registered personnel in 2009 regarding the features and risks of the products. The firms, however, failed to ensure that their registered representatives obtained adequate formal training on the unique features and risks of nontraditional ETFs before permitting them to recommend those products to customers. Between January 2009 and June 2013, Stifel and Century did not require that their representatives complete any product-specific training on nontraditional ETFs before recommending them. Likewise, Stifel and Century did not provide adequate formal training to the supervisory personnel who they assigned to review and approve nontraditional ETF transactions in the unique aspects of those products.

From January 2009 until June 1, 2013, Stifel and Century generally supervised sales of nontraditional ETFs in the same manner in which they supervised sales of traditional ETFs, with the exception of a policy enacted in June 2009 that limited leveraged ETF holdings to 10% of the value on an account. For example, during that time period, neither firm created a procedure to address the risk associated with longer-term holding periods in nontraditional ETFs. Therefore, each firm failed to establish a supervisory system, including written procedures, reasonably tailored to address the unique features and risks associated with nontraditional ETFs.

Despite its supervisory deficiencies, Stifel recommended approximately \$641 million worth of nontraditional ETF transactions to retail customers between January 1, 2009 and June 1, 2013. Despite its supervisory deficiencies, Century recommended approximately \$31 million worth of nontraditional ETF transactions to retail customers during the same time period.

Thus, from January 1, 2009 through June 1, 2013, Stifel and Century each failed to establish and maintain a supervisory system, including written procedures, that was reasonably designed to ensure that their sales of nontraditional ETFs complied with applicable securities laws and NASD and FINRA rules. Through this conduct, Stifel and Century violated NASD Conduct Rule 3010 and FINRA Rule 2010.

- B. The respondents also consent to the imposition of the following sanctions:
1. A censure of both Stifel and Century;
 2. A fine to be paid by Stifel of \$450,000.00;
 3. Restitution to be paid by Stifel to certain of its customers in the amount of \$338,128.00;
 4. A fine to be paid by Century of \$100,000.00; and
 5. Restitution to be paid by Century to certain of its customers in the amount of \$136,485.00.

Stifel and Century each agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Both Stifel and Century have submitted Election of Payment forms showing the method by which they propose to pay the fines imposed.

Stifel and Century both specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid by Stifel to the Stifel customers listed on Attachment A hereto in the total amount of \$338,128.00. Restitution is ordered to be paid by Century to the Century customers listed on Attachment B hereto in the total amount of \$136,485.00.

A registered principal on behalf of each respondent firm shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Adam Walker, Principal Regional Counsel, FINRA – District 4, 120 W. 12th Street, Kansas City, Missouri 64105, either by letter that identifies either Stifel and AWC No. 2012034576901 or Century and AWC No. 2011025493401, as applicable, or by e-mail from a work-related account of the registered principal of Stifel or Century to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Stifel cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Stifel shall forward any undistributed restitution to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Stifel 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 to the appropriate state authority.

Likewise, if for any reason Century cannot locate any customer identified in Attachment B after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Century shall forward any undistributed restitution to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Century 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 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.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Stifel and Century each specifically and voluntarily waive 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, the respondents specifically and voluntarily waive 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.

The 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

The 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 each respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against either respondent;
 - 2. This AWC will be made available through FINRA’s public disclosure program in response to public inquiries about each 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. The 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. The 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 the respondents’ (i) testimonial obligations or (ii) rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Either respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The 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 Stifel, 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 Stifel 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 Stifel to submit it.

The undersigned, on behalf of Century, 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 Century 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 Century to submit it.

Stifel, Nicolaus & Company, Incorporated

December 17, 2013
Date (mm/dd/yyyy)

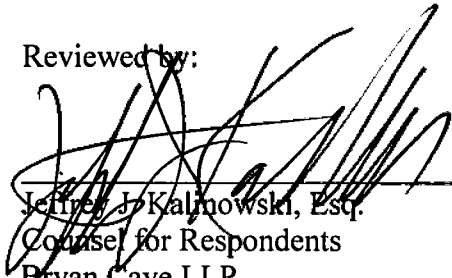
By: Bernard N. Burkemper
(name of signor), (title) Sr. V.P./CFO
Bernard N. Burkemper

Century Securities Associates, Inc.

December 17, 2013
Date (mm/dd/yyyy)

By: Bernard N. Burkemper
(name of signor), (title) CFO
Bernard N. Burkemper

Reviewed by:




Jeffrey J. Kalmowski, Esq.
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Accepted by FINRA:

1/9/14
Date

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



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ATTACHMENT A

STIFEL CUSTOMER	RESTITUTION AMOUNT
1	\$18
2	\$19
3	\$27
4	\$45
5	\$55
6	\$96
7	\$125
8	\$280
9	\$388
10	\$507
11	\$600
12	\$661
13	\$681
14	\$786
15	\$867
16	\$907
17	\$980
18	\$1,309
19	\$1,617
20	\$1,641
21	\$1,846
22	\$2,051
23	\$2,268
24	\$2,274

ATTACHMENT A

25	\$2,329
26	\$2,335
27	\$2,539
28	\$2,557
29	\$2,864
30	\$2,899
31	\$3,213
32	\$3,300
33	\$3,655
34	\$4,028
35	\$4,407
36	\$5,215
37	\$5,254
38	\$5,716
39	\$6,056
40	\$6,184
41	\$6,225
42	\$6,231
43	\$6,441
44	\$6,705
45	\$6,782
46	\$6,887
47	\$6,915
48	\$8,812
49	\$9,011

ATTACHMENT A

50	\$9,288
51	\$9,294
52	\$9,516
53	\$9,938
54	\$11,020
55	\$11,079
56	\$16,828
57	\$35,370
58	\$38,178
59	\$41,009
TOTAL	\$338,128

ATTACHMENT B

CENTURY CUSTOMER	RESTITUTION AMOUNT
1	\$104,203
2	\$2,869
3	\$13,570
4	\$6,807
5	\$5,856
6	\$3,180
TOTAL	\$136,485