

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20160505068-01**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Stifel, Nicolaus & Company, Inc. (the "firm" or "Respondent") 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**

The firm has been a member of FINRA since October 13, 1936, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

On January 26, 2018, FINRA accepted an AWC from the firm to resolve a trading-ahead review in over-the-counter ("OTC") securities. FINRA Matter No. 20140425127. The matter involved conduct that occurred between the second quarter of 2014 and the fourth quarter of 2015. Specifically, the firm admitted that: (i) it committed 18 trading-ahead violations, in violation of FINRA Rules 5320 and 2010; (ii) its supervisory procedures concerning compliance with FINRA Rule 5320 were inadequate, in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010; and (iii) it failed to report an information barrier identifier with its Order Audit Trail System ("OATS") submissions for 76 orders, in violation of FINRA Rule 7440(b)(19). The firm was censured and fined a total of \$37,500. It also paid \$318.25 in restitution to affected customers.

## SUMMARY

The Department of Market Regulation staff (the “Staff”) conducted a trading-ahead review in OTC securities during the first and third quarters of 2016. Based on its review, the Staff determined that the firm violated FINRA Rules 5320, 7450, 3110 and 2010.

### FACTS AND VIOLATIVE CONDUCT

#### **FINRA Rules 5320 and 2010—Trading-Ahead Violations**

1. FINRA Rule 5320 restricts trading ahead of customer orders. It provides that “a member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.”
2. In nine instances during the first quarter of 2016 and third quarter of 2016, the firm accepted and held customer orders in OTC securities, traded for its own account at prices that would have satisfied the customer orders, and failed to execute or immediately execute the customer orders up to the size and at the same price at which it traded for its own account or at a better price. These nine instances are reflected on Exhibit A. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rules 5320 and 2010.

#### **FINRA Rule 7450—Information Barrier Identifier Violations**

3. FINRA Rule 7450 requires reporting members to transmit to OATS “a report containing each applicable item of order information identified in Rule 7440(b),” which includes any applicable information barrier identifiers.
4. From August 1, 2016 to September 30, 2016, the firm transmitted 36,161 inaccurate reports to OATS. The firm’s OATS reports contained an inaccurate information barrier identifier. The cause of the inaccurate reports, which was systemic, was a change that the firm’s vendor made to the manner in which the firm reported information barrier identifiers. For each stock in which the firm makes a market, the stock is assigned to a particular trader at the firm. Because of the change by the firm’s vendor, instead of reporting information barrier identifiers based on the actual trader who handled the order, the firm reported information barrier identifiers based on the trader who was assigned the stock. The issue began affecting the firm’s OATS reports in July 2016, but the firm did not become aware of the issue until November 2016. To date, the firm has not corrected the issue. As a result of the issue, through the end of August 2018, the firm has submitted an estimated 452,024 reports to OATS with an inaccurate information barrier identifier. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

### **FINRA Rules 3110 and 2010—Supervision Violations**

5. FINRA Rule 3110 requires members to “establish and maintain a system to supervise” its activities that is “reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” It also requires members to “establish, maintain, and enforce written procedures to supervise” its activities “that are reasonably designed to achieve compliance with applicable securities laws and regulations” and the rules of FINRA. FINRA Rule 2010 requires members to “observe high standards of commercial honor and just and equitable principles of trade” in “the conduct of its business.”
6. From January 1, 2016 to May 2, 2017, the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the rules of FINRA, concerning compliance with FINRA Rule 7450. Specifically, the firm’s written supervisory procedures failed to include a review for the reporting of information barrier identifiers to OATS, and the firm did not otherwise review its reporting of information barrier identifiers to OATS. The conduct described in this paragraph constitute violations of FINRA Rules 3110 and 2010.

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

1. Censure;
2. A fine of \$37,500 (\$10,000 for the trading-ahead violations; \$15,000 for the OATS-reporting violations; and \$12,500 for the supervision violations);
3. Restitution by Respondent to the investors listed on Exhibit A, which is attached, in the total amount of \$68.50, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of the violative conduct until the date this AWC is accepted by the National Adjudicatory Council (“NAC”). A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850 or in an e-mail from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org), no later than 120 days after acceptance of this AWC. If for any reason, Respondent cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, 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 known to have last resided. Respondent shall provide satisfactory proof of such action to FINRA 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; and

4. An undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.6 above. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org), providing the following information: (a) a reference to this matter; (b) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph I.A.6; and (c) the date the revised procedures were implemented.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. It 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 that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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 the firm;
- 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 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 the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 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 the firm's: (a) testimonial obligations; or (b) 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. The firm 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 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 the firm to submit it.

9/13/18

Date

Respondent

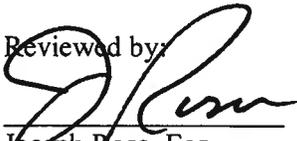
Stifel, Nicolaus & Company, Inc.

By: 

Name: JOSEPH ROSA.  
SA. Vice President

Title: DEPUTY GENERAL COUNSEL

Reviewed by:



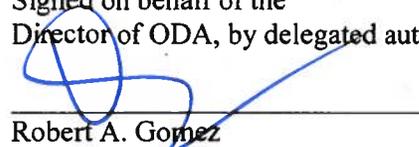
Joseph Rosa, Esq.  
Counsel for Respondent  
Stifel, Nicolaus & Company  
18 Columbia Turnpike  
Legal Department, 1<sup>st</sup> Floor  
Florham Park, New Jersey 07932  
973-549-4264

Accepted by FINRA:

September 13, 2018

Date

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

  
Robert A. Gomez  
Principal Counsel  
Department of Enforcement

Item #	Rever Period	Exception #	Part II: Triggering Transactions										Part III: Order Details										Part III: Staff's Findings										
			Trade Report Date	Trade Report Time	Execution Time	Firm	Capacity	Side	Trade Vol	Issue Symbol	Trade Price	Counter party ID	Counter party Category	Branch Sequence ID / Exchange Order ID	Order Letter	Event Type	Order Received Date	Order Received Time	Order Received Time	Desk Received Time	MPTD	Buy/Sell	Quantity	Issue Symbol	Order Type	Unit Price	Firm Order ID	Account Type Code	TIF	Execution Price	Execution Time	TA Violation	Restitution
1	1Q16	1	1/5/2016	15:44:49	15:44:48	STIFL	P	S	235	MHGU	11.35	ATDF	P	22879863	A	NW	1/4/2016	12:09:52	12:10:10	12:10:10	STFL	SL	500	MHGU	L	11.35	000089274933ORSL1-001	I	GTD	\$11.35	300 on 1/06/2016 @ 13:45:02 200 on 1/06/2016 @ 15:04:58	Yes	N/A
2	1Q16	2	1/7/2016	12:32:54	12:32:54	STIFL	P	S	270	MHGU	11.50	ATDF	P	22857943	B	NW	1/7/2016	08:00:05	08:06:17	08:06:17	STFL	SL	500	MHGU	L	11.50	000089549170RSL1-001	I	GTD			Yes	N/A
3	1Q16	3	1/7/2016	14:42:27	14:42:28	STIFL	P	S	175	MHGU	11.50	ATDF	P	22876597	B	NW	1/7/2016	08:00:05	08:06:17	08:06:17	STFL	SL	500	MHGU	L	11.50	000089549170RSL1-001	I	GTD			Yes	N/A
4	1Q16	13	2/11/2016	13:51:13	13:51:12	STIFL	P	B	700	MHGU	10.00	STFL	P	28659872	I	OR	2/11/2016	13:50:45	13:50:53	13:50:53	STFL	SL	700	MHGU	L	10.00	00009383043ORSL1-001	I	DAY	\$10.00	100 @ 13:52:30 600 @ 15:41:53	Yes	N/A
5	1Q16	14	2/19/2016	11:38:28	11:38:27	STIFL	P	B	2,300	GSHP	25.02	STFL	P	5,001205956101	J	NW	2/19/2016	11:38:19	11:38:19	11:38:19	STFL	B	970	GSHP	M		00009339733ORSL1-001	I		\$25.07	970 @ 13:23:54	Yes	N/A
6	1Q16	15	2/19/2016	12:22:16	12:22:15	PATR	A	S	15,000	GSHP	25.09	STFL	P	5,001206036801	K	NW	2/19/2016	13:52:02	13:52:02	13:52:02	STFL	B	250	GSHP	M		00009341596ORSL1-001	I		\$25.07	14:00:12	Yes	N/A
7	1Q16	16	2/19/2016	13:52:10	13:52:08	STIFL	P	S	1,000	GSHP	25.04	STFL	P	5,001206173701	K	NW	2/19/2016	13:52:02	13:52:02	13:52:02	STFL	B	250	GSHP	M		00009341596ORSL1-001	I		\$25.07	14:00:12	Yes	N/A
8	1Q16	17	2/19/2016	14:05:24	14:05:23	PATR	A	S	13,500	AMTRP	25.20	STFL	P	5,0013846817201	Q	NW	2/19/2016	13:22:18	13:22:18	13:22:18	STFL	B	250	AMTRP	L	25.25	00011141819ORSLUP-1	I	DAY	\$25.28	14:05:12	Yes	N/A
9	3Q16	31	9/29/2016	14:05:24	14:05:23	PATR	A	S	13,500	AMTRP	25.20	STFL	P	5,0013846817201	Q	NW	9/29/2016	13:22:18	13:22:18	13:22:18	STFL	B	250	AMTRP	L	25.25	00011141819ORSLUP-1	I	DAY	\$25.28	14:05:12	Yes	N/A
																Total Trading-Case Violations:				Total Restitution: \$48,50													