

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015045163601**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Stifel, Nicolaus & Company, Incorporated ("Stifel Nicolaus" 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. Stifel Nicolaus 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 Nicolaus is a full-service broker-dealer that has been a member of FINRA since 1936. Stifel has its main offices in St. Louis, Missouri. It has more than 4,300 registered representatives and more than 400 branch offices throughout the United States.

**RELEVANT DISCIPLINARY HISTORY**

Respondent has no relevant disciplinary history.

**OVERVIEW**

From at least April 2010 through April 2015, Stifel Nicolaus disadvantaged certain retirement plan and charitable organization customers that were eligible to purchase Class A shares in certain mutual funds without a front-end sales charge ("Eligible Customers"). These Eligible Customers were instead sold Class A shares with a front-end sales charge or Class B or C shares with back-end sales

charges and higher ongoing fees and expenses. During this period, Stifel Nicolaus failed to establish and maintain a supervisory system and procedures reasonably designed to ensure that Eligible Customers who purchased mutual fund shares received the benefit of applicable sales charge waivers. As a result, Stifel Nicolaus violated NASD Rule 3010 (for misconduct before December 1, 2014), FINRA Rule 3110 (for misconduct on or after December 1, 2014), and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### ***Stifel Nicolaus Failed to Identify and Apply Available Sales Charge Waivers to Eligible Retirement Accounts and Charitable Organizations***

Stifel Nicolaus sells mutual funds with different classes of shares representing interests in the same portfolio of securities, but differing in the structure and amount of both sales charges paid directly by shareholders and continuous, asset-based fees assessed on each shareholder's investment. Share class features, including fees and expenses and available sales charge waivers, are described by each mutual fund in its prospectus and/or statement of additional information.

Class A shares typically are subject to a front-end sales charge when originally purchased, and have annual fund expenses, including ongoing distribution and service fees ("fees") that are typically 0.25 percent. The majority of the front-end charge is paid to the selling broker-dealer as a concession. Investors purchase Class A shares at the applicable Net Asset Value ("NAV"), plus the initial sales charge. Most funds, however, offer certain investors a waiver of the initial sales charge associated with Class A shares under certain circumstances ("sales charge waiver").

Class B and C shares typically do not carry a front-end sales charge but have significantly higher distribution and service fees (typically 1.00 percent) and may be subject to a contingent deferred sales charge ("CDSC").

Some mutual funds offer Class R shares for purchase by certain retirement plans. Class R shares typically are sold without a front-end sales charge. However, Class R shares typically have higher fees than Class A shares.

The different sales charges, breakpoints, waivers and fees associated with different share classes affect mutual fund investors' returns. If an investor qualifies for a Class A sales charge waiver and purchases Class A shares, the investor will not pay a front-end sales load. In contrast, a purchase of Class B or C shares of the same fund will be subject to higher ongoing fees, as well as potential application of a CDSC. Therefore, if an investor qualifies for a Class A sales charge waiver, there would be no reason for the investor to purchase any other class of shares that has a sales load and/or higher annual expenses.

Many mutual funds waive the up-front sales charges associated with Class A shares for certain retirement plans and/or charitable organizations. Some of the mutual funds available on the Firm's retail platform during the relevant period offered such waivers and disclosed those waivers in their prospectuses. Notwithstanding the availability of the waivers, Stifel Nicolaus failed to apply the waivers to mutual fund purchases made by Eligible Customers and instead sold them Class A shares with a front-end sales charge or Class B or C shares with back-end sales charges and higher ongoing fees and expenses. These sales disadvantaged Eligible Customers by causing such customers to pay higher fees than they were actually required to pay.

#### ***Stifel Nicolaus's Supervisory Failures***

During the Relevant Period, Stifel Nicolaus failed to reasonably supervise the application of sales charge waivers to eligible mutual fund sales. The Firm relied on its financial advisors to determine the applicability of sales charge waivers, but failed to maintain adequate written policies or procedures to assist financial advisors in making this determination. For instance, Stifel Nicolaus failed to establish and maintain written procedures to identify applicable sales charge waivers in fund prospectuses for Eligible Customers.

In addition, Stifel Nicolaus failed to adequately notify and train its financial advisors regarding the availability of mutual fund sales charge waivers for Eligible Customers. Finally, Stifel Nicolaus failed to adopt adequate controls to detect instances in which they did not provide sales charge waivers to Eligible Customers in connection with their mutual fund purchases.

By failing to reasonably supervise mutual fund sales to ensure that Eligible Customers who purchased mutual fund shares received the benefit of applicable sales charge waivers, Stifel Nicolaus violated NASD Rule 3010 (for misconduct before December 1, 2014), FINRA Rule 3110 (for misconduct on or after December 1, 2014), and FINRA Rule 2010.

#### ***Stifel Nicolaus's Investigation and Self-Reporting to FINRA***

In October 2014, Stifel Nicolaus began a review to determine whether Stifel Nicolaus had provided available sales charge waivers to Eligible Customers. Based on this review, in April 2015, Stifel Nicolaus self-reported to FINRA that Eligible Customers had not received available sales charge waivers. Stifel Nicolaus estimates that, since April 2010, approximately 3,360 accounts purchased mutual fund shares for which an available sales charge waiver was not applied. As a result of the failure of Stifel Nicolaus to apply available sales charge waivers, the Firm estimates that Eligible Customers were overcharged by approximately \$2,733,576 for mutual fund purchases made since April 2010. As part of this settlement, Stifel Nicolaus agrees to pay restitution to Eligible Customers on the terms specified below, which is estimated to total

approximately \$2,948,205 (*i.e.*, the amount Eligible Customers were overcharged, inclusive of interest). Stifel Nicolaus will also ensure that retirement and charitable waivers are appropriately applied to all future transactions.

### **OTHER FACTORS**

In resolving this matter, FINRA has recognized the extraordinary cooperation of Stifel Nicolaus for having: (1) initiated, prior to detection or intervention by a regulator, an investigation to identify whether Eligible Customers received sales charge waivers during the relevant period; (2) promptly established a plan of remediation for Eligible Customers who did not receive appropriate sales charge waivers; (3) promptly self-reported to FINRA; (4) promptly taken action and remedial steps to correct the violative conduct; and (5) employed subsequent corrective measures, prior to detection or intervention by a regulator, to revise its procedures to avoid recurrence of the misconduct.

- B. Stifel Nicolaus also consents to the imposition of the following sanctions:
1. A censure; and
  2. Stifel Nicolaus will provide remediation to Eligible Customers who, from April 2010, qualified for, but did not receive, the applicable mutual fund sales charge waivers as described in Section A of this document.
    - a. Within 30 days of the date this AWC is accepted, the Firm will provide to FINRA a detailed plan to remediate Eligible Customers based on specific criteria that is not unacceptable to FINRA. In the event FINRA does object to the plan, the Firm will have an opportunity to address FINRA's objections and resubmit the plan within 20 days. The date that FINRA notifies the Firm that it does not object to the plan shall be called the Notice Date.
    - b. The remediation plan submitted by the Firm will also address restitution for each retirement plan customer that, while not eligible to purchase Class A shares without a front-end sales charge, was eligible to purchase an alternative share class without a front-end sales charge and with ongoing fees substantially similar to those of the Class A share.
    - c. Within 30 days from the Notice Date, the Firm will submit to FINRA a schedule of customers identified as eligible for remediation and include the details of the qualifying purchases and total dollar amounts of restitution that will be provided to each customer. Each such customer will receive restitution, plus interest, from the date of purchase through the payment date at the

rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (the "IRS Rate").

- d. A registered principal on behalf of Stifel Nicolaus shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Gerard Murphy, Senior Counsel, FINRA Enforcement, 200 Liberty Street, 11<sup>th</sup> Floor, New York, NY 10281 either by letter that identifies the Respondent and the case number or by e-mail from a work-related account of the registered principal(s) of Respondent to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 180 days from the Notice Date.
- e. If for any reason Stifel Nicolaus cannot locate any Eligible Customer after reasonable and documented efforts, Respondent shall move the money to the appropriate escheat account. Respondents will follow the standard escheatment process, adhering with each state's required time frames based on 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 moving the undistributed restitution and interest to the appropriate escheat account.
- f. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above; and

Stifel Nicolaus has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the restitution and any monetary sanctions imposed in this matter.

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 Nicolaus specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Respondent;

- 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 prejudice 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:

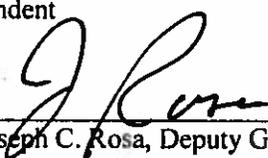
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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 actions 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. 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.

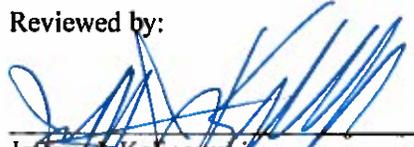
The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, 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 the Firm to submit it.

9-25-15  
Date (mm/dd/yyyy)

Stifel, Nicolaus & Company, Incorporated,  
Respondent

By:   
Joseph C. Rosa, Deputy General Counsel

Reviewed by:

  
Jeffrey J. Kalinowski  
Counsel for Respondent  
Bryan Cave LLP,  
One Metropolitan Square,  
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Accepted by FINRA:

Oct. 27, 2015  
Date

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

A handwritten signature in blue ink, appearing to read "Michael Choi", written over a horizontal line.

Michael Choi  
Director  
FINRA Department of Enforcement  
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