

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013036354001**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Stifel, Nicolaus & Company, Incorporated ("Stifel" or the "Firm") 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 the Firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The Firm 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 has been registered with the Securities & Exchange Commission ("SEC") and FINRA since January 1936 and October 1936 respectively. The Firm is a wholly owned subsidiary of Stifel Financial Corp., which is a publicly held company listed on the New York Stock Exchange. The Firm is a full-service brokerage and investment advisory firm based in St. Louis, Missouri, with approximately 4,400 registered representatives working out of approximately 400 branch offices.

In 2012 and 2013, the Firm's quarterly net capital requirement ranged from \$10.57 million to \$13.59 million, and the Firm's quarterly excess net capital ranged from \$294.03 million to \$411.72 million.

**RELEVANT DISCIPLINARY HISTORY**

The Firm has no prior relevant disciplinary history.

## OVERVIEW

From at least 1999 through June 2012 (the “Bank Loan Relevant Period”), the Firm routinely used permissible customer-owned securities as collateral for bank loans procured by the Firm. However, prior to performing its customer reserve computations as of Friday or the close of the last business day of the week, Stifel substituted these loans with new loans secured with Firm-owned collateral, potentially reducing the amount that Stifel was required to deposit into the Special Reserve Bank Account for the Exclusive Benefit of Customers (the “Customer Reserve Account”). For a sample five-week period in 2012, the amount of the loans collateralized with customer securities that were substituted with Firm-owned collateral prior to the Customer Reserve computation ranged from approximately \$30 million to approximately \$100 million. On all but one occasion during the sample five week period, the Firm had an excess debit condition such that, had the substitution of the customer securities not occurred, no additional deposit would have been required in the Customer Reserve Account. However, in one instance during this five-week period, had the substitution of customer securities not occurred, an additional deposit of approximately \$36 million would have been required to fund the Customer Reserve Account. As a result of this pattern of misconduct, Stifel violated Section 15(c) of the Securities Exchange Act of 1934 (“SEA”) and SEA Rule 15c3-3(e)(2) thereunder.

Separately, during the period of March 15, 2013 through November 15, 2013 (the “2013 Relevant Period”), Stifel incorrectly calculated its Proprietary Accounts of Introducing Brokers and Dealers (“PAIB”) Reserve and Customer Reserve deposit requirements. The errors were caused by the Firm’s improper treatment of various cash and securities balances in the accounts of a newly acquired introducing broker dealer, ABC Company (“ABC Co.”). As related to the Firm’s computation of its Customer Reserve Deposit requirements, these errors resulted in eight hindsight deficiencies that ranged between approximately \$825,000 and \$18 million. By making these errors in calculating the required deposits for the PAIB and Customer Reserve Accounts, the Firm violated Section 15(c) of the SEA and Rules 15c3-3(e)(1) and (2) thereunder. In addition, the above-referenced errors were reflected in the Firm’s books and records and in three Financial and Operational Combined Uniform Single (“FOCUS”) filings during the 2013 Relevant Period, resulting in the Firm’s maintenance of inaccurate books and records and submission to FINRA of three inaccurate FOCUS filings. Accordingly, the Firm violated Section 17a-3 of the SEA and Rules 17a-3(a)(11) and 17a-5 thereunder, and FINRA Rules 4511 and 2010.

The above deficiencies occurred, in part, as a result of Stifel’s failure to establish and maintain reasonable supervisory systems and procedures designed to detect and prevent the violative conduct described above. As a result, Stifel violated NASD Rule 3010(a) and FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

### **Section 15(c) of the Exchange Act and Rule 15c3-3 Thereunder**

The purpose of SEA Rule 15c3-3, known as “The Customer Protection Rule,” is to protect customer assets from being used improperly by a broker-dealer to fund its business operations.

To that end, Rule 15c3-3(e)(1) requires broker-dealers that receive customer funds or securities to open and maintain the Customer Reserve Account. Broker-dealers must at all times maintain certain minimum deposits of cash and/or qualified securities in the Customer Reserve Account computed in accordance with a formula (hereinafter, the “Customer Reserve Formula”) incorporated in SEA Rule 15c3-3. This requirement of 15c3-3(e)(1) helps ensure that funds are available to pay customers in the event the broker-dealer must liquidate its operations.

Among other things, Rule 15c3-3(e)(2) requires broker-dealers to maintain a Customer Reserve Account balance equal to the amount by which total credits exceed total debits, as determined by the Customer Reserve Formula. Rule 15c3-3(e)(3) requires broker-dealers to perform weekly computations as of the close of the last business day of the week, to determine the requisite amount to be deposited in the Customer Reserve Account. In connection with that computation, Rule 15c3-3(e)(2), as interpreted by NYSE Interpretation Memo No. 89-10 (issued in 1989; subsequently adopted by FINRA), specifically prohibits the practice of substituting proprietary bank loans for customer-secured bank loans prior to making the Customer Reserve computation if the customer-secured loans are reinstated shortly thereafter, given that such substitution may reduce the required deposit for the Customer Reserve Account.

Additionally, Rule 15c3-3(e)(1) requires, in certain instances, that broker-dealers perform weekly PAIB reserve computations (“PAIB Reserve computation”), using the formula incorporated in SEA Rule 15c3-3.<sup>1</sup> If credits exceed debits for the PAIB Reserve computation, the broker-dealer is required to reserve that amount in a separate PAIB reserve account.

A violation of Section 15(c) of the SEA, and Rule 15c3-3 thereunder, constitutes a violation of NASD Rule 2010.

### **Substitution of Firm Bank Loans for Customer Bank Loans in Violation of Rule 15c3-3**

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<sup>1</sup> On November 3, 1998, the SEC issued guidance to the NYSE and NASD Regulation, Inc. entitled “Proprietary Accounts of Introducing Brokers and Dealers” establishing the requirement for the PAIB Reserve computation and PAIB reserve account. On August 21, 2013, SEA Rule 15c3-3(e)(1) was amended in part to incorporate the PAIB reserve requirement.

During the Bank Loan Relevant Period, in the regular course of its business, Stifel procured bank loans to fund its business operations. The Firm's Treasury Department was responsible for obtaining any necessary bank loans and selected the collateral used to secure those loans. During the Bank Loan Relevant Period, the Treasury Department used permissible customer-owned securities as collateral for loans obtained by the Firm between Mondays and Thursdays. In general, the Firm found it administratively easier to secure certain loans using customer securities rather than Firm securities. Additionally, using customer securities as collateral allowed the Firm to make use of its securities from Monday to Thursday. However, if the bank loans were still outstanding on either Friday, the as of date in which the Customer Reserve computation was required to be calculated, or at month-end, when FOCUS filings were prepared, the Treasury Department substituted the bank loans collateralized with customer securities with loans secured by Firm-owned collateral.

If bank loans were again required by the Firm after the beginning of the following week or the following month, the Treasury Department would take out bank loans collateralized by customer securities until, come Friday or month-end, the substitution practice was repeated.

Although the Treasury Department engaged in the substitutions and made required Customer Reserve Deposits, the Firm's General Accounting Group was responsible for performing the Customer Reserve computation as of Fridays and month-end. Bank loan-related information required by the General Accounting Group in making the Customer Reserve computations was obtained by accessing the Firm's internal systems and did not involve any direct communications between the two departments of the Firm. The General Accounting Group was not otherwise privy to the manner or process by which the Treasury Department conducted bank loan transactions Mondays through Thursdays.

These loan substitutions by Stifel had the effect of reducing the customer credits in the Customer Reserve computation and thereby potentially reduced the dollar amount of the Firm's required deposit in the Customer Reserve Bank Account.

During a sample five-week period in 2012, the dollar value of the loans collateralized with customer securities that were improperly substituted with Firm-owned collateral prior to Customer Reserve and/or FOCUS-related computations ranged from approximately \$30 million to approximately \$100 million. On all but one occasion during the sample five week period, the Firm had an excess debit condition such that, had the substitution of the customer securities not occurred, no additional deposit would have been required in the Customer Reserve Account. However, in one instance during the sample period, had the substitution of customer securities not occurred, an additional deposit of approximately \$36 million to the Customer Reserve Account would have been required to sufficiently fund the Customer Reserve Account.

By the foregoing conduct, the Firm violated Section 15(c) of the SEA, Rule 15c3-3(e) thereunder, and FINRA Rule 2010.

### **Errors in Computing PAIB and Customer Reserve Deposit Requirements in Violation of Rule 15c3-3**

During the 2013 Relevant Period, the Firm made multiple errors in the computation of its PAIB Reserve and Customer Reserve deposit requirements. The computation errors relating to the Customer Reserve deposit requirements resulted in eight hindsight deficiencies to its Customer Reserve deposit during the 2013 Relevant Period.

Some of the errors were the result of the Firm's improper treatment of various cash and securities balances in the accounts of an affiliated introducing broker, ABC Co. , that the Firm acquired in 2013.

#### ***PAIB and Customer Reserve Computation Errors Related to ABC Co.***

During the 2013 Relevant Period, the Firm failed to correctly apply the required cash and securities balances in ABC Co.'s accounts when making its general ledger entries and reserve allocation entries for its PAIB Reserve and Customer Reserve computations. Regarding its PAIB Reserve computations, the Firm improperly excluded from those computations certain account balances of ABC Co. The improperly excluded account balances were approximately \$3.9 million for the August 31, 2013 PAIB Reserve computation. The Firm also made ABC Co. – related errors in making its Customer Reserve computations. Specifically, the Firm failed to include in the Customer Reserve computations the required credits for: (i) Delivery versus Payment (“DVP”) vs. PAIB Short Allocation positions and (ii) Customer vs. PAIB Short Allocation positions that were related to ABC Co.'s accounts. A sample of weekly Customer Reserve computations during 14 discrete weeks of the 2013 Relevant Period revealed the value of the excluded credits for the referenced items in the Customer Reserve computation to be in the range of \$5.7 million to \$26 million.

#### ***Other Customer Reserve Computation Errors***

During the 2013 Relevant Period, the Firm made other errors in its Customer Reserve computations. For example, the Firm improperly: (i) included debits for Stock Borrow vs. Non-Customer Fail to Receive positions, including one instance (August 31, 2013) in which the improperly included debit balance was approximately \$1.6 million; and (ii) the Firm improperly coded certain accounts of non-broker-dealer affiliates as non-customer in connection with the Customer Reserve computation, including one instance (August 31, 2013) in which the improper coding of the non-broker-dealer affiliates resulted in the Firm understating its credits by approximately \$1.08 million.

#### ***Customer Reserve Computation Errors Result in Hindsight Deficiencies during the 2013 Relevant Period***

The above-referenced errors in the Customer Reserve computations resulted in eight hindsight deficiencies in the Firm's Customer Reserve Account ranging in amount from approximately \$825,000 to \$18 million during the 2013 Relevant Period.

By the foregoing conduct, the Firm violated Section 15(c) of the SEA, Rule 15c3-3(e) thereunder, and FINRA Rule 2010.

#### **Customer Reserve and PAIB Reserve Computation Errors Result in Inaccurate Books and Records during the 2013 Relevant Period**

Section 17a of the SEA and Rule 17a-3(a)(11) thereunder requires broker-dealers to make and keep current accurate books and records, including, but not limited to, a record of the computation of aggregate indebtedness and net capital. FINRA Rule 4511(a) requires members to make and preserve books and records as required under the FINRA Rules, the SEA and the applicable SEA rules. A violation of Section 17a of the SEA and Rule 17a-3(a)(11) thereunder, as well as of FINRA Rule 4511(a), constitutes a violation of FINRA Rule 2010.

The PAIB Reserve and Customer Reserve computations are books and records of the Firm that are required to be accurately maintained pursuant to Rule 17a-3(a)(11). By virtue of the above-referenced errors in the PAIB and Customer Reserve computations, these records of the Firm were inaccurate.

Accordingly, the Firm violated Section 17a of the SEA and Rule 17a-3(a)(11) thereunder and FINRA Rules 4511 and 2010.

#### **Inaccurate FOCUS Filings During the 2013 Relevant Period**

Section 17a of the SEA and Rule 17a-5 thereunder requires FINRA-registered broker-dealers to file monthly or quarterly FOCUS reports, which must be accurate.

Three of the eight above-referenced hindsight deficiencies in the Customer Reserve Deposit occurred during the last week of the month. Consequently, these inaccurate computations were incorporated into the Firm's month-end FOCUS filings for April, May and September 2013. By filing inaccurate FOCUS reports during the referenced months, the Firm violated Section 17a of the SEA and Rule 17a-5 thereunder and FINRA Rules 4511 and 2010.

#### **Supervision**

NASD Rule 3010(a) requires each FINRA-member broker to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations. To meet the requirement that the written supervisory procedures ("WSPs") are reasonable to achieve compliance, firms are required to establish WSPs that address the nature and scope of their businesses and the WSPs must be designed to detect and prevent violations.

During the Bank Loan Relevant Period and the 2013 Relevant Period, Stifel failed to establish, maintain and enforce a supervisory system, including supervisory procedures, reasonably designed to ensure that its PAIB and Customer Reserve requirements were being computed in accordance with Section 15c3-3 of the SEA and to prevent and detect any errors in such computations. In connection with the improper loan substitutions, the Firm failed to have an adequate supervisory system and procedures in place to ensure the accuracy of its computations. Instead, the Firm established a structure in which the accuracy of the Customer Reserve computation was dependent on the output of two separate and distinct Firm departments – Treasury and General Accounting – and failed to ensure that each department was aware of the other’s business practices or that the two departments communicated regarding the accuracy of entries relevant to the Customer Reserve computations.

Similarly, as evidenced by its errors in calculating the PAIB and Customer Reserve requirements during the 2013 Relevant Period, the Firm failed to have an adequate supervisory system and procedures in place to ensure that it properly categorized certain account balances when making its general ledger and reserve allocation entries for its PAIB Reserve and Customer Reserve computations.

By the foregoing failures, the Firm violated NASD Rule 3010(a) and FINRA Rule 2010.

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

1. A censure; and
2. A fine in the amount of \$750,000.

Stifel agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Stifel has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Stifel specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

Stifel 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, Stifel 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.

Stifel 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

Stifel 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 it; 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;



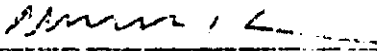
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. Stifel may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Stifel 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 Stifel'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. Stifel may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Stifel 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

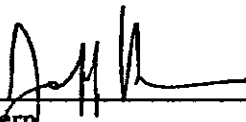
to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

03/14/2016  
Date (mm/dd/yyyy)

Stifel, Nicolaus & Company, Incorporated

By:   
Mark P. Fisher  
General Counsel

Reviewed by:

  
Jeff Kern  
Counsel for Respondent  
Sheppard, Mullin, Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112  
(212) 634-3075

Accepted by FINRA:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Attorney Name  
Title  
FINRA Department of Enforcement  
Address  
City/State/Zip  
Phone Number; Fax Number

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\_\_\_\_\_  
Date (mm/dd/yyyy)

Stifel, Nicolaus & Company, Incorporated

By: \_\_\_\_\_

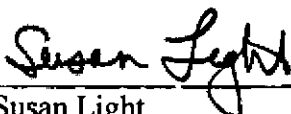
Reviewed by:

\_\_\_\_\_  
Attorney Name  
Counsel for Respondent  
Firm Name  
Address  
City/State/Zip  
Phone Number

Accepted by FINRA:

April 8 2016  
Date

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

  
\_\_\_\_\_  
Susan Light  
Sr. Vice President & Chief Counsel  
FINRA Department of Enforcement  
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