

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

)	
IN THE MATTER OF:)	
)	
STIFEL, NICOLAUS & COMPANY, INC.)	Docket No. E-2018-0013
)	
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and Stifel, Nicolaus & Company, Inc. (the “Respondent”) submits this Offer of Settlement (“Offer”) with respect to the ongoing investigation by the Division regarding Respondent’s alleged violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and the corresponding regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00-14.413. (the “Regulations”).

On December 17, 2018, Respondent submitted a signed Offer of Settlement (the “Offer”) to the Division. Respondent neither admits nor denies the Statement of Facts set forth in Section VI, and the Violations of Law set forth in Section VII, and consents to the entry of a this Order by the Division, consistent with the language and terms of the Offer, settling the claims brought thereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.

2. This Offer is made in accordance with MASS. GEN. LAWS ch. 110A. Specifically, the acts and practices investigated took place in Massachusetts.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2012 to the present (the “Relevant Time Period”).

IV. RESPONDENT

4. Stifel, Nicolaus & Company, Incorporated (“Stifel”) is a Missouri corporation with a principal place of business located at 501 North Broadway, St. Louis, Missouri 63102. According to the CRD, Stifel was incorporated in Missouri on February 20, 1900. Stifel has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 793 and has been a registered broker-dealer in Massachusetts since July 26, 1983.

V. RELATED PARTIES

5. Weller, Jr. Francis J. d/b/a Francis J. Weller Jr. - Registered Investment Adviser (hereinafter referred to as “Weller Investments” or “WI”) is an investment adviser with its principal place of business in South Orleans, Massachusetts. WI has a FINRA CRD number of 130474. WI has been registered in the Commonwealth as an investment adviser since December 30, 1994.

6. Francis J. Weller Jr. (“Weller”) is a resident of Massachusetts. Weller has a FINRA CRD number of 4852071. Weller has been registered as an investment adviser representative since December 30, 1994. Weller is the sole an investment adviser representative of WI. Weller is not registered with Stifel.

7. Stifel Registered Representative (“RR”) is a broker-dealer agent of Stifel who throughout the Relevant Time Period was the broker of record for all WI clients’ accounts.

VI. STATEMENT OF FACTS

A. Stifel’s Business Relationship with WI and Weller

i. All WI Clients are Stifel’s Customers

8. WI is a Massachusetts registered investment adviser and Weller is its sole investment adviser representative. WI operates out of Cape Cod.

9. WI has 27 advisory clients and Weller requires all of them to use Stifel as a custodian for their accounts.

10. All 27 WI clients have customer accounts with Stifel with RR as the broker of record.

11. WI is the only non-Stifel registered investment adviser for whom RR provides services.

12. Weller and WI utilize a one page agreement that serves as each client’s advisory agreement (“WI Advisory Agreements”). This brief document merely sets out the 1% advisory fee, the asset allocation, the management fee, and provides WI discretionary authority to make trades.

13. Stifel does not maintain its own trading authorization forms for the WI clients. Instead Stifel uses the WI Advisory Agreements.

14. All of WI’s clients are also Stifel and RR’s customers.

ii. Stifel Provides Brokerage Services to WI and Weller

15. Stifel is a full service broker-dealer firm that provides a wide variety of financial services and charges higher commissions than discount brokerages.

16. On occasion, Weller used Stifel's Cape Cod offices, including conference rooms, to conduct client meetings.

17. Stifel provides a variety of client account management tools for its registered representatives, including customer account information and customer overviews. WI and Weller obtain customer account information and customer overviews exclusively through RR. In response to requests for customer account information and customer overview, RR faxes the statements and/or relays the information orally.

18. Stifel, through its agent RR, provides third party research and stock management tools to Weller at no cost to WI and Weller.

iii. Weller May Use RR's Research and Advice to Make Investment Recommendations to WI Clients.

19. RR typically sends Weller multiple emails a day with, among other things, third party research and stock tips.

20. RR calls Weller to provide information on the market fluctuations of individual securities, including common stocks.

21. Weller authorizes RR to execute trades for WI clients based on, among other things, the investment research, news and advice that Weller receives from RR.

22. On August 23, 2017, RR emailed Weller an article on the rising price of ULTA Beauty (ULTA).
23. On August 25, 2017, Weller authorized RR to effect the purchase of ULTA Beauty (ULTA) in 11 WI clients' accounts.
24. Stifel and RR received commissions of \$954.80 for the purchase of 731 shares of ULTA across the 11 client accounts. All of the trades were marked solicited.
25. On December 7, 2016, RR sent Weller an email stating "Sell [NIKE.]"
26. On December 8, 2016, Weller authorized RR to effect the sale of 700 shares of Nike ("NKE") from 2 WI clients' accounts.
27. Stifel and RR received commissions of \$521.22 for the sale of NKE across the 2 client accounts. Both trades were marked as solicited.
28. On December 23, 2016, RR sent Weller an email with the subject line "[Boston Private Financial Holdings, Inc.] up 50 cents on volume[.]"
29. On December 23, 2016, Weller authorized RR to effect the purchase of 500 shares of Boston Private Financial Holdings, Inc. ("BPFH") for 1 WI client's account.
30. Stifel and RR received commissions of \$184.32 for the purchase of BPFH. The trade was marked as solicited.
31. On July 21, 2017, RR emailed Weller an article about the stock price of New Residential Investment Corp. and stated "still buy on this one."
32. Subsequent to the July 21, 2017 email, on 11 separate days between July 31, 2017 and August 31, 2017 RR effected the purchase 7500 shares of New Residential Investment Corp ("NRZ") in 13 WI clients' accounts.
33. Stifel and RR received commissions of \$2,598.76 for the purchase of NRZ. All

traders were marked as solicited.

B. Suitability

34. WI and Weller's clients are also Stifel and RR's customers.

35. All 27 WI clients completed Stifel account opening documentation that included information regarding net worth, annual income, liquid assets, and investment objectives.

No additional agreements were executed between the WI clients and Stifel.

36. Section 1.16.23 of the Stifel Policies and Procedures Manual states under "Prohibited Activity" that agents may not recommend the purchase or sale of a security without reasonable grounds to believe the transaction is suitable. Specifically, the section states:

Recommending a transaction or investment strategy involving a security or securities to a customer without reasonable grounds to believe that the recommendation is suitable for the customer is prohibited. The recommendation should be based on information furnished by the customer and made only after reasonable inquiry has been made to identify the customer's age, other investments, financial situation and risk needs, tax status, investment objectives, investment experience, time horizon, liquidity needs, and risk tolerance. **Any other information concerning the client already known by the FA should also be considered.** (emphasis added).

37. Since 2012, RR has recorded 6,102 solicited trades and 48 unsolicited trades for WI client accounts.

38. Section 7.3.1 of Stifel's Policies and Procedures Manual defines "solicited order."

Specifically, the section states:

[W]hen a transaction is recommended to a client and the client enters an order as a result of that recommendation. Other actions that may result in an order being deemed solicited **include the mailing of a research report or other written communication for the purpose of encouraging the client or prospect to act on the information provided or sending a prospectus on a new issue.** (emphasis added).

39. In certain instances, RR directly and indirectly recommended purchases and sales

of securities to Stifel customer through WI and Weller.

C. Stifel Failed to Supervise

40. Section 16.11.1 of Stifel's Policies and Procedures Manual regarding account monitoring states:

Trade Reports: Branch Managers are responsible for reviewing daily transactions for suitability using the ProSurv supervisory tool. Transactions are electronically acknowledged by the Branch Manager and supervisory notes can be made when warranted.

41. Section 25 of Stifel's Policies and Procedures Manual lists the duties of the Stifel's branch managers. Among other things, Section 25.1.2 specifically states:

25.1.2.1 Looking for Trends and Patterns

Branch managers/BOAs are provided tools and resources to assist them in identifying trends or patterns of activity which may warrant additional investigation or follow-up. Trends or patterns for a particular account or FA may be identified through alerts or additional ad hoc reviews available through the systems and reports provided. In addition, Branch Managers/BOA perform daily, monthly, quarterly and annual reviews as well as monthly or quarterly reviews of various files to identify and document any trends or patterns that warrant action to align the behavior within the policies and procedures of the Firm, the rules and regulations of the industry, and in accordance with the Firm's Code of Ethics and standard business ethics.

42. Stifel's branch offices are required to maintain daily trade blotters. Among other things, the trade blotter indicates whether a transaction was solicited.

43. RR's Office of Supervisory Jurisdiction ("OSJ"), was also RR's Branch Manager and was responsible for reviewing the trade blotter, approving all incoming and outgoing correspondence, and approving incoming and outgoing deposits and checks.

44. RR's OSJ and Branch Manager, who was aware of RR's trading relationship with Weller, and who had been supervising RR since 2016, understood that RR was required

to mark a transaction solicited if the transaction resulted from RR sending certain reports to Weller.

45. Since 2012, RR has recorded 6,102 solicited trades and 48 unsolicited trades for WI client accounts.

46. Section 25.7.8 of Stifel's Policies and Procedures Manual regarding active accounts states:

Branch Managers/BOAs are responsible for reviewing the Alerts in ProSurv to determine if additional follow up is needed which may include:

- Accounts engaged in higher-risk transactions
- Accounts with high volume of trading
- Accounts with high velocity
- Accounts with high turnover
- Accounts with excessive commission (monthly and annual)
- Other accounts at the discretion of the Branch Manager

Branch Managers/BOAs evidence their review by electronically "acknowledging" the Alert in ProSurv. Notes regarding the account and/or any action taken can be maintained in ProSurv or in a supervisory file or system maintained by the Branch Manager/BOA.

47. Since 2012, RR on average has executed over 86 trades per month on behalf of approximately 80 WI client accounts.

48. Since 2012, WI clients' accounts were assessed over \$15,000 in commissions per month by executing trades in WI clients' accounts.

D. Stifel Failed to Maintain Accurate Books and Records

49. In a January 2018 letter to the Enforcement Section, Stifel stated:

Stifel defines a solicited order as when a transaction is recommended to a client and the client enters an order as a result of that recommendation. Other actions that may result in an order being deemed solicited include the mailing of a research report or other written communication for the purpose of encouraging the client or

prospect to act on the information provided or sending a prospectus on a new issue.

Taking into account RR's statement described above, **Stifel would consider the transactions in Weller Advisory Accounts to be unsolicited by Stifel. RR has been re-educated on the definition of a solicited order. (Emphasis Added)**

50. Since 2012, RR has recorded 6,102 solicited trades and 48 unsolicited trades for WI client accounts.

51. The 6,102 trades executed by RR in WI client accounts were marked inconsistent with Stifel's policy resulting in inaccurate trade blotter records.

E. WI Clients Paid More Than \$1 Million in Commissions Since 2012

52. RR has approximately 750 customers and 27 of them are WI advisory clients.

53. Since 2012, WI clients have been a significant source of revenue for RR. In total, between 2012 and 2017, Stifel received \$1,072,894.78 in commissions on trades in WI client accounts.

Year	Commission Assessed on WI Clients' Accounts
2012	\$151,013.67
2013	\$187,562.71
2014	\$184,515.48
2015	\$261,987.00
2016	\$139,593.77
2017	\$148,222.15
Total	Total: \$1,072,894.78

VII. VIOLATIONS OF LAW

Count I – Violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

54. Section 204(a)(2)(J) of the Act provides:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

(J) has failed reasonably to supervise agents, investment adviser

representatives or other employees to assure compliance with this chapter
[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

55. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section V above.

56. The conduct of Stifel, as described in Section V above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VIII. ORDER

IT IS HEREBY ORDERED:

A. Respondent shall permanently cease and desist from further conduct in violation of the Act and the Regulations in the Commonwealth;

B. Respondent is hereby censured;

C. RR's ongoing registration as a broker-dealer agent in the Commonwealth shall be subject to conditions pursuant to Docket No. 2018-0142;

D. Within 60 days, Respondent shall review its supervisory procedures to ensure compliance with applicable state and federal laws, including but not limited to, policies and procedures relating to:

i. assessing commission on Stifel customers who are assessed third-party advisors fees;

ii. the scope of Stifel broker-dealer agent relationships with third-party advisors; and

iii. identifying and recording solicited and unsolicited trades;

E. Respondent shall either undertake or hire a consultant not unacceptable to the Division, within forty-five (45) days from the entry of the Consent Order, to conduct a

review of the 6,012 solicited trades in WI clients' accounts referenced above in this Offer to determine which trades were unsuitable and effected in connection with RR's communications to Weller and were the result of a trade (buy or sell) being transacted in a Weller client account within 60-days from that communication. In those instances Stifel identifies as meeting the above-referenced criteria, Stifel shall provide written offers to WI clients in an amount equal to all direct and indirect remuneration by Stifel within sixty (60) days and provide the Division with a verified accounting within ninety (90) days. Stifel's initial review shall be completed within forty-five (45) days from the entry of the Consent Order;

F. At Respondent's written request, the Division may extend, for good cause shown, any of the procedural dates set forth above;

G. Within ten (10) business days of the entry of a signed Order issued pursuant to this Offer of Settlement, Respondent Stifel shall pay a fine in the amount of \$300,000.00 (three hundred thousand dollars) to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered, mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies that Respondent Stifel is making the payment and the docket number of the proceedings. Additionally, Respondent Stifel shall provide the Division with notice twenty-four (24) hours prior to the payment;

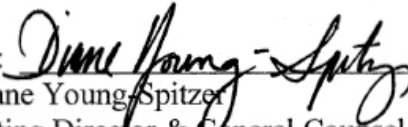
H. Respondent shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amount that it shall pay pursuant to the

Order;

I. Respondent shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to any payments made pursuant to an insurance policy, with regard to any amount that it shall pay pursuant to the Order; and

J. Upon the issuance of an Order by the Division that contains the terms as set forth above, if Respondent fails to comply with any of the terms set forth in the Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and re-institute the administrative proceeding and associated investigation that had been brought against Respondent.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 
Diane Young Spitzer
Acting Director & General Counsel
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Date: December 19, 2018