

State of Missouri
Office of Secretary of State

Case No. AP-12-01

IN THE MATTER OF:

STIFEL NICOLAUS & COMPANY, INC.,
CRD# 793,

Respondent.

Serve Stifel, Nicolaus & Company at:
501 North Broadway
St. Louis, MO 63102

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") alleges that Stifel, Nicolaus & Company, Inc. ("Stifel" or "Respondent"): (a) failed to reasonably supervise an agent in Missouri who sold unregistered securities to investors, failed to disclose material facts to these investors, made material misstatements, and engaged in an act, practice, or course of business that operated as a fraud or deceit on another person and that this constitutes grounds to revoke, suspend, condition or limit Stifel's registration in Missouri pursuant to Section 409.4-412(d)(9), RSMo. (Cum. Supp. 2009); and (b) failed to make, maintain, and preserve records as required by Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, as amended, and Stifel's written supervisory procedures, in violation of Section 409.4-411(c)(1), RSMo. (Cum. Supp. 2009), and Missouri Rules 15 CSR 30-51.120 and 15 CSR 30-51.130 and that this constitutes grounds to revoke, suspend, condition or limit Stifel's registration in Missouri pursuant to Section 409.4-412(d)(2), RSMo. (Cum. Supp. 2009).
2. Stifel and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the alleged violations by Stifel.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities ("Commissioner") has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, et seq.
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

5. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any right that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondent stipulates and agrees with the Enforcement Section that, should the facts contained herein prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith

settlement.

11. Respondent neither admits nor denies the allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

**COMMISSIONER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

I. FINDINGS OF FACT

A. Respondent

12. Stifel is incorporated in Missouri and is a Missouri-registered broker-dealer with an address of 501 North Broadway, St. Louis, Missouri 63102 ("Stifel Home Office"). Stifel is registered in Missouri through the Central Registration Depository System ("CRD") with CRD No. 793.

B. Other Related Parties

13. AXA Advisors, LLC ("AXA") is a Missouri-registered broker-dealer with an address of 1290 Avenue of the Americas, New York, New York 10104. AXA is registered in Missouri through the CRD with CRD No. 6627.
14. UBS Financial Services, Inc. ("UBS") is a Missouri-registered broker-dealer with an address of 1200 Harbor Boulevard, Weehawken, New Jersey 07086. UBS is registered in Missouri through the CRD with CRD No. 8174.
15. Kenneth Neely ("Neely") was a Missouri-registered securities agent with Stifel from October 2002 to January 2007. Neely worked from Stifel's St. Peters Branch Office. From June 1999 to October 2002, Neely was registered as an agent at UBS, and from December 2007 to July 2009, Neely was registered as an agent at AXA. Neely was registered through the CRD with CRD number 1586038. In 2010, Neely was sentenced by a Federal court to prison for mail fraud. Neely currently resides in a federal penitentiary.

C. Investigation by Enforcement Section

16. On or around July 21, 2009, the Enforcement Section received information from AXA that on July 8, 2009, Neely admitted to AXA representatives that Neely had commingled and converted funds intended for investment for Neely's own use and that Neely had made fraudulent misrepresentations to customers to induce them to invest in a St. Charles real estate investment trust ("REIT"). In addition, the Enforcement Section received information that Neely had sold these fraudulent investments to customers at AXA through a fraudulent St. Louis investment club ("Investment Club").
17. In July 2009, the Enforcement Section opened an investigation of Neely and, subsequently, the Enforcement Section opened investigations of Neely's supervision at both AXA and Stifel.
18. On November 4, 2009, the Commissioner issued a Cease and Desist Order against Neely: In the matter of Kenneth Neely, CRD #1586038, Respondent, Case Number AP-09-41 (Missouri Commissioner of Securities 2009) ("Neely Order"). In the Neely Order, the Commissioner found that Neely committed multiple violations of selling unregistered and nonexempt securities, multiple violations of transacting business as an unregistered agent, and multiple violations of making an untrue statement or omitting to state material facts in connection with the offer or sale of a security. The Neely Order became a Final Order on February 17, 2010.
19. On February 26, 2010, Neely was sentenced to thirty-seven (37) months in prison as a result of a guilty plea to a mail fraud charge in connection with these sales of securities in the REIT and the Investment Club. Neely is currently serving this sentence in a federal correctional facility in Indiana.
20. On October 28, 2010, the Commissioner issued a Consent Order against AXA, In the matter of AXA Advisors, LLC, CRD# 6627, Respondent, Case Number AP-10-24 (Missouri Commissioner of Securities 2010) ("AXA Consent Order"). In this AXA Consent Order, the Enforcement Section alleged that AXA was subject to discipline for Neely's dishonest and unethical activities. In the AXA Consent Order, AXA agreed, among other things, to pay twenty-eight thousand dollars (\$28,000) to the Missouri Investor Education and Protection Fund and to pay restitution and interest to three (3) individuals in an amount in excess of sixty-three thousand five hundred dollars (\$63,500).
21. The Enforcement Section conducted a two-year investigation of Stifel's supervisory practices related to Neely. During this investigation, the Enforcement Section staff:
 - a. interviewed ten (10) investors in Neely's fraudulent investment program;
 - b. reviewed Stifel's written policies and procedures relating to, among other things, private securities transactions, outside business activities, discounting of commissions, heightened supervision, and handling of customer checks ("Stifel's WSP");

- c. reviewed bank records; and
 - d. conducted six (6) on-the-record interviews (OTRs) of compliance and supervisory personnel at Stifel.
22. The Enforcement Section's interviews of Neely's investors revealed, among other things, that:
- a. many of the investors were friends of Neely through Neely's church or through Neely's country club;
 - b. Neely told these investors that Neely was on the board of the Investment Club;
 - c. Neely told these investors that the Investment Club invested in the REIT;
 - d. Neely did not tell investors that the REIT was unregistered;
 - e. Neely told these investors that the investments into the REIT should be made via check made payable to either Neely or Neely's wife, Jackie Neely, or in cash;
 - f. Neely represented that the Investment Club would pay up to twenty percent (20%) interest per year;
 - g. Neely explained to some of the investors that the Investment Club and the REIT were not offered through Stifel;
 - h. Neely did not tell investors that selling the REIT was in violation of the policies and procedures of Stifel, Neely's employing broker-dealer;
 - i. Neely did not tell investors that the money invested into the REIT would be used for Neely's personal expenses; and
 - j. Neely did not explain to investors that their investments were not on the books and records of Stifel.
23. As a result of this two-year investigation, the Enforcement Section concluded that Neely, while employed at Stifel: (a) sold unregistered securities; (b) failed to disclose material facts; (c) made material misstatements; and (d) engaged in an act, practice, or course of business that operated as a fraud or deceit on investors in the REIT, some of whom maintained accounts at Stifel.
24. While at Stifel, Neely had numerous contacts with Neely's supervisors. Upon hiring, Neely was immediately placed on heightened supervision at Stifel because of Neely's history of customer complaints. Subsequently, Neely experienced both low production and financial difficulties that again increased Stifel's compliance and supervisory interactions with Neely.
25. Neely's financial difficulties included, among others things:
- a. calls to Stifel from Neely's creditors;
 - b. information on a garnishment and a judgment related to Neely; and
 - c. the denial of Neely's check writing privileges on a Stifel account.
26. Stifel failed to reasonably detect, identify, review, investigate and/or respond to issues raised by Neely's activities and conduct, including:
- a. Neely's receipt of mail and checks from a Stifel customer at Neely's home address;
 - b. Stifel's receipt of customer correspondence referencing Neely's involvement with an investment club;
 - c. a customer e-mail to Neely referencing a request to make additional deposits in an investment club; and
 - d. Stifel's receipt of customer correspondence that expressed concerns with Neely's practices relating to the Investment Club.
27. Stifel failed to reasonably supervise Neely with a view to detecting and preventing Neely's violations of the Missouri Securities Act with respect to the following activities:
- a. outside business activities;
 - b. private securities transactions;
 - c. agent emails;
 - d. customer distributions; and
 - e. customer correspondence.
28. During its investigation, the Enforcement Section issued multiple target letters to Stifel over a several year period. Stifel was

not able to timely produce the records requested by the Enforcement Section during the investigation.

29. As a result of Stifel's failure to timely produce the records requested by the Enforcement Section, the Enforcement Section determined that Stifel failed to make, maintain, and preserve records as required by the Missouri Securities Act.

II. CONCLUSIONS OF LAW

30. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over this Respondent and this matter.
31. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that Respondent failed to reasonably supervise an agent in Missouri and that this constitutes grounds to revoke, suspend, condition or limit Respondent's registration in Missouri pursuant to Section 409.4-412(d)(9), RSMo. (Cum. Supp. 2009).
32. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that Respondent failed to make, maintain, and preserve records as required by: (a) Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, as amended; and (b) Respondent's written supervisory procedures, in violation of Section 409.4-411(c)(1), RSMo. (Cum. Supp. 2009), and Missouri Rules 15 CSR 30-51.120 and 15 CSR 30-51.130 and that this constitutes grounds to revoke, suspend, condition or limit Stifel's registration in Missouri pursuant to Section 409.4-412(d)(2), RSMo. (Cum. Supp. 2009).
33. The following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo. (Cum. Supp. 2009).

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Stifel's registration is hereby CENSURED.
2. Stifel will retain, at its expense, an outside consultant ("Consultant") not unacceptable to the Commissioner, no later than three (3) months after the effective date of this Consent Order. Within six (6) months of the effective date of this Consent Order, the Consultant will furnish an initial report to Stifel concerning: (a) Stifel's supervisory and compliance policies and procedures as they relate to Stifel's supervision of its agents; (b) Stifel's heightened supervision of its agents; (c) Stifel's Form U5 (Uniform Termination Notice For Securities Industry Registration) reporting processes; and (d) Stifel's complaint management policies and procedures. In addition, the Consultant will make recommendations to improve Stifel's policies and procedures relating to the above-named areas. If the Consultant becomes unable to perform its duties, Stifel shall have thirty (30) days to select a replacement Consultant not unacceptable to the Commissioner.
3. Stifel will submit a follow-up report six (6) months following the submission of the Consultant's report. The follow-up report will discuss the extent to which Stifel has implemented the Consultant's earlier recommendations. Both the Consultant's initial report and Stifel's follow-up report shall remain confidential and the Commissioner shall not release any such reports to any person without Stifel's express authorization.
4. Stifel will provide to the Enforcement Section copies of all reports prepared by the Consultant. The Enforcement Section may speak with the Consultant at any time during the period that the Consultant is retained by Stifel. Any costs and/or fees associated with the Enforcement Section's speaking with the Consultant shall be borne by the Enforcement Section.
5. Stifel will promptly adopt and implement the processes, procedures and practices recommended by the Consultant; however, Stifel may propose alternative procedures ("Alternative Procedures") designed to achieve the same objective or purpose as those that were recommended by the Consultant. Stifel may adopt the Alternative Procedures if the Consultant agrees that Stifel's proposed procedures will achieve the same objectives or purposes as the Consultant's original recommendations. In the event that Stifel and the Consultant disagree regarding any recommendation by the Consultant, Stifel shall have thirty (30) days to appeal such recommendation to the Commissioner and shall be bound by the decision of the Commissioner.
6. Stifel will make available upon request by the Enforcement Section all written communications between Stifel, its employees and the Consultant, as well as all documents that the Consultant has advised Stifel in writing that the Consultant reviewed or relied upon in connection with this engagement.
7. For a period of eighteen (18) months following the conclusion of the Consultant's work, Stifel, its affiliates and any of its officers may not employ or hire the Consultant in any capacity.
8. Stifel shall pay five hundred thirty-one thousand three hundred eighty-five dollars (\$531,385) in restitution and interest to the investors identified in Exhibit A. This restitution payment represents the out-of-pocket losses, plus interest calculated at the rate of eight percent (8%) per annum, for the investors identified in Exhibit A. This restitution payment shall be sent within ten (10) days of the date of this Consent Order to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. The Commissioner will

distribute these funds from the Investor Restitution Fund to the investors as specified in Exhibit A.

9. Stifel shall pay five hundred thousand dollars (\$500,000) to the Missouri Secretary of State's Investor Education and Protection Fund. This payment shall be sent within ten (10) days of the date of this Consent Order to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund.
10. Stifel shall pay seventy thousand dollars (\$70,000) as the costs of this investigation. This payment shall be sent within ten (10) days of the date of this Consent Order to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund.
11. Stifel shall pay its own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 24TH DAY OF JANUARY, 2012.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by
THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

STIFEL NICOLAUS & COMPANY, INC.

Approved as to Form:

Jeffrey J. Kalinowski
Attorney for Respondent