

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2010-AH- 027

In the matter of

**STIFEL, NICOLAUS & COMPANY,
INCORPORATED**
CRD #793
501 North Broadway
St. Louis, Missouri 63102

Respondent.

ADMINISTRATIVE CONSENT ORDER

WHEREAS, Stifel, Nicolaus & Company, Incorporated ("Stifel") is a broker-dealer registered in Kentucky, with its home office at 501 North Broadway St. Louis, Missouri 63106; and

WHEREAS, a multistate task force led by the Enforcement Section of the Securities Division of the Missouri Secretary of State (the "Enforcement Section") conducted an investigation into Stifel's marketing and sale of auction rate securities to investors during the period January 1, 2006, through February 14, 2008; and

WHEREAS, Stifel has advised the Enforcement Section of its agreement to resolve the multistate task force investigation relating to its marketing and sale of auction rate securities to investors; and

WHEREAS, Stifel elects to permanently waive any right to a hearing and appeal under KRS 292.470 and KRS 292.490 with respect to this Administrative Consent Order (the "Order"); and

WHEREAS, Stifel agrees that Stifel is not the prevailing party in this action and Stifel elects to specifically forever release and hold harmless the Kentucky Department of Financial Institutions ("DFI") and its representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter; and

WHEREAS, Stifel agrees not to take any action or to make or permit to be made any

1 public statement creating the impression that this Order is without a factual basis. Nothing in
2 this paragraph affects Stifel's: (a) testimonial obligations; (b) right to take legal or factual
3 positions in defense of litigation or in defense of other legal proceedings in which the DFI is not
4 a party; or (c) right to make public statements that are factual;

5 NOW, THEREFORE, the Commissioner of the DFI hereby enters this Order.

6 I.

7 FINDINGS OF FACT

8 1. Stifel admits the jurisdiction of the DFI for purposes of this Order, neither admits
9 nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to
10 the entry of this Order by the Commissioner of the DFI.

11 2. Auction rate securities are long-term debt or equity instruments that include
12 auction preferred shares of closed-end funds, municipal auction rate bonds, and various asset-
13 backed auction rate bonds (collectively referred to herein as "ARS"), with variable interest rates
14 that reset through a bidding process known as a Dutch auction.

15 3. At a Dutch auction, bidders generally state the number of ARS they wish to
16 purchase and the minimum interest rate they are willing to accept. Bids are ranked, from lowest
17 to highest, according to the minimum interest rate each bidder is willing to accept. The lowest
18 interest rate required to sell all of the ARS at auction, known as the "clearing rate," becomes the
19 rate paid to all holders of that particular security until the next auction. The process is then
20 repeated, typically every seven, twenty-eight, or thirty-five days.

21 4. While ARS are all long-term instruments, one significant feature of ARS (which
22 historically provided the potential for short-term liquidity) is the interest/dividend reset through
23 periodic auctions. If an auction is successful (i.e., there are enough buyers for every ARS being
24 offered for sale at the auction), investors are able to exit their positions at the auction. If,
25 however, auctions "fail" (i.e., there are not enough buyers for every ARS being offered for sale),
26 investors are required to hold all or some of their ARS until the next successful auction in order

1 to liquidate their funds.

2 5. Beginning in February 2008, the ARS market experienced widespread failed
3 auctions.

4 6. Stifel and its Kentucky-registered securities agents ("Registered Agents") sold
5 ARS to Kentucky residents.

6 7. Stifel's Registered Agents recommended ARS as safe and/or liquid investments,
7 and compared ARS to cash alternatives, such as certificates of deposit or money market
8 accounts.

9 8. Stifel did not formally train its Registered Agents regarding the risks and features
10 of ARS.

11 9. A number of Registered Agents did not sufficiently understand, and therefore did
12 not adequately communicate to retail purchasers, the risks and features of ARS. As a result, in
13 December, 2008 some Kentucky retail investors who had purchased ARS from Stifel or its
14 Registered Agents began to submit complaints to the DFI regarding these purchases.

15 **Stifel's Failure to Supervise the Sale of ARS**

16 10. Stifel failed to reasonably supervise its Registered Agents, which is grounds to
17 discipline Stifel under KRS 292.330(13)(a)9.a. Stifel failed to provide reasonable supervision by
18 failing to provide pertinent information and comprehensive training to its Registered Agents and
19 other sales and marketing staff regarding ARS and the mechanics of the auction process.

20 **II.**

21 **CONCLUSIONS OF LAW**

22 11. The DFI has jurisdiction over this matter pursuant to the Kentucky Securities Act,
23 KRS Chapter 292 (the "Act").

24 12. The DFI finds Stifel failed to reasonably supervise its Registered Agents in
25 Kentucky, and that this conduct constitutes grounds to discipline Stifel under KRS
26 292.330(13)(a)9.a.

1 Enforcement Section to share these written reports with the DFI pursuant to Missouri law,
2 provided that such written reports are given confidential treatment and are treated as nonpublic,
3 nondisclosable records to the extent possible under Kentucky law.

4 5. For a period of one (1) year following the conclusion of the Consultant's work,
5 Stifel, and its affiliates may not employ or hire the Consultant in any capacity.

6 6. Stifel shall modify its Voluntary Offer to Repurchase Eligible Auction Rate
7 Securities at Par dated April 9, 2009 (the "Voluntary Offer") for all Eligible Investors as
8 described in Paragraph 7 below. For purpose of this Order, Eligible Investors shall be defined as
9 investors who hold Eligible Accounts as that term is defined in the Voluntary Offer. Except as
10 modified by this Order, all other terms and conditions of the Voluntary Offer shall remain in full
11 force and effect and shall in no way be modified by this Order.

12 7. Stifel shall accelerate its repurchase of Eligible ARS from Eligible Investors who
13 have accepted the Voluntary Offer as follows:

14 a. January 2010 Repurchase

15 Stifel will have repurchased at par up to the greater of twenty-five
16 thousand dollars (\$25,000) of the remaining Eligible ARS holdings or ten percent (10%)
17 of the remaining Eligible ARS holdings plus any accrued and unpaid interest or dividend
18 of such amount no later than January 15, 2010.

19 b. December 2010 Repurchase

20 Stifel will repurchase at par up to the greater of twenty-five thousand
21 dollars (\$25,000) of the remaining Eligible ARS holdings or ten percent (10%) of the
22 remaining Eligible ARS holdings plus any accrued and unpaid interest or dividend of
23 such amount no later than December 31, 2010.

24 c. 2010 Supplemental Repurchase

25 Stifel will repurchase at par all of the Eligible ARS that remain after the
26 December 2010 Repurchase from Eligible Investors who, as of January 1, 2009,

1 maintained in an Eligible Account, Eligible ARS in an amount of one hundred fifty
2 thousand dollars (\$150,000) or less. Such repurchase shall be completed no later than
3 December 31, 2010.

4 d. 2011 Repurchase

5 Stifel will repurchase at par all of the remaining Eligible ARS holdings
6 plus any accrued and unpaid interest. Such repurchase shall be completed no later than
7 December 31, 2011. Stifel will make its Voluntary Offer as modified by this Order to
8 those Eligible Investors who have not previously accepted the Voluntary Offer.

9 8. Subject to applicable regulatory requirements and limitations, Stifel will
10 cooperate with its bank affiliate to use its best efforts to make no-net-cost loans to Eligible
11 Investors, provided such investors have demonstrated need for liquidity.

12 9. In accordance with the Missouri Order, Stifel shall, within fifteen (15) days of the
13 end of each calendar quarter following the execution of the Missouri Order, provide to the
14 Missouri Commissioner of Securities a written report describing and updating, in detail, all
15 repurchase/buyback, issuer redemption and investor arbitration claims related to Eligible ARS
16 that occur or continue to occur. Where applicable and in describing repurchase, redemption and
17 arbitration developments or occurrences, Stifel shall include investor or issuer names and state of
18 residence and amounts of repurchases, redemptions, and/or arbitration claims/awards. Missouri
19 shall be authorized to share these written reports with the DFI pursuant to Missouri law, provided
20 that such written reports are given confidential treatment and are treated as nonpublic,
21 nondisclosable records to the extent possible under Kentucky law.

22 10. Stifel shall pay fines and/or penalties totaling five hundred twenty-five thousand
23 dollars (\$525,000) to the states and other jurisdictions participating in this multistate task force
24 as allocated by the North American Securities Administrators Association to resolve matters
25 relating to Stifel's marketing and sale ARS in those states or other jurisdictions.

26 11. Within ten (10) calendar days following the entry of this Order, Stifel shall pay to

1 the DFI the sum of (Seven Thousand Nine Hundred Eighty Four Dollars and Forty Cents
2 (\$7,984.40), which amount constitutes Kentucky's allocated share of the total settlement
3 payment described in the preceding paragraph. Payment shall be made by certified check,
4 payable to the "Kentucky State Treasurer" and delivered to the Kentucky Department of
5 Financial Institutions, Attn: William Owsley, 1025 Capital Center Drive, Suite 200, Frankfort,
6 Kentucky 40601 within 10 days of entry of this Order.

7 12. If Stifel defaults in any of its obligations set forth in this Order, the DFI may
8 vacate this Order, at its sole discretion, upon ten (10) days notice to Stifel and without
9 opportunity for administrative hearing or may refer this matter for enforcement as provided in
10 KRS 292.470.

11 13. This Order is not intended to indicate that Stifel or any of its affiliates or current
12 or former employees shall be subject to any disqualifications contained in the federal securities
13 law, the rules and regulations there under, the rules and regulations of self-regulatory
14 organizations or various states' securities laws, including any disqualifications from relying upon
15 the registration exemptions or safe harbor provisions. In addition, this Order is not intended to
16 form the basis for any such disqualifications.

17 14. This Order may not be read to indicate that Stifel or any of its affiliates or current
18 or former employees engaged in fraud or violated any federal or state laws, the rules and
19 regulations thereunder, or the rules and regulations of any self regulatory organization.

20 15. For any person or entity not a party to this Order, this Order does not limit or create
21 any private rights or remedies against Stifel including, without limitation, the use of any e-mails or
22 other documents of Stifel or of others for the marketing and sale of auction rate securities to
23 investors, limit or create liability of Stifel, or limit or create defenses of Stifel to any claims.

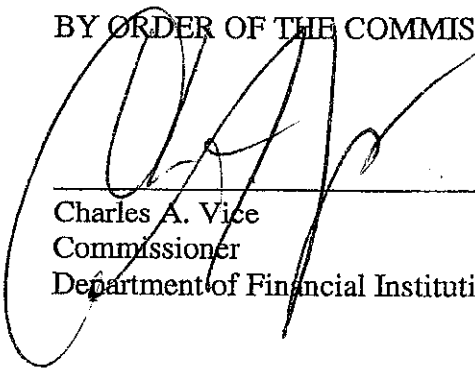
24 16. This Order shall not disqualify Stifel or any of its affiliates or current or former
25 employees from any business that they are otherwise qualified or licensed to perform under
26 applicable state law, or form the basis for any such disqualification.

1 17. Nothing herein shall preclude the Commonwealth of Kentucky, its departments,
2 agencies, boards, commissions, authorities, political subdivisions and corporations (collectively,
3 "State Entities"), other than the DFI and only to the extent set forth in paragraph 1 above, and the
4 officers, agents or employees of State Entities from asserting any claims, causes of action, or
5 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or
6 injunctive relief against Stifel in connection with the marketing and sale of auction rate securities at
7 Stifel.

8 18. Stifel shall pay its own costs and attorneys' fees with respect to this matter.

9 Dated this 29 day of Apr., 2010.

10 BY ORDER OF THE COMMISSIONER

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12 _____
13 Charles A. Vice
14 Commissioner
15 Department of Financial Institutions

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STATE OF Missouri)
City of St. Louis) ss.
County of St. Louis)

SUBSCRIBED AND SWORN TO before me by Scott B. McQuay, this
20th day of April, 2010.

Karen L. Kehrer
Notary Public

My commission expires:
12-3-13

