

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4665 / March 13, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17879

In the Matter of

**STIFEL, NICOLAUS &
COMPANY,
INCORPORATED,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Stifel, Nicolaus & Company, Incorporated (“Stifel” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. This matter arises from Stifel's failure to adopt and implement adequate policies and procedures to track and disclose trading away practices by certain of the sub-advisers participating in Stifel's wrap fee programs. Stifel, in its advisory capacity, offers its advisory clients the opportunity to invest in separately managed wrap fee programs. Through these programs, Stifel's advisory clients pay an annual fee in exchange for receiving access to select sub-advisers and trading strategies, advice from Stifel's financial advisors, and trade execution services through Stifel at no additional cost. However, if a sub-adviser chooses not to direct the execution of particular equity trades through Stifel and the executing broker charges a commission or fee, Stifel's advisory clients often are charged additional commissions or fees for those transactions. This practice is referred to as "trading away" and these types of trades are frequently called "trade aways." Historically, Stifel did not track or monitor which sub-advisers were trading away from Stifel, how often those sub-advisers were trading away, or the specific costs associated with those trade aways. In the first quarter of 2015, Stifel began collecting cost information from sub-advisers who were trading away but failed to adopt or implement any policies and procedures designed to provide information to Stifel's clients and financial advisors about the amount of the additional costs of trading away. Without the availability of such information, Stifel's financial advisors could not separately consider the costs associated with trading away practices in conducting their initial and periodic suitability analyses for advisory clients in wrap fee programs whose funds were managed by certain sub-advisers. By failing to adopt and implement such policies and procedures, Stifel violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

2. Stifel is a retail and institutional brokerage and investment banking firm headquartered in St. Louis, Missouri with branch offices located throughout the United States. It has been registered with the Commission as a broker-dealer since 1936 and as an investment adviser since 1975.

Stifel's Wrap Fee Programs

3. Among other services, Stifel offers its advisory clients the opportunity to invest in several separately managed wrap fee programs sponsored by Stifel. Stifel's wrap fee programs allow Stifel's clients to have their accounts managed on a discretionary basis by one or more third party investment managers acting as sub-advisers.

4. Stifel charges its wrap fee advisory clients a single fee for investment advisory services, trade execution services, custody and other standard brokerage services. One of the benefits of investing in Stifel's wrap fee programs is that wrap fee clients do not pay commissions to Stifel when Stifel acts as broker-dealer and executes the clients' trades.

Stifel's Advisory Clients Incurred Additional Costs

5. In addition to having discretion over investment decisions, the sub-advisers participating in Stifel's wrap fee programs have sole discretion in selecting which broker-dealers will execute equity trades on behalf of Stifel's clients. According to the wrap fee program brochure provided to Stifel's clients, each sub-adviser "may implement its trade decisions through Stifel in its capacity as a broker-dealer, or may implement trades through other broker-dealers if the Investment Manager determines that such other broker-dealer is providing best execution in light of all applicable circumstances." Stifel does not monitor whether the sub-advisers comply with the obligation to seek best execution.

6. When a sub-adviser selects Stifel as the broker-dealer to execute an equity trade, Stifel's clients do not pay commissions on the trade. However, when a sub-adviser selects a broker-dealer other than Stifel to execute an equity trade, Stifel's wrap fee clients may incur additional trading costs such as commissions and fees that are paid to the executing broker-dealer.

7. The additional costs incurred as a result of the sub-advisers trading away are embedded in the price of the security on the periodic account statements that Stifel provides to its clients. Stifel does not otherwise inform its clients when they have incurred these additional trading away costs or provide its clients with the amount of the additional trading away costs.

8. Stifel discloses in its Form ADV Part 2A Appendix 1 Wrap Fee Brochures and in client agreements that sub-advisers may trade away from Stifel and that clients may incur additional costs associated with those trade aways. However, prior to the first quarter of 2015, Stifel did not collect any information from the sub-advisers about the frequency with which the sub-advisers traded away or the costs associated with trading away. Consequently, Stifel did not and could not inform its financial advisors or clients about the amount of the additional trading away costs, and its financial advisors lacked information to separately take the additional costs into consideration in assessing whether use of a particular sub-adviser in the wrap fee program was, and continued to be, suitable for a particular client.

9. In the first quarter of 2015, Stifel began collecting information from the sub-advisers regarding the costs associated with and frequency of the sub-advisers' trading away practices. In doing so, Stifel found that a number of sub-advisers placed a majority of client trades with broker-dealer firms other than Stifel for execution while incurring additional trading costs.

10. Stifel began providing information about trade aways on certain clients' trade confirmations during the second quarter of 2015. As of September 2016, Stifel now includes information about trade aways on most of its wrap fee clients' trade confirmations. However, Stifel has not yet informed all of its clients or their financial advisors how much each client has paid in additional trading away costs so that the financial advisors can consider the information when determining whether the use of a particular sub-adviser is, and continues to be, suitable for the particular clients.

11. In April 2015, Stifel created and distributed to its financial advisors a document summarizing certain information about sub-advisers' trading away practices, including a chart reflecting the percentage of time each sub-adviser traded away and the average cost associated with those trades for 2014. This document was not distributed to Stifel's advisory clients. However, around the same time, Stifel sent a notice to its clients and updated its Brochures to inform clients that they could contact their financial advisor if they wanted more specific information about additional costs they may be incurring as a result of trade aways.

12. Stifel has not adopted or implemented written policies or procedures designed to review information received from the sub-advisers in wrap fee programs regarding their trading away practices. Without adequate policies or procedures, Stifel did not inform its clients or their financial advisors what additional costs individual clients actually paid for trade aways, beyond the amounts clients paid for participation in the wrap fee program. In addition, the financial advisors did not separately consider additional transaction costs and fees when assessing whether use of a particular sub-adviser in the wrap fee programs was, and continued to be, suitable for a particular client.

Violation

13. As a result of the conduct described above, Stifel violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Stifel's Remedial Efforts

14. In determining to accept the Offer, the Commission considered both the voluntary remedial acts promptly undertaken by Respondent and its cooperation with the Commission staff. Respondent has taken the following steps to strengthen its compliance function. Respondent has: (1) updated and expanded its disclosures in its Brochures regarding sub-advisers' practices of trading away from Stifel; (2) began collecting information from sub-advisers about their trading away practices in the first quarter of 2015; (3) provided a notice to new and existing clients with assets allocated to a sub-adviser that engaged in trading away informing them of the sub-advisers' trading away and instructing them to contact their financial advisor for more information; and (4) added questions to its sub-adviser questionnaire to obtain more detailed information about the execution policies and trading away practices of the sub-advisers.

Undertakings

15. Respondent has undertaken to:
- a. Review and update its policies and procedures related to tracking and disclosing the trading away practices and associated costs by the sub-advisers participating in its wrap fee programs.

- b. Design and implement a way in which to provide clients in its wrap fee programs and its financial advisors with information related to its wrap fee program sub-advisers' trading away practices and associated costs on a periodic basis.
- c. Develop and conduct training for its financial advisors regarding how to understand and analyze wrap fee program sub-advisers' trading away practices and associated costs and the appropriate consideration of such information in assessing whether an investment is suitable for a particular client.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$300,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Stifel, Nicolaus & Company, Incorporated as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anne C. McKinley, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary