

1 **THE PEOPLE OF THE STATE OF CALIFORNIA**
2 **BY AND THROUGH THE COMMISSIONER OF CORPORATIONS**

3 In the matter of)
4 **STIFEL, NICOLAUS & COMPANY,**)
5 **INCORPORATED**) **ADMINISTRATIVE CONSENT ORDER**
6) Respondent.
7)
8)

8)
9) WHEREAS, Stifel, Nicolaus & Company, Incorporated (“Stifel”) is a broker-dealer
10) registered in California, with its home office at 501 North Broadway St. Louis, Missouri 63106;
11) and

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

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

18) WHEREAS, Stifel elects to permanently waive any right to a hearing and appeal under
19) California Corporations Code sections 25532(d) and 25609 with respect to this Administrative
20) Consent Order (the “Order”); and

21) WHEREAS, Stifel agrees that Stifel is not the prevailing party in this action and Stifel
22) elects to specifically forever release and hold harmless the California Department of
23) Corporations (“Department”) and its representatives and agents from any and all liability and
24) claims arising out of, pertaining to, or relating to this matter; and

25) WHEREAS, Stifel agrees not to take any action or to make or permit to be made any
26) public statement creating the impression that this Order is without a factual basis. Nothing in

1 this paragraph affects Stifel's: (a) testimonial obligations; (b) right to take legal or factual
2 positions in defense of litigation or in defense of other legal proceedings in which the
3 Department is not a party; or (c) right to make public statements that are factual;

4 NOW, THEREFORE, the Department hereby enters this Order.

5 **I.**

6 **FINDINGS OF FACT**

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

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

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

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

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

3 6. Stifel and its California-registered securities agents (“Registered Agents”) sold
4 ARS to California residents.

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

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

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

14 **Stifel’s Failure to Supervise the Sale of ARS**

15 10. Stifel failed to reasonably supervise its Registered Agents, which is grounds to
16 discipline Stifel under California Corporations Code section 25218 and 10 CCR 260.218.4(a).
17 Stifel failed to provide reasonable supervision by failing to provide pertinent information and
18 comprehensive training to its Registered Agents and other sales and marketing staff regarding
19 ARS and the mechanics of the auction process.

20 **II.**

21 **CONCLUSIONS OF LAW**

22 11. The Department has jurisdiction over this matter pursuant to the Corporate
23 Securities Law of 1968 (the “CSL”).

24 12. The Department finds Stifel failed to reasonably supervise its Registered Agents
25 in California, and that this conduct constitutes grounds to discipline Stifel under California
26 Corporations Code section 25218 and 10 CCR 260.218.4(a).

1 13. The Department finds this Order and the following relief appropriate, in the public
2 interest, and consistent with the purposes intended by the Act.

3 **III.**

4 **ORDER**

5 On the basis of the Findings of Fact, Conclusions of Law, and Stifel’s consent to the entry of
6 this Order,

7 IT IS HEREBY ORDERED:

8 1. This Order concludes the investigation by the Department of Corporations
9 (“Department”) and any other action that the Department could commence under applicable
10 California law on behalf of California as it relates to Stifel, relating to the marketing and sale of
11 auction rate securities. The Department shall refrain from initiating any action against Stifel based
12 upon or related to the conduct set forth in this order. Specifically excluded from and not covered by
13 this paragraph are any claims by the Department arising from or relating to the Order provisions
14 contained herein.

15 2. This Order is entered into solely for the purpose of resolving the multistate
16 investigation and is not intended to be used for any other purpose.

17 3. Stifel will desist and refrain from violating the Corporate Securities Law of 1968
18 (“CSL”) and will comply with the CSL.

19 4. In accordance with the Consent Order entered against Stifel by the Missouri
20 Office of the Secretary of State dated January 22, 2010, Case No. Ap-10-05 (“Missouri Order”),
21 Stifel has or will retain, at its expense, an outside consultant (“Consultant”). The scope of
22 Consultant's work is to conduct a review and make written recommendations concerning Stifel’s
23 supervisory and compliance policies and procedures relating to the product review of
24 nonconventional investments and the training, marketing, and sale of nonconventional
25 investments by Stifel and its Registered Agents throughout Stifel's retail branch office system.
26 Stifel will receive a report prepared by the Consultant describing his or her recommendations and

1 Stifel will provide to the Enforcement Section a copy of such report. Stifel shall authorize the
2 Enforcement Section to share these written reports with the Department pursuant to Missouri
3 law, provided that such written reports are given confidential treatment and are treated as
4 nonpublic, nondisclosable records to the extent possible under California law.

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

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

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

15 a. January 2010 Repurchase

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

20 b. December 2010 Repurchase

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

1 c. 2010 Supplemental Repurchase

2 Stifel will repurchase at par all of the Eligible ARS that remain after the
3 December 2010 Repurchase from Eligible Investors who, as of January 1, 2009,
4 maintained in an Eligible Account, Eligible ARS in an amount of one hundred fifty
5 thousand dollars (\$150,000) or less. Such repurchase shall be completed no later than
6 December 31, 2010.

7 d. 2011 Repurchase

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

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

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

25 10. Stifel shall pay fines and/or penalties totaling five hundred twenty-five thousand
26 dollars (\$525,000) to the states and other jurisdictions participating in this multistate task force

1 as allocated by the North American Securities Administrators Association to resolve matters
2 relating to Stifel's marketing and sale ARS in those states or other jurisdictions.

3 11. Within ten (10) calendar days following the entry of this Order, Stifel shall pay to
4 the Department the sum of \$11,220.45, which amount constitutes California's allocated share of
5 the total settlement payment described in the preceding paragraph.

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

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

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

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

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

25 17. Nothing herein shall preclude California, its departments, agencies, boards,
26 commissions, authorities, political subdivisions and corporations (collectively, "State Entities"),

1 other than the Department and only to the extent set forth in paragraph 1 above, and the officers,
2 agents or employees of State Entities from asserting any claims, causes of action, or applications for
3 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
4 against Stifel in connection with the marketing and sale of auction rate securities at Stifel.

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

6 Dated this 5th day of May _____, 2010.

7 PRESTON DuFAUCHARD

8 California Corporations Commissioner

9 By _____

10 ALAN S. WEINGER
11 Deputy Commissioner
12 Enforcement Division
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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY STIFEL

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2 Stifel hereby acknowledges that it has been served with a copy of this Administrative
3 Consent Order (“Order”), has read the foregoing Order, is aware of its right to a hearing and appeal
4 in this matter, and has waived the same.

5 Stifel admits the jurisdiction of the California Department of Corporations; neither admits
6 nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to
7 entry of this Order by the Department as settlement of the issues contained in this Order.

8 Stifel states that no promise of any kind or nature whatsoever was made to it to induce it to
9 enter into this Order and that it has entered into this Order voluntarily.

10 Scott B. McCuaig represents that he/she is President of Stifel,
11 Nicolaus & Company, Incorporated, and that, as such, has been authorized by Stifel, Nicolaus &
12 Company, Incorporated to enter into this Order for and on behalf of Stifel, Nicolaus & Company,
13 Incorporated

14 Stifel agrees that it shall not seek or accept, directly or indirectly, reimbursement or
15 indemnification, including, but not limited to, payment made pursuant to any insurance policy,
16 with regard to any administrative monetary penalty that Stifel shall pay pursuant to this Order.
17 Stifel further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with
18 regard to any state, federal, or local tax for any administrative monetary penalty that Stifel shall
19 pay pursuant to this Order. Stifel understands and acknowledges that these provisions are not
20 intended to imply that the Department would agree that any other amounts Stifel shall pay
21 pursuant to this Order may be reimbursed or indemnified (whether pursuant to an insurance
22 policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit
23 with regard to any state, federal, or local tax.

24 Dated this 5th day of May, 2010.

25 Stifel, Nicolaus & Company, Incorporated

26 By: _____
Title: President

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STATE OF _____)
) ss.
County of _____)

SUBSCRIBED AND SWORN TO before me by _____, this
_____ day of _____, 2010.

Notary Public

My commission expires:
