

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86978 / September 16, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5349 / September 16, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19458

In the Matter of

Stifel, Nicolaus & Company,
Incorporated,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) and 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) 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 (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III. below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and 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

These proceedings arise out of Stifel's failure to submit to the Commission complete and accurate data in response to Commission staff electronic blue sheets ("EBS") requests, resulting in the reporting of EBS that was incomplete or deficient.

Commission staff routinely sends requests for securities trading records to market makers, brokers and/or clearing firms in order to identify buyers and sellers of securities, and firms provide the requested records in a universal electronic format known as the EBS format. It is a fundamental obligation of broker-dealers to provide complete and accurate EBS data when requested by representatives of the Commission. The submission of complete and accurate blue sheet data is critical to many aspects of the Commission's operations and its ability to discharge its enforcement and regulatory mandates. The failure of a broker-dealer to provide complete and accurate EBS information in response to a Commission request can impact the Commission's ability to discharge its statutory obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with the Commission's ability to protect investors.

From at least January 1, 2015 through September 30, 2018, Stifel should have reported approximately 17.8 million transactions in response to EBS requests ("reportable transactions") from the Commission. However, Stifel reported information concerning those transactions in a compressed format, causing Stifel to under-report the number of transactions and misreport certain data for the consolidated trades that it did report. As a result, Stifel only reported approximately 8 million transactions and failed to submit approximately 9.8 million. Of the transactions Stifel did report, approximately 1.4 million contained inaccurate data, resulting in the misreporting of EBS data for approximately 11.2 million transactions. As a result, Stifel violated the recordkeeping and reporting requirements of Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder.

Section 17 of the Exchange Act imposes on broker-dealers recordkeeping and reporting requirements that are essential to the Commission's ability to enforce the federal securities laws and to protect investors. To ensure the continued effectiveness of the Commission's enforcement and regulatory programs, broker-dealers must comply with, among other things: Rule 17a-25, requiring that broker-dealers submit electronically securities transaction information upon request by the Commission; and Rule 17a-4(j), requiring broker-dealers to furnish promptly legible, true, complete, and current copies of required records upon request by a representative of the Commission. Stifel failed to comply with these requirements, as described below.

Respondent

1. **Stifel, Nicolaus & Company, Incorporated (“Stifel”)** is incorporated in Missouri with its principal place of business in St. Louis. Stifel has been registered with the Commission as a broker-dealer since 1936 and an investment adviser since 1975.

Facts

A. Stifel’s Deficient EBS Submissions

2. From at least January 1, 2015 through September 30, 2018 (the “relevant period”), Stifel should have reported approximately 17.8 million transactions in response to EBS requests from the Commission. However, Stifel reported information concerning those transactions in a compressed format, causing Stifel to under-report the number of transactions and misreport certain data for the consolidated trades that it did report. As a result, Stifel only reported approximately 8 million transactions and failed to report approximately 9.8 million transactions. Of the 8 million it did report, approximately 1.4 million contained inaccurate data, resulting in a total of approximately 11.2 million missing or deficient transactions for the relevant period.

3. Both the missing transactions and inaccurate data reported were caused primarily by Stifel’s utilization of “trade compression,” a process by which data relating to multiple transactions executed during the same day for the same security, size and price, was compressed into a single transaction for reporting purposes.

4. Instead of reporting individual trades, the compression process incorrectly aggregated these trades into a single transaction with an execution time reflecting the time of the last aggregated trade. As a result, Stifel reported the last transaction of the day but omitted to report the other individual trades. For example, if a customer placed an order at 10:00 a.m. to buy 800 shares of Stock A, and the order was executed in 200 share lots at the same price at 10:15 a.m., 11:00 a.m., 1:15 p.m. and 2:00 p.m. that day, the four trades were reported in EBS data as only one transaction for 800 shares of Stock A with an execution time of 2:00 p.m.

5. In addition to errors caused by compression, Stifel had other EBS reporting errors during the relevant period, including inaccurately reporting street-side short sales as sales (approximately 10% of all reportable transactions). Further, in a smaller number of instances, there was missing or inaccurate information fields related to the securities transactions reported, blank customer name and address fields, or omitted contra-party identifiers. These deficient EBS submissions were caused by undetected coding errors in Stifel’s vendor’s system.

6. Stifel did not detect the errors in its EBS submissions, at least in part, because it did not have adequate processes to verify that the information it was reporting was accurate. For example, Stifel did not conduct adequate periodic sampling, manual validation, or have proper quality controls in place to ensure the completeness and accuracy of its EBS data prior to its submissions. Because Stifel lacked adequate processes for validating the accuracy of the

information provided in its EBS submissions, no one at the firm detected the errors that led to Stifel's frequent submission of deficient EBS information.

B. Stifel's Remedial Efforts

7. Stifel engaged in voluntary remedial efforts to correct and improve its EBS process and control environment, including but not limited to increased compliance staff and remedial expertise, enhanced EBS submission review procedures and controls, and increased budgets for EBS compliance. Specifically, prior to being contacted by the Commission staff, Stifel hired an expert regulatory and technology consultant to review all of its EBS submissions and, as a result, implemented modifications, both remedial and preventive—including removing trade compression—in an effort to eliminate any future errors. Stifel also drafted and implemented new procedures for responding to EBS requests, including the use of additional software to review and validate all EBS before their submission in response to regulatory requests. In addition, Stifel staff conducts a manual review of all EBS submissions to ensure completeness and accuracy. Stifel is in the process of resubmitting corrected EBS submissions to the Commission and to the Financial Industry Regulatory Authority.

Violations of the Federal Securities Laws

8. Section 17(a)(1) of the Exchange Act requires, among other things, that broker-dealers make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the securities laws. Exchange Act Rule 17a-4(j), promulgated thereunder, requires, in part, broker-dealers such as Stifel to furnish promptly legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under Exchange Act Rule 17a-4 and any other records of the member, broker or dealer subject to examination under Section 17(b) of the Exchange Act that are requested by a representative of the Commission. Likewise, Exchange Act Rule 17a-25 requires that broker-dealers such as Stifel shall, upon request, electronically submit to the Commission the securities transaction information as required in the rule.

9. As described above, Stifel failed to furnish complete records to the Commission staff that were requested by the Commission in its EBS requests. Therefore, Stifel willfully violated the recordkeeping and reporting requirements of Section 17(a)(1) of the Exchange Act and Rule 17a-4(j) thereunder by failing to furnish promptly true and complete trading information as requested by Commission staff over a period of approximately four years.¹ In

¹ “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to

addition, Stifel willfully violated Exchange Act Rule 17a-25 by failing to submit electronically certain securities transaction information to the Commission through the EBS system in response to requests made by the Commission.

Stifel's Remedial Efforts

10. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Stifel cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 promulgated thereunder.

B. Respondent Stifel is censured.

C. Respondent Stifel shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$2.7 million 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:

establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

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 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 G. Jeffrey Boujoukos, Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, One Penn Center, 1617 John F. Kennedy Blvd., Suite 520, Philadelphia, Pennsylvania 19103-1844.

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.

Vanessa A. Countryman
Secretary