BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of Stifel, Nicolaus & Co., Inc. with FINRA	Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD-2140 May 2, 2019

I. Introduction

On December 6, 2016, Stifel, Nicolaus & Company, Inc. ("Stifel" or the "Firm") submitted a Membership Continuance Application ("MC-400A" or "the Application") to FINRA's Department of Registration and Disclosure. The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA's Department of Member Supervision ("Member Supervision") recommends that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm's continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application.

II. The Statutorily Disqualifying Event

The Firm is subject to a statutory disqualification because of a final judgment entered against it on December 6, 2016 (the "Final Judgment"), by the U.S. District Court for the Eastern District of Wisconsin. The Final Judgment permanently enjoined the Firm from violating Sections 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act").[1]

The Final Judgment resulted from a complaint filed by the SEC against the Firm and David W. Noack ("Noack"), a Senior Vice President at the Firm and the registered

[1] Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act"), which incorporates by reference Exchange Act Section 15(b)(4)(C), provides that a member firm is subject to statutory disqualification if it is enjoined from, among other things, engaging in any conduct or practice as a broker-dealer or investment adviser, or in connection with the purchase or sale of any security.

representative and investment adviser. The SEC alleged, and the Firm and Noack admitted that, the Firm and Noack made material misstatements to five school districts in recommending investments in synthetic collateralized debt obligations ("CDOs") in 2006. Specifically, the Firm and Noack negligently failed to disclose material facts and made material misstatements to the school districts that overstated the safety of, and downplayed the risks associated with, investing in the CDOs. The Firm was aware that Noack, the individual who recommended that the school districts invest in the CDOs, had no prior experience with CDOs and had little or no understanding of how CDOs functioned. Nonetheless, it allowed Noack to represent the Firm when discussing the CDOs with the school districts.

The Firm also chose not to change the structure of the CDO investment program for the school districts after a potential CDO provider and a Firm employee separately notified the Firm of their concerns about the amount of leverage in the school districts' investment programs. Further, the Firm did not perform independent due diligence on the CDOs and did not conduct a meaningful suitability analysis prior to recommending these investments. The school districts participated in three separate deals between June 2006 and December 2006, based on the Firm's recommendations. The investments ultimately failed, causing the school districts to suffer losses totaling $47.3 million.

The Final Judgment permanently restrained and enjoined the Firm and Noack from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act. The Final Judgment also ordered the Firm and Noack to pay disgorgement, jointly and severally, to the school districts in the amount of $1.66 million, plus prejudgment interest totaling $840,000 to the SEC.[2] The Firm was also assessed a $22 million civil penalty (with $11.16 million of that total paid to the SEC and $10.84 million paid to the school districts). The Firm timely paid all amounts due under the Final Judgment. The SEC did not follow up with further administrative action against the Firm, nor did it require it to engage in any undertakings with respect to its business.

III. Background Information

A. The Firm

The Firm is based in St. Louis, Missouri, and has been a FINRA member since 1936. As of March 2019, the Firm has 407 branch offices, 295 of which are Offices of Supervisory Jurisdiction ("OSJs"). It employs approximately 4,685 registered representatives, including 1,364 registered principals, as well as 1,982 non-registered individuals.

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[2] The Final Judgment also ordered Noack to pay a $100,000 fine. The SEC also instituted an administrative proceeding against Noack, which barred him from association with any broker-dealer, investment adviser, municipal securities dealer, or transfer agent, with the right to apply for reentry after five years.

B. Recent Routine Examinations

Member Supervision represents that in the past two years, FINRA has conducted nine examinations of the Firm that resulted in Cautionary Actions. As described below, these examinations consisted of three routine examinations, five off-cycle, "cause" examinations, and one trading and financial compliance fixed income examination.

1. Routine Examinations

FINRA's 2018 routine examination resulted in a Cautionary Action for one exception pertaining to the omission of material information from marketing materials about potential risks associated with securities-backed lines of credit. The Firm responded in writing that it corrected this deficiency.

FINRA's 2017 routine examination resulted in a Cautionary Action for the following exceptions: inadequate supervisory controls for reviewing, monitoring and approving the Firm's idiosyncratic stress test results for liquidity calculations; deficiencies in the Firm's processes around possession and control of customer securities; failure to implement adequate risk controls over back office personnel; improper "haircut" calculations; and failure to file with the SEC a complete and accurate annual update to its application for municipal adviser registration and to report its municipal advisory business on its Uniform Application for Broker-Dealer Registration. The Firm responded in writing that it corrected the deficiencies noted.

FINRA's 2016 routine examination resulted in a Cautionary Action for the following exceptions: improper designation of certain accounts as appropriate control locations for unregistered securities; failure to have an adequate process to reconcile securities positions on a quarterly basis; failure to have a process to notify employees when certain files would be modified or deleted; failure to accurately calculate its net capital position; deficiencies in the Firm's supervisory procedures for ensuring that sales of certain multi-class variable annuities were consistent with customers' investment objectives; inadequate supervisory procedures related to the suitability of recommendations of Class C shares in multi-share class 529 college savings plans; failure to timely review certain anti-money laundering alerts for institutional accounts; an inadequate supervisory system to monitor third-party wire activity; and failure to properly register certain individuals with multiple exchanges. The Firm responded in writing that it corrected the deficiencies noted.

2. Cause and Other Examinations

FINRA also conducted five cause examinations of the Firm in the past two years. Each of these examinations resulted in FINRA's issuance of a Cautionary Action. These examinations focused on the Firm's untimely execution of customer market orders; failure to report customer complaints; failure to establish an adequate supervisory system to monitor customer accounts that may be potentially over-concentrated in certain securities or market sectors; deficient supervisory procedures for "wash sales;" and

failure to use reasonable diligence in six transactions to obtain the most favorable price to customers under prevailing market condition. The Firm responded in writing that it corrected the deficiencies noted for each of these examinations.

Finally, FINRA's 2016 trading and financial compliance fixed income examination of the Firm's institutional fixed income trading practices resulted in a Cautionary Action for the Firm's failure to timely and accurately report eligible transactions to FINRA's Trade Reporting and Compliance Engine ("TRACE") and related supervisory deficiencies. The Firm responded in writing that it corrected the deficiencies noted for each of these examinations.

C. Recent Regulatory Actions

In the past two years, the Firm has been subject to regulatory actions by FINRA, the SEC, and state securities commissions.[3]

In December 2018, the Massachusetts Securities Division and the Firm entered into a consent order. Without admitting or denying the allegations, the Firm agreed to findings that it failed to supervise a registered representative who made unsuitable recommendations in connection with brokerage accounts managed by a third party investment adviser. Massachusetts, among other things, censured the Firm, fined it $300,000, and ordered it to review its supervisory procedures.

In September 2018, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm for violations of FINRA Rules 3110, 5320, 7450, and 2010. The Firm consented to findings that it traded ahead of customer orders, inaccurately reported trades to FINRA's Order Audit Trail System ("OATS"), and that its supervisory procedures and systems did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations. FINRA, among other things, censured the Firm, fined it $37,500, and ordered it to revise its written supervisory procedures.

In April 2018, FINRA accepted an AWC from the Firm for violations of Exchange Act Section 17(a), Exchange Act Rules 17a-3 and 17a-4, and NASD Rule 3110. The Firm consented to findings that it failed to maintain accurate books and records because a registered representative at the Firm improperly marked solicited orders as unsolicited. FINRA censured the Firm and fined it $25,000.

In January 2018, FINRA accepted an AWC from the Firm for violations of FINRA Rules 6730 and 2010. The Firm consented to findings that it failed to timely report trades to OATS. FINRA censured the Firm and fined it $17,500.

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[3] For the Application, we agree with Member Supervision's focus on the Firm's regulatory actions that occurred in the past two years, and discuss these matters herein.

In November 2017, the North Carolina Securities Division and the Firm entered into a consent order for the Firm's failure to supervise sales of auction rate securities. North Carolina ordered that the Firm pay fines and costs totaling $18,088.

In November 2017, the State of Ohio and the Firm entered into a consent order for the Firm's failure to timely report a 2015 SEC action (described in Part III.D, *infra*) and a 2016 FINRA AWC. Ohio fined the Firm $500.

In June 2017, FINRA accepted an AWC from the Firm for violations of MSRB Rule G-23. The Firm consented to findings that it failed to disclose that it acted as placement agent for an issuer of municipal securities while it also acted as a financial adviser. FINRA censured the Firm and fined it $125,000.

In March 2017, the SEC issued an order finding that the Firm violated Section 206(4) of the Investment Advisers Act of 1940 ("the Advisers Act") and Rule 206(4)-7 thereunder, by failing to adopt or implement adequate policies and procedures to track and disclose trading away practices by certain sub-advisers participating in the Firm's wrap fee programs. The SEC found that the Firm failed to put in place policies and procedures to provide information to its clients or their financial advisers about the additional costs incurred when third party investment managers decided to execute trades through a broker-dealer other than the Firm. The SEC also found that the Firm's financial advisers did not consider the additional costs when assessing whether a sub-adviser wrap fee program was suitable for a specific client. The SEC ordered the Firm to cease and desist violating the Advisers Act and Rule 206(4)-7 thereunder, and fined it $300,000.[4]

D. Prior SEC Rule 19h-1 Notices

The Firm is also subject to statutory disqualification as the result of a June 2015 SEC order arising from the SEC's Municipalities Continuing Disclosure Cooperation Initiative. The Firm self-reported to the SEC its willful violations of Securities Act Section 17(a)(2) resulting from its failure to comply with its continuing disclosure obligations under Exchange Act Rule 15c2-12 in certain municipal securities offerings. The SEC ordered the Firm to cease and desist from committing or causing any violations and future violations of Securities Act Section 17(a)(2), pay a civil penalty of $500,000, and comply with various undertakings. The SEC acknowledged FINRA's SEC Rule 19h-1 notice in August 2015.

[4] The SEC noted that the Firm had undertaken, prior to the order's entry, to update its policies for tracking and disclosing trading away practices and costs in its wrap fee program and to develop related training for its financial advisers.

IV. The Firm's Proposed Continued Membership with FINRA and Proposed Supervisory Plan

The Firm seeks to continue its membership with FINRA notwithstanding the statutorily disqualifying Final Judgment. In support, the Firm represents that it has undertaken a number of remedial efforts to address the misconduct underlying the Final Judgment in an effort to ensure that such misconduct does not recur. The Firm also states that it no longer engages in transactions similar to those at issue in the Final Judgment, and represents that it ceased selling CDOs in 2008. It also states that Noack and the employees who were involved in the transactions underlying the Final Judgment are no longer associated with the Firm.

Additionally, the Firm represents that it has implemented enhanced controls and procedures in its Municipal Securities Group (f/k/a the Municipal Finance Department or Municipal Finance Group), in which the Firm's Public Finance Department is situated. The Firm represents that these enhanced controls and procedures, which were reviewed and approved by an independent consultant, bolstered its due diligence processes and risk management. The Firm also states that it created a Commitment Committee within its Public Finance Department to review the suitability of certain transactions and enforce enhanced requirements to approve such transactions.

To supplement these actions, the Firm has agreed to the following plan of supervision ("Supervision Plan") as a condition of its continued membership with FINRA:

1. On the anniversary date of the implementation of this Supervision Plan for a period of three years,[5] the Firm agrees to provide a certification to FINRA, in a form acceptable to FINRA, that Stifel has not sold or marketed CDOs to any school district nor has it, in its capacity as an investment adviser, recommended to any school district that it purchase a CDO. The Firm has updated its Public Finance Policies and Procedures to expressly prohibit its Public Finance Bankers from either marketing or selling CDOs to any state or local governmental entity or from providing any advice on CDOs to any state or local governmental entity. Stifel will certify that it has complied with the requirements of this paragraph and the additional requirements of this Supervision Plan, which are set forth below.

[5] The "anniversary date" is the date that the SEC acknowledges this Rule 19h-1 notice. Member Supervision has clarified that the Firm will make its first certification one year from the anniversary date, and will do so on each anniversary date for three years.

2. The Firm will conduct the following heightened reviews for certain transactions and engagements and the Firm's Compliance Department will maintain documentation of each review described below for ease of review during any FINRA examination:

    a. The Firm has a Public Finance Commitment Committee that reviews all negotiated underwritings and all competitive underwritings in excess of $25 million. For a period of three years, the Firm's Compliance Department will conduct a quarterly review to confirm that the Public Finance Committee has reviewed all negotiated underwritings and all competitive underwritings in excess of $25 million. The quarterly review shall be completed by the end of the month following the end of the quarterly review period.

    b. The Compliance Department will also, on no less than a quarterly basis for a period of three years, randomly select engagement letters for transactions requiring review in accordance with the Firm's Engagement Acceptance Committee process to determine whether the engagement letters were executed after that process was completed. The quarterly review shall be completed by the end of the month following the end of the quarterly review period.

    c. For a period of three years, the Firm's Compliance Department will conduct monthly compliance reviews of no less than five randomly selected school district transactions from Stifel's Municipal Securities Group (or all school district transactions if less than five (5) in a month) to determine compliance with applicable MSRB rules and the Firm's internal policies and procedures. In addition, on an annual basis, for a period of three years, the Firm's Supervisory Control Testing Group will review a random selection of these Compliance Departments monthly compliance reviews and will confirm that the reviews are conducted in a manner consistent with the Firm's policies and procedures and the requirements of this plan.

3. At least every two years, the Firm will require training, for all Public Finance Bankers who are members of the Municipal Securities Group, specifically addressing the following:

a. For all Stifel Public Finance Bankers registered with the SEC as municipal advisers, the MSRB rules applicable to municipal advisers as well as the applicable fiduciary duty provisions of the Exchange Act;

b. The principles of fair dealing under MSRB Rule G-17;

c. The statutes, rules and regulations applicable to various phases of a public finance transaction including solicitation, engagement, effecting the transaction, post pricing and post-closing; and

d. Compliance with due diligence obligations, including compliance with SEC Rule 15c2-12.

The Firm will maintain copies of the agenda for each training provided and will document attendance at such training. The Firm will segregate the agendas for ease of review during any FINRA examination.

4. The Firm will obtain written approval from FINRA Member Supervision before changing any provision of this Supervision Plan.

5. The Firm will provide FINRA with a copy of the certification referenced in paragraph 1, above, and all supporting documentation required. These documents must be sent directly to:

Anita Moore
Paralegal, Member Supervision Shared Services
FINRA
200 Liberty Street New York, NY 10281
anita.moore@finra.org

Following the approval of the Firm's continued membership in FINRA, Member Supervision represents that FINRA intends to utilize its examination and surveillance processes to assess the Firm's continued compliance with the standards prescribed by FINRA Rule 9523.

V. Discussion

Member Supervision recommends approving the Firm's request to continue its membership in FINRA. After carefully reviewing the entire record in this matter, we approve the Application.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, Sec. (3)(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the Final Judgment involved serious violations of securities rules and regulations. We note, however, that the violative conduct occurred in 2006, more than 12 years ago. We further note that the Firm represents that it no longer sells CDOs, and Noack has not been associated with the Firm since 2007. Further, the Final Judgment did not expel or suspend the Firm, did not require any undertakings or remedial measures, the SEC did not follow up the Final Judgment with further administrative action against the Firm, and the Firm made all payments required by the Final Judgement.[6]

Moreover, the Firm represents that it has independently undertaken remedial efforts intended to prevent future regulatory issues of the type addressed in the Final Judgment, including implementing enhanced controls and procedures in the Municipal Securities Group and bolstering its due diligence requirements and risk management. The Firm has also consented to a Supervision Plan that will help to ensure that misconduct similar to the misconduct underlying the Final Judgment does not recur.

We further find that although the Firm has recent regulatory history, the record shows that it has taken corrective actions to address the noted deficiencies. We agree with Member Supervision that the Firm's history should not prevent it from continuing as a FINRA member, and conclude that notwithstanding its regulatory history, the continued membership of the Firm is in the public interest and does not present an unreasonable risk of harm to the market or investors.

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[6] We have also considered that the SEC, in connection with the Final Judgment, granted the Firm a waiver of the disqualification provisions of the Securities Act (specifically, Securities Act Rule 506(d)(2)(ii) of Regulation D and Rule 262(b)(2) of Regulation A).

At this time, we are satisfied, based in part upon the Firm's representations, Member Supervision's representations concerning FINRA's future monitoring of the Firm, and the record currently before us, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the Firm's Application to continue its membership in FINRA as set forth herein.[7] In conformity with the provisions of Exchange Act Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the SEC, unless otherwise notified by the SEC.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

[7] FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with the following self-regulatory organizations and exchanges, which concur with the Firm's proposed continued membership: Investors' Exchange LLC; Cboe BZX Exchange; Cboe EDGA Exchange; Cboe EDGX Exchange; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market, LLC; NYSE Chicago, Inc.; NYSE American LLC; New York Stock Exchange LLC; and DTC, NSCC, and FICC.