

1 Division of Securities
Utah Department of Commerce
2 160 East 300 South
Box 146760
3 Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
4 FAX: (801) 530-6980

5
6 BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
7 OF THE STATE OF UTAH

8
9 IN THE MATTER OF:

10 **STIFEL, NICOLAUS & COMPANY,**
11 **INCORPORATED, CRD#793**
12 501 North Broadway
St. Louis, Missouri 63102

13 Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-10-0046

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15 The Utah Division of Securities ("Division"), by and through its Director of Licensing
16 and Compliance, Dave R. Hermansen, and the Respondent, Stifel, Nicolaus & Company,
17 Incorporated, hereby stipulate and agree as follows:

18 WHEREAS, Stifel, Nicolaus & Company, Incorporated ("Stifel") is a broker-dealer
19 registered in Utah, with its home office at 501 North Broadway St. Louis, Missouri 63106; and
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21 WHEREAS, a multistate task force led by the Enforcement Section of the Securities
22 Division of the Missouri Secretary of State (the "Enforcement Section") conducted an
23 investigation into Stifel's marketing and sale of auction rate securities to investors during the
24 period January 1, 2006, through February 14, 2008; and

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

1 investors; and

2 WHEREAS, Stifel elects to permanently waive any right to a hearing and appeal under
3 the Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code, with respect to
4 this Stipulation and Consent Order (the "Order"); and

5 WHEREAS, Stifel agrees that Stifel is not the prevailing party in this action and Stifel
6 elects to specifically forever release and hold harmless the Division and its representatives and
7 agents from any and all liability and claims arising out of, pertaining to, or relating to this matter;
8 and

9 WHEREAS, Stifel agrees not to take any action or to make or permit to be made any
10 public statement creating the impression that this Order is without a factual basis. Nothing in
11 this paragraph affects Stifel's: (a) testimonial obligations; (b) right to take legal or factual
12 positions in defense of litigation or in defense of other legal proceedings in which the Division is
13 not a party; or (c) right to make public statements that are factual;

14 NOW, THEREFORE, the Division hereby enters this Order.

15 **I.**

16 **FINDINGS OF FACT**

17 1. Stifel admits the jurisdiction of the Division for purposes of this Order, neither
18 admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and
19 consents to the entry of this Order by the Division.

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

24 3. At a Dutch auction, bidders generally state the number of ARS they wish to
25 purchase and the minimum interest rate they are willing to accept. Bids are ranked, from lowest
26 to highest, according to the minimum interest rate each bidder is willing to accept. The lowest

1 interest rate required to sell all of the ARS at auction, known as the “clearing rate,” becomes the
2 rate paid to all holders of that particular security until the next auction. The process is then
3 repeated, typically every seven, twenty-eight, or thirty-five days.

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

11 5. Beginning in February 2008, the ARS market experienced widespread failed
12 auctions.

13 6. Stifel and its Utah-registered securities agents (“Registered Agents”) sold ARS to
14 Utah residents.

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

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

20 9. A number of Registered Agents did not sufficiently understand, and therefore did
21 not adequately communicate to retail purchasers, the risks and features of ARS. As a result,
22 some retail investors who had purchased ARS from Stifel or its Registered Agents began to
23 submit complaints regarding these purchases.

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

25 10. Stifel failed to reasonably supervise its Registered Agents, which is grounds to
26 discipline Stifel under Section 61-1-6(2)(a)(ii)(J) of the Utah Uniform Securities Act (“Act”).

1 Stifel failed to provide reasonable supervision by failing to provide pertinent information and
2 comprehensive training to its Registered Agents and other sales and marketing staff regarding
3 ARS and the mechanics of the auction process.

4 **II.**

5 **CONCLUSIONS OF LAW**

6 11. The Division has jurisdiction over this matter pursuant to the Act.

7 12. The Division finds Stifel failed to reasonably supervise its Registered Agents in
8 Utah, and that this conduct constitutes grounds to discipline Stifel under Section 61-1-
9 6(2)(a)(ii)(J) of the Act.

10 13. The Division finds this Order and the following relief appropriate, in the public
11 interest, and consistent with the purposes intended by the Act.

12 **III.**

13 **ORDER**

14 On the basis of the Findings of Fact, Conclusions of Law, and Stifel's consent to the entry of
15 this Order,

16 **IT IS HEREBY ORDERED:**

17 1. This Order concludes the investigation by the Division and any other action that the
18 Division could commence under applicable Utah law on behalf of Utah as it relates to Stifel,
19 relating to the marketing and sale of auction rate securities. The Division shall refrain from
20 initiating any action against Stifel based upon or related to the conduct set forth in this order.
21 Specifically excluded from and not covered by this paragraph are any claims by the Division arising
22 from or relating to the Order provisions contained herein.

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

25 3. Stifel will CEASE AND DESIST from violating the Act and will comply with the
26 Act.

1 4. In accordance with the Consent Order entered against Stifel by the Missouri
2 Office of the Secretary of State dated January 22, 2010, Case No. Ap-10-05 (“Missouri Order”),
3 Stifel has or will retain, at its expense, an outside consultant (“Consultant”). The scope of
4 Consultant's work is to conduct a review and make written recommendations concerning Stifel’s
5 supervisory and compliance policies and procedures relating to the product review of
6 nonconventional investments and the training, marketing, and sale of nonconventional
7 investments by Stifel and its Registered Agents throughout Stifel's retail branch office system.
8 Stifel will receive a report prepared by the Consultant describing his or her recommendations and
9 Stifel will provide to the Enforcement Section a copy of such report. Stifel shall authorize the
10 Enforcement Section to share these written reports with the Division pursuant to Missouri law,
11 provided that such written reports are given confidential treatment and are treated as nonpublic,
12 nondisclosable records to the extent possible under Utah law.

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

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

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

23 a. January 2010 Repurchase

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

3 b. December 2010 Repurchase

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

8 c. 2010 Supplemental Repurchase

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

14 d. 2011 Repurchase

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

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

22 9. In accordance with the Missouri Order, Stifel shall, within fifteen (15) days of the
23 end of each calendar quarter following the execution of the Missouri Order, provide to the
24 Missouri Commissioner of Securities a written report describing and updating, in detail, all
25 repurchase/buyback, issuer redemption and investor arbitration claims related to Eligible ARS
26 that occur or continue to occur. Where applicable and in describing repurchase, redemption and

1 arbitration developments or occurrences, Stifel shall include investor or issuer names and state of
2 residence and amounts of repurchases, redemptions, and/or arbitration claims/awards. Missouri
3 shall be authorized to share these written reports with the Division pursuant to Missouri law,
4 provided that such written reports are given confidential treatment and are treated as nonpublic,
5 nondisclosable records to the extent possible under Utah law.

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

10 11. Within ten (10) calendar days following the entry of this Order, Stifel shall pay to
11 the state of Utah the sum of \$1,116.04, which amount constitutes Utah's allocated share of the
12 total settlement payment described in the preceding paragraph.

13 12. If Stifel defaults in any of its obligations set forth in this Order, the Division may
14 vacate this Order, at its sole discretion, upon ten (10) days notice to Stifel and without
15 opportunity for administrative hearing or may refer this matter for enforcement as provided in
16 Section 61-1-6 of the Act.

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

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

26 15. For any person or entity not a party to this Order, this Order does not limit or create

1 any private rights or remedies against Stifel including, without limitation, the use of any e-mails or
2 other documents of Stifel or of others for the marketing and sale of auction rate securities to
3 investors, limit or create liability of Stifel, or limit or create defenses of Stifel to any claims.

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

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

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

14 19. Stifel acknowledges that this Order, upon approval by the Utah Securities
15 Commission ("Commission") shall be the final compromise and settlement of this matter. Stifel
16 further acknowledges that if the Commission does not accept the terms of the Order, it shall be
17 deemed null and void and without any force or effect whatsoever.

18 20. This Order constitutes the entire agreement between the parties herein and
19 supersedes and cancels any and all prior negotiations, representations, understandings, or
20 agreements between the parties. There are no verbal agreements which modify, interpret,
21 construe, or otherwise affect this Order in any way.

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1 Dated this 1st day of June, 2010.

2 Utah Division of Securities

3 Date: June 1, 2010 

4 By: Dave R. Hermansen
5 Dave R. Hermansen
6 Director of Licensing and Compliance

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CONSENT TO ENTRY OF STIPULATION AND CONSENT ORDER BY STIFEL

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

Stifel admits the jurisdiction of the Division; neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Division as settlement of the issues contained in this Order.

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

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

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

Dated this 24th day of May, 2010.

Stifel, Nicolaus & Company, Incorporated

By: Scott B. McCueig
Title: PRESIDENT

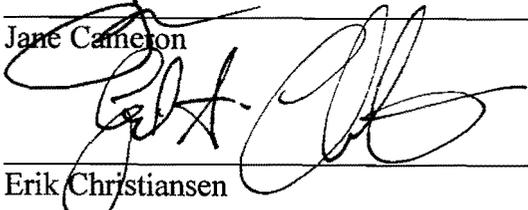
1 **BY THE UTAH SECURITIES COMMISSION:**

2 The foregoing Stipulation and Consent Order is hereby accepted, confirmed, and
3 entered by the Utah Securities Commission.
4

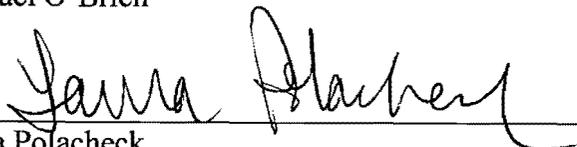
5 DATED this 24th day of June, 2010.
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8 _____
9 Tim Bangerter

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12 Jane Cameron

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15 Erik Christiansen

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18 Michael O'Brien

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21 Laura Polacheck
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Certificate of Service

I, Julie Price, certify that on the 1st day of July, 2010, I served the

foregoing Stipulation and Consent Order by mailing a copy to:

Sayler Ault Fleming
Bryan Cave LLP
One Metropolitan Square, Suite 3600
St. Louis, MO 63102

via e-mail: sayler.fleming@bryancave.com



Executive Secretary

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