UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101144 / September 24, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6722 / September 24, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22168

In the Matter of Stifel, Nicolaus & Company, Inc., Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) 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 pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Stifel, Nicolaus & Company, Inc. ("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 Sections 203(e) and 203(k) 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[1] that:

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers and registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the widespread and longstanding failure of Stifel's personnel, including at senior levels, to adhere to certain of these essential requirements and Stifel's own policies and procedures. Using their personal devices, these personnel communicated both internally and externally by text messages and/or other unapproved written communications platforms, such as WhatsApp ("off-channel communications").

3. From at least January 2020 (the "Relevant Period"), Stifel personnel sent and received off-channel communications that related to its broker-dealer business. Additionally, during the Relevant Period, Stifel personnel sent and received off-channel communications related to the investment adviser's receipt, disbursement or delivery of funds or securities. Stifel did not maintain or preserve the substantial majority of these written communications. Stifel's failure was firm-wide and involved personnel at various levels of authority. As a result, Stifel violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, and Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. Stifel's supervisors, who were responsible for supervising junior personnel, routinely communicated off-channel using their personal devices. In fact, senior personnel responsible for supervising junior personnel themselves failed to comply with Stifel's policies and procedures by communicating, through non-approved methods, on their personal devices about Respondent's business.

5. Stifel's widespread failure to implement its policies and procedures that prohibit such communications led to its failure to reasonably supervise its personnel within the meaning of Section 15(b)(4)(E) of the Exchange Act and Section 203(e)(6) of the Advisers Act.

6. During the Relevant Period, Stifel received and responded to Commission subpoenas for documents and records requests in various Commission investigations. As a result, Stifel's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

7. The Commission staff uncovered Stifel's misconduct after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers and registered investment advisers. Stifel has initiated a review of its recordkeeping failures and begun a program of remediation. As set forth in the Undertakings below, Stifel will retain an independent compliance consultant to review and assess Stifel's remedial steps relating to its recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondent

8. Stifel, Nicolaus & Company, Inc. is a Delaware corporation with its principal office in St. Louis, Missouri. Stifel has been registered with the Commission as a broker-dealer since 1936 and as an investment adviser since 1975.

Recordkeeping Requirements Under the Exchange Act and Advisers Act

9. Section 17(a)(1) of the Exchange Act and Section 204 of the Advisers Act authorize the Commission to issue rules requiring, respectively, broker-dealers and investment advisers, to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors, or, with respect to the Exchange Act, otherwise in furtherance of the purposes of the Exchange Act.

10. The Commission adopted Rule 17a-4 under the Exchange Act and Rule 204-2 under the Advisers Act pursuant to this authority. These rules specify the manner and length of time that the records made in accordance with Commission rules, and certain other records made by broker-dealers or investment advisers, must be maintained and produced promptly to Commission representatives.

11. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve for at least three years, the first two years in an easily accessible place, originals of all communications received and copies of all communications sent relating to the broker-dealer's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

12. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

13. The rules adopted under Section 204 of the Advisers Act, including Rule 204-2(a)(7), require that investment advisers preserve for at least five years in an easily accessible place, the first two years in an appropriate office of the investment adviser, originals of all written communications received and copies of all written communications sent relating to, among other

things: (a) any recommendation made or proposed to be made and any advice given or proposed to be given; (b) any receipt, disbursement or delivery of funds or securities; (c) the placing or execution of any order to purchase or sell any security; or (d) predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

Respondent's Policies and Procedures

14. Stifel maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

15. Stifel's personnel were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats or text messaging applications for business purposes, or forward work-related communications to unapproved applications on their personal devices.

16. Messages sent through firm-approved communications methods were monitored, subject to review, and archived. Messages sent through unapproved communications methods, such as WhatsApp or other unapproved applications on personal devices, were not monitored, subject to review or archived.

17. Stifel conducted trainings for its personnel, which were designed to address the firm's supervision of its personnel and adherence to Stifel's books and recordkeeping requirements. The policies and related trainings notified personnel that electronic communications on approved platforms were subject to surveillance by Stifel. Stifel had procedures for all personnel, including supervisors, requiring annual self-attestations of compliance.

18. Stifel failed to implement a system reasonably expected to determine whether all personnel, including supervisors, were following Stifel's policies and procedures. While permitting personnel to use approved communications methods for business communications, Stifel failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

Respondent's Recordkeeping Failures Across the Brokerage and Investment Advisory Businesses

19. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether registrants were properly retaining business-related messages sent and received on personal devices. Stifel cooperated with the investigation by voluntarily interviewing a sampling of senior personnel from Stifel, and gathering and reviewing messages found on the individuals' personal devices. These personnel included senior leadership, such as managing directors and desk heads.

20. The Commission staff's investigation uncovered pervasive off-channel communications at various seniority levels within Stifel. The investigation determined that

nearly all broker-dealer and investment adviser personnel sampled had engaged in at least some level of off-channel communications that were records required to be preserved by Stifel under the Exchange Act and/or Advisers Act.

21. Overall, Stifel personnel sent and received numerous off-channel communications, involving other personnel, Stifel's brokerage customers, and/or other participants in the securities industry. Within Stifel, significant numbers of executives and heads of desks participated in off-channel communications.

22. During the Relevant Period, Stifel personnel sent and received off-channel messages that concerned its broker-dealer business.

23. For example, a Stifel desk head exchanged numerous off-channel business-related text messages with at least 15 Stifel colleagues and about 10 brokerage customers, investors, or other market participants. Within Stifel, the desk head communicated with managing directors, global heads, and a junior employee under their supervision. These messages related to the broker-dealer's business as such.

24. In addition, an executive within Stifel exchanged numerous off-channel business-related text messages with six Stifel colleagues and one brokerage customer, investor, or other market participant. Within Stifel, the individual communicated with financial advisors and a global head. These messages related to the broker-dealer's business as such.

25. During the Relevant Period, Stifel personnel also sent and received off-channel text messages subject to the recordkeeping requirements of Advisers Act Rule 204-2 because they related to the investment adviser's receipt, disbursement, or delivery of funds or securities.

26. For example, in several off-channel text message exchanges, different Stifel investment adviser representatives communicated with colleagues concerning the receipt of funds from clients.

Respondent's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

27. During the Relevant Period, Stifel received and responded to Commission subpoenas for documents and records requests in various Commission investigations. By failing to maintain and preserve required records relating to its broker-dealer and investment adviser businesses, Stifel likely deprived the Commission of these off-channel communications in various investigations.

<u>Respondent's Violations and Failure to Supervise</u>

28. As a result of the conduct described above, Stifel willfully[2] violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

29. As a result of the conduct described above, Stifel failed reasonably to supervise its personnel with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

30. As a result of the conduct described above, Stifel willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

31. As a result of the conduct described above, Stifel failed reasonably to supervise its personnel with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

<u>Respondent's Efforts to Comply</u>

32. In determining to accept the Offers, the Commission considered steps promptly undertaken and cooperation afforded the Commission staff by Stifel. Prior to and after being approached by the Commission Staff, Stifel enhanced its policies and procedures, increased training concerning the use of approved communications methods, and began implementing significant changes to the technology available to personnel. This included providing some of its personnel with firm-issued devices or other firm-approved applications, thereby making approved channels more readily available.

<u>Undertakings</u>

Respondent has undertaken to:

33. <u>Independent Compliance Consultant</u>.

a. Respondent shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by Respondent.

b. Respondent will oversee the work of the Compliance Consultant.

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[2] "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.'" *See 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)).

c. Respondent shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. Respondent shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

i. A comprehensive review of Respondent's supervisory, compliance, and other policies and procedures designed to ensure that Respondent's electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.

ii. A comprehensive review of training conducted by Respondent to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that Respondent's personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

iii. An assessment of the surveillance program measures implemented by Respondent to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

iv. An assessment of the technological solutions that Respondent has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that Respondent personnel will use the technological solutions going forward and a review of the measures employed by Respondent to track employee usage of new technological solutions.

v. An assessment of the measures used by Respondent to prevent the use of unauthorized communications methods for business communications by personnel. This assessment should include, but not be limited to, a review of Respondent's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (*e.g.*, trading floor restrictions).

vi. A review of Respondent's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Respondent's overall communications surveillance program.

vii. A comprehensive review of the framework adopted by Respondent to address instances of non-compliance by Respondent's personnel with

Respondent's policies and procedures concerning the use of Personal Devices to communicate about firm business in the past. This review shall include a survey of how Respondent determined which personnel failed to comply with Respondent's policies and procedures, the corrective action carried out, an evaluation of who violated the policies and procedures and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

d. Respondent shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs 33.c.i. through c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to Respondent and to the Commission staff (the "Report"). Respondent shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to Respondent's policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to Respondent's policies and procedures.

e. Respondent shall adopt all recommendations contained in the Report within ninety (90) days of the date of the Report; provided, however, that within forty-five (45) days after the date of the Report, Respondent shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that Respondent considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers unduly burdensome, impractical, or inappropriate, Respondent need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning Respondent's policies or procedures on which Respondent and the Compliance Consultant do not agree, Respondent and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Respondent and the Compliance Consultant, Respondent shall require that the Compliance Consultant inform Respondent and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Respondent shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Respondent and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Respondent shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. Respondent shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of Respondent's files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. Respondent shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. Respondent shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two (2) years from completion of the engagement, Respondent shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents.

j. The Report by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

34. One-Year Evaluation. Respondent shall require the Compliance Consultant to assess Respondent's program for the preservation, as required under the federal securities laws, of electronic communications, including those found on Personal Devices, commencing one year after submitting the Report required by Paragraph 33.d above. Respondent shall require this review to evaluate Respondent's progress in the areas described in Paragraphs 33.c.i-vii above. After this review, Respondent shall require the Compliance Consultant to submit a report (the "One Year Report") to Respondent and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Respondent's respective policies and procedures with regard to the preservation of electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

35. Reporting Discipline Imposed. For two (2) years following the entry of this Order, Respondent shall notify the Commission staff as follows upon the imposition of any discipline imposed by Respondent, including, but not limited to: written warnings; loss of any pay, bonus, or incentive compensation; or the termination of personnel; with respect to any employee found to have violated Respondent's respective policies and procedures concerning the preservation of electronic communications, including those found on Personal Devices: at least forty-eight (48) hours before the filing of a Form U5, or within ten (10) days of the imposition of other discipline.

36. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, Respondent will also have its Internal Audit function conduct a separate audit(s) to assess Respondent's progress in the areas described in Paragraphs 33.c.i-vii above. After completion of this audit(s), Respondent shall ensure that Internal Audit submits a report to Respondent and to the Commission staff.

37. Recordkeeping. Stifel shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

38. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

39. Certification. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Alison R. Levine, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY, 10004-2616, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

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

A. Stifel shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

B. Stifel shall cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

C. Respondent is censured.

D. Respondent shall comply with the undertakings enumerated in paragraphs 33 to 39 above.

E. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $35,000,000 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 as the 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 Thomas P. Smith, Jr., Associate Regional Director, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

F. The amount ordered to be paid as a civil money penalty pursuant to this Order shall be treated as a penalty 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