IN THE CIRCUIT COURT OF FRANKLIN COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. Secretary of State ROBIN CARNAHAN and the Missouri Attorney General, Plaintiff, v. STIFEL, NICOLAUS & COMPANY, INCORPORATED; STIFEL FINANCIAL CORPORATION; JOSEPH SULLIVAN; ED POTH; JEFFREY S. COHEN; PAUL D. HEFLEY; ROBERT W. BECKMANN, JR.; PHILLIP A. HAMILTON; JOHN H. RUSSELL; TRICIA BRASE; CARINA SHEMONIA; CHRISTOPHER M. JOHNSON; RODOWE W. FADEM; RICHARD J. CHAPPUIS, JR.; ELLEN JOY LISS; MANUEL A. PALAN; JEFFREY W. BRUMMET; and STEVEN L. GOLDBERG, Defendants.	Case No. 09AB-CC00075 Division No.________ FILED MAR 12 2009 BILL D. MILLER, Circuit Clerk FRANKLIN COUNTY MISSOURI By________ D.C.

PETITION FOR INJUNCTION AND OTHER RELIEF

Secretary of State Robin Carnahan and the duly appointed Commissioner of Securities, Matthew D. Kitzi, bring an action by the State of Missouri, Plaintiff, against Stifel, Nicolaus & Company, Incorporated ("Stifel"), and Stifel Financial Corp. ("Stifel Financial"), and Stifel's individual managers and registered agents for violating the Missouri Securities Act of 2003 ("Securities Act") and 15 CSR 30-50.101 et seq. (the "Regulations"). The Attorney General represents the State of Missouri in this action and further brings an action for violations of the Missouri Merchandising Practices Act ("MMPA").

I. PARTIES

1. The State of Missouri, pursuant to the authorization of Secretary of State Robin Carnahan, under Section 409.6-601(a), RSMo. (Cum. Supp. 2008),[1] and the Commissioner of Securities under Section 409.6-603, RSMo., brings this action for violations of the Securities Act. The Attorney General appears on behalf of the State of Missouri pursuant to Section 409.6-601(b), RSMo., and brings an additional claim of violations of the MMPA pursuant to Section 407.020, RSMo.

2. Stifel is a Missouri corporation headquartered in St. Louis, Missouri, and may be served by serving its registered agent at CT Corporation System, 120 S. Central Avenue, Clayton, Missouri 63105.

3. Stifel Financial is a Missouri corporation headquartered in St. Louis, Missouri, and may be served by serving its registered agent at CT Corporation System, 120 S. Central Avenue, Clayton, Missouri 63105.

4. At all times relevant to this petition, Stifel was registered pursuant to the Securities Act as a broker-dealer and investment adviser. Stifel is registered in Missouri through the Central Registration Depository System ("CRD"), maintained by the Financial Industry Regulatory Authority ("FINRA") under CRD Number 793. Since 1983, Stifel has conducted its full service brokerage business in Missouri through its registered representatives, who must also be registered as agents in Missouri.

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[1] All statutory references used herein refer to the 2008 Cumulative Supplement, unless indicated otherwise. There have been no changes to the statutes cited herein since the adoption of The Missouri Securities Act of 2003.

5. Joseph Sullivan ("Sullivan") is a Missouri-registered representative of Legg Mason Investor Services, LLC with a business address of 100 Light Street, Baltimore, Maryland 21202. Sullivan is registered in Missouri through the CRD with number 872969. Sullivan was with Stifel from January 1, 2005 to September 22, 2008, as the Executive Vice President of Fixed Income Capital Markets.

6. Ed Poth ("Poth") is a Missouri-registered representative of Stifel, with a business address of 501 North Broadway, St. Louis, Missouri 63102. Poth is registered in Missouri through the CRD with number 1243209. Poth is the Director of Retail Municipal Trading at Stifel.

7. Jeffrey S. Cohen ("Cohen") is a Missouri-registered representative of Stifel with a business address of 600 East 96th Street, Suite 575, Indianapolis, Indiana, 46240. Cohen is registered in Missouri through the CRD with number 2846669.

8. Paul D. Hefley ("Hefley") is a Missouri-registered representative of Stifel, with a business address of 100 S. Bishop, Suite A, Rolla, Missouri 65401. Hefley is registered in Missouri through the CRD with number 2275265, and branch office manager for Stifel.

9. Robert W. Beckmann, Jr. ("Beckmann") is a Missouri-registered representative of and branch office manager for Stifel, with a business address of 500 Chesterfield Center, Suite 250, Chesterfield, Missouri 63017. Beckmann's CRD number is 1685426.

10. Philip A. Hamilton ("Hamilton") is a Missouri-registered representative of and branch office manager for Stifel, with a business address of 1001 S. Kirkwood Road, Suite 130, Kirkwood, Missouri 63122. Hamilton's CRD number is 2257268.

11. John H. Russell ("Russell") is a Missouri-registered representative of and branch office manager for Stifel, with a business address of 8182 Maryland Avenue, Clayton, Missouri

63105. Russell is registered in Missouri through the CRD with number 728702.

12. Trisha Brase ("Brase") is a Missouri-registered representative of Stifel, with a business address of 501 North Broadway St. Louis, Missouri 63102. Brase's CRD number is 4963810. Brase is a trader for Retail Municipal Trading at Stifel.

13. Carina Shemonia ("Shemonia") is a Missouri-registered representative of Stifel, with a business address of 501 North Broadway, St. Louis, Missouri 63102. Shemonia's CRD number is 1068955. Shemonia is a trader for Retail Municipal Trading at Stifel.

14. Christopher M. Johnson ("Johnson") is a Missouri-registered representative of Stifel, with a business address of 800 West 47th Street, Plaza Center Bldg., Suite 600, Kansas City, Missouri 64112. Johnson is registered in Missouri through the CRD with number 1080876.

15. Rodowe W. Fadem ("Fadem") was a Missouri-registered representative of Stifel. Fadem is currently a registered representative of Oppenheimer & Co. Inc. Fadem has a current business address of One North Brentwood Blvd. Suite 600 St. Louis, Missouri 63105. Fadem is registered in Missouri through the CRD with number 203660.

16. Richard J. Chappuis, Jr. ("Chappuis") was a Missouri-registered representative of Stifel. Chappuis is currently a registered representative of Raymond James & Associates, Inc. Chappuis has a current business address of 120 South Central Avenue, Suite 1420, St. Louis, Missouri 63105. Chappuis is registered in Missouri through the CRD with number 2199980.

17. Ellen Joy Liss ("Liss") is a Missouri-registered representative of Stifel. Liss has a business address 8182 Maryland Avenue, First Floor, Clayton, Missouri 63105. Liss is registered in Missouri through the CRD with number 2920052.

18. Manuel A. Palan ("Palan") is a Missouri-registered representative of Stifel. Palan has a current business address of 8182 Maryland Avenue, 10th Floor, Clayton, Missouri 63105.

Palan is registered in Missouri through the CRD with number 1310889.

19. Jeffrey W. Brummet ("Brummet") is a Missouri-registered representative of Stifel, with a business address of 100 S. Bishop, Suite A, Rolla, Missouri 65401. Brummet is registered in Missouri through the CRD with number 1817181.

20. Steven L. Goldberg ("Goldberg") is a Missouri-registered representative of Stifel, with a business address of 8182 Maryland Avenue, Clayton, Missouri 63105. Goldberg's CRD number is 2443858.

21. For the purposes of this petition, Defendants Cohen, Hefley, Beckman, Hamilton, Russell, Johnson, Fadem, Chappuis, Liss, Palan, Brummet, Goldberg and other un-named Missouri-registered representatives of Stifel are referred to as "Retail Agents."

II. JURISDICTION

22. The Circuit Court has subject matter jurisdiction of the Plaintiff's claim pursuant to Section 409.6-603, RSMo., which provides:

> (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act, the commissioner may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.
>
> (b) In an action under this section and on a proper showing, the court may:
>
> > (1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
> >
> > (2) Order other appropriate or ancillary relief, which may include:

(A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the commissioner, for the defendant or the defendant's assets;

(B) Ordering the commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) Imposing a civil penalty up to ten thousand dollars for a single violation or up to one million dollars for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act;

(D) Ordering the payment of prejudgment and post-judgment interest; and

(E) Ordering the payment to the investor education and protection fund of an amount equal to ten percent of the total rescission, restitution, or disgorgement ordered, or such other amount as awarded by the court; or

(3) Order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this act.

23. The Circuit Court has subject matter jurisdiction of the Plaintiff's claim pursuant to Section 407.100, RSMo. (2000), which provides:

1. Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, the attorney general may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be

unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court, in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including, but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured. Such funds may or may not be interest-bearing accounts, but any interest which accrues to any such account shall be sent at least annually by the attorney general to the director of revenue to be deposited in the state treasury to the credit of the state general revenue fund.

5. The court, in its discretion, may appoint a receiver to ensure the conformance to any orders issued under subsection 3 of this section or to ensure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.

III. VENUE

24. Venue is proper in the Circuit Court of Franklin County, Missouri, because some of the violations alleged herein accrued in Franklin County, Missouri.

IV. ALLEGATIONS COMMON TO ALL COUNTS

A. Background on Auction Rate Securities

25. Auction rate securities are long-term bonds issued by municipalities, corporations, and student loan companies, or preferred shares issued by closed-end mutual funds, with variable interest rates that reset through a bidding process known as a Dutch auction.

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

27. While auction rate securities are all long-term instruments, one significant feature is the interest/dividend reset through periodic auctions. If an auction is successful (i.e., there are enough buyers for every auction rate security being offered for sale at the auction), investors are able to exit their positions at the auction.

28. If, however, auctions "fail" (i.e., there are not enough buyers for every auction rate security being offered for sale), investors are required to hold all or some of their auction rate securities until the next successful auction in order to sell their securities.

29. As discussed above, the liquidity of an auction rate security relies on the successful operation of the Dutch auction process. When the auctions fail, investors may be unable to sell their auction rate securities.

30. When first marketed in the 1980s, investments in auction rate securities were limited to sophisticated institutional investors, with required minimums of $250,000 or more.

31. In the 1990s, issuers and underwriters lowered the minimum investment to $25,000, enabling sellers to market auction rate securities to retail investors including individuals, charities, and small businesses.

B. Stifel's Recommendation and Sale of Auction Rate Securities

32. Stifel and its Retail Agents, with the knowledge of Stifel Financial, began selling

auction rate securities to its customers in the early 1990s.

33. On numerous occasions, Stifel was involved as an underwriter and/or acted as a co-manager in auction rate securities offerings.

34. Stifel was aware that auction rate securities were complex investments that carried the risk of auction failure.

35. Stifel was compensated for underwriting, co-managing, and selling auction rate securities.

C. Stifel Retail Agents' Lack of Training with Regard to Auction Rate Securities

36. At all times relevant to this petition, Stifel was required by federal and state securities regulators to educate their Retail Agents with regard to the products Stifel offered or sold, including auction rate securities.

37. Additionally, FINRA required Stifel to educate its Retail Agents as to auction rate securities.[2]

38. Even though its Retail Agents were offering auction rate securities to retail investors, Stifel did not train those Retail Agents regarding the risks, features, and suitability of auction rate securities.

D. Stifel's Recommendations to Individual Investors

39. Stifel's Retail Agents recommended auction rate securities as safe and/or liquid investments.

40. Stifel's Retail Agents compared auction rate securities to cash, certificates of deposit, or money market accounts.

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[2] As a registered broker-dealer, Stifel must comply with the rules of FINRA, the largest nongovernmental regulatory body of all securities firms in the United States of America. (FINRA was formerly known as the National Association of Securities Dealers ("NASD").

41. Some of the comparisons that Stifel's Retail Agents made include the following:

a. "money market equivalents";

b. "safe as money markets";

c. "just like money markets";

d. "same as money markets";

e. "a type of money-market";

f. "cash equivalents";

g. "as good as cash";

h. "just like cash";

i. "same as cash";

j. "safe as cash";

k. "100% liquid";

l. "weekly CDs with one-week maturities";

m. "weekly, 3-month, 6-month, 1-year, 3-year, or 5-year CDs with better interest rates than through a bank";

n. "100% safe";

o. "completely safe";

p. "very safe";

q. "risk free"; and

r. "completely insured by the [Securities Investor Protection Corporation[3]]."

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[3] The Securities Investor Protection Corporation is a congressionally-established nonprofit corporation that provides insurance to member brokers for loss of the broker's customers' securities or cash in the event of the broker's failure. SIPC *does not* insure against market risks.

E. Trading Desk's Role in Stifel's Auction Rate Securities Sales

42. Stifel Retail Agents could not place their auction rate securities buy and sell orders without going through a trader on the Municipal Bond Trading Desk.

43. At all times relevant, Shemonia or Brase were the auction rate securities traders on the Municipal Bond Trading Desk.

44. Stifel Retail Agents contacted Shemonia or Brase in order to place a buy order for an auction rate security and they processed those orders.

45. Shemonia or Brase frequently decided for the Stifel Retail Agents which available auction rate securities to purchase for the customer.

F. Defendants' Untrue Statements and Omissions to Their Customers

46. When recommending and selling auction rate securities to some of their customers, Stifel Retail Agents made untrue statements regarding auction rate securities' safety and liquidity, and in comparisons to money markets, cash and certificates of deposit.

47. When recommending and selling auction rate securities to some of their customers as safe and/or liquid, and in making comparisons to money markets, cash and certificates of deposit, Stifel's Retail Agents omitted to state to those customers that there was the potential for auction failure, which would result in either temporary—if the next auction was successful—or permanent illiquidity of the security.

G. Decline of the Auction Rate Securities Market

48. In 2006, the United States Securities and Exchange Commission sanctioned fifteen broker-dealers for various violations of securities laws in association with their participation in auction rate securities auctions.

49. Due to a 2007 required change in accounting treatment of auction rate securities,

corporate interest in auction rate securities began to wane.

50. In early to mid-2007, as demand for auction rate securities declined, broker-dealers found it necessary to place support bids in an increasing number of auctions in order to prevent an auction failure.

51. By increasing their support bids in the auction, many broker-dealers' auction rates securities inventory also began to increase. Some broker-dealers' inventory became so high that they became reluctant to provide support bids in the auctions they were managing.

52. In August 2007, the credit crisis and other deteriorating market conditions further strained the auction rate securities market.

53. Despite the declining auction rate securities market, Stifel continued to sell auction rate securities to their customers as safe and/or liquid securities.

H. The 2008 Failure of the Auction Rate Securities Market

54. In late 2007 and early 2008, many broker-dealers refused to place further support bids for auction rate securities, causing sporadic failed auctions.

55. During this same period, demand for auction rate securities continued to erode.

56. Stifel was aware of the deteriorating conditions surrounding the auction rate securities market and failed to inform its retail customers.

57. On or about February 13, 2008, broker-dealers stopped supporting the auctions; without these support bids, most of the auctions collapsed.

I. Complaints to the Secretary of State's Securities Division

58. In early March 2008, Stifel customers, unable to liquidate their auction rate securities, began to submit complaints to the Secretary of State's office.

59. Since March 2008, the Secretary of State's office has received over forty

complaints from Stifel customers.

60. The illiquidity of the auction rate securities has impacted the ability of some customers to access money for:

a. health care:

b. children's education;

c. retirement and savings;

d. home purchase;

e. daily living expenses;

f. business expenses; and

g. small business expansion.

61. Approximately one thousand two hundred customers – including Missouri complainants – are unable to access $180 million in auction rate securities sold to them by the Defendants.

V. ALLEGATIONS OF STATUTORY VIOLATIONS

COUNT 1
(Section 409.5-501(2) – Making Untrue Statements in Securities Sales)

62. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 61 above as though fully set forth herein.

63. Section 409.5-501, RSMo, provides that "[i]t is unlawful for a person in connection with the offer, sale, or purchase of a security, directly or indirectly: ...(2) [t]o make an untrue statement of a material fact."

64. Defendants violated Section 409.5-501, RSMo., when, in connection with the offer, sale, or purchase of auction rate securities, Defendants made untrue statements of material facts to customers regarding auction rate securities' liquidity and safety, and in comparisons to

money markets, cash and certificates of deposit.

65. On a number occasions, Defendants engaged in acts, practices, and courses of business that materially aided others in violating Section 409.5-501, RSMo, by making untrue statements of material fact to customers.

COUNT 2

(Section 409.5-501(2) – Statements Made Misleading by Omissions in Securities Sales)

66. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 61 above as though fully set forth herein.

67. Section 409.5-501, RSMo, provides that "[i]t is unlawful for a person in connection with the offer, sale, or purchase of a security, directly or indirectly: ...(2) ... to omit to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it is made, not misleading."

68. On numerous occasions, Defendants violated Section 409.5-501, RSMo, in connection with the offer, sale or purchase of auction rate securities, by omitting to state material facts, including, but not limited to those pertaining to the potential for auction failure and the risk of illiquidity, which were necessary to make statements made to customers, in light of the circumstances under which they were made, not misleading.

69. On numerous occasions, Defendants engaged in acts, practices and courses of business that materially aided others in violating Section 409.5-501, RSMo, by omitting material facts, which made the statements, in light of the circumstances under which they were made, not misleading.

COUNT 3

(Section 409.5-501(3) – Acts, Practices, and Courses of Business Operating as Fraud and Deceit in Securities Sales)

70. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 61 above as though fully set forth herein.

71. Section 409.5-501, RSMo, provides that "[i]t is unlawful for a person in connection with the offer, sale, or purchase of a security, directly or indirectly: ...(3) ... [t]o engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person."

72. Defendants violated Section 409.5-501, RSMo, in connection with the offer, sale and purchase of auction rate securities, by engaging in acts, practices and courses of business that operated and would operate as a fraud and deceit upon their customers, in that, Defendants made misleading statements, recommended securities with a risk of illiquidity to customers whose objectives included liquidity, and failed to adequately train and supervise the Retail Agents.

73. Defendants engaged in acts, practices and courses of business that materially aided others in violating Section 409.5-501, RSMo, by engaging in acts, practices and courses of business that operate and would operate as a fraud and deceit upon customers.

COUNT 4

(Section 407.020 – Deception, Misrepresentation, Unfair Practice and Omissions)

74. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 61 above as though fully set forth herein.

75. Section 407.020.1, RSMo, provides that:

> The act, use or employment by any person of any deception, fraud,

> false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce, ...in or from the state of Missouri, is declared to be an unlawful practice.

76. Defendants, on numerous occasions, violated Section 407.020.1, RSMo, in connection with the sale of auction rate securities, by using deception, misrepresentation, unfair practice and the omission of material facts regarding auction rate securities' liquidity and safety, and in comparisons to money markets, cash and certificates of deposit.

PRAYER FOR RELIEF

WHEREFORE, the State of Missouri through its attorney general prays that this Court:

1. Issue a judgment declaring that Defendants have violated Sections 409.5-501 and Section 407.020, RSMo.;

2. Grant an order of permanent injunction restraining and enjoining the Defendants and their officers, agents, servants, employees, attorneys and those in active concert or participation with it who receive actual notice from, directly or indirectly, engaging in violations of Sections 409.5-501 and 407.020, RSMo., or engaging in acts, practices or courses of business that materially aid in violations of Section 409.5-501;

3. Issue an order requiring the Defendants pay restitution, plus interest, to all auction rate securities purchasers aggrieved by the violations of Sections 409.5-501 and 407.020, RSMo.;

4. Issue an order requiring Defendants disgorge all commissions, fees, remuneration, or profits received from the sale of auction rate securities, or any services performed as an underwriter, manager or participant in the auction process of such securities involved in the violations of Section 409.5-501, RSMo.;

5. Impose a civil penalty of $10,000 per violation upon any Defendant found to have violated Section 409.5-501, RSMo., up to a civil penalty of $1,000,000 per Defendant;

6. Order payment by each Defendant to the Investor Education and Protection Fund, in an amount equal to ten percent of the amount of rescission, restitution and disgorgement ordered, or such other amount as determined by the Court;

7. Order payment by each Defendant to the Merchandising Practices Revolving Fund of an amount equal to ten percent of the amount of restitution ordered, or such other amount as determined by the Court;

8. Order payment by each Defendant of an amount equal to the Plaintiff's costs of investigation and prosecution.

9. Such further relief as the Court deems just, proper, and necessary in this action.

Respectfully submitted,

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