

State of Missouri
Office of Secretary of State

Case No. AP-07-49

IN THE MATTER OF:

GIRARD AUGUSTUS MUNSCH, JR, CRD 342851

Respondent.

Serve at:

Stifel, Nicolaus & Company, Incorporated
501 North Broadway
St. Louis, Missouri 63102

CONSENT ORDER

SUMMARY OF ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division (“Division”) alleges that Girard Augustus Munsch, Jr. (“Munsch”) engaged in dishonest and unethical practices by making unsuitable recommendations in customers’ accounts in violation of Section 409.4-412(d), RSMo. (Cum. Supp. 2006).
2. Munsch and the Division desire to settle the allegations and the matters raised by the Division relating to Munsch’s alleged activities.

CONSENT TO JURISDICTION

3. Munsch and the Division stipulate and agree that the Commissioner has jurisdiction over Munsch and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Munsch and the Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2006), which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

WAIVER AND EXCEPTION

5. Munsch waives his right to a hearing with respect to this matter.
6. Munsch waives any right that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order. Munsch specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Munsch stipulates and agrees with the Division that, should the facts contained herein prove to be false or incomplete, the Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER’S ORDER

8. Munsch and the Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Munsch neither admits nor denies the allegations made by the Division but consents to the Commissioner’s Findings of Fact and Conclusions of Law as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
10. Munsch agrees not to take any action or to make or permit to be made any public statement creating the impression that this Consent Order is without a factual basis.
11. Munsch agrees that Munsch is not the prevailing party in this action since the parties have reached a good faith settlement.

**COMMISSIONER’S FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER**

I FINDINGS OF FACT

12. Munsch is a Missouri-registered agent employed by Stifel, Nicolaus & Company, Inc. ("Stifel"). Munsch is registered in Missouri through the Central Registration Depository System ("CRD") with CRD number of 342851. Munsch has a business address of 501 North Broadway, St. Louis, Missouri 63102.
13. Stifel is a Missouri-registered broker-dealer. Stifel has been registered in Missouri through the CRD since 1983, with CRD number 793, and an address of 501 North Broadway, St. Louis, Missouri 63102.

A. Missouri Residents

1. Missouri Resident 1

14. On or around July 2001, an investment account was opened at Stifel for an eighty-one (81) year-old Missouri Resident ("MR1"). Munsch was the agent designated on this account.
15. The Stifel New Account Form ("NAF") dated July 24, 2001, for MR1 reflected that MR1 was a Domestic Engineer had an investment objective of "Income." In addition, among other things, the NAF reflected that:
 - a. MR1 had an annual income under \$25,000;
 - b. MR1 had previously traded equities and bonds for 20 years;
 - c. MR1 had liquid assets between \$50,000 and \$100,000; and
 - d. MR1 had a net worth between \$100,000 and \$250,000.
16. On September 30, 2004, an Update of Client Account Information ("Account Update") form was completed by or caused to be completed by Munsch. MR1 was eighty-four (84) years-old at the time of this update. The financial information remained the same, but her investment objective was changed to "Growth and Income." The Account Update was sent to MR1 by Stifel. The Account Update asked MR1 to note discrepancies, if any, in the Account Update and bring them to Stifel's attention. Stifel's records indicate MR1 did not note any discrepancies.
17. On May 17, 2005, a second Account Update form was completed by or caused to be completed by Munsch. The form reflected MR1's investment objective again as "Growth and Income". Her annual income had increased to between \$50,000 and \$99,999 and her net worth increased to between \$500,000 and \$999,999. This Account Update was also sent to MR1 by Stifel and also asked MR1 to note discrepancies, if any, in the Account Update and bring them to Stifel's attention. Stifel's records indicate MR1 did not note any discrepancies.
18. Account statements and trade confirmations provided by Stifel show that during 2004, Munsch recommended sixty-two (62) trades in MR1's account, turning over her entire equities portfolio three times, generating commissions of fifteen thousand, four hundred and ninety-eight dollars (\$15,498.00).
19. During 2005, Munsch recommended ninety-one (91) trades in MR1's account, generating commissions of twenty-one thousand, eight hundred five dollars (\$21,805.00).
20. During 2006, Munsch recommended one hundred and nine (109) trades in MR1's account, generating commissions of twenty-six thousand, five hundred fifty-eight dollars (\$26,558.00).
21. During a phone interview between MR1 and an investigator with the Division, MR1 stated that she met Munsch at a senior center presentation. MR1 stated that she was not aware of the amount of commissions Munsch made on each trade.
22. The vast majority of the commissions paid by MR1 were disclosed on the trade confirmations that were sent to her by Stifel.
23. From approximately October 2004 forward, the Stifel monthly account statements received by MR1 indicated on the first page of the statements that the account's primary investment objective was growth and income. The term "growth & income" was defined on the first page of the account statement. Stifel's records indicate MR1 did not contact Munsch or Stifel upon receipt of her account statements to change the account's primary investment objective.
24. On November 23, 2005 and January 12, 2006, Munsch's branch manager corresponded in writing with MR1 concerning her Stifel account. The branch manager's letters indicated, among other things, the level of activity in MR1's Stifel account, as well as the account's primary investment objectives. MR1 signed the January 12, 2006 letter and returned it to Stifel. The letter also provided MR1 with the opportunity to inform Stifel of any changes in MR1's circumstances which would lead to a change in MR1's investment objectives. Stifel's records indicate MR1 did not inform Stifel of any changes in her circumstances such that her investment objectives remained growth and income.
25. Munsch was deposed by Division Attorneys on March 15, 2007. During the deposition Munsch stated, in part, the following:
 - a. He could not recall why he made the number trades he made in MR1's account; [\[1\]](#)

- b. On various trades, he was the only one that benefited from the transaction; [2]
 - c. MR1 always approved of suggestions Munsch made in regard to trading in her account; [3]
 - d. MR1 did not at any time tell him not to proceed with a particular trade; [4] and
 - e. MR1's Stifel account was her "extra money." [5]
26. During the deposition, Munsch described one specific trade in MR1's account. He explained that the reason he recommended that MR1 sell the stock was due to the volatility of the stock. When asked if a volatile stock was suitable for an eighty-seven (87) year old, he responded, "Probably not...Overall, it was not a good recommendation for her." [6]

2. Missouri Resident 2

27. On February 1, 2000, an investment account was opened at Stifel for a seventy-two (72) year-old Missouri Resident ("MR2"). Munsch was the agent designated on this account.
28. A Stifel NAF for MR2 reflected, in part, the following information:
- a. MR2 had an annual income between \$25,000 and \$50,000;
 - b. MR2 had previously traded equities and bonds for 18 years;
 - c. MR2 had liquid assets between \$50,000 and \$100,000; and
 - d. MR2 had a net worth between \$250,000 and \$500,000.
29. The NAF reflected that MR2 was a retired teacher with an investment objective of "Income."
30. On September 30, 2004, an Account Update form was completed by or caused to be completed by Munsch on MR2. This form reflected a change in the primary investment objective from "Income" to "Growth and Income." The Account Update was sent to MR2 by Stifel. The Account Update asked MR2 to note discrepancies, if any, in the Account Update and bring them to Stifel's attention. Stifel's records indicate MR2 did not note any discrepancies.
31. A review of account statements and trade confirmations showed that in 2004 Munsch performed fifty (50) trades in MR2's account, generating commissions of thirteen thousand, five hundred eight dollars (\$13,508.00).
32. During 2005, nine (9) trades were performed in MR2's account, generating commissions of two thousand, sixteen dollars (\$2,016.00).
33. During 2006, sixty-three (63) trades were performed by Munsch, generating commissions of sixteen thousand, eight hundred sixty-five dollars (\$16,865.00).
34. From approximately October 2004 forward, the Stifel monthly account statements sent to MR2 indicated on the first page of the statements that the account's primary investment objective was growth and income. The term "growth & income" was defined on the first page of the account statement. Stifel's records indicate MR2 did not contact Munsch or Stifel upon receipt of her account statements to change the account's primary investment objective.
35. On August 15, 2005, Munsch's branch manager corresponded in writing with MR2 concerning her Stifel account. The branch manager's letter indicated, among other things, the level of activity in MR2's Stifel account, as well as the account's primary investment objectives. The letter was not returned to Stifel by MR2. Stifel's records indicate MR2 did not contact Stifel to discuss the letter, dispute its contents or change the account's primary investment objective.
36. On June 27, 2007, a phone interview was conducted by a Division investigator with MR2. During that interview, MR2 stated, among other things, that:
- a. her goal for the money was to supplement her retirement income;
 - b. she specifically told Munsch that she did not want any "high risk stocks;"
 - c. she wanted to keep the money in mutual funds;
 - d. Munsch would call her prior to making a trade in her account;
 - e. she received trade confirmations reflecting the commissions charged;
 - f. she never called Munsch to request a trade; and
 - g. Munsch never discussed tax implications of these trades with MR2.

37. During the deposition, Munsch was asked about MR2. He stated, among other things, that:
- a. it did not concern him that he was the only one who benefited on some of MR2's trade transactions; [7]
 - b. MR2 was probably not a sophisticated investor; [8]
 - c. he solicited all of the trades in MR2's account; [9]
 - d. MR2 always accepted his recommendations. [10]

3. Missouri Resident 3

MR3's Non-IRA

38. On October 30, 1997 a new account was opened at Stifel for a fifty-three (53) year-old Missouri Resident ("MR3"). Munsch was the agent designated on this account
39. At that time, the Stifel NAF reflected, in part, that MR3 was a teacher and that MR3's primary investment objective was "Safety." MR3's secondary investment objective was "Income." This NAF also reflected the following information:
- a. MR3 had an annual income between \$25,000 and \$50,000;
 - b. MR3 had liquid assets between \$250,000 and \$500,000;
 - c. MR3 had a net worth between \$250,000 and \$500,000; and
 - d. MR3 had twenty years of previous experience trading equities and bonds.
40. On September 6, 2002, an updated NAF was completed or caused to be completed by Munsch. The updated NAF changed the account's primary investment objective to growth and income.
41. From approximately September 2002 forward, the Stifel monthly account statements sent to MR3 indicated on the first page of the statement that the account's primary investment objective was growth and income. The term "growth & income" was defined on the first page of the account statement. Stifel's records indicate MR3 did not contact Munsch or Stifel upon receipt of her account statements to change the account's primary investment objective.
42. On June 21, 2004 an Account Update form was completed or caused to be completed by Munsch on MR3's non-IRA account. The Account Update indicated, among other things, that the account's primary investment objective was "Growth and Income." The Account Update was sent to MR3 by Stifel. The Account Update asked MR3 to note discrepancies, if any, in the Account Update and bring them to Stifel's attention. Stifel's records indicate MR3 did not note any discrepancies.
43. A review of account statements and trade confirmations reflected that in 2004, Munsch performed thirteen (13) trades in MR3's non-IRA account, generating commissions of two thousand, five hundred eighty-six dollars (\$2,586.00).
44. In 2005, Munsch performed nineteen (19) trades in MR3's non-IRA account, generating commissions of three thousand, seventy-eight dollars (\$3,078.00).
45. In 2006, Munsch performed thirty-seven (37) trades in MR3's non-IRA account, generating commissions of eight thousand, four hundred sixty-one dollars (\$8,461.00).

MR3's IRA

46. On January 6, 2003, an IRA for MR3 was opened at Stifel. Munsch was the agent designated on this account. The NAF reflected that MR3 was a teaching assistant and that MR3's investment objective was "Growth and Income." In addition, this NAF reflected, in part, the following information:
- a. MR3's annual income was between \$25,000 and \$50,000;
 - b. MR3 had liquid assets between \$25,000 and \$50,000;
 - c. MR3's net worth was between \$500,000 and \$999,999; and
 - d. MR3 had five years of previous experience trading equities and bonds.
47. On or about January 6, 2003, Stifel sent MR3 a Client Account Information Summary. This summary is consistent with the NAF in that the summary indicates the account's primary investment objective is growth and income. The summary asked MR3 to note discrepancies, if any, in the summary and bring them to Stifel's attention. Stifel's records indicate MR3 did not note any discrepancies.

48. On June 21, 2004, an Account Update was completed by or caused to be completed by Munsch. The Account Update indicated, among other things, that the account's primary investment objective was "Growth and Income." The Account Update was sent to MR3 by Stifel. The Account Update asked MR3 to note discrepancies, if any, in the Account Update and bring them to Stifel's attention. Stifel's records indicate MR3 did not note any discrepancies.
49. A review of MR3's IRA account reflected eighteen (18) trades in 2004, generating commissions of two thousand, three hundred seventy-four dollars (\$2,374.00).
50. The vast majority of the commissions paid by MR3 were disclosed on the trade confirmations sent to her by Stifel.
51. In 2005, Munsch performed thirty-eight (38) trades in MR3's IRA account, generating commissions of seven thousand, one hundred eighty-six dollars (\$7,186.00).
52. In 2006, Munsch performed forty-five (45) trades in MR3's IRA account, generating commissions of eight thousand, six hundred eighty-two dollars (\$8,682.00).
53. On June 13, 2007 a Division investigator interviewed MR3. MR3 stated, among other things, that:
 - a. she was not a sophisticated investor;
 - b. Munsch did not discuss the risks associated with investing in the stock market;
 - c. she was not aware how much Munsch was paid to handle her account;
 - d. Munsch would call her home when she was at work and leave a voice mail message on her phone telling her that he was conducting a trade in her account and to call him back if she had any questions;
 - e. she never requested a trade herself; and
 - f. Munsch never discussed with her the tax implications of her trades.
54. During the Deposition, Munsch was asked by a Division attorney what he thought it meant to have "Safety" as MR3's primary investment objective. He responded by saying, "she doesn't want to take unnecessary risks and that she would prefer to have bonds, long-term bonds and short-term bonds in CD's."[\[11\]](#)
55. When asked if he believed MR3 was a sophisticated investor, Munsch responded by saying, "Oh, she's okay. Not real sophisticated. No."[\[12\]](#)
56. Munsch said during the Deposition that he would give MR3 the pluses and minuses of a particular stock and then she would decide to buy or sell, but all trades were solicited by him.[\[13\]](#)

B. Additional Investigative Information

57. From August 1999 until December 2000, Munsch was placed on heightened supervision due to a customer complaint of unauthorized trading.
58. Again in March 2003 and until March 2004, Munsch was placed on heightened supervision by Stifel due to a customer complaint of unsuitable investments. As part of this heightened supervision, Munsch was required to maintain a phone log of all calls to his clients for manager review, and send three to five (3-5) letters to clients per month for six (6) months.
59. Munsch was asked by Division Attorneys during the deposition why most of his clients would have the same investment objective of "Growth" or "Growth and Income." He stated in response, "...if somebody wants "Safety," they might as well buy a CD. We sell them, but we are not as competitive as the banks. Regarding accounts with a primary investment objective of speculation, Munsch stated: "I don't like to speculate, so I don't solicit that kind of account."[\[14\]](#)
60. Munsch indicated in the deposition that he was required to maintain a phone log.[\[15\]](#) He stated that he was not provided any guidance about how he was expected to maintain the phone log.[\[16\]](#) Munsch stated his supervisor never asked Munsch if the phone log was complete and never discussed the statements made in the phone log with him.[\[17\]](#)
61. The phone log that Munsch kept did not reflect a complete log of the trades that Munsch was making in client accounts.
62. Stifel compensated their agents based on a monthly gross production. The first eight thousand dollars (\$8,000.00) of monthly gross production received a twenty-five percent (25%) payout percentage. All gross monthly production above eight thousand dollars (\$8,000.00) received a fifty percent (50%) payout.
63. In addition to the monthly commissions, a bonus could be achieved at the end of each fiscal/calendar year if the gross annual production was above two hundred fifty thousand dollars (\$250,000.00). The agent would then receive an additional one and one half percent (1.5%) with an annual cap of seven thousand, five hundred dollars (\$7,500.00).

64. Munsch provided gifts to his customers. These gifts were not disclosed to Munsch's supervisor at Stifel, in violation of firm policy. These gifts included, but were not limited to, the following:
- a. fruitcakes;
 - b. flowers;
 - c. tickets to events; and
 - d. use of his timeshare in Florida.
65. Evidence received by the Division during the course of its investigation indicates that from at least 2004 until early 2007, Munsch:
- a. made unsuitable trades in elderly customers accounts; and
 - b. provided gifts to his customers that were not disclosed to his employing firm.

II. CONCLUSIONS OF LAW

66. These acts constitute dishonest or unethical practices under Missouri 15 CSR 30-51.170 and grounds to deny, suspend or revoke registration or bar or censure any registrant pursuant to Section 409.4-412(d) RSMo. (Cum. Supp. 2006).
67. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Securities Division, finds and concludes that the Commissioner has jurisdiction over this Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended this act. See Section 409.6-605(b) RSMo. (Cum. Supp. 2006).

ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Munsch is prohibited from engaging in dishonest or unethical practices in the securities business in violation of Section 409.4-412, RSMo. (Cum. Supp. 2006).
2. Munsch's registration in Missouri as a securities agent is hereby **SUSPENDED** for twenty-one (21) days. This suspension will be served from December 19, 2007 to January 10, 2008.
3. For a period of four (4) years from the date of this Order, Munsch will be under special supervision by his branch office manager at his employing firm. This special supervision will include, among other things, the following:
 - a. Munsch is required to personally meet with any client of his that is over the age of 60. Another Stifel employee, who reports directly to the branch manager, will be present at all these meetings. The purpose of these meetings is to speak with the client about the client's investment needs and goals, and to complete an asset allocation analysis. These asset allocation analyses will be reviewed by the branch office manager and will be retained at the branch;
 - b. These asset allocations will be used by Munsch when deciding whether to recommend a particular security to a client;
 - c. Should Munsch not meet with a client over the age of 60 within 3 months, the client's account(s) will be restricted to liquidations only (no purchases allowed) until a meeting has taken place and an allocation analysis has been completed and reviewed by the branch manager;
 - d. The branch manager or his designee will pre-approve each purchase and sale Munsch places for a client regardless of the client's age; and
 - e. Each trade Munsch wishes to place will be evaluated by having Munsch fill out a required template (attached as Exhibit 1) and promptly presenting it to the branch manager or his designee for review. The branch manager or his designee will then access the transaction and either approve or reject the transaction. These forms will be retained in the branch for periodic review by the Compliance Department.
4. For a period of four (4) years from the date of this Order, Munsch will:
 - a. not have discretionary authority over any client account;
 - b. not participate in any sales contests; and
 - c. not provide any gifts to any clients.
5. Munsch will pay the Investor Education and Protection Fund the sum of fifty thousand dollars (\$50,000.00). Munsch will

make this amount payable to the Missouri Secretary of State's Investor Education and Protection Fund and will deliver these funds to the Division and the Division shall forward these funds to the Investor Education and Protection Fund. This amount shall be due and payable within ten days of the effective date of this order.

6. Munsch will pay the Investor Restitution Fund the sum of fifty thousand dollars (\$50,000.00). Munsch will make this amount payable to the Missouri Secretary of State's Investor Restitution Fund, and will deliver these funds to the Division and the Division shall forward these funds to the Investor Restitution Fund to be paid to the investors identified in Exhibit 2, and in the amounts as stated in that Exhibit. This amount shall be due and payable within ten days of the effective date of this order.
7. Munsch shall pay five thousand, seven hundred dollars (\$5,700.00) as the cost of this investigation. Munsch will make this amount payable to the Missouri Secretary of State's Investor Education and Protection Fund and will deliver these funds to the Division and the Division shall forward these funds to the Investor Education and Protection Fund. This amount shall be due and payable within ten days of the effective date of this order.
8. Munsch shall pay his own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 14TH DAY OF DECEMBER, 2007.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:

Katie Whitman
Deputy Chief Counsel
Missouri Securities Division

Mary S. Hosmer
Assistant Commissioner of Securities
Missouri Securities Division

Girard Augustus Munsch, Jr.

Approved as to Form

Jeffrey S. Jamieson, Attorney for Respondent

[\[1\]](#) Deposition pg. 103.

[\[2\]](#) Deposition pg. 107.

[\[3\]](#) Deposition pg. 109.

[\[4\]](#) Deposition pg. 109.

[\[5\]](#) Deposition pg. 111.

[\[6\]](#) Deposition pg. 106.

[\[7\]](#) Deposition pg. 91.

[\[8\]](#) Deposition pg. 94.

[\[9\]](#) Deposition pg. 94.

[\[10\]](#) Deposition pgs. 94-95.

[\[11\]](#) Deposition pgs. 97-98.

[\[12\]](#) Deposition pg 101.

[\[13\]](#) Deposition pgs 101-102.

[\[14\]](#) Deposition pg 97.

[\[15\]](#) Deposition pg. 15.

[\[16\]](#) Deposition pg. 68.

[\[17\]](#) Deposition pg. 68-69.