

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20050002356-01

TO: Department of Market Regulation
NASD

RE: Oppenheimer & Co. Inc., Respondent
Broker-Dealer
CRD No. 249

Pursuant to Rule 9216 of NASD Code of Procedure, Oppenheimer & Co. Inc. ("OPCO") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against OPCO alleging violations based on the same factual findings.

OPCO understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against OPCO; and
3. If accepted:
 - a. this AWC will become part of OPCO's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against OPCO;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about OPCO's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

- d. OPCO may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects OPCO's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

OPCO also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

OPCO has been a member of NASD since March 22, 1945 and its registration remains effective. OPCO was censured and fined \$32,500 on May 17, 2005 for violations of NASD Marketplace Rule 5220(e) (\$5,000); NASD Conduct Rules 2110 and 3010 (\$7,500), NASD Conduct Rule 3370 (\$5,000), SEC Rule 10a-1 (\$5,000), SEC Rule 10b-10 (\$5,000) and SEC Rules 17a-3 and 17a-4 and NASD Conduct Rule 3110 (\$5,000).

I.

WAIVER OF PROCEDURAL RIGHTS

OPCO specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against OPCO;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, OPCO specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

OPCO further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

In connection with 20050002356, the staff of NASD's Department of Market Regulation (the "staff") conducted a review of OPCO's compliance with the rules requiring ITS/CAES Market Makers to maintain two-sided quotations during the period January 1, 2004 through June 30, 2004 (the "review period").

- A. OPCO hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:
1. During the review period OPCO was registered with NASD as an ITS/CAES Market Maker, as the term is defined in NASD Marketplace Rule 5210(e), in each security in which it made a market in ITS.
 2. During the review period, OPCO failed in 21 instances to maintain continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the NASD.
 3. The conduct described in paragraph two constitutes separate and distinct violations of NASD Marketplace Rule 5220(e).
 4. During the review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning maintaining two-sided quotations as an ITS/CAES Market Maker. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) identification of the person(s) responsible for supervision with respect to the applicable rules; and (2) a statement of the supervisory step(s) to be taken by the identified person(s).
 5. The conduct described in paragraph four constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. OPCO also consents to the imposition, at a maximum, of the following sanctions:

A censure and fine of \$17,500 (\$7,500 for NASD Marketplace Rule 5220(e) violations and \$10,000 for supervision) and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph four. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph four; and, (3) the date the revised procedures were implemented.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. OPCO understands that OPCO may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. OPCO understands that OPCO may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. OPCO agrees to pay any monetary sanctions imposed on OPCO upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which OPCO proposes to pay any fine imposed.
- C. OPCO specifically and voluntarily waives any right to claim that OPCO is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

OPCO certifies that OPCO has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce OPCO to submit it.

4/28/06
Date

Respondent
Oppenheimer & Co. Inc.

By: Allen Cox
Name: ALLEN COX
Title: VICE PRES
OTC TRADING

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by NASD:

6/30/06
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President & Deputy
Department of Market Regulation

Signed on behalf of the Director of
ODA, by delegated authority

Corrective Action: [This Corrective Action is submitted by the Respondent. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.]

1. Starting in March 2004, OPCO (along with other NASDAQ firms) converted Listed trading to SuperMontage. This allowed traders' quotes to automatically refresh at a preset level (\$0.01 for the bid and two times the inside offer for the offer). Therefore, this eliminates the risk that a trader does not see the execution and fails to update quote since the Nasdaq systems will automatically update the trader's quote.
2. Starting on July 30, 2004, the desk implemented a daily review, prior to the open, to scroll through the list of market making stocks to ensure OPCO had a two-sided quote. In addition, the list of market making stocks is linked to a Bloomberg function that alerts the traders to pending dividends. This reduces the risk that Nasdaq has deleted the firm's quote without the traders subsequently updating a quote in a timely manner. This procedure was implemented July 31, 2004.
3. Written supervisory procedures were implementing this review on March 31, 2005. The Department's OTC Trading Policies and Procedures were updated in January 2006. See attached.
4. Meetings were held with the traders to stress the importance of reviewing the quotes prior to the open.
5. These corrective steps above, were communicated to the NASD on September 16, 2005 in a response to a follow up letter from the NASD.
6. OPCO's previous trading system (Sungard's UMA) did not provide an automatic alert or pop up when a trader does not have a two sided quote. However, Sungard's new trading system, U2, does highlight stocks in which the trader does not have a two-sided quote. While this is not a "pop-up" alert, the trader can scroll through a list that highlights in red any stock in which OPCO does not have a quote. The list must be maintained and periodically reconciled to the desks database. The Listed traders were converted to the U2 on April 21, 2006.