

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050017145-01**

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REGISTRATION & DISCLOSURE

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: **Oppenheimer & Co. Inc.** Respondent
Broker/Dealer
CRD Number 249

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

I.

ACCEPTANCE AND CONSENT

- A. The firm 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Oppenheimer & Co. Inc. has been a member of FINRA (formerly NASD) since March of 1945, and its registration remains in effect. The firm has the following relevant disciplinary history:

- On May 17, 2005, an AWC became final in which the firm was censured and fined \$32,500 for violations of NASD Rules 2110, 3010, 3110, 3370, and 5220(e), and SEC Rules 10a-1, 10b-10, 17a-3 and 17a-4.
- On December 23, 2003, an AWC became final in which the firm was censured and fined \$4,500 for violations of NASD Rules 3110, 3370, 6130(d), and 6620, and SEC Rule 17a-3.

SUMMARY

In connection with 20050017145, the Market Regulation Department staff (the "staff") conducted a comparison of information reported to the Order Audit Trail System ("OATS") and the Trade Reporting Facility, formerly Nasdaq Market Center, during the period January 1, 2005 through March 31, 2005.

In connection with 20060051044, the staff conducted a review of the firm's compliance with Regulation SHO during the period January 1, 2006 through March 31, 2006 ("the review period").

FACTS AND VIOLATIVE CONDUCT

20050017145

1. During the period January 1, 2005 through March 31, 2005, the firm executed 13 short sale transactions and failed to report each of these transactions to the Trade Reporting Facility, formerly the Nasdaq Market Center, with a short sale modifier. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130.
2. During the period January 1, 2005 through March 31, 2005, the firm, on nine occasions, accepted a short sale order in an equity security from another person, or effected a short sale in an equity security for its own account, without (1) borrowing the security, or entering into a bona-fide arrangement to borrow the security; or (2) reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (3) documenting compliance with SEC Rule 203 (b)(1) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(1) of Regulation SHO.

20060051044

3. The firm had a fail to deliver position in Advance Nanotech, Inc. ("AVNA"), a threshold security, at a registered clearing agency for 13 consecutive settlement days as of March 3, 2006, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity. The firm continued to have a fail to deliver position, which it failed to close out as required, in AVNA at the registered clearing agency for each consecutive settlement day thereafter through March 15, 2006. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3).

4. The firm had a fail to deliver position in mPhase Technologies, Inc. ("XDSL"), a threshold security, at a registered clearing agency for 13 consecutive settlement days as of March 9, 2006, and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity. The firm continued to have a fail to deliver position, which it failed to close out as required, in XDSL at the registered clearing agency for each consecutive settlement day thereafter through March 27, 2006. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3).

B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$25,000 (comprised of a \$5,000 fine for the trade reporting violations; and a \$20,000 fine for the Reg. SHO violations).

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm 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.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. The firm 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. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it 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 FINRA, nor does it reflect the views of FINRA or its staff.

The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

4/1/08
Date

Oppenheimer & Co. Inc.

By: John T. McGuire

Name: JOHN T. MCGUIRE

Title: Deputy General Counsel

Reviewed by:

John T. McGuire
Counsel for Respondent

Accepted by FINRA:

4/11/08
Date

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

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