

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006004863601**

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

RE: E. Magnus Oppenheim & Co., Inc., Respondent
CRD No. 14268

E. Magnus Oppenheim, Respondent
CRD No. 353111

Pursuant to NASD Rule 9216 of FINRA Code of Procedure, Respondents E. Magnus Oppenheim & Co., Inc. and E. Magnus Oppenheim submit 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, FINRA will not bring any future actions against Respondents alleging violations based on the same factual findings.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the allegations or 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

E. Magnus Oppenheim & Co., Inc. ("EMO"), which has its place of business in New York, New York, has been a member of FINRA (f/k/a National Association of Securities Dealers or NASD) since 1983. EMO is a small firm with fewer than five registered individuals. EMO has no prior relevant disciplinary history.

E. Magnus Oppenheim entered the securities industry in 1960. He was first registered with FINRA (f/k/a National Association of Securities Dealers or NASD) as a General Securities Representative, General Securities Principal and Financial and Operations Principal of EMO in December 1983. At all times relevant to this AWC, Oppenheim

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was the President, Chief Executive Officer, Chief Compliance Officer, and sole owner of EMO. Oppenheim has no prior relevant disciplinary history.

OVERVIEW

This matter involves violations of NASD Conduct Rule 2110, through violation of Section 5 of the Securities Act of 1933, as well as NASD Conduct Rules 2210(d)(1)(A) and 2110. Between January 2001 and December 2006 (the "relevant period"), EMO and Oppenheim published material on EMO's website, www.emagnus.com, regarding purported benefits and advantages of investing in an unregistered private limited partnership called the E.M.O. Sterling Return LT Fund, L.P. (the "Sterling Fund"). No sales of interests in the Sterling Fund were made through the website. However, the material published on EMO's website during the relevant period regarding the Sterling Fund constituted a general solicitation of investors, which violates NASD Conduct Rule 2110 through violation of Section 5 of the Securities Act of 1933.

During the relevant period, EMO and Oppenheim discussed the purported benefits and advantages of investing in the Sterling Fund on EMO's website without providing a balanced disclosure of risks associated with that investment. EMO and Oppenheim also posted advertising material on the website that did not provide a sound basis for evaluating the facts regarding an investment in the Sterling Fund. Such conduct violates NASD Conduct Rules 2210(d)(1)(A) and 2110.

VIOLATIVE CONDUCT BY RESPONDENTS

1. Violation of NASD Conduct Rule 2110, by virtue of violating Section 5 of the Securities Act of 1933

The Sterling Fund was established in 1994 as an unregistered private limited partnership. EMO, which is also a registered investment advisor, is the investment advisor to the Sterling Fund, and E. Magnus Oppenheim Asset Management Inc., an affiliate of EMO, is the general partner. During the relevant period, EMO offered interests in the Sterling Fund to investors through a Confidential Memorandum (the "LP Memorandum"), which indicates that Sterling is a private limited partnership that is not, and does not intend to become, registered under the Investment Company Act of 1940. The LP Memorandum further states that the Sterling Fund will not be sold through a public offering and that "[n]o offering literature or advertising in whatever form shall be employed in the offering of the interests except for this memorandum, or statements contained herein."

During the relevant period, EMO's website was publicly accessible and was not password-protected. During that time, EMO's website contained several pages of information regarding the Sterling Fund, including: (1) a list of purported "advantages and benefits" of investing in the Sterling Fund; (2) a chart representing the "track record" of the Sterling Fund over various time periods in comparison with major stock market indices; and (3) an annual letter to investors discussing the past performance and future prospects of the Sterling Fund. Oppenheim created and approved all material placed on EMO's website during the relevant period, including the information regarding the Sterling Fund.

EMO and Oppenheim did not register the Sterling Fund with the Securities and Exchange Commission and instead relied upon the exemption from registration contained in Rule 506 of Regulation D. General solicitation or advertising is prohibited in private offerings under Rule 506. However, by posting information regarding the benefits and advantages of investing in the Sterling Fund on EMO's unrestricted website and thereby allowing all members of the public to have access to those materials, EMO and Oppenheim engaged in a general solicitation of investors for the Sterling Fund, in violation of Regulation D, Rule 502(c). As a result of having been the subject of a general solicitation, the offering of the Sterling Fund failed to comply with the requirements of the registration exemption set forth in Regulation D, Rule 506, and the offerings violated Section 5 of the Securities Act of 1933. In or about December 2006, EMO deleted references to the Sterling Fund from its website.

By virtue of their violation of Section 5 of the Securities Act of 1933, EMO and Oppenheim violated NASD Conduct Rule 2110.

2. Violation of NASD Conduct Rules 2210(d)(1)(A) and 2110

During the relevant period, EMO and Oppenheim posted promotional material on EMO's website regarding the Sterling Fund that violated NASD Conduct Rules 2210(d)(1)(A) and 2110. EMO's website discussed purported advantages and benefits of investing in the Sterling Fund without disclosure of any of the risks associated with the investment.

In addition, the LP Memorandum disclosed limitations and restrictions with respect to Sterling that were not disclosed on EMO's website during the relevant period. For example, the LP Memorandum states that because the Sterling Fund "is suitable only for sophisticated investors who have no need for liquidity in this investment," limited partners are prohibited from withdrawing funds for one year following their initial investment, and after the first year withdrawals can only be made on a quarterly basis after sixty days written notice. These limitations and restrictions were not disclosed

on EMO's website during the relevant period. During a portion of the relevant period, EMO and Oppenheim also did not disclose on EMO's website that investment in the Sterling Fund was speculative and subject to market loss and involved a high degree of risk.

From 2004 through 2006, EMO and Oppenheim claimed on EMO's website that the Sterling Fund "grew over 30%, outperforming eleven (11) major investment firms during the 2001-2003 period." The website then compared a performance figure for the Sterling Fund to performance figures supposedly obtained for investors by eleven other firms and the returns obtained by the S&P 500. However, EMO and Oppenheim failed to disclose that the performance figures for the other firms were drawn from a contest sponsored by an investment research firm that asked participants to choose a basket of recommended investments and then charted the hypothetical performance of each firm's recommendations. The comparison of the Sterling Fund's historical performance as an actively managed fund to the performance of theoretical portfolios involving unspecified criteria did not provide a sound basis for evaluating the facts underlying the comparison.

By virtue of the foregoing, EMO and Oppenheim violated NASD Conduct Rules 2210(d)(1)(A) and 2110.

B. EMO consents to the imposition of the following sanctions:

1. A censure;
2. A fine in the amount of \$17,500¹; and
3. An undertaking to file with FINRA's Advertising Regulation Department, within sixty (60) days of the effective date of this AWC, all sales literature and advertisements, including but not limited to annual or semi-annual client letters, print ads, performance updates and website content, that the firm is currently using on the date of acceptance by the NAC of this AWC (the "filed materials"). The firm agrees that, upon receipt of comments from FINRA on any of the filed materials, unless notified otherwise by FINRA, EMO shall take all reasonable steps to withhold or cause to be withheld such material from further publication until the changes specified by FINRA have been made,

¹ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

and such material will be revised and re-filed prior to any use, unless otherwise agreed to by FINRA staff in its sole discretion.

Oppenheim consents to the imposition of the following sanctions:

1. A censure;
2. A fine in the amount of \$10,000; and
3. Within 90 days of the effective date of this AWC, Oppenheim shall have completed 6 hours of Continuing Education relating to compliance with FINRA Rules and federal securities laws regarding advertising and/or use of the internet in connection with offerings of securities.

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

Respondents agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Each Respondent has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive any right to claim bias or prejudice 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.

Respondents further specifically and voluntarily waive 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

Respondents understand 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondents' disciplinary records;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - 4. Respondents 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 allegation in this AWC or creating the impression that the AWC is without factual basis. Respondents 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 Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statements that are 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.

Respondents certify that they have read and understand all of the provisions of this AWC and have 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 Respondents to submit it.

E. Magnus Oppenheim & Co., Inc.

Date: October 31, 2007

By: [Signature]
Name: E. Magnus Oppenheim
Title: President

Date: October 31, 2007

[Signature]
E. Magnus Oppenheim

Reviewed by:

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Accepted by FINRA:

12/16/07
Date

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

Thomas B. Lawson

Thomas B. Lawson

Chief Counsel

FINRA Department of Enforcement

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