

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060057396-01**

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REGISTRATION & DISCLOSURE

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

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

Pursuant to 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

The firm has been a member of FINRA since March 22, 1945, and its registration remains in effect. The firm has no relevant prior disciplinary history.

SUMMARY

In Review No. 20060057396, the Trading and Market Making Surveillance staff of FINRA ("the staff") conducted a Trading and Market Making Surveillance Examination ("TMMS Examination") of the firm, which included a review of the items set forth on Exhibit No. 1, for the trade dates June 7 and 8, 2006.

In Review No. 20070092499, the staff conducted an annual TMMS Examination of the firm, which included a review of the items set forth on Exhibit No. 2, for the trade dates June 4 and 5, 2007.

VIOLATIVE CONDUCT BY RESPONDENT

In connection with Review No. 20060057396:

1. During the review period, the firm failed on 19 occasions to provide written notification disclosing to its customer its correct capacity in the transaction. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

In connection with Review No. 20070092499:

2. During the review period, the firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data for 18 transactions. Specifically, the firm reported 18 riskless principal orders to OATS without using the correct reporting exception code. These inaccurate reports represented 36 percent of the sample of reports that the firm transmitted to OATS on the trade date(s) reviewed in the TMMS examination. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. For the month of April 2007, the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect order information for three orders entered on the trade date(s) reviewed in the TMMS examination. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.

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

A **censure**, a **fine** of \$12,500 (consisting of \$5,000 for the OATS reporting violations; \$5,000 for the SEC Rule 605 violations; and \$2,500 for the customer confirmation violations).

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments 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 the firm is unable to pay, now or at any time hereafter, the monetary sanctions 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 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.

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, pursuant to FINRA 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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. The firm understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent may not deny the findings 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 a duly authorized officer has read and understood 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.

8/26/08
Date

Oppenheimer & Co. Inc.

By: Allan R. Cox

Name: ALLAN R. COX

Title: EXECUTIVE DIRECTOR

Reviewed by:

[Signature]
Counsel for Respondent
ALLEN D. HOLTMAN
CHIEF COMPLIANCE OFFICER

Accepted by FINRA:

9/23/08
Date

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

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

Exhibit #1

Scope of the Trading and Market Making Surveillance Examination OPCO - 20060057396

NASD staff reviewed the following samples during the examination:

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
239	customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade dates June 7 to June 8, 2006
263	customer and proprietary sales, for compliance with NASD Rule 6130,	from trade dates June 7 to June 8, 2006
0	short sales in NNM and CQS securities, for compliance with NASD Rule 3350 (Bid Test) and SEC Rule 10a-1 (Tick Test),	from trade dates June 7 to June 8, 2006
50	cancelled trades for compliance with NASD Rules 3110, 4632(g), 4642(g), 4652(g), 6420(f), and 6620(f) and SEC Rule 17a-3(a)(6) and (a)(7),	from trade dates June 7 to June 8, 2006
90	Limit/Market orders executed as principal or riskless principal capacity, for compliance with NASD Rules 2110 (and IM-2110-2), 2111 6440, 6541 and 2320, and SEC Rules 11Ac1-1, 11Ac1-4, NASD Trade Reporting and ACT rules,	from trade dates June 7 to June 8, 2006
9	"non displayed" limit orders and 0 marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320.	from trade dates June 7 to June 8, 2006
N/A	not held market orders for compliance with NASD Rule 2320	from trade dates June 7 to June 8, 2006
N/A	orders for NASDAQ securities in soft dollar accounts and 50 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),	from trade dates June 7 to June 8, 2006
N/A	open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220,	from trade dates June 7 to June 8, 2006

Exhibit #1

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
N/A	trades reported and modified through a mixed capacity regulatory report, for compliance with NASD Rule 6130,	from trade dates June 7 to June 8, 2006
N/A	trades in NNM or SC securities reported with a .PRP modifier, for compliance with NASD Rules 4632 and 2320,	from trade dates June 7 to June 8, 2006
25	orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 605,	from trade dates June 7 to June 8, 2006
28 orders/ 4 buckets	security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605,	From the report for May 2006.
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606,	from the report including April through June, 2006.
29	customer orders in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,	from trade dates June 7 to June 8, 2006
10	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	From the trading staff in June 2006.
472	order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.	from trade dates June 7 to June 8, 2006.
740	trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,	from trade dates June 7 to June 8, 2006
44	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade dates June 7 to June 8, 2006
50	orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade dates June 7 to June 8, 2006