

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070118783**

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REGISTRATION & DISCLOSURE

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

RE: Oppenheimer & Co., Inc.
Member Firm
(CRD No. 249)

Pursuant to Rule 9216 of the FINRA Code of Procedure, Respondent Oppenheimer & Co., Inc. ("Oppenheimer" or "Respondent" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of 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. Respondent 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 has been a member of the NASD (n/k/a FINRA) since 1955. The Firm is headquartered in New York City and is a full-service, self-clearing broker-dealer. It is currently one of the largest broker-dealers in the United States with approximately 3,000 employees in 83 offices in 21 states and two foreign jurisdictions. Oppenheimer is a wholly owned subsidiary of Oppenheimer Holdings, Inc., a publicly held company based in Toronto and listed on the New York Stock Exchange ("NYSE"). In January 2003, Fahnestock & Co. Inc. acquired the U.S. Private Client Division of CIBC World Markets Corp. operating under the name Oppenheimer and subsequently assumed the Oppenheimer name.

At all times relevant, Donald Sorrentino ("Sorrentino") was a Vice President and senior manager of Oppenheimer's stock loan department. He was registered as a securities lending supervisor and securities lending representative.

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OVERVIEW

During the period January 1, 2003, through December 31, 2004 (the "relevant period"), Sorrentino, a registered securities lending supervisor and stock loan trader at Oppenheimer, caused the Firm to engage in numerous stock loans at inferior rates for the purpose of directing or facilitating unwarranted payments to finders, in exchange for cash kickbacks. Oppenheimer failed to establish, maintain, and enforce a supervisory system, including written procedures for its securities lending business, reasonably designed to monitor the trading activities of its stock loan representatives in order to prevent and detect such fraudulent activities.

FACTS AND VIOLATIVE CONDUCT

Overview of Securities Lending

A stock loan is a collateralized, temporary exchange of securities. In a typical stock loan transaction, a financial institution that needs to borrow a security communicates that need to other financial institutions known to engage in stock loan transactions. Upon locating the security it needs, the borrowing institution will negotiate with the lender three financial terms of the transaction: the form of the collateral, which can be either cash or securities; the amount of collateral; and the fee that the lender will charge the borrower to borrow the securities.

The stock loan borrower pays the collateral to the lender and the lender delivers the securities to the borrower. The lender invests the cash collateral at short-term (overnight Fed funds) interest rates. The lender retains part of the interest it receives on the cash collateral as its fee for lending the securities. The lender returns the remainder of the interest income on the collateral to the borrower, which is known as the rebate. In a situation where the securities that are the subject of the loan are readily available for loan, the lender keeps only a very small portion of the interest earned on the collateral and returns, or rebates, the majority of the interest to the borrower. Conversely, when the security that is the subject of the stock loan transaction is scarce or otherwise "hard-to-borrow," the lender retains most or all of the interest on the collateral and returns little if any to the borrower of the stock. Supply and demand determines the price the borrower pays to borrow the stock. The less stock there is to borrow and/or the harder it is to locate, the more the borrower may be willing to pay to borrow it.

In certain circumstances involving "hard-to-borrow" stocks, the interest earned on the cash collateral is not sufficient to cover the entire lending fee and the borrower must make payment to the lender, above and beyond the interest earned on the cash collateral, for the privilege of borrowing the stock, which is called a negative rebate. In almost all instances, the rebate rate associated with a particular stock loan contract is an indicator of the supply and demand of the subject security.

“Finders” are third parties to stock loan transactions who, in exchange for a fee, assist a borrower in locating securities it needs, and less frequently, assist a lender in finding a borrower for securities it has available to lend. Most finders are not registered broker-dealers and generally act only to locate the security. Electronic mail and facsimile transmissions have enabled parties that engage in stock loan activities to inform others almost instantaneously of the securities they have available to lend or need to borrow, thus eliminating, in many cases, the need for finders.

During the relevant period, Oppenheimer often loaned securities to, or borrowed securities from, firms that paid finders. Oppenheimer did not pay finders and had a policy prohibiting payments to finders.

Fraudulent Stock Loan Transactions

In June 2007, Sorrentino was charged by the United States Attorney's Office for the Eastern District of New York with conspiring to accept cash kickbacks from a manager at one of the Firm's counterparties between March 2003 and December 2004, in exchange for causing Oppenheimer to enter into stock loan transactions involving numerous securities and to pay and receive rebates and negative rebates in connection with these transactions that were, on certain occasions, less favorable to Oppenheimer than the rebates and negative rebates otherwise available in the marketplace.¹ On June 27, 2007, Sorrentino pleaded guilty to the criminal charges and presently awaits sentencing.

In September 2007, Sorrentino was named as a defendant in a civil suit filed by the United States Securities and Exchange Commission (the “SEC Complaint”).² According to the SEC Complaint, between May 2003 and December 2004, Sorrentino caused Oppenheimer to loan securities at rates that were inferior to rates that were otherwise available in the marketplace, in exchange for cash kickbacks in most if not all of over 1,000 stock loans from Oppenheimer to one of its counterparties.³ The SEC Complaint alleged that approximately \$500,000 in sham finder fees was paid in connection with these transactions.⁴ On December 21, 2007, Sorrentino consented to the entry of an Order of settlement with the SEC, which imposed a sanction including a permanent bar from the securities industry.⁵

Oppenheimer's Supervisory System

Oppenheimer delegated responsibility for the direct supervision of the securities lending department to Sorrentino. The Firm did not establish or maintain a system of follow up

¹ United States v. Donald Sorrentino, Crim. Information No. 07-CR-509, United States District Court, E.D.N.Y. (June 20, 2007).

² U.S. District Court Civil Action No. 07-3928 (EDNY), SEC Litigation Release 20290 (September 20, 2007) (amended September 24, 2007).

³ *Id.*, paragraphs 99-101.

⁴ *Id.*, paragraph 101.

⁵ SEC Release 34-57040, December 21, 2007 and Sorrentino's Uniform Reporting Form for Securities Industry Registration (Form U-6) filed January 7, 2008.

and review to ensure that Sorrentino was effectively performing his delegated supervisory responsibilities or properly exercising his supervisory authority.

In addition to supervising Oppenheimer's stock loan department, Sorrentino and another manager on the stock loan desk negotiated numerous stock loan transactions on behalf of the Firm on a daily basis. Oppenheimer's supervisory system permitted Sorrentino and the other manager to self-approve their own stock loan transactions, without any independent review.

Oppenheimer's Written Supervisory Procedures

Oppenheimer's written supervisory procedures were combined with its operational procedures. These procedures provided that stock loan rebate rates for securities loaned from the Firm's inventory were to be set based on the current Fed effective rate and the Firm's cost of money, and would vary based on supply and demand for a particular security. Oppenheimer's written procedures further provided that in conduit transactions, in which the Firm earned a spread by borrowing and lending a specific quantity of the same security at different rates, the borrow rebate was to be higher than the loan rebate. Oppenheimer's written procedures did not indicate who was responsible for reviewing rebate rates, what steps were to be taken to ensure that rebate rates paid to or by the Firm were appropriate, or the steps to be taken if rates were suspicious.

Instead, the Firm's written supervisory procedures provided more generally that daily activity of the securities lending department was to be scrutinized thoroughly, and that the senior manager was responsible for performing an extensive review of transactions and profitability using reports generated by the Loanet system.⁶ The supervisory procedures did not specifically address the steps that Sorrentino was to take in reviewing Loanet reports, including how he was to determine if stock loan rates were appropriate and what activity was to be flagged as suspicious, how his reviews were to be documented, or how any documentation of Sorrentino's reviews was to be maintained. Oppenheimer's written supervisory procedures did not require review or follow-up to ensure that Sorrentino was actually performing these supervisory responsibilities, and Oppenheimer did not document any review or follow-up.

In February 2005, Oppenheimer permitted Sorrentino to resign. In March 2006, the Firm enhanced its supervision of rebate rates by requiring the random review of stock loan contracts with one randomly selected counterparty on a monthly basis.

⁶ The Loanet system is a proprietary application owned by SunGard Data Systems, Inc. During the relevant period, the Loanet system was used industry-wide for electronically processing and matching stock loans and borrows.

Violative Conduct

Oppenheimer failed to establish, maintain, and enforce a system, including written supervisory procedures, to supervise its securities lending business and registered securities lending supervisor, in order to prevent and detect fraudulent stock loan transactions.

A supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and the rules of FINRA requires a member firm to establish and maintain a system of follow-up and review reasonably designed to ensure that delegated supervisory authority and responsibility is being properly exercised. During the relevant period, Oppenheimer delegated responsibility for the direct supervision of its securities lending department to Sorrentino without requiring any independent supervisory review or follow-up to ensure that Sorrentino was properly performing his designated responsibilities and properly exercising his supervisory authority.

A reasonable supervisory system does not permit persons to supervise themselves. Throughout the relevant period, Oppenheimer permitted Sorrentino and another stock loan manager to negotiate stock loan transactions on behalf of the Firm with no review or follow-up.

Overall, Oppenheimer's written supervisory procedures did not fully satisfy the NASD's minimum procedural standards as outlined in Notice to Members 99-45 because the procedures did not include a description of what managers were to look for in reviewing Loanet and other supervisory reports, the steps to be taken if suspicious activity was discovered, and how to document the supervisor's oversight activities. Oppenheimer's written procedures did not adequately provide a framework by which senior management could evaluate whether personnel were complying with the supervisory system.

As a result of these supervisory deficiencies, Oppenheimer failed to detect and prevent Sorrentino from engaging in a fraudulent scheme to participate in stock loan transactions with certain counterparties at rates that were inferior to rates otherwise available to a lender in the marketplace, for the benefit of himself, favored counterparties, and a finder who had not performed any services in the transactions for which they were paid.

By virtue of this conduct, Respondent Oppenheimer violated NASD Rules 3010(a), 3010(b), and 2110.

OTHER FACTORS

B. Respondent also consents to the imposition of the following sanctions:

1. Censure; and
2. Fine in the amount of \$100,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent 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

Respondent specifically and voluntarily waives the following rights granted under the FINRA 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, Respondent 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.

Respondent 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

Respondent understands that:

- A. Submission of the 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 Respondent; and
- C. If accepted:
 - 1. This AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent'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. Respondent 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. Respondent 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

Respondent 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 its 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 Respondent to submit it.

Date 6/27/08

Respondent
Oppenheimer & Co., Inc.

By: John T. McGone

Reviewed by:

[Signature]
Counsel for the Respondent
Pruskaev Rose LLP

Accepted by FINRA:

Date 7/30/08

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

[Signature]
Linda S. Riefberg
Vice President and Chief Counsel
FINRA Department of Enforcement
14 Wall Street
New York, NY 10005