

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO.20080136300-01

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

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

Pursuant to FINRA Rule 9216 of FINRA's 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 became a member of FINRA on March 22, 1945, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

The firm has the following relevant disciplinary history:

- On September 24, 2008, FINRA accepted the firm's AWC (20060057396) in which the firm agreed to a censure and a fine of \$12,500, which included a \$5,000 fine OATS violations during the period June 4, 2007, to June 5, 2007, and a \$2,500 for violations of SEC Rule 10b-10 during the period June 7, 2006, to June 8, 2006.
- On July 30, 2008, FINRA accepted the firm's AWC (20070118783) in which the firm agreed to a censure and a fine of \$100,000 for supervision violations related to stock lending activity during 2003 and 2004.

- On December 21, 2007, FINRA accepted the firm's AWC (20070095095) in which the firm agreed to a censure and a fine of \$250,000, which included supervision violations during the period January 2, 2003, through early September 2003.
- On November 3, 2006, FINRA accepted the firm's AWC (20050017907) in which the firm agreed to a censure and a fine of \$27,500, which included a \$5,000 fine for violations of SEC Rule 10b-10 during the period May 24, 2005, to May 25, 2005, and a \$7,500 fine for supervision violations during May and July 2005.
- On October 2, 2006, an Offer of Settlement was entered (CE4050002) in which the firm consented to a fine of \$800,000, which included supervision violations for the period January 1, 2003, to May 31, 2004.
- On June 30, 2006, FINRA accepted the firm's AWC (200500002356) in which the firm agreed to a censure and fine of \$17,500, which included a \$10,000 fine for supervision violations for the period January 1, 2004, to June 30, 2004.
- On January 9, 2006, FINRA accepted the firm's AWC (EAF0400720002) in which the firm agreed to a censure and fine of \$250,000 for supervision violations during the period January 2002 through March 2004.

SUMMARY

This matter is a result of reviews conducted by the Department of Market Regulation of the firm's compliance with fair pricing requirements of the Municipal Securities Rule Making Board ("MSRB") for the period from December 27, 2007, to March 31, 2008 (20080136300); and the firm's 2009 Trading and Market Making Surveillance ("TMMS") Examination (20090170114). The on-site portion of the TMMS examination took place on April 13 and 16, 2009. Attached as Exhibit 1 is a list of the items the staff reviewed during the on-site examination for trade dates February 18-19, 2009.

FACTS AND VIOLATIVE CONDUCT

20080136300

1. From December 27, 2007, to March 31, 2008, in seven transactions, the firm purchased municipal securities for its own account from a customer and/or sold municipal securities for its own account to a customer at an aggregate price (including any mark-down or mark-up) that was not fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the broker, dealer, or municipal securities dealer is entitled to a profit, and the total dollar amount of the transactions. The transactions are identified in Exhibit 2 which is attached. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rules G-17 and G-30(a).

20090170114

2. The firm failed on six occasions to provide written notification disclosing to its customer its correct capacity in the transaction; failed on 12 occasions to provide written notification disclosing to its customer its correct capacity in the transaction, and that the commission was a markup/markdown or commission equivalent; failed on two occasions to provide written notification disclosing to its customer its correct capacity in the transaction and that when acting as principal for its own account that it was a market maker in each security; and failed on three occasions to provide written notification disclosing to its customer that when acting as principal for its own account that it was a market maker in each security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
3. During the review period, the firm transmitted to the Order Audit Trail System ("OATS") ten reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports contained inaccurate order route reports, missing route reports, or incorrect share quantities. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.

4. During February 2009, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of FINRA. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
- a. specific identification of the individual(s) responsible for supervision;
 - b. the supervisory steps and reviews to be taken by the appropriate supervisor;
 - c. the frequency of such reviews; and
 - d. how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas:

- **Best Execution:** Riskless Principal Orders [(a), (b), (c), (d)];
- **Trade Reporting:** General Trade Reporting [(b)]; Riskless Principal Transactions [(a), (b), (c), (d)];
- **Sales Transactions:** SEC Rule 204 [(a), (b), (c), (d)]; SEC Rule 10b-21 [(a), (b), (c), (d)]; and Short Sale Indicator Reporting [(a), (b), (c), (d)].

The conduct described in this paragraph constitutes violations of FINRA Rule 2010 and NASD Rule 3010.

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

1. A censure;
2. A fine of \$57,500 (consisting of \$35,000 for MSRB fair pricing violations; \$5,000 for SEC Rule 10b-10 violations; \$12,500 for OATS violations; and \$5,000 for supervision violations);
3. An undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs I.A.4. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("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, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, 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 paragraphs I.A.4; and, (3) the date the revised procedures were implemented; and

4. Restitution by Respondent to the investors listed on Exhibit 2 which is attached, in the total amount of \$17,879.51, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a), from the date of the violative conduct until the date this AWC is accepted by the NAC. A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of the reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANCE, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, no later than 120 days after acceptance of this AWC. If for any reason, Respondent cannot locate any customer after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer is known to have last resided.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 imposed in this matter.

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 Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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, 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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 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 FINRA Rule 8313; 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 undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf 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.

Date 8/6/10

Respondent
Oppenheimer & Co. Inc.

By: [Signature]

Name: Dennis McNamara

Title: GENERAL COUNSEL
EXECUTIVE VICE PRESIDENT

Reviewed by:

[Signature]

John T. McGuire, Esq.
Counsel for Respondent
Oppenheimer & Co. Inc.
125 Broad Street
New York, NY 10004

Accepted by FINRA:

Date 10/11/10

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

[Signature]
Thomas R. Gira
Executive Vice President
Department of Market Regulation

2009 Market Regulation Examination Samples
 Oppenheimer Co., Inc.
 Exam No. 20090170114
 Sample Source/Period*: February 18-19, 2009

<u>Sample</u>	<u>Sample Description</u>
<u>Size</u>	
115	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
129	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
5,360	Trades reported to a TRF or OTCTRF for compliance with NASD Rule 6130
	5360 for general trade reporting requirements
	36 for Cancellation of reported trade requirements
	5360 for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange
	4121 for Sale Indicator requirements
92	Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755 and 2110
83	Orders for compliance with best execution requirements of NASD Rule 2320
	64 Orders executed as principal for compliance NASD Rule 2320 and with the order protection requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and Nasdaq Rules 2110, IM-2110-2, and 2111
	10 'Not Held' orders for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements
	9 Customer orders in OTC equity securities for compliance with NASD Rules 2320 and 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
50	Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements
42	Customer confirmations prepared and maintained in connection with select samples
	35 for compliance with SEC Rule 10b-10 disclosure requirements
	7 for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
4	Data sets published for December 2008 monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
28	Orders underlying data sets reviewed for December 2008 for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
1st Quarter 2009	Quarterly Routing Report for compliance with SEC Rule 606 requirements

2009 Market Regulation Examination Samples
Oppenheimer Co., Inc.
Exam No. 20090170114
Sample Source/Period*: February 18-19, 2009

<u>Sample</u> <u>Size</u>	<u>Sample Description</u>
24	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rules 610, 611, and 612
202	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110

Oppenheimer & Co. Inc. ("OPCO")
Matter No. 20080136300

Exhibit 2

Item	Date	Cusip	Issue	Quantity	Contra*	Trade Time	Trade Price	Firm	Proposed Restitution Amount
1	1/2/2008	57586CXH3	MASSACHUSETTS ST HEALTH & EDL FACS AUTH REV MILFORD REG MED CTR-SER E (MA)	50	C (B)	16:03:29	97.923	OPCO	\$2,500.50
2	1/11/2008	57586CXH3	MASSACHUSETTS ST HEALTH & EDL FACS AUTH REV MILFORD REG MED CTR-SER E (MA)	25	C (B)	8:50:44	97.925	OPCO	\$1,250.75
3	1/22/2008	57586CXH3	MASSACHUSETTS ST HEALTH & EDL FACS AUTH REV MILFORD REG MED CTR-SER E (MA)	125	C (B)	12:48:45	98.174	OPCO	\$5,347.38
4	3/5/2008	70917RFA8	PENNSYLVANIA ST HIGHER EDL FACS AUTH REV TEMPLE UNIV. FIRST SER (PA)	60	C (B)	11:16:33	100	OPCO	\$4,003.84
5	3/4/2008	798136PL5	SAN JOSE CALIF ARPT REV AMT-SER A (CA)	30	C (B)	10:52:37	97.021	OPCO	\$1,726.34
6	12/21/2007	57586CXH3	MASSACHUSETTS ST HEALTH & EDL FACS AUTH REV MILFORD REG MED CTR-SER E (MA)	50	C (B)	15:54:19	97.921	OPCO	\$2,550.50
7	1/8/2008	57586CXH3	MASSACHUSETTS ST HEALTH & EDL FACS AUTH REV MILFORD REG MED CTR-SER E (MA)	10	C (B)	11:37:17	97.924	OPCO	\$500.20
Total:									\$17,879.51

*Contra parties are identified as follows: B-D (S) indicates another Broker-Dealer selling to the firm; B-D (B) indicates another Broker-Dealer buying from the firm; C (S) indicates a customer selling to the firm, and C (B) indicates a customer buying from the firm.