

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2009017408102**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Oppenheimer & Co. Inc. 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 Respondent 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 & Co. Inc. is headquartered in New York, New York, and has been a member of FINRA since 1954. Oppenheimer has 116 branches and employs 2,396 registered representatives. It is a wholly-owned subsidiary of Oppenheimer Holdings, Inc., which is based in Toronto and listed on the New York Stock Exchange.

**RELEVANT DISCIPLINARY HISTORY**

On January 9, 2006, the NASD found that Oppenheimer had failed to timely file 230 amendments to Forms U4 and U5 and failed to file 82 initial Form U5s between January 2002 and March 2004, in violation of Article V of the NASD By-Laws. The NASD also found that Oppenheimer failed to establish and maintain supervisory systems and procedures reasonably designed to achieve compliance with its reporting obligations during the same period. The firm was censured, fined \$250,000, and ordered to conduct an audit to assess the effectiveness of the firm's systems and procedures to ensure compliance with its Article V reporting obligations.

## OVERVIEW

Between November 2005 and February 2009, Oppenheimer failed to supervise registered representative Mark Hotton, who misappropriated funds from his customers and excessively traded their accounts.<sup>1</sup> Hotton misappropriated funds from his customers by convincing them to wire funds from their Oppenheimer and personal bank accounts to entities that he owned or controlled. Oppenheimer failed to supervise Hotton in four ways. First, Oppenheimer failed to conduct an adequate pre-hire review of Hotton. Second, Oppenheimer failed to place Hotton on heightened supervision after it became aware of civil actions alleging that Hotton had defrauded business partners out of several million dollars in transactions he conducted away from his member firms. Third, Oppenheimer failed to respond to red flags demonstrating that Hotton was wiring funds from Oppenheimer customer accounts to entities that he owned or controlled. Finally, Oppenheimer failed to take action after its surveillance analysts detected that Hotton had traded multiple customer accounts at levels that FINRA deems presumptively excessive. As a result of Oppenheimer's failure to supervise Hotton, his customers suffered millions of dollars in losses.<sup>2</sup> Oppenheimer's failure to supervise Hotton violated NASD Rules 3010(a) and 3010(e), NASD Rule 2110, and FINRA Rule 2010.

Oppenheimer's inadequate supervisory systems and procedures contributed to its failure to prevent Hotton's fraudulent activities. Oppenheimer's supervisory systems and procedures were not reasonably designed to detect and prevent wire transfers between Oppenheimer customers and its registered representatives, and also failed to provide for specific action to be taken when trading activity in customer accounts was presumptively unsuitable. Oppenheimer's failure to maintain adequate supervisory procedures violated NASD Rule 3012(a)(2)B(i), NASD Rule 3010(a), NASD Rule 3010(b), NASD Rule 3010(d)(2) and NASD Rule 3010(d)(3), NASD Rule 2110, and FINRA Rule 2010.

Between 2005 and the April 5, 2013, Oppenheimer failed to timely make 320 required updates related to arbitrations and other legal matters on Forms U4 and U5 that were, on average, 238 days late. As a result, regulators, the investing public, and other member firms were unaware of serious allegations made against Oppenheimer's current and former registered representatives, including Hotton. By failing to make the required updates, Oppenheimer violated Article V, Sections 2(c) and (3)(b) of FINRA and NASD's By-Laws of the Corporation, NASD Rule 2110, NASD Rule IM 1000-1, FINRA Rule 1122, and FINRA Rule 2010. Oppenheimer also violated NASD Rules

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<sup>1</sup> In Offer of Settlement No. 2009017408101( Aug. 20, 2013) FINRA barred Hotton for, among other things, stealing approximately \$6 million from his customers and excessively trading and churning his customers' accounts, in willful violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder. FINRA also found that Hotton willfully violated Article V, Section 2(c) of the NASD and FINRA By-Laws of the Corporation, NASD Rules 2110 and IM-1000-1, and FINRA Rules 1122 and 2010, and that he violated NASD Rules 2120, 2310, 2510, IM-2310-2 and FINRA Rule 2020; NASD Rule 2330; NASD Rule 2370; NASD Rule 3030; NASD Rule 8210 and FINRA Rule 8210; and NASD Rule 2110 and FINRA Rule 2010.

<sup>2</sup> Oppenheimer has paid approximately \$6.26 million to resolve customer arbitration claims related to its supervision of Mark Hotton. This Letter of Acceptance, Waiver, and Consent will result in additional payments totaling \$1,251,076.10 to 22 Oppenheimer account holders who did not file arbitrations.

3010(a) and 3010(b) by failing to maintain or implement supervisory procedures related to filing U4 and U5 amendments.

Oppenheimer also violated FINRA rules during FINRA's investigation of its supervision of Hotton. In particular, Oppenheimer provided untimely responses to FINRA in response to six separate Rule 8210 requests for documents and information. By doing so, Oppenheimer violated FINRA Rule 8210 and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **Facts**

#### *Oppenheimer Failed to Conduct an Adequate Pre-hire Investigation of Mark Hotton.*

When Hotton joined Oppenheimer on November 23, 2005, his CRD record disclosed twelve reportable events, including two criminal charges involving larceny or possession of stolen property, a termination for cause, a New York Stock Exchange investigation, a personal bankruptcy, and seven customer complaints. Three of the customer complaints had alleged unauthorized trading. Oppenheimer, however, limited its pre-hire review of Hotton's background to the information that appeared in his CRD record. It did not obtain or review any additional information, such as court filings, that would have allowed it to better understand the risks that Hotton presented to the firm and the investing public.

#### *Oppenheimer Failed to Place Hotton on Heightened Supervision After He Was Sued for Diverting Millions of Dollars.*

In February 2006, approximately two months after Hotton joined Oppenheimer, Hotton's former business partners sued him in state court for allegedly misappropriating approximately \$4 million by misdirecting funds that were intended to be used for real estate transactions. The lawsuit alleged that Hotton misappropriated the funds by preparing forged documents and directing the plaintiffs' money to an entity that he had formed. In March 2006, a party to the lawsuit asserted a separate claim that Hotton had diverted more than \$5 million through a fictitious securities transaction prior to joining Oppenheimer, and then fabricated an Oppenheimer fax to fraudulently cause the transfer of an additional \$1.37 million. Both civil claims—which Hotton settled on May 17, 2006, by agreeing to make payments of more than \$3 million—alleged conduct that began prior to Hotton's registration with Oppenheimer and continued after he joined the firm.

Oppenheimer investigated the allegations of both claims, and incorrectly and unreasonably concluded that the plaintiffs' allegations entirely predated Oppenheimer and did not have any bearing on Oppenheimer customers. (In fact, one of the corporate signatories to the settlement was an Oppenheimer customer, several of the customers that Hotton was obligated to repay pursuant to the settlement agreement were Oppenheimer

customers, and some of the alleged conduct occurred while Hotton was employed by Oppenheimer.) In spite of the serious nature of the allegations, Hotton's agreement to settle the actions for \$3 million, and Hotton's history of criminal and customer complaints, Oppenheimer did not place Hotton on heightened supervision or supervise him any differently from any other registered representative of the firm.

*Oppenheimer Failed to Respond to Red Flags that Hotton was Obtaining Customer Funds.*

By May 2007, Oppenheimer was aware that Hotton maintained several outside business activities that he had not previously disclosed to the firm,<sup>3</sup> and, as discussed above, Oppenheimer was also aware that Hotton had been accused of defrauding his business partners by directing their funds to one or more entities he controlled.

Despite knowledge of these facts, Oppenheimer failed to monitor adequately Hotton's transactions with his customers. It failed to identify that between January 25, 2006 and January 21, 2009, Hotton directed thirty-one outgoing wire transfers totaling more than \$3 million from Oppenheimer customer accounts to entities that Oppenheimer knew or should have known were associated with Hotton. Oppenheimer also failed to identify twenty-two wires totaling more than \$1 million that were received into Oppenheimer customer accounts from three bank accounts held in the name of entities with the same or virtually identical names as Hotton's outside business activities.

Oppenheimer failed to detect other red flags during its review of Hotton's correspondence. For example, at least twenty faxes and emails contained indicia that Hotton was engaged in undisclosed outside business activities and/or was involving his customers in those activities. Oppenheimer also failed to identify that the letters of authorization it reviewed showed Hotton directing customer funds to outside business activities that had been disclosed to the firm. Oppenheimer also failed to respond to three emails reflecting unreported customer complaints and dozens of other emails that demonstrated violations of Oppenheimer policies and FINRA rules.

In spite of the red flags, Oppenheimer failed to place Hotton on heightened supervision, terminate him, or supervise him in any way that was different from other registered representatives of the firm. Oppenheimer's failure to supervise Hotton allowed him to transfer over \$2.9 million from Oppenheimer customer accounts to bank accounts that he owned or controlled.

*Oppenheimer Failed to Respond Adequately to Evidence of Hotton's Excessive Trading of Customer Accounts.*

While employed at Oppenheimer from November 2005 to February 2009, Hotton excessively traded dozens of customer accounts. Hotton's excessive trading was reflected on the firm's monthly Compliance Review Reports, which were reviewed both

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<sup>3</sup> Hotton formally disclosed two outside business activities to Oppenheimer.

by branch management in Jericho, New York and by the firm's centralized Surveillance Group within the firm's Compliance Department. In both 2007 and 2008, the Surveillance Group prepared spreadsheets showing that Hotton had excessively traded multiple customer accounts. The spreadsheets, which were to be presented to senior management, demonstrated that Hotton was excessively trading multiple customer accounts at levels that exceeded thresholds deemed presumptively excessive by FINRA precedent. The spreadsheets also showed that the commissions charged in four of the accounts exceeded the total account values and that two of the accounts had been placed on ninety-day restriction because they did not have sufficient funds to make entered trades.

Even though the firm's own analysis demonstrated that Hotton's trading in multiple customer accounts was presumptively excessive, the firm never placed Hotton on heightened supervision, terminated him, or restricted his trading activity.

*Oppenheimer's Inadequate Procedures Related to Excessive Trading Contributed to Its Failure to Reasonably Supervise Hotton.*

During at least the period of Hotton's employment at Oppenheimer, from November 2005 to February 2009, Oppenheimer's procedures related to detecting and preventing excessive trading, quantitatively unsuitable trading, and churning were inadequate. Surveillance analysts in the firm's compliance department and branch managers reviewed the monthly Compliance Review Report that, at times, identified presumptively excessive trading.<sup>4</sup> When the report showed that a customer's account was being actively traded, the analysts would contact the branch manager and suggest that the manager contact the customer. However, the firm's procedures did not provide for specific additional action to be taken when the firm's surveillance reports showed account activity that was presumptively excessive, or when customer accounts continued to appear on the reports over time.

Oppenheimer's procedures relating to excessive trading were unreasonable because FINRA's suitability rule requires member firms to consider whether recommended transactions are suitable for any customer, both qualitatively and quantitatively. As a result of the inadequate procedures, Oppenheimer failed to take action to limit trading in multiple Hotton customer accounts that was presumptively excessive, irrespective of the specific customers' risk tolerances, investment objectives, and other characteristics.

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<sup>4</sup> Annualized turnover ratios of greater than six are considered presumptive evidence of excessive trading. The annualized turnover ratios of dozens of Hotton's customer accounts exceeded six, and more than ten exceeded twenty.

*Oppenheimer's Inadequate Supervisory Procedures Related to Wire Transfers Contributed to Its Failure to Detect and Prevent Hotton's Activities.*

NASD Rule 3012(a)(2)(B)(i) required Oppenheimer to maintain written supervisory control policies and procedures that were reasonably designed to review and monitor all transmittals of funds, including wires from customers to third party accounts and between customers and the firm's registered representatives. However, Oppenheimer's supervisory systems and procedures were not reasonably designed to prevent fraudulent wire transfers, including transfers between Oppenheimer customers and its registered representatives or their outside business activities. The firm relied upon a daily review of bank reports to flag potentially fraudulent incoming and outgoing wire transfer activity. But the bank reports, which included as many as one thousand wires per day, were too voluminous for the firm to conduct a meaningful review as required by its procedures. In addition, the firm failed to incorporate information it collected about its registered representatives' outside business activities into its review of wire transfers.

The firm's branch-level supervisory procedures related to outgoing wire transfers also were insufficient to identify instances in which the firm was presented with fraudulent wire transfer requests. The firm's supervisory procedures did not require its branch managers to validate any information on the letters of authorization used to transfer funds from customer accounts. For example, the firm's supervisory procedures did not require the registered representative or branch manager to verify signatures or to speak to the customer before initiating a wire transfer. Nor did the firm identify instances in which the recipient of a wire was associated with the registered representative, or when multiple customers had wired funds to the same entity. These supervisory procedures were not reasonably designed to detect potentially fraudulent wire transfer requests.

As a result of these supervisory deficiencies, between November 23, 2005 and February 1, 2009, Oppenheimer approved fifty-six outgoing third party wire transfers from Hotton customer accounts without identifying any of them as potentially fraudulent. At least thirty-one of these wire transfers, totaling approximately \$3 million, were directed to bank accounts controlled or associated with Hotton. In many instances, several Hotton customers wired funds to the same Hotton-controlled entity. Oppenheimer also failed to detect or investigate twenty-two incoming wires totaling more than \$1 million that were directed to Oppenheimer customer accounts from three bank accounts controlled by Hotton.

*Oppenheimer Failed to Make Required Updates to Registered Representatives' Forms U4 and U5.*

Oppenheimer's legal department was responsible for initiating Form U4 and U5 filings related to arbitrations and certain other legal matters. In spite of its regulatory history,<sup>5</sup>

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<sup>5</sup> As noted above, in January 2006, Oppenheimer was fined \$250,000 by FINRA for failing to timely file 230 amendments to Forms U4 and U5 and 82 initial Form U5s between January 2002 and March 2004, and for failing to

Oppenheimer failed to design or implement supervisory procedures to ensure that timely U4 and U5 filings were made by its legal department. The legal department did not maintain a system to track when U4 or U5 filings needed to be made or maintain any written procedures related to the U4 or U5 filing process. The firm also failed adequately to follow up with the attorneys assigned to individual matters to ensure that they made the required filings on time.

Between January 1, 2005 and July 19, 2013, Oppenheimer's legal department failed to timely file 320 Form U4 and U5 amendments and initial U5 filings, including twelve filings related to Mark Hotton. On average, these late U4 and U5 filings were 238 days late. Nineteen of these filings were more than one thousand days late. The failure to make timely U4 and U5 filings became worse over time, with 264 of the late filings occurring after 2009.

The firm's legal department was aware that it was not timely filing amendments to Forms U4 and U5 in a consistent manner. Oppenheimer's legal department also continued to fail to make certain required filings even after it was put on notice of the necessity of making specific filings by FINRA. In particular, Oppenheimer failed to identify and make at least thirty-three Form U4 and U5 filings after receiving notice from FINRA. Oppenheimer also failed to make several required amendments to Mark Hotton's Form U5 after FINRA asked why it had not done so in several letters issued pursuant to FINRA Rule 8210.

Oppenheimer's failure to make timely Form U4 and U5 amendments caused the investing public and other broker-dealers to be unaware of serious allegations made against registered representatives, including several allegations that Hotton had defrauded customers out of millions of dollars and excessively traded customer accounts.

*Oppenheimer Failed to Timely Respond to FINRA's Requests for Documents and Information.*

Between June 2010 and January 2013, Oppenheimer provided significantly untimely responses to six separate letters from FINRA that requested documents and information related to Mark Hotton and the firm's supervision of Mark Hotton. It took Oppenheimer between five and eight months to fully respond to certain requests contained in four of the request letters. In addition, Oppenheimer failed to maintain in a readily accessible format its records of its supervisors' reviews of Hotton's emailed correspondence. As a result, Oppenheimer failed to produce records reflecting its supervisory review of Hotton's emails until more than two years after they were originally requested by FINRA, and after originally representing to FINRA that it did not maintain the records.

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establish and maintain supervisory systems and procedures reasonably designed to achieve compliance with its Article V reporting obligations.

## **Violations**

*Failure to Conduct a Reasonable Pre-Hire Investigation of Mark Hotton.* NASD Rule 3010(e)<sup>6</sup> requires each member to “ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration.” In Notice to Members 97-19, the NASD had described how a “firm that hires one or more registered representatives with a history of customer complaints, disciplinary actions, or arbitrations, or that employs a registered representative who develops such a record during his or her employment, should recognize that it has heightened supervisory responsibilities that will require it, at a minimum, to examine the circumstances of each such case and make a reasonable determination whether its standard supervisory and educational programs are adequate to address the issues raised by the record of any such registered representative.” After determining “if it is necessary to develop and implement special supervisory procedures tailored to the individual registered representative,” the special supervision should be “structured to address the sales practice concerns that are raised by that history.” As described above, Oppenheimer failed to investigate the circumstances of the twelve disclosures that appeared in Hotton’s CRD record or subject Hotton to heightened supervision. Accordingly, Oppenheimer violated NASD Rule 3010(e).

*Failure to Supervise Hotton.* NASD Rule 3010(a) requires that each member establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations. As described above, Oppenheimer was made aware that Hotton was engaged in undisclosed outside business activities. It then failed to monitor or identify numerous red flags demonstrating that he and/or Oppenheimer customers were wiring customer funds to accounts he controlled. In addition, Oppenheimer failed to place Hotton on heightened supervision after the firm became aware of serious allegations of fraud and deceit that Hotton settled for \$3 million. Oppenheimer also failed to take action to restrict Hotton’s trading in customer accounts after its internal analysis showed that Hotton was trading multiple customer accounts at levels considered presumptively excessive. Accordingly, Oppenheimer violated NASD Rule 3010(a).

*Inadequate Supervisory Procedures Related to Third Party Wire Transfers.* NASD Rule 3012(a)(2)(B)(i)<sup>7</sup> requires firms to maintain written supervisory control policies and procedures that are reasonably designed to review and monitor all transmittals of funds, including wires from customers to third party accounts and between customers and the firm’s registered representatives. As described above, Oppenheimer failed to maintain policies and procedures capable of detecting and preventing certain potentially fraudulent third party wires, including wires between its customers’ accounts and its registered representatives or their outside business activities. Accordingly, Oppenheimer violated NASD Rule 3012(a)(2)(B)(i), NASD Rule 3010(a), and NASD Rule 3010(b).

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<sup>6</sup> Effective July 1, 2015, NASD Rule 3010(e) will be replaced by FINRA Rule 3110(e). The remainder of NASD Rule 3010 was replaced by FINRA Rule 3110 effective December 1, 2014.

<sup>7</sup> Effective December 1, 2014, NASD Rule 3012 was replaced by FINRA Rule 3120.

*Inadequate Procedures Related to Excessive Trading.* As described above, between at least 2005 and February, 2009, Oppenheimer's procedures related to excessive trading were unreasonable because they did not provide for specific action to be taken when trading activity was unsuitable for any customer or when customer accounts repeatedly triggered the firm's exception reports. Accordingly, Oppenheimer violated NASD Rule 3010(a) and NASD Rule 3010(b).

*Failure to Make Required U4 and U5 Filings or Maintain Adequate Procedures Related to U4 and U5 Filings.* Article V, Section 2(c) of the NASD By-Laws of the Corporation and, effective July 30, 2007, the FINRA By-laws of the Corporation provide that "[e]very application for registration filed with the corporation shall be kept current at all times by supplementary amendments . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Section 3(b) of Article V of the By-laws provides that in the event a broker-dealer learns of facts or circumstances causing any information set forth in a U5 termination notice filed with FINRA to become inaccurate or incomplete, the broker-dealer must notify FINRA, within 30 days thereafter, of those facts or circumstances by means of an amendment to the termination notice.

In Regulatory Notice 10-39, FINRA reminded member firms of their obligation to provide timely, complete, and accurate information on Form U5. The Notice explained how FINRA uses U5 information to identify and sanction individuals who violate FINRA's rules and federal statutes and regulations. In addition, member firms use the information to help them make informed employment decisions, and investors use the Form U5 information displayed through BrokerCheck when considering whether to do business with registered (or formerly registered) persons. As described above, Oppenheimer, through its legal department, failed to make 320 required Form U4 and U5 filings between January 1, 2005 and July 19, 2013. These filings were, on average, 238 days late. Moreover, personnel in the firm's legal department were aware that the department was not making timely filings. Accordingly, Oppenheimer violated Article V, Sections 2(c) and (3)(b) of the FINRA and NASD By-Laws of the Corporation,<sup>8</sup> NASD Rule 2110, NASD Rule IM 1000-1,<sup>9</sup> FINRA Rule 1122, and FINRA Rule 2010.<sup>10</sup> In addition, by failing to maintain or implement supervisory procedures related to filing U4 and U5 amendments through its legal department, Oppenheimer violated NASD Rules 3010(a) and 3010(b).

*Failure to Timely Provide Documents and Information to FINRA.* FINRA Rule 8210 authorizes FINRA to require its members and their associated persons to "provide information orally [or] in writing ... with respect to any matter involved in the

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<sup>8</sup> Effective July 30, 2007, the NASD By-Laws of the Corporation were replaced by the FINRA By-Laws of the Corporation.

<sup>9</sup> Until August 17, 2009, NASD Rule IM 1000-1 also provided that filing membership or registration information that was incomplete or inaccurate so as to be misleading, or the failure to correct such filing, could constitute a violation of NASD Rule 2110. Effective August 17, 2009, FINRA Rule 1122 replaced NASD Rule IM 1000-1; it prohibits the filing of information which is incomplete or inaccurate so as to be misleading, or the failure to correct such filing.

<sup>10</sup> Effective December 15, 2008, NASD Rule 2110 became FINRA Rule 2010.

investigation.” As described above, between June 2010 and January 2013 Oppenheimer provided delinquent responses to six separate 8210 letters for documents and information related to Hotton and its supervision of Mark Hotton. Accordingly, Oppenheimer violated FINRA Rule 8210.

*Evidence of Email Review Not Readily Accessible.* NASD Rule 3010(d)(2) requires members to develop appropriate written procedures for the review of electronic and non-electronic correspondence, and NASD Rule 3010(d)(3) requires that firms maintain in a readily ascertainable format the names of the persons who reviewed correspondence. As described above, Oppenheimer did not produce records of who reviewed Hotton’s emailed correspondence for more than two years. Accordingly, Oppenheimer violated NASD Rule 3010(d)(2) and NASD Rule 3010(d)(3).

As a result of the other violations, Oppenheimer also violated NASD Rule 2110 for the period through December 14, 2008, and FINRA Rule 2010, for the period thereafter.

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

1. A Censure;
2. A fine in the amount of \$2,500,000;
3. Restitution totaling \$1,251,076.10 to the customers set forth in Attachment A; and
4. The undertaking described below.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Paul Schindler, Chief Counsel, 15200 Omega Drive, Third Floor, Rockville, MD 20850 either by letter that identifies Oppenheimer & Co. Inc. and matter no. 20090174081 or by e-mail from a work-related account of the registered principal of Respondent firm to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, 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 last known to have resided. Respondent shall provide satisfactory proof of such action to the

FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

Respondent has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the monetary sanction(s) imposed in this matter.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

The firm understands that this settlement includes a finding that it failed to supervise an individual who violated Section 10(b) of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes the firm subject to a statutory disqualification with respect to membership.

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

1. Oppenheimer shall:

- a. Retain, within 30 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's supervisory policies, systems and procedures (written and otherwise) and training relating to wire transfers, Form U4/U5 reporting, and excessive trading.
- b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;
- c. Cooperate with the Independent Consultant in all respects, including by providing staff support. Oppenheimer shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Oppenheimer shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Oppenheimer shall not be in and shall not have an attorney-customer relationship with the Independent Consultant and shall not seek to invoke the attorney-customer privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;
- d. At the conclusion of the review, which shall be no more than 90 days after the date of the Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written

Report shall address, at a minimum, (i) the adequacy of the Firm's supervisory policies, systems, procedures, and training relating to wire transfers, U4/U5 reporting, and excessive trading; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and

e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-customer, auditing or other professional relationship with Oppenheimer, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-customer, auditing or other professional relationship with Oppenheimer or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

2. Within 30 days after delivery of the Written Report, Oppenheimer shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

3. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Oppenheimer shall provide FINRA staff with a written implementation report, certified by an officer of Oppenheimer, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.

4. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

## **II.**

## **WAIVER OF PROCEDURAL RIGHTS**

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

- A. To have a Complaint issued specifying the allegations against Respondent;
- 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 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 Chief Legal Officer, 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 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**

Respondent 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 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 FINRA Rule 8313; 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

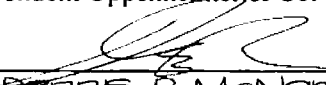
D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondent 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 the Firm to submit it.

03/11/2015

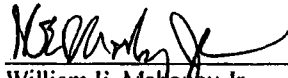
Date (mm/dd/yyyy)

Respondent Oppenheimer & Co. Inc.

By: 

DENNIS P. McNamara  
EVP & General Counsel

Reviewed by:



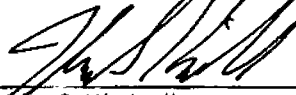
William E. Mahoney Jr.  
Counsel for Respondent  
Stradley Ronon Stevens & Young, LLP  
2005 Market Street, Suite 2600  
Philadelphia, PA 19103-7018

Accepted by FINRA:

March 26, 2015

Date

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



Thomas S. Kimbrell  
Senior Counsel  
FINRA Department of Enforcement  
15200 Omega Drive, Third Floor  
Rockville, MD 20850  
Ph: 301-258-8550  
Fax: 202-721-6515

**Attachment A**  
**AWC No. 2009017408102**

| <b>Customer</b> | <b>Restitution Amount</b> |
|-----------------|---------------------------|
| R.B. & M.B.     | \$83,623.26               |
| K.C. & M.C.     | \$111,370.66              |
| C.A.P.          | \$53,894.76               |
| D.D.L.          | \$44,786.29               |
| R.F.            | \$46,450.14               |
| K.F. & K.F.     | \$86,154.87               |
| D.G.            | \$34,591.80               |
| M.H.            | \$45,932.35               |
| E.J. & C.J.     | \$11,975.52               |
| C.K.            | \$72,055.17               |
| A.L. & C.L.     | \$33,657.11               |
| E.M.            | \$63,793.41               |
| R.M. & A.M.     | \$47,329.28               |
| G.P. & B.P.     | \$50,400.49               |
| P.B.M.C.        | \$27,007.88               |
| P.S.            | \$11,600.39               |
| T.T. & L.T.     | \$86,034.03               |
| K.T.            | \$53,121.44               |
| W.D.L.R.T.      | \$70,960.42               |
| R.W. & D.W.     | \$24,149.37               |
| I.C.            | \$126,187.46              |
| J.C. & R.C.     | \$66,000.00               |