

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090182613-01

TO: Department of Market Regulation
Financial Industry Regulation 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. ("OPCO" or 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 April 10, 2008, pursuant to an AWC, OPCO consented to a censure and total fine of \$25,000, of which \$20,000 was, in part, for failing to timely close-out fails in two threshold securities during the first quarter of 2006, in violation of SEC Rule 203(b)(3).

SUMMARY

This matter is a result of three reviews conducted by the Short Sales section of FINRA's Department of Market Regulation of the firm's compliance with Regulation SHO under the Securities Exchange Act of 1934 ("Regulation SHO").

FACTS AND VIOLATIVE CONDUCT

1. During the period between February 23, 2009 and August 4, 2009, the firm executed 14 orders for sales pursuant to SEC Rule 144, and failed to mark each as a short sale. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
2. In four instances during the period between March 11, 2009 and March 23, 2009, the firm had a fail-to-deliver position at a registered clearing agency in one equity security that resulted from long sale transactions, and failed to timely close out the fail-to-deliver positions by purchasing securities of like kind. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 204T(a)(1) of Regulation SHO.

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

1. A censure; and
2. A fine of \$17,500

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.

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 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 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 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: (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. 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.

6/27/13
Date

Respondent
Oppenheimer & Co. Inc.

By: John T. McGuire

Name: JOHN T. MCGUIRE

Title: Deputy General Counsel

Reviewed by:

John T. McGuire

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

Accepted by FINRA:

7/15/2013
Date

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

Eric S. Brown

Eric S. Brown
Chief Counsel
Department of Market Regulation