

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009018400501**

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. ("Oppenheimer" or "Respondent") 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 Oppenheimer 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 is based in New York, New York and has been a FINRA member firm since March 1945. Oppenheimer employs approximately 1,277 registered personnel and approximately 880 associated personnel.

RELEVANT DISCIPLINARY HISTORY

Oppenheimer has had the following relevant disciplinary history:

- On October 12, 2010, Oppenheimer was censured and fined \$57,500 by FINRA for violations of the MSRB fair pricing rules, OATS violations and for violations of SEC Rule 10b-10.

- On February 3, 2006, Oppenheimer was censured and fined \$20,000 by FINRA for, among other things, failing to timely file a MSRB Form G-36 and an official statement for three underwritings and filing an inaccurate MSRB Form G-37.

OVERVIEW

Oppenheimer failed to deliver official statements by settlement date to numerous customers who purchased new issue municipal securities. At various times, Oppenheimer also failed to keep a record of deliveries of official statements to purchasers of new issue municipal securities. In addition, Oppenheimer failed to enforce its written supervisory procedures pertaining to: (1) the firm's requirements to deliver official statements to customers who purchased new issue municipal securities; and (2) the firm's requirements to maintain various records pertaining to its obligation to deliver official statements to customers who purchased new issue municipal securities. As a result of the foregoing, Oppenheimer violated MSRB Rules G-8, G-17, G-27, and G-32.

FACTS AND VIOLATIVE CONDUCT

MSRB Rule G-32: Disclosures in Connection with New Issues

MSRB Rule G-32(a) requires, with limited exceptions, broker-dealers selling a new issue municipal bond to deliver a copy of the issue's official statement to the customer on or before settlement date of the purchase.¹ Delivery by settlement date is presumed to have been made if the official statement is placed in the mail at least three business days before settlement date.²

A new issue municipal bond is a municipal bond sold during the primary offering disclosure period.³ The primary offering disclosure period begins with the first submission to the underwriters of an order for the purchase of offered municipal securities⁴ or the purchase of securities from the issuer, whichever first occurs, and ends 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole

¹ Alternatively, pursuant to an amendment effective June 1, 2009, MSRB Rule G-32 permits broker-dealers to satisfy this delivery obligation by notifying customers how they may obtain a copy of the issue's official statement electronically.

² MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

³ MSRB Rule G-32(d)(vi).

⁴ The term "offered municipal securities" shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the securities' primary offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered. See MSRB Rule G-32(d)(vi).

underwriter (usually the issue closing date).⁵ Rule G-32 does not limit the official statement delivery obligation to the underwriters of the municipal bond issue. The obligation to deliver an official statement by settlement date applies not only to underwriters, syndicate managers, syndicate members, and selling group members, but also to firms not participating in the offering that sell the municipal securities during the primary offering period and to secondary market transactions during that period.⁶

Failure to Deliver Official Statements to Customers

At various times from January 1, 2009 through March 31, 2009, Oppenheimer failed to deliver official statements by settlement date to numerous customers who purchased new issue municipal securities during the primary offering disclosure period. In all of these transactions, Oppenheimer was neither an underwriter nor part of the underwriting syndicate. However, the firm was required to deliver an official statement to each customer by settlement date, as required by MSRB Rules G-32.

Failure to Keep Records Required by MSRB Rule G-8(a)(xiii)

MSRB Rule G-8(a)(xiii) requires broker-dealers to keep a record of all deliveries of official statements to purchasers of new issue municipal securities required to be provided under MSRB Rule G-32. Interpretive guidance notes that MSRB Rule G-8 requires broker-dealers to keep a record of: the customer's name, a description of the security, the settlement date, the type of disclosure sent (*i.e.*, a preliminary or final official statement), the date the disclosure was sent, and the name of the person(s) sending the disclosure.⁷ Firms must do more than merely establishing a file containing a copy of the customer's confirmation and a copy of a mailing label used to send the official statement. At various times from January 1, 2009 through March 31, 2009, Oppenheimer failed to keep various records required by MSRB Rule G-8(a)(xiii).

Failure to Enforce Written Supervisory Procedures as Required by MSRB Rule G-27

MSRB Rule G-27(a) requires broker-dealers to supervise the conduct of their municipal securities activities and to ensure compliance with MSRB Rules. Rule G-27(c) requires each broker-dealer to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of municipal securities activities is in compliance with MSRB Rules. The firm's written policies and procedures and internal compliance review procedures should clearly address both new issue municipal securities customer disclosures and recordkeeping

⁵ MSRB Rule G-32(d)(ix).

⁶ MSRB G-32(a). See also MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with new Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

⁷ MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with new Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

relating to MSRB Rule G-32.⁸

From January 1, 2009 through March 31, 2009, Oppenheimer failed to enforce its written supervisory procedures pertaining to: (1) the firm's official statement delivery requirements to customers who purchased new issue municipal securities for secondary market transactions that occurred during the primary offering disclosure period, including those transactions in which the firm was not an underwriter nor part of the underwriting syndicate, as required by MSRB Rule G-32; and (2) the firm's requirements to maintain various records pertaining to its obligation to deliver official statements to customers who purchased new issue municipal securities, including those transactions in which the firm was not an underwriter nor part of the underwriting syndicate, as required by MSRB Rule G-8.

In light of the foregoing, Oppenheimer violated MSRB Rules G-8, G-17, G-27, and G-32.

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

Respondent Oppenheimer is censured and fined \$100,000.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondent has submitted an *Election of Payment* form showing the method by which it proposes to pay the fines imposed.

Respondent specifically and voluntarily waives any right to claim that it 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

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 it;
- 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

⁸ NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

- 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 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 records and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary records;
 - 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 rights 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 Oppenheimer, certifies that he is duly authorized to act on Oppenheimer's 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 Oppenheimer 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 Oppenheimer to submit it.

Oppenheimer & Co. Inc.

By: 

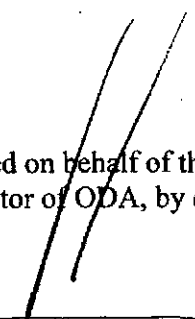
4/4/11
Date

Name: Dennis McMahon

Title: Ex-Parte General Counsel

Accepted by FINRA:

5/10/11
Date


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

David B. Klafter, Esq.
Deputy Regional Chief Counsel
FINRA Department of Enforcement
2500 N. Military Trail, Suite 302
Boca Raton, FL 33431-6324
Phone: (561) 443-8110
Fax: (561) 443-7998
david.klafter@finra.org