

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025957001**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Oppenheimer & Co., Inc. ("Oppenheimer" 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 Oppenheimer alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Oppenheimer 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 FINRA member since March 22, 1945. The Firm is headquartered in New York City and is a full-service, self-clearing broker-dealer. It employs approximately 1,263 registered persons in 116 branch offices.

RELEVANT DISCIPLINARY HISTORY

On February 19, 2014, pursuant to Letter of Acceptance, Waiver and Consent No. 2011026125001, FINRA found that Oppenheimer failed to supervise Trade and OATS reporting, among other violations, censured the Firm, and fined it \$45,000.

On July 29, 2013, pursuant to Offer of Settlement No. 2009018668801, FINRA found that Oppenheimer failed to supervise the sale of over one billion shares of twenty unregistered penny stocks and had inadequate AML systems and procedures, censured the Firm, fined it \$1,425,000, and required it to undertake a comprehensive review of relevant policies, systems, and procedures.

On October 12, 2010, pursuant to Letter of Acceptance, Waiver and Consent No. 2008013630001, FINRA found that Oppenheimer failed to adequately supervise the purchase and sale of municipal securities and other rule violations, censured the Firm, and fined it \$57,500.

OVERVIEW

Between April 5, 2005, and November 30, 2009 (the "Relevant Period"), Oppenheimer failed to establish and maintain an adequate system to monitor, supervise, and control its extension of margin loans for foreign sovereign debt. The system was inadequate in three respects. First, the Firm's written supervisory procedures ("WSPs") did not address how to assess the risks of extending margin credit for foreign sovereign bonds. Second, the Firm failed to dedicate sufficient supervisory resources to monitoring the risk of holding below-investment-grade foreign sovereign bonds. Third, the Firm failed to take sufficient steps to assess whether a ready market existed for below-investment-grade foreign sovereign bonds.

In addition, the Firm failed to reasonably supervise the transfer of assets securing a margin loan from one party to another.

Accordingly, the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010.¹

FACTS AND VIOLATIVE CONDUCT

Foreign Sovereign Debt Margin Loans

NASD Rule 3010(a) requires each member to establish and maintain a system of supervision that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD and FINRA Rules, including but not limited to Rule 15c3-1 of the Securities Exchange Act of 1934 and NASD Rule 2520 (which governed Oppenheimer's margin activity during the Relevant Period).²

During the Relevant Period, former NASD Rule 2520 set the margin requirement for non-investment-grade, non-equity securities and required firms to review the need for instituting higher margin requirements. Exchange Act Rule 15c3-1 required firms to deduct 100 percent of the carrying value of securities for which there was no ready market. Oppenheimer failed to have adequate systems and procedures in place to ensure that it complied with NASD Rule 2520 and Exchange Act Rule 15c3-1.

¹ NASD Rule 2110 was superseded by FINRA Rule 2010 effective December 15, 2008.

² NASD Rule 2520, along with NYSE Rule 431, were superseded by FINRA Rule 4210 effective December 2, 2010.

1. *Oppenheimer Failed to Address the Risks of Extending Margin to Foreign Sovereign Bonds.*

In April of 2005, the Firm expanded its business by opening an office in Atlanta designed to service foreign customers, particularly foreign banks and broker-dealers (the "International Office"). A number of the clients of the International Office sought to purchase below-investment-grade foreign sovereign bonds on margin, almost all of which were issued by a single foreign government. Oppenheimer approved the margin loans, and for almost all of the loans set the maintenance requirement at a minimum of 50 percent of the value of the security. The Firm's exposure to below-investment-grade foreign sovereign bonds ultimately exceeded \$30 million during the Relevant Period. The Firm failed to upgrade its systems and procedures to address the issues arising from risks of having margin debt collateralized by foreign sovereign bonds.

The Firm's failure to supervise placed its capital at risk. Almost all of the \$30 million in outstanding loans were collateralized by below-investment-grade bonds issued by a single government. A credit issue involving the default of one bond would therefore likely mean the default of all of the bonds. Although these bonds did not default during the Relevant Period, the Firm's WSPs failed to provide guidance on how to assess the risks of foreign sovereign lending, including the risk of multiple defaults, and how such assessments should be incorporated into margin requirements or limits on total exposure.

2. *Oppenheimer Failed to Dedicate Sufficient Resources to Monitor the Risk of Holding Below-Investment-Grade Foreign Sovereign Bonds.*

The Firm failed to adequately monitor below-investment-grade foreign sovereign bonds collateralizing margin. The Firm relied on two senior executives to monitor the debt, but these executives had other significant oversight responsibilities involving the operations of over 100 branch offices. The Firm failed to implement additional and more robust oversight of its holdings in foreign sovereign debt, such as creating a credit committee, to assess and monitor the risk of these loans.

3. *Oppenheimer Failed to Adequately Assess Whether a Ready Market Existed for these Below-Investment-Grade Foreign Sovereign Bonds.*

For securities with no ready market, Exchange Act Rule 15c3-1 required a deduction from net capital of 100 percent of carrying value. A ready market could be shown to exist through an analysis of trading in the security or through other means that would show the debt to have been adequately secured.

The Firm did not have adequate policies and procedures to determine whether a ready market existed. Because the below-investment-grade bonds at issue here did not trade on a daily basis, the Firm should have employed additional means to demonstrate that the margin loans were adequately secured. The Firm did not take adequate steps or maintain sufficient documentation to do so. As a result, the Firm's net capital calculation as of July 31, 2009, should have been reduced by approximately \$31 million.

Third-Party Transfer

The Firm also failed to adequately supervise a third-party transfer of marginable securities during the Relevant Period. The Firm's WSPs required a Letter of Authorization to approve third-party transfers of securities. Notwithstanding its WSPs, in one instance, the Firm allowed a third-party transfer of securities to occur without taking adequate steps to determine whether the information provided on the Letter of Authorization was sufficient for the transfer to be approved.

For all of these reasons, the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

B. Oppenheimer consents to the imposition of the following sanctions:

1. A Censure; and
2. A fine of \$250,000.

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

Oppenheimer 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

Oppenheimer 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
- 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, Oppenheimer 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.

Oppenheimer 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

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

- D. Oppenheimer may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Oppenheimer 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 person 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.

On behalf of Oppenheimer & Co., Inc.

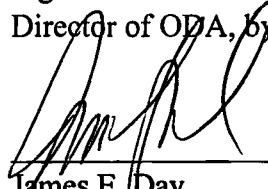
11/26/14
Date


Dennis McNamara
General Counsel

Accepted by FINRA:

1/6/15
Date

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


James E. Day
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