

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110261250-01**

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. ("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

On October 11, 2010, an AWC became final wherein the firm was censured and fined a total of \$57,500. The total fine included a fine of \$5,000 for violations of SEC Rule 10b-10, and \$12,500 for violations of FINRA Rule 7450 during the period of February 18 and 19, 2009.

SUMMARY

The staff in the Department of Market Regulation's Trading and Market Making Surveillance ("TMMS") Section reviewed the items listed on Exhibit 1, attached, to determine the firm's compliance with various FINRA and SEC rules for trade dates January 12 and 13, 2011 (the "review period"), unless otherwise noted.

FACTS AND VIOLATIVE CONDUCT

1. During the review period in 2,092 instances, OPCO submitted to the FINRA/Nasdaq Trade Reporting facility transactions with inaccurate market center codes. In four instances, the firm submitted transactions for which it failed to substantiate usage of the qualified contingent trade modifier. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A.
2. OPCO reported inaccurate information on 50 customer confirmations during the review period consisting of the following: : (i) in 30 instances, disclosed an inaccurate capacity; disclosed an inaccurate execution price; failed to disclose that these were average price transactions; and inaccurately disclosed the compensation type as "commission equivalent" for agency trades; (ii) in 8 instances, disclosed an inaccurate capacity, failed to disclose the firm was market maker in a security, and inaccurately disclosed the compensation type as "commission" for principal trades; (iii) in 5 instances, failed to disclose that they were a market maker in a security; (iv) in 6 instances, disclosed an inaccurate execution price; and (v) in 1 instance, disclosed an inaccurate capacity and inaccurately disclosed the compensation type as "commission" for a principal trade. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
3. During the review period, OPCO transmitted to the Order Audit Trail System ("OATS") 9 reports that contained inaccurate, incorrect, incomplete or improperly formatted data. Specifically, in 8 instances, the firm submitted orders with an inaccurate customer designation, and in 1 instance, failed to submit information for routes associated with an order. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
4. On six occasions during the review period, OPCO marked its internal ledger with an inaccurate short designation for a long position. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3110 and SEC Rule 17a-3.
5. On six occasions during the review period, OPCO incorrectly reported a long sale to the FINRA/Nasdaq TRF with a short sale modifier. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6182.
6. In two instances during the review period, OPCO failed to properly classify customer orders for purposes of SEC Rule 605 order execution disclosure; and for the month of November 2010, the firm made available a report on the covered orders in national market system securities that it received, which failed to contain accurate statistics for marketable limit orders it received between 500 and 1,999 shares in one security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605.
7. During the review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain

applicable federal securities laws and regulations, and/or the rules of NASD/FINRA. At a minimum, adequate written supervisory procedures addressing Trade and OATS reporting 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 minimal requirements for adequate written supervisory procedures, in the following areas.

- Trade Reporting: Timely and accurate reporting to the TRF [(a), (b), (c)]; and
- OATS: accuracy of OATS data [(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:

Censure and fine of \$45,000 (consisting of a \$10,000 fine for the FINRA Rule 6380A violation; a \$5,000 fine for the SEC Rule 10b-10 violation; a \$12,500 fine for the FINRA Rule 7450 violation; a \$2,500 fine for the NASD Rule 3110 and SEC Rule 17a-3 violations and FINRA Rule 6182 violations; a \$10,000 fine for the SEC Rule 605 violation; and a \$5,000 fine for the FINRA Rule 2010 and NASD Rule 3010 violation).

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

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

2/10/14
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.
Counsel for Respondent
Oppenheimer & Co., Inc.
125 Broad Street
New York, NY 10004

Accepted by FINRA:

2/12/14
Date

Signed on behalf of the

Director of ODA, by delegated authority

Kenneth R. Bozza
Kenneth R. Bozza
Chief Counsel, Legal Section
Department of Market Regulation

**2011 Market Regulation Examination Samples
Oppenheimer Co., Inc. ("OPCO")
Exam No. 20110261250
Sample Source/Period*: January 12-13, 2011**

<u>Sample Size</u>	<u>Sample Description</u>
168	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
172	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
1	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
458	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
17	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
67	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
40	Sell orders entered into BATS Exchange execution system for compliance with BATS Rule 11.19 long/short entry requirements
26	Sell orders entered into EDGA Exchange execution system for compliance with EDGA Rule 11.15 long/short entry requirements
26	Sell orders entered into EDGX Exchange execution system for compliance with EDGX Rule 11.15 long/short entry requirements
41	Sell orders entered into NYSE Arca Exchange execution system for compliance with NYSE Arca Rule 7.16 long/short entry requirements
42	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
80	Orders for compliance with best execution requirements of NASD Rule 2320
	62 Held orders from the Held Order Protection Review
	10 Not Held orders from the Not Held Order Review
	0 Order executed with a .PRP (Prior Reference Price) trade modifier
	8 Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
62	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
0	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761

2011 Market Regulation Examination Samples
Oppenheimer Co., Inc. ("OPCO")
Exam No. 20110261250
Sample Source/Period*: January 12-13, 2011

<u>Sample Size</u>	<u>Sample Description</u>
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
68	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
94	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
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 November 2010 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)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
21	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; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4
8	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
2329	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
4913	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
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 and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements