

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120347132 - 01**

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

RE: Oppenheimer & Co. Inc. ("OPCO"), Respondent
Broker-Dealer
CRD No. 249

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Oppenheimer & Co. Inc. ("OPCO," the "firm," 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 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

OPCO has been a member of FINRA since 1945, and its registration currently remains in effect. The firm does not have any prior relevant disciplinary history.

SUMMARY

In this matter, the Customer Issues Team of the Department of Market Regulation reviewed the firm's compliance with best execution requirements for over-the-counter ("OTC") securities for the period between October 1, 2011 through December 31, 2011 (the "4Q11 review period"), and July 1, 2012 through September 30, 2012 ("3Q12 review period").

FACTS AND VIOLATIVE CONDUCT

4Q11 Review Period

1. During the review period, in seven transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 2320 and FINRA Rule 2010.¹
2. In six instances during the review period, the firm failed to accurately report the correct execution price to the OTC Reporting Facility ("OTCRF"). The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7330.
3. In four instances between October 1, 2011 and December 3, 2011, the firm failed to show the correct order receipt time and time of execution on the memorandum of four brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3110(a) and FINRA Rule 2010, and SEA Rule 17a-3.
4. In six instances between December 5, 2011 and December 31, 2011, the firm failed to show the correct order receipt time and time of execution on the memorandum of six brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and FINRA Rule 4511, and SEA Rule 17a-3.

3Q12 Review Period

5. During the review period, in six transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and FINRA Rule 5310.²
6. In two instances during the review period, the firm failed to accurately report the correct execution price to the OTCRF. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7330.
7. In six instances during the review period, the firm failed to show the correct order receipt time and time of execution on the memorandum of six brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and FINRA Rule 4511, and SEA Rule 17a-3.

¹ These violations resulted in \$73.54 in restitution, which the firm has confirmed was paid.

² These violations resulted in \$35.61 in restitution, which the firm has confirmed was paid.

4Q11 and 3Q12 Review Periods

8. During the review periods, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of the NASD and FINRA pertaining to the firm's best execution obligations in OTC securities. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (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 conduct described in this paragraph constitutes a violation of FINRA Rule 2010 and NASD Rule 3010.

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

Censure and a fine of \$21,000 (consisting of a fine of \$5,000 for the violations of NASD Rule 2320, FINRA Rule 2010 and FINRA Rule 5310; \$5,000 for the violations of FINRA Rule 7330; \$1,000 for the violations of NASD Rule 3110(a), FINRA Rule 2010 and FINRA Rule 4511 and SEA Rule 17a-3; and \$10,000 for the violations of NASD Rule 3010 and FINRA Rule 2010).

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. It 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.

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 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, 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 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. 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 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. Respondent 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.

9/23/15
Date

Respondent
Oppenheimer & Co. Inc.

By: John T. McGuire

Name: JOHN T. MCGUIRE

Title: DEPUTY GENERAL
COUNSEL

Reviewed by:

John T. McGuire
Attorney Name
Counsel for Respondent

Accepted by FINRA:

10/6/15
Date

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

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