

Disciplinary Proceeding No. CE4050002 was filed through a Second Amended Complaint ("Complaint") on September 26, 2006 by the Department of Enforcement of NASD ("Complainant"). Respondent Oppenheimer & Co. Inc. submitted an Offer of Settlement ("Offer") to Complainant on September 25, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

### BACKGROUND

Oppenheimer & Co. Inc. (CRD No. 249) has been a member of NASD since March 22, 1955, and has been registered with the Securities and Exchange Commission since 1955. Oppenheimer is a full-service, self-clearing securities brokerage firm headquartered in New York, and engages in a general securities business. Oppenheimer Holdings, Inc., a publicly held company based in Toronto and listed on the NYSE, owns the firm. In January 2003, Fahnestock & Co. Inc. acquired the U.S. Private Client Division of CIBC World Markets Corp. operating under the name Oppenheimer (and subsequently assumed the Oppenheimer name), creating a combined firm with over seventeen hundred (1,700) financial consultants and placing it among the top ten independent full-service retail broker-dealers in the United States, based on financial consultants and client assets. Since January 2003, the two firms have been consolidating and aligning their systems, including replacing the former Fahnestock clearing platform with a Bloomberg clearing platform.

The firm's recent relevant disciplinary history follows:

On June 30, 2006, NASD accepted a Letter of Acceptance, Waiver and Consent from Oppenheimer in relation to violations of NASD Rules 2110, 3010, and 5220(E), for, as an intermarket trading system/computer assisted execution system (ITS/CAES) market maker, failing to maintain continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by NASD; and failing to maintain a supervisory system that provided for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations, and NASD rules concerning maintaining two-sided quotations as an ITS/CAES market maker. The firm was censured, fined \$17,500, and ordered to revise its written supervisory procedures with respect to maintaining two-sided quotations as an ITS/CAES market maker. (Case No. 20050002356-01).

On February 3, 2006, NASD accepted a Letter of Acceptance, Waiver and Consent from Oppenheimer in relation to violations of MSRB Rules G-36, G-37 and G-38, for failing to file in a timely manner MSRB Form G-36 and an official statement for three underwritings; filing an inaccurate MSRB Form G-37; failing to submit in writing to issuers with which it was seeking municipal securities business, information on consulting arrangements with each issuer; and failing to disclose required information regarding consultants to issuers. The firm was censured and fined \$20,000. (Case No. E102003017701).

On January 9, 2006, NASD accepted a Letter of Acceptance, Waiver and Consent from Oppenheimer in relation to violations of NASD Conduct Rules 2110 and 3010, for failing to file amendments to Forms U-4 and U-5, and initial Form U-5 in a timely manner, and failing to establish and maintain supervisory systems and procedures reasonably designed to achieve compliance with NASD By-Laws, Article V, Sections 2(c), 3(a), and 3(b) reporting obligations ("Article V Reporting Obligations"). The firm was censured, fined \$250,000, and ordered to conduct an audit to assess, and provide a certification regarding, the effectiveness of the firm's systems and procedures for ensuring compliance with Article V Reporting Obligations. (Case No. EAF0400720002).

On October 18, 2004, NASD's Department of Market Regulation filed a complaint against the firm charging that it failed to make and annotate an affirmative determination for short sales, failed to mark orders as short, failed to disclose correct capacity, failed to show time of execution and correct volume, failed to maintain two-sided quotations, and failed to establish and maintain a supervisory system. The violations were alleged to have occurred in February 2003, with the exception of the two-sided quotations, which were alleged to have occurred between April and June 2003. An Offer of Settlement was entered in that matter, effective May 17, 2005, and Oppenheimer consented to a censure and fine of \$32,500. (Case No. CMS040156).

On December 23, 2003, NASD accepted a Letter of Acceptance, Waiver and Consent from Fahnstock in relation to violations of NASD Conduct Rules 3370, 3110 and 2110, NASD Marketplace Rules 6620(c)(2) and 6130(d), and

SEC Rule 17a-3 for failing to make an affirmative determination prior to executing a customer short sale and two proprietary short sale orders; failing to report to ACT the correct symbol indicating whether three transactions in eligible securities were a Buy, Sell, Sell Short, Sell Short Exempt, or Cross; failing to report the correct number of shares through ACT in four last sale reports for transactions in OTC Equity securities; failing to show the correct time of execution on the memorandum of brokerage orders; failing to show the price and number of shares of each partial execution on the memorandum of one brokerage order; failing to show the time of entry and terms and conditions on the memorandum of brokerage orders; and failing to indicate whether the order was long or short on the memorandum of brokerage orders. The firm was fined \$4,500 (composed of a \$1,000 fine for the affirmative determination rule violations, \$2,500 for the transaction reporting violations, and \$1,000 for the recordkeeping violations). (Case No. CMS030297).

On January 29, 2002, NASD accepted a Letter of Acceptance, Waiver and Consent from Fahnestock in relation to a violation of MSRB Rule G-36 for the untimely submission of official statements. The firm was fined \$2,000. (Case No. C10020009).

## FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

### Summary

For 17 months, from January 1, 2003 to May 31, 2004, Respondent Oppenheimer & Co. Inc. ("Oppenheimer," "Respondent," or the "firm") failed to report on a timely basis over 6,100 municipal securities transactions with other dealers and for more than a month, during May and June 2003, it failed to accurately report to the Municipal Securities Rulemaking Board ("MSRB") the price, time, commission or whether it acted as principal or agent on hundreds of municipal securities trades with customers. In addition, in May and June 2003, it failed to report more than 600 municipal securities transactions.

Oppenheimer provided an untimely and incomplete response to one request for information made under Procedural Rule 8210 and provided information for a different request months late. In addition, from July 1, 2002 through at least the first quarter of 2004, the firm also failed to have a system in place to save all electronic communications between its employees, and failed to prevent its employees from deleting internal electronic communications in violation of federal securities laws and NASD Rules.

Oppenheimer therefore violated MSRB Rules G-14 and G-27, Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4, NASD Procedural Rule 8210, and NASD Conduct Rules 2110, 3110 and 3010(a) and (b). In support of its charges, the Department alleges the following:

**RESPONDENT**

In January 2003, Fehnestock & Co., Inc. acquired the U.S. Private Client Division of CIBC World Markets Corp. operating under the name Oppenheimer, and subsequently assumed the Oppenheimer name. The acquisition of the U.S. Private Client Division greatly expanded the size of the firm's municipal securities bond business and resulted in the firm introducing a new technology platform for that business which it had not adequately tested. Oppenheimer has been a member of NASD since March 1955 and has been registered with the Securities and Exchange Commission since 1955. The firm, headquartered in New York City, is a full-service, self-clearing broker-dealer. It is currently one of the largest broker dealers in the United States with approximately 3,000 employees in 83 offices in 21 states and 2 foreign jurisdictions. Oppenheimer is a wholly owned subsidiary of Oppenheimer Holdings, Inc., a publicly held company based in Toronto, Canada and listed on the New York Stock Exchange.

**OPPENHEIMER FAILED TO PROVIDE TIMELY AND ACCURATE INFORMATION REGARDING  
MUNICIPAL SECURITIES TRANSACTIONS WITH OTHER DEALERS  
Violation of MSRB Rule G-14**

During all periods relevant to this Complaint, MSRB Rule G-14 required NASD member firms to report municipal securities transactions with other broker-dealers in an acceptable format to a registered clearing agency so that the

agency could timely compare and report inter-dealer municipal securities transactions to the MSRB, which makes the transaction data available to investors. Failure to report all eligible inter-dealer municipal securities transactions in the format and within the timeframe as required by the registered clearing agency results in an untimely report in violation of MSRB Rule G-14.

With regard to inter-dealer transactions, Rule G-14 also required the firm to accurately report the time of trade and identity of the entities that execute and clear the transaction. MSRB Rule G-14 stated,

The information submitted in accordance with this procedure shall include the time of trade execution and the identity of the brokers, dealers, or municipal securities dealers that execute the transaction in addition to the identity of the entities that clear the transaction. If clearing/introducing broker arrangements are used for transactions, the introducing brokers shall be identified as the "executing brokers."

At all times relevant to this Complaint, Respondent used the National Securities Clearing Corporation ("NSCC") as its registered clearing agency.

From January 1, 2003 to May 31, 2004, Oppenheimer untimely reported to the NSCC over 6,100 eligible inter-dealer transactions. In addition, Oppenheimer inaccurately reported the time of certain of these trades and inaccurately identified the executing broker for certain of these trades.

A list of each inter-dealer transaction that Oppenheimer failed to report in a timely manner is attached as Schedule A. Schedule A also identifies these trades for which Oppenheimer inaccurately reported the time of the trade or the identity of the executing broker.

The conduct described above constitutes separate and distinct violations of MSRB Rule G-14 by Oppenheimer.

**OPPENHEIMER FAILED TO PROVIDE ACCURATE INFORMATION REGARDING  
MUNICIPAL SECURITIES TRANSACTIONS WITH CUSTOMERS  
Violation of MSRB Rule G-14**

MSRB Rule G-14 requires firms to report the following information for municipal securities transactions with customers promptly, accurately and completely: time of trade execution; dollar price of the transaction, exclusive of any commission; capacity in which the broker, dealer, or municipal securities dealer acted, whether it acted as an agent for the customer or as a principal; and commission, if any.

On May 21, 2003, Oppenheimer began reporting customer and inter-dealer municipal securities transactions to the MSRB using a new trade reporting system previously employed by the U.S. Private Client Division of CIBC World Markets Corp. that it had acquired in January 2003. Oppenheimer failed to test the CIBC World Markets Corp. system with the MSRB before it began reporting to ensure that the system would report transactions to the MSRB properly. This system contained flaws that resulted in inaccurate trade reports.

Between May 1 and June 3, 2003, Oppenheimer, either directly or through a clearing firm, inaccurately reported to the MSRB information on hundreds of municipal securities transactions with customers.

MSRB staff notified Oppenheimer on numerous occasions in May 2003 that the firm was erroneously reporting municipal securities transactions to the MSRB. The MSRB staff informed the firm of the nature of the trade reporting errors and asked the firm to take corrective action.

In response, Oppenheimer acknowledged it was inaccurately reporting municipal securities transactions with customers and informed MSRB officials that it was working to solve the programming problem and should have it fixed shortly.

Notwithstanding these assurances, the firm continued to report municipal securities transactions inaccurately throughout May 2003 and the beginning of June 2003.

For these trades, Oppenheimer inaccurately reported to the MSRB:

- a. the time of trade execution (in more than 200 transactions);
- b. the dollar price of the transaction, exclusive of any commission (in more than 800 transactions);
- c. whether Oppenheimer acted as an agent or principal (in more than 40 transactions); and/or
- d. the commission (in more than 500 transactions).

A list of each customer transaction in which Oppenheimer inaccurately reported the time of trade execution is attached as Schedule D. A list of each customer transaction in which Oppenheimer inaccurately reported the dollar price of the transaction, exclusive of any commission, is attached as Schedule E. A list of each customer transaction in which Oppenheimer inaccurately reported whether

it acted as an agent or principal is attached as Schedule F. A list of each customer transaction in which Oppenheimer inaccurately reported the commission is attached as Schedule G. A list of each customer transaction in which Oppenheimer inaccurately reported either the commission, or whether it acted as an agent or principal, is attached as Schedule H.

On June 4, 2003, in the face of Oppenheimer's continued submissions of deficient trade reports, MSRB staff ordered Oppenheimer to stop reporting municipal securities transactions until it fixed its reporting problems. The firm complied with the MSRB order to stop reporting municipal securities transactions.

On or about June 6, 2003, the firm stated that it had corrected its trade reporting system for customer transactions and resumed reporting transactions.

The inaccurate trade reporting described above constitutes separate and distinct violations of MSRB Rule G-14 by Oppenheimer.

**OPPENHEIMER FAILED TO REPORT MUNICIPAL  
SECURITIES TRANSACTIONS WITH CUSTOMERS  
Violation of MSRB Rule G-14**

Rule G-14 requires each dealer to report all eligible customer municipal securities transactions to the MSRB.

Between approximately May 1 and June 3, 2003, Oppenheimer failed to report to the MSRB over 600 customer municipal securities transactions.

A list of each customer transaction that occurred but the firm failed to report to the MSRB is attached as Schedule B.

The conduct described above constitutes separate and distinct violations of MSRB Rule G-14 by Oppenheimer.

**OPPENHEIMER FAILED TO RETAIN ELECTRONIC COMMUNICATIONS  
Violations of Section 17(a) of the Securities Exchange Act of 1934,  
Rule 17a-4 thereunder, and NASD Conduct Rules 2110 and 3110**

Section 17(a)(1) of the Exchange Act requires that each broker or dealer

make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

Pursuant to its authority under Section 17(a)(1) of the Exchange Act, the Commission promulgated Rule 17a-4. Rule 17a-4(b)(4) requires that each broker and dealer

preserve for a period of not less than three years, the first two years in an easily accessible place.... [o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such....

Internal and external e-mail communications relating to a broker-dealer's "business as such" are subject to the retention requirements of Rule 17a-4.

NASD Rule 3110 requires, among other things, that members comply with Rule 17a-4.

From July 1, 2002 through at least the first quarter of 2004, Oppenheimer did not have a system in place to retain internal electronic communications sent between its associated persons.

From July 1, 2002 through at least the first quarter of 2004, Oppenheimer's system allowed employees to permanently delete e-mails, and some employees did in fact delete "sent" and "received" e-mails from their desktops during that period.

Accordingly, Oppenheimer failed to retain internal e-mails for three years.

By virtue of this conduct, Oppenheimer violated Section 17(a) of the Securities Exchange Act of 1934, Rule 17a-4 thereunder and NASD Conduct Rules 3110 and 2110.

**OPPENHEIMER FAILED TO RESPOND IN A TIMELY AND COMPLETE MANNER  
TO A REQUEST FOR INFORMATION AND DOCUMENTS  
Violations of NASD Procedural Rule 8210 and  
NASD Conduct Rule 2110  
(September 16, 2004 Request)**

***First Request***

By letter dated September 16, 2004, sent via certified mail, return receipt requested, to Oppenheimer's business address as reflected in the records of NASD's Central Registration Depository ("CRD"), the Department requested that the firm produce information relating to its retention of e-mail for twenty employees who traded municipal securities and maintained electronic communications for Oppenheimer and were therefore critical to the NASD

investigation of these areas of the firm's operations. In its request, the Department requested the firm to identify all electronic communication systems used by twenty employees from July 1, 2002 to September 16, 2004. The Department requested the firm to certify that it retained all electronic communications for the twenty employees for certain time periods. The Department also requested the firm to explain in writing the reasons for numerous discrepancies in the prior productions of electronic communications. The request was made in accordance with NASD Procedural Rule 8210 and requested that the firm comply on or before September 30, 2004.

The return receipt for the certified mailing was returned, verifying that the firm received it.

On September 30, 2004, the firm sought a three-week extension in which to respond. By letter dated October 1, 2004, NASD granted the firm an extension until October 14, 2004, and warned of possible disciplinary action if the firm failed to respond. Thereafter, on numerous occasions, the Department renewed its request to produce the requested information. Oppenheimer attempted to precondition production of information responsive to the first request upon a prior meeting with the Department.

### ***Second Request***

By letter dated November 3, 2004, sent via certified mail, return receipt requested, to Oppenheimer's business address as reflected in CRD, the Department requested that the firm immediately provide the information

requested in its September 16, 2004 letter. The second request was made in accordance with NASD Procedural Rule 8210 and warned of possible disciplinary action if the firm failed to respond. The return receipt for the certified mailing was returned verifying that the firm received the November 3 letter.

On or about November 23, 2004, NASD advised Oppenheimer in a letter that the NASD staff had made a preliminary determination to recommend disciplinary action against the firm for, among other things, failing to comply with the September 16, 2004 request letter.

On May 10, 2005, Oppenheimer provided a written response to Enforcement that addressed one portion of the September 16, 2004 request letter. That response was untimely and did not respond to the majority of the request. To date, the firm has not provided information responsive to the balance of the September 16, 2004 letter.

By virtue of this conduct, Oppenheimer violated NASD Procedural Rule 8210.

By virtue of this conduct, Oppenheimer also violated NASD Conduct Rule 2110.

**OPPENHEIMER FAILED TO RESPOND IN A TIMELY MANNER TO  
A REQUEST FOR INFORMATION  
Violations of NASD Procedural Rule 8210 and  
NASD Conduct Rule 2110  
(August 7, 2003 Request)**

***First Request***

By letter dated August 7, 2003, sent via regular first class mail to Oppenheimer's business address as reflected in CRD, the Department requested that the firm produce, among other items, a copy of the firm's customer confirmations for all municipal securities transactions with customers effected by the firm between May 1, 2003 and June 30, 2003 (collectively "confirmations"). The request was made in accordance with NASD Procedural Rule 8210, required the firm to produce the information on or before August 22, 2003 and warned of possible disciplinary action if the firm failed to respond.

The letter sent by regular first class mail was not returned. The firm requested, and the staff granted, in writing, two extensions – the first until September 5 and the second until September 24, 2003. Both letters granting extensions warned of possible disciplinary action if the firm failed to respond. The firm failed to produce the requested confirmations.

***Second Request***

By letter dated October 2, 2003, sent via regular first class mail to Oppenheimer's business address as reflected in CRD, the Department again requested that the firm produce confirmations as requested in its August 7, 2003

letter. The request was made in accordance with NASD Procedural Rule 8210, required the firm to produce the confirmations on or before October 17, 2003 and warned of possible disciplinary action if the firm failed to respond. The letter informed the firm that, "[t]his is the final request for the [confirmations]."

The letter sent by regular first class mail was not returned. On multiple occasions in 2003 and 2004, the Department asked the firm to produce the requested confirmations. The firm, however, failed to produce the requested confirmations.

In 2003, the firm stated that it was gathering confirmations. For example, in a letter dated October 17, 2003, Oppenheimer wrote to the Department,

With respect to [the request for confirmations], we are manually obtaining copies of the corresponding confirmations for the subject transactions but are unable to provide them at this time. This is a tedious and manual process and we concentrated our resources initially on retrieving and copying Firm order tickets. We will provide copies of these confirmations as soon as possible.

### ***Third Request***

By letter dated April 14, 2004, sent via regular first class mail to Oppenheimer's business address as reflected in CRD, the Department repeated its request that the firm produce confirmations consistent with its request in the August 7, 2003 letter. The request was made in accordance with NASD Procedural Rule 8210, required that the firm comply on or before April 28, 2004 and warned of possible disciplinary action if the firm failed to respond.

The letter sent by regular first class mail was not returned.

On May 17, 2004, Oppenheimer informed the Department that the firm would produce a document listing all municipal bond transactions and from this document the Department could determine for which transactions it wanted the firm to provide trade confirmations. The Department stated that this document was not responsive to the Department's request, but that it would review the document for adequacy. The firm provided the document to the Department on June 2, 2004. On June 18, 2004, the Department informed the firm that the document provided June 2 was not adequate, and that the request for confirmations remained due and outstanding. Representatives of the firm then requested that the Department narrow the dates for the confirmation request.

#### ***Fourth Request***

By letter dated June 25, 2004, sent via regular first class mail to Oppenheimer's business address as reflected in CRD, the Department again requested that the firm produce confirmations. Pursuant to requests by the firm, the staff modified its August 7, 2003 request by narrowing the date range as follows, "Please provide a copy of the firm's customer confirmations for all municipal securities transactions with customers effected by the firm between May 1, 2003 and June 6, 2003." The request was made in accordance with NASD Procedural Rule 8210. The Department requested that the firm immediately provide the information and warned of possible disciplinary action if the firm failed to respond.

The letter sent by regular first class mail was not returned.

The firm eventually produced confirmations on a rolling basis for the period May 1 through June 6, 2003 on the following dates: July 14, July 22, August 12, September 2 and September 16, 2004.

The firm failed to produce any confirmations to the Department for more than 11 months after the Department's initial August 7, 2003 request and did not fully comply with the staff's initial request, as modified, for more than one year.

By virtue of this conduct, Oppenheimer violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

**OPPENHEIMER FAILED TO ESTABLISH, MAINTAIN AND ENFORCE AN ADEQUATE  
SUPERVISORY SYSTEM AND WRITTEN SUPERVISORY PROCEDURES  
Violations of NASD Conduct Rules 2110 and 3010(a) and (b)**

From July 1, 2002 through at least the first quarter of 2004, Oppenheimer lacked adequate systems and procedures for the retention of internal electronic mail communications. While the firm maintained written supervisory procedures requiring employees to save every internal e-mail message they sent, the procedures were neither followed nor enforced. Employees deleted "sent" and "received" e-mails from their desktops during that period.

The firm's supervisory system and written supervisory procedures were inadequate and not reasonably designed to achieve compliance with applicable securities laws and regulations or with NASD Rules, including NASD Rules 2110, 3110, and Section 17(a) of the Securities Exchange Act and Rule 17a-4 thereunder.

By virtue of this conduct, Oppenheimer violated NASD Conduct Rules 2110 and 3010(a) and (b).

**OPPENHEIMER FAILED TO ADOPT, MAINTAIN AND ENFORCE WRITTEN SUPERVISORY PROCEDURES**  
**Violation of MSRB Rule G-27**

Between approximately January 2003 and June 2004, Oppenheimer failed to adopt and maintain adequate written supervisory procedures for the firm's municipal securities business in order to ensure compliance with MSRB rules. The firm lacked written procedures to monitor and test whether automated systems were properly reporting municipal securities transactions. The firm also lacked written procedures sufficient to address systems upgrades and technology conversions.

On June 19, 2003, an Oppenheimer employee sent an email to a member of the firm's Compliance Department in which he expressed concern about the lack of written procedures. The employee wrote,

*I'm getting concerned regarding how we report to the MSRB. I am now aware of another issue regarding the Bloomberg Trading system that may be causing a problem. Additionally, I think it is important programming write a manual for us (how to input & what codes to use). There is NO DOCUMENTATION for anything. There continues to be no coordination for any of this.....Please know I'm not pointing fingers at anyone, I know our resources are limited, though maybe you can help. Please keep this message to yourself, as I said, I'm not pointing fingers – I just think you can help.*

The firm's written supervisory procedures were inadequate and not reasonably designed to ensure that the conduct of the municipal securities

activities of the firm was in compliance with applicable securities laws and regulations and MSRB rules.

By virtue of this conduct, Oppenheimer violated MSRB Rule G-27.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD of its regulatory responsibility under the Securities Exchange Act of 1934.

#### SANCTIONS

It is ordered that Respondent:

- A. Pay a fine of \$800,000; and
- B. Oppenheimer undertakes to:
  - i. retain outside counsel, which NASD finds not unacceptable to:<sup>1</sup>
    - a. review, modify, and enhance Oppenheimer's written supervisory procedures applicable to its municipal securities trade reporting systems. This review and the modification and enhancements will be made so that the firm's written supervisory procedures, including written

<sup>1</sup> Respondent has represented to NASD that it has retained the law firm of Katten Muchin Rosenman LLP as its outside counsel and that the law firm has commenced a review of the firm's written supervisory policies including, but not limited to, a review of the firm's municipal capital markets supervisory procedures and supervisory procedures for responding to regulatory requests. Given that firm's familiarity with Respondent's procedures and measures taken to date to review the firm's procedures, NASD finds Katten Muchin Rosenman LLP acceptable as the outside counsel for this undertaking. The results of the Katten Muchin review described in B i a and b above shall constitute the basis for the report due hereunder.

supervisory procedures relating to the firm's systems, are reasonably designed to ensure compliance with trade reporting obligations under MSRB Rule G-14, and with other MSRB rules. The new written supervisory procedures will include, but not be limited to, provisions for monitoring and testing, in connection with any new systems upgrades, whether automated systems are properly designed to report the firm's municipal securities transactions timely and accurately in accordance with MSRB Rule G-14;

- b. review, modify, and enhance Oppenheimer's written supervisory procedures such that those written supervisory procedures are reasonably designed to ensure that the firm complies with regulatory requests in order to achieve compliance with applicable federal securities laws and regulatory rules; and
- c. prepare a report describing the nature and extent of its review, and the modifications and enhancements recommended in paragraphs B i a and b above. That report shall be completed within 45 days after notice of approval of this Offer and provided to Oppenheimer and NASD.

- ii. Cooperate with outside counsel retained under paragraph B i, above. Oppenheimer shall place no restrictions on outside counsel's communications with NASD staff, limited to its review, modification and enhancement of Oppenheimer's written supervisory procedures as required under the undertakings in paragraphs B i a and b. Upon request, Oppenheimer shall make available to NASD staff any and all communications between Oppenheimer (and its employees) and outside counsel, made in regard to outside counsel's review of the subject matters referenced in paragraph B i. Oppenheimer shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the outside counsel from transmitting to NASD staff any information, reports, or documents to the NASD relevant to its review under paragraph B i, above. Notwithstanding the scope or nature of the information provided to the NASD staff, the foregoing is not intended by Oppenheimer to be a general waiver of its attorney-client privilege or its attorneys' work product privileges.<sup>2</sup>
- iii. review its procedures regarding the preservation of electronic communications for compliance with NASD rules

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<sup>2</sup> Oppenheimer and outside counsel have represented to NASD that the outside counsel has not communicated with Oppenheimer or its employees nor reviewed any information provided by Oppenheimer regarding item B i L above. Accordingly, any waiver of the attorney client privilege by Oppenheimer as to item B i b above is limited as to communications provided to outside counsel after the date hereof.

and the federal securities laws.<sup>3</sup> Within 120 days of the notice of acceptance of this Offer, Oppenheimer agrees to inform NASD in writing that it has completed its review and that it has established systems and procedures in place reasonably designed to achieve compliance with applicable federal securities laws and regulatory rules concerning the preservation of currently existing or future electronic communications. The staff of the NASD Department of Enforcement shall have the discretion, upon a showing of good cause, to extend the deadline for compliance with the undertaking set forth in this paragraph.

- iv. within 120 days after notice of approval of this Offer, provide to NASD a notarized certification from a senior officer(s) of Oppenheimer that it has complied with the foregoing undertakings and has implemented the procedures in paragraphs B i and ii above.

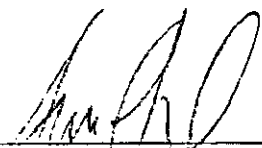
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<sup>3</sup> Respondent has represented to NASD that beginning January 1, 2006, Oppenheimer began utilizing the Sector Email Comply archiving solution. Under that system, all electronic messages including Oppenheimer Corporate Email, Bloomberg Email, and Instant Messages are being journaled to the Sector Email Comply system, which will archive and create a non-rewritable media copy of the archive for the three-year retention lifecycle.

SO ORDERED.

NASD

By:

  
James E. Day, Esq.  
Chief Counsel  
on behalf of the Director of ODA,  
pursuant to delegated authority