

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E102003017701

TO: Department of Enforcement
NASD

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

Pursuant to Rule 9216 of NASD Code of Procedure, Oppenheimer & Co. Inc. submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against me alleging violations based on the same factual findings.

We understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. We 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. Nothing in this provision affects our testimonial obligations or right to take legal or factual positions in litigation or other proceedings in which NASD is not a party.

We also understand that our experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

In January 2003, Fahnstock & Co., Inc. acquired the U.S. Private Client Division of Oppenheimer & Co. Inc. and subsequently assumed the Oppenheimer name.

Oppenheimer & Co. Inc. has been a member of NASD since March 22, 1945. During all periods mentioned herein, Oppenheimer & Co. Inc. was a registered broker-dealer with the United States Securities and Exchange Commission and a member of NASD. Oppenheimer & Co. Inc. has previously been the subject of the following relevant formal disciplinary action by NASD, as follows:

On January 29, 2002, a Letter of Acceptance, Waiver and Consent was accepted whereby Oppenheimer & Co. Inc. was found to have violated Municipal Securities Rulemaking Board ("MSRB") Rule G-36 for failing to timely submit official statements and/ or other documents to the MSRB as required. The firm was fined \$2,000.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against us;
- B. To be notified of the Formal 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, we specifically and voluntarily waive 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.

We further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

- A. We hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding in which NASD is a party, prior to a hearing and without adjudication of any issue of law or fact, to the entry of the following findings by NASD:

1. During the time period of March 1, 2002 through July 31, 2003, in violation of MSRB Rule G-36(b)(i), Oppenheimer & Co. Inc. failed to file in a timely manner a MSRB Form G-36 and an official statement for three underwritings. These filings ranged from two to eighteen days late.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-36(b)(i) by Oppenheimer & Co. Inc.

2. During the time period March 1, 2002 through July 31, 2003, Oppenheimer & Co. Inc., in violation of MSRB Rule G-37(e)(i)(B), filed an inaccurate MSRB Form G-37 in the following instances:

- a. For the reports filed for the first, third, and fourth quarters of 2002 and for the first and second quarters of 2003, the firm listed negotiated underwriting activity for an issuer when in fact none took place.
- b. For the report for the first quarter 2003, the firm listed an underwriting obtained by a consultant, but this underwriting was not listed on the firm's overall listing of municipal business.
- c. For the report filed for the third quarter 2002, the firm failed to list two offerings that it was required to report for that quarter.
- d. The report filed for the first quarter 2003 failed to list two offerings.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-37(e)(i)(B) by Oppenheimer & Co. Inc.

3. During the period March 1, 2002 through July 31, 2003, the firm, in violation of MSRB Rule G-38(b)(iv), failed to submit in writing to six issuers with which it was seeking municipal securities business, information on consulting arrangements with each issuer, and in apparent violation of MSRB Rule G-38(d), failed to disclose required information regarding consultants to issuers.

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Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-38(b)(iv) and (d) by Oppenheimer & Co. Inc.

B. We also consent to the imposition, at a maximum, of the following sanctions:

A censure and a monetary fine in the amount of \$20,000 to be assessed against Oppenheimer & Co. Inc.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC, that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 NASD, nor does it reflect the views of NASD or its staff.
- B. We agree to pay any monetary sanctions imposed on us upon notice that this AWC has been accepted and that such payments are due and payable as noted above and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.
- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

We certify that we have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

January 24, 2006
Date

Oppenheimer & Co. Inc.

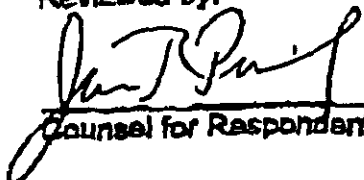
By: [Signature]

Albert G. Lowenthal, Chairman & CEO
[Name and Title]

AWC02
Rev 8/18/05

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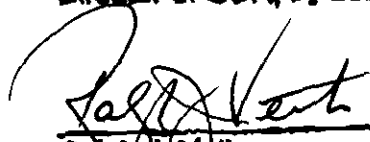
Reviewed by:


Counsel for Respondent

Accepted by NASD:

February 3, 2006
Date

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


Ralph J. Veth,
Regional Counsel
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NASD Senior Vice President
and Regional Director
Warren A. Butler, Jr.
NASD, District No. 5
1100 Poydras Street, Suite 850
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Attachment: Election of Payment Form

AWCB
Rev 8/1/05

Transmittal Letter of Acceptance, Waiver and Consent
Examination No. E1020030177/ Oppenheimer & Co. Inc.

Corrective Action Statement

This Corrective Statement is submitted by the Respondent, Oppenheimer & Co. Inc., ("Oppenheimer"). It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.

Finding: During the time period of March 1, 2002 through July 31, 2003, in violation of MSRB Rule G-36(b)(1), Oppenheimer failed to file in a timely manner MSRB Form G-36 and an official statement for three underwritings. These filings ranged from two to eighteen days late.

Corrective Actions Taken

1. While the firm's general Compliance Manual covered G-36 procedures, at the time of the violations, the firm had no Municipal Compliance Manual. The firm now has such a manual, the Municipal Capital Markets Group Policies and Procedures Manual ("MCMG Manual"). The MCMG Manual became effective 1/1/2005.
2. The MCMG Manual sets out the firm's G-36 filing procedures and provides:
 - a. That required documents shall be submitted within the required timeframes
 - b. That the Public Finance Checklist shall be used to monitor submission
 - c. Detailed description of what documents must be filed and when
 - d. That filings must be documented by the firm
 - e. That the "date of sale" be recorded and sets out the definition for "date of sale" for competitive and negotiated issues
 - f. Delivery requirements for: (1) issues subject to SEC Rule 15c2-12, (2) not subject to SEC Rule 15c2-12, and (3) filing of ARD's
 - g. For required communications with the issuer regarding delivery of the Final Official Statement and documenting those communications
 - h. For maintaining a G-36 file by the firm
 - i. Required shipping procedures and documentation of the procedures.
3. The Municipal Capital Markets Group has designated a person in each Public Finance Location, as defined in the MCMG Manual, as the person responsible for all G-36 filings in that location. Those filings go directly to the MSRB, with a copy to the Compliance Department in NY, rather than to NY and then to the MSRB. This saves time and avoids mistakes and confusion about delivery.
4. G-36 Procedures were discussed at the most recent Public Finance Annual Compliance Meeting, December 15, 2005.

Finding: During the time period March 1, 2002 through July 31, 2003, Oppenheimer, in violation of MSRB Rule G-37(e)(1)(B), filed an inaccurate MSRB Form G-37 in the following instances:

- a. For the reports filed for the first, third and fourth quarters of 2002 and for the first and second quarters of 2003, the firm listed negotiated underwriting activity for an issuer when in fact none took place.
- b. For the report for the first quarter 2003, the firm listed an underwriting obtained by a consultant, but this underwriting was not listed on the firm's overall listing of municipal business.
- c. For the report filed for the third quarter 2002, the firm failed to list two offerings that it was required to report for that quarter.
- d. The report filed for the first quarter 2003 failed to list two offerings.

Corrective Actions Taken

1. Pertinent G-37 filings have been amended and submitted to the MSRB.
2. While the firm's general Compliance Manual covered G-37 procedures, at the time of the violations, the firm had no Municipal Compliance Manual. The firm now has such a manual, the Municipal Capital Markets Group Policies and Procedures Manual ("MCMG Manual"). The MCMG Manual became effective 1/1/2005.

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Corrective Action Statement

3. The MCMG Manual sets out the firm's G-37 filing procedures and provides:
 - a. Definitions of engaging in municipal business and "municipal finance professional."
 - b. A list of political activities that Municipal Finance Professional's ("MFP") shall not engage in without the permission of the supervisor of the MCMG and the Compliance Department.
 - c. A list, based on G-37, of exceptions to the activities listed in b., above.
 - d. A definition and guidance for non-MFP Executive Officers, regarding political activities.
 - e. Policies regarding employee in-house political activities, employee outside activities, and corporate political contributions.
 - f. Assignment of responsibility for filing and review of MSRB G-37 reports on a quarterly basis.
 - g. Detailed procedures for gathering information of the G-37 reports, delivery to the MSRB, and retention of records on G-37 filings.
4. Based on the MCMG Manual and MSRB requirements, each Public Finance Location and the Compliance Department, follow an established process for completing, reviewing, and delivering G-37 reports.
5. The G-37 Procedures were discussed at the most recent Annual Compliance Meetings for Trading & Underwriting and for Public Finance, which were held December 14 and 15, 2005, respectively.

Finding: During the period March 1, 2002 through July 31, 2003, Oppenheimer, in violation of MSRB Rule G-38(b)(iv), failed to submit in writing six issuers with which it was seeking municipal securities business, information on consulting arrangements with each issuer, and in apparent violation of MSRB Rule G-38(d), failed to disclose required information regarding consultants to issuers.

Corrective Actions Taken

1. For the period prior to August 29, 2005, (when G-38 was amended) the firm enhanced its procedures and review of G-38 information filed on Consultants. The Compliance Department provided greater oversight to contracts, filings, and notices to issuers.
2. After August 29, 2005, no consultants have been engaged by the firm to solicit municipal business. Any payments made for work done prior to that date were included in the firm's G-38(t) filings.
3. Policies and procedures to be followed under the revised G-38 were discussed at the most recent Annual Compliance Meetings for Trading & Underwriting and for Public Finance, which were held December 14 and 15, 2005, respectively.