

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0400720002

TO: Department of Enforcement
NASD

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

Pursuant to Rule 9216 of NASD Code of Procedure, Oppenheimer & Co., Inc. ("Respondent") 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 Respondent alleging violations based on the same factual findings.

Respondent understands 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 Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's 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. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual

positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that its 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:

Respondent has been an NASD member since December 23, 1954. It is a New York corporation that maintains its principal place of business at 125 Broad Street, 16th Floor, New York, New York, and has branch offices throughout the country. Respondent has no relevant formal disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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 Respondent;
- 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, Respondent 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.

Respondent further specifically and voluntarily waives 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. Respondent hereby accepts and consents, without admitting or denying the allegations or findings, 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

SUMMARY

1. From January 2002 through March 2004 (the "Relevant Period"), Respondent failed to file in a timely manner certain amendments to Form U4 (Question 14 – Disclosure Questions) and Form U5 (Question 7 – Disclosure Questions), and certain initial Form U5 termination filings as required by NASD By-Laws, Article V, Sections (2)(c), 3(a), and 3(b) (the "Article V Reporting Obligations"). The late disclosure items pertained to certain individuals' reportable customer complaints, arbitrations, litigations, regulatory investigations, regulatory actions, and terminations. Respondent's failure to comply with the Article V Reporting Obligations may have hampered the investing public's ability to assess the background of certain brokers through NASD's public disclosure program, rendered certain information unavailable to member firms making hiring determinations, may have reduced the ability of state securities regulators to review applications by brokers to transfer firms, and may have hindered NASD from promptly investigating certain disclosure items.
2. During the Relevant Period, Respondent's supervisory system and procedures were not reasonably designed to achieve compliance with its Article V Reporting Obligations.

RESPONDENT FAILED TO FILE AMENDMENTS TO FORMS U4 AND U5, AND INITIAL FORM U5s, IN A TIMELY MANNER

3. Article V, Section 2(a), of NASD's By-Laws provides that application for registration with NASD by any person shall be made by a process established by NASD and on a prescribed form signed by the applicant. Section 2(c) provides that every application for registration (Form U4) filed with NASD shall be kept current at all times by supplementary amendments which must be filed within 30 days after learning of the facts or circumstances giving rise to the amendment. The filing must be made within ten days, however, if the amendment involves disclosure of a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Securities Exchange Act of 1934.
4. Article V, Section 3(a) of NASD's By-Laws provides that following the termination of the association with a member of a person who is registered with it, such member

shall, not later than 30 days after such termination, file notice of such termination with NASD.

5. Article V, Section 3(b) of NASD's By-Laws provides that, in the event a member learns of facts or circumstances causing any information set forth in a termination notice (Form U5) filed with NASD to become inaccurate or incomplete, the member must notify NASD, within 30 days thereafter, of those facts or circumstances by means of an amendment to the termination notice. D
6. During the Relevant Period, Respondent filed at least 230 late amendments to Forms U4 and U5, which represented approximately 25% of the required amendments relating to reportable customer complaints, arbitrations, litigations, regulatory investigations, and regulatory actions. During the Relevant Period, Respondent filed at least 82 late initial U5 termination filings, which represented approximately 8% of the firm's required initial U5 termination filings. During the Relevant Period, Respondent's supervisory system and procedures were not reasonably designed to achieve compliance with its Article V Reporting Obligations.
7. Based on the foregoing, Respondent acted in contravention of Article V, Sections 2(c), 3(a) and 3(b) of NASD's By-Laws and violated NASD Conduct Rules 2110 and 3010.

B. Respondent also consents to the imposition, at a maximum, of the following sanctions:

- A censure; and
- a fine of \$250,000, which shall be paid within 10 days of notice of acceptance of this AWC.

In addition, Respondent shall comply with the following undertakings within the time periods specified (unless otherwise extended in writing by NASD staff):

1. Required Audits and Officer Certifications Relating to Article V Reporting Obligations
 - a. Promptly following notice of acceptance of this AWC, Respondent's Internal Audit Department (or, if there is no Internal Audit Department, personnel other than personnel directly responsible for Respondent's Article V Reporting Obligations and their immediate supervisors) shall conduct an audit, applying reasonable auditing standards, which shall include audit sampling, to assess the effectiveness of Respondent's system and procedures for ensuring the timely filing of amendments to Form U4 (Question 14) and amendments to Form U5 (Question 7), and initial U5 termination filings, for the period January 1, 2004 through December 31, 2005, and shall prepare a written audit report ("Current Audit Report") summarizing their findings and recommendations. The Current Audit Report shall describe the method and

scope of the audit, list all late filings, if any, identified for the period covered by the audit, and make any appropriate recommendations to improve the firm's system and procedures to prevent late filings.

- b. Thereafter, Respondent's Internal Audit Department (or, if there is no Internal Audit Department, personnel other than personnel directly responsible for Respondent's Article V Reporting Obligations and their immediate supervisors) shall, for each of the next three calendar quarters beginning first quarter 2006, conduct an audit as described in paragraph 1.a. above and prepare a written audit report ("Quarterly Audit Report") summarizing their findings and recommendations. The Quarterly Audit Report shall describe the method and scope of the audit, list all late filings, if any, identified for the period covered by the audit, and make any appropriate recommendations to improve the firm's system and procedures to prevent late filings.
- c. No later than 90 days after notice of acceptance of this AWC, an officer of Respondent shall certify in writing to NASD staff that (i) Respondent conducted the audit required by paragraph 1.a. above and prepared the Current Audit Report, and (ii) such officer has reviewed the Current Audit Report.
- d. No later than 60 days after the date of the Current Audit Report, an officer of Respondent shall certify in writing to NASD staff that Respondent has implemented any recommendations set forth therein, or has engaged in a process that will result in the implementation of any such recommendations within a reasonable time period to be specified in such written certification.
- e. No later than 60 days after the last day of each of the next three calendar quarters, beginning first quarter 2006, an officer of Respondent shall certify in writing to NASD staff that (i) Respondent conducted the audit required by paragraph 1.b. above and prepared a Quarterly Audit Report, (ii) such officer has reviewed the Quarterly Audit Report, and (iii) Respondent has implemented any recommendations set forth therein, or has engaged in a process that will result in the implementation of any such recommendations within a reasonable time period to be specified in such written certification.

2. Required Officer Certification Relating to System and Procedures

No later than 6 months after notice of acceptance of this AWC, an officer of Respondent shall certify in writing to NASD that Respondent has reviewed its system and procedures for complying with its Article V Reporting Obligations and has established a system and procedures reasonably designed to achieve compliance with the reporting requirements set forth therein.

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

III.

OTHER MATTERS

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

Respondent certifies that it has read and understands all of the provisions of this AWC and has 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 it to submit the AWC.

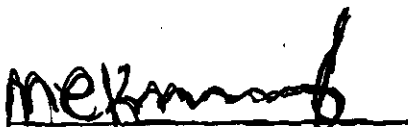
[SIGNATURES APPEAR ON FOLLOWING PAGE]

Oppenheimer & Co., Inc.

Date: December 8, 2005

By: 
Name: Albert G. Lewenthal
Title: CHAIRMAN

Reviewed by:


Mark L. Kowalsky, Esq.
Hertz, Schram & Saretsky, P.C.
1760 South Telegraph Road
Suite 300
Bloomfield Hills, MI 48302-0183
Counsel for Respondent

Accepted by NASD:

~~December~~ 9 2005
JANUARY 9, 2006


Kevin M. Carroll, Esq.
Assistant Director
Department of Enforcement, NASD
1801 K Street, NW
Washington, DC 20006

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