

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20130387252-01**

**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", 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**

The firm has been a member of FINRA in 1945, and its registration currently remains in effect. The firm has no relevant disciplinary history.

**SUMMARY**

Matter No. 20130387252 involves a review conducted by the Department of Market Regulation's Short Interest Section (the "staff") of OPCO's compliance with short interest reporting requirements during the period between January 15, 2008 and November 29, 2013.

Matter No. 20150448263 involves a review conducted by staff of OPCO's compliance with short interest reporting requirements during the period between November 13, 2013 and October 15, 2014.

Matter No. 20150453495 involves a review conducted by staff of OPCO's compliance with short interest reporting requirements during the period between April 15, 2014 and August 14, 2015.

## **OVERVIEW**

On 175 settlement dates between January 15, 2008 and August 14, 2015 (the "relevant period"), OCPO failed to report a total of 9,781 short interest positions totaling 175,366,361 shares; inaccurately reported 1,277 short interest positions totaling 19,550,287 shares when it should have reported 1,277 short interest positions totaling 47,393,498 shares; and erroneously reported 15 short interest positions totaling 4,358 shares that should not have been reported to FINRA; and OPCO failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with the applicable securities laws and regulations and NASD and FINRA rules concerning short interest reporting.

## **FACTS AND VIOLATIVE CONDUCT**

### **Matter No. 20130387252**

1. Between January 15, 2008 and November 29, 2013, OPCO failed to report 8,666 short interest positions totaling 155,115,702 shares on 142 settlement dates, and inaccurately reported 1,277 short positions totaling 19,550,287 shares, when it should have reported 1,277 short interest positions totaling 47,393,498 shares as set forth below:
  - a. Between January 15, 2008 and November 28, 2008, OPCO failed to report 557 short interest positions totaling 14,295,853 shares on 22 settlement dates, and inaccurately reported 78 short interest positions totaling 3,642,805 shares when it should have reported 78 short interest positions totaling 6,262,717 shares. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360.
  - b. Between December 15, 2008 and November 29, 2013, OPCO failed to report 8,109 short interest positions totaling 140,819,849 shares on 120 settlement dates, and inaccurately reported 1,199 short interest positions totaling 15,907,482 shares when it should have reported 1,199 short positions totaling 41,130,781. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.<sup>1</sup>

### **Matter No. 20150448263**

2. Between November 13, 2013 and October 15, 2014, OPCO failed to report 1,115 short interest positions totaling 20,250,659 shares on 23 settlement dates. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.

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<sup>1</sup> Effective December 15, 2008, FINRA Rule 4560 replaced NASD Rule 3360.  
Matter No. 20130387252 (includes 20150448263 and 20150453495) (BW)

**Matter No. 20150453495**

3. **Between April 15, 2014 and August 14, 2015, OPCO erroneously reported 15 “fail to receive” positions on 11 settlement dates in the firm’s “Buy-In Account” as 15 short interest positions totaling 4,358 shares, when such positions should not have been reported to FINRA. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.**

**Matter Nos. 20130387252, 20150448263, and 20150453495**

4. **During the relevant period, OPCO failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with the applicable securities laws and regulations and NASD and FINRA rules concerning short interest reporting to ensure compliance with NASD Rule 3360 and FINRA Rule 4560. In addition, while the firm’s written supervisory procedures identified an individual responsible for conducting a review, the frequency of such review, and a description of how the review should be documented, the firm’s supervisory steps did not contain a periodic review of OPCO’s short interest reporting logic to ascertain that it was operating properly and that it captured the required information. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3010 (for conduct prior to December 1, 2014) and NASD Rule 2110 (for conduct prior to December 15, 2008), and FINRA Rule 3110<sup>2</sup> (for conduct on and after December 1, 2014) and FINRA Rule 2010<sup>3</sup> (for conduct on and after December 15, 2008).**
- B. **Respondent also consents to the imposition of the following sanctions:**

**A censure and a fine totaling \$275,000 (consisting of a fine of \$175,000 for its violations of NASD Rule 3360 and FINRA Rule 4560, and \$100,000 for its violations of NASD Rules 3010 and 2110, and FINRA Rules 3110 and 2010), and an undertaking to ensure that the Firm has implemented procedures that are reasonably designed to achieve compliance with the rules and regulations described in Section A. Therefore, within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work related account of the registered principal to MarketRegulationComp@finra.org providing The following information: (1) a reference to this matter; (2) a representation that the firm has addressed the deficiencies described above; and (3) the dates that this was completed.**

**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.**

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<sup>2</sup> On December 1, 2014, FINRA Rule 3110 replaced NASD Rule 3010.

<sup>3</sup> On December 15, 2008, FINRA Rule 2010 replaced NASD Rule 2110.

**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 accordance with FINRA Rule 8313;
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 the firm's 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 the firm has agreed to its 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.

5/25/16  
Date

John T. McGuire  
Oppenheimer & Co. Inc.

By: JOHN T. MCGUIRE

Name: \_\_\_\_\_

Title: DEPUTY GENERAL COUNSEL

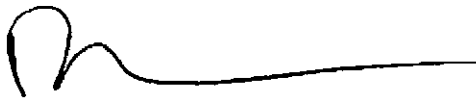
Reviewed by:

John T. McGuire

**Accepted by FINRA:**

6-20-16  
Date

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



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**David E. Rosenstein, Senior Vice President  
Legal Section  
FINRA Department of Market Regulation**