

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK**

**IN THE MATTER OF  
OPPENHEIMER & COMPANY  
NEW YORK, NEW YORK**

**Number 2005 - 4**

**ASSESSMENT OF CIVIL MONEY PENALTY**

**I. INTRODUCTION**

The Secretary of the United States Department of the Treasury has delegated to the Director of the Financial Crimes Enforcement Network the authority to determine whether a financial institution has violated the Bank Secrecy Act and the regulations issued pursuant to that Act,<sup>1</sup> and what, if any, sanction is appropriate.

To resolve this matter, and only for that purpose, Oppenheimer & Company, Inc. (“Oppenheimer”) has entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) without admitting or denying the determinations by the Financial Crimes Enforcement Network, as described in Sections III and IV below, except as to jurisdiction in Section II below, which is admitted.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) by this reference.

**II. JURISDICTION**

Oppenheimer is a securities broker-dealer located in New York City. Oppenheimer is a subsidiary of Oppenheimer Holdings, Inc. Oppenheimer was owned by Canadian Imperial Bank of Commerce until January 2003, when Fahnestock and Company, Inc. acquired certain retail brokerage activities of the Bank. Fahnestock changed its name to Oppenheimer in June 2003. As a result of that acquisition, the firm expanded and greatly increased the size of its staff, customer base and number of offices. During 2004, Oppenheimer had total revenue of \$606 million and net income (before taxes) of \$45.8 million. As of June 30, 2005, Oppenheimer had total assets of \$1.9 billion.

Oppenheimer is registered as a broker-dealer with the Securities and Exchange Commission, and is therefore a “financial institution” within the meaning of the Bank

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<sup>1</sup> 31 U.S.C. § 5321 and 31 U.S.C. § 103.57.

Secrecy Act and the regulations issued pursuant to that Act.<sup>2</sup> The New York Stock Exchange, a self-regulatory organization registered with the Securities and Exchange Commission, examines Oppenheimer for compliance with the Bank Secrecy Act and the regulations issued pursuant to that Act.

### III. DETERMINATIONS

The Financial Crimes Enforcement Network has determined that Oppenheimer violated the anti-money laundering program requirements of the Bank Secrecy Act and the regulations issued pursuant to that Act.<sup>3</sup> Because of the deficiencies in its anti-money laundering program, Oppenheimer also failed to properly identify and report transactions that were suspicious within the meaning of the Bank Secrecy Act regulations.

Oppenheimer must implement an anti-money laundering program that meets minimum standards. The anti-money laundering program of Oppenheimer meets these standards if the program conforms with rules of its Federal functional regulator or self-regulatory organization governing such programs. New York Stock Exchange Rule 445, which became effective on April 24, 2002, requires each broker-dealer under the supervision of the New York Stock Exchange to establish and maintain an anti-money laundering program that at a minimum must: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. § 5318(g) and the implementing regulations thereunder; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder; (3) provide for independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party; (4) designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and (5) provide ongoing training for appropriate persons.

Oppenheimer failed to establish and implement an adequate anti-money laundering program in violation of New York Stock Exchange Rule 445 and § 5318(h)(1) of the Bank Secrecy Act and its implementing regulation, 31 CFR § 103.120. In 2001, the New York Stock Exchange, along with the Securities and Exchange Commission, conducted a joint sweep examination of Oppenheimer for compliance with the Bank Secrecy Act regulations, pursuant to its general supervisory authority. Although Oppenheimer was not required at that time to maintain an anti-money laundering program, the New York Stock Exchange notified Oppenheimer that its compliance procedures were not adequate to manage the risk of money laundering. The procedural deficiencies discovered in the 2001 examination were again found in a subsequent examination of Oppenheimer by the New York Stock Exchange in 2003, and continued

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<sup>2</sup> 31 U.S.C. § 5312(a)(2) and 31 CFR § 103.11.

<sup>3</sup> 31 U.S.C. § 5318(h)(1) and 31 CFR § 103.120. These requirements became effective on April 24, 2002.



through 2004. The procedural deficiencies existed in required elements of Oppenheimer's anti-money laundering program, as described below. In addition, Oppenheimer failed to file timely and complete suspicious activity reports.

#### A. Internal Controls

Oppenheimer's system of internal controls was inadequate to ensure compliance with the Bank Secrecy Act and the regulations issued pursuant to that Act, particularly the requirement to report suspicious activity. This deficiency was particularly apparent with respect to journal transactions and wire transfers conducted for customers of Oppenheimer in one of its foreign branch offices and a Florida branch office that transited through its New York office. The wire transfer and journals transactions involved unrelated and related customer accounts. At that time, Oppenheimer did not have adequate systems and controls in place to review these transactions for potential suspicious activity. Some of these transactions lacked related securities transactions and appeared to lack economic benefit.

From April 2002 through May 2004, Oppenheimer's controls and procedures were not adequate to manage the volume of the business and risks of money laundering involving wire and journal activity from a foreign branch office. During this time, wire activity at Oppenheimer was manually reviewed by one compliance employee. The Financial Crimes Enforcement Network has determined that such reviews were not adequate to ensure compliance with the Bank Secrecy Act. Furthermore, none of the reports used to facilitate suspicious activity reporting compliance aggregated incoming or outgoing wire transfers by customer, account, branch office or destination. Therefore, these reports did not capture a true picture of a customer's total money movements. An individual with more than one account at Oppenheimer could (and did) move money without adequate review for suspicious activity even if the aggregate amount of such transactions exceeded Oppenheimer's internal thresholds to capture transactions for review.

Oppenheimer also lacked adequate internal controls for collecting customer information that was critical to its ability to monitor customer activity. Oppenheimer was not able to provide New Account Forms for numerous accounts that the New York Stock Exchange reviewed. In addition, despite apparent anomalies, Oppenheimer did not conduct any regular or periodic reviews of accounts that maintained post office box addresses. A large number of the accounts for apparently unrelated customers maintained the same home and/or business address, many of which were post office boxes or "care of" accounts in Florida. Several groups of apparently unrelated customers also shared addresses in foreign jurisdictions, including an offshore financial center.<sup>4</sup>

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<sup>4</sup> These findings arise from the 2003 examination, before the Customer Identification Program rule for broker-dealers became effective in October of that year, and thus are not alleged to be violations of this rule. Nonetheless, the failure to collect basic information necessary for identifying and reporting suspicious activity constitutes an internal control failure.



## B. Independent Testing

After April 2002, Oppenheimer did not implement an adequate system for independent testing of Bank Secrecy Act compliance. Oppenheimer's Internal Audit Department prepared two audit reports that evaluated Oppenheimer's anti-money laundering policies and procedures. However, the scope of the 2003 audit did not include higher-risk activities between foreign and domestic branches of Oppenheimer. As detailed above, a number of wire transfer and journal transactions through Oppenheimer's office in the United States, unrelated to the purchase or sale of securities, were never reviewed for potential suspicious activity.

In addition, the Internal Audit Department played a supervisory role in finalizing any decision regarding the reporting of suspicious activity. This overlap of anti-money laundering compliance and auditing responsibilities undercut the independence of Oppenheimer's anti-money laundering testing.

## C. Designation of Individual(s) to Coordinate and Monitor Compliance

In the later part of 2002 and into 2003, Oppenheimer's Anti-Money Laundering Department was staffed by a Bank Secrecy Act Officer and analyst. These two individuals were also responsible for other compliance duties in addition to the Bank Secrecy Act. For example, the Bank Secrecy Act officer also reviewed and responded to customer complaints, regulatory inquiries and trade surveillance for two branch offices. In 2003, Oppenheimer employed approximately 1,600 registered representatives in over 100 domestic and foreign branch offices who serviced approximately 360,000 individual customers. In view of the above, Oppenheimer's Anti-Money Laundering Department was not adequately staffed to ensure compliance with the Bank Secrecy Act.

## D. Training Appropriate Personnel

Oppenheimer failed to implement an adequate, firm-wide anti-money laundering training program tailored to the job responsibilities of its employees, including positions critical for Bank Secrecy Act compliance. For example, Oppenheimer failed to adequately train the former Margin Department Managers in anti-money laundering policies and procedures even though, at that time, that Department was responsible for reviewing journal transactions and wire transfers for suspicious activity.

## E. Suspicious Activity Reporting Requirements

The Bank Secrecy Act and the regulations issued pursuant to that Act<sup>5</sup> impose an obligation on a broker or dealer in securities to report any transaction that involves or aggregates to at least \$5,000 that "the broker-dealer knows, suspects, or has reason to suspect": (i) may derive from illegal activity; (ii) is designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act ("structuring"); (iii) has no business

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<sup>5</sup> 31 U.S.C. § 5318(g) and 31 CFR § 103.19.

or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (iv) involves use of the broker-dealer to facilitate criminal activity.<sup>6</sup> A broker or dealer in securities must file a suspicious activity report no later than 30 calendar days after the date of initial detection of a reportable transaction.<sup>7</sup> If no suspect is identified on the date of the detection, a broker-dealer may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect.<sup>8</sup> A suspicious activity report must include material information available to the broker-dealer at the time of filing.

Oppenheimer failed to timely report suspicious transactions involving several million dollars that occurred during 2003. Furthermore, Oppenheimer filed suspicious activity reports involving a foreign branch that were materially incomplete and contained only a general, generic description of the suspicious activity, in direct contravention of the instructions provided with the relevant reporting form, including the following minimum criteria:

- specific date range over which the activity occurred;
- number of accounts involved;
- suspect names;
- amount of money involved; and
- other crucial details regarding the nature of the suspicious activity.

#### IV. CIVIL MONEY PENALTY

Under the authority of the Bank Secrecy Act and the regulations issued pursuant to that Act,<sup>9</sup> the Financial Crimes Enforcement Network has determined that a civil money penalty is due for the violations of the Bank Secrecy Act and the regulations issued pursuant to that Act, as described in this ASSESSMENT.

The Financial Crimes Enforcement Network may impose civil money penalties or take additional enforcement action against a financial institution for violations of the Bank Secrecy Act and the regulations issued pursuant to that Act. Based on the serious nature of the Bank Secrecy Act violations at issue in this matter, and the financial resources available to Oppenheimer, the Financial Crimes Enforcement Network has determined that the appropriate penalty in this matter is \$2,800,000.00.

#### V. CONSENT TO ASSESSMENT

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<sup>6</sup> 31 CFR § 103.19(a)(2).

<sup>7</sup> 31 C.F.R. § 103.19(b)(3).

<sup>8</sup> *Id.*

<sup>9</sup> 31 U.S.C. § 5321 and 31 CFR § 103.57.



To resolve this matter, and only for that purpose, Oppenheimer, without admitting or denying either the facts or determinations described in Sections III and IV above, except as to jurisdiction in Section II, which is admitted, consents to the assessment of a civil money penalty against it in the sum of \$2,800,000.00. The penalty assessment shall be concurrent with the \$2,800,000.00 penalty assessment against Oppenheimer by the New York Stock Exchange for violations of related statutes under their purview. The penalty assessment of the Financial Crimes Enforcement Network and the New York Stock Exchange referenced above shall be satisfied by the payment of \$1,400,000.00 to each agency.

Oppenheimer agrees to pay the amount of \$2,800,000.00 within ten (10) business days of this ASSESSMENT. Such payment shall be:

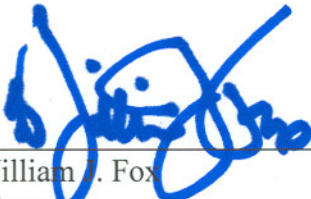
- a. Made by certified check, bank cashier's check, or bank money order or wire;
- b. Made payable to the United States Department of the Treasury;
- c. Hand-delivered or sent by overnight mail to the Financial Crimes Enforcement Network, Attention: Associate Director, Administration & Communications Division, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182; and
- d. Submitted under a cover letter, which references the caption and file number in this matter.

Oppenheimer recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by the Financial Crimes Enforcement Network or any employee, agent, or representative of the Financial Crimes Enforcement Network to induce Oppenheimer to enter into the CONSENT, except for those specified in the CONSENT.

Oppenheimer understands and agrees that the CONSENT embodies the entire agreement between Oppenheimer and the Financial Crimes Enforcement Network relating to this enforcement matter only, as described in Section III above. Oppenheimer further understands and agrees that there are no express or implied promises, representations, or agreements between Oppenheimer and the Financial Crimes Enforcement Network other than those expressly set forth or referred to in the CONSENT and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether federal, state, or local.

## VI. RELEASE

Oppenheimer understands that execution of the CONSENT, and compliance with the terms of this ASSESSMENT, constitute a complete settlement of civil liability for the violations of the Bank Secrecy Act and regulations issued pursuant to that Act as described in the CONSENT and this ASSESSMENT.

By:   
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William J. Fox  
Director  
FINANCIAL CRIMES ENFORCEMENT NETWORK  
U.S. Department of the Treasury

Date: DEC 29 2005