

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)
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)

OPPENHEIMER & CO., INC.,)
ALBERT LOWENTHAL,)
ROBERT LOWENTHAL &)
GREG WHITE)

RESPONDENTS.)
)
)

DOCKET NO. 2008-0080

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section (“Enforcement Section”) of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (“Division”) files this complaint (“Complaint”) in order to commence an adjudicatory proceeding against Oppenheimer & Co, Inc. (“Oppenheimer”) for violating M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the “Act”) and 950 CMR 10.00 *et seq.* (“Regulations”).

The Enforcement Section seeks an order (a) requiring Oppenheimer to permanently cease and desist from committing any further violations of the Act and Regulations, (b) requiring Oppenheimer to offer rescission of sales of ARS at par (c) requiring Oppenheimer to make full restitution to investors who have already sold these instruments below par on the terms and conditions that a Hearing Officer deems appropriate, (d) censuring Oppenheimer, (e) revoking Albert Lowenthal’s Massachusetts registration as a broker-dealer agent of Oppenheimer, (f) requiring

Oppenheimer, Albert Lowenthal, Robert Lowenthal and Greg White to pay an administrative fine in an amount and upon such terms and conditions as a Hearing Officer may determine, and (g) requiring Oppenheimer, Albert Lowenthal, Robert Lowenthal and Greg White to take any other action that a Hearing Officer may deem appropriate in the public interest and necessary for the protection of Massachusetts investors.

II. SUMMARY

This administrative complaint addresses how Oppenheimer improperly conducted its auction rate securities (“ARS”) business and charges the firm with separate counts of fraud and dishonest and unethical conduct. The complaint details how Oppenheimer significantly misrepresented not only the nature of ARS, but also the overall stability and health of the ARS market when marketing the product to clients. In addition, the complaint details how key Oppenheimer executives and ARS Department personnel sold their own ARS as they learned that the market was in danger of imploding and how they failed to disclose this information to investors. Oppenheimer’s misrepresentations regarding the nature and safety of the ARS market and the firm’s failure to inform clients of heightened concerns prior to the market implosion resulted in clients being stranded with illiquid ARS.

Oppenheimer marketed ARS to clients as cash equivalents, as being “as safe as safe can be” and liquid every seven to thirty-five days depending on the particular security. Oppenheimer marketed ARS as appropriate investments for individuals who were holding money that they needed to be readily available for the purchase of a home, for the payment of taxes, for the distribution of the proceeds of an estate and

more generally as appropriate for those looking for a secure, easily accessible place to invest their money. Oppenheimer often did not describe the products as “auction rate securities” and instead avoided the term “auction” altogether. Oppenheimer Financial Advisors (“FAs”) generally presented ARS to clients as a cash management tool that was safe, easily accessible and an alternative to other cash equivalent products like money markets and certificates of deposit.

Ultimately, in late January and early February of 2008, while clients continued to be told and still believed they held cash like investments, Oppenheimer senior executives and ARS Department personnel unloaded millions of dollars of their personal holdings of ARS in an effort to avoid the catastrophic effects of a market failure that they saw coming. However, the Oppenheimer personnel who were aware the market could soon become illiquid and sold their personal ARS holdings did not inform Oppenheimer’s FAs or Oppenheimer clients of their concerns. In mid-February, after members of Oppenheimer’s ARS department and senior management had sold their ARS, the ARS market failed, leaving investors who had been sold “cash equivalents” with products that were unrecognizable and unfathomable to them. The securities sold to them as cash equivalents now could not be liquidated, thereby had reduced value, and had long term maturity dates or were perpetual instruments with low rates of return for which no ready market existed. Cash equivalent suddenly did not and would not equal cash.

These ARS products, which were simply described to investors as being safe, accessible every seven to thirty-five days, and an alternative to a money market or certificate of deposit, were in reality not so benign. ARS were actually complex debt

instruments which allow long term debt to be traded on a short term basis at periodic auctions or were shares in closed end funds with perpetual maturity dates that were traded at periodic auctions. The ARS auctions required matching the bids of buyers and sellers and mandated that all sell orders had to be filled for any buy order to be processed. Each ARS had a maximum rate that set an upper limit on what rate could be set at auction. The maximum rate was also the rate of return for the ARS if there was an auction failure. The firms that underwrote the products and held the auctions regularly stepped in to submit a bid to make sure that all the sell orders were filled at a rate below the maximum rate and that the auction did not fail. However these lead underwriters were not required to submit these bids and ensure that the auctions did not fail. If the auctions did fail, the products would revert to their long term (typically twenty to forty year) or perpetual structure and pay out the mandated maximum rate. Yet all investors were told was simply that the products were safe, cash equivalent alternatives to money markets and certificates of deposit and that they would be able to access their money every seven to thirty-five days.

Also, unbeknownst to investors, substantial disruptions and auction failures occurred in the market for these complex products in the summer of 2007. Oppenheimer largely ignored them, intentionally choosing not to inform all of its FAs or their clients of the failures. Even after the firm was put on notice that auctions could fail and had failed, they did little if anything to educate themselves on the likelihood of failure or its implications for clients. Through the fall and early winter of 2007, Oppenheimer failed to inquire as to what obligations the underwriters had to place bids in the auctions and prevent failure. An inquiry would have revealed the reality that lead

underwriters who supported the auctions had no contractual duty to ensure auctions did not fail. Oppenheimer further failed to evaluate the lead underwriters' financial ability to continue supporting their auctions and the ramifications of their withdrawing support. If Oppenheimer had conducted such basic due diligence, it would have become clear that lead underwriters had no duty to prevent failed auctions and that once they faced inventory pressure and/or they became concerned about the profitability of the product and market as they did during the fall and winter of 2007 and 2008, they would let the auctions fail.

Not only did Oppenheimer fail to recognize significant and obvious financial market risk, but the firm also failed to research what rates of return their clients would receive if the auctions failed. In failing to do so, they also failed to evaluate what type of market might develop for these products. Had they done the research and evaluated the potential market, they would have found that if auction failures occurred, investors would be holding long term bonds (typically twenty to forty year maturity) paying low interest rates (typically 2.5 -3.5 percent). These were terms that were so unattractive as to create no ready market and no incentive for an issuer to buy the bond back. Another alternative for some types of auction rate securities would involve the client holding perpetual securities with similarly low rates of return and no ready market. Despite their knowledge of the auction failures that occurred in August, Oppenheimer chose not to research any of these factors.

Yet they continued to market these products to clients as cash equivalent investments appropriate for the same purposes that money markets and certificates of deposits were appropriate for. They similarly chose not to notify clients who had

already made investments that they should believe anything other than what they had already been told about the safety and liquidity of the product. All of this marketing continued, when in reality, Oppenheimer had no basis to make these claims since the firm had not researched the information and factors outlined above that were essential to assuring the accuracy of the cash equivalent representations they were making to customers. They blissfully pocketed millions of dollars in revenue while failing to adequately research and substantiate their sales representations-- representations that proved to be inaccurate and which led to investors losing access to hundreds of millions of dollars in assets.

In December 2007 and January of 2008, pressure in the ARS market once again intensified. By mid-January, Oppenheimer became aware that Lehman Brothers Inc. ("Lehman"), a major ARS lead underwriter, was trying to exit the business. On January 18, 2008, the Managing Director of the Oppenheimer ARS Department, Greg White ("White"), emailed his top lieutenants and asked for a risk assessment. On the same day, Louis Gelormino ("Gelormino"), Senior Vice President, ARS Desk Supervisor responded: "If a sole participant processes its customer orders but declines entering a back bid, we may not be able to sell shares." In testimony before the Division, White confirmed that he took "back bid" to mean the support bid that lead underwriters made to prevent the failure of auctions. Thus, Gelormino clearly identified and emphasized the possibility that lead underwriters may choose not to support the auction and also the result which would be auction failure. Further, he identified the implications of such a decision and failure when he stated "we may not be able to sell shares." Oppenheimer received further warning about the fragility of the

market and about the reality of auction failures and their implications when Lehman did in fact choose not to support at least one of their auctions on January 23, 2008 causing the auction to fail. Other underwriters began failing auctions in the weeks following the Lehman failure. Piper Jaffrey failed auctions several days after the Lehman failure and Goldman Sachs failed auctions on February 7, 2008. For years Oppenheimer had been telling clients that the cash equivalent product they were purchasing was available to be cashed out every seven to thirty-five days. However, by mid January of 2008, Oppenheimer had internally discussed the distinct possibility that this might not end up being the case and market events indicated that the promised ready liquidity was in significant danger. Even though the firm was acutely aware of the dangers to the ARS market, Oppenheimer chose not to inform all clients of the failures or of the likely dire consequences.

As key Oppenheimer executives and ARS Department personnel digested the worsening ARS market and the corresponding auction failures as well as the implications of such failures, they concluded that it was time for them to exit the market. Oppenheimer Chief Executive Officer and Chairman, Albert “Bud” Lowenthal, sold 1.775 million dollars of personal holdings of ARS between January 29, 2008 and February 12, 2008. Oppenheimer Chief Operating Officer, Larry Spaulding, sold \$700,000.00 of his ARS between February 7, 2008 and February 11, 2008. Greg White, the Managing Director of the Oppenheimer ARS Department, sold \$300,000.00 of his personal ARS and \$100,000.00 of ARS in the account of his wife’s business’s account between January 29, 2008 and February 12, 2008. Louis Gelormino, Oppenheimer ARS Desk Supervisor and Senior Vice President, sold \$75,000.00 of his

personal ARS holdings on February 11, 2008. While the Oppenheimer Chief Executive Officer, Chief Operating Officer, Managing Director of the Auction Rate Securities Department and the Auction Rate Desk supervisor were fleeing the market, the company chose not to inform FAs and clients of changes in their view of the liquidity and quality of ARS. Instead, they left the clients in the dark still believing that their money was safe and available every seven to thirty-five days as Oppenheimer had told them.

A former Oppenheimer FA expressed a sentiment undoubtedly held by other Oppenheimer FAs and clients when he testified before the Division that he would be “angry” and “extremely disappointed” if he learned that White, the Managing Director of the ARS department, sold his personal ARS holdings amidst concerns about the market while failing to disclose those concerns to FAs and clients. The former Oppenheimer FA further testified: “I would have been—I would have wanted to know what was going on, whether it was Greg White or anybody else in, you know, senior management, that had done that, and is there something that we don’t know about.” None of Oppenheimer’s ARS clients were informed of the concerns that White and senior management held. Almost none of Oppenheimer’s ARS clients were ever even informed that their holdings were subject to auction, not to mention auction failure. Nor did they know that auction failure was actually occurring and would lead to them holding long term or perpetual products with no market. Oppenheimer executives and ARS Department personnel who knew this information and were concerned about the market did what any of these investors would have if they had been informed, they sold their auction rate securities.

On February 12th, 13th and 14th, the vast majority of auctions failed leaving unsuspecting, misled and misinformed investors who had been told they had a safe investment that they could liquidate easily with long term or perpetual instruments with low rates of return that created no ready market. They couldn't access their money, they still can't and in most cases don't know when they will be able to. Those Oppenheimer executives and employees who were responsible for supplying them with the inaccurate and inadequately researched information that they based their investment decisions on don't have the same problem.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals offering and/or selling securities; and 3) those individuals and entities transacting business as investment advisers within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by section 407A of the Act and M.G.L. c. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.

3. This proceeding is brought in accordance with sections 101, 204 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.

4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RESPONDENTS

5. Oppenheimer & Co., Inc. (“Oppenheimer”) is a registered broker-dealer and investment adviser, registered and notice filed with Massachusetts, with a Central Registration Depository (“CRD”) number of 291.

6. Albert Lowenthal is a natural person, registered as an agent of Oppenheimer, with a CRD number of 313519. Albert Lowenthal is Chairman and Chief Executive Officer at Oppenheimer.

7. Robert Lowenthal is a natural person, registered as an agent of Oppenheimer, with a CRD number of 1639913. Robert Lowenthal is Senior Managing Director of the Taxable Fixed Income Trading Department at Oppenheimer.

8. Greg White (“White”) is a natural person, registered as an agent of Oppenheimer, with a CRD number of 1107013. White is the Managing Director of the Auction Rate Department at Oppenheimer (“Auction Rate Department”).

V. OTHER RELATED PERSONS OR ENTITIES

9. Todd Flaman (“Flaman”) is a natural person, registered as an agent of Oppenheimer with a CRD number of 4229573. Flaman is a Trader in the Auction Rate Department and Senior Vice President at Oppenheimer.

10. Louis Gelormino (“Gelormino”) is a natural person, registered as an agent of Oppenheimer with at CRD number of 4225945. Gelormino is the Desk Supervisor of the Auction Rate Department and Senior Vice President at Oppenheimer.

11. Grant Hewit (“Hewit”) is a natural person, registered as an agent of Oppenheimer, with a CRD number of 4992538. Hewit is a Trader formerly in the Auction Rate Department and Associate Vice President at Oppenheimer.

12. Larry Spaulding (“Spaulding”) is a natural person, registered as an agent of Oppenheimer, with a CRD number of 709233. Spaulding is the Chief Operating Officer at Oppenheimer.

VI. FACTS AND ALLEGATIONS

A. The Auction Rate Securities Market and the Role of Maximum Rates

1.) An Explanation of the Nature of ARS, the Auction Process and Auction Failure.

13. ARS consist of preferred shares from closed end funds (“APS”) which have a perpetual maturity, and dividends which reset every seven to thirty-five days through a Dutch Auction process, as well as long term debt instruments, issued by municipalities (“Municipal ARCS”) or student loan organizations (“Student Loan ARCS”), with maturities of twenty to forty years and interest rates that reset through the same process.

14. Due to the upward sloping yield curve, issuers of long-term instruments typically have to pay higher interest rates, but due to the frequent auctions for ARS, the issuer of the ARS is allowed to pay short term rates on long term instruments.

15. In a Dutch Auction ARS always trade at par, with the yield of the instrument determined by the dividend or interest rate determined by the auction.

16. In a Dutch Auction a security holder has three options, the holder could: (1) hold; (2) purchase or sell; or (3) purchase and hold at rate.

17. In order to acquire ARS, a bid needs to be placed into the auction at the rate and quantity that the bidder is willing to hold the securities. Orders for the available quantity of ARS are filled starting with the lowest bid rate up until all the shares offered for sale in the auction are allocated. The rate at which the final share from the auction is allocated sets the dividend or interest rate on the entire issue until the next auction.

18. If there are not enough purchasers the auction fails, no shares change hands and the rate resets to a maximum rate proscribed in the instrument's offering document.

19. The offering documents additionally proscribe that the rate set at auction can not exceed the maximum rate.

20. The underwriting firms from which Oppenheimer obtained the ARS it sold, had the option but not the obligation to participate in the auctions and had traditionally supported their auctions by placing proprietary bids in the auctions to ensure the auction would not fail or hit its maximum rate. These firms were referred to as "lead underwriters."

21. The ability of an ARS investor to liquidate his or her position is contingent on there being sufficient buy bids, whether they were placed by the lead underwriters or by other buyers.

22. During 2007 and into 2008, Oppenheimer clients who purchased ARS typically had the ability to liquidate their holdings at the next auction. However, beginning in August of 2007 and culminating in late January and early February of 2008, buyer interest declined significantly and concerns over whether the maximum rates were too low led the lead underwriters through which Oppenheimer offered ARS to stop supporting their ARS programs. The firms ceased their support by choosing not

to place proprietary bids below the maximum rate which was also the highest rate that could be set at auction. Once these lead underwriters stopped placing these bids, the market became illiquid because the maximum rate on many of the instruments was insufficient to generate natural demand at auction or after a failed auction or to compel the issuer to redeem the ARS.

2.) Low Maximum Rates and AAA Ratings

23. The maximum rate restrictions on ARS, which set an absolute ceiling on the dividend or interest rate, allow the instruments to achieve AAA ratings.

24. AAA ratings from agencies such as Fitch and Moody's, are long term debt ratings, and signify a rating agency's assessment that there is a high likelihood that the security will pay interest or dividends as well as principal when due in a timely manner.

25. Because the maximum rate places an absolute cap on the interest or dividend the instrument will pay, in turn restricting its potential obligations, lower maximum rates make it easier for the instrument to achieve a AAA rating.

26. Financial firms including Oppenheimer used the AAA rating as an important marketing tool when describing the nature and safety of the product.

27. However, the fact that lower maximum rates made acquiring a AAA rating easier had the perverse effect of motivating issuers and underwriters to set low maximum rates that were ultimately too low to garner investor interest

28. When the financial firms through which Oppenheimer offered ARS stopped supporting their ARS programs in February of 2008 due to their concerns over decreased buyer demand and low maximum rates, there were auction failures across much of the ARS market, causing many ARS to start paying their maximum rates.

29. ARS with high maximum rates, typically Municipal ARCS with maximum rates in the range of 12-15% continued to have successful auctions because the rates were high enough to draw investor interest or to incentivize the issuer to offer a redemption.

30. ARS with low maximum rates, typically taxable and tax exempt APS and Student Loan ARCS, with maximum rates in the range of 3-5%, experienced failed auctions, and became illiquid, because the maximum rates were not high enough to draw investor interest or to incentivize issuers to offer a redemption.

B. Oppenheimer Marketed and Sold Auction Rate Securities as Safe, Liquid Short-Term Investments.

1.) Oppenheimer Marketed ARS as Safe, Liquid Investments.

31. Oppenheimer marketed and sold ARS as a cash management option that was safe and liquid.

32. Oppenheimer FAs introduced the product to clients at the same time that options like money markets or certificates of deposit (“CDs”) were discussed.

33. Auction Rate Preferred Shares were categorized as Cash Equivalents on customer account statements.

34. Investors with specific liquidity needs like those intending to use the money to buy a home, pay taxes, or distribute the proceeds of an estate were advised by Oppenheimer FAs that ARS were appropriate for these needs and advised to buy ARS.

35. Conservative investors who held large portions of their investment portfolio in cash equivalent and low risk investments were advised that ARS were appropriate for conservative investment objectives and were advised to purchase ARS.

36. Investors were told by Oppenheimer FAs that ARS were as safe as CDs or money markets and that they were like cash.

37. Some investors were told by Oppenheimer FAs that ARS were safer than money markets because they couldn't "break the buck" in the manner that money markets can.

38. Oppenheimer FAs touted the AAA rating of ARS to clients when selling them the product.

39. Investors were told by FAs that they could sell the product and get cash every seven to thirty-five days depending on which product they purchased.

40. Most investors were not told by Oppenheimer FAs that an auction was involved with the product at all.

41. Investors were not told by Oppenheimer FAs that a successful auction was required for the product to maintain its seven to thirty-five day liquidity.

42. Investors were not told by Oppenheimer FAs that the auctions that were required for the product to maintain liquidity could fail.

43. Investors were not told by Oppenheimer FAs that the reason why auctions had not failed in the past was that the underwriters were continually submitting support bids and that these underwriters could cease doing so at any time.

44. Investors were not told by Oppenheimer FAs that if there was a failure, the products they were purchasing were perpetual or long term in nature.

45. Investors were not told by Oppenheimer FAs what rate of return they would receive if the auctions failed.

46. Investors were not told by Oppenheimer FAs about maximum rates or their importance.

47. Investors were not told by Oppenheimer FAs that some products had high rates of return upon failure while others had zero rates of return.

48. Investors were not told by Oppenheimer FAs that the products that had high rates of return upon failure would be much more valuable and much easier to liquidate during periods of market stress than those that had lower or zero rates of return.

49. Most investors were not provided with a prospectus before or after they purchased ARS.

50. Most investors who did receive a prospectus received it after the auctions had failed.

51. Investors were not told by Oppenheimer FAs that a AAA rating on ARS does not address to an investor's ability to liquidate the instrument through auction at par.

52. In August 2007, as described below, the auctions for a number of AAA rated action rate securities failed.

53. Despite the fact that a number of AAA auction-rate securities failed in August 2007, subsequent to August 2007, Oppenheimer did not inform all clients of those failures and continued to use the AAA rating as a selling point for auction rate securities.

54. Institutional Investors were not told by Oppenheimer FAs that Oppenheimer FAs received additional compensation in the case of new issue ARS

available to Institutional Investors if the client held the ARS for multiple auction cycles.

55. Institutional Investors were not told by Oppenheimer FAs that this compensation policy was put in place to maintain Oppenheimer's own business relationships with issuers of ARS and not because of Oppenheimer's direct concern for the individual Institutional Investor. (A copy of an email outlining this policy is attached hereto as Exhibit A).

56. Investors were not told that while Oppenheimer classified APS as cash equivalents on client statements, Oppenheimer did not classify them under the cash equivalent portion of their own financial statements but instead classified them as "securities owned at market" on their own financial statements.

2.) Massachusetts Oppenheimer Clients Were Negatively Impacted by the Firm's Inadequately Researched and Inaccurate Sales Representations.

57. Many Massachusetts clients of Oppenheimer relied on sales representations provided by Oppenheimer FAs that were inadequately researched and inaccurate.

58. These Massachusetts Oppenheimer clients have been negatively impacted by their reliance on these inadequately researched and inaccurate representations.

59. The following investors are examples of that class of victims:

a.) Client A

60. Client A, a Massachusetts resident, maintains a brokerage account at Oppenheimer for the purpose of retirement planning and personal investment.

61. Client A sought advice from his Oppenheimer FA on the best options for the cash portion of his account.

62. Client A is a conservative investor who maintains a conservative investment portfolio with Oppenheimer

63. Client A and his Oppenheimer FA discussed money markets and certificates of deposit as possible investments.

64. However, Client A's Oppenheimer FA brought up and recommended ARS as the best option as an investment.

65. Client A's Oppenheimer FA described ARS as being like a CD or money market but as having a higher yield

66. Client A's Oppenheimer FA described the product as being like cash, as being safe, and as being available to be cashed with seven days notice.

67. In reliance upon his Oppenheimer FA's recommendation and representations, Client A purchased ARS for his account in July and August of 2004 and 2005.

68. Client A was never provided any disclosure documents by his Oppenheimer FA nor was he informed of the existence of any disclosure documents that he could review.

69. Client A was never told by his Oppenheimer FA that the auctions that created liquidity for his ARS could fail.

70. Client A's Oppenheimer FA never told him about the implications of an auction failure including the default rates that the ARS would pay, the risk of illiquidity and the possibility of principal loss.

71. Since the auction failures in mid February of 2008, Client A has not been able to liquidate a portion of his auction rate securities.

b.) Client B

72. Client B, a Massachusetts resident, maintains a brokerage account at Oppenheimer for the purpose of personal investment.

73. Client B knew that he would have to pay taxes in excess of \$400,000.00 for April of 2008.

74. In Spring of 2007 Client B explained to his Oppenheimer FA that he was setting aside money for the purpose of paying these taxes and told his Oppenheimer FA that he was interested in purchasing a CD.

75. Client B's Oppenheimer FA indicated that he had a better cash equivalent option and recommended ARS.

76. Client B's Oppenheimer FA told Client B that the ARS were as good as cash.

77. In reliance upon his Oppenheimer FA's recommendation and representations, Client B purchased \$500,000 worth of ARS for his account in the Spring of 2007.

78. Client B was never provided any disclosure documents by his Oppenheimer FA, nor was he informed of the existence of any disclosure documents that he could review.

79. Client B was never told by his Oppenheimer FA that an auction was what created liquidity for the products.

80. Client B was never told by his Oppenheimer FA that the auctions that created liquidity for the products could fail.

81. Client B's Oppenheimer FA never told him about the implications of an auction failure including the default rates that the products would pay, the risk of illiquidity and the possibility of principal loss.

82. Following the auction failures in mid February of 2008, Client B has been unable to liquidate more than half of his auction rate securities.

83. Since Client B cannot access these funds he has been unable to pay his taxes and is in danger of having his home foreclosed on.

c.) Client C

84. Client C, a seventy-four year old Massachusetts resident, maintains a brokerage account at Oppenheimer for the purpose of personal investment and retirement planning.

85. Client C is a retired investor who desired to have his account structured in a conservative manner.

86. At the end of January of 2008, Client C's Oppenheimer FA contacted Client C to recommend that Client C move assets out of money market funds and into ARS.

87. Client C informed his Oppenheimer FA that his highest priority was that his investments be safe.

88. Client C's Oppenheimer FA told Client C that the product was safe, AAA rated, and could be liquidated every seven days.

89. In reliance upon his Oppenheimer FA's recommendation and representations, Client C placed close to half the value of his account in ARS in January of 2008.

90. Client C was never provided with any disclosure documents by his Oppenheimer FA nor was he informed of the existence of any disclosure documents that he could review.

91. Client C was never told by his Oppenheimer FA that an auction was what created liquidity for the products.

92. Client C was never told by his Oppenheimer FA that the auctions that created liquidity for the products could fail.

93. Client C's Oppenheimer FA never told him about the implications of an auction failure including the default rates that the products would pay, the risk of illiquidity and the possibility of principal loss.

94. Following the auction failures in mid February of 2008, Client C has been unable to liquidate \$75,000.00 worth of ARS.

d.) Client D

95. Client D, a Massachusetts resident, maintains a brokerage account with Oppenheimer for the purpose of personal investment and retirement planning.

96. Client D also maintains a brokerage account with Oppenheimer in her capacity as executrix of her mother's estate for the purpose of holding and distributing the assets of her mother's estate.

97. In the fall of 2007 Client D opened both accounts at Oppenheimer.

98. Client D informed her Oppenheimer FA who handles both accounts that she was interested in safe investments for her personal account.

99. Client D informed her Oppenheimer FA that she needed the assets in the account for her mother's estate to be available as she would need to distribute them to her sisters who were beneficiaries of the estate.

100. Client D's Oppenheimer FA recommended ARS for both accounts.

101. When asked by Client D about the risks associated with ARS, Client D's Oppenheimer FA indicated that the ARS were the same as cash, were as safe as CD's, were AAA rated, and were available to be liquidated every seven days.

102. In reliance upon her Oppenheimer FA's recommendation and representations, Client D purchased ARS for both her personal account and for the account held for her mother's estate in the Fall of 2007.

103. Client D was never provided with any disclosure documents by his Oppenheimer FA nor was she informed of the existence of any disclosure documents that she could review.

104. Client D was never told by her Oppenheimer FA that an auction was what created liquidity for the products.

105. Client D was never told by her Oppenheimer FA that the auctions that created liquidity for the products could fail.

106. Client D's Oppenheimer FA never told her about the implications of an auction failure including the default rates that the products would pay, the risk of illiquidity and the possibility of principal loss.

107. Following the auction failures in mid February of 2008, Client D has been unable to liquidate \$75,000.00 worth of ARS.

3.) Oppenheimer Failed to Adequately Train its FAs in Regards to ARS.

108. Oppenheimer had no required training program regarding educating FAs on ARS or on selling ARS.

109. Oppenheimer had no system in place to make sure that Oppenheimer FAs knew even the most basic details about ARS before they sold them.

110. Despite not requiring mandatory training on ARS, Oppenheimer offered financial incentives for Oppenheimer FAs to sell the ARS that were superior to other cash equivalent options like money markets.

111. Some Oppenheimer FAs relied on ad hoc presentations made by Greg White, Managing Director of the ARS Department, at Oppenheimer Branch Offices regarding ARS.

112. During these presentations, White promoted ARS as a cash management tool that provided a superior rate of return in comparison to a money market or CD.

113. White did not discuss maximum rates, underwriters' backstopping of auctions, auction failures or the implication of auction failures as a standard part of these presentations.

114. As discussed in further detail below, White himself was not adequately educated on key aspects of ARS such as maximum rates, auction failures or the implication of auction failures. Yet he was performing the vast majority of presentations to Oppenheimer FAs on ARS

115. In March of 2008, after the auction market froze, an Oppenheimer FA who had attended one of White's presentations, voluntarily contacted the Division and

reported that he felt that the firm had not fully disclosed the nature of ARS to its FAs and clients.

116. The FA indicated that he advised elderly clients and clients who were using their assets to purchase a home that ARS were appropriate based on the information provided to him by Oppenheimer.

117. The FA added that if he knew that the products were subject to auction failure and perpetual maturity dates, he never would have sold them to his clients.

118. A different and former Oppenheimer FA who had attended one of White's presentations at Oppenheimer's branch office on Federal Street in Boston, MA and who had called the Oppenheimer ARS Department, testified before the Division that Oppenheimer had advised him that ARS were a product appropriate for cash management. He further testified that he suggested ARS for his clients in the following manner:

What happened is when a client had a need for putting his cash to work, money, that would be something that could be available to him in a fairly short period of time, you had the ability to have it in [a] money market fund, you could put it into a CD, and another type of cash management tool might be auction rate preferreds – auction rate securities, I'm sorry, I keep saying that, auction rate securities. So it was kind of a cash management tool for clients...

119. This former Oppenheimer FA testified that Oppenheimer did not inform him that the ARS could be long-term or perpetual in nature. He also stated that if he had known that there was even a minute risk of liquidity loss with these products, he would not have advised his clients to purchase them.

120. The former Oppenheimer FA testified that "I never thought there would be a question of illiquidity because it was never – that was never the risk that came up" in regards to White's presentation and the FA's calls to the ARS Department.

4.) Oppenheimer Failed to Provide Their Clients With Adequate ARS Disclosure Documents.

121. Oppenheimer FAs were not required to make any mandatory disclosures to clients who considered purchasing ARS or who purchased ARS.

122. Oppenheimer FAs were not required to provide any disclosure documents to clients who considered purchasing ARS or who purchased ARS.

123. Oppenheimer FAs could at their discretion choose to provide clients with a disclosure document or inform clients of a disclosure document that was available online.

124. Most Oppenheimer FAs did not advise their clients of the existence of any available disclosure document or provide a physical copy of any disclosure document.

125. Clients A, B, C and D were not provided with any disclosure documents by their Oppenheimer FAs nor were they informed that any disclosure document existed.

126. The disclosure document available online did not disclose that if an auction failure occurred, investors would be left holding long term or perpetual securities.

127. The disclosure document available online did not inform the client what the maximum rate and rate of return was in the event of an auction failure regarding any particular ARS issue.

128. Oppenheimer did not track or ensure that clients received the information present in the disclosure document that was available online.

C. Lack of Due Diligence

1.) Trouble in the ARS Market and Oppenheimer's Failure to Perform the Due Diligence Necessary to Protect Customers and Provide Accurate Sales Representations.

a.) Oppenheimer Failed to Warn Customers or FAs of Trouble in the ARS Market.

129. During August of 2007 the ARS market experienced stress and market disruption which resulted in the failure of some ARS auctions.

130. Oppenheimer failed to research these failures adequately or to disseminate information on them to its FAs and clients.

131. When asked by a fellow Oppenheimer executive as to whether Oppenheimer should inform their FAs of the failure, Albert Lowenthal, Chairman and CEO of Oppenheimer, instructed the executive not to inform all FAs of the failure.

132. In doing so, Oppenheimer intentionally withheld information from FAs whose customers were invested in ARS and denied the FAs and their clients the opportunity to review and research the ARS product and to exit the market if they felt it was necessary.

b.) Oppenheimer Failed to Fully Research and Recognize the Subsidization of the ARS Market by Underwriters and the Risks Associated with Such Subsidization.

133. In testimony before the Division, White, the Managing Director of the Auction Rate Department, testified that he did not research the implications of auction failure even after the August failures.

134. White testified that he did no research to find out the nature of the duty for the lead underwriters to place the proprietary clearing bids that ensured the auction didn't fail as they had historically done.

135. Such research would have revealed that the underwriting firms that were lead managers did not have a contractual obligation to place clearing bids that prevented failure.

136. White had access to information from these underwriters of ARS that disclosed their ARS inventory. This information indicated that inventory levels at these firms were rising during winter of 2007-2008.

137. Despite this, White testified that he did not research or inquire into what the inventory limitations were for lead underwriters that ran the auctions in regards to their capacity to buy, bid and hold ARS.

138. Information on the inventory capacity of the firms that ran and placed clearing bids was essential because if the firms approached their inventory limits as they ultimately would, the firms would not place a clearing bid.

139. Because White failed to research the obligation of lead underwriters to place supporting bids and because he failed to consider or inquire into the inventory capacity of these firms, Oppenheimer failed to recognize that underwriters of ARS could and would cease supporting auctions when it was no longer advantageous to the firm.

c) Oppenheimer Failed to Adequately Research the Maximum Rates for the ARS that it Sold to Customers and Thereby Failed to Recognize that the Re-set Rates at Auctions Were Getting Prohibitively Close to the Maximum Rates and that the Maximum Rates Would Not Be High Enough Upon Failure to Incentivize Issuers to Buy Back the Securities or to Create a Ready Market.

140. White testified that he did not research what the maximum rates were for ARS.

141. Moreover, White testified that he did not research whether the maximum rates would be high enough upon failure so as to create a ready market or to incentivize issuers to buy them back.

142. White similarly failed to research whether the maximum rates, which capped the re-set rate allowable at auctions, were too low so as to provide sufficient buyer interest.

143. White's failure to adequately research the maximum rates and consider their implications resulted in Oppenheimer failing to recognize that maximum rates were too low to be attractive at auction or to incentivize issuers to buy them back upon an auction failure.

d.) Oppenheimer's Failure to Perform Adequate Research and Due Diligence Resulted in Oppenheimer Clients Receiving and Relying on Inaccurate Sales Representations Provided to Them by Oppenheimer FAs.

144. Even after Oppenheimer had been put on notice in August that failures could and had occurred, Oppenheimer failed to take the simplest and most obvious steps described above to ensure that the sales representations that they had and continued to make to clients were accurate.

145. Had Oppenheimer taken these steps, it would have been revealed that ARS were not as safe and as liquid as Oppenheimer had been and continued to tell their clients they were.

146. As a result of Oppenheimer's inadequate research, the sales representations made by Oppenheimer to clients regarding the safety of ARS were inaccurate and placed the customers at risk.

147. In doing so, Oppenheimer ultimately caused thousands of unsuspecting investors to lose access to money that the clients believed was safe and easily accessible.

148. However, Oppenheimer was operating with the incentive of millions of dollars in revenue per year from their ARS business to motivate them to keep clients in the market with assurances about the safety and liquidity of the product.

D. Knowledge of Market Trouble and Insider Sales

1.) Oppenheimer Became Aware of Stress and Unprecedented Failures in the ARS Market and the Implications of Such Failures in the Latter Part of 2007 and early 2008.

149. The ARS market once again faced increased stress in December of 2007 and January and February of 2008.

150. Todd Flaman, a Trader on the Oppenheimer ARS Desk and Senior Vice President, testified before the Division that downgrades in monoline insurers had led to increased selling pressure in parts of the ARS market during the winter of 2007 and 2008.

151. White testified before the Division that by mid January he was aware that Lehman was thinking of leaving the market.

152. On January 18, 2008, White sent an email to the highest ranking personnel within the ARS department asking for their assessment of the risks present in Oppenheimer's ARS business.

153. Louis Gelormino, the ARS Desk Supervisor and Senior Vice President who was responsible for compliance and surveillance in the Oppenheimer ARS Department, responded by email on the same day accurately spelling out the risks and implications of auction failure weeks before the auction failures would ultimately occur.

154. Specifically, Gelormino evaluated the risks by replying in part: "If a sole participant processes its customer orders but declines entering a back bid, we may not be able to sell shares." (A copy of the email is attached hereto as Exhibit B.)

155. White testified that he understood "back bid" to mean the bid that the lead underwriters made to ensure that auctions wouldn't fail.

156. On January 18, 2008, Gelormino accurately predicted and described a scenario that would unfold in the following weeks as the lead underwriters would choose not enter support bids into the auctions, thereby causing auctions to fail, which resulted in Oppenheimer clients being unable to sell shares.

157. In testimony taken before the Division, Gelormino testified that he, White and possibly others met shortly after January 18th to discuss the contents of Gelormino's email.

158. On January 23, 2008, Lehman, a financial firm that underwrites ARS and runs auctions chose not to place a support bid in some auctions thereby causing the

auctions to fail. White testified that he considered these failures to be “a shot across the bow” by Lehman that they wanted to get out of the ARS business.

159. This Lehman failure was the first failure that the Oppenheimer ARS Department was aware of that involved an APS that was widely available to retail clients.

160. Flaman testified that when he contacted Lehman to find out why they let the auction fail, he was told that there were more sellers than buyers in the market.

161. Piper Jaffrey, another financial firm that ran and supported auctions chose not to place a supporting bid and failed auctions several days after Lehman failed their auctions.

162. According to White, Piper Jaffrey cited problems with low maximum rates on the ARS involved in the failed auctions.

163. If the re-set rate at auction approaches the maximum rate and the maximum rate is too low to create buyer interest, a lead underwriter like Lehman or Piper Jaffrey in these cases, is forced to take on larger amounts of ARS inventory via their support bid in order to ensure a successful auction. Lehman and Piper Jaffrey were unwilling to take on the inventory in these auctions and did not enter a support bid sufficient to ensure that the auctions would not fail. These risks which became apparent and known to Oppenheimer in mid to late January of 2008 were recognizable earlier upon the performance of the due diligence and research that Oppenheimer failed to undertake as described above.

164. Five days previous to the Lehman failure, Gelormino accurately described the implications of such decisions by underwriters to cease supporting the auctions when he indicated that clients would not be able to sell their shares.

2.) Oppenheimer Executives and ARS Department Personnel Fled the Market in Late 2007 and Early 2008 Amid Concerns Over its Continued Viability While Leaving Investors in the Dark.

165. In the wake of the Lehman and Piper Jaffrey failures, White was concerned enough about the health of the ARS market that he sold \$100,000 worth of ARS in his wife's business's account on February 3, 2008. (Oppenheimer provided the Division with a spreadsheet containing information on the sales of ARS by ARS Department personnel and senior management, a copy of which is attached hereto as Exhibit C.)

166. However, even though there were failures occurring in the market and Oppenheimer had accurately identified the risk that clients would not be able to sell shares if there were failures, Oppenheimer chose not to inform all clients of any of this information or disclose any concerns that they had with the market.

167. On February 5, 2008, White checked on the inventory that the underwriting firms that were lead managers were holding. White asked ARS Department Trader and Associate Vice president, Grant Hewit, if inventory was up street wide to which Hewit confirmed that it was indeed up. (A copy of an email in which this is discussed is attached hereto as Exhibit D.)

168. This inventory information confirmed that there were more sellers than buyers across the market which was causing the lead underwriters to buy more of the ARS to prevent failed auctions.

169. These lead underwriters were having to hold increasingly higher amounts of ARS that no one else wanted to buy.

170. Yet, Oppenheimer still did not inform FA's about the auctions that had failed nor did the firm inform FAs and clients that the inventory capacity of ARS underwriters may be being stretched and that it was possible that additional auctions could fail, thereby leaving clients with illiquid long term or perpetual instruments.

171. On February 7, 2008, Goldman Sachs, a major ARS underwriter and lead manager failed auctions.

172. On February 8, 2008, Hewitt emailed a personal acquaintance at Citi and stated: "I literally feel like the world is ending."¹

173. On February 7th and 12th White became concerned enough to sell \$300,000 worth of ARS in his own account. (See Exhibit C).

174. White testified that he sold his ARS because: "After Goldman Sachs let the auction fail on February seventh at that time I did not know what was going to happen, and on February 8th, that Friday, I sold those [ARS] because I did not know what was going to happen." He testified further that: "...my feeling about the market... really changed."

175. Oppenheimer still did not inform FAs and clients of any concerns that the firm had with the market despite the fact that the individual responsible for the training and education that Oppenheimer provided to FAs on ARS didn't know what was going to happen with the market and was concerned enough to liquidate his own holdings.

¹ In his on the record testimony before the Division, Mr. Hewitt attempted to distinguish the email by asserting that it was referring to personal rather than business matters.

176. Gelormino, the ARS Desk Supervisor and Senior Vice President whose duties included surveillance over the Auction Rate Desk, testified before the Division that as auction failures occurred in early February of 2008, he became concerned.

177. On February 11th, Gelormino, the author of the email which accurately assessed the risks and implications of a failed auction, chose to liquidate \$75,000 worth of ARS from his personal account. (See Exhibit C).

178. When asked why he sold his ARS, Gelormino further testified: "...what was happening was unique in my experience at the auction rate market and there was a degree of uncertainty in my opinion and that's what led to my selling the shares."

179. Oppenheimer Chief Executive Officer and Chairman Albert Lowenthal testified before the Division, that on February 11, 2008 he called a meeting with White, Oppenheimer General Counsel Dennis McNamara, Oppenheimer Chief Operating Officer Larry Spaulding, and Oppenheimer senior executive Robert Okin to discuss the ARS market.

180. Albert Lowenthal testified that by the end of the meeting, Oppenheimer had concluded that there were potential problems in the student loan ARS market.

181. On February 7th and 11th, Oppenheimer Chief Operating Officer Lawrence Spaulding took the opportunity to unload \$700,000 of his personal holdings of ARS. (See Exhibit C).

182. By the end of the day on the 11th more than half of the individuals in the meeting had begun the process of liquidating their personal ARS holdings.

183. Albert Lowenthal, had been liquidating \$2,650,000 of his personal holdings of ARS since December 1, 2007, including \$1,775,000 between January 29, 2008 and February 12, 2008. (See Exhibit C).

184. Albert Lowenthal had been concerned enough about the risk of failed auctions that he had been receiving a hand delivered memo each day documenting the status of auction failures since August of 2007.

185. Oppenheimer FA's and clients did not receive any memo on any failed auction on any day between August of 2007 and February 11, 2008.

186. When asked about why ARS were sold from his personal accounts, Albert Lowenthal testified before the Division that his son, Robert Lowenthal, had made the decision to sell the ARS.

187. Robert Lowenthal testified before the Division that he sold the ARS as part of a "portfolio decision... to move from shorter duration, lower yielding fixed income securities to longer duration and higher yielding fixed income securities."

188. Robert Lowenthal did not purchase longer duration and higher yielding fixed income securities in three of the four accounts in which he sold ARS.

189. Robert Lowenthal purchased only \$351,300.45 worth of longer duration, higher yielding securities in February of 2008 to replace the \$1.2 million worth of ARS that he sold.

190. When asked why he did not purchase more of the longer duration, higher yielding securities Robert Lowenthal testified that: "I didn't get around to it."

3.) Oppenheimer and Oppenheimer Executives and ARS Department Personnel Failed to Inform Oppenheimer FAs and Clients of the Failures that Had Occurred, of the Internally Discussed Implications of Failure and of the Concerns that Led Them to Sell Their Personal ARS Holdings Before the Market Implosion, These Failures to Disclose Resulted in Clients Holding Illiquid Securities.

191. The period of February 1st to the 12th was one in which Oppenheimer knew that if auctions failed, clients would not be able to sell shares. During this period Oppenheimer also knew that that lead underwriters were taking increasing amounts of ARS that no one wanted onto their inventories. Finally, Oppenheimer was aware during this period that Lehman, Piper Jaffrey and Goldman Sachs chose to and did fail auctions.

192. The period of February 1st to the close of business on the 12th was also one in which Oppenheimer Executives and Auction Desk Personnel, busy dumping their own ARS, failed to disclose any information to all of their FAs or all of their clients on auction failures, the implications of auction failures or most importantly their concerns with the auction market in general.

193. While Oppenheimer Executives and Auction Desk Personnel had a barrage of negative information at their disposal on which to base to their investment decisions on, Oppenheimer clients still believed the inaccurate and inadequately researched sales representations made to them by their FAs. They were given no reason or new information on which to believe that the sales representations that the products were safe and liquid were anything but accurate.

194. As a result of the decisions by Oppenheimer executives and ARS Department personnel to withhold information on the auction failures and on their

concerns about the ARS market, Oppenheimer clients did not have the chance to sell their ARS in the manner that the Oppenheimer executives and ARS Department personnel did.

195. The uninformed investors, including holders of 176 Massachusetts accounts with ARS valued at \$55,900,00.00, were holding their ARS when, unbeknownst to them, virtually the entire Auction Rate Securities market failed on February 12th, 13th and 14th rendering the ARS they held as unmarketable, illiquid long term bonds or perpetual securities with low rates of return.

196. These investors never knew that auctions that ensured the liquidity of the product could fail, that there was negative pressure in the market for the product, that auctions did in fact fail prior to the market collapse and that Oppenheimer was concerned about the market. They similarly did not know that they could ever end up holding unmarketable, illiquid long term bonds or perpetual securities with low rates of return. Instead they were told and believed that they held safe investments that they could simply cash out of every seven or 28 days upon making a request to their FA.

197. In March of 2008, Oppenheimer clients with ARS, were notified that their ARS might be something other than what they were sold to them as when Oppenheimer re-classified them on client account statements by changing their classification from “Cash Equivalent” to “Other Security.”

198. By this time however, it was too late to ask any questions as the ARS were already illiquid.

199. As of the date of this Complaint many of the ARS in Oppenheimer Accounts remain illiquid.

200. Presently, Oppenheimer continues to value the ARS at par on client account statements despite their unmarketability.

VII. VIOLATIONS OF SECURITIES LAWS

A. COUNT I – VIOLATIONS OF §101 BY OPPENHEIMER, ALBERT LOWENTHAL, ROBERT LOWENTHAL & GREG WHITE.

201. Section 101 of the Act provides in pertinent part:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (1) to employ any device, scheme or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

202. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 200 above.

203. The conduct of Oppenheimer and individual respondents, as described above, constitutes violations of M.G.L. c. 110A, § 101.

B. COUNT II – VIOLATIONS OF § 204 (a)(2)(B) BY OPPENHEIMER & ALBERT LOWENTHAL

204. Section 204 (a)(2)(B) of the Act provides in pertinent part:

- (a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:–

(B) has willfully violated or willfully failed to comply with any provision of this chapter

205. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 200 above.

206. The conduct of Oppenheimer and Albert Lowenthal as described above, constitute violations of M.G.L. c. 110A, § 204 (a)(2)(B).

C. COUNT III – VIOLATIONS OF § 204 (a)(2)(G) BY OPPENHEIMER & ALBERT LOWENTHAL.

207. Section 204 (a)(2)(G) of the Act provides in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:–

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

208. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 200 above.

209. The conduct of Oppenheimer & Albert Lowenthal as described above, constitute violations of M.G.L. c. 110A, § 204 (a)(2)(G).

210. Without limiting the generality of the foregoing, the conduct of Oppenheimer & Albert Lowenthal set forth above constitute violations of the following provisions of the Regulations:

950 CMR Section 12.204 (1)(a):

(4) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

... (14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he/she is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer.

... (28) Failing to comply with any applicable provision of the NASD rules of Fair Practice.

211. Without limiting the generality of the foregoing,

applicable NASD rules include the following:

2310. Recommendations to Customers (Suitability)

(a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs...

IM-2310-2. Fair Dealing with Customers

(a)(1) Implicit in all member and registered representative relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of the Association's Rules, with particular emphasis on the requirement to deal fairly with the public...

2760. Offerings 'At the Market'

A member who is participating or who is otherwise financially interested in the primary or secondary distribution of

any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer “at the market” or at a price related to the market price unless such member knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such member, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with such member.

2110. Standards of Commercial Honor and Principles of Trade

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

2120. Use of Manipulative, Deceptive or Other Fraudulent Devices

No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

2210. Communications with the Public

(d) Content Standards

(1) Standards Applicable to All Communications with the Public

(A) All member communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No member may publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. . . .

D. COUNT IV – VIOLATIONS OF § 204 (a)(2)(J) BY OPPENHEIMER

212. Section 204 (a)(2)(J) of the Act provides in pertinent part:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant (J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter.

213.. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 200 above.

214. The conduct of Oppenheimer, as described above, constitutes violations of M.G.L. c. 110A, § 204 (a)(2)(J).

VIII. STATUTORY BASIS FOR RELIEF

Violations, Cease and Desist Orders and Costs

215. Section 407A(a) of the Act provides in pertinent part that:

(a) If the secretary determines, after notice and opportunity for a hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act].

216. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 200 above.

217. Oppenheimer, Albert Lowenthal, Robert Lowenthal, and Greg White directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above, and it is the Division’s belief that Respondents will continue to

engage in acts and practices similar in subject and purpose, which constitute violations if not ordered to cease and desist.

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to provide the relief requested in Section X below.

X. RELIEF REQUESTED

Wherefore, the Enforcement Section of the Division requests that Hearing Officer take the following action:

- A. Find that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- B. Find as fact the allegations set forth in paragraphs 1 through 200 of the Complaint; and
- C. Enter an order (a) requiring Oppenheimer to permanently cease and desist from committing any further violations of the Act and Regulations, (b) requiring Oppenheimer to offer rescission of sales of ARS at par (c) requiring Oppenheimer to make full restitution to investors who have already sold these instruments below par on the terms and conditions that a Hearing Officer deems appropriate, (d) censuring Oppenheimer, (e) revoking Albert Lowenthal's Massachusetts registration as a broker-dealer agent of Oppenheimer, (f) requiring Oppenheimer, Albert Lowenthal, Robert Lowenthal and Greg White to pay an administrative fine in an amount and upon such terms and conditions as a Hearing Officer may determine, and (g) requiring Oppenheimer, Albert Lowenthal, Robert Lowenthal and Greg White to take any other

action that a Hearing Officer may deem appropriate in the public interest and necessary for the protection of Massachusetts investors.

**ENFORCEMENT SECTION
MASSACHUSETTS SECURITIES DIVISION**



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Dated: November 18, 2008