

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
25 CAPITOL STREET
CONCORD, NH 03301

CONSENT ORDER
IN THE MATTER OF:

Oppenheimer & Co. Inc., CRD #249

I-2010-0000017

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Oppenheimer & Co. Inc. (hereinafter referred to as "Oppenheimer") has submitted an offer of settlement, which the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as the "Bureau") has determined to accept. As such, Oppenheimer, without admitting or denying the allegations or conclusions of law, consents to the entry of this Order.

STATEMENT OF ALLEGATIONS

1. Oppenheimer is a broker-dealer. Its principal address is 125 Broad Street, 16th Floor, New York, N.Y. 10004. The events giving rise to this Consent Order occurred at the Oppenheimer branch office currently located at 30 Penhallow Street, Suite 100, Portsmouth, N.H. 03801 (hereinafter referred to as the "Portsmouth branch") between January 2004 and early 2010. The branch office manager for the Portsmouth branch during this time period was Jane Dooda. Ms. Dooda was responsible for supervision of the Portsmouth branch personnel, which included regular review of the transactions in the branch employees' personal brokerage accounts.
2. Oppenheimer's Firm Procedural Memo on Penny Stocks states that financial advisors ("FAs") are prohibited from soliciting or recommending any transactions in designated securities or penny stocks. A "penny stock" is defined as non-Nasdaq securities traded over-the-counter, i.e., on the OTC Bulletin Board or Pink Sheets or on a non-U.S. exchange at or below five dollars (\$5.00) per share.
3. During the course of a routine examination of the Portsmouth branch, examiners from the Bureau discovered that several Oppenheimer broker agents, including branch manager Jane Dooda, had purchased the same penny stock, Miller Petroleum Inc., as several of the branch's clients. The transactions occurred since the beginning of 2004. Miller Petroleum Inc. was not registered or otherwise exempt from registration in New Hampshire until early 2010. After further investigation, the Bureau concluded that some of the trade tickets for the purchase or sale of Miller Petroleum Inc. in both client and employee accounts were mismarked as unsolicited when the trades were solicited.

4. Additionally, after further investigation the Bureau also concluded that other penny stocks were purchased by both Oppenheimer broker agents and their clients, namely Aviza Technology, Inc., American International Petroleum Corp., and Tasty Fries, Inc. The Bureau concluded that these securities were not registered or otherwise exempt from registration in New Hampshire and the transactions at issue occurred at least as early as 2004.
5. The Bureau determined that at least two clients who purchased one or more of the penny stocks described above had conservative investment objectives on file with Oppenheimer. Penny stocks are speculative investments and therefore may not be appropriate for conservative investors.
6. On or about May 23, 2011, amidst settlement negotiations with the Bureau, Oppenheimer sent a rescission offer to clients of the Portsmouth branch office that had purchased Miller Petroleum, Inc. While Oppenheimer may have acted in good faith with the intent to remedy the matter by providing clients an opportunity to rescind the unregistered transactions, neither the secretary of state's office nor the Bureau received a copy of this offer or an opportunity to review the offer prior to delivery to the customers. Prior notice and approval by the secretary of state is required by RSA 421-B:25, VIII in order for Oppenheimer to obtain protection from subsequent litigation by the investor. Subsequent to this rescission offer, Oppenheimer submitted and received approval from the State to withdraw its May rescission offer and issue a rescission offer that was reviewed and approved by the Secretary of State to New Hampshire clients who purchased Miller Petroleum, Inc. Oppenheimer has delivered its offer of rescission in the Miller Petroleum, Inc. securities to all New Hampshire customers¹ who purchased Miller Petroleum Inc. securities from Oppenheimer broker agents of the Portsmouth branch between January 1, 2004 to December 31, 2010.

CONCLUSIONS OF LAW

1. Oppenheimer is a "broker dealer" within the meaning of RSA 421-B:2.
2. Pursuant to RSA 421-B:3-a, I, in recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs. Oppenheimer violated this provision by failing to prevent the solicited sale of unregistered penny stocks to New Hampshire customers.
3. Pursuant to RSA 421-B:8, X, persons licensed under RSA 421-B to conduct securities business shall abide by the rules of the Securities and Exchange Commission, National

¹ Oppenheimer broker agents and their household accounts, regardless of domicile in New Hampshire, are not considered New Hampshire customers for the purposes of this Order.

Association of Securities Dealers ("NASD" now FINRA), national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. In failing to prevent two unsuitable recommendations, Oppenheimer violated this provision by failing to meet the suitability requirements set forth in NASD Rule 2310, particularly as it relates to penny stock transactions and solicitation (guidance set forth in NASD Notice to Members 96-60).

4. Pursuant to RSA 421-B:10, the Secretary of State may impose sanctions against Oppenheimer's broker-dealer for failing to reasonably supervise its brokers. Oppenheimer is in violation of this provision for failing to supervise employees at its Portsmouth branch by allowing transactions in unregistered securities, soliciting transactions in penny stocks, unsuitable transactions, and mismarking order entry tickets.
5. Pursuant to RSA 421-B:11, I, it is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federal covered security for which the fee has been paid and documents have been filed as required by paragraph I-a of this section. Oppenheimer violated this provision by effecting sales of Miller Petroleum, Inc., Aviza Technology, Inc., American International Petroleum Corp., and Tasty Fries, Inc. These securities were not registered under RSA 421-B, and Oppenheimer has not proved any exemption under RSA 421-B:17 or federally securities laws.
6. Pursuant to RSA 421-B:22, IV, the Bureau is entitled to recover the costs of its investigation.
7. Pursuant to RSA 421-B:23, I, whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter.
8. Pursuant to RSA 421-B:25, VIII, no offer shall be effective to prevent suit by an offeree under this section unless a duplicate copy thereof shall have been filed with the secretary of state at least 20 days prior to its delivery to the offeree and the Secretary of State shall not have objected to the offer within that time. The offer shall be in the form and contain the information the secretary of state by rule or order prescribes. If the offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subdivision. Oppenheimer did not file its initial rescission offer with the Secretary of State and failed to include a required disclosure statement. The initial offer was therefore ineffective to prevent suit by an offeree.
9. Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any

registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation.

10. Pursuant to RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under paragraph I, II, or III every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25.
11. Pursuant to RSA 421-B:26, V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. Oppenheimer is subject to this provision.

Undertaking

1. Oppenheimer agrees that it voluntarily entered into this Consent Order and represent and aver that no employee or representative of the Bureau has made any promise, representation, or threat to induce their execution.
2. Oppenheimer agrees to waive its right to an administrative hearing and any appeal therein under RSA 421-B.
3. Oppenheimer agrees that this Consent Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Oppenheimer for which the Bureau has no knowledge of at the time of the final entry of this Consent Order.
4. Oppenheimer may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation contained in this Consent Order or create the impression that the Consent Order is without factual basis.
5. Within ten (10) business days of the execution of this Consent Order, Oppenheimer agrees to pay the costs of this investigation to the Bureau in the amount of thirty thousand dollars (\$30,000). A certified check or mail order funds shall be made out to the State of New Hampshire.

6. Within ten (10) business days of the execution of this Consent Order, Oppenheimer agrees to pay a fine in the amount of one hundred and twenty-five thousand dollars (\$125,000). A certified check or mail order funds shall be made out to the State of New Hampshire.
7. Jane Dooda formally agrees to voluntarily relinquish her position as supervisor and branch manager for a period of one year from the date of execution of this Consent Order. The Bureau will revisit the issue of any potential enforcement action against Jane Dooda after one year of the date of execution of this Consent Order, taking into account whether Oppenheimer has satisfied this Undertaking and whether Ms. Dooda has been subject to any disciplinary actions or complaints. After one year from the date of execution of this Consent Order, if Jane Dooda is not subject to any disciplinary action or complaints, she may again become a supervisor and/or branch manager without prior approval by the Bureau.
8. Oppenheimer agrees to offer rescission, within ninety (90) days of the execution of this Consent Order, to New Hampshire clients who purchased Aviza Technology, Inc., American International Petroleum Corp., and Tasty Fries, Inc. from January 1, 2004 to December 31, 2010. Oppenheimer agrees to submit its rescission offers to the Bureau for approval prior to execution. The rescission offers shall be sent via certified mail, return receipt requested, to the last known addresses of each New Hampshire client who purchased Aviza Technology, Inc., American International Petroleum Corp. and Tasty Fries, Inc. in an Oppenheimer Portsmouth branch account. Oppenheimer shall offer rescission on the purchase price of the security plus interest at the New Hampshire statutory rate at the time of the transaction, less any sale proceeds and dividends received by the client as a result of holding or selling the security.
9. Oppenheimer agrees to retain attorney Susan Bryant, within thirty (30) days of the execution of this Consent Order, as an independent consultant for the purposes of reviewing certain activities in the Portsmouth branch. Oppenheimer shall bear the costs of this Undertaking. Ms. Bryant shall review and provide a written report on the following:
 - a. Determine the underlying cause of the violations discussed above and make such recommendations as necessary to prevent their reoccurrence.
 - b. Whether, for the time period of January 1, 2004 to present, any unregistered transactions occurred at the Portsmouth branch aside from the known transactions in Miller Petroleum Inc., Aviza Technology, Inc., American International Petroleum Corp., and Tasty Fries, Inc. Ms. Bryant shall rely on statistically relevant random sampling of all the Portsmouth Branch transactions from January 1, 2004 to present in making this determination. Ms. Bryant shall provide a thorough explanation of her sampling methodology in the written report.
 - c. Whether, for the time period of January 1, 2004 to present, employees of the Portsmouth branch effected transactions on behalf of one or more customer or

related-customer account(s), of any low-priced (below \$5 per share), non-Nasdaq security traded over-the-counter, i.e., on the OTC Bulletin Board or Pink Sheets or on a non-U.S. exchange, while simultaneously purchasing the same securities in their own personal accounts, aside from the known purchases of Miller Petroleum Inc., Aviza Technology, Inc., American International Petroleum Corp., and Tasty Fries, Inc., as described above. The Bureau expects Ms. Bryant to make this determination through random statistical sampling of all the transactions from January 1, 2004 to present, with a sampling size that Ms. Bryant feels is sufficiently large enough to provide accurate results. A thorough explanation of Ms. Bryant's sampling methodology must be included in the written report.

- d. Review and evaluate procedures, compliance, and practices in the Portsmouth branch relating to the sale of low-priced securities, unregistered securities, and supervision. Ms. Bryant's report must determine if current procedures, compliance, and/or practices are reasonably designed to prevent and detect future violations. If Ms. Bryant determines that the current procedures, compliance and practices are not sufficient to prevent and detect future violations, she must provide written recommendations as to what changes should be made.
- e. Review and evaluate whether Oppenheimer's order entry and surveillance systems are reasonably designed to prevent the sale of unregistered securities. If the systems are found to be unreasonably designed, provide recommendations as to changes that need to be made.

10. To ensure the independence of Ms. Bryant, Oppenheimer agrees to the following:

- a. Oppenheimer shall not have the authority to terminate Ms. Bryant without prior written approval from the Bureau. To that end, the formal written agreement between Oppenheimer and Ms. Bryant regarding the terms of her engagement as an independent consultant, as described herein, shall be incorporated into this Order by reference and a copy of the agreement shall be provided to the Bureau.
- b. No attorney-client relationship shall exist between Oppenheimer and Ms. Bryant. Accordingly, Oppenheimer shall not seek to invoke the attorney-client privilege or any other privilege or doctrine to prevent Ms. Bryant from transmitting any information, reports, or documents to the Bureau.
- c. During the period of engagement, and for two years after the engagement, Oppenheimer shall not enter into any employment, customer, consultant, attorney-client, auditing, or other professional relationship with Ms. Bryant.
- d. Ms. Bryant will have access to privileged or confidential trade secrets and commercial or financial information and customer identifying information, the public dissemination of which could place Oppenheimer in a competitive disadvantage and expose their customers to unwarranted invasions of their

personal privacy. Therefore, it is the intention of the Bureau that such information will remain confidential and protected, and shall not be disclosed to any third party, except to the extent provided by applicable FOIA statutes or other regulations or policies.

11. Ms. Bryant shall, within one hundred and twenty (120) days of the date of her engagement by Oppenheimer, conduct the review described above and make written findings and recommendations to the Bureau and Oppenheimer. Together with the written findings and recommendations, Ms. Bryant shall submit copies of all drafts, notes, and other working papers used in creating the report. If Ms. Bryant is unable to make such a report to the Bureau within 120 days, Ms. Bryant shall make an interim report to the Bureau describing the work completed and the work remaining to be completed, along with an estimated date for completion and issuance of a final report.
12. Within sixty (60) days of the delivery of Ms. Bryant's final report to the Bureau and Oppenheimer, Oppenheimer shall evaluate Ms. Bryant's report and provide a written response to the Bureau addressing any findings and/or recommendations contained therein. Thereafter, Oppenheimer shall consult with the Bureau regarding reasonable enhancements it intends to implement in response to recommendations made in Ms. Bryant's report. Oppenheimer may request an extension of time, if needed, but such extension must be requested in writing and approved by the Bureau. If Oppenheimer and the Bureau cannot come to agreement regarding the implementation of Ms. Bryant's recommendations, either party can petition the Hearing Officer for a final determination as to what, if any, of Ms. Bryant's recommendations must be implemented.
13. Within one year of the date of execution of this Consent Order, Oppenheimer shall submit a written follow-up report to the Bureau outlining any enhancements it has instituted as a result of this Consent Order or Ms. Bryant's recommendations. This follow-up report shall be submitted to the Bureau within one year of the date of execution of this Consent Order, unless an extension is granted by the Bureau after a written request by Oppenheimer.
14. Oppenheimer agrees to offer full rescission to all affected clients for any and all additional unregistered securities discovered as a result of Ms. Bryant's review, but only for the time period of January 1, 2008 to present. Oppenheimer agrees to submit their rescission offers to the Bureau for approval prior to their execution, in accordance with RSA 421-B:25. The rescission offers shall be sent via certified mail, return receipt requested, to the last known addresses of each client. The Bureau reserves the right to notify those who purchased unregistered securities before January 1, 2008 that they may have a claim against Oppenheimer.
15. Oppenheimer and the Bureau understand that failure by either party to fully comply with the terms of this Consent Order may result in this Consent Order being vacated. If vacated, the Bureau may reinstate its enforcement action and Oppenheimer may invoke its right to an Administrative Hearing.

So Consented.

Executed this 31st day of January, 2012

By: [Signature]
Oppenheimer & Co. Inc.

By: Dennis McNamara DUT-based Counsel

Executed this 1st day of Feb, 2012

[Signature]
STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
Joseph Long, Hearing Officer