

News Release

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NASD Charges Oppenheimer & Co. and CEO Albert Lowenthal with Knowingly Producing Inaccurate Data to NASD in Breakpoint Sweep

In Separate Action, NASD Fines Oppenheimer \$250,000 for Late Reporting of Potential Broker Misconduct to Public, Regulators, Brokerages

Washington, D.C. — NASD announced today that it has charged Oppenheimer & Co. and the firm's CEO, Albert Lowenthal, with knowingly submitting inaccurate and incomplete data in response to NASD's request that the firm perform a self-assessment of its mutual fund breakpoint discount practices. This is the second time in eight months that NASD has charged the firm with failing to produce documents and information requested by NASD. The [first complaint](#), issued in May 2005, involved an investigation of municipal bond transaction reporting violations.

"All regulated firms have a fundamental obligation to cooperate with NASD requests for information by providing complete, accurate and responsive data in a timely manner," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "The ability of NASD and other securities regulators to protect investors and police the markets depends upon compliance with that obligation. Today's matter is especially troubling not only because of the firm's repeated lack of cooperation with NASD, but more significantly because, as stated in the complaint, the CEO himself allegedly directed the firm to provide NASD with information that he knew to be inaccurate."

The complaint announced today has its origins in a [March 2003 report](#) jointly issued by NASD and other securities regulators that showed that nearly one in three mutual fund transactions in front-end load mutual funds that appeared eligible for a breakpoint discount did not receive one. As a result of those findings, NASD required approximately 2,000 broker-dealers that sold front-end load mutual funds during 2001-2002 - including Oppenheimer - to conduct a self-assessment of their compliance with mutual fund breakpoint discount requirements and report the results to NASD. As a result of the breakpoint sweep and ensuing NASD enforcement actions, more than \$130 million has been returned to investors who did not receive appropriate breakpoint discounts.

Typically, breakpoint discounts are applied to front-end load Class "A" share transactions to reduce sales loads at the investment levels of \$50,000, \$100,000, \$250,000 and \$1 million. Class "B" and "C" share transactions typically do not charge front-end sales charges and thus, are generally not entitled to breakpoint discounts.

Specifically, NASD required Oppenheimer to sample 800 front-end load Class "A" share transactions effected between Jan. 1, 2001 and Dec. 31, 2002, and to furnish certain information about these transactions in an online self-assessment form posted on NASD's web site. Oppenheimer's breakpoint self-assessment was due on June 13, 2003.

In its complaint, NASD alleges that on or about June 10, 2003 - three days before the due date - Lowenthal learned that the firm's 800-transaction sample included Class "A," "B" and "C" share transactions. The complaint alleges that Lowenthal knew that the firm's inclusion of "B" and "C" share transactions improperly diluted the firm's sample, resulting in the firm sampling fewer Class "A" transactions than NASD had required. Regardless, Lowenthal allegedly ordered the submission of this flawed data to NASD; Lowenthal neither notified NASD about the flawed data, nor did he request anyone else to notify NASD about the flawed data, either before or after the firm's submission.

NASD quickly discovered this deficiency, as well as numerous other significant deficiencies, in the firm's self-assessment submission, and on June 13, 2003, directed the firm to immediately generate and submit a new self-assessment. In its complaint, NASD alleges that, in response, Lowenthal assigned the same senior officer whom he had charged with preparing the initial self-assessment the task of preparing the second self-assessment. A few months later, Lowenthal terminated this same senior officer, but allegedly failed to assume or delegate responsibilities for the self-assessment to another qualified principal of the firm.

NASD's complaint alleges that the firm's second self-assessment, submitted more than five months after the firm's initial submission, contained many of the same defects as the first - it continued to include certain Class "B" share transactions; failed to identify linked accounts; failed to include proper discount information; failed to provide the actual sales charge percentages, appropriate sales charge percentages, and the proper discount descriptions; and failed to identify overcharged trades, among other problems. To date, now more than two and one-half years after the initial

self-assessment was due, the complaint alleges that neither the firm nor Lowenthal has submitted to NASD a complete and accurate self-assessment.

The complaint further charges that Oppenheimer's self-assessment submissions so completely and fundamentally failed to comply with NASD's regulatory request that NASD could not rely on or use the firm's data for purposes of analyzing the firm's breakpoint compliance in both absolute terms, and in relation to the approximately 2,000 other registered firms that contemporaneously submitted breakpoint self-assessments.

In another matter involving Oppenheimer, NASD announced today that it censured and fined the firm \$250,000 for at least 230 late disclosures of reportable information about its brokers, including customer complaints, regulatory actions and investigations, and terminations. Reportable information on all registered brokers is maintained in NASD's Central Registration Depository (CRD) and is available free of charge to the public through NASD's [BrokerCheck](#). Last year, approximately four million investors investigated brokers' backgrounds through BrokerCheck. In settling the matter, the firm neither admitted nor denied the charges, but consented to the entry of NASD's findings.

This settlement reflects NASD's continuing commitment to ensure that registered firms comply with their obligation to timely and accurately disclose reportable information about their brokers to the public. In 2004, NASD fined 30 firms more than \$11 million for similar late reporting violations.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

Investors can obtain more information about, and the disciplinary record of, any NASD-registered broker or brokerage firm by using NASD's BrokerCheck. NASD makes BrokerCheck available at no charge to the public. In 2004, members of the public used this service to conduct more than 3.8 million searches for existing brokers or firms and requested more than 190,000 reports in cases where disclosable information existed on a broker or firm. Investors can link directly to BrokerCheck at www.nasdbrokercheck.com. Investors can also access this service by calling (800) 289-9999.

NASD is the leading private-sector provider of financial regulatory services, dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. NASD touches virtually every aspect of the securities business - from registering and educating all industry participants, to examining securities firms, enforcing both NASD rules and the federal securities laws, and administering the largest dispute resolution forum for investors and registered firms. For more information, please visit our Web site at www.nasd.com.

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