

State of Missouri  
Office of Secretary of State

Case No. AP-05-03

IN THE MATTER OF:

Oppenheimer & Co., Inc.  
125 Broad Street  
New York, New York 10001,

Respondent,

**CONSENT ORDER**

The Missouri Securities Division alleges that Oppenheimer employed an unregistered investment adviser representative and an unregistered agent and failed to supervise an agent in Missouri and that these constitute grounds to revoke, bar or censure Oppenheimer's registration in Missouri pursuant to Section 409.204, RSMo 2000.

1. Oppenheimer desires to settle the allegations and the matters raised by the staff of the Securities Division relating to Oppenheimer's employment of an unregistered investment adviser representative, an unregistered agent and its failure to supervise an agent.
2. Oppenheimer and the Securities Division consent to the issuance of this Consent Order.
3. Oppenheimer stipulates and agrees to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
4. Oppenheimer waives its right to a hearing with respect to this matter.
5. Oppenheimer stipulates and agrees that it waives any rights that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Further, Oppenheimer specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.
6. Oppenheimer stipulates and agrees that, should the facts contained herein prove to be false or incomplete, the Missouri Division of Securities preserves the right to pursue any and all legal or administrative remedies at its disposal.

**STIPULATIONS OF FACT**

7. Oppenheimer & Co., Inc. (f/k/a Fahnestock referred to herein as "Oppenheimer") is a federal covered investment adviser and a Missouri registered broker-dealer with an address of 125 Broad Street, New York, New York 10001.
8. In 1999 the Missouri Division of Securities conducted an audit of Oppenheimer's branch offices in Missouri. The Division observed certain deficiencies in Oppenheimer's supervisory systems, policies and procedures. At least one of these deficiencies related to unregistered activity by an agent. In 2000, Oppenheimer retained an outside consultant who made recommendations relating to these deficiencies.
9. Subsequent to this audit and the outside consultant's recommendations, Oppenheimer employed David Tipton ("Tipton"), an unregistered agent, from December 31, 2001 to April 17, 2003. Tipton generated \$93,074 in commissions while unregistered.
10. From December 16, 1994, to February 26, 2004, Oppenheimer employed Paul Gershon ("Gershon"), an unregistered investment adviser representative who transacted business in Missouri with 4 individual customers and 7 accounts of an employee profit sharing plan. Gershon received \$4,496.22 in advisory fees while unregistered.
11. On or before January 9, 2001, a customer called Oppenheimer's Kansas City, Missouri, branch office and talked to an Oppenheimer employee and stated that an Oppenheimer registered representative, William L Evans ("Evans"), had borrowed money from the customer and was delinquent in repaying the customer. On January 9, 2001, the Oppenheimer customer sent a letter which alerted or should have alerted Oppenheimer that Evans was borrowing money from a customer.

12. The Oppenheimer employee discussed this matter with the Oppenheimer Branch Manager and the customer letter was sent to Oppenheimer's New York, compliance department.
13. Members of the New York compliance department discussed the letter with various compliance personnel. Evans was contacted by the firm regarding this matter and the registered representative stated that this was a personal matter, unrelated to the firm, which Evans would handle on his own.
14. In correspondence with the Division, Oppenheimer contended that the firm had no knowledge of Evans' outside business activity and that the firm was unaware that the customer had opened a margin account to wire funds to this outside business.
15. In July of 2002, the customer filed an arbitration against the firm and Evans seeking reimbursement for the loan made to the registered representative in the amount of \$70,000.
16. Upon receipt of the arbitration claim the firm conducted an investigation and Evans was terminated on September 11, 2002, for violations of firm policy.
17. On August 5, 2004, the Missouri Securities Division sent a letter of inquiry to Oppenheimer requesting copies of interviews conducted, documents reviewed and statements taken during their investigation.
18. Oppenheimer responded in a letter dated August 27, 2004 by stating, "The Firm is unable to provide documentation pertaining to the inquiry at this time."
19. The Securities Division's letter of August 5, 2004, also requested copies of all compliance reviews of the registered representative from January 1998 to until the Evans' termination in 2002.
20. Oppenheimer responded by stating, "The Firm is not able to locate the requested information at this time."
21. On October 12, 2004, the Securities Division sent a letter to Oppenheimer asking why the firm was unable to provide the documents pertaining to this inquiry.
22. On November 3, 2004, Oppenheimer responded in part by saying "older documentation may have been misplaced when being transferred between personnel and / or sent to storage."
23. An order is in the public interest.

### **JURISDICTIONAL BASIS**

24. Oppenheimer and the Securities Division stipulate and agree that the Commissioner has jurisdiction over these matters pursuant to the Missouri Securities Act, Chapter 409, et al.
25. Oppenheimer and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Â§409.408(b), RSMo 2000, which provides, in part:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.

### **ORDER**

**WHEREAS**, the Commissioner, after consideration of the stipulations set forth above and on the consent of Oppenheimer and the Securities Division, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, et al.

**NOW, THEREFORE**, it is hereby Ordered that:

1. Oppenheimer is prohibited from employing unregistered agents in violation of Â§409.4-401 RSMo Cumulative Supp. 2004, and is prohibited from failing to supervise its employees in violation of Â§409.4-412, RSMo Cumulative Supp. 2004.
2. Oppenheimer shall reasonably supervise its agents and employees by establishing procedures and a system for applying such

procedures that would reasonably be expected to prevent and detect, in so far as practicable, any violations of its policies or procedures by its agents or employees.

3. Oppenheimer shall develop within thirty days of the effective date of this order a bulletin outlining agent "red flag" behavior that may warrant heightened supervisory scrutiny or indicate misbehavior. This bulletin will be submitted to the Securities Division and within thirty days after this review will be sent to all Missouri registered principals.
4. Oppenheimer shall enhance its supervisory procedures to assist in detecting and preventing customer account abuses by its Missouri registered agents. In particular, Oppenheimer will enhance its supervisory activities relating to agent registrations, outside business activities and borrowing of customer funds or securities. These enhancements will be sent to the Securities Division within thirty days of the effective date of this order.
5. Oppenheimer shall enhance its record keeping procedures to ensure that they retain complaints, compliance reviews, and other documents relating to internal investigations. These enhancements will be sent to the Securities Division within thirty days of the effective date of this order.
6. For a period of two years:
  - a. Oppenheimer shall make available upon request by the Division all Missouri branch office reviews conducted by regulators including the SEC and the NASD and all correspondence with such regulators pertaining to these reviews.
  - b. Oppenheimer shall report to the Division all material changes in Oppenheimer's compliance supervisors and policies pertaining to Missouri-based agents within thirty days of these changes.
7. Oppenheimer shall pay \$50,000 to the Missouri Secretary of State's Investor Education and Protection Fund. Such amount shall be immediately due and payable.
8. Pursuant to this Consent Order, Oppenheimer has paid restitution in the amount of \$63,000 to customer identified in Exhibit A. Oppenheimer shall send to the Securities Division within 10 days of the execution of this order; a copy of this check, and documentation that the check was sent by registered mail to the customer and a copy of the settlement documents with this customer.
9. Oppenheimer shall pay \$9,050 as the cost of this investigation. This amount shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. Such amount shall be immediately due and payable.
10. Oppenheimer will pay its own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 15<sup>th</sup> DAY OF JUNE, 2005.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
DAVID B. COSGROVE  
COMMISSIONER OF SECURITIES

Consented to by:

Mary S. Hosmer  
ASSISTANT COMMISSIONER OF SECURITIES  
MISSOURI DIVISION OF SECURITIES

Oppenheimer & Co., Inc.