

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

IN THE MATTER OF:	)	
	)	
	)	
OPPENHEIMER & CO., INC.,	)	
ALBERT LOWENTHAL,	)	DOCKET NO. 2008-0080
ROBERT LOWENTHAL &	)	
GREG WHITE	)	
	)	
RESPONDENTS.	)	
	)	

**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

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 11<sup>th</sup>, 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 7<sup>th</sup> and 11<sup>th</sup>, 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 11<sup>th</sup> 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 1<sup>st</sup> to the 12<sup>th</sup> 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 1<sup>st</sup> to the close of business on the 12<sup>th</sup> 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