

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID T. VINING, Individually And On Behalf )  
of All Others Similarly Situated, )

Plaintiff, )

v. )

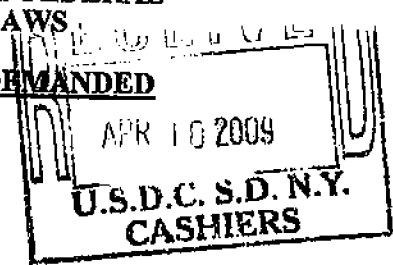
OPPENHEIMER HOLDINGS INC., )  
OPPENHEIMER & CO., INC. & )  
OPPENHEIMER ASSET MANAGEMENT INC. )

Defendants. )

Civil Action No. 08-CV-4435 (LAP)

FIRST AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT FOR  
VIOLATION OF FEDERAL  
SECURITIES LAWS

JURY TRIAL DEMANDED



1. Lead Plaintiff David T. Vining, by his counsel, alleges the following based upon personal knowledge as to his own acts and upon the investigation by his counsel, which includes, among other things, a review of: (a) public statements, sales presentations, and marketing materials by Oppenheimer Holdings Inc., Oppenheimer & Co. Inc. and Oppenheimer Asset Management Inc. (collectively “Oppenheimer” or “Defendants”), and their affiliates, agents and employees; (b) Securities and Exchange Commission (“SEC”) filings made by Oppenheimer and other brokerages, financial services firms, and investment companies; (c) public filings and statements in court proceedings and civil government and regulatory investigations involving Oppenheimer and other brokerages, financial services firms, and investment companies; (d) documents believed to be authentic copies of internal emails and other business records of various brokerages, financial services firms, and investment companies obtained from public record sources; (e) securities analysts’ reports, press releases, and media reports; (f) interviews with purchasers of auction rate securities and other knowledgeable individuals; and (g) discussions with consultants.

### INTRODUCTION

2. This is a class action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) on behalf of all persons or entities who purchased auction rate securities from Oppenheimer between March 19, 2003 and February 13, 2008, inclusive (the “Class Period”), and who were damaged thereby.

3. Auction rate securities are bonds or preferred stocks that pay interest or dividends at rates set at periodic auctions. During the Class Period, Oppenheimer sold auction rate securities to investors as highly liquid short-term investments.

4. During the Class Period, Oppenheimer engaged in a scheme to defraud purchasers of auction rate securities by making omissions and misrepresentations of material fact about the risks, value and liquidity of those securities. The scheme allowed Oppenheimer to reap millions

of dollars in sales commissions at the expense of investors who purchased auction rate securities at overvalued prices.

5. Oppenheimer failed to disclose material facts relating to the liquidity and risk characteristics of auction rate securities including the scope and extent to which broker-dealers intervened in the auctions for auction rate securities, the extent to which the auction rate securities market depended on continued bidding and purchasing by broker-dealers, and that the cessation of continued bidding and purchasing by broker-dealers would collapse the auction rate securities market leaving holders with illiquid assets.

6. On February 13, 2008, the auction rate securities market collapsed after all major auction rate securities broker-dealers abruptly ended their policy of propping up the market, leaving Class Members holding hundreds of millions of dollars in illiquid auction rate securities, often earning interest far below market rates.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act (15 U.S.C. § 78aa). The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission (“SEC”) (17 C.F.R. 240.10b-5).

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §§1391(b), 1337. Defendants maintain offices within this District and many of the acts giving rise to the violations complained of herein took place in this District.

9. In connection with the acts alleged in this Amended Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

**PARTIES**

10. Plaintiff David T. Vining purchased auction rate securities sold by Oppenheimer during the Class Period.

11. Defendant Oppenheimer Holdings Inc. is a Canadian corporation headquartered in Toronto, Ontario. Oppenheimer Holdings Inc. is a middle-market investment bank and full service investment dealer.

12. Defendant Oppenheimer & Co. Inc. is incorporated in Delaware and has its principal offices in New York, New York. Oppenheimer & Co. Inc. is registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the New York Stock Exchange (“NYSE”), the Financial Industry Regulatory Authority (“FINRA”), and the Securities Investor Protection Corporation (“SIPC”). Oppenheimer & Co. Inc. is a wholly owned subsidiary of Oppenheimer Holdings Inc.

13. Defendant Oppenheimer Asset Management Inc. is incorporated in New York and has its principal offices in New York, New York. Oppenheimer Asset Management Inc. is a registered Investment Advisor pursuant to Section 203 of the Investment Advisor Act of 1940. Oppenheimer Asset Management Inc. is a wholly owned subsidiary of Oppenheimer Holdings Inc.

14. Unless specifically noted, “Oppenheimer” refers collectively to Defendants Oppenheimer Holdings Inc., Oppenheimer & Co. Inc., and Oppenheimer Asset Management Inc.

**PLAINTIFF’S CLASS ACTION ALLEGATIONS**

15. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1), (b)(2) and/or (b)(3), and 23(c)(4) on behalf of a Class consisting of all persons and entities who purchased auction rate securities from Oppenheimer between March 19, 2003 and February 13, 2008, inclusive, and who were damaged thereby (the “Class”).

16. Excluded from the Class are Defendants; the subsidiaries and affiliates of any Defendant; any person or entity who is a partner, officer, director, employee, or controlling person of any Defendant; members of Defendants’ immediate families and their legal

representatives, heirs, successors, or assigns; and any entity in which any Defendant has or had a controlling interest.

17. The members of the Class are so numerous that joinder of all members is impracticable. The market for auction rate securities, while it existed, was estimated to exceed \$300 billion in the United States.

18. During the Class Period, Oppenheimer sold auction rate securities to thousands of customers. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are thousands of members of the proposed Class.

19. Record owners and other members of the Class may be identified from records maintained by Defendants and other brokerage firms and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

20. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a. Whether the federal securities laws were violated by Defendants' acts as alleged herein;
- b. Whether Defendants made omissions or misrepresentations of material fact about the risks, value and liquidity of auction rate securities and the market for such securities;
- c. Whether Defendants failed to disclose that broker-dealers artificially supported and manipulated the market for auction rate securities to maintain the appearance of liquidity and stability, and if so, whether the omitted facts are material; and
- d. Whether Class members have sustained damages and the proper measure of damages.

21. Lead Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

22. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

23. A class action is superior to all other available methods for the fair and efficient adjudication of Lead Plaintiff's claims. The damages suffered by individual Class members are relatively small given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class to individually redress the wrongs done to them.

24. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, is in fact manageable, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. The benefits of adjudicating this controversy as a class action far outweigh any difficulties in managing the Class.

25. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P. 23(b)(1), 23(b)(2) and/or 23(c)(4) because:

- a. The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendants;
- b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;
- c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole; and
- d. The claims of Class members are comprised of common issues that are appropriate for certification under Rule 23(c)(4).

**FACTUAL ALLEGATIONS**

**A. The Auction Rate Securities Market**

26. Auction rate securities are long-term or perpetual variable-rate equity or debt instruments that pay interest or dividends at rates set at periodic “auctions.”

27. Auction rate securities were an attractive financing vehicle while the market for those securities existed because they allowed issuers to obtain long-term capital at short-term rates.

28. The market for auction rate securities experienced dramatic growth since the securities were first introduced in 1984.

29. By February 2008, approximately \$330 billion of auction rate securities were outstanding.

30. Investments in auction rate securities when they were first marketed in the 1980s were limited to highly sophisticated institutional investors, with required minimums of \$250,000 or more.

31. Prior to the beginning of the Class Period, issuers and underwriters lowered the minimum investment to \$25,000.

32. The reduced minimum investment enabled sellers to market auction rate securities to retail investors including individuals, charities and small businesses.

33. Prior to February 2008, auction rate securities typically traded at par value through periodic auctions.

34. The rates of interest or dividends paid on auction rate securities were purportedly determined at the periodic auctions, which were conducted as “Dutch” auctions.

35. Although the amount of time between each auction varied between individual securities, in general auctions were held every 7, 28, 35 or 49 days, with interest paid at the end of the auction period.

36. Auction rate securities were sold to investors by broker-dealers that had entered into agreements to manage auctions and accept orders for the purchase and sale of those

securities, or by other designated brokerages, often referred to as “remarketing agents” or “distributing firms.”

37. In theory, before an auction took place, broker-dealers surveyed investor interest and gave guidance to potential investors, providing a range of rates within which the broker-dealers believed the auction would clear. This conduct was referred to as “price talk.”

38. Price talk enabled broker-dealers to influence the clearing rate for the auctions they managed. Among other things, if investors placed bids well above the price talk, the broker-dealers were able to and did place sufficient bids to clear the auctions at lower interest rates.

39. According to typical auction procedures, each prospective buyer submitted a bid for a specific amount of securities and a specified interest or dividend rate. Sell orders were filled beginning with bids at the lowest rate and continuing with bids at progressively higher rates, until all securities available for sale were sold. The interest or dividend rate bid at which the last of the securities were sold was the “clearing rate.” The clearing rate was then applied to all securities sold in the auction.

40. Auction procedures typically provided for the following types of orders:

- a. Hold: The holder kept the securities regardless of the clearing rate;
- b. Hold at Rate: The prospective seller kept the securities only if the clearing rate was at least as much as the rate that the person specified; if the clearing rate was less than the rate specified, then the person sold his or her securities;
- c. Sell: The prospective seller sold the securities regardless of the clearing rate; and
- d. Buy: The prospective buyer submitted a bid to purchase securities at a specified minimum interest or dividend rate.

41. Auctions could end in one of three ways: as a successful auction, an “all-hold” auction, or a failed auction.

42. In a successful auction, the number of shares bid for purchase was equal to or greater than the number of shares offered for sale. All shares for sale were purchased, and the clearing rate applied to all securities sold until the next auction. If several bidders had bids at the

clearing rate, and there were more bids than shares offered for sale, the shares were divided pro-rata between the clearing rate bidders.

43. As an example of a successful auction, assume an auction took place in which \$1,000,000 of securities were for sale, and the auction received four bids: Bid A was for \$500,000 at 3.2 percent; Bid B was for \$500,000 at 3.3 percent; Bid C was for \$500,000 at 3.3 percent; and Bid D was for \$250,000 at 3.4 percent. In this example, the clearing rate would be 3.3 percent, which would be paid as interest or dividends on all securities in the auction until the next auction. Bid A would be allocated \$500,000, Bids B and C would receive pro-rata allocations of \$250,000 each, and Bid D would not receive any allocation.

44. If all investors decided to hold and not sell their securities, then the auction was an all-hold auction. No securities changed hands, and a formula specified in the offering documents set the interest or dividend rate for all securities until the next auction.

45. The all-hold rate was generally lower than the market rate. Thus, if investors failed to bid their auction rate securities at rate, the interest or dividend rate on those securities would be reduced.

46. An auction failed if the number of shares offered for sale exceeded the number of shares bid for purchase. If the auction failed, then none of the current shareholders could sell their shares, no matter what type of order they issued. An interest or dividend rate called the "penalty rate" or "maximum rate" (hereafter referred to as the "maximum rate") would then apply until the next auction. The maximum rate was specified in the offering documents as either a formula or a multiplier of a reference rate, such as a specified index rate.

47. The maximum rate on an auction rate security was intended to ensure that the security remained liquid if the auction failed, by attracting new buyers or prompting the issuer to refinance. If the maximum rate was insufficient to attract liquidity in the event of an auction failure, however, the risk characteristics of an auction rate security were fundamentally altered. An auction rate security that carried a low penalty rate was dependent on the broker-dealers'

pervasive intervention and “support” for the periodic auctions to ensure liquidity, and in the absence of the broker-dealer’s support, any auction failure would render the security illiquid.

48. Auction rate securities have no “put” feature guaranteeing that an investor could either sell the securities back to the broker-dealer or remarketing agent on demand at par value or force the issuer to redeem the securities if the auctions failed. Holders of auction rate securities depended on the integrity of the broker-dealers, the remarketing agents, and the auctions to ensure that the securities remained liquid.

**B. Broker-Dealers Manipulated The Market For Auction Rate Securities And Created A Façade Of Liquidity.**

49. During the Class Period, financial firms, including Oppenheimer, underwrote billions of dollars of auction rate securities that carried insufficient maximum rates to ensure the liquidity of those securities if the auctions failed. Broker-dealers and other distributing firms, including Oppenheimer, sold these auction rate securities to investors during the Class Period.

50. As a general matter, financial firms did not object to underwriting auction rate securities where the maximum rate was insufficient to ensure liquidity. Rather, underwriters encouraged issuers to establish low maximum rates in order to obtain AAA ratings from credit rating agencies, thus creating the appearance of quality and safety. Broker-dealers and other distributing firms, including Oppenheimer, touted AAA ratings as a selling point.

51. Unbeknownst to investors, however, the same maximum rates that enabled auction rate securities to have AAA ratings also limited the liquidity of those securities, and ensured that, once an auction failed, investors would receive interest rates that were below market value and insufficient to compensate for the lack of liquidity.

52. To mask the inherent lack of liquidity of auction rate securities, broker-dealers engaged in a wide range of tactics to conceal the liquidity characteristics of auction rate securities while protecting themselves from the consequences of intervening in auctions to prevent failures.

53. Throughout the Class Period, all broker-dealers adhered to the industry practice of intervening in the auctions by placing “support bids” to purchase auction rate securities for their own account when the auctions otherwise would have failed due to lack of sufficient demand.

54. For example, between January 1, 2006 and February 28, 2008, broker-dealer UBS placed support bids in more than 30,000 auctions of its municipal and student loan auction rate securities which prevented more than 85 percent of those auctions from failing. During the same time period, UBS placed support bids in more than 27,000 auctions of its auction rate preferred securities which prevented more than 50 percent of those auctions from failing. Between January 3, 2006 and May 27, 2008, broker-dealer Merrill Lynch placed support bids that prevented more than 5,800 auctions for auction rate securities from failing. UBS and Merrill Lynch were lead managers and underwriters on the auction rate securities held by Plaintiff Vining.

55. Broker-dealers were able to place support bids and prevent auctions from failing because they were aware of the other bids in the auctions and could place their own bids after the bidding deadline for other investors.

56. The extensive and sustained interventions by broker-dealers to prevent auction failures created the outward appearance that auction rate securities were readily liquid investments.

57. By intervening to prevent auction failures, broker-dealers masked the liquidity risks inherent to auction rate securities. Due to the lack of transparency in the auction market, investors had no way of knowing the extent to which broker-dealers’ interventions were needed to sustain the auction rate market and ensure that auctions continued to clear.

58. Had broker-dealers not supported these auctions, or had the extent of their interventions been apparent, widespread auction failures would have alerted the public to the risk characteristics of the auction rate securities.

59. The continued viability of the entire auction rate securities market therefore depended upon concerted efforts by all broker-dealers. If one broker-dealer permitted

widespread auction failures, a “run on the bank” would ensue, with panic selling by investors, and the broker-dealer being forced to choose between attempting to sustain the auction rate securities market by buying all securities offered at auction or allowing the auctions to fail *en masse*. As Frances Constable, the Managing Director in charge of Merrill Lynch’s ARS Trading Desk put it, the interventions were necessary to prevent investors from “freaking out.”

60. As a result, all broker-dealers had a common interest in suppressing auction failures. In furtherance of their common interests, and with a tacit or express understanding that other broker-dealers would similarly act to suppress auction failures, broker-dealers continued to intervene to prevent auction failures even after they anticipated the ultimate demise of the auction rate securities market.

**C. Oppenheimer Misrepresented And Omitted Material Facts About The Auction Market And The Liquidity Of And Risks Associated With Auction Rate Securities**

61. Oppenheimer was actively involved in the auction rate securities market throughout the Class Period.

62. Oppenheimer acted as an underwriter for auction rate securities. Oppenheimer also acted as a remarketing agent for auction rate securities. Through its brokerage divisions, Oppenheimer sold millions of dollars worth of auction rate securities to its clients throughout the Class Period. Through the end of January 2009, even after several issuers had redeemed some of their illiquid auction rate securities, Oppenheimer estimated that its clients still owned approximately \$930 million worth of auction rate securities in their Oppenheimer accounts.

63. Oppenheimer acknowledged that it sold auction rate securities “as an available cash management option for clients seeking to increase their yields on short-term investments similar to a money market fund.”

64. In order to perpetuate the auction rate securities market and earn lucrative commissions and fees for selling and underwriting auction rate securities, Oppenheimer directed its financial advisors throughout the United States to represent to investors in its written materials and uniform sales presentations that auction rate securities were equivalent to cash and

were safe, highly liquid short-term investment vehicles suitable for any investor with at least \$25,000 of available cash and as little as one week in which to invest.

65. Oppenheimer knew or was grossly reckless in not knowing that auction rate securities were not equivalent to cash, however. Since at least March 2005, the “Big-4” accounting firms, the Financial Accounting Standards Board (“FASB”) and the SEC have adopted the position that auction rate securities do not qualify as “cash equivalents.” According to the SEC, “because the auction rate securities have long-term maturity dates and there is no guarantee the holder will be able to liquidate its holdings, these securities do not meet the definition of cash equivalents in paragraphs 8 and 9 of FASB Statement No. 95, *Statement of Cash Flows*.”

66. Nonetheless, Oppenheimer’s financial advisors sold auction rate securities as cash equivalent pursuant to management directives without disclosing the following material facts about those securities before or at the time of sale:

- a. Auction rate securities were not cash alternatives, but were long-term financial instruments with maturity dates of 30 years or longer, or no maturity whatsoever;
- b. **With the exception of some auction rate securities issued by state agencies, municipalities and other government authorities that had maximum rates high enough to attract liquidity or cause the issuer to refinance, auction rate securities lacked features designed to ensure the holder’s ability to sell the security, and in the event of an auction failure, the purchaser would be required to hold the security to maturity or indefinitely;**
- c. Many auction rate securities were subject to interest rate caps, which if triggered, would reset their interest rates to levels well below market rates for comparable securities, often as low as zero, and render those securities unmarketable.
- d. Auction rate securities appeared readily liquid at the time of purchase and sale because broker-dealers were artificially supporting and manipulating the auction market to maintain the appearance of liquidity and stability;
- e. The short-term nature of auction rate securities and the ability of investors to liquidate their auction rate securities at par depended on the perpetuation of the artificial auction market by broker-dealers;
- f. **The periodic auctions at which the rates of interest or dividends on auction rate securities were set required that investors actively bid their securities to maximize the rate of return on their investments and minimize the impact of**

manipulative conduct by the broker-dealers and others, and in the absence of the investor's active participation in the time consuming and highly specialized process of monitoring "price talk" and the bidding process, investors were likely to earn interest or dividends at reduced rates; and

- g. In the event of persistent auction failures, auction rate securities would be saleable only at a substantial discount from their purchase price.

67. Oppenheimer's financial advisors also sold auction rate securities pursuant to management directives without disclosing the following material facts about the auction market in which those securities were traded before or at the time of sale:

- a. The auction market operated without transparency to investors, thus enabling manipulation by broker-dealers;
- b. The "auctions" for auction rate securities were not true Dutch auctions, as broker-dealers submitted "support" bids and engaged in other manipulative practices for their own accounts in auctions that would have otherwise failed during the Class Period, did so with knowledge of the other bids in the auctions, and often did so after the bidding deadline imposed on other investors;
- c. Broker-dealers routinely intervened in auctions during the Class Period for their own benefit, to set rates and prevent all-hold auctions and failed auctions;
- d. Broker-dealers directly or indirectly set the clearing rate in most of the auctions in which they submitted bids during the Class Period;
- e. Broker-dealers managed the interest rates for auction rate securities to ensure that rates of interest or dividends paid were at levels sufficiently low to attract continued interest from their issuer clients in future auction rate securities issuances, while paying sufficient interest to make auction rate securities saleable to retail investors;
- f. By manipulating the auctions for auction rate securities, broker-dealers prevented investors from learning the true risk, value and liquidity features of auction rate securities;
- g. Broker-dealers intended to continue to market auction rate securities as cash equivalent and highly liquid, safe investments, even after they determined that they were likely to stop supporting and manipulating the auctions; and
- h. Purchasers of auction rate securities were expected to monitor the auctions at all times to protect their interests, as broker-dealers considered themselves free to "manage" auction outcomes and withdraw their support for the auctions at any time.

68. Oppenheimer contacted investors with significant cash holdings at Oppenheimer via unsolicited telephone calls and encouraged those investors to invest their cash in auction rate

securities. At all relevant times, Oppenheimer's financial advisors uniformly failed to disclose the information in paragraphs 66-67 above to investors.

69. During the Class Period, Oppenheimer failed to provide mandatory instruction or compliance training about auction rate securities to its financial advisors. Oppenheimer had no required training program for educating financial advisors on auction rate securities. Instead, Greg White, the Managing Director of the Auction Rate Department at Oppenheimer, made ad hoc presentations at Oppenheimer branch offices that failed to adequately discuss the maximum rates of auction rate securities, the broker-dealers' ongoing backstopping or support of auctions, the risk of auction failures or the risk of illiquidity.

70. As a result, Oppenheimer's financial advisors lacked a rudimentary understanding about auction rate securities and how the auction rate securities market functioned during the Class Period.

71. Oppenheimer's practice was not to deliver a prospectus to Class members who purchased auction rate securities at periodic auctions, as it treated such purchases as "secondary market sales" exempt from the prospectus delivery requirement. Oppenheimer financial advisors believed they were not required to provide any disclosures to clients who considered purchasing or actually purchased auction rate securities.

72. During the Class Period, Oppenheimer failed to disclose the liquidity characteristics of auction rate securities or the risk of auction failure in its trade confirmations.

73. On November 18, 2008, the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts filed an Administrative Complaint against Oppenheimer related to its sale of auction rate securities. The Massachusetts Securities Division states that "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."

**D. As The Auction Rate Securities Market Begins To Unravel, Oppenheimer Looks To Enrich Itself, Rather Than Protect Its Clients.**

74. Starting in the summer of 2007 and continuing through early February 2008, as the credit market deteriorated, broker-dealers, including Merrill Lynch, UBS, Lehman Brothers and Deutsche Bank, chose not to intervene to prevent failures of auctions for certain auction rate securities that were viewed by the credit markets as particularly undesirable.

75. To prevent the entire market from unraveling, the broker-dealers had to increase their support for the auctions and as a result, began to accumulate ever increasing levels of auction rate securities inventory. To help offload their excess auction rate securities, the broker-dealers stepped up their sales efforts through remarketers, including Oppenheimer.

76. Broker-dealers engaged in an aggressive campaign to increase sales of auction rate securities by having their sales personnel and their remarketing agents, including Oppenheimer, continue to describe the securities as safe, highly liquid, cash equivalent investments. Broker-dealers and remarketing agents, including Oppenheimer, knew but did not disclose the risks associated with those securities, the fact that several auctions had failed, and the likelihood that the broker-dealers would abandon the auction market leaving investors with illiquid securities.

77. At the same time, Oppenheimer worked to deter clients from selling their auction rate securities before the market collapse. In a July 11, 2007 email, Oppenheimer instructed its Auction Rate Securities Desk to ensure that its auction rate securities clients held any new auction rate securities purchases for a "minimum" of 2 to 4 auctions, depending upon the type of ARS purchased. "These holding periods are in place to ensure that Oppenheimer continues to maintain and build positive long term relationships with the underwriters of these securities, continues to be shown these new issues, and receive favorable allocations."

78. Oppenheimer instructed that if a "client must sell prior to the minimum holding period," Oppenheimer would financially penalize the financial advisor who allowed for this early sale. Oppenheimer's own financial advisors described this as an "inhouse rule" that ran contrary to the best interests of their clients.

79. The following month, when the auction rate securities market experienced failures in August 2007, including auction failures in auction rate securities sold by Oppenheimer, the Chairman and CEO of Oppenheimer instructed another Oppenheimer executive *not* to inform Oppenheimer's financial advisors of these failures.

80. The volume of auction rate securities in the market and the pressure to sell continued to mount throughout the Fall of 2007. Frances Constable at the Merrill Lynch ARS Trading Desk told her supervisor in September 2007 she was "shoveling [ARS] as fast as we can." By November 2007 Constable was comparing the urgency to move ARS to selling off small appliances – "Gotta move these microwave ovens!!"

81. Oppenheimer's traders testified before the Massachusetts Securities Division that Oppenheimer knew in January 2008 that key participants in the auction rate securities market, including Lehman Brothers, were thinking of leaving the ARS market. Oppenheimer knew but failed to inform its customers that the ARS market would immediately collapse if the major ARS auction dealers withdrew from the market. Oppenheimer instead continued to sell auction rate securities to its clients in an effort to perpetuate the market.

82. On January 18, 2008, approximately one month before the industry-wide auction rate securities failures, Greg White sent Louis Gelormino, the Desk Supervisor of the Auction Rate Department and Senior Vice President at Oppenheimer, and Todd Flaman, a trader in the Auction Rate Department and Senior Vice President, an email asking them to "Think about our ARS business and let me know your worst case thoughts on our potential counterparty risk." Mr. Gelormino responded with his conclusions that there were multiple scenarios that could occur in which Oppenheimer would "not be able to sell our [ARS] positions."

83. Mr. Gelormino specifically wrote in this same email that if "a sole participant processes it's [sic] customer orders but declines entering a back bid, we may not be able to sell shares." In testimony before the Massachusetts Securities Division, Mr. White stated that he understood "back bid" to mean the bid that lead underwriters made to ensure that auctions would not fail.

84. By January 23, 2008, Lehman Brothers allowed additional auctions to fail and Mr. White understood these failures to be “a shot across the bow” by Lehman, confirming Lehman’s intention to exit the auction rate securities business. Oppenheimer was specifically told by Lehman that auctions were failing because there were more sellers than buyers in the ARS market.

85. Following mere days after the Lehman Brothers auction failures, Piper Jaffrey allowed auctions to fail by refusing to place supporting bids. Oppenheimer was told by Piper Jaffrey that these auctions failed because of the low maximum rates on the auction rate securities at issue.

86. In emails dated February 5, 2008, Mr. White confirmed with Grant Hewit, an Oppenheimer ARS Department Trader and Associate Vice President, that there were more sellers than buyers across the auction rate securities market, which was causing lead underwriters to buy more of the ARS to prevent auction failures. Oppenheimer knew but failed to disclose the material fact that the ARS market was not in balance, which placed pressure on the broker-dealers to either increase their own inventory through support bids or to exit the market.

87. On or about February 7, 2008, additional Goldman Sachs auction rate securities auctions failed.

88. Well aware of these ARS auction failures, Mr. White began to liquidate thousands of dollars of his personal ARS holdings on February 3, 2008. On February 7 and 12, 2008, Mr. White sold an additional \$300,000 of ARS from his personal accounts. Mr. White testified that he sold his ARS because he “did not know what was going to happen” with the ARS market after the Goldman Sachs ARS auction failures.

89. On February 11, 2008, Mr. Gelormino liquidated approximately \$75,000 worth of his personal auction rate securities holdings.

90. On February 7 and 11, 2008, Oppenheimer’s Chief Operating Officer Lawrence Spaulding liquidated \$700,000 of his personal auction rate securities holdings.

91. Between January 29, and February 12, Albert Lowenthal, the Chairman and Chief Executive Officer at Oppenheimer, liquidated \$1,775,000 of his personal auction rate securities holdings.

92. While Oppenheimer's senior management was unloading their personal holdings of auction rate securities, and despite the fact that Oppenheimer was well aware that the auction rate market was near collapse, Oppenheimer made no effort to correct its prior false statements or material omissions related to the auction rate securities it had sold to its customers.

93. Instead, Oppenheimer continued to encourage investors to purchase auction rate securities through the first half of February 2008, despite increasing turmoil in the auction rate securities market, including sporadic failures of auctions conducted by Lehman Brothers, Piper Jaffray, Stifel Nicolaus and Goldman Sachs during the last week of January 2008 and the first week of February 2008.

94. On or around February 13, 2008, all major broker-dealers of auction rate securities refused to continue to support the auctions. As a result, 87 percent of all auctions of auction rate securities failed.

95. Broker-dealers did not notify investors or publicly announce that they would allow the auctions to fail before February 13, 2008.

96. As a result of the withdrawal of support by the major broker-dealers, the market for auction rate securities collapsed, rendering more than \$300 billion of securities illiquid.

97. In March 2008, after the wholesale collapse of the auction rate securities market, Oppenheimer reclassified auction rate securities on its client account statements from "Cash Equivalent" to "Other Security."

98. By virtue of its substantial participation in the auction rate securities market, including its role as both an underwriter and seller, Oppenheimer was intimately acquainted with the liquidity features and risk characteristics of those securities. Oppenheimer knew or was grossly reckless in not knowing these characteristics of auction rate securities.

99. Among other things, Oppenheimer knew or was grossly reckless in not knowing that auction rate securities were not liquid cash equivalents; that the auction market operated without transparency, leaving it prone to manipulation by broker-dealers; that broker-dealers systematically intervened in auctions to maintain the appearance of liquidity and stability of the market; that the systematic intervention by broker-dealers to suppress auction failures and lack of information regarding the extent of those interventions by broker dealers made it impossible for retail investors to assess accurately the risks of investing in auction rate securities, including the risk of illiquidity.

**E. Lead Plaintiff's Experience**

100. Lead Plaintiff David Vining purchased auction rate securities from Oppenheimer in March and May of 2007.

101. Mr. Vining's primary contact at Oppenheimer was Bert Gilbert, an investment advisor in Oppenheimer's Boston office.

102. Prior to buying auction rate securities, Mr. Vining maintained funds at Oppenheimer in cash. In 2007, Mr. Gilbert contacted Mr. Vining and recommended that Mr. Vining use his cash to purchase auction rate securities.

103. Mr. Vining was unfamiliar with auction rate securities and had not considered investing in those securities prior to his conversations with Mr. Gilbert.

104. Based on Mr. Gilbert's advice and recommendation, Mr. Vining authorized Mr. Gilbert to purchase auction rate securities. Mr. Vining relied on Mr. Gilbert to select the auction rate securities to be purchased.

105. Neither Mr. Gilbert nor any other Oppenheimer employee provided Mr. Vining with any written description of Oppenheimer's auction rate securities practices and procedures or any written materials concerning auction rate securities before or at the time of Mr. Vining's purchases of those securities.

106. Neither Mr. Gilbert nor any other Oppenheimer employee explained to Mr. Vining how auction rate securities were traded or priced or that investment companies like Oppenheimer could seek to influence interest rates by bidding in the auctions.

107. Neither Mr. Gilbert nor any other Oppenheimer employee explained to Mr. Vining the extent to which the auction rate securities market was being supported by broker-dealers or the risk of auction failures.

108. Neither Mr. Gilbert nor any other Oppenheimer employee informed Mr. Vining of the information in paragraphs 66-67 before he bought auction rate securities from Oppenheimer.

109. In February or early March 2008, Mr. Gilbert called Mr. Vining and explained that the auction rate securities market had collapsed. Mr. Gilbert told Mr. Vining that he no longer had access to the \$500,000 he had invested in auction rate securities.

110. While Mr. Vining has had some auction rate securities redeemed, he continues to hold illiquid ARS he purchased from Oppenheimer.

111. Had Mr. Vining known about the information in paragraphs 66-67, he would not have purchased auction rate securities from Oppenheimer or would not have done so at the prices he paid.

#### **ADDITIONAL SCIENTER ALLEGATIONS**

112. Auction rate securities were highly profitable for Oppenheimer.

113. As a remarketing agent and underwriter of auction rate securities during the Class Period, Oppenheimer earned substantial fees for its services from the issuers and underwriters of those securities.

114. Oppenheimer was motivated to make false and misleading omissions and statements of material fact about auction rate securities in order to perpetuate its interests as a remarketing agent for those securities.

115. The fees paid to Oppenheimer for remarketing auction rate securities were particularly attractive to Oppenheimer as they allowed Oppenheimer to profit from its clients'

short-term, cash management investments. These investments would ordinarily have been committed to other cash management vehicles such as money market funds, from which Oppenheimer would stand to earn little or no additional revenue. Oppenheimer offered financial incentives for financial advisors to sell auction rate securities that were superior to other cash equivalent options like money markets.

**NO SAFE HARBOR**

116. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint.

117. The statements pleaded herein were not identified as “forward-looking statements” when made.

118. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

119. Alternatively, to the extent that the statutory safe harbor applies to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew or was grossly reckless in not knowing that the particular forward-looking statement was false and/or the forward-looking statement was authorized and/or approved by a director or an executive officer of Oppenheimer who knew or was grossly reckless in not knowing that those statements were false when made.

**LOSS CAUSATION/ECONOMIC LOSS**

120. As alleged above, during the Class Period, Defendants engaged in a scheme and course of conduct to create, prop up, and perpetuate for their own benefit an artificial market for auction rate securities and to inflate the perceived value of those securities to the detriment of Lead Plaintiff and Class members.

121. This scheme and course of conduct operated as a fraud or deceit on Lead Plaintiff and Class members by, among other things, omitting to disclose material foreseeable risks

concerning the market for auction rate securities and the value, safety, and liquidity risks of those investments.

122. The materialization of the risks concealed by Defendants was foreseeable to Defendants throughout the Class Period.

123. Those risks materialized when most of the auctions failed on or about February 13, 2008, because broker-dealers refused to continue serving as buyers of last resort.

124. Materialization of those risks and subsequent disclosures of those risks directly and/or proximately caused the damages sustained by Lead Plaintiff and Class members.

125. Only through the persistent conduct of broker-dealers in artificially supporting, maintaining, and intervening in the auctions and acting as buyers of last resort was the market for auction rate securities able to exist during the Class Period.

126. Defendants failed to disclose to Lead Plaintiff and Class members that the auction rate securities market depended on the voluntary, pervasive, and ongoing participation of broker-dealers in the auctions.

127. It was also materially deceptive for Defendants to represent to Lead Plaintiff and the Class that auction rate securities were cash equivalents or highly liquid investments.

128. When the auctions failed on or around February 13, 2008, the concealed risks that auction rate securities would stop trading as cash equivalents materialized.

129. Because of Defendants' failure to disclose these and other material risks, Lead Plaintiff and Class members were damaged when broker-dealers withdrew their support for the auction market.

130. If not for Defendants' omissions and false and misleading statements of material fact about auction rate securities and the auction market in which those securities were traded, Lead Plaintiff and Class members would not have purchased auction rate securities or would not have purchased them for the prices and/or at the interest rates at which they did.

131. Accordingly, Defendants' wrongdoing directly or proximately caused economic losses to Lead Plaintiff and Class members by rendering their auction rate securities illiquid and

by limiting the interest and dividends that they would have otherwise received. Lead Plaintiff and Class members remain unable to sell their auction rate securities and continue to receive interest and/or dividends on those securities at below-market rates that are insufficient to compensate for the lack of liquidity features inherent in the securities.

132. Given the higher interest and dividend rates both before and after the collapse of the auction market that would have resulted from full disclosure, Lead Plaintiff and Class members would have been able to acquire a lower face amount of auction rate securities while still obtaining the same dollar amount of interest or dividends they received on the auction rate securities actually purchased.

133. As a result of the materialization of the concealed risks, the perceived values of auction rate securities have declined substantially. Auction rate securities that Oppenheimer sold to Lead Plaintiff and Class members remain illiquid and are unable to be sold at any price. A recently developed secondary market values illiquid auction rate securities at steep discounts to par value. Investors who sold their auction rate securities on this secondary market realized substantial losses. Finally, following the collapse of the auction rate securities market, Lead Plaintiff and Class members received interest on their auction rate securities at below-market rates that are insufficient to compensate for the lack of liquidity features that are inherent in the securities.

### **TRANSACTION CAUSATION:**

#### **APPLICABILITY OF THE PRESUMPTION OF RELIANCE**

##### **A. Reliance On Material Omissions**

134. To the extent required, a presumption of reliance is applicable here due to Oppenheimer's use of standardized sales pitches which omitted on a uniform basis the material facts described in paragraphs 66-67 regarding auction rate securities and the auction market in which those securities were traded.

135. The facts described in paragraphs 66-67, which Oppenheimer failed to disclose, were material in that there is a substantial likelihood that the disclosure of these facts would have been viewed by a reasonable investor as having significantly altered the total mix of information about auction rate securities made available.

136. Oppenheimer's financial advisors were required to and did use uniform, standardized and materially identical sales pitches created and/or approved by Oppenheimer's senior management to market and sell auction rate securities to Lead Plaintiff and Class members. The sales pitch did not vary appreciably, if at all.

137. In light of Defendants' knowledge that their sales force routinely represented to investors that auction rate securities were safe, highly liquid investments with interest rates established by periodic auctions, it was materially misleading for Defendants to fail to correct the record and state expressly that auction rate securities were, among other things, neither safe nor liquid investments and/or had interest rates managed by broker-dealers.

138. Lead Plaintiff and Class members would not have invested in auction rate securities, or alternatively, would not have purchased those securities on the terms at which they did, had Defendants' omissions of material fact not concealed the true nature of those securities and the auction market in which those securities were traded.

139. Lead Plaintiff's and Class members' fraud-based claims stem primarily, if not exclusively, from these omissions of material fact for which reliance may be presumed.

**B. Fraud On The Market**

140. In the alternative, and to the extent required, a presumption of reliance is applicable here because the auction rate securities market was well-developed and efficient throughout the Class Period.

141. The presumption of reliance, based on the fraud-on-the-market doctrine, is applicable here, because among other things:

- a. Defendants made false and misleading omissions and misrepresentations of fact concerning auction rate securities during the Class Period;

- b. The omissions and misrepresentations were material in that there is a substantial likelihood that the disclosure of these facts would have been viewed by a reasonable investor as having significantly altered the total mix of available information about auction rate securities;
- c. The omissions and misrepresentations alleged would tend to induce a reasonable investor to misjudge, among other things, the value of the securities at issue; and
- d. Lead Plaintiff and Class members purchased auction rate securities after Defendants made these omissions and misrepresentation, and did so without knowledge of the omitted and misrepresented facts.

142. Auction rate securities and the auction market have existed since 1984, and have developed rapidly since that time.

143. Throughout the Class Period, the auction market digested current information regarding auction rate securities and reflected that information in the prices of those securities.

144. Material news concerning auction rate securities had a prompt and immediate effect on the market price of those securities, as evidenced by, among other things, the rapid decline in the market price occurring after the collapse of the auction market in February 2008.

145. Under these circumstances, all purchasers of auction rate securities suffered similar injury due to the fact that those securities were overvalued throughout the Class Period.

146. When Lead Plaintiff and Class members purchased auction rate securities, they did not know about, and could not reasonably have discovered, Defendants' wrongful conduct alleged in this Amended Complaint.

147. Lead Plaintiff and Class members would not have purchased auction rate securities from Defendants, or alternatively, would not have purchased those securities on the terms at which they did, but for Defendants' misconduct.

### COUNT I

#### **Violation Of Section 10(b) Of The Exchange Act Against Oppenheimer & Co. Inc. By Lead Plaintiff And The Class**

148. Lead Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Lead Plaintiff brings this cause of action on behalf of himself and the Class against Oppenheimer & Co. Inc.

149. During the Class Period, Defendant Oppenheimer & Co. Inc. employed manipulative or deceptive devices or contrivances, in contravention of Rule 10b-5(b) promulgated by the SEC, which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Lead Plaintiff and Class members; (ii) enable Defendant to sell auction rate securities to investors, and on which Defendant made substantial fees and commissions; and (iii) cause Lead Plaintiff and Class members to purchase overvalued auction rate securities from Defendant.

150. Defendant engaged in a scheme to defraud and made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b).

151. Defendant is sued as a primary participant in the wrongful and illegal conduct charged herein.

152. Defendant directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a comprehensive scheme to defraud and a continuous course of conduct to conceal adverse material information about auction rate securities, as specified herein including in particular the information specified in paragraphs 66-67 above.

153. The information that Defendant failed to disclose to Lead Plaintiff and Class members was material in that there is a substantial likelihood that the disclosure of the omitted information would have been viewed by a reasonable investor as having significantly altered the total mix of information about auction rate securities made available.

154. Defendant employed manipulative or deceptive devices or contrivances, while in possession of material, adverse non-public information, and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure Lead Plaintiff and Class members that auction rate securities were the same as cash and were highly liquid, safe short-term investment vehicles suitable for almost all investors.

155. Defendant had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with deliberate disregard for the truth and gross recklessness in that it failed to ascertain and to disclose such facts.

156. Defendant made the material misrepresentations and/or omissions described herein knowingly or deliberately and for the purpose and effect of (a) concealing the truth about the value, liquidity and risks of auction rate securities from Lead Plaintiff, Class members and the investing public, and (b) supporting the overvalued price and market for auction rate securities.

157. If Defendant did not have actual knowledge of the misrepresentations and omissions alleged herein, they were grossly reckless in failing to obtain such knowledge and refraining from taking those steps necessary to discover whether those statements were false or misleading.

158. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of auction rate securities sold by Oppenheimer & Co. Inc. was artificially inflated during the Class Period.

159. In ignorance of the fact that the market prices of auction rate securities were artificially inflated, and relying directly or indirectly on the false and misleading statements or omissions of material fact made by Defendant, and/or on the absence of material information that was known to or deliberately disregarded by Defendant but not disclosed in public statements by Defendant during the Class Period, and/or on the integrity of the auction market in which auction rate securities traded, Lead Plaintiff and Class members acquired overvalued auction rate securities from Defendant during the Class Period and were damaged thereby.

160. At the time of said misrepresentations and omissions, Lead Plaintiff and Class members were ignorant of their falsity and believed them to be true.

161. Lead Plaintiff and Class members acted with due diligence, did not act with recklessness, and could not have discovered the true facts that Defendant misstated and/or failed to disclose.

162. Had Lead Plaintiff, Class members and the marketplace known the truth regarding the value, liquidity, and risks of auction rate securities, which were not disclosed by Defendant, Lead Plaintiff and Class members would not have purchased auction rate securities from Defendant, or, if they had acquired such securities during the Class Period, they would not have done so at the overvalued prices which they paid.

163. By virtue of the foregoing, Defendant violated Section 10(b) of the Exchange Act, and Rule 10b-5(b) promulgated thereunder.

164. As a direct and proximate result of Defendant's wrongful conduct, Lead Plaintiff and Class members suffered damages in connection with their respective purchases of auction rate securities from Defendant during the Class Period.

## COUNT II

### **Violation Of Section 20(a) Of The Exchange Act Against Defendants Oppenheimer Holdings Inc. And Oppenheimer Asset Management Inc. By Lead Plaintiff And The Class**

165. Lead Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Lead Plaintiff brings this cause of action on behalf of himself and the Class against Oppenheimer Holdings Inc. and Oppenheimer Asset Management Inc.

166. Oppenheimer Holdings Inc. and Oppenheimer Asset Management Inc. acted as controlling persons of Oppenheimer & Co. Inc. within the meaning of Section 20(a) of the Exchange Act for the reasons alleged in this Amended Complaint.

167. By virtue of its operational and management control of Oppenheimer & Co. Inc., including Oppenheimer Holding Inc.'s 100% ownership of Oppenheimer & Co. Inc., and systematic involvement in the fraudulent scheme alleged in this Amended Complaint, Oppenheimer Holdings Inc. and Oppenheimer Asset Management Inc. had the power to influence and control and did influence and control, directly or indirectly, the decision-making

and actions of Oppenheimer & Co. Inc., including the content and dissemination of the various statements and omissions of material fact which Lead Plaintiff contends are false and misleading.

168. Oppenheimer Holdings Inc. and Oppenheimer Asset Management Inc. had the ability to prevent the issuance of the statements and omissions of material facts described in this Amended Complaint.

169. Oppenheimer Holdings Inc. and Oppenheimer Asset Management Inc. had direct and supervisory involvement in the operations of Oppenheimer & Co. Inc., and therefore, are presumed to have had and exercised the power to control or influence the particular conduct giving rise to the securities violations alleged in this Amended Complaint.

170. As set forth above, Oppenheimer & Co. Inc. violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder by its acts and omissions as alleged in this Amended Complaint.

171. By virtue of their positions as controlling persons, Oppenheimer Holdings Inc. and Oppenheimer Asset Management Inc. are liable pursuant to Section 20(a) of the Exchange Act.

172. As a direct and proximate result of Oppenheimer Holdings Inc. and Oppenheimer Asset Management Inc.'s wrongful conduct, Lead Plaintiff and Class members suffered damages in connection with their purchase of auction rate securities from Oppenheimer during the Class Period.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Lead Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, certifying Lead Plaintiff as a representative of the Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Lead Plaintiff's counsel as counsel for the Class;

B. Awarding damages, including but not limited to rescission, other compensatory damages, consequential damages, restitution, and disgorgement of ill-gotten gains in favor of

Lead Plaintiff and Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding Lead Plaintiff and the Class pre-judgment and post-judgment interest;

E. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder; and

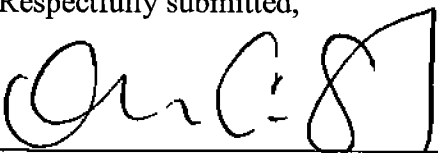
F. Granting such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Lead Plaintiff hereby demands a trial by jury.

Dated: April 10, 2009

Respectfully submitted,

By: 

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**CERTIFICATE OF SERVICE**

Rodney Bush, being duly sworn, hereby deposes and says:

I am over the age of eighteen years and not a party to the within action and am employed by the firm Seeger Weiss LLP, counsel for the plaintiff.

On April 10, 2009, I caused a true and correct copy of the foregoing FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS to be served via U.S. Mail, with proper postage prepaid, on all counsel of record at the following address:

Howard Wilson  
Stephen L. Ratner  
Scott A. Eggers  
John H. Snyder  
PROSKAUER ROSE LLP  
1585 Broadway  
New York, NY 10036  
(212) 969-3000

  
Rodney Bush

## ATTACHMENT A

**LEAD PLAINTIFF DAVID T. VINING'S TRANSACTIONS IN  
AUCTION RATE SECURITIES SOLD BY OPPENHEIMER BETWEEN  
MARCH 19, 2003 AND FEBRUARY 13, 2008**

<b>TRADE DATE</b>	<b>AUCTION RATE SECURITY</b>	<b>Number of Share</b>	<b>PRICE PER SHARE/UNIT</b>	<b>BUY OR SELL</b>
03/26/2007	Eaton Vance Limited Duration Income Fund Preferred Auction Series A	10	\$25,000	Bought
05/08/2007	PIMCO Floating Rate Income Fund Auction Rate Preferred Series T	10	\$25,000	Bought