FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of Oppenheimer & Co., Inc.	Notice Pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 SD-2062 **Date: January 25, 2017**

I. Introduction

On March 25, 2015, Oppenheimer & Co., Inc. ("Oppenheimer" or the "Firm") submitted a Membership Continuance Application ("SD-SEC" or "Oppenheimer Application") with FINRA's Department of Registration and Disclosure.[1] The Oppenheimer Application seeks to permit the Firm, a FINRA member subject to statutory disqualification, to continue its membership with FINRA notwithstanding its disqualification.[2] A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(b), FINRA's Department of Member Regulation ("Member Regulation") approves the Oppenheimer Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 ("Exchange Act").

II. The Statutorily-Disqualifying Event

Oppenheimer is subject to statutory disqualification pursuant to Section 3(a)(39)(F)[3] of the Exchange Act as a result of an Order Instituting Administrative and Cease-And-Desist

[1] *See* SD-SEC (attached as Attachment 1). *See also* the Record ("R.") that was compiled by FINRA's Registration and Disclosure Department and provided to the parties and FINRA's Office of General Counsel on April 27, 2015 pursuant to FINRA Procedural Rule 9524(a)(3).

[2] On May 14, 2015, the Firm submitted a Membership Continuance Application ("SD-FINRA") relating to its statutory disqualification as a result of a Letter of Acceptance, Waiver, and Consent ("AWC") with FINRA's Department of Enforcement ("Enforcement") dated March 26, 2015 ("2015 AWC"). However, a Rule 19h-1 Notice is not required to be filed because the Firm satisfied the undertakings and the sanctions are no longer in effect.

[3] The Firm is subject to disqualification on a number of grounds. Section 3(a)(39)(F) of the Exchange Act incorporates Section 15(b)(4)(D), which provides that a member firm is subject to statutory disqualification if it has willfully violated any provision of the Securities Act of 1933 or other securities laws and rules. Further, Section 3(a)(39)(F) incorporates Section 15(b)(4)(E), which provides that a member firm is subject to statutory disqualification if it: (1) willfully aided or abetted any other person in the violation of any provision of the Securities Act of 1933 or other securities laws and rules; or (2) failed to reasonably supervise, with a view to preventing

Proceedings issued by the United States Securities and Exchange Commission ("SEC" or the "Commission") on January 27, 2015 (the "SEC Order").[4]

The SEC Order found that Oppenheimer engaged in two separate courses of conduct each of which resulted in willful violations of the federal securities laws. The first course of conduct concerned Oppenheimer's execution of sales of billions of shares of penny stocks on behalf of Gibraltar Global Securities, Inc. ("Gibraltar"), a broker-dealer licensed in the Bahamas, from July 2008 to May 2009. Although Gibraltar maintained a proprietary account with Oppenheimer, the Firm knew that Gibraltar was executing transactions on behalf of U.S. customers. Gibraltar is not registered as a broker-dealer in the U.S. As such, the Commission found that Oppenheimer willfully aided and abetted Gibraltar's violation of Section 15(a) of the Exchange Act. Another finding by the Commission involved Gibraltar's exemption from paying taxes on profits derived from sales of its securities in the U.S. Gibraltar provided an Internal Revenue Service ("IRS") Form W-8BEN to Oppenheimer in which it falsely certified that it was the sole owner of all income generated in its Oppenheimer account. However, Oppenheimer knew that Gibraltar's customers, many of whom were U.S. citizens, were the beneficial owners of the securities in the account, not Gibraltar. Oppenheimer was required to withhold taxes from the proceeds of the securities transactions in the account on behalf of Gibraltar's customers that were U.S. citizens, but Oppenheimer failed to do so, which caused the Firm to accrue a tax liability that it failed to properly record on its books and records. Therefore, Oppenheimer willfully violated Rule 17a-3(a)(9). Finally, Oppenheimer willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 by failing to file Suspicious Activity Reports ("SARs") in connection with some of Gibraltar's penny stock activities.[5]

The second course of conduct involved willful violations of Sections 5(a) and (c) of the Securities Act of 1933 (the "Securities Act"). More specifically, from October 2009 through December 2010, a financial advisor and a Branch Office Manager at the Firm sold over 2.5 billion unregistered shares of various penny stocks, generating approximately $12,000,000 in proceeds of which Oppenheimer was paid $588,400 in commissions. The Firm recognized red flags indicating that the securities were potential restricted securities and were not being distributed pursuant to a registration statement filed with the Commission. Despite this, the Firm failed to make a reasonable inquiry to determine whether it was exempt from Section 5

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violations of the Securities Act of 1933 or other securities laws and rules, another person who commits such a violation.

[4] *See* SEC Order, *In the Matter of Oppenheimer & Co. Inc.*, SEC Admin Proc. File No. 3-16361, dated January 27, 2015 (attached as Attachment 2); Att. 1, R. (SD-SEC) at FINRA00295.

[5] *See id.* at 2-3; FINRA00296-97.

registration requirements. The Firm also failed to establish and implement policies and procedures reasonably designed to achieve compliance with Section 5 of the Securities Act.[6]

The SEC Order required the Firm to cease and desist from committing or causing any violations and any future violations of Sections 15(a) and 17(a) of the Exchange Act and Rules 17a-3 and 17a-8 thereunder and Section 5 of the Securities Act. The Firm was censured and ordered to pay $10,000,000, comprised of $4,168,400 in disgorgement, $753,471 in prejudgment interest and $5,078,129 in civil penalties.[7] The SEC Order acknowledges potential escalation in the fine amount if Oppenheimer fails to satisfy its $10,000,000 civil money penalty to the U.S. Department of Treasury Financial Crimes Enforcement Network ("FINCEN") in *In the Matter of Oppenheimer & Co. Inc.*, No. 2015-01.[8] Additional sanctions levied at the Firm included a requirement to comply with several undertakings, including retaining an Independent Consultant ("IC") to conduct a comprehensive review of the adequacy of Oppenheimer's policies and procedures as they relate to compliance with Section 5 of the Securities Act, the Bank Secrecy Act, the Patriot Act, the Firm's Anti-Money Laundering ("AML") program, and recognition of liabilities and expenses associated with failing to properly withhold taxes and report on income in accounts of foreign entities and for U.S. customers trading through foreign financial institutions.

Per the undertakings in the SEC Order: (1) the IC shall submit a report of its findings to Oppenheimer and the Commission; (2) Oppenheimer shall adopt all recommendations contained in the report or attempt to reach an agreement with the IC about any objections; (3) Oppenheimer shall certify that it has adopted and implemented all the recommendations in the report and the IC shall subsequently confirm said adoption and implementation; and (4) the IC shall conduct an annual review of Oppenheimer continuing for four years following certification of the Firm's adoption and implementation of the recommendations in the IC's report and submit a written report to Oppenheimer and the Commission.[9]

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[6] *See id.* at 3-5; FINRA00297-99.

[7] *See id.* at 24; FINRA00318. Counsel for the Firm provided payment documentation and represented that the Firm is in compliance with its current payment obligations under the SEC Order and additional, related payments will become due in the future. *See* n.8 below regarding contingent payment based on related enforcement action.

[8] *Id.* The FINCEN action was an enforcement action resolved in conjunction with the SEC enforcement action. FINCEN's Assessment of Civil Money Penalty references the SEC Order and its undertakings and assessed a $20 million total fine for resolution of both of the enforcement actions. FINCEN concluded that the Firm willfully violated requirements under the Bank Secrecy Act to implement an adequate anti-money laundering program and due diligence program and violated certain notification requirements under the Patriot Act. *See* Assessment of Civil Money Penalty, *In the Matter of Oppenheimer & Co., Inc.*, No. 2015-01 dated January 26, 2015 (attached as Attachment 3).

[9] The SEC extended the IC's deadline to submit the report required by Paragraph 94(c) of the SEC Order until September 30, 2016. *See* e-mail dated June 24, 2016 (attached as Attachment 4). The Firm has advised that the IC and Firm have requested an extension of the deadline until October 31, 2016. The SEC Order's sanctions are still in effect and will continue to be in effect for at least the next four years as the report has not been issued yet and the IC

III. Background Information

A. The Firm

Oppenheimer is based in New York, New York and has been a FINRA (f/k/a NASD) member since March 1945.[10] According to the Central Registration Depository ("CRD"), the Firm has approximately 120 branch offices, 93 of which are Offices of Supervisory Jurisdiction ("OSJ"), and the Firm employs approximately 2,068 registered individuals and 640 non-registered individuals.[11] The Firm currently employs two statutorily-disqualified individuals – Joseph Popp ("Popp") and Edward Schmitz ("Schmitz").[12]

Oppenheimer is approved to engage in the following lines of businesses: exchange member engaged in exchange commission business other than floor activities; broker or dealer making inter-dealer markets in corporation securities over the counter; broker or dealer retailing corporate equity securities over the counter; broker or dealer selling corporate debt securities; underwriter or selling group participant in corporate securities other than mutual funds; mutual fund retailer; U.S. government securities dealer; U.S. government securities broker; municipal securities dealer; municipal securities broker; put and call broker or dealer or option writer; investment advisory services; broker or dealer selling tax shelters or limited partnerships in primary distributions; broker or dealer selling tax shelters or limited partnerships in the secondary market; trading securities for own account; private placement of securities; broker or dealer selling interest in mortgages or other receivables; and municipal advisors.[13] Oppenheimer is a member of nine other self-regulatory organizations ("SROs"): Chicago Board Options Exchange ("CBOE"), Chicago Stock Exchange, International Securities Exchange, NASDAQ PHLX LLC, NASDAQ Stock Market, New York Stock Exchange ("NYSE"), NYSE Arca, Inc., NYSE MKT LLC and Municipal Securities Rulemaking Board ("MSRB").[14]

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has an obligation to issue an "Anniversary Report" in each of the subsequent four years. *See* Att. 2 at 22; Att. 1, R. (SD-SEC) at FINRA00316.

[10] *See* Att. 1, R. (SD-SEC) at FINRA00328.

[11] This information is current as of January 25, 2017.

[12] Popp is subject to disqualification due to a May 2008 felony conviction for Driving While Intoxicated. On January 16, 2014, FINRA filed a 19h-1 Notice with the SEC, approving Popp's association with the Firm subject to a plan of heightened supervision. On March 4, 2014, the SEC acknowledged Popp's association with Oppenheimer. Schmitz is disqualified as a result of a 1999 SEC administrative proceeding that required him to cease and desist from committing or causing any violations Section 15(c) of the Exchange Act. Schmitz was not required to undergo FINRA's eligibility proceeding because the sanctions from his disqualifying event are no longer in effect and he is not subject to heightened supervision.

[13] *See* CRD.

[14] *See id.*

B. FINRA Routine Examinations

Over the past two years, FINRA has examined the Firm annually. Although several exceptions have been referred to Enforcement, none of the recent examination exceptions noted by FINRA during the past two years involve findings similar to the misconduct that rendered the Firm statutorily disqualified.

FINRA's 2015 Cycle Examination (the "2015 examination") resulted in a report that included six exceptions, including: failure to extend no-lien language to sub-custodians for possession and control of foreign securities; failure to timely file certain retail communications concerning registered investment companies; and failure to promptly notify other SROs of certain disciplinary actions.[15]

FINRA's 2014 Cycle Examination (the "2014 examination") resulted in a referral to Enforcement for supervisory deficiencies relating to monitoring outside accounts and activities and failures to send customer confirmations of their securities transactions.[16] This referral is still pending with Enforcement. The Firm was also issued a Cautionary Action for four exceptions: (1) inadequate procedures and documentation relating to customer notifications and coordination of new hire approvals across various departments at Oppenheimer; (2) failure to obtain consent from a customer's employer of another broker-dealer prior to executing transactions in certain accounts and failure to implement related parts of its Written Supervisory Procedures ("WSPs") regarding opening accounts; (3) failure to enforce its WSPs, including requirements for Heightened Supervision Plans; and (4) failure to timely file its Form U4 and U5 filings.

C. Regulatory Actions

In the past two years, apart from the SEC Order and 2015 AWC, Oppenheimer has been the subject of 19 settled disciplinary matters. Ten of these involve AWCs with FINRA, and the other nine matters involve the SEC, FINCEN, other exchanges and state securities regulators.

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[15] *See* FINRA's Report of Examination No. 20150431965 dated August 10, 2016 and the Firm's response dated September 16, 2016 (attached as Attachment 5).

[16] *See* FINRA's Exam Disposition Letter dated September 18, 2015 (including Report of Examination No. 20140388596 dated June 26, 2015) and the Firm's response dated August 10, 2015 (attached as Attachment 6).

1. *FINRA Disciplinary Actions*

Apart from the 2015 AWC,[17] Oppenheimer has executed ten additional AWCs to resolve FINRA disciplinary actions in the past two years. Collectively, these AWCs addressed misconduct concerning: failure to provide written notifications to customers regarding bond information,[18] failure to establish, maintain and implement supervisory systems and procedures and failure to report certain violations and information to FINRA,[19] short interest reporting,[20] deficient supervision relating to non-traditional exchange-traded funds,[21] customer disclosures in municipal bond sales,[22] short positions in tax-exempt municipal bonds,[23] customer confirmations for municipal securities transactions,[24] best execution obligations in OTC securities,[25] its extension of margin loans for foreign sovereign debt,[26] failure to accurately report execution times in TRACE-eligible Securitized Products,[27] and supervisory issues arising from the specific rule violations. The Firm was censured in seven of the matters, ordered to pay fines ranging from $2,500 to $2,250,000, and in certain cases, ordered to pay restitution to customers and comply with undertakings to revise its WSPs.

2. *Non-FINRA Regulatory Actions and AWCs*

There have been six actions that the Firm resolved with state securities regulators and other exchanges involving failures to: supervise registered representatives for excessive trading and suitability issues; detect and report the activities of a former registered representative; discharge responsibilities regarding suitability and investment advice; submit registration materials for investment advisors, traders, principals and certain compliance personnel; and

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[17] *See* FINRA AWC No. 2009017408102 dated March 26, 2015 (attached as Attachment 7).

[18] *See* FINRA AWC No. 2015044484601 dated November 29, 2016 (attached as Attachment 7).

[19] *See* FINRA AWC No. 2015046355401 dated November 17, 2016 (attached as Attachment 7).

[20] *See* FINRA AWC No. 20130387252-01 dated June 20, 2016 (attached as Attachment 7).

[21] *See* FINRA AWC No. 20130381808-01 dated June 7, 2016 (attached as Attachment 7).

[22] *See* FINRA AWC No. 20140418328-01 dated December 22, 2015 (attached as Attachment 7).

[23] *See* FINRA AWC No. 20130381490-01 dated December 22, 2015 (attached as Attachment 7).

[24] *See* FINRA AWC No. 20140410532-01 dated November 24, 2015 (attached as Attachment 7).

[25] *See* FINRA AWC No. 20120347132-01 dated October 6, 2015 (attached as Attachment 7).

[26] *See* FINRA AWC No. 20110259570-01 dated January 6, 2015 (attached as Attachment 7).

[27] *See* FINRA AWC No. 20130377924-01 dated October 28, 2014 (attached as Attachment 7).

display customer limit orders.[28] The Firm paid fines ranging from $7,500 to $900,000, paid restitution (where necessary) and agreed to revise applicable WSPs and policies regarding supervision in the relevant areas. Additionally and as addressed above, the Firm resolved a separate enforcement action with FINCEN in conjunction with its resolution of the SEC Order that involved a significant fine and substantive issues to be examined and reviewed by the IC.[29]

3. *Other Statutory Disqualification Matters*

The Firm is also subject to statutory disqualification as a result of two other SEC orders. First, Oppenheimer entered into a June 2015 SEC Order ("2015 Order"),[30] arising out of the SEC's Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative").[31] The Firm self-reported to the SEC its involvement in the offerings and the Firm was ordered to: cease and desist from committing or causing any violations and future violations of Section 17(a)(2) of the Securities Act, pay a civil penalty of $400,000 and comply with various undertakings from the 2015 Order. Second, the Firm is subject to statutory disqualification as the result of an SEC order dated November 3, 2014, finding that Oppenheimer willfully violated MSRB Rule G-15(f) by executing three sales transactions in Puerto Rico bonds with customers in amounts below the $100,000 minimum denomination of the issue.[32] The Firm was censured, fined $61,200, and ordered to comply with various undertakings.[33]

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[28] *See* the following documents (attached as Attachment 8): the Investor Protection Director of the State of Delaware, Administrative Consent Order, IPU Case No. 11-2-4, dated June 25, 2015; Stipulation and Agreement between Oppenheimer and the Director of the Securities Division of the New Mexico Regulation and Licensing Department dated October 19, 2015; Consent Order between Oppenheimer and the Securities Division of the Office of the Attorney General of the State of South Carolina dated May 4, 2016; Consent Agreement & Order in Lieu of Cease & Desist Proceedings between Oppenheimer and the Michigan Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau dated July 19, 2016; Order in Matter No. 20150462954 dated October 20, 2015; and AWC No. 20120334885-01 dated January 29, 2015.

[29] *See* n.8 above and Att. 3.

[30] *See* Order Instituting Administrative and Cease-and-Desist Proceedings in the Matter of Oppenheimer & Co., Inc. dated June 18, 2015, File No. 3-16629 (attached as Attachment 9).

[31] Through the MCDC Initiative, the SEC offered certain settlement terms to any underwriter that self-reported to the SEC its involvement in an offering where the issuer of that offering failed to abide by its continuing disclosure requirements pursuant to Exchange Act Rule 15c2-12.

[32] *See* Order Instituting Administrative and Cease-And-Desist Proceedings in the Matter of Oppenheimer & Co., Inc. dated November 3, 2014, File No. 3-16243 (attached as Attachment 10).

[33] Although the Firm is subject to a statutory disqualification, it was not required to submit an Application to FINRA because the sanctions from the willful violation are no longer in effect. *See* FINRA Regulatory Notice 09-19.

IV. The Firm's Proposed Continued Membership with FINRA and Plan of Supervision

Oppenheimer seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm retained the same IC to conduct separate reviews of the Firm's policies and procedures relating to the undertakings in the SEC Order and 2015 AWC, respectively, the latter of which have been deemed satisfied. Additionally, the undertakings established a schedule for adoption of the IC's recommendations, implementation thereof and subsequent review by the IC of the Firm's implementation progress. The Firm, working with the IC, is at an early stage of compliance with the SEC Order.

To supplement these actions already taken, Oppenheimer has agreed to the following Plan of Supervision as a condition of its continued membership with FINRA:[34]

1. Comply with the undertakings specified in the SEC Order;

2. Provide Member Regulation with copies of correspondence between the Firm and Commission staff regarding any request to extend the procedural dates relating to the undertakings in the SEC Order;

3. Provide Member Regulation with a copy of the certification and all supporting documentation that will be provided to the Commission upon completion of the undertakings as specified in the SEC Order;

4. The Firm will provide to Member Regulation appropriate documentation to evidence its payment of any remaining fines, assessments or penalties per the SEC Order to the Commission or FINCEN in *In the Matter of Oppenheimer & Co. Inc.*, No. 2015-01; and

5. All requested documents and certifications under this Plan of Supervision shall be sent directly to:

   Lorraine Lee-Stepney
   Manager, Statutory Disqualification Program
   FINRA
   1735 K Street NW
   Washington, DC 20006
   Lorraine.Lee@finra.org.

[34] *See* executed copy of the Plan of Supervision dated January 13, 2017 (attached as Attachment 11).

V. Discussion

After carefully reviewing the record in this matter, Member Regulation approves the Firm's request to continue its membership in FINRA, subject to the terms and conditions set forth herein.

In evaluating the Oppenheimer Application, Member Regulation assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets.[35] Typically, factors that bear on Member Regulation's assessment include the nature and gravity of the statutorily-disqualifying misconduct, time elapsed since its occurrence, restrictions imposed, Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, Member Regulation finds that the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm. While the SEC Order at issue involves serious violations of the federal securities laws, the undertakings contained therein address necessary changes to the Firm's procedures and compliance function and are reasonably designed to prevent and deter similar misconduct in the future. Specifically, the undertakings systematically cover the areas where the Firm failed to prevent misconduct and regulatory non-compliance, and seek to bolster the Firm's legal, compliance, management and officers accountability, awareness and ability to deter misconduct and effectively monitor and investigate regulatory failings.

The SEC Order, including the IC's continued involvement, as well as the Firm's Plan of Supervision will continue to provide oversight of the Firm's compliance in the relevant areas for a number of years. The IC's purview is expansive, as directed by the SEC Order, and the Firm expanded the IC's scope of review to include numerous other areas, arising out of other recent FINRA disciplinary actions and investigations by state securities regulators.

Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

In addition, Member Regulation conducted a review of the Firm's regulatory history and recent disciplinary actions and finds that none of these matters would prevent the continuance of the Firm as a FINRA member. Thus, Member Regulation is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Plan of Supervision that the Firm's continued

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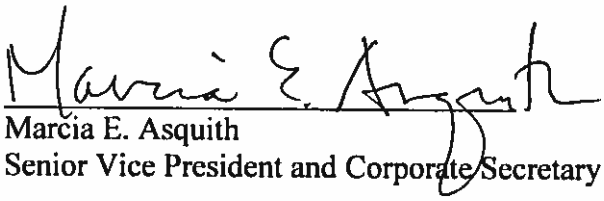
[35] *See In the Matter of the Continued Membership of J.P. Morgan Securities, LLC (citing Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors")). *See* J.P. Morgan Securities, LLC, 19h-1 Notice, http://www.finra.org/sites/default/files/NAC%20Statuatory%20Disqualification%20Decision%20SD1904_0_0_0_0_0_0.pdf. .

membership in FINRA does not create an unreasonable risk of harm to the market or investors. Accordingly, Member Regulation approves Oppenheimer's Application to continue its membership in FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other self-regulatory organizations ("SROs") including CBOE, Chicago Stock Exchange, International Securities Exchange, NASDAQ PHLX LLC, NASDAQ Stock Market, NYSE, NYSE Arca, Inc., NYSE MKT LLC and MSRB.[36] In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

[36] Based on CRD and DTCC records current as of January 25, 2017.