

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017052438501**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Oppenheimer & Co. Inc. (Respondent)
Member Firm
CRD No. 249

Pursuant to FINRA Rule 9216, Respondent Oppenheimer & Co. Inc. submits this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Oppenheimer has been a FINRA member since 1945. The firm is a full-service broker-dealer that is headquartered in New York, New York. Oppenheimer has approximately 135 branch offices and roughly 1,900 registered representatives.¹

OVERVIEW

Between 2012 and 2017, Oppenheimer failed to reasonably supervise transactions that the firm's registered representatives placed directly with product sponsors on behalf of firm customers (*i.e.*, direct business transactions or held away securities transactions) in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.² Oppenheimer did not take steps reasonably designed to ensure that direct business transactions appeared on the firm's daily trade blotter, causing the firm to fail to run approximately 490,000 transactions (including dividend reinvestments) for over 14,000 customers through exception reports used to identify potential sales practice violations, including potentially unsuitable transactions. Oppenheimer also failed to ensure that it collected information for customers' investment profiles (*e.g.*, customers' ages, investment time horizons and liquidity needs) that was relevant for making certain suitability determinations.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

As a result of the foregoing, Oppenheimer violated Section 17(a) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-3, NASD Rule 3010, and FINRA Rules 3110, 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA examination of Oppenheimer.

FINRA Rule 3110(a) and its predecessor, NASD Rule 3010(a), require each member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. A violation of NASD Rule 3010 or FINRA Rule 3110 is also a violation of FINRA Rule 2010, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

Prior to June 30, 2020, FINRA Rule 2111 and its predecessor, NASD Rule 2310, required member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for a customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile.³ A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. FINRA Rule 2111 Supplementary Material .04 stated that a member or associated person shall make a recommendation "only if" the member or associated person had sufficient information about the customer to have a reasonable basis to believe that the recommendation is suitable for that customer, and that the customer profile information is generally relevant to make a suitability determination.

FINRA Rule 4511 requires member firms and associated persons to make and preserve books and records as required by FINRA rules, the Exchange Act, and applicable Exchange Act rules. Section 17(a)(1) of the Exchange Act requires firms to "make and keep . . . such records . . . as the [SEC], by rule, prescribes." Exchange Act Rule 17a3(a)(17)(i)(A), in turn, requires firms to maintain, for each customer who is a natural person—and for whom the firm is required to make a suitability determination—an account record containing the customer's name, tax identification number, address, telephone number, date of birth, employment status, occupation, annual income, net worth, and investment objectives. Implicit in the requirement to make and preserve books and records is the requirement that information in those books and records be accurate and complete. A violation of Exchange Act Rule 17a-3 or FINRA Rule 4511 also constitutes a violation of FINRA Rule 2010.

Oppenheimer supervises mutual fund transactions, in part, by reviewing exception reports relevant to identifying potential sales practice violations, including potentially unsuitable

³ FINRA Rule 2111 superseded NASD Rule 2310 on July 9, 2012.

transactions, such as certain purchases of mutual fund shares. The firm used its daily trade blotter to generate such exception reports. However, from January 2012 to December 2017, Oppenheimer did not have a reasonable system to ensure that direct business transactions appeared on the firm's daily trade blotter, which Oppenheimer used to run the exception reports.

Oppenheimer was on notice that certain of its representatives were engaging in direct business transactions when it received commission records from product sponsors. Nonetheless, Oppenheimer did not have any system or procedures in place to require registered representatives to report those transactions to the firm. As a result, approximately 490,000 direct business transactions involving over 14,000 customers were not reported on Oppenheimer's daily trade blotter, which caused the firm to fail to reasonably supervise the suitability of such transactions.

During the same period, Oppenheimer also failed to have a reasonable supervisory system to ensure that it collected and maintained information about its direct business customers' investment profiles—such as the customers' ages, investment time horizons, and liquidity needs—that was relevant for making suitability determinations. Oppenheimer relied on its representatives to collect such information by completing new account forms. However, the firm did not take steps to ensure that representatives completed new account forms for new customers placing direct business transactions. As a result, Oppenheimer failed to collect and maintain information about certain direct business customers that was relevant to assessing whether their direct business transactions were suitable.⁴

As a result of the above, Oppenheimer violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-3, NASD Rule 3010(a), and FINRA Rules 3110(a), 4511 and 2010.

Starting in 2021, Oppenheimer began a retrospective review of its direct business transactions during the relevant period. That review involved identifying the direct business transactions that Oppenheimer failed to include on its trade blotter and reviewing the transactions according to the parameters used by Oppenheimer's exception reporting system. Oppenheimer attempted to collect missing information about customers' investment profiles. The suitability of certain of the transactions could not be determined because the firm was unable to collect complete information at the time of the retrospective review about customers' investment profiles, including their investment time horizons or liquidity needs that would have been relevant at the time of the purchase.

⁴ Following the relevant period, Oppenheimer revised its written supervisory procedures to prohibit direct transactions with mutual fund companies unless a corresponding account has been established at Oppenheimer. The firm also instituted procedures to verify that each direct business mutual fund transaction is housed in a firm account or, if not, to require registered representatives to promptly obtain a new account application and open an account for the customer. Oppenheimer also established progressive discipline measures if representatives failed to obtain new account applications.

B. Respondent also consents to the imposition of the following sanctions:

- a censure; and
- a \$500,000 fine.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- B. To be notified of the complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council (NAC) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

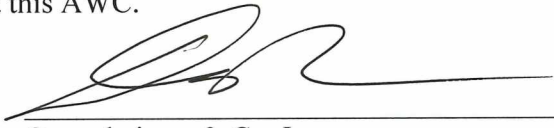
Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than

the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

4/22/24
Date


Oppenheimer & Co. Inc.
Respondent

Print Name: Dennis McWAMART

Title: EVP

Reviewed by: adam algaze

Adam Algaze
Counsel for Respondent
Oppenheimer & Co. Inc.
85 Broad St., 25th Floor
New York, NY 10004

Accepted by FINRA:

Signed on behalf of the
Director of ODA, by delegated authority

5/7/2024
Date


Gabrielle Hirz
Senior Counsel
FINRA
Department of Enforcement
1700 K Street NW
Washington, DC 20006