

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of:

Complaint No. 328306

OPPENHEIMER & CO. INC. (CN 328306)  
CRD #249

Respondent.

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Issued and entered  
This 19<sup>th</sup> day of July, 2016

**CONSENT AGREEMENT & ORDER IN LIEU OF CEASE & DESIST  
PROCEEDINGS**

The Michigan Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau ("Bureau"), as the agency regulator of the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* ("Securities Act"), and whose Director, Julia Dale, is the statutory Administrator authorized to enforce the Securities Act ("Administrator"), hereby enters into this Consent Agreement ("Agreement") with Oppenheimer & Co. Inc. ("Respondent"), in lieu of the Administrator issuing cease and desist orders against Respondent for materially allowing its employees to violate the Securities Act's investment adviser representative registration provisions, and in lieu of the Administrator issuing cease and desist orders against Respondent's employees for engaging in investment adviser representative activities under the Securities Act without being registered in Michigan. Respondent and the Bureau are referred to collectively hereafter as the "Parties."

## I. BACKGROUND

### A. Respondent

1. Respondent Oppenheimer & Co. Inc. (CRD #249) is a federal covered investment adviser that operates out of New York, New York, and which is notice-filed in Michigan.

### B. Findings of Fact

1. The Bureau conducted an investigation of Respondent's activities.
2. The investigation determined that Respondent was responsible for submitting the relevant investment adviser representative registration application materials for forty (40) Michigan individual representatives, but that it failed to do so from the effective date of the Securities Act on October 1, 2009 (as extended by various Transition Orders) through late 2015/early 2016.
3. Respondent has not identified any exemption, exception, preemption, or exclusion justifying its failure to register these 40 investment adviser representatives in Michigan from October 1, 2009 (the date the registration requirement became effective) through their actual registration date in late 2015/early 2016.

## II. RELEVANT STATUTORY PROVISIONS

1. Section 102(f) of the Securities Act, MCL 451.2102(f), states:

“Federal covered investment adviser” means a person registered under the investment advisers act of 1940.

2. Section 102a(f) of the Securities Act, MCL 451.2102a(f), states:

“Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for

selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who meets any of the following:

(i) Performs only clerical or ministerial acts.

(ii) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and does not receive special compensation for investment advisory services.

(iii) Is employed by or associated with a federal covered investment adviser, unless the individual meets any of the following:

(A) Has a "place of business" in this state as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3, and is an "investment adviser representative" as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3.

(B) Has a "place of business" in this state as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3, and is not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940, 15 USC 80b-2.

(iv) Is excluded by rule or order under this act.

3. Section 404(1) of the Securities Act, MCL 451.2404(1), states:

An individual shall not transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (2).

4. Section 503(1) of the Securities Act, MCL 451.2503(1), states:

In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusions.

5. Section 604 of the Securities Act, MCL 451.2604, states in part:

(1) If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the administrator may do 1 or more of the following:

(a) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act...

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(4) In a final order issued under this section, the administrator may do any of the following:

(a) Impose a civil fine of not more than \$10,000.00 for a single violation of this act or a rule adopted or order issued under this act or \$500,000.00 for multiple violations.

### **III. AGREEMENT**

Respondent, without admitting or denying the above Findings of Fact and solely for the purposes of resolving this matter, and the Bureau agree that the Administrator has grounds to issue cease and desist orders against Respondent and its employees for the conduct outlined in Section I(B) above, under the authority set out in Section II above. In lieu of the Administrator issuing those orders, the Parties agree to the following terms:

1. Respondent must pay the Bureau the settlement amount allocated as follows: (a) a \$250,000 civil fine for Respondent's responsibility in failing to register its 40 individual representatives, due and payable

within thirty (30) days after the entry date of this Agreement; (b) a \$400,000 civil fine on behalf of Respondent's 40 individual representatives for their unregistered conduct in Michigan, due and payable within thirty (30) days after the entry date of this Agreement; and (c) \$250,000 into the Bureau's Securities Investor Education and Training Fund, to be paid in installments of \$50,000 per year for five years, with each payment due on October 1 beginning on October 1, 2016, for total payments of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00). Each payment must be received by the Bureau on or before the stated deadline, and sent to the following address:

Corporations, Securities & Commercial Licensing Bureau  
Final Order Monitoring – Administrative Services Section  
P.O. Box 30018  
Lansing, Michigan 48909

2. Respondent will send a copy of the Client Notice in the form attached to this Agreement as **Exhibit A** to all current and former clients whom have been provided advice by a representative acting on behalf of Respondent in violation of Section 404(1) since January 1, 2015.
3. Respondent acknowledges and agrees that: (a) the Administrator has jurisdiction and authority to enter the Consent Order attached to this Agreement; (b) the Administrator may enter the attached Consent Order without any further notice to Respondent; and (c) upon entry of the attached Consent Order, it is final and binding, and Respondent waives any right to a hearing and/or appeal of the Consent Agreement, the attached Consent Order, or any of the conduct resolved in connection therewith, that exists or may exist under the Securities Act, the rules promulgated under the Securities Act or the predecessor Uniform Securities Act, 1964 PA 265, MCL 451.501 *et seq.* (repealed), the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 *et seq.*, or other applicable law.
4. The Parties agree that this Consent Agreement & Order in Lieu of Cease & Desist Proceedings: (a) does not and shall not be interpreted to subject Respondent or its associated persons to disqualification, or to form the basis for such a disqualification, under the federal securities laws, or rules or regulations thereunder, including without limitation, Section 3(a)(39) of the Securities Exchange Act of 1934, as amended, and as used therein; or Section 203(e)(9) of the Investment Advisers

Act of 1940, as amended, or the rules and regulations of any self-regulatory organization, or the securities laws, rules, and regulations of the various states, commonwealths, and territories of the United States of America, including without limitation, any disqualification from relying upon the exemptions from securities registration or related safe harbor provisions; (b) does not disqualify Respondent or its affiliates or any current or former officers, directors, trustees, agents, members, partners or employees of Respondent and Respondent's affiliates from any business that they are otherwise qualified or licensed to perform; (c) does not constitute a finding that Respondent or its affiliates or any current or former officers, directors, trustees, agents, members, partners or employees of Respondent or Respondent's affiliates engaged in fraud, or serve as the basis for any future action to establish violation of the federal laws, rules or regulations of self-regulatory organizations; (d) for any person or entity not a party to this Consent Agreement & Order in Lieu of Cease and Desist Proceedings, does not limit or create any private rights or remedies against Respondent, limit or create liability of Respondent, or limit or create defenses of or for Respondent to any claims; and (e) that, pursuant to Rule 506(d)(2)(iii) and Rule 262(b)(3) of the Securities Act of 1933 ("1933 Act"), disqualification under Rules 505(b)(2)(iii) or 506(d)(1), or Rule 262(a) under the 1933 Act should not arise as a consequence of this Consent Agreement & Order in Lieu of Cease & Desist Proceedings. The application of this paragraph is limited solely to this Consent Agreement & Order in Lieu of Cease & Desist Proceedings and the conduct resolved in connection therewith, and it does not otherwise limit or affect application of the cited statutes and rules in any other respect.

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IN WITNESS WHEREOF, the Parties hereto have agreed to and executed this CONSENT AGREEMENT & ORDER IN LIEU OF CEASE & DESIST PROCEEDINGS, with the intent to be legally bound hereby, as of the dates indicated by each authorized signature.

**OPPENHEIMER & CO. INC.**

Dated: 7/18/16

By: John T. McGuire

[Print Name] JOHN T. MCGUIRE

Its: DEPUTY GENERAL COUNSEL

**CORPORATIONS, SECURITIES &  
COMMERCIAL LICENSING BUREAU**

Dated: 7-19-16

By: Timothy L. Teague  
Timothy L. Teague

Its: Securities and Audit Division Director

**IV. ORDER**

NOW, THEREFORE, the Administrator ORDERS:

THE TERMS AND CONDITIONS IN THE FOREGOING FULLY EXECUTED CONSENT AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND MADE BINDING AND EFFECTIVE THROUGH THIS CONSENT ORDER.

A handwritten signature in cursive script, appearing to read "Julia Dale", is written over a horizontal line.

Julia Dale

Administrator and Director

Corporations, Securities & Commercial Licensing Bureau



[Oppenheimer & Co., Inc. Letterhead]

[Date]

[Client Name]

[Client Address]

Re: Important Client Information

Dear [\_\_\_\_\_]:

We appreciate the opportunity to serve you as one of our Michigan clients. Our Michigan roots date back to the 1930s. We proudly serve our Michigan communities through 12 offices.

You are being contacted because there is information about your transactions with an Oppenheimer professional that you need to know.

In complying with Michigan requirements on representative registrations, we made a mistake involving our Michigan representatives that has since been corrected. Historically, Michigan did not require the registration and licensing of investment adviser representatives. When that changed in 2009, regrettably we did not catch it. Upon discovering our error in 2015, we registered a number of our financial advisors as investment adviser representatives who were previously only registered as our broker-dealer agents. Because of this mistake, we negotiated a regulatory settlement with the State of Michigan that required us to pay a fine of \$650,000 plus periodic payments into the Bureau's Securities Investor Education and Training Fund and send you this notice.

You are being contacted because you transacted business with one of these investment adviser representatives who was not registered in Michigan during the period of October 1, 2009 through the end of 2015. Except for that registration mistake, the investment adviser representative was otherwise qualified, was registered in other states, and had passed all necessary exams and other requirements. Again, this was a technical error that we do not believe affected the quality of services you were provided, the advice you were given, or the validity of any of your business transactions. However, if you have any questions or concerns about what occurred, please contact [*insert individual's name, telephone, and email address*] or our representative serving you.

We are especially proud of our team of dedicated professionals. When you started working with our investment adviser representatives, you received a disclosure brochure describing his or her professional background and another copy is available upon request. Additional information about each representative is available on FINRA's BrokerCheck (<http://brokercheck.finra.org/>) and the Investment Adviser Public Disclosure website (<http://www.adviserinfo.sec.gov/>).

Thank you for your continued patronage of our services.

Sincerely,

OPPENHEIMER & CO., INC.

[*Oppenheimer & Co., Inc. Letterhead*]

[*CEO or senior officer's signature*]