UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97114 / March 13, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6259 / March 13, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21340

In the Matter of **E. MAGNUS OPPENHEIM & CO. INC.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against E. Magnus Oppenheim & Co. Inc. ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

These proceedings arise out of the failure of Respondent, a registered investment adviser, to adopt and implement reasonably designed compliance policies and procedures as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. This violation persisted over multiple years, including after Respondent was put on notice of multiple of these deficiencies in connection with a Division of Examinations examination. Respondent also failed to conduct best execution reviews of third-party service providers in violation of Section 206(2) of the Advisers Act.

Respondent

1. **E. Magnus Oppenheim & Co. Inc.** is a New York corporation with its principal place of business in New York, New York. Respondent has been registered with the Commission as an investment adviser since 1978. It was also registered with the Commission as a broker-dealer from 1979 until December 2022 when its registration terminated as a result of its filing of a Form BDW. As of February 15, 2023, it has approximately $56 million of assets under management and, according to its Form ADV, invests on behalf of about 95 clients with 95 accounts. The firm was founded by E. Magnus Oppenheim who was the President, Chief Investment Officer, and Chief Compliance Officer until he passed away on June 19, 2019. Shortly thereafter, an interim compliance officer was hired from a third party service, and E. Magnus Oppenheim Revocable Trust became the majority owner of the firm. Day-to-day management of the firm was assumed by a portfolio manager who had been with the firm since 2005 and an administrative employee who had been with the firm since 2008. Respondent offers discretionary portfolio management services. It has both individual clients and a private fund client, E.M.O. Sterling Return LT Fund. The Division of Examinations conducted recent examinations of Respondent in 2019 and 2021. In May 2022, E. Magnus Oppenheim Revocable Trust entered into an agreement (the "Stock Purchase Agreement") to sell its interest in Respondent to another entity ("New Owner"). The Stock Purchase Agreement was amended in October 2022 and January 2023, and the transaction it contemplated (the "Sale") closed on January 20, 2023. Following the Sale, New Owner's Chief Compliance Officer has become Chief Compliance Officer of Respondent.

Background

Failure to Adopt and Implement Reasonably Designed Compliance Policies and Procedures

2. Section 206(4) of the Advisers Act and Rule 206(4)-7(a) thereunder require an investment adviser that is registered or required to be registered to adopt and implement written policies and procedures reasonably designed to prevent violations by the adviser and its supervised persons of the Advisers Act and the rules adopted thereunder.

3. Prior to 2019, Respondent's written compliance policies and procedures were principally oriented towards broker-dealer activities rather than the investment advisory business. Among other things, these policies and procedures referenced outdated regulatory guidance from the National Association of Securities Dealers, which had ceased to exist in 2007, and only mentioned the Advisers Act once.

4. From 2019 to 2021, Respondent adopted as its written compliance policies and procedures ("Compliance Manual") another investment adviser's compliance manual without removing references to the other adviser and failed to tailor the manual to its own business, including leaving in references to research analysts that it did not employ.

5. The Compliance Manual did not include policies and procedures reasonably designed to prevent violations of the Advisers Act in areas that were relevant to Respondent's business and operations, including policies and procedures involving access to client funds and custody, political contributions made by Respondent or its covered associates, valuation of client assets, billing fees, and conducting due diligence of third-party service providers. These were all areas in which Respondent had been previously notified of deficiencies during the 2019 examination. Only upon inquiry by Division of Examinations staff in 2021 did Respondent insert addenda relating to two areas that had not been addressed by its policies and procedures, Form CRS and custody, and, in the latter instance, the addendum was itself deficient by virtue of failing to address Respondent's custody of client funds or securities with respect to the private fund it manages. The 2019 examination also cited Respondent for failing to establish procedures in the event of the loss or incapacitation of key individuals, including Mr. Oppenheim, then Respondent's sole principal.

Failure to Fulfill Responsibility to Seek Best Execution

6. Section 206 of the Advisers Act establishes a fiduciary duty for investment advisers to act for the benefit of their clients. This duty includes the requirement to seek the best execution of client securities transactions. To fulfill that duty, investment advisers should periodically and systematically evaluate the execution they are receiving for clients' transactions. Respondent represented to clients that commissions they paid would "comply with [Respondent's] duty to obtain 'best execution.'"

7. Even though a similar deficiency had been identified in the 2019 examination, Respondent failed to make an adequate assessment of the commission rates, fees, or ticket charges charged by its clearing broker, try to negotiate better terms with its clearing broker, or make an adequate assessment of the commissions, fees, ticket charges, and execution quality available from other clearing brokers.

Violations

8. As a result of the conduct described above in paragraphs 2 to 5, Respondent

willfully[1] violated Section 206(4) of the Advisers Act and Rule 206(4)-7(a) thereunder, which, among other things, require that an investment adviser that is registered or required to be registered adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser or its supervised persons, of the Advisers Act and the rules adopted thereunder. A violation of Section 206(4) and the rules thereunder does not require scienter. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

9. As a result of the conduct described above in paragraphs 6 to 7, Respondent willfully violated Section 206(2) of the Advisers Act, which prohibits investment advisers from directly or indirectly engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence. *See SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

Undertakings

Respondent has undertaken to:

10. Independent Compliance Consultant

a. Within 90 days of the entry of this Order, Respondent shall retain the services of an independent compliance consultant ("Independent Consultant") not unacceptable to the Commission staff. Respondent shall require that the Independent Consultant conduct a review of the compliance policies and procedures designed to promote Respondent's compliance with the Advisers Act and rules thereunder with respect to Respondent. The Independent Consultant's review shall be limited to the issues identified in Respondent's 2021 examination. Furthermore, the Independent Consultant's review shall be limited to the compliance policies and procedures applied by the New Owner to business conducted through the entity now known as E. Magnus Oppenheim & Co. Inc., and shall not encompass any other of the New Owner's businesses.

[1] "Willfully," for purposes of imposing relief under Sections 15(b) of the Exchange Act and 203(e) of the Advisers Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

b. Respondent shall provide to the Commission staff, within 90 days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant's responsibilities.

c. Respondent shall require the Independent Consultant to submit a written report to Respondent and to Commission staff within 180 days of the entry of this Order (the "Report"). The Report shall describe in detail (1) the Independent Consultant's review, findings, conclusions, and recommendations, if any; (2) any proposals made by Respondent; and (3) a procedure for Respondent to adopt and implement any recommended changes in or improvements to its policies and procedures.

d. Within 90 days of receipt of the Report, Respondent shall adopt and implement any recommendations contained in the report; provided, however, that within 30 days of Respondent's receipt of the Report, Respondent may, in writing, advise the Independent Consultant and the Commission staff of any recommendations that it considers unnecessary, unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose, or shall explain why such recommendation is unnecessary or inappropriate. As to any recommendation on which Respondent and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 30 days after Respondent provides the response described above. In the event that Respondent and the Independent Consultant are unable to agree on whether a recommendation is necessary or an alternative proposal, Respondent and the Independent Consultant shall jointly confer with the Commission staff to resolve the matter. In the event that, after conferring with the Commission staff, Respondent and the Independent Consultant are unable to agree on an alternative proposal, Respondent will abide by the recommendations of the Independent Consultant.

e. Within 30 days of Respondent's adoption of the recommendations in the Report, to the extent the Independent Consultant makes any such recommendations and other than those determined not to be required by Respondent and the Independent Consultant or in consultation with the Commission staff, Respondent shall certify in writing to the Independent Consultant and the Commission staff that it has adopted and implemented the Independent Consultant's recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications and other documents required to be provided to the Commission staff shall be sent to Steven G. Rawlings, Assistant Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616, or such other address as the Commission's staff may provide.

f. As part of its work with the Independent Consultant, Respondent shall cooperate

fully and provide the Independent Consultant with access to files, books, records, and personnel as are reasonably requested by the Independent Consultant for review. Respondent shall bear all of the Independent Consultant's compensation and expenses.

g. To ensure the independence of the Independent Consultant, Respondent: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

h. Respondent shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

i. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

j. For good cause shown and upon timely application by Respondent, the Commission staff may extend any of the procedural dates set forth in this undertaking.

11. Respondent shall certify, in writing, its compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The

Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Steven G. Rawlings, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

12. Respondent shall preserve, for a period of not less than six years from the entry of this Order, the first two years in an easily accessible place, any record of compliance with the undertaking set forth in this Order.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. E. Magnus Oppenheim & Co. Inc. is censured.

C. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 10 to 12 above.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in the manner provided in Subsection E below.

E. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying E. Magnus Oppenheim & Co. Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sheldon Pollock, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004, or such other address as the Commission staff may provide.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary