UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9868 / July 23, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75510 / July 23, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31725 / July 23, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4145 / July 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16699

In the Matter of

SCOTT A. EISLER,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY 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 8A of the Securities Act of 1933 ("Securities Act"), Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Scott A. Eisler ("Eisler" or "Respondent").

II.

In anticipation of the institution of these proceedings, Eisler 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 him 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 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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[1] that:

A. RESPONDENT

1. **Scott A. Eisler**, age 50, resides in Parkland, Florida. From 2007 to 2011, Eisler was a registered representative and investment adviser representative, holding the position of Financial Advisor ("FA"), at Oppenheimer & Co. Inc.'s ("Oppenheimer") Boca Raton Branch Office. He is currently a registered representative and investment adviser representative, holding the position of FA at another dually-registered broker-dealer and investment adviser. Eisler holds Series 7 and 63 licenses.

B. OTHER RELEVANT ENTITY

2. **Oppenheimer & Co. Inc.**, a New York corporation, is a broker-dealer and an investment adviser registered with the Commission and headquartered in New York, New York. Oppenheimer is a subsidiary of Oppenheimer Holdings, Inc., a publicly traded company with securities registered with the Commission pursuant to Section 12(b) of the Exchange Act. On January 27, 2015, Oppenheimer was the subject of a Commission enforcement action, in which it consented to the institution of an order admitting to the facts set forth in the Order and that it violated the federal securities laws, and consenting to the issuance of an order finding that it willfully violated Securities Act Sections 5(a) and 5(c) and Exchange Act Section 17(a) and Rules 17a-3(a)(2), 17a-3(a)(9) and 17a-8 thereunder, willfully aided and abetted and caused violations of Exchange Act Section 15(a), and, pursuant to Exchange Act Section 15(b)(4)(E), failed reasonably to supervise with a view to preventing and detecting the violations of Section 5 by Oppenheimer personnel. *Oppenheimer & Co. Inc.*, Sec. Act Rel. No. 33-9711, 2015 WL 33111 (January 27, 2015).

C. SUMMARY

3. Section 5 of the Securities Act generally requires registration of securities offerings, or an available exemption from registration, including for resales of securities acquired in private transactions. Brokers frequently rely on an exemption under Section 4(a)(4) of the Act, known as the brokers' transaction exemption. For this exemption to be available, brokers are required, before selling securities on their customers' behalf, to engage in a reasonable inquiry into the facts surrounding the customers' proposed sales to determine if the customers

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

were engaging in an unlawful distribution of securities. The amount of inquiry a broker must conduct as part of this reasonable inquiry varies with the facts and circumstances of each transaction. When brokers are presented with red flags indicating that a customer could be potentially engaging in an unlawful distribution of securities, brokers are required to conduct a searching inquiry to claim the brokers' transaction exemption. As part of a searching inquiry, brokers have a responsibility to know the requirements necessary to establish an exemption from the registration requirements of the Securities Act and, for each resale transaction, they need to be reasonably certain that an exemption is available.

4. In the present case, from October 6, 2009 through December 10, 2010 (the "relevant period"), an Oppenheimer customer (the "Customer") repeatedly deposited into its Oppenheimer account large quantities of newly-issued penny stocks that it had recently acquired from little known, non-reporting companies through private transactions. Shortly after the Customer deposited these securities, Eisler, at the direction of his Customer, sold the shares to the public ("resales"), without registration statements being on file or in effect, and then quickly wired the proceeds out of its account. In total, Eisler sold over 2.5 *billion* shares of newly issued penny stocks for the Customer.

5. The Customer's trading activity raised numerous red flags indicative of illegal unregistered distributions, which Eisler knew about while selling shares at the direction of the customer. Eisler failed to make the reasonable inquiry necessary to ensure that the proposed resales of the Customer's securities were exempt from the registration requirement of Section 5, and therefore cannot claim to have relied on the brokers' transaction exemption to that registration requirement.

D. FACTS

Eisler Executed His Customer's Illegal Unregistered Sales of Billions of Shares Through the Customer's Oppenheimer Account

6. In October 2009, the Customer opened an account at Oppenheimer with Eisler and shortly thereafter electronically deposited millions of recently-issued shares of Quasar Aerospace, Inc. ("QASP"), a thinly-traded penny stock that the Customer had recently acquired.

7. Between October 6, 2009 and June 10, 2010, the Customer acquired and electronically deposited 575 million recently-issued shares of QASP, and Eisler sold all of these securities at his Customer's direction over the course of approximately 634 sales transactions, typically within days of the shares being deposited at Oppenheimer, and no later than 45 days after deposit.

8. Between March 23, 2010 and June 24, 2010, the Customer acquired and deposited physical certificates for 12.6 million recently-issued shares of My Social Income, Inc. ("MSOA"), another thinly-traded penny stock. Eisler sold all of these securities at his Customer's direction in 57 sales transactions, all of which took place within 21 days of deposit.

9. Between June 15, 2010 and July 27, 2010, the Customer acquired and deposited physical certificates for 540 million recently-issued shares of Sebastian River Holdings, Inc.

("SBRH"), another thinly-traded penny stock, and Eisler sold all of these securities at his Customer's direction in 48 sales transactions, all of which took place within 14 days of deposit.

10. Between June 29, 2010 and July 28, 2010, the Customer acquired and deposited physical certificates for 885 million recently-issued shares of Encounter Technologies, Inc. ("ENTI"), another thinly-traded penny stock, and Eisler sold all of these securities at his Customer's direction in 27 sales transactions, all of which took place within three days of deposit.

11. Between July 13, 2010 and July 16, 2010, the Customer acquired and deposited physical certificates for 270 million recently-issued shares of Strategic Rare Earth Metals, Inc. ("SREH"), another thinly-traded penny stock, and Eisler sold all of these securities for the Customer at his Customer's direction in five sales transactions, all of which took place within three days of deposit.

12. Between November 18, 2010, and December 10, 2010, the Customer acquired and deposited physical certificates for 250 million recently-issued shares of Shot Spirit Corporation ("SSPT"), another thinly-traded penny stock, and Eisler sold all of these securities at his Customer's direction in five sales transactions, all of which took place within 22 days of deposit.

13. In total, between October 6, 2009, and December 10, 2010, the Customer deposited over 2.5 billion shares of recently-issued shares of QASP, ENTI, MSOA, SREH, SBRH, and SSPT (collectively, "the Customer's Securities"), which Eisler sold at his Customer's direction in approximately 776 unregistered resale transactions.

14. In facilitating and effecting the offers and sales of the Customer's Securities, Eisler used email and made telephone calls from his office in Florida to Oppenheimer personnel in New York.

15. All of the Customer's Securities were quoted on the Pink Sheets (now known as OTC Link) and sold into interstate commerce by Eisler and Oppenheimer at the Customer's direction.

16. The unregistered resales of the Customer's Securities generated approximately $12,000,000 in proceeds.

17. The Customer paid Oppenheimer approximately $588,400 in commissions for the unregistered resales of the Customer's Securities. The remaining proceeds were credited to the Customer's account.

18. Oppenheimer wired the proceeds of the unregistered resales of the Customer's Securities, net of commissions, out of the Customer's account shortly after the sales transactions.

19. The Customer's pattern and practice of trading over the relevant period strongly indicated that it was engaging in the unlawful unregistered distribution of securities. The Customer acquired shares in QASP, MSOA, SBRH, and SSPT through wrap-around debt-purchase agreements. Specifically, the Customer purchased, with promissory notes, purportedly

pre-existing debt that was owed to affiliates of each of these issuers using wrap-around agreements that modified the affiliates' pre-existing debt to include new debt-to-equity conversion rights. Shortly after the wrap-around agreements were executed, the Customer began to exercise the debt-to-equity conversion provision to have the companies issue new shares to the Customer. The Customer then deposited the newly-issued shares at Oppenheimer and ordered Eisler to quickly sell them, repeating the process in which the shares were issued by the company, deposited by the Customer, and sold by Eisler at his Customer's direction.

20. The Customer used stock purchase agreements to acquire shares in ENTI and SREH from unrelated third parties that were owed money by ENTI and SREH. Those third parties converted their pre-existing debt with ENTI and SREH into newly-issued equity securities just before selling the shares to the Customer. The Customer deposited all of these securities into its Oppenheimer account, and Eisler sold them at his Customer's direction shortly after they were deposited.

21. None of the securities that the Customer deposited at Oppenheimer bore any legends indicating the securities were restricted, even though they had been recently acquired directly or indirectly from the issuer, or an affiliate of the issuer, in private transactions.

22. For all of the securities that the Customer deposited at Oppenheimer, no registration statement was filed or in effect for: (1) the issuance of shares upon conversion of the debt; (2) the third-party creditors' sales of the shares to the Customer; or (3) the Customer's subsequent resales of the shares into the public market through Oppenheimer.

23. The Customer represented to Oppenheimer that its resales qualified for the Securities Act Rule 144 safe harbor and the Securities Act Section 4(a)(1) exemption from registration.

24. Neither the Customer's acquisition of the Customer's Securities, nor its resale of these securities through Oppenheimer, qualified for an exemption from the registration requirements of Section 5.

25. In particular, the resale of the Customer's Securities did not satisfy Securities Act Rule 144's one-year holding period requirement for three reasons. *First*, a debt owed by an issuer (i.e., a mere obligation to pay a sum of money) in the absence of a conversion provision allowing the debt's conversion into the issuer's securities does not qualify as a "security" within the meaning of Rule 144(d)(3)(ii). None of the debts the Customer converted to acquire the shares had a conversion provision until just prior to or at the time of the Customer's acquisition of the shares, and Rule 144 does not permit the Customer to include in its holding period the period of time that the debt was owed before the conversion feature was added. *Second*, even if the debts at issue had been securities from the date they were incurred, the original debt holders were affiliates of QASP, MSOA, SBRH, and SSPT and, therefore, the Customer may not include the affiliate's holding period in its holding period. 17 C.F.R. §§ 230.144(a)(3) and 230.144(d)(1)(ii). *Third*, if a promissory note is used to pay for the purchase of securities, the Rule's holding period does not commence until the note has been discharged by payment in full prior to the sale of the securities. 17 C.F.R. § 230.144(d)(2). Here, the Customer used promissory notes to purchase the debt from affiliates that was converted into shares of QASP,

MSOA, SBRH, and SSPT, and only paid for the shares at or around the time of the conversions, at which point the holding period could commence.

Eisler Was Aware of Substantial Red Flags Associated with His Customer's Trading Activity, Yet Eisler Failed to Conduct a Reasonable Inquiry Before Engaging in Unregistered Resales of his Customer's Securities

26. Sections 5(a) and 5(c) of the Securities Act prohibit the offer and sale of securities through interstate commerce or the mails, unless a registration statement is filed with the Commission and is in effect, or the offer and sale are subject to an exemption. 15 U.S.C. § 77e(a) and (c).

27. Section 4(a)(4) of the Securities Act exempts from the registration requirements of Section 5 "brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders." 15 U.S.C. § 77d(a)(4). Section 4(a)(4) of the Securities Act is unavailable, for example, when a broker "knows or has reasonable grounds to believe that the selling customer's part of the transaction is not exempt from Section 5 of the Securities Act." *John A. Carley*, Exch. Act Rel. No. 34-57246, 2008 WL 268598, *8 (Jan. 31, 2008) (Commission Opinion). To rely on this exemption, the broker must, among other things, engage in a "reasonable inquiry" into the facts surrounding the proposed unregistered sale, and after such inquiry, he must not be "aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with respect to the securities or that the transaction is part of a distribution of the securities of the issuer." 15 U.S.C. § 77d(a)(4); 17 CFR § 230.144(g)(4). Section 2(a)(11) of the Securities Act defines an underwriter as "any person who has purchased from an issuer, with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking." 15 U.S.C. § 77b(a)(11).

28. The Commission long ago explained that whether a broker has conducted a "reasonable inquiry" depends on the facts and circumstances surrounding the transaction:

> A dealer who is offered a modest amount of a widely traded security by a responsible customer, whose lack of relationship to the issuer is well known to him, may ordinarily proceed with considerable confidence. On the other hand, when a dealer is offered a substantial block of a little-known security, either by persons who appear reluctant to disclose exactly where the securities came from, or where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for.

Distribution by Broker-Dealers of Unregistered Securities, Sec. Act Rel. No. 4445 (Feb. 2, 1962) (Commission interpretative release).

29. On January 13, 2009, the Financial Industry Regulatory Authority ("FINRA") issued Notice to Members 09-05 in which FINRA reminded firms of their obligations to determine whether sales comply with the registration requirements of the federal securities laws.

30. FINRA's Notice to Members 09-05 listed examples of "red flags" that broker-dealers should be on the alert for in order to identify possible illegal unregistered distributions, including: (1) a customer opens a new account and delivers physical certificates representing a large block of thinly traded or low priced securities; (2) a customer has a pattern of depositing physical share certificates, immediately selling the shares, and then withdrawing the proceeds from the account; (3) a customer deposits share certificates that have been recently issued or represent a large percentage of the float of the security; and (4) the lack of a restrictive legend on deposited shares seems inconsistent with the date the customer acquired the securities or the nature of the transactions in which the securities were acquired.

31. The red flags in FINRA's Notice to Members 09-05 had been previously identified by the Commission as red flags that are indicative of illegal unregistered distributions.

32. Eisler received and read FINRA's Notice to Members 09-05 and kept a copy of it on his desk during the time the Customer was depositing and selling the securities at issue.

33. In October 2009, Oppenheimer's Compliance Department issued a Compliance Alert that referenced FINRA Notice to Members 09-05 ("Compliance Alert"). The Compliance Alert addressed concerns about illegal unregistered distributions, and advised employees to be on alert for the red flags listed in FINRA's Notice to Members 09-05.

34. Eisler received Oppenheimer's Compliance Alert in October 2009 and specifically discussed with his Branch Office Manager that trading activity by Eisler's customers appeared to exhibit eight of the red flags identified in the Compliance Alert.

35. From the time that the Customer began trading penny stocks through its Oppenheimer account in October 2009, Eisler knew that the Customer's business model was to acquire and immediately liquidate large blocks of shares.

36. Eisler was presented with the following recurring red flags in the Customer's trading activity: (1) the Customer acquired substantial amounts of newly issued penny stocks; (2) directly from little known, non-reporting issuers; (3) through private, unregistered transactions; (4) then immediately resold those shares; (5) wired out the sales proceeds; and (6) repeated the process over and over again.

37. Taken together, the red flags in the Customer's trading put Eisler and Oppenheimer on notice that the Customer may have been engaged in unlawful distributions.

38. Given the red flags associated with the Customer's deposited securities and resale transactions, Eisler was required to engage in a searching inquiry to properly rely on the Section 4(a)(4) brokers' transaction exemption.

39. As part of a searching inquiry, Eisler had a responsibility to be aware of the requirements necessary to establish an exemption from the registration requirements of the

Securities Act, and for each resale transaction he needed to be reasonably certain that such an exemption was available. *World Trade Financial Corp., et al.*, Exch. Act Rel. No. 66114 (Jan. 6, 2012) (Commission Opinion), *petition denied*, 739 F.3d 1243 (9th Cir. 2014); *Stone Summers & Co., et al.*, 45 S.E.C. 105, 108 (1972) (Commission opinion).

40. Eisler took inadequate steps to identify the specific exemptions from registration on which the Customer was claiming, relying on assertions from the Customer or third parties, and he did not become aware of any other exemptions potentially available.

41. When a broker is faced with recurring red flags suggesting that a customer is engaging in unregistered distributions of securities, he cannot satisfy his reasonable inquiry obligations by relying on the mere representations of his customer, the issuer, or counsel for the same, without reasonably investigating the potential for opposing facts. *See World Trade Financial Corp. v. SEC*, 739 F.3d 1243, 1249 (9th Cir. 2014) (rejecting the argument that under the circumstances the duty of reasonable inquiry was met by reliance on third parties in conformity with industry practice and stating "brokers rely on third–parties at their own peril, and will not avoid liability through that reliance when the duty of reasonable inquiry rests with the brokers"); *Wonsover v. SEC*, 205 F.3d 408, 415-16 (D.C. Cir. 2000) (rejecting broker's argument that under the circumstances he justifiably relied on the clearance of sales by his firm's restricted stock department, the transfer agent, and counsel); *see also, Distribution by Broker-Dealers of Unregistered Securities*, Sec. Act Rel. No. 4445 ("It is not sufficient for [a dealer] merely to accept self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contrary facts." (internal quotation omitted)).

42. Because Eisler did not undertake a searching inquiry to be reasonably certain that the exemptions being claimed by the Customer were available, in light of other facts of which he was aware, Eisler cannot claim the brokers' transaction exemption under Section 4(a)(4) with respect to his facilitation of the Customer's resales of securities that were not registered under the Securities Act. As a consequence, he is liable for willfully violating Section 5.

E. VIOLATIONS

43. Based on the conduct alleged above, Eisler willfully violated Sections 5(a) and (c) of the Securities Act by selling the Customer's Securities in illegal unregistered distributions.

F. UNDERTAKINGS

Respondent undertakes to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice in connection with any hearing or trial against any other individual or entity relating to the facts at issue in this matter, and to cooperate with the Commission at any such hearing or trial upon reasonable notice.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, Section 203(f) the Advisers Act, and 9(b) of the Investment Company Act it is hereby ORDERED that:

1. Eisler cease-and-desist from committing or causing any violations and any future violations of Section 5 of the Securities Act.

2. Eisler be, and hereby is:

    a. barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

    b. prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

    c. barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock,

    with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

3. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

4. Eisler shall, within thirty (30) 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 United States Treasury in accordance with 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 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 Scott A. Eisler 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 Scott W. Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010.

5. Eisler shall comply with the undertaking in Section III.F above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary