

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75512 / July 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16701

In the Matter of

ROBERT OKIN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Robert Okin (“Okin” or “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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. RESPONDENT

1. Robert Okin, age 59, resides in Armonk, New York. From June 2009 to December 2014, Okin was Executive Vice President of Oppenheimer & Co. Inc. ("Oppenheimer" or the "Firm"), serving as the Head of the Private Client Division, Oppenheimer's retail brokerage division, which included National Sales. Okin was the subject of a prior Commission enforcement action in which, without admitting or denying the Commission's findings, he consented to the issuance of an order finding that he failed reasonably to supervise within the meaning of Exchange Act Section 15(b)(4)(E) and imposing a one-year supervisory suspension and ordering him to pay a \$150,000 civil penalty. *See In the Matter of Michael Sassano, Dogan Baruh, Robert Okin and R. Scott Abry*, Securities Exchange Act Rel. No. 34-57879 (May 28, 2008). Okin's supervisory suspension was effective from June 9, 2008 through June 8, 2009. Okin holds Series 7, 8, and 63 licenses.

B. RELEVANT ENTITY

2. Oppenheimer, 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.

C. SUMMARY

3. Section 5 of the Securities Act of 1933 ("Securities Act") prohibits any person, directly or indirectly, from offering or selling securities unless a registration statement is on file or in effect or the offer or sale falls within an available exemption from registration. Section 4(a)(4) of the Securities Act provides an exemption for "brokers' transactions, executed upon customers' orders but not the solicitation of such orders." Before selling securities in reliance on Section 4(a)(4), a broker must conduct a reasonable inquiry into the facts surrounding a proposed unregistered sale and, after such inquiry, not "know[] or ha[ve] reasonable ground[s] to believe that his customer is an underwriter," *In re Ronald S. Bloomfield*, Exchange Act Rel. No. 71632, 2014 WL 768828, *7 (Feb. 27, 2014) (Commission opinion), "or that the transaction is part of a distribution of securities of the issuer." 17 C.F.R. § 203.144(g) (defining broker's transactions for purposes of the Rule 144 safe harbor for persons deemed not to be engaged in a distribution).

4. Between October 2009 and December 2010, Okin failed reasonably to supervise a

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.

Branch Office Manager (“BOM”) under his direct supervision with a view towards preventing and detecting his violations of Section 5 of the Securities Act in connection with the unregistered offer and sale by a customer of the Firm (the “Customer”) of the securities of five different issuers. The five issuers were Encounter Technologies, Inc. (“ENTI”), My Social Income, Inc. (“MSOA”), Strategic Rare Earth Metals, Inc. (“SREH”), Sebastian River Holdings, Inc. (“SBRH”), and Shot Spirit Corporation (“SSPT”). No registration statement was filed with the Commission with respect to any of the offers or sales, and no exemption from registration applied. The BOM willfully violated Section 5 by requesting and granting exceptions to the Customer, pursuant to a delegation of authority from another member of senior management, from Firm policies designed to curtail sales of sub-penny and penny stocks² and by signing paperwork that allowed the Customer to deposit the certificates. The BOM engaged in these activities despite being aware of red flags that the Customer was engaging in unregistered offers and sales potentially in violation of Section 5, in response to which the BOM failed to conduct a searching inquiry into the propriety of the sales.

5. Beginning in July 2010, in response to trading in penny stocks, among other things, Oppenheimer formulated policies designed to limit customers’ transactions in penny stocks and address capital costs of clearing the stocks. Although these policies purportedly sought to address potential unregistered distributions, among other regulatory risks, no feature of the policies reflected consideration of Section 5 requirements, except for the limited consideration of affiliate status. As a result, Oppenheimer did not establish policies and procedures that addressed compliance with Section 5, including how to conduct a reasonable inquiry to determine whether a customer’s transactions were subject to an exemption from the registration requirements of Section 5, except in relation to compliance with certain requirements of Rule 144.

6. Okin failed reasonably to supervise with respect to the BOM’s violations of Section 5. First, the BOM, or the financial advisor (“FA”) under the BOM’s supervision at the relevant branch (“Branch”), asked Okin and other members of Oppenheimer’s senior management team for exceptions to the Firm policies limiting sales of sub-penny and penny stocks on behalf of the Customer. Information about the proposed transactions provided to Okin in connection with these requests suggested that the transactions might violate Section 5. These requests, in conjunction with knowledge of the Customer’s trading activity, constituted red flags that the BOM had possibly violated Section 5. Okin failed to follow up with the BOM to determine whether the proposed offers and sales complied with Section 5 or whether the BOM had performed a reasonable inquiry into the offers and sales to determine that they were exempt from registration. If Okin had followed up appropriately, it is likely that he would have prevented and detected the BOM’s Section 5 violations. Second, Okin, working with other senior managers, participated in developing and implementing policies (1) to limit the number of

² The securities qualified as “penny stocks” because they did not meet any of the exceptions from the definition of a “penny stock,” as defined by Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder.

penny stock transactions executed at the Firm, and (2) with respect to one customer, for Oppenheimer's Corporate and Executive Services ("CES") department, which Okin supervised, to limit or truncate its required review of certificates that did not have a restricted legend and were accompanied by legal opinion letters stating that the requirements of Rule 144 had been met. When the new Firm policy related to penny stocks prevented the Customer from being able to trade in penny stocks, the BOM sought an exemption from an account-based condition of the policy for the Customer. Okin and another member of senior management who, unlike Okin, had operational responsibility at the Firm but no supervisory responsibility for the BOM (hereinafter, the "Senior Executive") granted the exemption, and the Customer's deposits and sales were subject to the truncated review. Accordingly, the BOM facilitated the Customer's deposit and sale of the securities in one of the five issuers in violation of Section 5.

The Customer's Offers and Sales Violated Section 5

7. From October 6, 2009 through December 10, 2010 (the "relevant period"), the Customer repeatedly deposited large blocks of penny stocks obtained either directly or indirectly from the issuer or an affiliate of the issuer, which Oppenheimer then offered and sold to the public without any registration statements being filed or in effect. The Customer claimed the resales were exempt from registration under Section 4(a)(1) because they complied with Rule 144's safe harbor.

8. In fact, the Customer's resales of the penny stocks did not qualify for any exemption from registration. The Customer's resales failed to comply with Rule 144's safe harbor because the transaction did not meet Rule 144's requirements. In particular, the offers and sales of the securities of the five issuers did not comply with Rule 144(d)'s one-year holding period requirement for non-reporting issuers. In most instances, the Customer had deposited and liquidated each tranche of the five issuers' penny stocks shortly after acquiring them. In any event, the Customer had liquidated all tranches of each issuer's securities in less than four months.

The BOM Failed to Conduct a Reasonable Inquiry into the Customer's Offers and Sales and Violated Section 5

9. To facilitate the Customer's offer and sale of the securities, the BOM: (1) authorized the deposit of the certificates, without which Oppenheimer would not have accepted the securities for deposit and sale; (2) asked senior management, including Okin, for exceptions on behalf of the Customer to Firm policies directed at curtailing the deposit and sale of sub-penny stocks; (3) when delegated the authority by the Senior Executive to do so, granted exceptions to the Customer to enable it to sell sub-penny stocks; and (4) successfully advocated to Okin and senior management that the Customer receive an exemption to certain Oppenheimer policies restricting sales of penny stock for customers with no business other than penny stocks. Without the BOM requesting and granting these exceptions, the Customer would not have been able to sell the penny stocks through its Oppenheimer account.

10. The proposed sales of the penny stocks were accompanied by a number of red

flags that the transactions could violate Section 5, including the pattern of activity in the Customer's account, information about how the Customer obtained the shares in relation to when the shares were deposited in the account, and the timing of the Customer's sales. In the face of these red flags, the BOM failed to perform the reasonable inquiry required for him to claim an exemption from Section 5 under Section 4(a)(4) of the Securities Act for "brokers' transactions."

11. 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. FINRA listed illustrative examples of red flags that broker-dealers should be on the alert for in identifying illegal unregistered distributions. The red flags were consistent with red flags previously identified by the Commission as indicative of the possibility of an illegal unregistered distribution. *See Distribution by Broker-Dealers of Unregistered Securities*, Securities Act Rel. No. 33-4445 (Feb. 2, 1962) (Commission interpretative release).

12. Ten months later, in October 2009, Oppenheimer's compliance department issued internal guidance to the Firm referencing FINRA Notice 09-05 and identifying red flags indicative of illegal unregistered distributions. The red flags included the following: (i) a customer opens a new account and delivers physical certificates representing a large block of thinly traded or low priced securities; (ii) a customer has a pattern of depositing physical share certificates, immediately selling the shares, and then withdrawing the proceeds from the account; (iii) a customer deposits share certificates that have been recently issued or represent a large percentage of the float of the security; and (iv) 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.

13. The BOM received the alert, and was aware that the Customer's account activity exhibited a pattern of red flags that the FINRA notice indicated could reflect illegal unregistered distributions. For instance, the BOM knew that the Customer opened the account in October 2009 and, in the relevant period, deposited 1.95 billion shares of penny stocks, mostly in the form of physical certificates, many of which the Customer obtained pursuant to conversion provisions put in place coincident with or shortly before each share issuance. The BOM also knew that the Customer had a pattern of depositing and, shortly after, liquidating the shares and withdrawing the proceeds from each sale. The BOM understood that the Customer's business model was to acquire and immediately liquidate large blocks of shares for the purpose of raising capital to finance penny stock issuers. The per-share price of each liquidated share of the five issuers was generally sub-penny and never exceeded \$0.24. The BOM was aware that the certificates deposited did not have restricted legends even though the Customer had only recently acquired them in a private transaction with the issuer or third parties who themselves had recently acquired them from the issuer. In addition, the BOM knew or should have known the cumulative number of shares owned and sold over relatively short periods of time constituted a significant percentage of the issued and outstanding shares for each issuer. Essentially all of the Customer's activity consisted of penny stocks.

14. The BOM, however, did not properly follow up on those red flags or analyze available information in order to rely on the Section 4(a)(4) exemption. Given that the pattern of recurring red flags known to the BOM suggested that the Customer was engaged in illegal unregistered distributions of securities, to rely on Section 4(a)(4) the BOM should have engaged in a searching inquiry into the facts and circumstances of the transactions. Had the BOM done so, he likely would have determined that the facts did not support the Customer's representations that the transactions complied with the Rule 144 safe harbor, and that the Customer was, in fact, engaged in the illegal unregistered distribution of securities.

15. Moreover, the BOM failed to follow Firm procedures directed at complying with Rule 144. Okin supervised Oppenheimer's CES department which had responsibility for reviewing share deposits for compliance with Rule 144 of the Securities Act. Before September 2010, Oppenheimer's written policy required that all shares subject to Rule 144 be reviewed for compliance with Rule 144 and subsequently approved by CES for deposit. This policy applied to all restricted securities, which were defined as "securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering." Such securities included both certificates with a restricted legend where a customer was seeking to have the legend removed based on compliance with Rule 144, and unlegended certificates accompanied by a legal opinion letter representing that a sale would comply with Rule 144. Personnel at the Branch determined which certificates should be elevated to CES for review. In determining whether physical certificates presented for deposit were "restricted," however, it was the practice of Branch personnel to determine whether the certificate bore a restricted legend. The Branch routed to CES only those certificates bearing such a legend. Contrary to Firm policy, neither the BOM nor other Branch personnel routed to CES certificates that bore no "restricted" legend but which were accompanied by legal opinion letters representing that the shares were unrestricted, due to satisfaction of the Rule 144(d) holding period.

16. Because the transactions were illegal unregistered distributions and the BOM could not rely on the Section 4(a)(4) exemption and no other exemption was available, the BOM violated Section 5.

Okin Failed Reasonably to Supervise the BOM's Section 5 Violations

17. Okin became aware of red flags of Section 5 violations by the BOM in conjunction with the facts about the Customer's account activity but did not reasonably follow up to determine whether the BOM was facilitating transactions that were part of a potentially illegal unregistered distribution or whether the BOM was conducting an inquiry necessary to rely on the Section 4(a)(4) exemption.

18. On June 24, 2009, in order to address capital concerns and operational risk, members of senior management, after discussion with Okin, disseminated a policy prohibiting the sale of shares with a per-share price below a penny.

19. Following the implementation of the policy, a number of the FA's customers

wanted to sell securities priced at below a penny per share. On behalf of the FA, the BOM directed requests to Okin and the Senior Executive for exemptions from the Firm's policy prohibiting the sale of sub-penny shares in order for the customer's sales to be executed. The Senior Executive, or Okin when the Senior Executive was not available, granted certain of these requests. In evaluating these requests, Okin became aware of red flags related to the Customer's account and trading activity, in particular the fact that the Customer was trading in large blocks of penny stocks in thinly-traded issuers.

20. In July 2010, Okin, the Senior Executive, and members of the Firm's legal and compliance departments, formulated and implemented a written policy designed to limit the number of penny stock transactions executed at the Firm, including by limiting the number and type of customers authorized to engage in such transactions. This policy established certain transaction- and account-based conditions that had to be satisfied to allow transactions in penny stocks. An amendment to the policy in October 2010 directed requests for exceptions from the policy to Okin and National Sales.

21. By its terms, the policy barred the Customer from trading in penny stocks because the Customer did not satisfy the account-based condition that it maintain a minimum non-penny stock equity balance in its account. Beginning in August 2010, the BOM requested that Okin and the Senior Executive grant an exemption to the Customer from this condition to permit it to continue executing sales of penny stocks in order—according to the BOM—to allow the FA time to transition his business from penny stocks to other products.

22. In the course of reviewing the BOM's requests for an exemption to the policy on behalf of the Customer, Okin and the Senior Executive reviewed a spreadsheet that identified all trades in the Customer's account, sorted by the per-share price of each transaction. This spreadsheet revealed that the Customer had a pattern of depositing and liquidating large blocks of penny stocks at mostly sub-penny prices, and that this pattern of activity occurred regularly in a given security over relatively short periods of time.

23. At no time did Okin follow up on these red flags to seek to ensure that the BOM had been conducting a reasonable inquiry into the facts surrounding these transactions and that the BOM was not violating Section 5.

24. Rather, despite having reviewed information that revealed the extent of the Customer's transactions in penny stocks, Okin agreed to the BOM's request to except the Customer from the minimum non-penny stock equity balance condition in Oppenheimer's July 2010 policy. Thereafter, the Customer proceeded to sell shares of SSPT in illegal unregistered distributions.

25. If Okin had reasonably followed up on these red flags, he likely would have prevented and detected the BOM's violations of Section 5.

26. Before September 2010, as discussed above, Oppenheimer's written policy required that all shares subject to Rule 144 be reviewed and approved by CES for deposit.

Contrary to Firm policy, neither the BOM nor other Branch personnel routed to CES certificates that bore no “restricted” legend but which were accompanied by legal opinion letters representing that the shares were unrestricted. Okin had responsibility for the implementation of this procedure for his areas of supervision.

27. Beginning around September 2010, Okin worked with the Senior Executive, the compliance department, and the BOM to adopt a procedure pursuant to which CES would conduct a limited review for one customer’s deposits of certificates without a restricted legend that were accompanied by legal opinion letters representing that the shares were unrestricted. Okin directed CES to conduct this limited review of that customer.

28. From August through October 2010, the BOM made repeated requests to Okin and the Senior Executive that they exempt the Customer from the minimum non-penny stock equity balance condition of the July 2010 policy. The BOM ultimately proposed that the exemption be granted with the Customer’s shares deposits being subject to the CES limited review described in paragraph 27. Okin, despite his awareness of information indicating red flags addressed above, and the Senior Executive granted the request. The BOM thereafter facilitated the Customer’s deposit and sale of securities in the last of the five issuers, SSPT, pursuant to the limited review. In November 2010, the Customer deposited physical certificate shares of SSPT with no “restricted” legend, but accompanied by a legal opinion letter. Personnel from CES reviewed the deposit of SSPT shares under the limited review but did not detect that the transactions failed to meet the requirements of Rule 144. The BOM then allowed the Customer to sell the SSPT shares in illegal unregistered transactions.

29. The limited review was unreasonable and failed to prevent and detect the BOM’s violations of Section 5. If Okin had not granted the exemption to the July 2010 policy, and not allowed the limited CES review of the Customer’s deposit and sales, it is likely the BOM’s violations of Section 5 would have been prevented or detected.

D. VIOLATIONS

30. Sections 15(b)(4)(E) and 15(b)(6) of the Exchange Act provide that the Commission may sanction a supervisor for failing reasonably to supervise, with a view to preventing violations of the federal securities laws, another person subject to his supervision who commits such a violation.

31. As a result of the conduct described above, Okin failed reasonably to supervise the BOM, within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act, with a view to preventing the BOM’s violations of Section 5 of the Securities Act.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

1. Okin be, and hereby is, barred from association in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization 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;

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 arbitration award related to the conduct that served as the basis for the Commission order; (b) 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 (c) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order;

2. Okin shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$125,000 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 by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. 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 (for transfer to the general fund of United States Treasury in accordance with Exchange Act Section 21F(g)(3)) 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 Okin 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.

3. 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 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