



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 26, 2013

Ms. Amy N. Kroll
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006-1806

Re: In the Matter of Oppenheimer Asset Management Inc. and Oppenheimer Alternative Investment Management, LLC (NY-8640)
Oppenheimer Holdings, Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Ms. Kroll:

This is in response to your letter dated January 25, 2013, written on behalf of Oppenheimer Holdings, Inc. (Company) and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an “ineligible issuer” under Rule 405, for purposes of Rules 164 and 433 of the Securities Act, due to the entry on March 11, 2013, of a Commission Order (Order) pursuant to Section 8A of the Securities Act and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 naming two Company subsidiaries, Oppenheimer Asset Management Inc. (OAM) and Oppenheimer Alternative Investment Management, LLC (OAIM), as respondents. The Order finds, among other things, that OAM and OAIM violated Section 17(a)(2) and 17(a)(3) of Securities Act and requires that OAM and OAIM cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act.

Based on the facts and representations in your letter, and assuming the Company, OAM and OAIM comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer for purposes of Rules 164 and 433 of the Securities Act by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 for purposes of Rules 164 and 433 of the Securities Act is hereby granted, and the effectiveness of such relief is as of the date of the entry of the Order. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

/s/

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

Amy N. Kroll
Direct Phone: 202.373.6118
Direct Fax: 202.373.6001
amy.kroll@bingham.com

January 25, 2013

Advance Copy Via E-Mail

Mary J. Kosterlitz, Esq.
Chief of the Office of Enforcement Liaison
U.S. Securities and Exchange Commission
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549-3628

**Re: In the Matter of Oppenheimer Asset Management Inc. and Oppenheimer
Alternative Investment Management, LLC**

Dear Ms. Kosterlitz:

We are writing on behalf of our client Oppenheimer Holdings, Inc. (“Oppenheimer”). Oppenheimer’s subsidiaries, Oppenheimer Asset Management Inc. (“OAM”) and Oppenheimer Alternative Investment Management, LLC (“OAIM”) (collectively, the “Respondents”), are settling the above-referenced matter, which followed an investigation by the U.S. Securities and Exchange Commission (the “Commission”). The settlement concerns the dissemination of marketing materials and quarterly reports related to Respondents’ valuation policies and Oppenheimer Global Resource Private Equity Fund I, L.P.’s (“OGR”) performance.

Oppenheimer hereby respectfully requests, pursuant to Rule 405 under the Securities Act of 1933, as amended (“Securities Act”), that the Division of Corporation Finance, on behalf of the Commission, for good cause shown determine that Oppenheimer shall not be considered an “ineligible issuer” as defined in Rule 405 as a result of the settlement, as described below. Oppenheimer respectfully requests that this waiver be granted effective upon the entry of the Administrative Order. It is our understanding that the Division of Enforcement does not object to the grant of the requested waiver.

BACKGROUND

Respondents are registered with the Commission as investment advisers. Oppenheimer & Co. Inc. (“OPCO”), a registered broker-dealer and investment adviser, is an affiliate of OAM and all persons providing services for OAM are employees of OPCO. OAIM is wholly owned by OAM, and OAM is the sole member of OAIM. OAIM is the general

Boston

Hartford

Hong Kong

London

Los Angeles

New York

Orange County

San Francisco

Santa Monica

Silicon Valley

Tokyo

Walnut Creek

Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000

F 202.373.6001

bingham.com

partner of and, together with employees of OAM, provides investment advisory services to several funds, including OGR and Oppenheimer Private Equity Fund I, L.P. (“OPE”), funds of private equity funds. Respondents are subsidiaries of Oppenheimer, the shares of which are listed on the New York Stock Exchange. Oppenheimer is a reporting company under the Securities Exchange Act of 1934 (“Exchange Act”).

The conduct alleged in the Administrative Order concerns the marketing of OGR to investors from October 2009 through June 2010. The Administrative Order alleges that Respondents disseminated marketing materials to prospective investors and quarterly reports to existing investors that contained material misrepresentations and omissions concerning Respondents’ valuation policies and OGR’s performance. Respondents stated in the marketing materials and quarterly reports to investors that OGR’s asset values were “based on the underlying managers’ estimated values” when that was not the case with respect to one of the assets in OGR’s investment portfolio. In addition, the Order alleges that Respondents’ written policies and procedures did not provide a reasonable process for ensuring that the valuations provided in their quarterly performance summary tables and marketing presentations were in fact those of the underlying managers, as was represented by the former employees overseeing OAIM’s investments.

The Staff of the Commission’s Division of Enforcement engaged in settlement discussions with Respondents in connection with the above-described investigation. As a result of these discussions, Respondents have each submitted an Offer of Settlement which the Commission has determined to accept. The Commission alleges that Respondents willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rules 206(4)-7 and 206(4)-8 thereunder. As contemplated by the offers of settlement, the Commission issued an order instituting administrative proceedings against Respondents (the “Administrative Order”).

Respondents neither admit nor deny the allegations in the Administrative Order except as to personal and subject matter jurisdiction, which they have admitted, and they consent to the entry of the Administrative Order. As negotiated by the parties, the Administrative Order, among other things: (i) orders Respondents to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act and Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder, (ii) censures Respondents, (iii) requires Respondents to pay a civil money penalty in the amount of \$617,579,¹ (iv) requires Respondents to pay a total of \$2,269,098 in disgorgement and pre-judgment interest to certain OGR investors, and (v) requires that Respondents comply with certain undertakings, including retaining, at their own expense, the services of an independent consultant to conduct a review of Respondents’ valuation policies and procedures.

¹ Respondents will also pay a penalty of \$132,421 to the Commonwealth of Massachusetts in a related action by the Commonwealth of Massachusetts.

DISCUSSION

The Securities Act rules permit an issuer and other offering participants to communicate more freely during registered offerings by using free-writing prospectuses, but only if the issuer is not an “ineligible issuer.”² Thus, being an ineligible issuer will disqualify an issuer from a significant benefit under the new rules.

Rule 405 under the Securities Act makes an issuer an “ineligible issuer” if, during the past three years, the issuer or any entity that at the time was a subsidiary of the issuer “was made the subject of any judicial or administrative decree or order arising out of a governmental action” that, among other things, “(A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws” or “(B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws.”³ Rule 405 also authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”⁴ The Commission has delegated authority to the Division of Corporation Finance to grant waivers from any of the ineligibility provisions of this definition.⁵

The Administrative Order may be deemed to be an administrative order of the kind that would result in Oppenheimer becoming an ineligible issuer for a period of three years after the Administrative Order is executed. This result would preclude Oppenheimer, for a period of three years, from using free-writing prospectuses during registered offerings of its securities. This would be a significant detriment for Oppenheimer.

As described above, Rule 405 authorizes the Commission to determine that a company shall not be an ineligible issuer, notwithstanding that the company becomes subject to an otherwise disqualifying administrative order. Oppenheimer believes that there is good cause, in its case, for the Commission to make such a determination with respect to the Administrative Order on the grounds that the disqualification of Oppenheimer is not warranted given the nature of the alleged violations in the Commission's order. The conduct alleged in the Administrative Order, which involves actions directed by a former

² Being an ineligible issuer will disqualify an issuer under Rules 164 and 433, whether or not it is a well-known seasoned issuer, thereby preventing the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities.

³ See 17 C.F.R. §§ 230.405.

⁴ *Id.*

⁵ See 17 C.F.R. § 200.30-1. See also Securities Act Release No. 8591 at note 215 (July 19, 2005).

Mary J. Kosterlitz, Esq.
January 25, 2013
Page 4

employee of a subsidiary of Oppenheimer and implemented by his team, neither relates to Oppenheimer or its subsidiaries' disclosures in their own filings with the Commission nor to any offering by Oppenheimer of its securities. Further, the Administrative Order does not allege that Respondents engaged in violations of any provisions of the federal securities laws that require intentional or reckless misconduct.

In light of the foregoing, we believe that disqualification of Oppenheimer as an ineligible issuer is not necessary under the circumstances, either in the public interest or for the protection of investors, and that Oppenheimer has shown good cause for the requested relief to be granted. Accordingly, we respectfully request that the Division of Corporation Finance, on behalf of the Commission, pursuant to Rule 405, determine that it is not necessary under the circumstances that Oppenheimer be an "ineligible issuer" within the meaning of Rule 405 as a result of the Administrative Order.

Please do not hesitate to contact me at 202.373.6118, if you have any questions about this request.

Sincerely yours,

Handwritten signature of Amy Natterson Kroll in cursive script.

Amy Natterson Kroll