



DISCIPLINARY DECISION

Cboe Exchange, Inc.

File No. URE-146-01/Star No. 20200685197

Oppenheimer & Co., Inc.

Pursuant to Exchange Rule 13.3, attached to and incorporated as part of this Decision is a Letter of Consent.

Applicable Rules

- Cboe Rules 4.13 and 8.43 – Reports Related to Position Limits and 4.24 and 8.16 – Supervision.¹

Sanction

A censure, a monetary fine in the amount of \$450,000 and an undertaking described in the Letter of Consent.

Effective Date

September 14, 2023

/s/ Greg Hoogasian

Greg Hoogasian, CRO, EVP

¹ Cboe Rule 4.13 was re-numbered to Cboe Rule 8.43, and Cboe Rule 4.24 was re-numbered to Cboe Rule 8.16, both as of October 7, 2019. The text of the rules was unchanged.

Cboe Exchange, Inc.
LETTER OF CONSENT
File No. URE-146-01/Star No. 20200685197

In the Matter of:

Oppenheimer & Co. Inc.
85 Broad Street
New York, NY 10004

Subject

Pursuant to the provisions of Cboe Exchange, Inc. ("Cboe" or the "Exchange") Rule 13.3 – Expedited Proceeding, Oppenheimer & Co. Inc. ("Oppenheimer" or the "Firm") submits this Letter of Consent for the purpose of proposing a settlement of the alleged rule violations described below.

The Firm neither admits nor denies that violations of Exchange Rules have been committed, and the stipulation of facts and findings described herein do not constitute such an admission.

BACKGROUND

1. During all relevant periods herein, Oppenheimer was acting as a registered Broker-Dealer and was an Exchange Trading Permit Holder registered to conduct floor brokerage business on the Exchange. The Firm's registrations remain in effect.
2. This matter originated from a review conducted by FINRA's Department of Market Regulation, on behalf of Cboe, regarding Oppenheimer's compliance with its obligations to report certain options positions and related information to the Large Options Position Report system ("LOPR").

VIOLATIVE CONDUCT

Applicable Rules

3. During all relevant periods herein, the following rules were in full force and effect: Exchange Rules 4.13 and 8.43 – Reports Related to Position Limits and Rules 4.24 and 8.16 – Supervision.¹
4. Exchange Rules 4.13(a) and 8.43(a) provided, in relevant part, that “In a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange.”
5. Exchange Rules 4.24(e) and 8.16(e) required, in relevant part, that “Each Trading Permit Holder shall establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business in which the Trading Permit Holder engages and to supervise the activities of all associated persons. The written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect violations of applicable securities laws and regulations, and applicable Exchange rules.”

Reports Related to Position Limits

6. Regulators use the information required by Exchange Rules 4.13 and 8.43 (LOPR information) to surveil for violations of securities rules and regulations, including potentially manipulative behavior such as attempting to corner the market in the underlying equity, leveraging an option position to affect the price, or moving the underlying equity to change the value of a large option position. The accuracy of LOPR information is therefore essential to regulators’ reviews.
7. From January 1, 2017 through on or about September 15, 2021 (the Relevant Period), in at least 809,000 instances, Oppenheimer failed to report, or inaccurately reported, positions to the LOPR where the Firm’s LOPR reporting system did not recognize that the accounts of certain customers were acting in concert (“AIC”).
8. Specifically, where an account held positions with fewer than 200 options contracts, Oppenheimer’s LOPR reporting system erroneously failed to

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aggregate the account with accounts with which it was acting in concert. As a result, the Firm failed to report approximately 21,000 positions to the LOPR in approximately 370,000 instances.² Where an account or AIC group held options positions exceeding 200 contracts, Oppenheimer's LOPR reporting system erroneously failed to aggregate the account with accounts with which it was acting in concert. As a result, in approximately 439,000 instances, the Firm reported approximately 29,000 positions to the LOPR that included inaccurate AIC information. Oppenheimer represents it remediated this LOPR reporting issue by September 15, 2021.

9. The acts, practices, and conduct described in Paragraphs 7 and 8 constitute violations of Exchange Rules 4.13 and 8.43 by the Firm, in that Oppenheimer failed to report or inaccurately reported positions to the LOPR in approximately 809,000 instances.

Written Supervisory Procedures

10. During the Relevant Period, Oppenheimer failed to establish a supervisory system, including written supervisory procedures ("WSPs") reasonably designed to prevent and detect violations of LOPR reporting rules for accounts acting in concert.
11. While Oppenheimer had WSPs in place during the Relevant Period relevant to its LOPR reporting obligations, those WSPs focused only on the Firm's process for identifying AIC relationships at account opening, and did not provide guidance for how the Firm should identify changes in AIC relationships. Oppenheimer also did not have any system of follow-up and review to identify AIC relationships if AIC information changed or to verify the AIC information the Firm reported to the LOPR matched what was stored in its customer account records.
12. The acts, practices and conduct described in Paragraphs 10 and 11 constitute violations of Exchange Rules 4.24 and 8.16 by Oppenheimer, in that the Firm failed to establish, maintain and enforce WSPs reasonably designed to ensure compliance with Exchange LOPR reporting rules.

SANCTIONS

13. On October 5, 2017, the Exchange accepted a Letter of Consent in which Oppenheimer was censured and fined \$625,000 for failing to report or inaccurately reporting certain options positions to the LOPR system in at least

² An "instance" represents a single failure to report a given options position or a single inaccurate report of an options position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position was not reported or was reported inaccurately.

1.5 million instances from January 19, 2010, through December 31, 2016, and for related supervisory violations.

14. In a related matter, also in October 2017, Oppenheimer was censured and fined \$75,000 on behalf of NASDAQ PHLX LLC for overreporting positions to the LOPR in approximately 261,000 instances and for related supervisory violations.
15. In light of the alleged rule violations described above, and prior relevant disciplinary history, the Firm consents to the imposition of the following sanctions:
 - a. A censure;
 - b. A monetary fine in the amount of \$450,000; and
 - c. An undertaking whereby, within thirty (30) days of acceptance of this Letter of Consent by the Business Conduct Committee, a registered principal of Oppenheimer shall submit to Cboe, care of FINRA's Department of Enforcement, a signed, dated attestation providing the following information: (1) a reference to this matter; and (2) a representation that Oppenheimer has implemented remediation to address issues with its WSPs described above.

If this Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations, and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 13.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The Firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The Firm agrees to pay the monetary sanction upon notice that this Letter of Consent has been accepted and that such payment is due and payable. The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The Firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 13.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the Firm.

The Firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the Firm.

The Firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The Firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the Firm to submit it.

Date: 9/7/23

Oppenheimer & Co. Inc.

By: 

Name: Dennis McNAMARA

Title: EVP and General Counsel