



DIVISION OF
MARKET REGULATION

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

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November 8, 1985

SCHULTE ROTH & ZABEL

Deborah R. Schumer, Esq.
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900 Third Avenue
New York, New York 10022

Dear Ms. Schumer:

This is in response to your request for a no-action position if Oppenheimer & Co., Inc. ("Opco") includes investments in certain limited partnerships in its calculation of net capital under Rule 15c3-1.

I understand the pertinent facts to be as follows: Opco is the general partner and certain officers of Opco are the limited partners of a certain limited partnership ("the General Partner"). The General Partner is the sole general partner, and Opco is a limited partner of an investment partnership ("the Investment Partnership") which was organized to invest primarily in securities listed on the New York Stock Exchange. Along with Opco, customers of Opco are jointly investing in limited partnership interests of the Investment Partnership.

Opco has made a capital contribution to the General Partner which, in turn, has been invested into the Investment Partnership. Additionally, Opco has made capital contributions directly to the Investment Partnership as a limited partner. All securities purchased by the Investment Partnership are held in an account carried by Opco. This account is treated as a customer account.

Under the terms of the limited partnership agreements of both the General Partner and Investment Partnership, Opco has the right to withdraw its funds from those partnerships without the consent of any other person.

Ordinarily, under the net capital rule, Opco's investments in the partnerships are treated as assets not readily convertible into cash and therefore the broker-dealer must take a 100% deduction from net worth in computing net capital as to these investments. However, you contend that Opco's capital

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investments into these partnerships are as readily available as investments would be if held in a proprietary account. Under these circumstances, you suggest that the formal limited partnership structure be ignored in favor of permitting Opco to "look through" its partnership interest and allow Opco, on a pro rata basis, to treat its capital investments in the partnerships as if they were direct proprietary investments in the underlying securities held in the portfolio of the Investment Partnership. Hence, Opco would compute its net capital by appropriately haircutting its pro rata share of the underlying securities held by the Investment Partnership. In addition to the above calculation, Opco will include in its net capital computation all liabilities of the General Partner and Investment Partnership in excess of their respective assets.

Opco expects to utilize this structure or a similar version in forming other investment partnerships, i.e., having the same provisions as contained in the General Partner and Investment Partnership's agreements, and having the underlying securities held in a customer account at Opco. As a concentration limitation, you have suggested Opco will be limited to invest, in the aggregate, no more than 25% of its excess net capital in similar investments.

The Division finds your proposed method unacceptable because merely including the excess liabilities over the respective assets of the partnerships in Opco's net capital computation, without calculating net capital for the partnerships, fails to account for allowable/non-allowable assets.

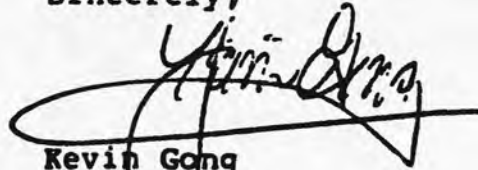
Based on the foregoing facts and representations, the Division will not raise any questions or recommend any action to the Commission if Opco in computing its net capital: 1) computes net capital under Rule 15c3-1 for the partnerships and take any resulting deficit as a charge in computing the broker-dealer's net capital, 2) treats any carrying value of the partnership interests on the broker-dealer's books as a non-allowable asset, 3) increase the broker-dealer's net capital by the percentage of its pro rata interests of any net capital equity in the partnership(s), and (4) does not otherwise consolidate the assets and liabilities of the partnerships in its own computation of net capital.

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In order to limit over-concentration in similar joint partnership investments, Opco will be allowed to treat all their joint partnership investments which contain similar provisions permitting the withdrawal of capital in the manner described above, so long as Opco does not invest, in the aggregate, more than 25% of its excess net capital (before any deductions required herein) in these similar investments. Any investments above 25% will be subject to a 100% charge as investments in limited partnership interests which are assets not readily convertible into cash.

If you have any further questions, please call us.

Sincerely,



Kevin Gong
Attorney Advisor

59560.032

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August 20, 1985

FEDERAL EXPRESS

Michael A. Macchiaroli, Esq.
Assistant Director
Compliance & Finance Responsibility
Division of Market Regulation
Securities and Exchange Commission
Judiciary Plaza
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Macchiaroli:

On behalf of Oppenheimer & Co., Inc. ("Opco"), a registered broker-dealer, we are requesting confirmation that the Staff of the Securities and Exchange Commission ("Commission") will not recommend that the Commission take enforcement action if Opco, in calculating its net capital pursuant to Rule 15c3-1 promulgated under Section 15 of the Securities Exchange Act of 1934, as amended (the "Act"), includes its pro rata share of the securities held by certain limited partnerships in which Opco has invested.

Opco has become the general partner of a limited partnership (the "General Partner") whose limited partners are certain officers of Opco. The General Partner acts as the general partner of an investment partnership (the "Investment Partnership") organized to invest primarily in securities listed on The New York Stock Exchange, Inc.

Opco has made a capital contribution to the General Partner which has invested Opco's capital contribution in the Investment Partnership. In addition, Opco has contributed capital to the Investment Partnership as a limited partner.

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To: Michael A. Macchiaroli, Esq.

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In the aggregate, Opco's contributions to both partnerships have totalled \$2,000,000. All securities purchased by the Investment Partnership are held in an account at Opco as to which Opco complies with the requirements of Rule 15c3-3 under the Act regarding reserves for and custody of the securities of customers. The Investment Partnership's account is, in all other respects, also treated as a customer account of Opco.

As the general partner of the General Partner, Opco will include in its net capital computation all liabilities of the General Partner in excess of the General Partner's assets. Similarly, as the sole general partner of the General Partner, Opco will also be including in its net capital computation the liabilities of the Investment Partnership to the extent that those liabilities exceed the assets of the Investment Partnership.

With respect to the value of Opco's investment in the partnerships, we are aware that generally, an interest in a limited partnership is treated as a security for which there is no ready market under Rule 15c-3-1(c)(2)(vii) and, accordingly, a broker-dealer must deduct from its net capital 100% of the carrying value of such interest.

Under the terms of the limited partnership agreements of both the General Partner and the Investment Partnership, Opco has the right (without the consent of any other person) to withdraw its funds from those partnerships if Opco determines it necessary to do so to assist it in complying with the net capital rules. By virtue of these provisions, the capital contributed by Opco to these partnerships is as available to Opco to meet its net capital requirements as that capital would be were it held in a proprietary account at Opco. Under these circumstances, we are of the view that the formal limited partnership structure should be ignored in favor of permitting Opco to calculate its net capital in a manner which more truly reflects Opco's financial position and its liquidity. Therefore, we are of the opinion that Opco should be permitted to "look through" its partnership interests in the General Partner and the Investment Partnership to the securities in the portfolio of the Investment Partnership and to include in Opco's computation of its net capital, Opco's pro rata share (in this case, approximately 6%) of the securities held by the Investment Partnership, less any haircuts applicable to such securities under Rule 15c3-1.

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In addition to the Investment Partnership, Opco expects to utilize this or a similar structure in forming other investment partnerships. All such partnership agreements would contain provisions similar to those contained in the agreements of the Investment Partnership and the General Partner permitting the withdrawal of Opco's capital (without the consent of any other person) to assist it in complying with net capital provisions. Accordingly, we request that so long as Opco does not invest, in the aggregate, more than 25% of its excess net capital in similar investments, and that all securities in each such partnership are held in a customer account at Opco as to which Opco complies with the requirements of Rule 15c3-3 under the Act regarding reserves for and custody of the securities of customers, that Opco be permitted to calculate its net capital respecting those partnership interests in the "look through" manner set forth above.

Should you have any questions, please telephone me.

We thank you for your consideration in this matter.

Very truly yours,

Deborah R. Schumer

cc: Mr. Martin Hobby