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March 4, 2014

**Via Commercial Courier**

Ms. Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

**Re: In the Matter of the Association of Joel E. Breiter (CRD # 1212742) with Oppenheimer & Co., Inc. (BD # 249)**

Dear Ms. Murphy:

Effective February 18, 2014, and pursuant to the Securities Exchange Act of 1934 (“SEA” or “Exchange Act”) Rule 19h-1(a)(3)(ii) (“Rule 19h-1”), the Financial Industry Regulatory Authority (“FINRA”) hereby gives notification to the United States Securities and Exchange Commission (“SEC” or “the Commission”) of the association of Joel E. Breiter (“Breiter”) with Oppenheimer & Co., Inc. (“Oppenheimer” or “the Firm”) as a General Securities Representative (Series 7). In January 2014, the Firm submitted a Membership Continuance Application (“MC-400” or “the Application”) with FINRA’s Department of Registration and Disclosure seeking Breiter’s association with the Firm.<sup>1</sup>

**Breiter’s Disqualifying Event**

Breiter is statutorily disqualified due to his October 14, 2005 guilty plea to charges of operating a motor vehicle with .08 of 1% alcohol, a felony<sup>2</sup> in the State of New York.<sup>3</sup> Specifically, while

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<sup>1</sup>See the MC-400 Application, as well as related documents, filed by Oppenheimer & Co., Inc. on behalf of Joel E. Breiter, dated January 17, 2014 (attached as Exhibit 1).

<sup>2</sup>When Breiter was arrested he was charged with a misdemeanor offense because it was not known by the arresting authorities that he had been previously convicted of an earlier misdemeanor in September 2004. On October 14, 2005, Breiter pled guilty to the felony.

driving his car on a public highway in an eastbound direction, Breiter failed to stay in his driving lane and crossed over the solid double yellow line into the westbound lane. At that point, Breiter was being followed by a police officer and he failed to comply with the officer's vehicle stop. Breiter did not stop his vehicle until he reached the driveway of his home. While in his driveway, Breiter was interviewed by police and was given a field sobriety test, which he failed.

As a result of his guilty plea and conviction, Breiter was sentenced to 60 days of imprisonment; (2) assessed a \$1,000 fine; (3) had his license revoked for one year; and (4) was placed on probation for 5 years.

### **Breiter's Proposed Association**

The Firm proposes to employ Breiter as a General Securities Representative (Series 7). Breiter will be employed as an Executive Director and he will work from a branch office of the Firm, which is located at 888 Veteran Memorial Highway, Suite 400, Hauppauge, New York.

Breiter's compensation package, which includes salary, commission and forgivable loans, is detailed in the attached exhibit.<sup>4</sup>

### **Breiter's Registration and Employment History**

#### *Registration History*

Breiter was first registered in the securities industry as a General Securities Representative (Series 7) in March 1987.<sup>5</sup> He qualified for the Uniform Securities Agent State Law Examination (Series 63), in April 1987 and the Investment Advisors Law Examination (Series 65), in February 1996.

#### *Employment History*

Breiter was first employed with Donaldson, Lufkin & Jenrette Securities, Corp. from September 1983 to September 1989; he then worked for CIBC Oppenheimer Corp. from September 1989 to

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<sup>3</sup>See Certificate of Disposition for The People of the State of New York vs Joel Breiter, dated August, 19, 2013 (attached as Exhibit 2).

<sup>4</sup>See letter from John West, Branch Manager, Oppenheimer, to Joel Breiter, dated December 5, 2013 (attached as Exhibit 3).

<sup>5</sup>See CRD records for Breiter (attached as Exhibit 4).

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February 1998; and Breiter was employed with UBS Financial Services, Inc. (“UBS”) from February 1998 to December 2013.<sup>6</sup>

*Breiter’s Additional Criminal History*

In May 2004, Breiter was charged with a misdemeanor for Operating a Motor Vehicle With a .08 of 1 Blood Alcohol Concentration. He pled guilty to that misdemeanor on September 21, 2004. Breiter was fined \$1,000.00; had his license revoked; and he was placed on probation for a period of 3 years.

*Public Judgment and Lien*

On September 26, 2001, a judgment was filed against Breiter by the New York State Tax Commission in the amount of \$1,953. The judgment has been noted as “satisfied.”

*Customer Complaints*

Breiter has been the subject of three customer complaints.<sup>7</sup> All of the complaints were based on transactions in auction rate securities (“ARS”), which were sold by Breiter to the complainants while he was employed with UBS. The complaints were related to “the sale of an auction rate security (ARS) that was made prior to the widespread illiquidity in the ARS market that occurred in February 2008.” To settle the complaints, UBS repurchased these securities. Breiter did not contribute to the settlement of these complaints.

The first complaint, which was received in March 2008, was settled in the amount of \$375,000. The settlement amount represented the initial par value of the customer’s ARS position. UBS agreed to repurchase the ARS securities at issue at par value pursuant to a global repurchase settlement it entered into with several regulatory bodies.

The second and third customer complaints were settled by UBS for \$175,000 and \$250,000, respectively. As with the settlement in the first complaint the settlement amounts represented the initial par value of the ARS.

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<sup>6</sup>*Id.*

<sup>7</sup>See customer complaints filed against Joel Breiter (CRD Disclosure Occurrence Composite #'s 1468510, 1468508 and 1468509) (all attached as Exhibit 5).

### **Prior 19h-1 Approvals**

On May 15, 2012, Breiter was approved by FINRA to associate with UBS pursuant to SEA Rule 19h-1.<sup>8</sup> The SEC acknowledged Breiter's association with UBS on September 10, 2012.<sup>9</sup>

### **SD Examinations of Breiter**

In November 2013, while employed with UBS, FINRA completed a statutory disqualification examination of Breiter. There were no deficiencies or findings from that examination.<sup>10</sup>

### **The Firm's Information**

Oppenheimer is based in New York, New York and has been a member of FINRA (f/k/a NASD) since March 1945. The Firm has approximately 114 registered branch offices, 96 of which are Offices of Supervisory Jurisdiction ("OSJ"), approximately 2,458 registered representatives, and 3,398 non-registered employees.

### **Other Statutorily Disqualified Individuals at Oppenheimer**

The Firm currently employs five statutorily disqualified individuals in addition to Breiter: Steven Keesal ("Keesal"), Joseph Popp ("Popp"), William Bierlin ("Bierlin"), Edward Schmitz ("Schmitz"), and Robert Okin ("Okin").<sup>11</sup>

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<sup>8</sup>See Notice Pursuant to Rule 19h-1 In the Matter of the Association of Joel E. Breiter as a General Securities Representative with UBS, dated May 15, 2012 (attached as Exhibit 6).

<sup>9</sup>See the SEC's Acknowledgement Letter, dated September 10, 2012 (attached as Exhibit 7).

<sup>10</sup>See letter from Christopher Colletti, Examination Manger, FINRA, to Melinda Lee, Director, UBS, dated November 22, 2013 (attached as Exhibit 8).

<sup>11</sup>Keesal is disqualified due to a guilty plea to the felony offense of second degree burglary in the Superior Court of the State of California, County of Orange, on May 5, 2005. Keesal's association with Oppenheimer was approved by FINRA pursuant to SEA Rule 19h-1, effective June 12, 2008. Popp is disqualified due to May 2008 felony DWI conviction. Oppenheimer filed an MC-400 Application on behalf of Popp in December 2008. The Department recommended approval of Popp's association as a GS and that matter is currently under review with the SEC. Berlin was convicted of a felony in 1998 and subject to heightened supervision until 2008. Bierlin is still currently disqualified as the result of an SEC action from 1997, but was not required to go through the MC-400 Application process with FINRA. Schmitz and Okin were also not required to go through the MC-400 Application process due to the circumstances of their disqualifying events, and they are therefore not subject to heightened supervision.

### **Supervision of Breiter**

#### *Breiter's Primary Supervisor – John West (CRD # 1406429)*

Breiter will be supervised by John West (“West”), the branch manager in the Hauppauge branch office. West has been employed with Oppenheimer since January 2004 and he has been registered as a General Securities Principal since November 7, 1989.

West was first registered in the securities industry in September 1985 as a General Securities Representative (Series 7).<sup>12</sup> He then qualified for the Series 63, Uniform Securities Agent State Law Examination (AG), in October 1985; the Series 24, General Securities Principal, in November 1989, the Series 8 – General Securities Supervisor in September 1991; the Series 65, Investment Advisors Law Examination (RA), in December 1997.

West has been registered with the following broker-dealers during the following periods of time:<sup>13</sup>

- |                                 |                   |
|---------------------------------|-------------------|
| • Oppenheimer                   | 1/2002 – Present  |
| • Josephthal & Co., Inc.        | 05/1990 – 01/2002 |
| • Vanderbilt Securities, Inc.   | 01/1990 – 05/1990 |
| • J. T. Moran & Co., Inc.       | 05/1988 – 01/1990 |
| • Sherwood Capital, Inc.        | 02/1987 – 05/1988 |
| • First Jersey Securities, Inc. | 08/1985 – 01/1987 |

One complaint has been filed against West. The complaint, which was received in November 2001, resulted in arbitration. It was reported that the claimant withdrew his arbitration against West, with prejudice, prior to settling the arbitration.<sup>14</sup>

#### *Breiter's Interim Supervisor – Steven S. Kahane*

In West's absence, Steven S. Kahane (“Kahane”) will act as Breiter's interim supervisor. Kahane also works from the branch office in Hauppauge, New York. Kahane has been registered as a General Securities Sales Supervisor – Options Module (Series 9) since December 2001 and as a General Securities Sales Supervisor- General Module (Series 10) since June 2001.

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<sup>12</sup>See CRD records for John West, CRD # 1406429 (attached as Exhibit 9).

<sup>13</sup>See Exhibit 9.

<sup>14</sup>See Disclosure Occurrence Composite for Occurrence # 1053329 (attached as Exhibit 10).

In that Kahane is not registered as a General Securities Principal (Series 24), the Firm has provided an attestation stating that Breiter will not be able to perform any functions which cannot be supervised by a General Securities Sales Supervisor, holding a Series 9 or 10 registration.<sup>15</sup>

Kahane was first registered in the securities industry as a General Securities Representative (Series 7) in October 1992.<sup>16</sup> He also qualified for the Uniform Securities Agent – State Law Examination (Series 63) in October 1992.<sup>17</sup>

Kahane has been registered with the following broker-dealers, during the following periods of time:<sup>18</sup>

- Oppenheimer & Co. 11/2005 – Present
- Advest, Inc. 05/1998 – 11/2005
- Merrill Lynch, Pierce, Fenner & Smith (“Merrill Lynch”) 01/1993 – 05/1998
- Chatfield Dean & Co., Inc. 07/1992 – 11/1992

There have been three customer complaints filed against Kahane. One of the complaints, which was filed in 1998, alleged unauthorized trading and churning during periods in 1997 -1998.<sup>19</sup> Kahane’s employer, Merrill Lynch, settled the complaint for \$15,500. Kahane did not contribute to the settlement. In the second complaint, which was filed in 2008, the customer alleged that they were never informed of the penalties associated with their annuity investment and that they were told that their principal would never decrease. The customer sought \$5,000 in compensatory damages but the matter was closed with no action. A third complaint, also filed in 2008, alleged similar facts as the other 2008 complaint and similarly sought \$5,000 in compensatory damages. That complaint was also closed with no action.

### Terminations

In April 1998, as a result of an internal review by Merrill Lynch, Kahane was terminated from Merrill, effective May 1, 1998.<sup>20</sup>

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<sup>15</sup>See Steven Kahane’s attestation, received from Oppenheimer, dated February 7, 2014 (attached as Exhibit 11).

<sup>16</sup>See CRD records for Steven S. Kahane, CRD # 2271030 (attached as Exhibit 12).

<sup>17</sup>See Exhibit 12.

<sup>18</sup>See Exhibit 12.

<sup>19</sup>See customer complaints filed against Kahane (CRD Disclosure Occurrence Composite #'s 586222, 1386850 and 1386849) (all attached as Exhibit 13).

<sup>20</sup>See CRD Disclosure Occurrence Composites # 303559 and 274439. Also see Form U5, Uniform Termination Notice for Securities Industry Registration, filed by Merrill Lynch on behalf of Steven Kahane (all attached as Exhibit 14).

Kahane has not been the subject of any additional regulatory actions, criminal events or customer complaints.

**Basis for FINRA's Filing of the 19h-1 Notification**

SEA Rule 19h-1(a)(3)(ii) reads:

A notice need not be filed with the Commission pursuant to this rule if . . .

- ii. The self-regulatory organization finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the person subject to the statutory disqualification pursuant to an order of the Commission under paragraph (d) of this section or other substantially equivalent written communication and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

The Application meets all applicable conditions of this rule. Pursuant to Rule 19h-1, Breiter's proposed association with Oppenheimer, except for the identity of the supervisors and the employing firm, is the same in all material respects as that imposed in his prior Rule 19h-1 approval to associate with UBS. Further, there is no evidence of new or intervening misconduct by Breiter since his last approval. While Kahane, the alternate supervisor, does not hold the Series 24 registration, FINRA does not deem this to be material because the Firm has asserted that Breiter will not be engaging in any activities that cannot be supervised by a General Securities Sales Supervisor holding a Series 9 or 10 license, both of which Kahane presently holds. Further, Breiter's prior supervisor, Helen Minieri Stacy, from his earlier 19h-1 approval, similarly did not hold a Series 24 license.

While employed with Oppenheimer, Breiter will be subject to the same plan of heightened supervision as outlined in his prior 19h-1 approval.<sup>21</sup>

FINRA knows of no other conduct or other circumstances that would cause Breiter's association with Oppenheimer to be inconsistent with the public interest or the protection of investors and believes that this form of notification is appropriate. Based on the above, FINRA is filing this notification pursuant to SEA Rule 19h-1 (a)(3)(ii).

The Firm is also a member of the following exchanges and self-regulatory organizations ("SRO's): MSRB, BATS-YX, BATS-ZX, CBOE, CHX, EDGA, EDGX, ISE, BX, PHLX, NQX, ARCA, NYSE and NYSE-MKT. With the exception of the MSRB, which is not required

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<sup>21</sup>See Exhibit 6.

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to concur with this notification, all of the other named SRO's have concurred with FINRA's determination to file this notification on Breiter's behalf.

Please feel free to contact the undersigned, if you have any questions in regards to the filing of this notification.

Sincerely,



Lorraine Lee-Stepney  
Manager, Statutory Disqualification Program  
FINRA

Enclosures

cc: Peter Byer, Esq.  
Of Counsel  
Davidson & Grannum, LLP

(Via Commercial Courier)

Daniel M. Sibears  
Executive Vice President  
Member Regulation Programs  
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(Via Electronic Mail w/out attachments)

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