

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association  
of  
Joseph P. Popp  
as a  
General Securities Representative  
with  
Oppenheimer & Co., Inc.

Notice Pursuant to  
Rule 19h-1  
Securities Exchange Act  
of 1934

SD-1750

Dated: January 16, 2014

**I. Introduction**

On November 24, 2008, Oppenheimer & Co. Inc. (“Oppenheimer” or the “Firm”) filed a Membership Continuance Application (“MC-400” or the “Application”) with FINRA’s Department of Registration and Disclosure.<sup>1</sup> The Application requests that FINRA permit Joseph P. Popp (“Popp”), a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), Member Regulation recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve Popp’s proposed continued association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application to permit Popp to continue to associate with the Firm as a general securities representative.

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<sup>1</sup> FINRA’s Department of Member Regulation (“Member Regulation”) originally delayed acting upon the Firm’s MC-400 while FINRA’s Department of Enforcement (“Enforcement”) investigated Popp’s failure to timely disclose the underlying disqualifying event. *See infra* Part III.A.2. The Firm filed an updated MC-400 in August 2012.

## **II. The Statutory Disqualifying Event**

Popp is statutorily disqualified because on May 15, 2008, he pleaded guilty in New York to one felony count of driving while intoxicated (“DWI”).<sup>2</sup> The court suspended Popp’s driving privileges for one year, placed him on five years’ probation, fined him \$1,050, and ordered that he pay \$500 in restitution. Popp timely paid all fines, fees, and the restitution amount owed, and he was subsequently granted a conditional driver’s license and ordered to install an ignition interlock device in his vehicle. The court granted Popp a certificate of relief from disabilities, and in December 2011, terminated his sentence of probation, which was originally scheduled to end in August 2013.

In June 2006, shortly after his arrest, Popp underwent substance abuse evaluation and was admitted to a treatment program. Popp successfully completed his treatment program, stopped all alcohol intake, and gained “insight into how alcohol use was influencing his life.” After the completion of Popp’s formal treatment program, Popp has followed up with his treatment provider. As of March 2013, and according to the director of Popp’s treatment facility, Popp continues to “maintain his abstinence from alcohol without any difficulty.” Additionally, the Westchester County Department of Probation monitored Popp (through home visits and via telephone) and oversaw Popp’s compliance with ignition interlock conditions. According to Popp’s attorney, Popp had the opportunity to take over 1,000 interlock breath tests throughout the course of his probationary period and never failed any of these tests.

## **III. Background Information**

### **A. Popp**

#### **1. Employment History**

Popp first registered in the securities industry as a general securities representative in November 1980. He later passed the uniform securities agent state law examination in September 1983, the investment advisers law examination in February 1997, and the uniform combined state law examination in July 2009. Popp has been associated with Oppenheimer since May 2008. Popp was previously associated with two firms.

#### **2. Late Disclosure of Felony Conviction**

Popp failed to timely disclose his felony DWI charge and conviction on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”). Popp disclosed his

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<sup>2</sup> FINRA’s By-Laws provide that a person is subject to “disqualification,” and thus must seek and obtain FINRA’s approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”). See FINRA By-Laws, Article III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to a statutory disqualification if he has been convicted of any felony within 10 years of the date of the filing of an application to associate with a member firm.

felony conviction in September 2008,<sup>3</sup> although in May 2008 he disclosed his pending felony charges in his employment application with the Firm. Enforcement investigated Popp's late disclosure and, after that investigation, elected to take no further action on the matter.

### 3. Disciplinary and Other Disclosable History

In April 2009, FINRA issued Popp a Cautionary Action for improperly exercising discretion in 23 customer accounts while employed at his prior firm. Specifically, although Popp received verbal authorization from these customers prior to effecting the transactions at issue, during 2006, Popp executed Unit Investment Trust rollovers in the customer accounts without written authorization, in contravention of NASD Rule 2510(b) and his firm's procedures. The firm issued Popp a letter of reprimand for violating its procedures and suspended him from work without pay for one week. Due in part to the sanctions already imposed by Popp's firm, and taking into consideration the fact that none of the customers suffered any financial harm and gave Popp prior verbal authorization for the rollovers, FINRA ultimately issued Popp the Cautionary Action.

In addition to his disqualifying event, Popp has one prior misdemeanor conviction. In October 1997, Popp was arrested in New York and charged with DWI (a misdemeanor), Aggravated Unlicensed Operation of a Motor Vehicle, Speeding, and Unsafe Lane Movement. In January 1998, Popp pled guilty to a misdemeanor count of DWI and Unlicensed Operator (a traffic infraction) and paid \$550 in fines.

### 4. Customer Complaints

From 1988 through April 2003, six customers filed complaints against Popp, four of which resulted in settlements totaling \$287,700. The allegations included, among other things, unauthorized trading, excessive trading, and unsuitability. Popp did not personally contribute to any of the four settlements. Regarding the two remaining customer complaints, one complaint was closed with no action taken by his firm. The other customer complaint was ultimately withdrawn.

The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Popp.

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<sup>3</sup> Question 14A(1) of Form U4 asks, "[h]ave you ever: (a) been convicted of or pled guilty . . . to any felony," and "(b) been charged with any felony?" Article V, Section 2(c) of FINRA's By-Laws provides that "[e]very application for membership . . . shall be kept current at all times by supplementary amendments[.]" Such amendments must be filed within 30 days of learning of the facts or circumstances giving rise to the amendment, unless such amendment involves a statutory disqualification (in which case it must be filed within 10 days after such disqualification occurs).

B. The Firm

1. Background

Oppenheimer is based in New York, New York, and has been a FINRA member since March 1945. The MC-400 states that the Firm has approximately 113 registered branch offices, 94 of which are Offices of Supervisory Jurisdiction (“OSJ”), approximately 2,500 registered representatives, 266 registered principals, and 3,600 non-registered employees. The Firm currently employs four statutorily disqualified individuals in addition to Popp.<sup>4</sup>

Oppenheimer has a well-developed disciplinary history. Member Regulation narrowed its focus to the Firm’s more recent regulatory events in evaluating the Application. As we discuss in more detail below, we do not find that this disciplinary history will prevent Oppenheimer from providing suitable heightened supervision for Popp.

2. Regulatory Actions

In July 2013, the Firm entered into a Letter of Acceptance, Waiver, and Consent (“AWC”) with FINRA for violations of SEC Rules 200(g) and 204(a)(1) of Regulation SHO and NASD Rule 2110. Without admitting or denying FINRA’s allegations, the Firm consented to findings that it executed orders for sales pursuant to SEC Rule 144 and failed to mark each sale as a short sale, and that it failed to timely close out certain fail-to-deliver positions. FINRA censured the Firm and fined it \$17,500.

In April 2013, the Firm entered into an AWC with FINRA for violations of Exchange Act Rules 17a-3 and 17a-4 and NASD Rules 4632, 3110, 2320, and 2110. Without admitting or denying FINRA’s allegations, the Firm consented to findings that it: failed to use reasonable diligence to ascertain the best inter-dealer market and failed to obtain for customers as favorable a price as possible under prevailing market conditions; failed to show the correct execution time, correct entry time, order size, order type, and the terms and conditions of a transaction on brokerage order memoranda; failed to preserve memoranda of brokerage orders; and transmitted inaccurate reports to the FINRA/NASDAQ Trade Reporting Facility. FINRA censured the Firm, fined it \$22,500, and ordered that it pay restitution totaling \$1,290.58.

In January 2013, the Firm entered into an AWC with FINRA for violations of Exchange Act Rule 10b-10 and FINRA Rules 7450 and 6380A. Without admitting or denying FINRA’s allegations, the Firm consented to findings that it: failed to disclose on customer confirmations the correct type of remuneration and that the prices received by the customer were average prices; failed to disclose the correct capacity in which it acted; and transmitted inaccurate reports

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<sup>4</sup> One of these individuals is disqualified and subject to heightened supervision until 2017 as the result of a 2007 felony conviction. The other three individuals are disqualified as the result of SEC administrative proceedings, but were not required to undergo FINRA’s eligibility process due to the nature of their disqualifying events (and they are not currently subject to heightened supervision).

to the Order Audit Trail System (“OATS”) and the FINRA/NASDAQ Trade Reporting Facility. FINRA censured the Firm and fined it \$20,000.

In July 2012, Oppenheimer entered into an AWC with the International Securities Exchange. The Firm was fined \$60,000 and censured for failing to properly submit entries to the Large Options Position Report.

In March 2012, the Firm entered into an AWC with FINRA for violations of FINRA Rules 6622 and 2010. Without admitting or denying FINRA’s allegations, the Firm consented to findings that it failed to timely and correctly transmit to the OTC Reporting Facility last sale reports. FINRA censured the Firm and fined it \$18,000.

In June 2011, the State of New Hampshire Bureau of Securities Regulation initiated an action against Oppenheimer alleging that it sold unregistered penny stocks not exempt from registration and mismarked order tickets. In February 2012, the Firm entered into a consent order in which it agreed to rescind the penny stock sales, a \$125,000 fine, and \$30,000 in costs.

In May 2011, the Firm entered into an AWC with FINRA for violations of MSRB Rules G-8, G-17, G-27, and G-32. Without admitting or denying FINRA’s allegations, the Firm consented to findings that it failed to timely deliver official statements to customers, failed to keep a record of deliveries of official statements, and failed to enforce its written supervisory procedures (“WSPs”) pertaining to these matters. FINRA censured the Firm and fined it \$100,000.

In October 2010, the Firm entered into an AWC with FINRA for violations of Exchange Act Rule 10b-10, FINRA Rules 7450 and 2010, NASD Rule 3010, and MSRB Rules G-17 and G-30. Without admitting or denying FINRA’s allegations, the Firm consented to findings that it purchased municipal securities for its own account and sold municipal securities from its own account to customers at prices that were not fair and reasonable; failed to provide written notification to customers disclosing its capacities in certain transactions and that commissions were mark-ups or mark-downs; transmitted inaccurate or incomplete reports to OATS; and failed to establish and maintain a supervisory system, including WSPs, designed to achieve compliance with rules related to the foregoing violations. FINRA censured the Firm, fined it \$57,500, ordered it to pay restitution totaling \$17,879.51, and required it to revise its WSPs.

In February 2010, the Firm entered into a consent order with the Massachusetts Securities Division, in which it agreed to buy back illiquid auction rate securities and pay administrative and investigative costs in the amount of \$250,000. The order also required the Firm to cease and desist from further violations, and the Firm agreed to rescind the sales of auction rate securities and make full restitution to investors.<sup>5</sup>

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<sup>5</sup> This order rendered the Firm statutorily disqualified. The sanctions imposed against Oppenheimer pursuant to the order, however, are no longer in effect. Thus, Oppenheimer continued to operate and was not required to initiate an eligibility proceeding pursuant to FINRA’s rules. See Financial Industry Regulatory Authority, SEC No-Action Letter, 2009 SEC No-Act. LEXIS 349, at \*4-6 (Mar. 17, 2009) (stating that the SEC will not recommend

In August 2009, Oppenheimer entered into a Consent Agreement with the Florida Office of Financial Regulation, which included findings that the Firm failed to maintain adequate WSPs regarding the borrowing of money from clients. The employee at issue in this matter was terminated, and Oppenheimer agreed to cease and desist from future violations and paid a \$5,000 fine.

In June 2009, the Firm entered into an AWC with FINRA for violations of NASD Rules 4632 and 2110. Without admitting or denying FINRA's allegations, the Firm consented to findings that it failed to timely transmit to the FINRA/NASDAQ Trade Reporting Facility last sale reports of transactions in Consolidated Quotation Service securities. FINRA censured the Firm and fined it \$7,500.

In February 2009, the SEC fined and censured Oppenheimer for failing to supervise an employee and failing to prevent and detect the employee's violations of the federal securities laws. This action noted a deficiency in Oppenheimer's electronic mail review procedures for failing to detect the employee's misconduct. Oppenheimer consented to an undertaking to review its system, policies and procedures regarding the Firm's electronic communications within 90 days and certify that it established procedures to prevent and detect similar violations. The Firm also paid an \$850,000 fine.

In September 2008, the Firm entered into an AWC with FINRA for violations of Exchange Act Rule 10b-10, Rule 605 of Regulation NMS, and NASD Rule 6955. Without admitting or denying FINRA's allegations, the Firm consented to findings that it failed to provide written notification to customers disclosing its capacities in certain transactions and transmitted inaccurate or incomplete reports to OATS. FINRA censured the Firm and fined it \$12,500.

In July 2008, the Firm entered into an AWC with FINRA for violations of NASD Rules 3010 and 2110. Without admitting or denying FINRA's allegations, the Firm consented to findings that it failed to establish, maintain, and enforce a supervisory system, including WSPs, for its securities lending business. As a result, the Firm failed to detect and prevent an individual at the Firm from engaging in a fraudulent scheme to participate in stock loan transactions with counterparties at inferior rates. FINRA censured the Firm and fined it \$100,000.

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enforcement action if FINRA does not file a notice with the Commission when proposing to permit a member to continue its membership in FINRA if the member is subject to a final order based on violations of laws or regulations prohibiting fraudulent, manipulative or deceptive conduct (as described in Exchange Act Section 15(b)(4)(H)(ii)), the sanctions do not involve licensing or registration, revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect).

In April 2008, the Firm entered into an AWC with FINRA for violations of SEC Rule 203 of Regulation SHO and NASD Rule 6130. Without admitting or denying FINRA's allegations, the Firm consented to findings that it: executed short sales and failed to report them to the Trade Reporting Facility with a short sale modifier; accepted short sale orders in equity securities without borrowing the security, entering into a bona fide arrangement to borrow the security, or possessing reasonable grounds to believe that the security could be borrowed so that it could be delivered on the delivery due date; failed to document compliance with SEC rules; and failed to deliver positions in threshold securities at a registered clearing agency and failed to properly handle "fail to deliver" positions. FINRA censured the Firm and fined it \$25,000.

### 3. Routine Examinations of the Firm

Member Regulation represents that during the past five years, Oppenheimer has been the subject of approximately 10 FINRA examinations focusing on, among other things, sales practices, financial operations issues and supervision of employees that are statutorily disqualified.

In April 2013, in connection with FINRA's 2012 cycle examination of the Firm, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for: failing to adequately supervise the activities of two registered representatives in connection with their use of personal email and text messages to communicate with customers; failing to timely update Form U4 disclosures for two registered representatives and failing to timely file for registered representatives Uniform Termination Notices for Securities Industry Registration; failing to appropriately follow-up on a denied examination waiver request; failing to implement its WSPs relating to heightened supervision by omitting the names of individuals to perform supervisory reviews on three heightened supervision plans and failing to timely notify a state of a change in supervisors; failing to timely submit three Advance Refunding Documents to the Electronic Municipal Market Access System; failing to properly approve and report outside business activities at a branch office; failing to verify customer signatures on underlying documentation at two branch offices; permitting customer accounts to use post office boxes as mailing addresses, in contravention of the Firm's WSPs; failing to evidence that the Firm received, maintained, or reviewed the outside brokerage accounts of a registered representative and failing to adequately supervise the use of outside brokerage accounts; failing to report outside business activities at a branch office; and maintaining a fidelity bond policy that did not identify the specific coverage allocated to the Firm. None of the exceptions involved the Firm's White Plains, New York office (where Popp and his proposed supervisor are located), and the Firm responded in writing stating that it had corrected the deficiencies noted.

In May 2012, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for: failing to send notice to correspondent accounts regarding special measures for the opening of such accounts and failing to maintain a list of non-exempt Foreign Financial Institutions; failing to properly calculate salability and customer redemptions of money market funds; failing to comply with delivery and close out requirements; failing to maintain complete and accurate addresses for customer accounts; failing to timely update Forms U4 and evidence written notice for outside business activities; failing to evidence approval or rejection by the Firm for outside

business activities; and failing to have a process in place to prepare reconciliations on at least a monthly basis.<sup>6</sup> The Firm responded in writing stating that it had corrected the deficiencies noted.

In June 2011, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for failing to keep accurate customer account statements and failing to identify on Uniform Branch Office Registration Forms and Uniform Application for Broker-Dealer Registration Forms an office as a branch office or as having an introducing arrangement with the Firm and inaccurately describing the office on the Firm's website. The Firm responded in writing stating that it had corrected the deficiencies noted.

FINRA reviewed the heightened supervision of Keesal in 2012, 2010, 2009, and 2008. The 2012, 2009, and 2008 examinations yielded no exceptions. The 2010 examination resulted in a Cautionary Action. In that examination, FINRA found that two individuals not identified to FINRA had supervised Keesal's activities. In response, the Firm asserted that FINRA's finding was the result of a miscommunication and that these two individuals' reviews were redundant to, and not intended to substitute for, the supervision of Keesal's previously approved supervisors. Oppenheimer affirmed in writing that it would notify FINRA of any additional supervisor for Keesal.

#### **IV. Popp's Proposed Business Activities and Supervision**

Oppenheimer proposes that it will continue to employ Popp as a general securities representative at its White Plains, New York office.<sup>7</sup> According to the Application, Popp services the accounts of Oppenheimer retail and institutional clients, which includes providing investment recommendations and guidance, accepting and processing solicited and unsolicited orders, and responding to clients' needs and requests. Popp states that he focuses on providing corporate stock option services and services related to restricted stock. Popp is compensated monthly based upon commissions and fees generated from his retail customer accounts. Popp does not and will not have any supervisory duties at the Firm.<sup>8</sup>

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<sup>6</sup> In addition, a referral was made to Enforcement regarding inadequate Anti-Money Laundering ("AML") and suspicious activity review procedures. Enforcement consolidated this referral with another matter and filed a complaint against the Firm in May 2013 (which remains pending).

<sup>7</sup> Previously, from 2008 through September 2011, Popp was employed at the Stamford, Connecticut branch office.

<sup>8</sup> The Firm asserts that none of the registered representatives at the White Plains office are statutorily disqualified or under heightened supervision.



Oppenheimer proposes that Popp will be supervised by Lisa Barone (“Barone”), a Director-Senior Financial Associate at the Firm.<sup>9</sup> Barone joined Oppenheimer in March 2008, and first registered as a general securities representative in December 1994. She passed the branch office manager examination (Series 8, which was the predecessor to the general securities sales supervisor examinations (Series 9 and 10)) in July 1998. Barone also passed the investment advisers law examination in January 1995, the uniform combined state law examination in October 2002, and the national commodity futures examination in February 2005. Barone was previously employed at one other firm. The Firm states that Barone’s primary supervisory responsibility will be to supervise Popp and that her “other supervisory responsibilities will only consist of acting as a delegate for other supervisory functions in the White Plains branch on an as needed basis.”

The record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Barone.

## **V. Member Regulation’s Recommendation**

Member Regulation recommends that the Application be approved, subject to the specified terms and conditions of heightened supervision over Popp set forth below.

## **VI. Discussion**

### **A. The Legal Standard**

In reviewing this type of application, we consider whether the particular felony at issue, examined in light of the circumstances related to the felony, and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors. We assess the totality of the circumstances in reaching a judgment about Popp’s future ability to deal with the public in a manner that comports with FINRA’s requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business. In so doing, we recognize that the sponsoring firm has the burden of demonstrating that the proposed association of the statutorily disqualified individual is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Ass’n of X*, SD06003, slip op. at 5 (NASD NAC 2006) (redacted decision), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036480.pdf>. Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, whether the person has engaged in any intervening misconduct, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person.

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<sup>9</sup> Oppenheimer originally proposed a different primary supervisor (Maria Palumbo) for Popp. Palumbo, however, left the Firm in mid-2013.

After carefully reviewing the entire record in this matter, we find that Oppenheimer has met its burden, and we conclude that Popp's participation in the securities industry will not present an unreasonable risk of harm to the market or investors. Accordingly, we approve the Application for Popp to continue to associate with the Firm as a general securities representative, subject to the supervisory terms and conditions detailed herein.

B. Popp's Disqualifying Event

As an initial matter, we acknowledge that Popp was convicted of felony DWI in 2008. We recognize, however, that a New York judge sentenced Popp for that offense by suspending his driving privileges for one year, placing him on five years' probation, fining him \$1,050, and ordering that he pay \$500 in restitution. Popp has demonstrated that he has complied with all aspects of that sentence and was granted an early release from probation and relief from disabilities. Moreover, the record shows that Popp has accepted responsibility for his DWI violations and problems with alcohol. Popp entered a treatment program shortly after his arrest in 2006, and he successfully completed that program. Popp stated that he stopped all alcohol intake, and the director of the treatment facility recently opined that Popp continues to "maintain his abstinence from alcohol without any difficulty." Additionally, during Popp's probationary period, the Westchester County Department of Probation monitored Popp and oversaw his compliance with ignition interlock conditions. Probation staff never found any problems with the terms of Popp's probation, and Popp never failed an interlock breath test.

The record shows that Popp has taken numerous rehabilitative steps to avoid repeat occurrences of the problems that resulted in his felony conviction. Popp continues to speak with his substance abuse counselor even though he is no longer under any court-mandated requirement to do so, and he has shown since his arrest in 2006 a fundamental and long-lasting change in the behavior that resulted in his statutory disqualification. When combined with the plan of heightened supervision proposed by the Firm and the experience of Popp's proposed supervisors, as described below, we conclude that Popp's proposed association with Oppenheimer does not create an unreasonable risk of harm to the investing public.

C. Popp's Failure to Timely Amend His Form U4, Cautionary Action and Customer Complaints

We acknowledge that Popp failed to timely amend his Form U4 after his felony arrest and conviction. Registered representatives such as Popp are responsible for timely updating information on a Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table). Although we find Popp's failure to timely amend his Form U4 is serious, the record shows that Popp disclosed to Oppenheimer his pending felony arrest during the recruitment process and in his employment application with the Firm. Further, Enforcement investigated Popp's late disclosure and, after that investigation, elected to take no further action on the matter.

Additionally, in April 2009 FINRA issued Popp a Cautionary Action for improperly exercising discretion in 23 customer accounts while employed at his prior firm. We note, however, that although Popp violated FINRA rules, he received verbal authorization from these customers prior to effecting the transactions at issue and no customer suffered any financial harm

in connection with these transactions. We also consider that the misconduct underlying these transactions occurred more than seven years ago and Popp's firm disciplined him for this misconduct. Similarly, while Popp has been the subject of six customer complaints, the last customer complaint occurred more than 10 years ago. Popp's firms settled four of these complaints, and the two remaining customer complaints were closed with no action taken by his firm or withdrawn.

Although these matters are serious, the misconduct underlying these events either occurred prior to Popp's disqualifying felony conviction or involved Popp's failure to timely disclose this conviction. Given the numerous rehabilitative steps taken by Popp, Popp's proposed supervisor, and Oppenheimer's heightened supervisory plan, we conclude that Popp's prior regulatory issues and customer complaints do not warrant denial of the Application. *See also Continued Ass'n of X*, SD12006 (FINRA NAC 2012) (approving an individual disqualified as the result of a felony DWI who also had a criminal and regulatory history, including a previous misdemeanor DWI conviction, a FINRA Cautionary Action for failing to disclose his felony DWI conviction, three customer complaints and a prior state tax judgment), *available at* <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p196933.pdf> (redacted decision); *Ass'n of X*, SD10003 (FINRA NAC 2010) (approving the association of an individual disqualified as the result of a felony DWI conviction who also had two prior misdemeanor convictions, a FINRA Cautionary Action for failing to disclose his felony conviction, and a customer complaint), *available at* <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p125898.pdf> (redacted decision).

D. The Firm and the Supervisor's Ability to Supervise Popp

Finally, we find that the Firm and Barone are qualified to supervise a statutorily disqualified individual such as Popp.

Oppenheimer has been a FINRA member since 1945. The record shows that the Firm has a formal disciplinary history. FINRA's recent examinations have led to the issuance of several Cautionary Actions and AWCs, and several other regulators have disciplined Oppenheimer. We are persuaded, however, that the Firm has satisfactorily responded to the deficiencies cited in those reviews and has made the necessary corrections to its procedures. Further, Oppenheimer has employed disqualified individuals, one who has been subject to several statutory disqualification examinations in the past five years. None of FINRA's disqualification examinations have risen to the level of formal action. No exceptions were cited by FINRA in three of the four most recent examination reports, and Oppenheimer has responded to FINRA examination findings and demonstrated its willingness and ability to make necessary improvements to address deficiencies in its WSPs and reporting systems. The Firm also took steps to rectify the cited problem in the 2010 statutory disqualification examination, and none of the examination findings or disciplinary history mentioned herein relate to Oppenheimer's White Plains branch or the proposed supervisors for Popp.

We also find that Popp's proposed primary supervisor, Barone, is well qualified. She first registered in the securities industry in 1994, and she has been a supervisor since 1998 and has no disciplinary history.<sup>10</sup> Barone will supervise Popp on-site.

We are satisfied that the following heightened supervisory procedures will enable the Firm to reasonably monitor Popp's activities on a regular basis:<sup>11</sup>

- \*1. The written supervisory procedures for Oppenheimer will be amended to state that Barone will be Popp's primary supervisor;
- \*2. Popp will not act in a supervisory capacity;
- \*3. Popp will not maintain any discretionary accounts;
- \*4. Barone will supervise Popp on-site at the Firm's branch office, located at 360 Hamilton Avenue, White Plains, NY;
- \*5. On a quarterly basis (March 31st, June 30th, September 30th, and December 31st), Popp will certify in writing to Barone that he has read the Firm's current Code of Conduct and other applicable Firm policies pertaining to his obligations to disclose legal and regulatory matters to the Firm, and that he fully understands his obligations thereunder. Barone will maintain copies of Popp's certifications and will keep them segregated for ease of review during any statutory disqualification examination;
- \*6. On a quarterly basis, Popp will certify in writing to Barone that he is in full compliance with all of his disclosure reporting obligations pursuant to FINRA's rules. Barone will maintain copies of Popp's certifications and will keep them segregated for ease of review during any statutory disqualification examination;
- \*7. Barone will promptly alert the Firm's Chief Compliance Officer and Legal Department of any indication that Popp is under the influence of alcohol while at work, including but not limited to unexplained lateness or absences, or other erratic behavior;
- \*8. Barone will review and initial all of Popp's trade blotters weekly. Barone will review and approve any requests to issue checks or funds from any of Popp's customer's accounts. Barone will keep copies of the reviewed

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<sup>10</sup> This reasoning applies equally to Steven Gordon, the proposed backup supervisor for Popp. Further, Oppenheimer has represented that Popp's activities can be properly supervised by a sales supervisor holding a Series 8.

<sup>11</sup> Items that are denoted by an asterisk are heightened supervisory conditions for Popp and are not standard operating procedures of the Firm.

trade blotters and check/wire requests segregated for ease of review during any statutory disqualification examination;

- \*9. Barone will review and pre-approve each securities account prior to the opening of the account by Popp. Account paperwork will be documented as approved with a date and signature and maintained at the branch office in White Plains, as well as the Firm's home office. Barone will keep copies of the account paperwork segregated for ease of review during any statutory disqualification examination;
- \*10. Barone will review Popp's incoming written correspondences (which will include e-mail communications) upon its arrival and will review Popp's outgoing correspondence (including e-mail communications) before it is sent;
- \*11. For the purposes of client communication, Popp will only be allowed to use an e-mail account that is held at the Firm, with all emails being filtered through the Firm's e-mail system. If Popp receives a business related e-mail message in another e-mail account outside the Firm, he will immediately deliver that message to the Firm's e-mail account. Also, Popp will inform the Firm of all outside e-mail accounts which he maintains and will provide the Firm access to the accounts upon request. The e-mail messages are to be preserved and kept segregated for ease of review during any statutory disqualification examination;
- \*12. Barone must certify quarterly to the Compliance Department of Oppenheimer that she and Popp are in compliance with all of the above conditions of heightened supervision to be accorded Popp;
- \*13. All complaints pertaining to Popp, whether verbal or written, will be immediately referred to Barone for review, and then to the Compliance Department of Oppenheimer. Barone will prepare a memorandum to the file as to what measures she took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review during any statutory disqualification examination;
- \*14. If Barone is to be on vacation or out of the office for an extended period, Steven Gordon ("Gordon"), CRD No. 1112019, will act as Popp's interim supervisor;<sup>12</sup> and

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<sup>12</sup> Gordon first qualified as a general securities representative in April 1983, and passed the branch office manager examination (Series 8) in December 1992. Gordon also passed the investment advisers law examination in April 1983 (and again in July 1992), the uniform combined state law examination in March 1993, and the national commodity futures examination in April 1997. Gordon joined Oppenheimer in September 2007. He was previously employed at five other firms. The record shows one complaint against Gordon, which was subsequently

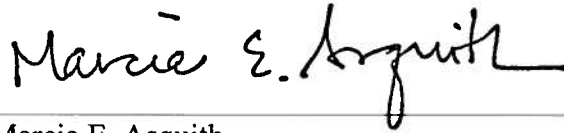
- \*15. For the duration of Popp's statutory disqualification, Oppenheimer must obtain prior approval from Member Regulation if it wishes to change Popp's responsible supervisor from Barone to another person.

FINRA certifies that: (1) Popp meets all applicable requirements for the proposed employment; (2) the Firm represents that is registered with several other self-regulatory organizations, including BATS, CBOE, CHX, ISE, PHLX, NQX, NYSE ARCA, NYSE AMEX, and NYSE, which concur with Popp's continued association with the Firm; (3) the Firm employs four other statutorily disqualified individuals; and (4) the Firm represents that Popp and Barone are not related by blood or marriage.

## VII. Conclusion

Accordingly, we approve Oppenheimer's Application to continue to employ Popp as a general securities representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Popp as a general securities representative with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,



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Marcia E. Asquith  
Senior Vice President and Corporate Secretary

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[cont'd]

withdrawn. The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Gordon. The Firm represents that Gordon will perform his duties as Popp's backup supervisor from the White Plains, New York office.