

**NYSE AMERICAN LLC  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NOS. 2019-12-00063 & 2020-10-00112**

TO: NYSE AMERICAN LLC

RE: Oppenheimer & Co., Inc., Respondent  
CRD No. 249

**During the period between November 13, 2019 and July 29, 2020 (the “Relevant Period”), Oppenheimer & Co., Inc. violated: (i) NYSE American Rule 16 by failing to adhere to good business practices with respect to its handling of two customer options orders; (ii) NYSE American Rule 966NY by failing to obtain prior agreement of its customer before nullifying and adjusting a trade to a worse price for its customer; and (iii) NYSE American Rule 320(e) by failing to establish and maintain supervisory systems and written procedures that were reasonably designed to ensure compliance with applicable laws and rules. Consent to a censure and a \$175,000 fine.**

\* \* \*

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”) Code of Procedure, Oppenheimer & Co., Inc. (“Oppenheimer” or the “Firm”) submits this Letter of Acceptance, Waiver, and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, NYSE American will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I. ACCEPTANCE AND CONSENT**

- A. Oppenheimer hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE American, or to which NYSE American is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NYSE American:

**BACKGROUND AND JURISDICTION**

1. Oppenheimer is a corporation registered in the State of New York. The Firm has been a member of NYSE American since 1988 and was registered as a NYSE American Options Trading Permit (“OTP”) Holder during the Relevant Period. Oppenheimer is a corporation with its main office located in New York, NY. The Firm’s options business is conducted solely in an agency capacity.

## VIOLATIONS

### *NYSE American Rules 16 and 966NY*

2. NYSE American Rule 16 provides that every member and member organization “shall at all times adhere to the principles of good business practice” in the conduct of its business affairs.
3. Under NYSE American Rule 966NY: “[a] trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that any trade that is nullified or adjusted pursuant to this Rule must be authorized by the Exchange prior to the nullification or adjustment.” Furthermore, any trade that is adjusted pursuant to NYSE American Rule 966NY “must be adjusted to a price that was permissible and in compliance with any applicable rules of the Exchange or the Securities and Exchange Commission, as amended, at the time the original transaction was executed.” *Id.*

### *November 13, 2019 Trade*

4. On November 13, 2019, an Oppenheimer trader preemptively crossed an order and by doing so was able to avoid competition from on-floor market makers in the trading crowd.
5. On that day, a Firm customer placed a not-held order to sell 5000 calls over the course of the day. The Oppenheimer trader (“Trader A”) solicited a potential liquidity provider to take the other side of the trade. The liquidity provider agreed to pay \$1.70 for 250 calls contingent upon the underlying stock reaching a \$21.70 bid price.
6. Oppenheimer Trader A then instructed a broker on the NYSE American trading floor to sell and cross the 250 calls at \$1.70. The NYSE American floor broker systematized the order, and the order was announced to the trading crowd and released. The floor broker messaged Trader A that the trade had been crossed and the market makers in the trading crowd did not participate: “all u.” The stock bid price ranged from approximately \$21.60 - \$21.64 during this time, and never reached the liquidity provider’s contingent bid price.
7. Oppenheimer Trader A then called the liquidity provider and informed him, “I put it on the tape a little preemptive. 250 at \$1.70 if stock gets there.” When the liquidity provider asked for an explanation, Trader A responded, “Because it was getting up there. Otherwise, I won’t be able to cross it. I can always take it down.” During this phone call, the stock bid price ranged from approximately \$21.63 - \$21.66.
8. Oppenheimer Trader A then instructed the NYSE American floor broker to nullify the original execution of 250 calls at \$1.70 and to adjust the price and reprint the trade at \$1.60. The floor broker systematized a new order to sell 250 calls at \$1.60,

announced it in open outcry, and notified Trader A that the trade was crossed.

9. By instructing the NYSE American floor broker to preemptively cross and sell the 250 calls at \$1.70 before the stock reached the liquidity provider's contingent bid price, Oppenheimer Trader A was able to avoid competition from on-floor market makers in the trading crowd, in violation of NYSE American Rule 16.

*July 29, 2020 Trade*

10. On July 29, 2020, the Firm adjusted a trade to result in an inferior price for its customer, and without obtaining prior customer agreement before instructing that price adjustment.
11. That morning, at 11:42:25am, a Firm customer gave an Oppenheimer sales person, who was also the desk supervisor, an order to sell 2,232 calls. The Oppenheimer sales person relayed the order to Oppenheimer Trader A, who then solicited a liquidity provider to take the other side of the trade. The liquidity provider agreed to pay \$4.35 for the calls with a price reference in the underlying security.
12. At approximately 11:45am, Oppenheimer Trader A instructed a broker on the NYSE American trading floor to sell and cross the 2,232 calls at \$4.35. The floor broker systematized the order, and the order was announced in open outcry and released at 11:45:35am. The execution printed at 11:46:12 and the floor broker gave a report to Oppenheimer Trader A at 11:46:19.
13. At 11:46:18am, the Firm's customer instructed the Oppenheimer sales person to increase the size of its sell order from 2,232 contracts to 2,855 contracts. At 11:47:39am, the Oppenheimer sales person gave the customer a report for the sale of the original 2,232 contracts: "S[old] 2232 4.35 protected you at the highs, add'l fill coming but we top ticked that first lot."
14. At 11:47am, Oppenheimer Trader A went back to the liquidity provider and informed him that he had an additional 623 contracts to sell. The liquidity provider declined to bid on the additional size, saying, "pass was a disaster go wild on screens." Oppenheimer Trader A executed the 623 additional contracts electronically at a net price of \$3.9792. At 11:48:47am, the Oppenheimer sales person provided the customer with an amended report on all 2,855 contracts, "S[old] 2855 4.2691."
15. The underlying stock price decreased immediately after the initial trade was executed, and at approximately 11:48am, a second Oppenheimer trader ("Trader B") informed the Oppenheimer sales person and his desk supervisor, "fyi - we buried [liquidity provider] on this one." The desk supervisor responded, "can you fix price? See the stk came in, move to 4.30 if nec[essary]."

16. At approximately 11:54am, Oppenheimer Trader B instructed the NYSE American floor broker to adjust the price from \$4.35 to \$4.30 on the 2,232 contracts, five cents worse for the Firm's customer.
17. At 11:54:01am, the Oppenheimer desk supervisor gave a corrected report to the Firm's customer reflecting the price adjustment: "Correct avg coming on total ... will be close and good price/level on the exit here! Nice trade... S[old] 2855 4.23."
18. At approximately 11:55am, Oppenheimer Trader B messaged the liquidity provider to discuss the price adjustment. At 11:56am, Trader B messaged the desk supervisor, "that went long way thank you." The desk supervisor replied, "gotta make you guys look good when we can..." Oppenheimer Trader B then gave the liquidity provider the corrected report reflecting the price adjustment at 11:58am.
19. Although the price adjustment benefitted the liquidity provider, the price adjustment resulted in \$11,160 in harm to Oppenheimer's customer.
20. At no point before the trade was executed at \$4.35 and then adjusted to \$4.30 did any Oppenheimer representative obtain the agreement of their customer to bust and adjust the trade.
21. By failing to obtain the agreement of its customer prior to instructing the NYSE American floor broker to bust and adjust the trade to a price that was worse for its customer, Oppenheimer violated NYSE American Rules 16 and 966NY.

*NYSE American Rule 320(e)*

22. Under NYSE American Rule 320(e), firms must have "a system of compliance and supervisory controls, reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules, that are appropriate to their business size, structure, customer accounts, transactions and business activities." The rule further requires that "such system of compliance and supervisory controls must include written compliance and supervisory policies and procedures."
23. During the Relevant Period, the Firm failed to establish and maintain a supervisory system and procedures reasonably designed to ensure compliance with its obligations for handling certain customer options orders transmitted to a floor broker on the NYSE American trading floor.
24. Specifically, the Firm did not conduct a review of options orders sent to the NYSE American trading floor where an execution was subsequently nullified and/or adjusted, and so did not identify either the November 13, 2019 or the July 29, 2020 trades. Nor did the Firm have any policies or procedures in place requiring employees to obtain prior customer agreement for price adjustments. Finally, as discussed above, the desk supervisor gave the instructions to improperly adjust the price on the July 29, 2020 trade.

25. Accordingly, the Firm violated NYSE American Rule 320(e) during the Relevant Period.

### **OTHER FACTORS CONSIDERED**

26. Beginning in approximately November 2020, the Firm implemented new procedures requiring options desk employees to document and notify Compliance of all trade nullifications and price adjustments, and to obtain prior written customer agreement for any nullified or adjusted trades. The Firm also now conducts a daily review of a report identifying all trade amendments, adjustments, and cancellations.

27. In connection with NYSE Regulation's investigation, Oppenheimer offered the customer who was impacted by the July 29, 2020 trade restitution in the amount of \$11,160.

### **SANCTIONS**

B. The Firm also consents to the imposition of the following sanctions:

#### **Censure and fine in the amount of \$175,000**

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

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(s) imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

## **II. WAIVER OF PROCEDURAL RIGHTS**

The Firm specifically and voluntarily waives the following rights granted under the NYSE American Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the

allegations in writing;

- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer of NYSE American; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE American employee; or any Regulatory Staff as defined in Rule 9120 in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### **III. OTHER MATTERS**

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE American pursuant to NYSE American Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
  - 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE American Rule 9310(a)(1)(B);
  - 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
  - 3. NYSE American shall publish a copy of the AWC on its website in

accordance with NYSE American Rule 8313;

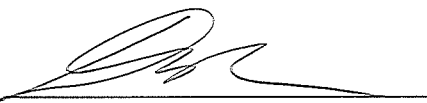
4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
  5. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

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 AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

June 7, 2021  
Date

Oppenheimer & Co., Inc.  
Respondent

By:   
Dennis P. McNamara  
General Counsel

Reviewed by:

Julian Rainero  
Julian Rainero  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
T. 212.756.2411  
Counsel for Respondent

Accepted by NYSE Regulation

June 11, 2021  
Date

Catherine Lifeso  
Catherine Lifeso  
Director, Enforcement  
NYSE Regulation

Signed on behalf of NYSE American LLC,  
by delegated authority from its Chief  
Regulatory Officer