

Securities Regulation Daily Wrap Up, ENFORCEMENT—Aguilar, Stein say SEC’s bad actor waiver “blind” to Oppenheimer’s misdeeds, (Feb. 4, 2015)

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By Mark S. Nelson, J.D.

A week after Oppenheimer & Co. Inc. agreed to pay \$20 million to end enforcement actions by the SEC and the Treasury Department’s Financial Crimes Enforcement Network, SEC commissioners Luis A. Aguilar and Kara M. Stein have gone public with their objections to the bad actor waiver the Commission granted in the matter. They said the Commission majority cast a “blind eye” to the gravity of Oppenheimer’s misconduct in a lengthy joint dissent issued earlier today.

Aguilar and Stein pointed to Oppenheimer’s knowledge of problems with penny stock sales and the number of times the firm seemed to repeat similar acts. “It is difficult to conceive of a better justification for the bad actor disqualification under Rule 506, or a better reason to act with great care and caution in analyzing whether ‘good cause’ may exist to waive this automatic disqualification,” said the commissioners.

The Commission had granted the waiver based on its assessment that Oppenheimer would comply with remedial measures. But according to Aguilar and Stein, the Commission “unacceptab[ly]” stayed from its prior waiver decisions and instead opted not to require Oppenheimer to retain a law firm to consult with it that is either qualified or independent. They also said the wavier does nothing to get Oppenheimer’s top managers involved in compliance efforts, nor does it require the firm to report back to the SEC on its progress that would justify continuing the wavier.

As Aguilar and Stein see it, Oppenheimer’s “entrenched culture of non-compliance” warranted stronger Commission action. “The Commission is this firm’s primary regulator, and with this action a majority of the Commission is telling the public that this firm should not be labeled a ‘bad actor.’ Given the long record of broken promises, the Commission must demand more accountability from this firm and its leadership,” said Aguilar and Stein.

Companies: Oppenheimer & Co. Inc.

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