

OPPENHEIMER HOLDINGS INC

Form 10-K

March 06, 2013

[Table of Contents](#)

As filed with the U.S. Securities and Exchange Commission on March 6, 2013

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D. C. 20549

**FORM 10-K**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2012

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 1-12043

**OPPENHEIMER HOLDINGS INC.**

Edgar Filing: OPPENHEIMER HOLDINGS INC - Form 10-K

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**98-0080034**  
(I.R.S. Employer  
Identification No.)

**85 Broad Street, New York, NY**  
(Address of principal executive offices)

**10004**  
(Zip Code)

**Registrant's Telephone number, including area code: (212) 668-8000**

**Securities registered pursuant to Section 12(b) of the Act:**

**Title of each class**  
**Class A non-voting common stock**

**Name of each exchange on which registered**  
**New York Stock Exchange**

**Securities registered pursuant to Section 12(g) of the Act:**

**Title of class**

**Not Applicable**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

## Edgar Filing: OPPENHEIMER HOLDINGS INC - Form 10-K

Large accelerated filer ☐ Accelerated filer ☒  
Non-accelerated filer ☐ Smaller reporting company ☐  
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting stock of the Company held by non-affiliates of the Company cannot be calculated in a meaningful way because there is only limited trading in the class of voting stock of the Company. The aggregate market value of the Class A non-voting common stock held by non-affiliates of the Company at June 30, 2012 was \$212.0 million based on the per share closing price of the Class A non-voting common stock on the New York Stock Exchange as at June 30, 2012 of \$15.72.

The number of shares of the Company's Class A non-voting common stock and Class B voting common stock (being the only classes of common stock of the Company) outstanding on February 28, 2013 was 13,508,318 and 99,680 shares, respectively.

### DOCUMENTS INCORPORATED BY REFERENCE

The Company's definitive Proxy Statement for the 2013 Annual Meeting of Stockholders to be filed by the Company pursuant to Regulation 14A is incorporated into Items 10, 11, 12, 13 and 14 of Part III of this Form 10-K.

**Table of Contents**

**TABLE OF CONTENTS**

Item Number		Page
<b><u>PART I</u></b>		
1.	<u>Business</u>	2
1A.	<u>Risk Factors</u>	18
1B.	<u>Unresolved Staff Comments</u>	34
2.	<u>Properties</u>	34
3.	<u>Legal Proceedings</u>	34
4.	<u>Mine Safety Disclosures</u>	41
<b><u>PART II</u></b>		
5.	<u>Market for the Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	42
6.	<u>Selected Financial Data</u>	45
7.	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	45
7A.	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	67
8.	<u>Financial Statements and Supplementary Data</u>	71
9.	<u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	136
9A.	<u>Controls and Procedures</u>	136
9B.	<u>Other Information</u>	137
<b><u>PART III</u></b>		
10.	<u>Directors, Executive Officers and Corporate Governance</u>	138
11.	<u>Executive Compensation</u>	138
12.	<u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	138
13.	<u>Certain Relationships and Related Transactions and Director Independence</u>	138
14.	<u>Principal Accountant Fees and Services</u>	139
<b><u>PART IV</u></b>		
15.	<u>Exhibits and Financial Statement Schedules</u>	140
	<u>Signatures</u>	141

## **Table of Contents**

*Throughout this annual report, we refer to Oppenheimer Holdings Inc., collectively with its subsidiaries, as the Company. We refer to the directly and indirectly owned subsidiaries of Oppenheimer Holdings Inc. collectively as the Operating Subsidiaries.*

## **PART I**

### **Item 1. BUSINESS**

#### **OVERVIEW**

Oppenheimer Holdings Inc., through its Operating Subsidiaries, is a leading middle-market investment bank and full service broker-dealer. With roots tracing back to 1881, the Company is engaged in a broad range of activities in the securities industry, including retail securities brokerage, institutional sales and trading, investment banking (both corporate and public finance), research, market-making, trust services and investment advisory and asset management services. The Company owns, directly or through subsidiaries, Oppenheimer & Co. Inc. ( Oppenheimer ), a New York-based securities broker-dealer, Oppenheimer Asset Management ( OAM ), a New York-based investment advisor, Freedom Investments, Inc. ( Freedom ), a discount securities broker-dealer based in New Jersey, Oppenheimer Trust Company ( Oppenheimer Trust ), a New Jersey limited purpose bank, OPY Credit Corp., a New York corporation, organized to trade and clear syndicated corporate loans, and Oppenheimer Multifamily Housing & Healthcare Finance, Inc. ( OMHHF ), a Federal Housing Administration ( FHA )-approved mortgage company based in Pennsylvania. The Company's international businesses are carried on through Oppenheimer Europe Ltd. (formerly Oppenheimer E.U. Ltd.) (United Kingdom), Oppenheimer Investments Asia Ltd. (Hong Kong), and Oppenheimer Israel (OPCO) Ltd. (Israel).

Oppenheimer Holdings Inc. was originally incorporated under the laws of British Columbia. Pursuant to its Certificate and Articles of Incorporation, effective on May 11, 2005, the Company's legal existence was continued under the Canada Business Corporations Act. Effective May 11, 2009, the Company changed its jurisdiction of incorporation from the federal jurisdiction of Canada to the State of Delaware in the United States with the approval of its shareholders.

#### **PRIVATE CLIENT**

Through its Private Client Division, Oppenheimer provides a comprehensive array of financial services through a network of approximately 1,406 financial advisers in 86 offices located throughout the United States and in two offices in Latin America through locally incorporated and independently owned businesses. Clients include high-net-worth individuals and families, corporate executives, and small and mid-sized businesses. Clients may choose a variety of ways to establish a relationship and conduct business including brokerage accounts with transaction-based pricing and/or investment advisory accounts with asset-based fee pricing. As of December 31, 2012, the Company held client assets under administration of approximately \$80.3 billion. Oppenheimer provides the following private client services:

**Full-Service Brokerage** Oppenheimer offers full-service brokerage covering a broad array of investment alternatives including exchange-traded and over-the-counter corporate equity and debt securities, money market instruments, exchange-traded options and futures contracts, municipal bonds, mutual funds, and unit investment trusts. A substantial portion of Oppenheimer's revenue is derived from commissions from retail customers through accounts with transaction-based pricing. Brokerage commissions are charged on investment products in accordance with a schedule which Oppenheimer has formulated. Discounts are available to customers based on transaction size and volume.

## **Table of Contents**

**Wealth Planning** Oppenheimer also offers financial and wealth planning services which include individual and corporate retirement solutions, including insurance and annuities products, IRAs and 401(k) plans, U.S. stock plan services to corporate executives and businesses, education savings programs, and trust and fiduciary services to individual and corporate clients.

**Margin Lending** Oppenheimer extends credit to its customers, collateralized by securities and cash in the customer's account, for a portion of the purchase price, and receives income from interest charged on such extensions of credit. The customer is charged for such margin financing at interest rates derived from Oppenheimer's base rate, as defined, as well as the brokers' loan rate and LIBOR.

**Securities Lending** In connection with both its trading and brokerage activities, Oppenheimer borrows securities to cover short sales and to complete transactions in which customers have failed to deliver securities by the required settlement date and lends securities to other brokers and dealers for similar purposes. Oppenheimer earns interest on its cash collateral provided and pays interest on the cash collateral received less a rebate earned for lending securities. In addition, to a limited extent, Oppenheimer acts as a broker-finder whereby it stands between two broker-dealers, borrowing securities from one and lending to the other for an interest rate spread (or profit).

**Discount Brokerage** Through Freedom, Oppenheimer offers online equity investing and discount brokerage services to individual investors.

## **ASSET MANAGEMENT**

The Company offers a wide range of investment advisory services to its retail and institutional clients through proprietary and third party distribution channels. Clients include high-net-worth individuals and families, foundations and endowments, and trust and pension funds. Asset management capabilities include equity, fixed income, large-cap balanced and alternative investments, which are offered through vehicles such as privately managed accounts, and retail and institutional separate accounts. At December 31, 2012, the Company had approximately \$20.9 billion of client assets under management in fee-based programs. The Company's asset management services include:

**Separate Managed Accounts** The Company provides clients with two wrap fee-based programs: (i) Investment Advisory Services through which clients may select among those managers approved by the Company and (ii) Strategic Asset Review through which clients may select among those managers reviewed and recommended by the Company and those outside of the Company's approved list of managers.

**Other Managed Accounts** The Company offers a long-term strategic asset allocation program, Portfolio Advisory Services, in which clients select among mutual funds approved by the Company.

**Oppenheimer Investment Advisory Services** Oppenheimer Investment Advisors offers internal portfolio managers servicing high-net-worth individuals, retirement plans, endowments, foundations and trusts using equity and fixed income strategies.

**Discretionary Portfolio Management** Through its Omega, Fahnstock Asset Management, and the Alpha program, Oppenheimer offers discretionary investment management wrap programs managed by Oppenheimer advisors with a client-focused approach to money management, servicing high-net-worth individuals and families, endowments and foundations and institutions.

## **Table of Contents**

***Fee-Based Non-Discretionary Accounts*** Under Oppenheimer's Preference Program, Oppenheimer provides non-discretionary investment advisory services to high-net-worth individuals and families who pay an advisory fee on a quarterly basis with no commissions or additional charges for transactions. The program includes features such as initial portfolio consultation, quarterly performance reporting and periodic consultation.

***Institutional Investment Management*** Oppenheimer Investment Management ( OIM ) provides fixed income management and solutions to institutional investors including: Taft-Hartley funds, public pension funds, corporate pension funds, and foundations and endowments.

***Alternative Investments*** The Company offers high-net-worth and institutional investors the opportunity to participate in a wide range of non-traditional investment strategies. Strategies include single manager hedge funds, fund of funds and private equity vehicles. For proprietary funds, the Company, through its subsidiaries, acts as general partner in these investments and typically earns 1% to 2% per year in management fees and 20% performance (or incentive) fees. The fees which the Company receives are shared in a pre-determined manner with the portfolio manager.

## **CAPITAL MARKETS**

### **Investment Banking**

Oppenheimer employs approximately 100 investment banking professionals throughout the United States and in the United Kingdom, Israel and Asia. Our investment banking department provides strategic advisory services and capital markets products to emerging growth and middle market businesses. The investment banking business has industry coverage groups that focus on each of consumer and business services, energy, real estate, financial institutions, healthcare, industrial growth and services, media and entertainment, technology and telecom. Oppenheimer's industry groups serve their clients by working with colleagues in each of the relevant product groups including Mergers and Acquisitions, Leveraged Finance, Equity Capital Markets and Restructuring. Oppenheimer has extensive experience working with financial sponsors and maintains a dedicated Financial Sponsor group.

***Financial Advisory*** Oppenheimer advises buyers and sellers on sales, divestitures, mergers, acquisitions, tender offers, privatizations, restructurings, spin-offs and joint ventures. With experience facilitating and financing acquisitions and recapitalizations, Oppenheimer executes both buy-side and sell-side mandates. Oppenheimer provides dedicated senior banker focus to clients throughout the financial advisory process, which leverages Oppenheimer's industry knowledge, extensive relationships, and capital markets expertise.

***Equities Underwriting*** Oppenheimer provides capital raising solutions for corporate clients through initial public offerings, follow-on offerings, equity-linked offerings, private investments in public entities, and private placements. Oppenheimer focuses on emerging companies in growth industries, including consumer and business services, energy, financial institutions, healthcare, industrial growth and services, media and entertainment, technology and telecom.

***Debt Underwriting*** Oppenheimer offers a full range of debt financing for emerging growth and middle market companies and financial sponsors. Oppenheimer focuses on structuring and distributing public and private debt in leveraged finance transactions, including leveraged buyouts, acquisitions, growth capital financings, recapitalizations and Chapter 11 exit financings. Oppenheimer specializes in high yield debt and fixed and floating-rate senior and subordinated debt offerings. Oppenheimer recently began advising on bond financing alternatives for both sovereign and corporate emerging market issuers.

## **Table of Contents**

### **EQUITIES CAPITAL MARKETS**

***Institutional Equity Sales and Trading*** Oppenheimer provides equity market execution and market making services in all major U.S. exchanges and alternative execution venues, capital markets/origination, risk arbitrage, statistical arbitrage, special situations, pair trades, relative value, and portfolio and electronic trading. In addition, Oppenheimer offers a suite of quantitative and algorithmic trading solutions as well as access to liquidity in order to access the global markets. Oppenheimer's clients include domestic and international investors such as investment advisors, banks, mutual funds, insurance companies, hedge funds, and pension and profit sharing plans. These investors normally purchase and sell securities in block transactions, the execution of which requires focused marketing and trading expertise. Oppenheimer believes that its institutional customers are attracted by the quality of its execution (measured by volume, timing and price) and its competitive commission rates, which are negotiated on the basis of market conditions, the size of the particular transaction and other factors.

***Equity Research*** Oppenheimer employs over 34 senior analysts covering approximately 600 equity securities worldwide, and over 120 dedicated equity research sales professionals. Oppenheimer provides regular research reports, notes and earnings updates and sponsors numerous research conferences where the management of covered companies can meet with investors in a group format as well as in one-on-one meetings. Oppenheimer also arranges for company managements to meet with interested investors through arranged meetings wherein the management representatives travel to various sites to meet with Oppenheimer representatives and with investors. Oppenheimer's analysts use a variety of quantitative and qualitative tools, integrating field analysis, proprietary channel checks and ongoing dialogue with the managements of the companies they cover in order to produce reports and studies on individual companies and industry developments. In addition to providing fundamental analysis, the Company also provides technical analysis.

***Equity, Debt and Index Options*** Oppenheimer offers extensive equity and index options for investors seeking to manage risk and optimize returns within the equities market. Oppenheimer's experienced professionals have expertise in listed and over-the-counter transactions and products. In addition, the Company focuses on serving the diverse needs of its institutional, corporate and private client base across multiple product lines, offering listed and OTC options.

***Convertible Bonds*** Oppenheimer commits dedicated personnel to serve the convertible markets, offering expertise in the sales, trading and analysis of U.S. domestic and international convertible bonds, convertible preferred shares, warrants and structured products, with a focus on minimizing transaction costs and maximizing liquidity. In addition Oppenheimer offers hedged (typically long convertible bonds and short equities) positions to its clients on an integrated trade basis.

***Event Driven Sales and Trading*** Oppenheimer has a dedicated team focused on providing specialized advice and trade execution expertise to institutional clients with an interest in investment strategies such as: Merger Arbitrage; Dutch tender offers; Splits and Spin-offs; and Recapitalizations and Corporate Reorganizations.

## **Table of Contents**

### **DEBT CAPITAL MARKETS**

#### **Fixed Income Sales & Trading**

**Fixed Income** Oppenheimer trades non-investment grade public and private debt securities, mortgage-backed securities, sovereign and corporate debt of industrialized and emerging market countries and distressed securities both for its own account as well as for institutional clients qualified to sustain the risks associated with such securities. Oppenheimer also publishes research with respect to a number of such securities. Risk of loss upon default by the borrower is significantly greater with respect to unrated or less than investment grade corporate debt securities than with other corporate debt securities. These securities are generally unsecured and are often subordinated to other creditors of the issuer. These issuers usually have high levels of indebtedness and are more sensitive to adverse economic conditions, such as recession or increasing interest rates, than are investment grade issuers. There is a limited market for some of these securities and market quotes are available only from a small number of dealers. Oppenheimer also offers trading and a high degree of sales support in highly rated ( high grade ) corporate bonds, mortgage-backed securities, government and agency bonds and the sovereign and corporate debt of industrialized and emerging market countries, which may be denominated in currencies other than U.S. dollars. Since June 2009, Oppenheimer has participated in auctions for U.S. Government securities conducted by the Federal Reserve Bank of New York on behalf of the U.S. Treasury.

**Fixed Income Research** Oppenheimer has a total of 8 fixed income research professionals. There are 4 dedicated analysts covering over 250 companies in the high yield bond and leveraged loan sectors. Oppenheimer's fixed income research supports its investment banking and sales and trading activities. Its research is designed to identify debt issues that provide a combination of high yield plus capital appreciation over the short to medium term. There is 1 emerging market fixed income research analyst covering investment grade and high yield corporate issuers domiciled in Latin America. There is 1 special situations fixed income analyst in London focused on a variety of European-based investment grade and high yield issuers. In addition, Oppenheimer employs 1 bank strategist, focused on portfolio strategy for financial institutions and depositories. The approach is client centric, incorporating both an understanding of the operating position, risk profile and policy constraints of the client, as well as the efficient market execution of a particular strategy. In providing strategy-based services and ideas, the group utilizes a wide range of sophisticated, state-of-the-art financial models as well as comprehensive portfolio analytics. There is 1 Mortgage Backed Securities analyst focused on the detailed analysis of individual agency and non-agency Mortgage Backed Securities.

**Public Finance** Oppenheimer's public finance department advises and raises capital for state and local governments, public agencies, private developers and other borrowers. The group assists its clients by developing and executing capital financing plans that meet our clients' objectives and by maintaining strong national institutional and retail securities distribution capabilities. Public finance bankers have expertise in specific areas, including local governments and municipalities, primary and secondary schools, post secondary and private schools, state and local transportation entities, health care institutions, senior-living facilities, public utility providers and project financing.

**Municipal Trading** Oppenheimer has municipal trading desks located throughout the country that serve retail financial advisers within their regions as well as mid-tier and national institutional accounts. Oppenheimer also assists in underwriting municipal securities originated by its Public Finance Department. These desks serve Oppenheimer's financial advisers in supporting their high net worth clients' needs for taxable and non-taxable municipal securities.

### **PROPRIETARY TRADING**

In the regular course of its business, Oppenheimer takes securities positions as a market maker and/or principal to facilitate customer transactions and for investment purposes. In making markets and when trading for its own account, Oppenheimer exposes its own capital to the risk of fluctuations in market value. In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act ( Dodd-Frank ) that proposes to prohibit proprietary trading by certain financial institutions (the Volcker Rule) except where facilitating customer trades. The Company does not believe that this legislation will affect its business or operations as the proposals appear to apply to banks and other subsidiaries of bank holding companies only.

## **Table of Contents**

**Equities** Oppenheimer acts as both principal and agent in the execution of its customers' orders. Oppenheimer buys, sells and maintains an inventory of a security in order to make a market in that security. In executing customer orders for securities in which it does not make a market, Oppenheimer generally charges a commission and acts as agent, or will act as principal by marking the security up or down in a riskless transaction. However, when an order is in a security in which Oppenheimer makes a market, Oppenheimer normally acts as principal and purchases from or sells to its brokerage customers at a price which is approximately equal to the current inter-dealer market price plus or minus a mark-up or mark-down. The stocks in which Oppenheimer makes a market may also include those of issuers which are followed by Oppenheimer's research department.

**Fixed Income** Oppenheimer trades and holds positions in public and private debt securities, including non-investment grade and distressed corporate securities as well as municipal securities. There may be a limited market for some of these securities and market quotes may be available from only a small number of dealers or inter-dealer brokers. While Oppenheimer normally holds such securities for a short period of time in order to facilitate client transactions, there is a risk of loss upon default by the borrower. These issuers may have high levels of indebtedness and be sensitive to adverse economic conditions, such as recession or increasing interest rates. The Company has made a determination for the short to intermediate term to refrain from positioning fixed income securities issued by European sovereign states or their agencies until prevailing conditions stabilize and improve. As of December 31, 2012, the Company did not have any exposure to European sovereign debt.

Through the use of securities sold under agreements to repurchase ( repurchase agreements ) and securities purchased under agreements to resell ( reverse repurchase agreements ), the Company acts as an intermediary between borrowers and lenders of short-term funds and provides funding for various inventory positions.

**Proprietary Trading and Investment Activities** Oppenheimer holds positions in its trading accounts in securities in which it does not make a market and may engage from time to time in other types of principal transactions in securities. Oppenheimer has several trading departments including: a convertible bond department, a risk arbitrage department, a corporate bond dealer department, a municipal bond department, a government/mortgage backed securities department, and a department that underwrites and trades U.S. government agency issues, taxable corporate bonds, preferred shares, unit investment trusts and short term debt instruments. These departments continually purchase and sell securities and make markets in order to make a profit on the inter-dealer spread or to profit from investment. Although Oppenheimer from time to time holds an inventory of securities, more typically, it seeks to match customer buy and sell orders. In addition, Oppenheimer or OAM holds proprietary positions in equity or fixed income securities in which it may not act as a dealer.

The size of its securities positions vary substantially based upon economic and market conditions, allocations of capital, underwriting commitments and trading volume. Also, the aggregate value of inventories of securities which Oppenheimer may carry is limited by the Net Capital Rule. See Regulatory Capital Requirements , below and Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources.

The Company, through its subsidiaries, holds investments as general partner in a range of investment partnerships (hedge funds, fund of funds, private equity partnerships and real estate partnerships) which are offered to Oppenheimer hedge fund-qualified clients and on a limited basis to qualified clients of other broker-dealers.

## **Table of Contents**

### **OPY CREDIT CORP.**

Through OPY Credit Corp., the Company utilized a warehouse facility provided by CIBC World Markets Corp. ( CIBC ), to extend financing commitments to third party borrowers identified by the Company. As of December 31, 2012, the Company utilized \$nil (\$65.9 million as of December 31, 2011) under such warehouse facility and had \$nil in Excess Retention (\$nil as of December 31, 2011). This warehouse arrangement terminated on July 15, 2012. However, the Company will remain contingently liable for some minimal expenses in relation to this facility related to commitments made by CIBC to borrowers introduced by the Company until such borrowings are repaid by the borrower or until 2016, whichever is the sooner to occur. All such owed amounts will continue to be reflected in the Company's consolidated statement of operations as incurred.

The Company reached an agreement with RBS Citizens, NA ( Citizens ) that was announced in July 2012, whereby the Company, through OPY Credit Corp., will introduce lending opportunities to Citizens, which Citizens can elect to accept and in which the Company will participate in the fees earned from any related commitment by Citizens. The Company can also in certain circumstances assume a portion of Citizens' syndication and lending risk under such loans, and if it does so it shall be obligated to secure such obligations via a cash deposit determined through risk based formulas. Neither the Company nor Citizens is obligated to make any specific loan or to commit any minimum amount of lending capacity to the relationship. The agreement also calls for Citizens and the Company at their option to jointly participate in the arrangement of various loan syndications. At December 31, 2012, there were no loans in place.

### **OPPENHEIMER TRUST COMPANY**

Oppenheimer Trust offers a wide variety of trust services to clients of Oppenheimer. This includes custody services, advisory services and specialized servicing options for clients. At December 31, 2012, Oppenheimer Trust held custodial assets of approximately \$2.2 billion. See Other Requirements below.

### **OPPENHEIMER MULTIFAMILY HOUSING & HEALTHCARE FINANCE, INC.**

OMHHF is an FHA-approved mortgage originator and servicing company offering a variety of mortgage services to developers of commercial properties including apartments satisfying FHA criteria, elderly housing and nursing homes. OMHHF also maintains a mortgage servicing portfolio in which it collects mortgage payments from mortgagees and passes these payments on to mortgage holders, charging a fee for its services. The servicing portfolio represented \$3.4 billion in outstanding principal amount at December 31, 2012.

### **ADMINISTRATION AND OPERATIONS**

Administration and operations personnel are responsible for the processing of securities transactions; the receipt, identification and delivery of funds and securities; the maintenance of internal financial controls; accounting functions; custody of customers' securities; the handling of margin accounts for Oppenheimer and its correspondents; and general office services.

## **Table of Contents**

Oppenheimer executes its own and certain of its correspondents' securities transactions on all United States exchanges as well as many non-U.S. exchanges and in the over-the-counter market. Oppenheimer clears all of its securities transactions (i.e., it delivers securities that it has sold, receives securities that it has purchased and transfers related funds) through its own facilities and through memberships in various clearing corporations and custodian banks in the United States. For transactions executed in local markets in Europe and Asia, Oppenheimer uses BNP Paribas Securities Services for execution, clearing, and settlement on an introduced basis. Oppenheimer has recently introduced a multi-currency platform which enables it to facilitate client trades in securities denominated in foreign currencies. Oppenheimer is also a futures commission merchant and clears commodities transactions on a number of commodities exchanges for its clients that trade commodities through a correspondent firm on an omnibus basis.

## **EMPLOYEES**

At December 31, 2012, the Company employed 3,521 employees (3,445 full time and 76 part time), of whom approximately 1,406 were financial advisers.

## **Table of Contents**

### **COMPETITION**

Oppenheimer encounters intense competition in all aspects of the securities business and competes directly with other securities firms, a significant number of which have substantially greater resources and offer a wider range of financial services. In addition, there has been increasing competition from other sources, such as commercial banks, insurance companies and certain major corporations that have entered the securities industry through acquisition, and from other entities. Additionally, foreign-based securities firms and commercial banks regularly offer their services in performing a variety of investment banking functions including: mergers and acquisitions advice, leveraged buy-out financing, merchant banking, and bridge financing, all in direct competition with U.S. broker-dealers.

During the recent financial crisis and currently, several key market events drastically altered the landscape for financial institutions. Voluntary and involuntary consolidations among, and government assistance provided to, U.S. financial institutions has led to a greater concentration of capital and market share among large financial institutions. This, coupled with the ability of these financial institutions to finance their securities businesses with capital from other businesses, such as commercial banking deposits, as well as such institutions deriving an aura of stability in the mind of the public ( too big to fail ), may put the Company at a significant competitive disadvantage.

The Company believes that the principal factors affecting competition in the securities and investment banking industries are the quality and ability of professional personnel and relative prices of services and products offered. In some instances, competition within the industry can be impacted by the credit ratings assigned to the firm offering services when potential clients are making a determination of acceptable counterparties. The ability of securities industry participants to offer credit facilities to potential investment banking clients may affect the assignment of individual transactions. The Company's ability to compete depends substantially on its ability to attract and retain qualified employees while managing compensation and other costs. Oppenheimer and its competitors employ advertising and direct solicitation of potential customers in order to increase business and furnish investment research publications in an effort to retain existing and attract potential clients. Many of Oppenheimer's competitors engage in these programs more extensively than Oppenheimer.

### **BUSINESS CONTINUITY PLAN**

The Company has a business continuity plan in place which is designed to enable it to continue to operate and provide services to its clients under a variety of circumstances in which one or more events may make one or more firm operating locations unavailable due to a local, regional or national emergency, or due to the failure of one or more systems that the Company relies upon to provide the services that it routinely provides to its clients, employees and various business partners and counterparties. The plan covers all business areas of the Company and provides contingency plans for technology, staffing, equipment, and communication to employees, clients and counterparties. While the plan is intended to address many types of business continuity issues, there could be certain occurrences, which by their very nature are unpredictable, that can occur in a manner that is outside of our planning guidelines and could render the Company's estimates of timing for recovery inaccurate. Under all circumstances, it is the Company's intention to remain in business and to provide ongoing investment services as if no disruption had occurred.

## **Table of Contents**

Oppenheimer maintains its headquarters and principal operating locations in New York City. In order to provide continuity for these services, the Company operates a primary data center as well as maintains back-up facilities (information technology, operations and data processing) in sites with requisite communications back-up systems. These facilities are maintained in multiple locations and, in addition, the Company occupies significant office facilities in locations around the United States which could, in an emergency, house dislocated staff members for a short or intermediate time frame. Oppenheimer relies on public utilities for power and phone services, industry specific entities for ultimate custody of client securities and market operations, and various industry vendors for services that are significant and important to our business for the execution, clearance and custody of client holdings, for the pricing and valuing of client holdings, and for permitting our Company's employees to communicate on an efficient basis. All of these service providers have assured the Company that they have made plans for providing continued service in the case of an unexpected event that might disrupt their services.

The fourth quarter of 2012 was impacted by Superstorm Sandy which occurred on October 29<sup>th</sup> causing the Company to vacate its two principal offices in downtown Manhattan and displaced 800 of the Company's employees including substantially all of its capital markets, operations and headquarters staff for in excess of 30 days. During the displacement period the Company successfully implemented its business continuity plan by relocating personnel from both of its downtown Manhattan locations into other branch offices and back-up facilities in the region. Other than the closure of the financial markets for two business days, the Company was able to successfully clear and settle open trades that took place prior to the storm and to get its trading, operations, technology, and other support functions mobilized to process business once the financial markets reopened. The Company has since returned to both of its downtown locations, one of which is still operating under generator power. There can be no certainty that the availability of independent generators will under all circumstances provide business continuity to the Company. As a result of the dislocation, the Company received rent abatement credits of \$1.7 million for its two downtown buildings and incurred rent and other costs of approximately \$500,000 to accommodate displaced employees.

## **REGULATION**

*Self-Regulatory Organization Membership* Oppenheimer is a member firm of the following self-regulatory organizations ( SROs ): the Financial Industry Regulatory Authority ( FINRA ), the Intercontinental Exchange, Inc., known as ICE Futures U.S., and the National Futures Association. In addition, Oppenheimer has satisfied the requirements of the Municipal Securities Rulemaking Board ( MSRB ) for effecting customer transactions in municipal securities. Freedom is a member of FINRA. Oppenheimer Europe Ltd. (formerly called Oppenheimer E.U. Ltd.) is regulated by the Financial Services Authority in the United Kingdom. Oppenheimer Investments Asia Ltd. is regulated by the Securities and Futures Commission in Hong Kong. Oppenheimer is also a member of the Securities Industry and Financial Markets Association ( SIFMA ), a non-profit organization that represents the shared interests of participants in the global financial markets. The Company has access to a number of regional and national markets and is required to adhere to their applicable rules and regulations.

*Securities Regulation* The securities industry in the United States is subject to extensive regulation under both federal and state laws. The Securities and Exchange Commission ( SEC ) is the Federal agency charged with administration of the Federal securities laws. Much of the regulation of broker-dealers has been delegated to SROs such as FINRA and the National Futures Association. FINRA has been designated as the primary regulator of Oppenheimer and Freedom with respect to securities and option trading activities and the National Futures Association has been designated as Oppenheimer's primary regulator with respect to commodities activities. SROs adopt rules (subject to approval by the SEC or the Commodities Futures Trading Commission ( CFTC ), as the case may be) governing the industry and conduct periodic examinations of Oppenheimer's and Freedom's operations. Securities firms are also subject to regulation by state securities commissions in the states in which they do business. Oppenheimer and Freedom are each registered as a broker-dealer in the 50 states and the District of Columbia and Puerto Rico.

## **Table of Contents**

*Broker-dealer Regulation* The regulations to which broker-dealers are subject cover all aspects of the securities business, including sales methods, trade practices among broker-dealers, the use and safekeeping of customers' funds and securities, capital structure of securities firms, record keeping and the conduct of directors, officers and employees. The SEC has adopted rules requiring underwriters to ensure that municipal securities issuers provide current financial information and imposing limitations on political contributions to municipal issuers by brokers, dealers and other municipal finance professionals. Additional legislation, changes in rules promulgated by the SEC, the CFTC and by SROs, or changes in the interpretation or enforcement of existing laws and rules may directly affect the method of operation and profitability of broker-dealers. The SEC, SROs (including FINRA) and state securities commissions may conduct administrative proceedings which can result in censure, fine, issuance of cease and desist orders or suspension or expulsion of a broker-dealer, its officers, or employees. These administrative proceedings, whether or not resulting in adverse findings, can require substantial expenditures of time and money and can have an adverse impact on the reputation of a broker-dealer. The principal purpose of regulating and disciplining broker-dealers is to protect customers and the securities markets rather than to protect creditors and shareholders.

Regulation NMS and Regulation SHO have substantially affected the trading of equity securities. These regulations were intended to increase transparency in the markets and have acted to further reduce spreads and, with competition from electronic marketplaces, to reduce commission rates paid by institutional investors.

Oppenheimer, and certain of its affiliates, are also subject to regulation by the SEC and under certain state laws in connection with its business as an investment advisor and its research department activities.

The SEC has passed a requirement for custodians of securities on behalf of investment advisors, such as the Company, to be subject to an annual surprise examination of custodian assets and to deliver a control report to its clients, issued by a qualified accounting firm, describing its processes and controls affecting custody operations, which report was issued by the Company for the first time on September 12, 2010. The Company's most recent report was timely filed on December 21, 2012.

Margin lending by Oppenheimer is subject to the margin rules of the Board of Governors of the Federal Reserve System and FINRA. Under such rules, Oppenheimer is limited in the amount it may lend in connection with certain purchases of securities and is also required to impose certain maintenance requirements on the amount of securities and cash held in margin accounts. In addition, Oppenheimer may (and currently does) impose more restrictive margin requirements than required by such rules.

The Sarbanes-Oxley Act of 2002 effected significant changes to corporate governance, auditing requirements and corporate reporting. This law generally applies to all companies, including the Company, with equity or debt securities registered under the Securities Exchange Act of 1934, as amended (the Exchange Act). The Company has taken numerous actions, and incurred substantial expenses, since the passage of the legislation to comply with the Sarbanes-Oxley Act, related regulations promulgated by the SEC and other corporate governance requirements of the NYSE. Management has determined that the Company's internal control over financial reporting as of December 31, 2012 was effective. See Item 8 under the caption Management's Report on Internal Control over Financial Reporting.

## **Table of Contents**

In July 2010, Congress enacted extensive legislation entitled the Dodd-Frank Wall Street Reform and Consumer Protection Act in which it mandated that the SEC and other regulators conduct comprehensive studies and issue new regulations based on their findings to control and monitor the activities of financial institutions in order to protect the financial system, the investing public and consumers from issues and failures that occurred in the recent financial crisis. All the relevant studies have not yet been completed, but they are widely expected to extensively impact the regulation and practices of financial institutions including the Company. The changes are likely to significantly reduce leverage available to financial institutions and to increase transparency to regulators and investors of risks taken by such institutions. It is impossible to presently predict the nature of such rulemaking, although proposals being considered in the U.S. and Europe would possibly create a new regulator for certain activities, regulate and/or prohibit proprietary trading for certain deposit taking institutions (the Volcker Rule), control the amount and timing of compensation to highly paid employees, create new regulations around financial transactions with consumers requiring the adoption of a uniform fiduciary standard of care of broker-dealers and investment advisers providing personalized investment advice about securities to retail customers, and increase the disclosures provided to clients, and create a tax on securities transactions. In December 2012, France began applying a .2% transaction tax on financial transactions in American Depositary Receipts of French companies that trade on U.S. exchanges. Italy is expected to implement its own transaction tax on financial transactions in March 2013. The European Markets are attempting to enact a transaction tax on financial transactions that would be imposed on all financial transactions originating in the Euro zone. If and when enacted, such regulations will likely increase compliance costs and reduce returns earned by financial service providers and intensify compliance overall. It is difficult to predict the nature of the final regulations and their impact on the business of the Company. The impact of any of, or more than one of, the foregoing could have a material adverse affect on our business, financial condition and results of operations.

*Trust Company Regulation* Oppenheimer Trust is a limited purpose trust company organized under the laws of New Jersey and is regulated by the New Jersey Department of Banking and Insurance.

## **REGULATORY CAPITAL REQUIREMENTS**

As registered broker-dealers and member firms regulated by FINRA, Oppenheimer and Freedom are subject to certain net capital requirements pursuant to Rule 15c3-1 (the Net Capital Rule) promulgated under the Exchange Act. The Net Capital Rule, which specifies minimum net capital requirements for registered brokers and dealers, is designed to measure the general financial integrity and liquidity of a broker-dealer and requires that at least a minimum part of its assets be kept in relatively liquid form.

Oppenheimer elects to compute net capital under an alternative method of calculation permitted by the Net Capital Rule. (Freedom computes net capital under the basic formula as provided by the Net Capital Rule.) Under this alternative method, Oppenheimer is required to maintain a minimum net capital, as defined in the Net Capital Rule, at least equal to 2% of the amount of its aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3 under the Exchange Act) or \$1.5 million, whichever is greater. Aggregate debit items are assets that have as their source transactions with customers, primarily margin loans. Failure to maintain the required net capital may subject a firm to suspension or expulsion by FINRA, the SEC and other regulatory bodies and ultimately may require its liquidation. The Net Capital Rule also prohibits payments of dividends, redemption of stock and the prepayment of subordinated indebtedness if net capital thereafter would be less than 5% of aggregate debit items (or 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater) and payments in respect of principal of subordinated indebtedness if net capital thereafter would be less than 5% of aggregate debit items (or 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater). The Net Capital Rule also provides that the total outstanding principal amounts of a broker-dealer's indebtedness under certain subordination agreements (the proceeds of which are included in its net capital) may not exceed 70% of the sum of the outstanding principal amounts of all subordinated indebtedness included in net capital, par or stated value of capital stock, paid in capital in excess of par, retained earnings and other capital accounts for a period in excess of 90 days.

## **Table of Contents**

Net capital is essentially defined in the Net Capital Rule as net worth (assets minus liabilities), plus qualifying subordinated borrowings minus certain mandatory deductions that result from excluding assets that are not readily convertible into cash and deductions for certain operating charges. The Net Capital Rule values certain other assets, such as a firm's positions in securities, conservatively. Among these deductions are adjustments (called "haircuts") in the market value of securities to reflect the possibility of a market decline prior to disposition.

Compliance with the Net Capital Rule could limit those operations of the brokerage subsidiaries of the Company that require the intensive use of capital, such as underwriting and trading activities and the financing of customer account balances, and also could restrict the Company's ability to withdraw capital from its brokerage subsidiaries, which in turn could limit the Company's ability to pay dividends, repay debt and redeem or purchase shares of its outstanding capital stock. Under the Net Capital Rule, broker-dealers are required to maintain certain records and provide the SEC with quarterly reports with respect to, among other things, significant movements of capital, including transfers to a holding company parent or other affiliate. The SEC and/or SROs may in certain circumstances restrict the Company's brokerage subsidiaries' ability to withdraw excess net capital and transfer it to the Company or to other Operating Subsidiaries or to expand the Company's business.

On January 31, 2013, a FINRA arbitration panel rendered a decision in the previously disclosed U.S. Airways case, filed in February 2009, resulting in an award against Oppenheimer, in the amount of \$30 million including interest and costs on a claim of approximately \$140 million (adjusted down from \$253 million). The effect of the award resulted in a fourth quarter after-tax charge of \$17.9 million. Oppenheimer Holdings Inc., the ultimate parent of Oppenheimer, has contributed capital into Oppenheimer in an amount equal to the net after tax effect of the award. Accordingly, the Net Capital of Oppenheimer did not change as a result of the award.

Oppenheimer Europe Ltd. (formerly called Oppenheimer E.U. Ltd.) is authorized by the Financial Services Authority ("FSA") of the United Kingdom to provide investment services under the Markets of Financial Instruments Directive ("MiFID"). Under its current status, Oppenheimer Europe Ltd.'s capital resource requirement is the higher of the base capital resource requirement ("50,000"), or the sum of the credit risk capital and the market risk capital requirements, or the fixed overheads requirement, which is equal to 25% of the firm's relevant fixed expenditures as defined by the FSA.

On February 12, 2010, Oppenheimer Investments Asia Ltd. was approved by the Hong Kong Securities and Futures Commission to place securities of U.S. listed companies with institutional clients and to provide corporate finance advisory services to Hong Kong institutional clients. Oppenheimer Investments Asia Ltd. is required to maintain Required Liquid Capital of the greater of HKD \$3,000,000 or 5% of Adjusted Liabilities as defined by the Hong Kong Securities and Futures Financial Resources Rules.

See note 14 to the consolidated financial statements for the year ended December 31, 2012 appearing in Item 8 for further information on the Company's regulatory capital requirements.

## **Table of Contents**

### **OTHER REQUIREMENTS**

#### *Notes*

On April 12, 2011, the Company completed the private placement of \$200.0 million in aggregate principal amount of 8.75 percent Senior Secured Notes due April 15, 2018 at par (the "Notes"). The interest on the Notes is payable semi-annually on April<sup>15</sup><sup>th</sup> and October 15<sup>th</sup>. Proceeds from the private placement were used to retire the Senior Secured Credit Note due 2013 (\$22.4 million) and the Subordinated Note due 2014 (\$100.0 million) and for other general corporate purposes. The private placement resulted in the fixing of the interest rate over the term of the Notes compared to the variable rate debt that was retired and an extension of the debt maturity dates as described above. The cost to issue the Notes was approximately \$4.6 million which was capitalized in the second quarter of 2011 and will be amortized over the period of the Notes. The Company wrote off \$344,000 in unamortized debt issuance costs related to the Senior Secured Credit Note during the second quarter of 2011. Additionally, as a result of the retirement of the Subordinated Note, the effective portion of the net loss of \$1.3 million related to the interest rate cap cash flow hedge was reclassified from accumulated other comprehensive income (loss) on the consolidated balance sheet to interest expense in the consolidated statement of operations during the second quarter of 2011.

The indenture for the Notes contains covenants which place restrictions on the incurrence of indebtedness, the payment of dividends, sale of assets, mergers and acquisitions and the granting of liens. The Notes provide for events of default including nonpayment, misrepresentation, breach of covenants and bankruptcy. The Company's obligations under the Notes are guaranteed, subject to certain limitations, by the same subsidiaries that guaranteed the obligations under the Senior Secured Credit Note and the Subordinated Note which were retired. These guarantees may be shared, on a senior basis, under certain circumstances, with newly incurred debt outstanding in the future. The Notes were filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2011. At December 31, 2012, the Company was in compliance with all of its covenants.

On July 12, 2011, the Company's Registration Statement on Form S-4 filed to register the exchange of the Notes for fully registered Notes was declared effective by the SEC. The Exchange Offer was completed in its entirety on August 9, 2011.

In November 2011, the Company repurchased \$5.0 million of its Notes at a cost of \$4.7 million resulting in the recording of a gain of \$300,000 during the fourth quarter of 2011. The Company continued to hold these Notes at December 31, 2012.

On April 4, 2012, the Company's Registration Statement on Form S-3 filed to enable the Company to act as a market maker in connection with the Notes was declared effective by the SEC.

Interest expense for the year ended December 31, 2012 on the Notes was \$17.1 million (\$12.5 million in 2011 and \$nil in 2010). Interest paid on the Notes for the year ended December 31, 2012 was \$17.1 million (\$8.9 million in 2011).

#### *Senior Secured Credit Note*

In 2006, the Company issued a Senior Secured Credit Note in the amount of \$125.0 million at a variable interest rate based on LIBOR with a seven-year term to a syndicate led by Morgan Stanley Senior Funding Inc., as agent. In accordance with the Senior Secured Credit Note, the Company provided certain covenants to the lenders with respect to the maintenance of a minimum fixed charge ratio and maximum leverage ratio and minimum net capital requirements with respect to Oppenheimer.

The remaining principal balance of the Senior Secured Credit Note in the amount of \$22.4 million was repaid in full on April 12, 2011 in connection with the issuance of the Notes described above.

## **Table of Contents**

Interest expense, as well as interest paid for the year ended December 31, 2011, on the Senior Secured Credit Note was \$306,000 (\$1.5 million in 2010).

### *Subordinated Note*

On January 14, 2008, in connection with the acquisition of certain businesses from CIBC World Markets Corp., CIBC made a loan in the amount of \$100.0 million and the Company issued a Subordinated Note to CIBC in the amount of \$100.0 million at a variable interest rate based on LIBOR. The purpose of this note was to support the capital requirements of the acquired business. In accordance with the Subordinated Note, the Company provided certain covenants to CIBC with respect to the maintenance of a minimum fixed charge ratio and maximum leverage ratio and minimum net capital requirements with respect to Oppenheimer.

The principal balance of the Subordinated Note in the amount of \$100.0 million was repaid in full on April 12, 2011 in connection with the issuance of the Notes described above.

Interest expense, as well as interest paid for the year ended December 31, 2011, on the Subordinated Note was \$1.6 million (\$5.7 million in 2010).

### *Other debt*

Through OPY Credit Corp., the Company utilized a warehouse facility provided by CIBC to extend financing commitments to third party borrowers identified by the Company. As of December 31, 2012, the Company utilized \$nil (\$65.9 million as of December 31, 2011) under such warehouse facility and had \$nil in Excess Retention (\$nil as of December 31, 2011). This warehouse arrangement terminated on July 15, 2012. However, the Company will remain liable for some minimal expenses in relation to this facility related to commitments made by CIBC to borrowers introduced by the Company until such borrowings are repaid by the borrower or until 2016, whichever is the sooner to occur. All such owed amounts will continue to be reflected in the Company's consolidated statement of operations as incurred.

Oppenheimer and Freedom are each members of the Securities Investor Protection Corporation (SIPC), which provides, in the event of the liquidation of a broker-dealer, protection for customers' accounts (including the customer accounts of other securities firms when it acts on their behalf as a clearing broker) held by the firm of up to \$500,000 for each customer, subject to a limitation of \$250,000 for claims for cash balances. SIPC is funded through assessments on registered broker-dealers. In addition, Oppenheimer has purchased additional excess of SIPC policy protection from certain underwriters at Lloyd's of London of an additional \$99.5 million (and \$900,000 for claims for cash balance) per customer. The excess of SIPC policy has an overall aggregate limit of liability of \$400.0 million. The Company has entered into an indemnity agreement with Lloyd's of London pursuant to which the Company has agreed to indemnify Lloyd's of London for losses incurred by Lloyd's under the policy.

## **AVAILABLE INFORMATION**

The Company's principal place of business is at 85 Broad Street, New York, NY 10004 and its telephone number is (212) 668-8000. The Company's Internet address is <http://www.opco.com>. The Company makes available free of charge through its website its Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other SEC filings and all amendments to those reports within 24 hours of such material being electronically filed with or furnished to the SEC.

**Table of Contents**

You may read and copy this Annual Report on Form 10-K for the year ended December 31, 2012 at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies by mail from the Public Reference Room of the SEC at prescribed rates. To obtain information on the operation of the Public Reference Room, you can call the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website that contains reports, proxy and information statements and other information regarding issuers, including Oppenheimer Holdings Inc., that file electronically with the SEC. The address of the SEC's Internet website is <http://www.sec.gov>.

## **Table of Contents**

### **Item 1A. RISK FACTORS**

The Company's business and operations are subject to numerous risks. The material risks and uncertainties that management believes affect the Company are described below. The risks and uncertainties described below are not the only ones facing the Company. Additional risks and uncertainties that management is not aware of or focused on or that management currently deems immaterial may also impair the Company's business operations. If any of the following risks actually occur, the Company's financial condition and results of operations may be materially and adversely affected.

#### **The Company may continue to be adversely affected by the failure of the Auction Rate Securities Market.**

In February 2008, the market for auction rate securities (ARS) began experiencing disruptions due to the failure of auctions for preferred stocks issued to leverage closed end funds, municipal bonds backed by tax exempt issuers, and student loans backed by pools of student loans guaranteed by U.S. government agencies. This failure followed an earlier failure of a smaller market of ARS that were backed by mortgage and other forms of derivatives in the summer of 2007. These auction failures developed as a result of auction managers or dealers, typically large commercial or investment banks, deciding not to commit their own capital when there was insufficient demand from bidders to meet the supply of sales from sellers. The failure of the ARS market has prevented clients of the Company from liquidating holdings in these positions or, in many cases, posting these securities as collateral for loans. The Company had operated in an agency capacity in this market and held and continues to hold ARS in its proprietary accounts and, as a result, is exposed to these liquidity issues as well. The Company believes that, although issuer redemptions of ARS have occurred, approximately 15% of the overall ARS issued into the ARS market remain outstanding at December 31, 2012. There is no guarantee that further ARS issuer redemptions will occur and, if so, that the Company's clients' ARS will be redeemed.

Regulators have concluded, in many cases, that securities firms, initially those that underwrote and supported the auctions for ARS, should be compelled to purchase them from retail customers. Underwriters and broker-dealers in such securities have settled with various regulators and have purchased ARS from their retail clients. The Company may be at a competitive disadvantage to those of its competitors that have already completed purchases of ARS from their clients.

In February 2010, Oppenheimer finalized settlements with each of the New York Attorney General's office (NYAG) and the Massachusetts Securities Division (MSD) and, together with the NYAG, the Regulators) concluding investigations and administrative proceedings by the Regulators concerning Oppenheimer's marketing and sale of ARS. Pursuant to those settlements and legal settlements the Company has purchased and will, subject to the terms and conditions of the settlements with the regulators, continue to purchase ARS from its clients on a periodic basis pursuant to the settlements with the Regulators. The ultimate amount of ARS to be repurchased by the Company cannot be predicted with any certainty and will be impacted by redemptions by issuers and legal and other actions by clients during the relevant period which cannot be predicted.

Notwithstanding the foregoing settlements with the Regulators, the Company remains as a named respondent in a number of arbitrations by its current or former clients as well as lawsuits related to its sale of ARS. In addition, the Company is continuing to cooperate with investigating entities from other states. If the ARS market remains frozen, the Company may likely be further subject to claims by its clients. There can be no guarantee that the Company will be successful in defending any or all of the current actions against it or any subsequent actions filed in the future. Any such failure could have a material adverse effect on the results of operations and financial condition of the Company, including its cash position.

## **Table of Contents**

See Legal Proceedings and Management's Discussion and Analysis of Financial Condition and Results of Operations Regulatory and Legal Environment Other Regulatory Matters and Other Matters.

Interest rates on ARS typically reset through periodic auctions. Due to the auction mechanism and generally liquid markets, ARS have historically been categorized as Level 1 in the fair value hierarchy. Beginning in February 2008, uncertainties in the credit markets resulted in substantially all of the ARS market experiencing failed auctions. Once the auctions failed, the ARS could no longer be valued using observable prices set in the auctions. The Company has used less observable determinants of the fair value of ARS, including the strength in the underlying credits, announced issuer redemptions, completed issuer redemptions, and announcements from issuers regarding their intentions with respect to their outstanding ARS. The Company has also developed an internal methodology to discount for the lack of liquidity and non-performance risk of the failed auctions. Key inputs include spreads on comparable Treasury yields to derive a discount rate, an estimate of the ARS duration, and yields based on current auctions in comparable securities that have not failed. Due to the less observable nature of these inputs, the Company categorizes ARS in Level 3 of the fair value hierarchy. As of December 31, 2012, the Company had a valuation adjustment (unrealized loss) of \$7.7 million for ARS.

The Company's customers held at Oppenheimer approximately \$212.9 million of ARS at December 31, 2012, exclusive of amounts that were owned by Qualified Institutional Buyers (QIBs), transferred to the Company or purchased by customers after February 2008, or transferred from the Company to other securities firms after February 2008. The Company does not presently have the capacity to purchase all of the ARS held by all of its former or current clients who purchased such securities prior to the market's failure in February 2008 over a short period of time. If the Company were to be required to purchase all of the ARS held by all former or current clients who purchased such securities prior to the market's failure in February 2008 over a short period of time, these purchases would have a material adverse effect on the Company's results of operations and financial condition including its cash position. Neither of the settlements with the Regulators requires the Company to do so. The Company does not currently believe that it is legally obligated to make any such purchases except for those purchases it has agreed with the Regulators to make as previously disclosed. If Oppenheimer defaults on either agreement with the Regulators, the Regulators may terminate their agreements and, in the case of the MSD, may reinstitute the previously pending administrative proceedings. In addition, there can be no guarantee that other regulators won't seek to compel the Company to repurchase a greater amount of ARS than called for by the settlements with the Regulators. See Legal Proceedings.

The Company has sought, with very limited success, financing from a number of sources to try to find a means for all its clients to find liquidity from their ARS holdings and will continue to do so. There can be no assurance that the Company will be successful in finding a liquidity solution for all its clients' ARS holdings.

## **Table of Contents**

### **Damage to our reputation could damage our businesses.**

Maintaining our reputation is critical to our attracting and maintaining customers, investors and employees. If we fail to deal with, or appear to fail to deal with, various issues that may give rise to reputational risk, we could significantly harm our business prospects. These issues include, but are not limited to, any of the risks discussed in this Item 1A, appropriately dealing with potential conflicts of interest, legal and regulatory requirements, ethical issues, money-laundering, privacy, record keeping, sales and trading practices, failure to sell securities we have underwritten at the anticipated price levels, and the proper identification of the legal, reputational, credit, liquidity, and market risks inherent in our products. A failure to deliver appropriate standards of service and quality, or a failure or perceived failure to treat customers and clients fairly, can result in customer dissatisfaction, litigation and heightened regulatory scrutiny, all of which can lead to lost revenue, higher operating costs and harm to our reputation. Further, negative publicity regarding us, whether or not true, may also result in harm to our prospects.

### **Developments in market and economic conditions have adversely affected, and may in the future adversely affect, the Company's business and profitability.**

Performance in the financial services industry is heavily influenced by the overall strength of economic conditions and financial market activity, which generally have a direct and material impact on the Company's results of operations and financial condition. These conditions are a product of many factors, which are mostly unpredictable and beyond the Company's control, and may affect the decisions made by financial market participants. Uncertain or unfavorable market or economic conditions could result in reduced transaction volumes, reduced revenue and reduced profitability in any or all of the Company's principal businesses. For example:

The Company's investment banking revenue, in the form of underwriting, placement and financial advisory fees, is directly related to the volume and value of transactions as well as the Company's role in these transactions. In an environment of uncertain or unfavorable market or economic conditions such as we have observed in recent years, the volume and size of capital-raising transactions and acquisitions and dispositions typically decrease, thereby reducing the demand for the Company's investment banking services and increasing price competition among financial services companies seeking such engagements. The completion of anticipated investment banking transactions in the Company's pipeline is uncertain and beyond its control, and its investment banking revenue is typically earned upon the successful completion of a transaction. In most cases, the Company receives little or no payment for investment banking engagements that do not result in the successful completion of a transaction. For example, a client's acquisition transaction may be delayed or terminated because of a failure to agree upon final terms with the counterparty, failure to obtain necessary regulatory consents or board or stockholder approvals, failure to secure necessary financing, adverse market conditions or unexpected financial or other problems in the client's or counterparty's business. If the parties fail to complete a transaction on which the Company is advising or an offering in which it is participating, the Company will earn little or no revenue from the transaction but may incur expenses including but not limited to legal fees. The Company may perform services subject to an engagement agreement and the client may refuse to pay fees due under such agreement, requiring the Company to re-negotiate fees or commence legal action for collection of such earned fees. Accordingly, the Company's business is highly dependent on market conditions, the decisions and actions of its clients and interested third parties. The number of engagements the Company has at any given time is subject to change and may not necessarily result in future revenues.

A portion of the Company's revenues are derived from fees generated from its asset management business segment. Asset management fees often are primarily comprised of base management and performance (or incentive) fees. Management fees are primarily based on assets under management. Assets under management balances are impacted by net inflow/outflow of client assets and changes in market values. Poor investment performance by the Company's funds and portfolio managers could result in a loss of managed accounts and could result in reputational damage that might make it more difficult to attract new investors and thus further impact the Company's business and financial condition. If the Company experiences losses of managed accounts, fee revenue will decline. In addition, in periods of declining market values, the values under management may ultimately decline, which would negatively impact fee revenues.

## **Table of Contents**

A downturn in the financial markets may result in a decline in the volume and value of trading transactions and, therefore, may lead to a decline in the revenue the Company generates from commissions on the execution of trading transactions and, in respect of its market-making activities, a reduction in the value of its trading positions and commissions and spreads. A further downturn could negatively impact the Company's ability to generate revenue.

Financial markets are susceptible to severe events such as dislocations which may lead to reduced liquidity. Under these extreme conditions, the Company's risk management strategies may not be as effective as they might otherwise be under normal market conditions.

Liquidity is essential to the Company's businesses. The Company's liquidity could be negatively affected by an inability to raise funding on a regular basis either in the short term market through bank borrowing or in the long term market through senior and subordinated borrowings. Such illiquidity could arise through a lowering of the Company's credit rating or through market disruptions unrelated to the Company. The availability of unsecured financing is largely dependent on our credit rating which is largely determined by factors such as the level and quality of our earnings, capital adequacy, risk management, asset quality and business mix. As noted above, the Company has purchased, and will continue to purchase, auction rate securities from its clients which will reduce liquidity available to the Company for other purposes. The failure to secure the liquidity necessary for the Company to operate and grow could have a material adverse effect on the Company's financial condition and results of operations. See Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources, under Item 7.

Changes in interest rates (especially if such changes are rapid), high interest rates or uncertainty regarding the future direction of interest rates, may create a less favorable environment for certain of the Company's businesses, particularly its fixed income business, resulting in reduced business volume and reduced revenue. The reduction of interest rates to all-time record lows has substantially reduced the interest profits available to the Company through its margin lending and has also reduced profit contributions from money fund products and sponsored FDIC-covered deposits. If interest rates remain at the current historical low levels until late 2014, as is forecasted by the Federal Reserve, or later, the Company's profitability will continue to be significantly negatively impacted.

The Company expects to continue to commit its own capital to engage in proprietary trading, investing and similar activities, and uncertain or unfavorable market or economic conditions may reduce the value of its positions, resulting in reduced revenue. The cyclical nature of the economy and the financial services industry leads to volatility in the Company's operating margins, due to the fixed nature of a portion of compensation expenses and many non-compensation expenses, as well as the possibility that the Company will be unable to scale back other costs at an appropriate time to match any decreases in revenue relating to changes in market and economic conditions. As a result, the Company's financial performance may vary significantly from quarter to quarter and year to year.

## **Table of Contents**

### **Markets have experienced, and may continue to experience, periods of high volatility accompanied by reduced liquidity.**

Financial markets are susceptible to severe events evidenced by rapid depreciation in asset values accompanied by a reduction in asset liquidity. Under these extreme conditions, hedging and other risk management strategies may not be effective. Severe market events have historically been difficult to predict, and significant losses could be realized in the wake of such events. The Flash Crash on May 6, 2010 was driven not by external economic events but by internal market dynamics and automated systems. Such events cannot be predicted nor can anyone, including the Company, predict the effectiveness of controls put in place to prevent such incidents.

### **The Company has experienced significant pricing pressure in areas of its business, which may impair its revenues and profitability.**

In recent years the Company has experienced, and continues to experience, significant pricing pressures on trading margins and commissions in debt and equity trading. In the fixed income market, regulatory requirements have resulted in greater price transparency, leading to increased price competition and decreased trading margins. In the equity market, the Company has experienced increased pricing pressure from institutional clients to reduce commissions, and this pressure has been augmented by the increased use of electronic and direct market access trading, which has created additional downward pressure on trading margins. The trend toward using alternative trading systems is continuing to grow, which may result in decreased commission and trading revenue, reduce the Company's participation in the trading markets and its ability to access market information, and lead to the creation of new and stronger competitors. Institutional clients also have pressured financial services firms to alter soft dollar practices under which brokerage firms bundle the cost of trade execution with research products and services. Some institutions are entering into arrangements that separate (or unbundle) payments for research products or services from sales commissions. These arrangements have increased the competitive pressures on sales commissions and have affected the value the Company's clients place on high-quality research. Moreover, the Company's inability to reach agreement regarding the terms of unbundling arrangements with institutional clients who are actively seeking such arrangements could result in the loss of those clients, which would likely reduce the level of institutional commissions. The Company believes that price competition and pricing pressures in these and other areas will continue as institutional investors continue to reduce the amounts they are willing to pay, including reducing the number of brokerage firms they use, and some of our competitors seek to obtain market share by reducing fees, commissions or margins. Additional pressure on sales and trading revenue may impair the profitability of the Company's business.

### **The ability to attract, develop and retain highly skilled and productive employees is critical to the success of the Company's business.**

The Company faces intense competition for qualified employees from other businesses in the financial services industry, and the performance of its business may suffer to the extent it is unable to attract and retain employees effectively, particularly given the relatively small size of the Company and its employee base compared to some of its competitors. The primary sources of revenue in each of the Company's business lines are commissions and fees earned on advisory and underwriting transactions and customer accounts managed by its employees, who are regularly recruited by other firms and in certain cases are able to take their client relationships with them when they change firms. Experienced employees are regularly offered financial inducements by larger competitors to change employers, and thus competitors can de-stabilize the Company's relationship with valued employees. Some specialized areas of the Company's business are operated by a relatively small number of employees, the loss of any of whom could jeopardize the continuation of that business following the employee's departure.

## **Table of Contents**

### **The Company depends on its senior employees and the loss of their services could harm its business.**

The Company's success is dependent in large part upon the services of its senior executives and employees. Any loss of service of the CEO may adversely affect the business and operations of the Company. The Company maintains key man insurance on the life of its CEO. If the Company's senior executives or employees terminate their employment and the Company is unable to find suitable replacements in relatively short periods of time, its operations may be materially and adversely affected.

### **Underwriting and market-making activities may place capital at risk.**

The Company may incur losses and be subject to reputational harm to the extent that, for any reason, it is unable to sell securities it purchased as an underwriter at the anticipated price levels. As an underwriter, the Company is subject to heightened standards regarding liability for material misstatements or omissions in prospectuses and other offering documents relating to offerings it underwrites. Any such misstatement or omission could subject the Company to enforcement action by the SEC and claims of investors, either of which could have a material adverse impact on the Company's results of operations, financial condition and reputation. As a market maker, the Company may own large positions in specific securities, and these undiversified holdings concentrate the risk of market fluctuations and may result in greater losses than would be the case if the Company's holdings were more diversified.

### **Increases in capital commitments in our proprietary trading, investing and similar activities increase the potential for significant losses.**

The Company's results of operations for a given period may be affected by the nature and scope of these activities and such activities will subject the Company to market fluctuations and volatility that may adversely affect the value of its positions, which could result in significant losses and reduce its revenues and profits. In addition, increased commitment of capital will expose the Company to the risk that a counterparty will be unable to meet its obligations, which could lead to financial losses that could adversely affect the Company's results of operations. These activities may lead to a greater concentration of risk, which may cause the Company to suffer losses even when business conditions are generally favorable for others in the industry.

### **If the Company is unable to repay its outstanding indebtedness when due, its operations would be materially, adversely affected.**

At December 31, 2012, the Company had liabilities of approximately \$2.2 billion, a significant portion of which is collateralized by highly liquid and marketable government securities as well as marketable securities owned by customers. The Company cannot assure that its operations or the liquidation of collateral supporting such borrowings will generate funds sufficient to repay its existing debt obligations as they come due. The Company's failure to repay its indebtedness and make interest payments as required by its debt obligations would most likely have a material adverse affect on its results of operations and financial condition.

### **The Company may make strategic acquisitions of businesses, engage in joint ventures or divest or exit existing businesses, which could result in unforeseen expenses or disruptive effects on its business.**

From time to time, the Company may consider acquisitions of other businesses or joint ventures with other businesses. For example, on January 14, 2008, the Company acquired certain businesses from CIBC World Markets Corp. Any acquisition or joint venture that the Company determines to pursue will be accompanied by a number of risks. After the announcement or completion of an acquisition or joint venture, the Company's share price could decline if investors view the transaction as too costly or unlikely to improve the Company's competitive position. Costs or difficulties relating to such a transaction, including integration of products, employees, offices, technology systems, accounting systems and management controls, may be difficult to predict accurately and be greater than expected causing the Company's estimates to differ from actual results. The Company may be unable to retain key personnel after the transaction, and the transaction may impair relationships with customers and business partners. In addition, the Company may be unable to achieve anticipated benefits and synergies from the transaction as fully as expected or within the expected time frame. Divestitures or elimination of existing businesses or products could have similar effects. These difficulties could disrupt the Company's ongoing business, increase its expenses and adversely affect its operating results and financial condition.

## **Table of Contents**

**The Company is subject to extensive securities regulation and the failure to comply with these regulations could subject it to penalties or sanctions.**

The securities industry and the Company's business are subject to extensive regulation by the SEC, state securities regulators and other governmental regulatory authorities. The Company is also regulated by industry self-regulatory organizations, including FINRA and the MSRB. The Company may be adversely affected by changes in the interpretation or enforcement of existing laws and rules by these governmental authorities and self-regulatory organizations. The regulatory environment is subject to change and the Company may be adversely affected as a result of new or revised legislation or regulations imposed by the SEC, other federal or state governmental regulatory authorities, or self-regulatory organizations. In response to the recent financial crisis, the regulatory environment to which the Company is subjected is expected to intensify as additional rules and regulations are adopted by the Company's regulators. These new regulations will likely increase costs related to compliance and may in other ways adversely affect the performance of the Company.

Oppenheimer is a registered broker-dealer with the SEC and is primarily regulated by FINRA. Broker-dealers are subject to regulations which cover all aspects of the securities business, including:

sales methods and supervision;

trading practices among broker-dealers;

use and safekeeping of customers' funds and securities;

anti-money laundering and Patriot Act compliance;

capital structure of securities firms;

compliance with lending practices (Regulation T);

record keeping; and

the conduct of directors, officers and employees.

Compliance with many of the regulations applicable to the Company involves a number of risks, particularly in areas where applicable regulations may be subject to varying interpretation. The requirements imposed by these regulations are designed to ensure the integrity of the financial markets and to protect customers and other third parties who deal with the Company. New regulations will result in enhanced standards of duty on broker-dealers in their dealings with their clients (fiduciary standards). Consequently, these regulations often serve to limit the Company's activities, including through net capital, customer protection and market conduct requirements, including those relating to principal trading. Much of the regulation of broker-dealers has been delegated to self-regulatory organizations, principally FINRA, which is the Company's primary regulatory agency. FINRA adopts rules, subject to approval by the SEC, which govern its members and conducts periodic examinations of member firms' operations.

The SEC has passed a requirement for custodians of securities on behalf of investment advisors, such as the Company, to conduct an annual surprise audit, in addition to the annual audit, and to issue an annual controls report to its clients, issued by a qualified accounting firm, describing its processes and controls affecting custody operations. A failure to conduct such an audit or issue the report with favorable findings could adversely affect a sizable portion of the Company's businesses.



## **Table of Contents**

If the Company is found to have violated any applicable regulations, formal administrative or judicial proceedings may be initiated against it that may result in:

censure;

fine;

civil penalties, including treble damages in the case of insider trading violations;

the issuance of cease-and-desist orders;

the deregistration or suspension of our broker-dealer activities;

the suspension or disqualification of our officers or employees; or

other adverse consequences.

The imposition of any of these or other penalties could have a material adverse effect on our operating results and financial condition. For a more detailed description of the regulatory scheme under which the Company operates, see Item 1 under the caption "Regulation" and Item 7 under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations" Regulation.

### **Failure to comply with net capital requirements could subject the Company to suspension or revocation by the SEC or suspension or expulsion by FINRA, the FSA and the SFC.**

Oppenheimer and Freedom are subject to the SEC's Net Capital Rule which requires the maintenance of minimum net capital. For a more detailed description of the regulatory scheme under which the Company operates, see Item 1 under the caption "Net Capital Requirements". Failure to comply with net capital requirements could subject the Company to suspension or revocation by the SEC or suspension or expulsion by FINRA.

In addition, Oppenheimer Europe Ltd. and Oppenheimer Investments Asia Ltd. are regulated by the Financial Services Authority of the United Kingdom and the Securities and Futures Commission in Hong Kong, respectively. Failure of these entities to comply with net capital requirements could subject those entities to suspension or expulsion by their respective regulators.

### **If the Company violates the securities laws, or is involved in litigation in connection with a violation, the Company's reputation and results of operations may be adversely affected.**

Many aspects of the Company's business involve substantial risks of liability. An underwriter is exposed to substantial liability under federal and state securities laws, other federal and state laws, and court decisions, including decisions with respect to underwriters' liability and limitations on indemnification of underwriters by issuers. For example, a firm that acts as an underwriter may be held liable for material misstatements or omissions of fact in a prospectus used in connection with the securities being offered or for statements made by its securities analysts or other personnel. In recent years, there has been an increasing incidence of litigation involving the securities industry, including class actions that seek substantial damages. The Company's underwriting activities will usually involve offerings of the securities of smaller companies, which often involve a higher degree of risk and are more volatile than the securities of more established companies. In comparison with more established companies, smaller companies are also more likely to be the subject of securities class actions, to carry directors and officers liability insurance policies with lower limits or not at all, and to become insolvent. In addition, in market downturns, claims tend to increase. Each of these factors increases the likelihood that an underwriter may be required to contribute to an adverse judgment or settlement of a securities lawsuit.



## **Table of Contents**

In the normal course of business, the Operating Subsidiaries have been and continue to be the subject of numerous civil actions and arbitrations arising out of customer complaints relating to our activities as a broker-dealer, as an employer and as a result of other business activities. In turbulent times such as in recent years, the volume of claims and amount of damages sought in litigation and regulatory proceedings against financial institutions have historically escalated. The Company has experienced an increase in such claims as a result of the recent worldwide credit disruptions, including the disruptions in the auction rate securities market. If the Company misjudged the amount of damages that may be assessed against it from pending or threatened claims, or if the Company is unable to adequately estimate the amount of damages that will be assessed against it from claims that arise in the future and reserve accordingly, its financial condition and results of operations may be materially adversely affected. As discussed above, on January 31, 2013, a FINRA arbitration panel rendered a decision in the previously disclosed U.S. Airways case, filed in February 2009, resulting in an award against Oppenheimer et al, in the amount of \$30 million including interest and costs on a claim of approximately \$140 million (adjusted down from \$253 million). The effect of the award resulted in a fourth quarter after-tax charge of \$17.9 million. See Item 1A under the caption Risk Factors -The Company may continue to be adversely affected by the failure of the Auction Rate Securities Market , as well as Item 3 under the caption Legal Proceedings and Item 7 under the caption Management's Discussion and Analysis of Financial Condition and Results of Operations Regulatory Environment Other Regulatory Matters.

**The preparation of the consolidated financial statements requires the use of estimates that may vary from actual results and new accounting standards could adversely affect future reported results.**

If actual experience differs from management's estimates used in the preparation of financial statements, the Company's consolidated results of operations or financial condition could be adversely affected. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the application of accounting policies that often involve a significant degree of judgment. Such estimates and assumptions may require management to make difficult, subjective and complex judgments about matters that are inherently uncertain. The Company's accounting policies that are most dependent on the application of estimates and assumptions, and therefore viewed by the Company as critical accounting estimates, are those described in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations Critical Accounting Estimates . These accounting estimates require the use of assumptions, some of which are highly uncertain at the time of estimation. These estimates, by their nature, are based on judgment and current facts and circumstances. Accordingly, actual results could differ from these estimates, possibly in the near term, and could have a material effect on the consolidated financial statements.

**The value of the Company's goodwill and intangible assets may become impaired.**

A substantial portion of the Company's assets arise from goodwill and intangibles recorded as a result of business acquisitions it has made. The Company is required to perform a test for impairment of such goodwill and intangible assets, at least annually. To the extent that there are continued declines in the markets and general economy, impairment may become more likely. If the test resulted in a write-down of goodwill and/or intangible assets, the Company would incur a significant loss. For further discussion of this risk, see note 15 to the consolidated financial statements for the year ended December 31, 2012 appearing in Item 8.

## **Table of Contents**

### **The Company's move to a new and unified headquarters may create unintended risks and cost overruns.**

The Company is in the final phase of a process to unify its principal businesses in New York City in a single building (85 Broad St.) in downtown Manhattan. This process is under way with the initial re-locations having taken place in the fourth quarter of 2011 and continuing throughout 2012. This process is expected to be completed by June 30, 2013. While the Company believes that these actions will significantly improve its business operations and result in financial savings over the life of its initial 15 year lease, the Company cannot assure that this result will not be negatively impacted by any or all of the following factors:

cost overruns on the project;

business disruptions from the re-location process;

business disruptions from unforeseen factors, such as Superstorm Sandy;

employee loss due to re-location;

disruptions due to the centrally located nature of the business; and

other

### **The Company's risk management policies and procedures may leave it exposed to unidentified risks or an unanticipated level of risk.**

The policies and procedures the Company employs to identify, monitor and manage risks may not be fully effective. Some methods of risk management are based on the use of observed historical market behavior. As a result, these methods may not predict future risk exposures, which could be significantly greater than historical measures indicate. Other risk management methods depend on evaluation of information regarding markets, clients or other matters that are publicly available or otherwise accessible by the Company. This information may not be accurate, complete, up-to-date or properly evaluated. Management of operational, legal and regulatory risk requires, among other things, policies and procedures to properly record and verify a large number of transactions and events. The Company cannot give assurances that its policies and procedures will effectively and accurately record and verify this information. See Item 7A, Quantitative and Qualitative Disclosures About Market Risk.

The Company seeks to monitor and control its risk exposure through a variety of separate but complementary financial, credit, operational and legal reporting systems. The Company believes that it effectively evaluates and manages the market, credit and other risks to which it is exposed. Nonetheless, the effectiveness of the Company's ability to manage risk exposure can never be completely or accurately predicted or fully assured. For example, unexpectedly large or rapid movements or disruptions in one or more markets or other unforeseen developments can have a material adverse effect on the Company's financial condition and results of operations. The consequences of these developments can include losses due to adverse changes in securities values, decreases in the liquidity of trading positions, higher volatility in earnings, increases in the Company's credit risk to customers as well as to third parties and increases in general systemic risk.

### **Credit risk may expose the Company to losses caused by the inability of borrowers or other third parties to satisfy their obligations.**

The Company is exposed to the risk that third parties that owe it money, securities or other assets will not perform their obligations. These parties include:

trading counterparties;

customers;

clearing agents;

exchanges;

clearing houses; and

other financial intermediaries as well as issuers whose securities we hold.

## **Table of Contents**

These parties may default on their obligations owed to the Company due to bankruptcy, lack of liquidity, operational failure or other reasons. This default risk may arise, for example, from:

holding securities of third parties;

executing securities trades that fail to settle at the required time due to non-delivery by the counterparty or systems failure by clearing agents, exchanges, clearing houses or other financial intermediaries; and

extending credit to clients through bridge or margin loans or other arrangements.

The exposure to credit risk is heightened in the current economic environment in which default rates across many asset classes have increased. Significant failures by third parties to perform their obligations owed to the Company could adversely affect the Company's revenue and its ability to borrow in the credit markets.

### **Risks related to insurance programs.**

The Company's operations and financial results are subject to risks and uncertainties related to the use of a combination of insurance, self-insured retention and self-insurance for a number of risks, including most significantly: property and casualty, general liability, workers' compensation, and the portion of employee-related health care benefits plans funded by the Company, and certain errors and omissions liability, among others.

While the Company endeavors to purchase insurance coverage that is appropriate to its assessment of risk, it is unable to predict with certainty the frequency, nature or magnitude of claims for direct or consequential damages. The Company's business may be negatively affected if in the future its insurance proves to be inadequate or unavailable. In addition, insurance claims may divert management resources away from operating the business.

### **The precautions the Company takes to prevent and detect employee misconduct may not be effective and the Company could be exposed to unknown and unmanaged risks or losses.**

The Company runs the risk that employee misconduct could occur. Misconduct by employees could include:

employees binding the Company to transactions that exceed authorized limits or present unacceptable risks to the Company (rogue trading);

employee theft and improper use of Company or client property;

employees conspiring with third parties to defraud the Company;

employees hiding unauthorized or unsuccessful activities from the Company; or

the improper use of confidential information.

These types of misconduct could result in unknown and unmanaged risks or losses to the Company including regulatory sanctions and serious harm to its reputation. The precautions the Company takes to prevent and detect these activities may not be effective. If employee misconduct does occur, the Company's business operations could be materially adversely affected.

**Defaults by another large financial institution could adversely affect financial markets generally.**

In the fourth quarter of 2008, Lehman Brothers filed for bankruptcy protection and financial institutions including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Citigroup Inc., Bank of America Corporation, and American International Group, Inc. needed to accept substantial funding from the Federal government. In the fourth quarter of 2011, MF Global Holdings Ltd. filed for bankruptcy protection. In August 2012, Peregrine Financial Group, Inc. was declared bankrupt and placed in receivership. The commercial soundness of many financial institutions may be closely interrelated as a result of credit, trading, clearing, or other relationships between these institutions. As a result, concerns about, or a default or threatened default by, one institution could lead to significant market-wide liquidity and credit problems, losses, or defaults by other institutions. This is sometimes referred to as "systemic risk" and may adversely affect financial intermediaries, such as clearing agencies, clearing houses, banks, securities firms and exchanges with which the Company interacts on a daily basis, and therefore could affect the Company.

## **Table of Contents**

### **The failure of guarantors could adversely affect the pricing of securities and their trading markets.**

Monoline insurance companies, commercial banks and other insurers regularly issue credit enhancements to issuers in order to permit them to receive higher credit ratings than would otherwise be available to them. As a result, the failure of any of these guarantors could and would suddenly and immediately result in the depreciation in the price of the securities that have been guaranteed or enhanced by such entity. This failure could adversely affect the markets in general and the liquidity of the securities that are so affected. This disruption could create losses for holders of affected securities including the Company. In addition, rating agency downgrades of the debt or deposit or claims paying ability of these guarantors could result in a reduction in the prices of securities held by the Company which are guaranteed by such guarantors.

### **The Company's information systems may experience an interruption or breach in security.**

The Company relies heavily on communications and information systems to conduct its business. Any failure, interruption or breach in security of these systems could result in failures or disruptions in the Company's customer relationship management, general ledger, and other systems. While the Company has policies and procedures designed to prevent or limit the effect of the failure, interruption or security breach of its information systems, there can be no assurance that any such failures, interruptions or security breaches will not occur or, if they do occur, that they will be adequately addressed. Recent disclosures of such incursions by foreign and domestic unauthorized agents aimed at large financial institutions reflect higher risks for all such institutions. The occurrence of any failures, interruptions or security breaches of the Company's information systems could damage the Company's reputation, result in a loss of customer business, subject the Company to additional regulatory scrutiny, or expose the Company to civil litigation and possible financial liability, any of which could have a material adverse effect on the Company's financial condition and results of operations.

### **Security breaches and other disruptions could compromise the Company's information and expose the Company to liability, which would cause its business and reputation to suffer.**

In the ordinary course of business, the Company collects and stores sensitive data, including its proprietary business information and that of its customers, and personally identifiable information of its customers and employees, in its data centers and on its networks. The secure processing, maintenance and transmission of this information is critical to its operations. Despite its security measures, its information technology and infrastructure may be vulnerable to attacks by hackers or breached due to employee error, malfeasance or other disruptions. Any such breach could compromise its networks and the information stored there could be accessed, publicly disclosed, lost or stolen. Any such access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information, and regulatory penalties, disrupt its operations and the services the Company provides to customers, damage its reputation, and cause a loss of confidence in its products and services, which could adversely affect its business, revenues and competitive position.

## **Table of Contents**

### **The Company continually encounters technological change.**

The financial services industry is continually undergoing rapid technological change with frequent introductions of new technology-driven products and services. The effective use of technology increases efficiency and enables financial institutions to better serve customers and reduce costs. The Company's future success depends, in part, upon its ability to address the needs of its customers by using technology to provide products and services that will satisfy customer demands, as well as to create additional efficiencies in the Company's operations. Many of the Company's competitors have substantially greater resources to invest in technological improvements. The Company may not be able to effectively implement new technology-driven products and services or be successful in marketing these products and services to its customers. Failure to successfully keep pace with technological change affecting the financial services industry could have a material adverse impact on the Company's business and, in turn, the Company's financial condition and results of operations.

### **The business operations that are conducted outside of the United States subject the Company to unique risks.**

To the extent the Company conducts business outside the United States, it is subject to risks including, without limitation, the risk that it will be unable to provide effective operational support to these business activities, the risk of non-compliance with foreign laws and regulations, the general economic and political conditions in countries where it conducts business and currency fluctuations. The Company operates in Israel, the United Kingdom, and Hong Kong, China as well as through agents in Latin America. If the Company is unable to manage these risks relating to its foreign operations effectively, its reputation and results of operations could be harmed.

### **We may face exposure for environmental liabilities in British Columbia, Canada.**

The Company has received notice from the current owner of rural mountainous properties in Canada that the Company maybe liable for environmental claims with respect to such properties and that designate it a potentially responsible party in remedial activities for the cleanup of waste sites under applicable statutes. The Company is believed to have held title to various properties near Panorama, British Columbia, Canada from October 1942 through August 1969 and to have engaged in mining and milling operations for some part of that period. The Company was originally incorporated in British Columbia, Canada in 1933, under the name Sheep Creek Gold Mines Limited. The Company underwent a series of name changes and continuances, including from British Columbia to Ontario, from Ontario to Canadian federal jurisdiction and then, in May 2009, from Canada to Delaware.

The Company currently believes that future environmental claims, if any, that may be asserted will not be material and that its potential liability for known environmental matters is not material. However, environmental and related remediation costs are difficult to quantify. Applicable law may impose joint and several liability on each potentially responsible party for the cleanup.

## **Table of Contents**

### **Severe weather, natural disasters, acts of war or terrorism and other external events could significantly impact the Company's business.**

Severe weather, natural disasters, acts of war or terrorism and other adverse external events could have a significant impact on the Company's ability to conduct business. Although management has established a disaster recovery plan there is no guarantee that such plan will allow the Company to operate without disruption if such an event was to occur and the occurrence of any such event could have a material adverse effect on the Company's business, which, in turn, could have a material adverse effect on the Company's financial condition and results of operations. The Company maintains disaster recovery sites to aid it in reacting to circumstances such as those described above. The fourth quarter of 2012 was impacted by Superstorm Sandy which occurred on October 29<sup>th</sup> causing the Company to vacate its two principal offices in downtown Manhattan and displaced 800 of the Company's employees including substantially all of its capital markets, operations and headquarters staff for in excess of 30 days. During the displacement period the Company successfully implemented its business continuity plan by relocating personnel from both of its downtown Manhattan locations into other branch offices and back-up facilities in the region. Other than the closure of the financial markets for two business days, the Company was able to successfully clear and settle open trades that took place prior to the storm and to get its trading, operations, technology, and other support functions mobilized to process business once the financial markets reopened. The plans and preparations for such eventualities including the sites themselves may not be adequate or effective for their intended purpose.

### **The effect of climate changes on the Company cannot be predicted with certainty.**

The Company is not directly affected by environmental legislation, regulation or international treaties. The Company is not involved in an industry which is significantly impacted by climate changes except as such changes may affect the general economy of the United States and the rest of the world. Severe weather conditions such as storms, snowfall, and other climatic events may affect one or more offices of the Company. Recently Superstorm Sandy caused dislocation and disruption of the Company's operations. Any such event may materially impact the operations or finances of the Company. The Company maintains Disaster Recovery Plans (see Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations – Business Continuity) and property insurance for such emergencies. A significant change in the climate of the World could affect the general growth in the economy, population growth and create other issues which will over time affect returns on financial instruments and thus the financial markets in general. It is impossible to predict such effects on the Company's business and operations.

### **The recent downgrade of U.S. long term sovereign debt obligations and issues affecting the sovereign debt of European nations may adversely affect markets and other business.**

On August 5, 2011, Standard & Poor's lowered its long term sovereign credit rating on the United States of America from AAA to AA+. Credit agencies have also reduced the credit ratings of various sovereign nations in recent months. While the ultimate impact of such action is inherently unpredictable, these downgrades could have a material adverse impact on financial markets and economic conditions throughout the world, including, specifically, the United States. Moreover, the market's anticipation of these impacts could have a material adverse effect on our business, financial condition and liquidity. Various types of financial markets, including, but not limited to, money markets, long-term or short-term fixed income markets, foreign exchange markets, commodities markets and equity markets may be adversely affected by these impacts. In addition, the cost and availability of funding and certain impacts, such as increased spreads in money market and other short term rates, have been experienced already as the market anticipated the downgrade.

The negative impact that may result from this downgrade or any future downgrade could adversely affect our credit ratings, as well as those of our clients and/or counterparties, and could require us to post additional collateral on loans collateralized by U.S. Treasury securities. The unprecedented nature of this and any future negative credit rating actions with respect to U.S. government obligations will make any impact on our business, financial condition and liquidity unpredictable. In addition any such impact may not be immediately apparent.

In addition, global markets and economic conditions have been negatively impacted by the ability of certain European Union (EU) member states to service their sovereign debt obligations. The continued uncertainty over the outcome of the EU governments' financial support programs and the possibility that other EU member states may experience similar financial troubles could further disrupt global markets and may negatively impact our business, financial condition and liquidity.

## **Table of Contents**

### **Risks associated with the Company's stock.**

#### **The Company's stock price can be volatile.**

Stock price volatility may make it difficult for an investor to resell shares of the Company's Class A non-voting common stock (the "Class A Stock") at the times and at the prices desired. The price of the Class A Stock can fluctuate significantly in response to a variety of factors including, among other things:

actual or anticipated variations in quarterly results of operations;

operating and stock price performance of other companies that investors deem comparable to the Company;

news reports relating to trends, concerns and other issues in the financial services industry;

perceptions in the marketplace regarding the Company and/or its competitors;

new technology used, or services offered, by competitors;

significant acquisitions or business combinations, strategic partnerships, joint ventures or capital commitments by or involving the Company or its competitors;

a downturn in the overall economy or the equity markets in particular;

failure to effectively integrate acquisitions or realize anticipated benefits from acquisitions; and

the occurrence of any of the other events described in these Risk Factors.

General market fluctuations, industry factors and general economic and political conditions and events, such as economic slowdowns or recessions, interest rate changes or credit loss trends, could also cause the Company's stock price to decrease regardless of operating results.

#### **The trading volume in the Company's Class A Stock is less than that of larger financial services companies.**

Although the Company's Class A Stock is listed for trading on ARCA/NYSE, the trading volume in its Class A Stock is less than that of larger financial services companies. A public trading market having the desired characteristics of depth, liquidity and orderliness depends on the presence in the marketplace of willing buyers and sellers of the Company's Class A Stock at any given time. This presence depends on the individual decisions of investors and general economic and market conditions over which the Company has no control. Given the lower trading volume of the Company's Class A Stock, significant sales of shares of the Company's Class A Stock, or the expectation of these sales, could cause the Company's stock price to fall and increase the volatility of the Class A Stock generally.

#### **The holders of Class A Stock do not have the ability to vote on most corporate matters which limits the influence that these holders have over the Company.**

The Company issues two classes of shares, Class A Stock and Class B voting common stock ("Class B Stock"). At December 31, 2012, there were 99,680 shares of Class B Stock outstanding compared to 13,508,318 shares of Class A Stock. The voting power associated with the Class B

## Edgar Filing: OPPENHEIMER HOLDINGS INC - Form 10-K

Stock allows holders of Class B Stock to effectively exercise control over all matters requiring stockholder approval, including the election of all directors and approval of significant corporate transactions, and other matters affecting the Company. Over 96% of the Class B voting shares are held by an entity controlled by Mr. Albert Lowenthal, the Chairman and CEO of the Company. Due to the lack of voting power, the Class A Stockholders have limited influence on corporate matters.

## **Table of Contents**

**The Company's Chairman and CEO owns a significant portion of the Company's Class B voting stock and therefore can exercise significant control over the corporate governance and affairs of the Company, which may result in him taking actions with which other stockholders do not agree.**

The Company's Chairman and CEO, Mr. Albert Lowenthal, owns over 96% of the Class B voting stock. As a result, Mr. Lowenthal can exercise substantial influence over the outcome of most, if not of all corporate actions requiring approval of our stockholders, including the election of directors and approval of significant corporate transactions, which may result in corporate action with which other stockholders do not agree. This Class B voting power may have the effect of delaying or preventing a change in control of the Company or may result in the receipt of a control premium by the controlling stockholder which premium would not be received by the holders of the Class A Stock. The controlling stockholder may have potential conflicts of interest with other stockholders including the ability to determine the impact of say on pay provisions on corporate governance at the Company.

**Possible additional issuances of the Company's stock will cause dilution.**

At December 31, 2012, the Company had 13,508,318 shares of Class A Stock outstanding, outstanding employee stock options to purchase a total of 86,803 shares of Class A Stock, as well as outstanding unvested stock awards granted for an additional 850,068 shares of Class A Stock. The Company is further authorized to issue up to 319,587 shares of Class A Stock under share-based compensation plans for which stockholder approval has already been obtained. As part of the consideration for the January 14, 2008 acquisition of certain businesses from CIBC World Markets Corp., the Company issued to CIBC warrants to purchase 1,000,000 shares of Class A Stock on January 14, 2008 at an exercise price of \$48.62 per share. The warrants expire on April 13, 2013. As the Company issues additional shares, stockholders' holdings will be diluted, perhaps significantly. The issuance of any additional shares of Class A Stock or securities convertible into or exchangeable for Class A stock or that represent the right to receive Class A Stock, or the exercise of such securities, could be substantially dilutive to holders of our Class A Stock. Holders of our shares of Class A Stock have no preemptive rights that entitle holders to purchase their pro rata share of any offering of shares of any class or series and, therefore, such sales or offerings could result in increased dilution to the Company's stockholders. The market price of the Company's Class A Stock could decline as a result of sales or issuance of shares of Class A Stock or securities convertible into or exchangeable for Class A Stock.

## **Table of Contents**

### **Item 1B. UNRESOLVED STAFF COMMENTS**

None.

### **Item 2. PROPERTIES**

The Company and Oppenheimer maintain offices at its new headquarters at 85 Broad Street, New York, New York which houses its executive management team and many administrative functions for the firm as well as its research, trading, investment banking, and asset management divisions. The Company is also in the final phase of transitioning its operations, technology, and finance personnel from 125 Broad Street to 85 Broad Street, New York, New York which should be completed by June 30, 2013 (See below as well as Item 1, Business and Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations). Generally, the offices outside of 85 Broad Street and 125 Broad Street serve as bases for sales representatives who process trades and provide other brokerage services in co-operation with Oppenheimer's New York offices using the data processing facilities located there. The Company maintains an office in Troy, Michigan, which among other things, houses its human resources department. OMHHF operates its business out of North Wales, Pennsylvania and Oppenheimer Trust Company is based in Florham Park, New Jersey. Freedom conducts its business from its offices located in Edison, New Jersey. Management believes that its present facilities are adequate for the purposes for which they are used and have adequate capacity to provide for presently contemplated future uses. In addition, the Company has offices in London, U.K., Tel Aviv, Israel and Hong Kong, China.

The Company and its subsidiaries own no real property but, at December 31, 2012, occupied office space totaling approximately 1.5 million square feet in 109 locations under standard commercial terms expiring between 2012 and 2020. If any leases are not renewed, the Company believes it could obtain comparable space elsewhere on commercially reasonable rental terms.

In 2011, the Company signed a lease to occupy approximately 270,000 square feet on seven floors at 85 Broad Street in New York City for a term of 15 years. The costs of the consolidation of the Company's primary business units and employees into this space will generate approximately \$62 million in savings over the life of the lease. However, in 2011 and 2012, the expense to the Company with respect to this consolidation was approximately \$11.5 million stemming from overlapping rent costs and write-offs. The Company expects to expense \$1 million in fiscal 2013, stemming from duplicative rent, write-offs and depreciation and amortization of tenant improvements.

### **Item 3. LEGAL PROCEEDINGS**

Many aspects of the Company's business involve substantial risks of liability. In the normal course of business, the Company has been the subject of customer complaints and has been named as a defendant or co-defendant in various lawsuits or arbitrations creating substantial exposure. The incidences of these types of claims have increased since the onset of the credit crisis in 2008 and the resulting market disruptions. The Company is also involved from time to time in certain governmental and self-regulatory agency investigations and proceedings. These proceedings arise primarily from securities brokerage, asset management and investment banking activities. There has been an increased incidence of regulatory investigations in the financial services industry in recent years, including customer claims, which seek substantial penalties, fines or other monetary relief.

While the ultimate resolution of routine pending litigation and other matters cannot be currently determined, in the opinion of management, after consultation with legal counsel, the Company does not believe that the resolution of these matters will have a material adverse effect on its financial condition. However, the Company's results of operations could be materially affected during any period if liabilities in that period differ from prior estimates.

## **Table of Contents**

**Notwithstanding the foregoing, an adverse result in any of the matters set forth below or multiple adverse results in arbitrations and litigations currently filed or to be filed against the Company, including arbitrations and litigations relating to auction rate securities, would have a material adverse effect on the Company's results of operations and financial condition, including its cash position.**

The materiality of legal matters to the Company's future operating results depends on the level of future results of operations as well as the timing and ultimate outcome of such legal matters. See *Risk Factors*. The Company may continue to be adversely affected by the failure of the Auction Rate Securities Market as well as *Management's Discussion and Analysis of Financial Condition and Results of Operations*, *Regulatory and Legal Environment*, *Other Regulatory Matters* and *Other Matters* as well as *Factors Affecting Forward-Looking Statements* herein.

In accordance with applicable accounting guidance, the Company establishes reserves for litigation and regulatory matters when those matters present loss contingencies that are both probable and reasonably estimable. When loss contingencies are not both probable and reasonably estimable, the Company does not establish reserves. In some of the matters described below under *Legal Proceedings*, loss contingencies are not probable and reasonably estimable in the view of management and, accordingly, reserves have not been established for those matters. For legal proceedings set forth below where there is at least a reasonable possibility that a loss or an additional loss may be incurred, the Company estimates a range of aggregate loss in excess of amounts accrued of \$0 to approximately \$125.5 million. This estimated aggregate range is based upon currently available information for those legal proceedings in which the Company is involved, where an estimate for such losses can be made. For certain cases, the Company does not believe that an estimate can currently be made. The foregoing estimate is based on various factors, including the varying stages of the proceedings (including the fact that many are currently in preliminary stages), the numerous yet-unresolved issues in many of the proceedings and the attendant uncertainty of the various potential outcomes of such proceedings. Accordingly, the Company's estimate will change from time to time, and actual losses may be more than the current estimate.

### *Auction Rate Securities Matters*

For a number of years, the Company offered auction rate securities (ARS) to its clients. A significant portion of the market in ARS failed in February 2008 due to credit market conditions, and dealers were no longer willing or able to purchase the imbalance between supply and demand for ARS. See *Risk Factors*. The Company may continue to be adversely affected by the failure of the Auction Rate Securities Market as well as *Management's Discussion and Analysis of Financial Condition and Results of Operations*, *Business Environment*, *Other Regulatory Matters* and *Other Matters* herein.

Oppenheimer offered ARS to its clients in the same manner as dozens of other downstream firms in the ARS marketplace as an available cash management option for clients seeking to increase their yields on short-term investments similar to a money market fund. The Company believes that Oppenheimer's participation therefore differs dramatically from that of the larger broker-dealers who underwrote and provided supporting bids in the auctions and who subsequently entered into settlements with state and federal regulators, agreeing to purchase billions of dollars of their clients' ARS holdings. Unlike these other broker-dealers, Oppenheimer did not act as the lead or sole lead managing underwriter or dealer in any ARS auctions during the relevant time period, did not enter support bids to ensure that any ARS auctions cleared, and played no role in any decision by the lead underwriters or broker-dealers to discontinue entering support bids and allowing auctions to fail.

## **Table of Contents**

As previously disclosed, Oppenheimer entered into a Consent Order (the "Order") pursuant to the Massachusetts Uniform Securities Act on February 26, 2010 settling a pending administrative proceeding against the respondents related to Oppenheimer's sales of ARS to retail and other investors in the Commonwealth of Massachusetts. Oppenheimer did not admit or deny any of the findings or allegations contained in the underlying administrative complaint. Oppenheimer agreed to pay, and has paid, the external costs incurred by the Massachusetts Securities Division (the "MSD") related to the investigation and the administrative proceeding in the amount of \$250,000.

As previously disclosed, on February 23, 2010, the New York Attorney General ("NYAG") accepted Oppenheimer's offer of settlement and entered an Assurance of Discontinuance ("AOD") pursuant to New York State Executive Law Section 63(15) in connection with Oppenheimer's marketing and sale of ARS. Oppenheimer did not admit or deny any of the findings or allegations contained in the AOD and no fine was imposed.

Pursuant to the terms of the Order, Oppenheimer commenced and closed three offers to purchase Eligible ARS (as defined in the Order) from Customer Accounts (as defined in the Order) during 2010 and 2011 with the final offer closing on April 7, 2011. In addition, pursuant to the terms of the AOD, the Company has made five offers to purchase ARS from Eligible Investors between the periods May 21, 2010 and October 22, 2012. The Company's purchases of ARS from clients have continued and will, subject to the terms and conditions of the settlements with the regulators, continue on a periodic basis pursuant to the settlements with the Regulators. Accounts were, and will continue to be, aggregated on a "household" basis for purposes of these offers. As at December 31, 2012, the Company had purchased and holds approximately \$77.1 million of ARS from repurchases from clients and legal settlements.

The Company's purchases of ARS from clients will continue on a periodic basis pursuant to the settlements with the Regulators. Oppenheimer has agreed with the NYAG that it will offer to purchase Eligible ARS from Eligible Investors who did not receive an initial purchase offer periodically, as excess funds become available to Oppenheimer after giving effect to the financial and regulatory capital constraints applicable to Oppenheimer, until Oppenheimer has extended a purchase offer to all Eligible Investors. Such offers will remain open for a period of seventy-five days from the date on which each such offer to purchase is sent. The ultimate amount of ARS to be repurchased by the Company cannot be predicted with any certainty and will be impacted by redemptions by issuers and client actions during the period, which also cannot be predicted.

In addition, Oppenheimer has agreed to work with issuers and other interested parties, including regulatory and other authorities and industry participants, to provide liquidity solutions for other Massachusetts clients not covered by the offers to purchase. In that regard, on May 21, 2010, Oppenheimer offered such clients a margin loan against marginable collateral with respect to such account holders' holdings of Eligible ARS. As of December 31, 2012, Oppenheimer had extended margin loans to six holders of Eligible ARS from Massachusetts.

## **Table of Contents**

Further, Oppenheimer has agreed to (1) no later than 75 days after Oppenheimer has completed extending a purchase offer to all Eligible Investors (as defined in the AOD), use its best efforts to identify any Eligible Investors who purchased Eligible ARS (as defined in the AOD) and subsequently sold those securities below par between February 13, 2008 and February 23, 2010 and pay the investor the difference between par and the price at which the Eligible Investor sold the Eligible ARS, plus reasonable interest thereon (the "ARS Losses"); (2) no later than 75 days after Oppenheimer has completed extending a Purchase Offer to all Eligible Investors, use its best efforts to identify Eligible Investors who took out loans from Oppenheimer after February 13, 2008 that were secured by Eligible ARS that were not successfully auctioning at the time the loan was taken out from Oppenheimer and who paid interest associated with the ARS-based portion of those loans in excess of the total interest and dividends received on the Eligible ARS during the duration of the loan (the "Loan Cost Excess") and reimburse such investors for the Loan Cost Excess plus reasonable interest thereon; (3) upon providing liquidity to all Eligible Investors, participate in a special arbitration process for the exclusive purpose of arbitrating any Eligible Investor's claim for consequential damages against Oppenheimer related to the investor's inability to sell Eligible ARS; and (4) work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional investors not within the definition of Small Businesses and Institutions (as defined in the AOD) that held ARS in Oppenheimer brokerage accounts on February 13, 2008. Oppenheimer believes that because items (1) through (3) above will occur only after it has provided liquidity to all Eligible Investors, it will take an extended period of time before the requirements of items (1) through (3) will take effect.

Each of the AOD and the Order provides that in the event that Oppenheimer enters into another agreement that provides any form of benefit to any Oppenheimer ARS customer on terms more favorable than those set forth in the AOD or the Order, Oppenheimer will immediately extend the more favorable terms contained in such other agreement to all eligible investors. In the case of the Order, it is limited to more favorable agreements entered into subsequent to the February 26, 2010 Order while, in the case of the AOD, it covers more favorable agreements entered into prior and subsequent to the February 23, 2010 AOD. The AOD further provides that if Oppenheimer pays (or makes any pledge or commitment to pay) to any governmental entity or regulator pursuant to any other agreement costs or a fine or penalty or any other monetary amount, then an equivalent payment, pledge or commitment will become immediately owed to the State of New York for the benefit of New York residents.

If Oppenheimer fails to comply with any of the terms set forth in the Order, the MSD may institute an action to have the Order declared null and void and reinstitute the previously pending administrative proceedings. If Oppenheimer defaults on any obligation under the AOD, the NYAG may terminate the AOD, at his sole discretion, upon 10 days written notice to Oppenheimer.

Reference is made to the Order between the MSD and Oppenheimer et al, described in Item 3 of the Company's Annual Report on Form 10-K for the year ended December 31, 2009 and attached as Exhibit 10.24 thereto, as well as the disclosures related thereto in the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010, June 30, 2010, September 30, 2010, 2011 and 2012 and in the Company's Annual Reports on Form 10-K for the year ended December 31, 2010 and 2011, for additional details of the agreements with the MSD. Reference is also made to the AOD between the NYAG and Oppenheimer, described in Item 3 of the Company's Annual Report on Form 10-K for the year ended December 31, 2009 and attached as Exhibit 10.22 thereto, as well as the disclosures related thereto in the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010, June 30, 2010, September 30, 2010, 2011 and 2012 and in the Company's Annual Reports on Form 10-K for the year ended December 31, 2010 and 2011, for additional details of the agreements with the NYAG.

The Company is continuing to cooperate with investigating entities from states other than Massachusetts and New York.

## **Table of Contents**

In February 2009, Oppenheimer received notification of a filing of an arbitration claim before FINRA captioned *U.S. Airways v. Oppenheimer & Co. Inc., et. al* seeking an award compelling Oppenheimer to purchase approximately \$250 million in ARS previously purchased by U.S. Airways through Oppenheimer (which was subsequently reduced to a \$110 million liquidated damages claim) or, alternatively, an award rescinding such sale. Claimant sought an award of punitive damages from Oppenheimer as well as interest on such award. Claimant based its claims on numerous causes of action including, but not limited to, fraud, gross negligence, misrepresentation and suitability. U.S. Airways is a publicly-traded corporation that bought and sold ARS for many years through several broker dealers, not just Oppenheimer. It is also a Qualified Institutional Buyer (as defined in Rule 144A of the Securities Exchange Act of 1934) and purchased ARS for cash management purposes. On July 26, 2012, in connection with claimant having rested its case, Oppenheimer made a Motion to Dismiss the arbitration or in the alternative, to make a finding that claimant should have reasonably mitigated its damages in the fall of 2007. On August 10, 2012, the panel issued an order denying Oppenheimer's Motion to Dismiss and made a finding that claimant should have reasonably mitigated its damages in the fall of 2007. On January 31, 2013, the arbitration panel, issued an order awarding US Airways \$30 million in damages, including interest and costs, on a claim of approximately \$140 million (including interest and costs). The Company has incorporated the financial impact of the award, an after-tax charge of \$17.9 million, into its 2012 financial results. Oppenheimer paid its respective share of the award on February 25, 2013.

In connection with the U.S. Airways matter, on July 10, 2009, Oppenheimer asserted a third party statement of claim against Deutsche Bank Securities, Inc. (DBSI) and Deutsche Bank A.G. (Deutsche AG). Deutsche AG challenged Oppenheimer's efforts to compel that entity to appear at a FINRA arbitration since, Deutsche AG argued, it is not a FINRA member. Subsequently, Oppenheimer deferred further action against Deutsche AG and proceeded prosecuting its third party claim against DBSI. At the same time, Oppenheimer filed its answer denying any liability to U.S. Airways. DBSI subsequently filed a motion to sever the arbitration into a separate proceeding which motion was granted on July 28, 2010. To the extent there is a determination by an arbitration panel that U.S. Airways has been harmed, Oppenheimer's third party statement of claim against DBSI alleges that DBSI is liable to U.S. Airways because of its role in the process of creating, marketing and procuring ratings for certain auction rate credit-linked notes purchased by U.S. Airways. The arbitration with U.S. Airways commenced in September 2011. No date has yet been set for the arbitration with the DBSI. On January 28, 2011, DBSI filed a motion to stay the DBSI arbitration. Oppenheimer filed its opposition to the DBSI motion to stay on February 25, 2011. On May 25, 2011, the arbitration panel granted DBSI's motion to stay the DBSI arbitration. On June 10, 2011, Oppenheimer filed a motion for reconsideration of the arbitration panel's decision to stay the arbitration which motion for reconsideration was denied on July 14, 2011. As a result of the award in favor of US Airways, Oppenheimer intends shortly to file a motion to lift the stay in the arbitration with DBSI and to commence to prosecute its claim in arbitration against DBSI in an effort to, among other things, recover in full the amount paid to US Airways pursuant to the order described above plus all associated costs. There can be no assurance Oppenheimer will prevail in the arbitration against DBSI or that it will recover any or all of the amounts paid by Oppenheimer to US Airways.

In August 2009, Oppenheimer received notification of the filing of an arbitration claim before FINRA captioned *Investec Trustee (Jersey) Limited as Trustee for The St. Paul's Trust v. Oppenheimer & Co. Inc. et. al* seeking an award ordering Oppenheimer to repurchase approximately \$80 million in ARS previously purchased by Investec as Trustee for the St. Paul's Trust, and seeking additional damages of approximately \$11.5 million as a result of claimant's liquidation of certain ARS positions in a private securities transaction. Claimant sought interest and attorneys fees as part of its claim. On August 31, 2012, the parties entered into a settlement agreement pursuant to which (i) Oppenheimer agreed to pay and subsequently did pay \$4.5 million to Investec; (ii) Oppenheimer agreed to repurchase any remaining ARS held by Investec on January 15, 2015; and (iii) the claims in the arbitration were withdrawn. At December 31, 2012, Investec held approximately \$7.0 million in ARS.

## **Table of Contents**

In addition to the ARS cases discussed above, as of December 31, 2012, Oppenheimer and certain affiliated parties are currently named as a defendant or respondent in approximately nine arbitration claims before FINRA, as well as one court action brought by individuals and entities who purchased ARS through Oppenheimer in amounts ranging from \$100,000 to \$20 million, seeking awards compelling Oppenheimer to repurchase such ARS or, alternatively, awards rescinding such sales, based on a variety of causes of action similar to those described above. The Company has filed, or is in the process of filing, its responses to such claims and has participated in or is awaiting hearings regarding such claims before FINRA or in the court actions. As of December 31, 2012, ten ARS matters were concluded in either court or arbitration with Oppenheimer prevailing in four of those matters and the claimants prevailing in six of those matters. The Company has purchased approximately \$7.6 million in ARS from the prevailing claimants in those six actions. In addition, the Company has made cash payments of approximately \$12.1 million as a result of legal settlements with clients. In addition, as noted above, on January 31, 2013, the arbitration panel, issued an order awarding US Airways \$30 million in damages, including interest and costs. Oppenheimer paid its respective share of the award on February 25, 2013. Oppenheimer believes it has meritorious defenses to the claims in the pending arbitrations and court actions and intends to vigorously defend against these claims. Oppenheimer may also implead third parties, including underwriters where it believes such action is appropriate. It is possible that other individuals or entities that purchased ARS from Oppenheimer may bring additional claims against Oppenheimer in the future for repurchase or rescission.

See Item 1A, Risk Factors The Company may continue to be adversely affected by the failure of the Auction Rate Securities Market, and note 13 to the consolidated financial statements appearing in Item 8 herein as well as Management's Discussion and Analysis of Financial Condition and Results of Operations Regulatory and Legal Environment Other Regulatory Matters and Other Matters herein.

### *Other Pending Matters*

In addition to the ARS cases discussed above, on or about March 13, 2008, Oppenheimer was served in a matter pending in the United States Bankruptcy Court, Northern District of Georgia, captioned *William Perkins, Trustee for International Management Associates v. Lehman Brothers, Oppenheimer & Co. Inc., JB Oxford & Co., Bank of America Securities LLC and TD Ameritrade Inc.* The Trustee seeks to set aside as fraudulent transfers in excess of \$25 million in funds embezzled by the sole portfolio manager for International Management Associates, a hedge fund. Said portfolio manager purportedly used the broker dealer defendants, including Oppenheimer, as conduits for his embezzlement. Oppenheimer filed its answer to the complaint on June 18, 2010. Oppenheimer filed a motion for summary judgment, which was argued on March 31, 2011. Immediately thereafter, the Bankruptcy Court dismissed all of the Trustee's claims against all defendants including Oppenheimer. In June 2011, the Trustee filed an appeal with the United States District Court for the Northern District of Georgia. In addition, on June 10, 2011, the Trustee filed a petition for permission to appeal the dismissal with the United States Court of Appeals for the Eleventh Circuit. On July 27, 2011, the Court of Appeals for the Eleventh Circuit denied the Trustee's Petition. The Trustee then appealed to the United States District Court for the Northern District of Georgia (U.S.N.D. GA). On March 30, 2012, the U.S.N.D. GA affirmed in part and reversed in part the ruling from the Bankruptcy Court and remanded the matter to the Bankruptcy Court. Oppenheimer believes that as a result of the foregoing the claimed damages against Oppenheimer have been substantially reduced and that it has meritorious defenses to the remaining claims made against it and intends to defend itself vigorously.

## **Table of Contents**

In March 2010, the Company received a notice from counsel representing a receiver appointed by a state district court in Oklahoma (the Receiver) to oversee a liquidation proceeding of Providence Property and Casualty Insurance Company (Providence), an Oklahoma insurance company. That notice demanded the return of Providence's municipal bond portfolio of approximately \$55 million that had been custodied at Oppenheimer beginning in January 2009. In January 2009, the municipal bond portfolio had been transferred to an insurance holding company, Park Avenue Insurance LLC (Park Avenue), as part of a purchase and sale transaction. Park Avenue used the portfolio as collateral for a margin loan used to fund the purchase of Providence from Providence's parent. On October 19, 2010, Oppenheimer was named as a co-defendant in a complaint filed by the Receiver in state district court for Oklahoma County, Oklahoma captioned *State of Oklahoma, ex rel. Kim Holland, Insurance Commissioner, as Receiver for Park Avenue Property and Casualty Insurance Company v. Providence Holdings, Inc., Falcon Holdings, LLC et. al* alleging, that all defendants conspired to unlawfully transfer the assets of Providence to Park Avenue. In addition to Oppenheimer, the complaint names as defendants nine individuals alleging they were members of the board of directors of Oppenheimer & Co. Inc. during the time period at issue. In fact, for the time period alleged, six of these individuals were not members of such board. The complaint was subsequently amended to name three individuals including the Chairman and Chief Executive Officer, who is the only individual who has been served, who were directors of Oppenheimer & Co. Inc. at the time of the events in question. The complaint alleges causes of action for negligence, breach of fiduciary duty and trespass to chattel and/or conversion and seeks actual damages of \$102 million, punitive damages, interest and costs, including attorneys' fees. Oppenheimer moved to remove the matter to the United States District Court, Western District of Oklahoma on December 2, 2010. Thereafter, the Receiver moved to remand the matter to the District Court of Oklahoma County, Oklahoma. Oppenheimer filed its opposition to this motion on February 3, 2011; the motion to remand was granted on February 24, 2011. On January 18, 2011 and March 28, 2011, motions to dismiss the complaint were filed on behalf of Oppenheimer and the Chairman and Chief Executive Officer, respectively. On June 17, 2011, the motion to dismiss Oppenheimer was deferred and the motion to dismiss the Chairman and Chief Executive Officer was granted in its entirety. The motion to dismiss the Receiver's action against Oppenheimer, which was refiled in state court after remand from the Federal court, was denied on August 2, 2011. On July 20, 2012, Providence Holding, Inc. (Providence Holding), the seller of Providence to Park Avenue in the transaction referenced above, filed a motion in the Oklahoma proceeding for permission to assert a tardy cross-claim against Oppenheimer and Oppenheimer Trust Company alleging breach of fiduciary duty, fraud, breach of contract, and interference with prospective business advantage. Providence Holding's motion was mooted by the Receiver's service of an amended complaint on December 20, 2012, which refreshed Providence Holding's right to serve cross-claims. Oppenheimer answered the amended complaint on January 23, 2013 and the other Oppenheimer entities named as defendants filed motions to dismiss the amended complaint, which motions remain under consideration. On January 14, 2013, Providence Holdings, Inc. served an answer to the amended complaint and interposed cross-claims against Oppenheimer, Oppenheimer Trust Company and three other Oppenheimer companies: the Company, Oppenheimer Asset Management, Inc. and Oppenheimer Investment Management. All Oppenheimer entities served motions to dismiss the Providence Holdings, Inc. cross claims on February 7, 2013. On September 7, 2012, the court entered a scheduling order requiring that all discovery be completed by December 4, 2013. Discovery is ongoing. On October 1, 2012, a 13-count indictment was unsealed in the United States District Court for the Southern District of New York charging three individuals, including a former registered representative of Oppenheimer, with, conspiracy to commit wire fraud in connection with Park Avenue's acquisition of Providence. Oppenheimer is not named in the indictment, and there are no indications that it is a target of any investigation. Oppenheimer believes it has meritorious defenses to the claims raised in the Oklahoma proceedings and intends to defend against these claims vigorously.

## **Table of Contents**

On June 24, 2011, Oppenheimer was served with a petition in a matter pending in state court in Collin County, Texas captioned *Jerry Lancaster, Providence Holdings, Inc., Falcon Holdings, LLC and Derek Lancaster v. Oppenheimer & Co., Inc., Oppenheimer Trust Company, Charles Antonuicci, Alan Reichman, John Carley, Park Avenue Insurance, LLC and Park Avenue Bank*. The action requests unspecified damages, including exemplary damages, for Oppenheimer's alleged breach of fiduciary duty, negligent hiring, fraud, conversion, conspiracy, breach of contract, unjust enrichment and violation of the Texas Business and Commerce Code. The first amended petition alleges that Oppenheimer held itself out as having expertise in the insurance industry generally and managing insurance companies' investment portfolios but inappropriately allowed plaintiffs' bond portfolios to be used by Park Avenue Insurance Company to secure the sale of Providence Property and Casualty Insurance Company to Park Avenue Insurance Company. On July 22, 2011, defendants removed the case to the United States District Court for the Eastern District of Texas, Sherman Division, and subsequently moved to dismiss or transfer the action. On October 5, 2011 plaintiffs in the matter filed a voluntary dismissal without prejudice. On the same date, Oppenheimer and Oppenheimer Trust Company agreed to suspend the running of any applicable statute of limitations defense for one year. Just prior to the expiration of the one-year tolling agreement, on October 3, 2012, Providence Holding filed a new action in the United States District Court for the Eastern Division of Texas against Oppenheimer, Oppenheimer Trust Company, and two individuals, re-asserting basically the same claims. On December 18, 2012, Oppenheimer and Oppenheimer Trust Company filed motions (i) to dismiss the new complaint and (ii) to stay the action pending resolution of all claims among the parties in the action pending in Oklahoma styled *State of Oklahoma ex rel. Holland v. Providence Holdings Inc.* and discussed above. In response to the motions, plaintiffs' counsel voluntarily agreed to stay their action until the resolution of all claims among the parties in the Oklahoma action. The Texas court has not as yet approved the parties' stipulation to stay the action, but Oppenheimer believes the court will enter its formal approval in due course. Oppenheimer believes it has meritorious defenses to the claims raised and intends to defend against these claims vigorously including seeking dismissal of the claims against it.

### **Item 4. MINE SAFETY DISCLOSURES**

Not applicable.

**Table of Contents****PART II****Item 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

(a) The Company's Class A Stock is listed and traded on the NYSE (trading symbol OPY). The Class B Stock is not traded on any stock exchange and, as a consequence, there is only limited trading in the Class B Stock. The Company does not presently contemplate listing the Class B Stock in the United States on any national or regional stock exchange or on NASDAQ.

The following tables set forth the high and low sales prices of the Class A Stock on the NYSE for the 2012 and 2011 fiscal years. Prices provided are based on data provided by the NYSE.

		NYSE	
Class A Stock:		HIGH	LOW
2012	1 <sup>st</sup> Quarter	\$ 19.69	\$ 15.67
	2 <sup>nd</sup> Quarter	\$ 18.71	\$ 13.21
	3 <sup>rd</sup> Quarter	\$ 18.00	\$ 13.24
	4 <sup>th</sup> Quarter	\$ 17.42	\$ 14.63
2011	1 <sup>st</sup> Quarter	\$ 33.93	\$ 24.63
	2 <sup>nd</sup> Quarter	\$ 34.87	\$ 25.00
	3 <sup>rd</sup> Quarter	\$ 28.98	\$ 15.47
	4 <sup>th</sup> Quarter	\$ 19.45	\$ 12.47

As at December 31, 2012, there were 936,871 shares of Class A Stock underlying outstanding options and restricted share awards. Class A Stock underlying all vested options, if exercised, and restricted shares could be sold pursuant to Rule 144 or effective registration statements on Form S-8.

As part of the consideration for certain businesses acquired in January 2008, the Company issued to CIBC warrants to purchase 1,000,000 shares of Class A Stock at an exercise price of \$48.62 per share on January 14, 2013. The warrants expire on April 13, 2013.

(b) The following table sets forth information about the stockholders of the Company as at February 28, 2013 as set forth in the records of the Company's transfer agent and registrar:

	Number of shares	Number of stockholders of record
Class A Stock	13,508,318	179
Class B Stock	99,680	171

**(c) Dividends**

The following table sets forth the frequency and amount of any cash dividends declared on the Company's Class A Stock and Class B Stock for the fiscal years ended December 31, 2011 and 2012 and the first quarter of 2013.

**Table of Contents**

Type	Declaration date	Record date	Payment date	Amount per share
Quarterly	January 27, 2011	February 11, 2011	February 25, 2011	\$ 0.11
Quarterly	April 28, 2011	May 13, 2011	May 27, 2011	\$ 0.11
Quarterly	July 28, 2011	August 12, 2011	August 26, 2011	\$ 0.11
Quarterly	October 27, 2011	November 11, 2011	November 25, 2011	\$ 0.11
Quarterly	January 26, 2012	February 10, 2012	February 24, 2012	\$ 0.11
Quarterly	April 25, 2012	May 11, 2012	May 25, 2012	\$ 0.11
Quarterly	July 26, 2012	August 10, 2012	August 24, 2012	\$ 0.11
Quarterly	October 25, 2012	November 9, 2012	November 23, 2012	\$ 0.11
Quarterly	January 24, 2013	February 8, 2013	February 22, 2013	\$ 0.11

Future dividend policy will depend upon the earnings and financial condition of the Operating Subsidiaries, the Company's need for funds and other factors. Dividends may be paid to holders of Class A Stock and Class B Stock (pari passu), as and when declared by the Company's Board of Directors, from funds legally available therefore.

**(d) Share-Based Compensation Plans**

The Company has a 2006 Equity Incentive Plan, adopted December 11, 2006 and amended in December 2011, subject to stockholder approval, and had a 1996 Equity Incentive Plan, as amended March 10, 2005, which expired on April 18, 2006 (together "EIP"), under which the Compensation and Stock Option Committee of the Board of Directors of the Company has and may grant options to purchase Class A Stock, restricted Class A Stock awards and Class A Stock awards to officers and key employees of the Company and its subsidiaries. Grants of options have been made to the Company's non-employee directors on a formula basis; going forward, restricted Class A Stock awards will be granted to the Company's non-employee directors as approved by a committee.

Oppenheimer has an Employee Share Plan ("ESP"), under which the Compensation and Stock Option Committee of the Board of Directors of the Company may grant stock awards and restricted stock awards to key management employees of the Company and its subsidiaries.

The Company's share-based compensation plans are described in note 12 to the Company's consolidated financial statements appearing in Item 8.

## **Table of Contents**

### **e) Share Performance Graph**

The following graph shows changes over the past five year period of U.S. \$100 invested in (1) the Company's Class A Stock, (2) the Standard & Poor's 500 Index (S&P 500), and (3) the Standard & Poor's 500 Diversified Financial Index (S&P 500 / Diversified Financials - S5DIVF).

As at December 31,	2007	2008	2009	2010	2011	2012
Oppenheimer Class A Stock	100	31	79	63	39	42
S&P 500	100	62	76	86	86	97
S&P 500 / Diversified Financials	100	40	51	53	37	51

### **Stock Buy-Back**

On October 7, 2011, the Company announced its intention to purchase up to 675,000 shares of its Class A Stock in compliance with the rules and regulations of the New York Stock Exchange and the Securities and Exchange Commission and the terms of its senior secured debt. The 675,000 shares represented approximately 5% of its then 13,572,265 issued and outstanding shares of Class A Stock. Any such purchases will be made by the Company in the open market at the prevailing open market price using cash on hand. All shares purchased will be cancelled. The repurchase program is expected to continue indefinitely. The repurchase program does not obligate the Company to repurchase any dollar amount or number of shares of Class A Stock. Depending on market conditions and other factors, these repurchases may be commenced or suspended from time to time without prior notice.

## Table of Contents

In 2012, the Company purchased and cancelled an aggregate of 121,599 shares of Class A Stock for total consideration of \$1.9 million (\$15.35 per share).

### Item 6. SELECTED FINANCIAL DATA

The following table presents selected financial information derived from the audited consolidated financial statements of the Company for each of the five years in the period ended December 31, 2012. In January 2008, the Company purchased certain businesses (See Item 1, Business and Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations).

Amounts are expressed in thousands of dollars, except share and per share amounts.

	2012	2011	2010	2009	2008
Revenue	\$ 952,612	\$ 958,992	\$ 1,036,273	\$ 990,480	\$ 919,823
Net profit (loss) attributable to the Company	\$ (3,613)	\$ 10,316	\$ 38,532	\$ 20,824	\$ (19,980)
Net profit (loss) per share attributable to the Company (1)					
basic	\$ (0.27)	\$ 0.76	\$ 2.89	\$ 1.59	\$ (1.51)
diluted	\$ (0.27)	\$ 0.74	\$ 2.77	\$ 1.55	\$ (1.51)
Total assets	\$ 2,678,020	\$ 3,527,439	\$ 2,515,062	\$ 2,162,582	\$ 1,506,073
Long term debt	\$ 195,000	\$ 195,000	\$ 122,503	\$ 132,503	\$ 147,663
Total liabilities	\$ 2,173,019	\$ 3,014,036	\$ 2,007,700	\$ 1,701,570	\$ 1,072,119
Cash dividends per share of Class A and Class B Stock	\$ 0.44	\$ 0.44	\$ 0.44	\$ 0.44	\$ 0.44
Stockholders' equity attributable to the Company	\$ 500,740	\$ 508,070	\$ 504,330	\$ 461,012	\$ 433,954
Book value per share attributable to the Company (1)	\$ 36.80	\$ 37.16	\$ 37.73	\$ 34.88	\$ 33.38
Number of shares of capital stock outstanding (1)	13,607,998	13,671,945	13,368,202	13,217,681	12,999,145

(1) The Class A Stock and Class B Stock are combined because they are of equal rank for purposes of dividends and in the event of a distribution of assets upon liquidation, dissolution or winding up.

### Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The Company's consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The following discussion should be read in conjunction with the consolidated financial statements and notes thereto which appear elsewhere in this annual report.

## **Table of Contents**

The Company engages in a broad range of activities in the securities industry, including retail securities brokerage, institutional sales and trading, investment banking (both corporate and public finance), research, market-making, trust services and investment advisory and asset management services. Its principal subsidiaries are Oppenheimer & Co. Inc. ( Oppenheimer ) and Oppenheimer Asset Management ( OAM ). As at December 31, 2012, the Company provided its services from 86 offices in 26 states located throughout the United States, offices in Tel Aviv, Israel, Hong Kong, China, and London, England and in two offices in Latin America through local broker-dealers. Client assets entrusted to the Company as at December 31, 2012 totaled approximately \$80.3 billion. The Company provides investment advisory services through OAM and OIM and Oppenheimer's Fahnstock Asset Management and OMEGA Group divisions. The Company provides trust services and products through Oppenheimer Trust Company. The Company provides discount brokerage services through Freedom Investments, Inc. ( Freedom ) and through BUYandHOLD, a division of Freedom. Through OPY Credit Corp., the Company offers syndication as well as trading of issued corporate loans. Oppenheimer Multifamily Housing & Healthcare Finance, Inc. ( OMHHF ) is engaged in mortgage brokerage and servicing. At December 31, 2012, client assets under management by the asset management groups totaled approximately \$20.9 billion. At December 31, 2012, the Company employed 3,521 employees (3,445 full time and 76 part time), of whom approximately 1,406 were financial advisers.

## **Critical Accounting Estimates**

The Company's accounting policies are essential to understanding and interpreting the financial results reported in the consolidated financial statements. The significant accounting policies used in the preparation of the Company's consolidated financial statements are summarized in note 1 to those statements. Certain of those policies are considered to be particularly important to the presentation of the Company's financial results because they require management to make difficult, complex or subjective judgments, often as a result of matters that are inherently uncertain. The following is a discussion of these policies.

## ***Financial Instruments and Fair Value***

### ***Financial Instruments***

Securities owned and securities sold but not yet purchased, investments and derivative contracts are carried at fair value with changes in fair value recognized in earnings each period. The Company's other financial instruments are generally short-term in nature or have variable interest rates and as such their carrying values approximate fair value, with the exception of notes receivable from employees which are carried at cost.

### ***Financial Instruments Used for Asset and Liability Management***

For derivative instruments that are designated and qualify as a cash flow hedge, the effective portion of the gain or loss on the derivative is reported as a component of other comprehensive income and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. Gains or losses on the derivative representing either hedge ineffectiveness or hedge components excluded from the assessment of effectiveness are recognized in current earnings.

On September 29, 2006, the Company entered into interest rate swap transactions to hedge the interest payments associated with its floating rate Senior Secured Credit Note, which was subject to change due to changes in 3-Month LIBOR. See note 7 to the consolidated financial statements for the year ended December 31, 2012 for further information. These swaps were designated as cash flow hedges. Changes in the fair value of the swap hedges were expected to be highly effective in offsetting changes in the interest payments due to changes in 3-Month LIBOR. The swaps expired on March 31, 2011. For the year ended December 31, 2011, the effective portion of the net gain on the interest rate swaps, after tax, was approximately \$69,000 (\$450,900 in 2010) and was recorded as other comprehensive income on the consolidated statement of comprehensive income (loss).

## **Table of Contents**

On January 20, 2009, the Company entered into an interest rate cap contract, incorporating a series of purchased caplets with fixed maturity dates ending December 31, 2012, to hedge the interest payments associated with its floating rate Subordinated Note, which was subject to change due to changes in 3-Month LIBOR. See note 7 to the consolidated financial statements appearing in Item 8 for further information. With the repayment of the Subordinated Note in the second quarter of 2011, this cap was no longer designated as a cash flow hedge. The cap expired worthless on December 31, 2012. The Company recorded \$19,780 in interest expense with respect to the interest rate cap for the year ended December 31, 2012.

### *Fair Value Measurements*

Effective January 1, 2008, the Company adopted the accounting guidance for the fair value measurement of financial assets, which defines fair value, establishes a framework for measuring fair value, establishes a fair value measurement hierarchy, and expands fair value measurement disclosures. Fair value, as defined by the accounting guidance, is the price that would be received in the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value hierarchy established by this accounting guidance prioritizes the inputs used in valuation techniques into the following three categories (highest to lowest priority):

**Level 1:** Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets;

**Level 2:** Inputs other than quoted prices included in Level 1 that are observable for the asset or liability either directly or indirectly; and

**Level 3:** Unobservable inputs.

The Company's financial instruments are recorded at fair value and generally are classified within Level 1 or Level 2 within the fair value hierarchy using quoted market prices or quotes from market makers or broker-dealers. Financial instruments classified within Level 1 are valued based on quoted market prices in active markets and consist of U.S. government, federal agency, and sovereign government obligations, corporate equities, and certain money market instruments. Level 2 financial instruments primarily consist of investment grade and high-yield corporate debt, convertible bonds, mortgage and asset-backed securities, municipal obligations, and certain money market instruments. Financial instruments classified as Level 2 are valued based on quoted prices for similar assets and liabilities in active markets and quoted prices for identical or similar assets and liabilities in markets that are not active. Some financial instruments are classified within Level 3 within the fair value hierarchy as observable pricing inputs are not available due to limited market activity for the asset or liability. Such financial instruments include investments in hedge funds and private equity funds where the Company, through its subsidiaries, is general partner, less-liquid private label mortgage and asset-backed securities, certain distressed municipal securities, and auction rate securities. A description of the valuation techniques applied and inputs used in measuring the fair value of the Company's financial instruments is located in note 4 to the consolidated financial statements for the year ended December 31, 2012.

## **Table of Contents**

### *Fair Value Option*

The Company has the option to measure certain financial assets and financial liabilities at fair value with changes in fair value recognized in earnings each period. The Company may make a fair value option election on an instrument-by-instrument basis at initial recognition of an asset or liability or upon an event that gives rise to a new basis of accounting for that instrument. The Company has elected to apply the fair value option to its loan trading portfolio which resides in OPY Credit Corp. and is included in other assets on the consolidated balance sheet. Management has elected this treatment as it is consistent with the manner in which the business is managed as well as the way that financial instruments in other parts of the business are recorded. There were no loan positions held in the secondary loan trading portfolio at December 31, 2012 and 2011. The Company also elected the fair value option for those securities sold under agreements to repurchase ( repurchase agreements ) and securities purchased under agreements to resell ( reverse repurchase agreements ) that do not settle overnight or have an open settlement date or that are not accounted for as purchase and sale agreements (such as repo-to-maturity transactions). The Company has elected the fair value option for these instruments to more accurately reflect market and economic events in its earnings and to mitigate a potential imbalance in earnings caused by using different measurement attributes (i.e. fair value versus carrying value) for certain assets and liabilities. At December 31, 2012, the fair value of the reverse repurchase agreements and repurchase agreements was \$nil and \$nil, respectively.

### *Financing Receivables*

The Company's financing receivables include customer margin loans, securities purchased under agreements to resell ( reverse repurchase agreements ), and securities borrowed transactions. The Company uses financing receivables to extend margin loans to customers, meet trade settlement requirements, and facilitate its matched-book arrangements and inventory requirements.

### *Allowance for Credit Losses*

The Company's financing receivables are secured by collateral received from clients and counterparties. In many cases, the Company is permitted to sell or repledge securities held as collateral. These securities may be used to collateralize repurchase agreements, to enter into securities lending agreements, to cover short positions or fulfill the obligation of fails to deliver. The Company monitors the market value of the collateral received on a daily basis and may require clients and counterparties to deposit additional collateral or return collateral pledged, when appropriate.

Customer receivables, primarily consisting of customer margin loans collateralized by customer-owned securities, are stated net of allowance for credit losses. The Company reviews large customer accounts that do not comply with the Company's margin requirements on a case-by-case basis to determine the likelihood of collection and records an allowance for credit loss following that process. For small customer accounts that do not comply with the Company's margin requirements, the allowance for credit loss is generally recorded as the amount of unsecured or partially secured receivables.

The Company also makes loans or pays advances to financial advisers as part of its hiring process. Reserves are established on these receivables if the financial advisor is no longer associated with the Company and the receivable has not been promptly repaid or if it is determined that it is probable the amount will not be collected.

### *Legal and Regulatory Reserves*

The Company records reserves related to legal and regulatory proceedings in accounts payable and other liabilities. The determination of the amounts of these reserves requires significant judgment on the part of management. In accordance with applicable accounting guidance, the Company establishes reserves for litigation and regulatory matters where available information indicates that it is probable a liability had been incurred at the date of the consolidated financial statements and the Company can reasonably estimate the amount of that loss. When loss contingencies are not probable and cannot be reasonably estimated, the Company does not establish reserves.

## **Table of Contents**

When determining whether to record a reserve, management considers many factors including, but not limited to, the amount of the claim; the stage and forum of the proceeding, the sophistication of the claimant, the amount of the loss, if any, in the client's account and the possibility of wrongdoing, if any, on the part of an employee of the Company; the basis and validity of the claim; previous results in similar cases; and applicable legal precedents and case law. Each legal and regulatory proceeding is reviewed with counsel in each accounting period and the reserve is adjusted as deemed appropriate by management. Any change in the reserve amount is recorded in the results of that period. The assumptions of management in determining the estimates of reserves may be incorrect and the actual disposition of a legal or regulatory proceeding could be greater or less than the reserve amount. See Legal Proceedings, note 13 to the consolidated financial statements appearing in Item 8 and Management's Discussion and Analysis of Financial Condition and Results of Operations Regulatory and Legal Environment.

### ***Goodwill***

Goodwill arose upon the acquisitions of Oppenheimer, Old Michigan Corp., Josephthal & Co. Inc., Grand Charter Group Incorporated and the Oppenheimer Divisions, as defined below. The Company defines a reporting unit as an operating segment. The Company's goodwill resides in its Private Client Division (PCD). Goodwill of a reporting unit is subject to at least an annual test for impairment to determine if the fair value of goodwill of a reporting unit is less than its estimated carrying amount. Goodwill of a reporting unit is required to be tested for impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. The Company derives the estimated carrying amount of its operating segments by estimating the amount of stockholders equity required to support the activities of each operating segment. Due to the volatility in the financial services sector and equity markets in general, determining whether an impairment of goodwill has occurred is increasingly difficult and requires management to exercise significant judgment. Goodwill recorded as at December 31, 2012 has been tested for impairment and it has been determined that no impairment has occurred. See note 15 to the consolidated financial statements appearing in Item 8 for further discussion.

Excess of fair value of assets acquired over cost arose from the January 2008 acquisition of certain businesses from CIBC World Markets Corp., including five-year contingent consideration issued as a result of such acquisition. At the end of 2012, all contingencies expired and the Company recorded a reduction of Excess of fair value of assets acquired over cost of \$7 million and deferred tax liabilities of \$5 million offset by the reversal of related customer relationship intangible assets of \$630,000 and fixed assets of \$65,000 on the consolidated balance sheet as of December 31, 2012 as well as a non-cash adjustment reducing occupancy expenses in the amount of \$11.3 million.

### ***Intangible Assets***

Intangible assets arose upon the acquisition, in January 2003, of the U.S. Private Client and Asset Management Divisions of CIBC World Markets Corp. (the Oppenheimer Divisions) and comprise customer relationships and trademarks and trade names. Customer relationships of \$4.9 million were amortized on a straight-line basis over 80 months commencing in January 2003 (fully amortized and carried at \$nil since December 31, 2010). Trademarks and trade names, carried at \$31.7 million, which are not amortized, are subject to at least an annual test for impairment to determine if the fair value is less than their carrying amount. Trademarks and trade names recorded as at December 31, 2012 have been tested for impairment and it has been determined that no impairment has occurred. See note 15 to the consolidated financial statements appearing in Item 8 for further discussion.

## **Table of Contents**

Intangible assets also arose from the January 2008 acquisition of the Oppenheimer Divisions from CIBC World Markets Corp. and are comprised of customer relationships and a below market lease. Customer relationships were being amortized on a straight-line basis over 180 months commencing in January 2008. However, due to the expiration of the five-year contingent consideration issued as part of such acquisition, remaining amounts related to the customer relationship intangible asset of \$630,000 were reversed in the fourth quarter of 2012. The below market lease was determined to amortize on a straight-line basis over 60 months commencing in January 2008. However, due to the plan to consolidate the Company's headquarters, the Company terminated the lease which resulted in a reevaluation of the remaining useful life of the below market lease intangible asset and amortized \$1.1 million in the fourth quarter of 2011 and \$3.2 million during the first quarter of 2012.

### ***Share-Based Compensation Plans***

The Company estimates the fair value of share-based awards using the Black-Scholes option-pricing model and applies to it a forfeiture rate based on historical experience. Key input assumptions used to estimate the fair value of share-based awards include the expected term and the expected volatility of the Company's Class A Stock over the term of the award, the risk-free interest rate over the expected term, and the Company's expected annual dividend yield. Estimates of fair value are not intended to predict actual future events or the value ultimately realized by persons who receive share-based awards. For further discussion, see note 12 to the consolidated financial statements appearing in Item 8.

### ***Income Taxes***

The Company records deferred taxes for the future consequences of events that have been recognized for financial statements or tax returns, based upon enacted tax laws and rates. In addition, the Company estimates and provides for potential liabilities that may arise out of tax audits to the extent that uncertain tax positions fail to meet the recognition standard under accounting guidance. For further discussion, see note 11 to the consolidated financial statements appearing in Item 8.

### ***New Accounting Pronouncements***

Recently adopted and recently issued accounting pronouncements are described in note 1 to the consolidated financial statements for the year ended December 31, 2012 appearing in Item 8.

### ***Business Environment***

The securities industry is directly affected by general economic and market conditions, including fluctuations in volume and price levels of securities and changes in interest rates, inflation, political events, investor participation levels, legal and regulatory, accounting, tax and compliance requirements and competition, all of which have an impact on commissions, firm trading, fees from accounts under investment management as well as fees for investment banking services, and investment income as well as on liquidity. Substantial fluctuations can occur in revenues and net income due to these and other factors.

For a number of years, the Company has offered auction rate securities (ARS) to its clients. A significant portion of the market in ARS has failed because, in the tight credit market, the dealers are no longer willing or able to purchase the imbalance between supply and demand for ARS. These securities have auctions scheduled on either a 7, 28 or 35 day cycle. Clients of the Company own a significant amount of ARS in their individual accounts. The absence of a liquid market for these securities presents a significant problem to clients and, as a result, to the Company. It should be noted that this is a failure of liquidity and not a default. These securities in almost all cases have not failed to pay interest or principal when due. These securities are fully collateralized for the most part and, for the most part, remain good credits. The Company has not acted as an auction agent for ARS.

## **Table of Contents**

Interest rates on ARS typically reset through periodic auctions. Due to the auction mechanism and generally liquid markets, ARS have historically been categorized as Level 1 in the fair value hierarchy. Beginning in February 2008, uncertainties in the credit markets resulted in substantially all of the ARS market experiencing failed auctions. Once the auctions failed, the ARS could no longer be valued using observable prices set in the auctions. The Company has used less observable determinants of the fair value of ARS, including the strength in the underlying credits, announced issuer redemptions, completed issuer redemptions, and announcements from issuers regarding their intentions with respect to their outstanding ARS. The Company has also developed an internal methodology to discount for the lack of liquidity and non-performance risk of the failed auctions. Key inputs include spreads on comparable Treasury yields to derive a discount rate, an estimate of the ARS duration, and yields based on current auctions in comparable securities that have not failed. Due to the less observable nature of these inputs, the Company categorizes ARS in Level 3 of the fair value hierarchy. As of December 31, 2012, the Company had a valuation adjustment (unrealized loss) of \$7.7 million for ARS.

The Company has sought, with limited success, financing from a number of sources to try to find a means for all its clients to find liquidity from their ARS holdings and will continue to do so. There can be no assurance that the Company will be successful in finding a liquidity solution for all its clients ARS. See Risk Factors The Company may continue to be adversely affected by the failure of the Auction Rate Securities Market and Factors Affecting Forward-Looking Statements .

Recent events have caused increased review and scrutiny on the methods utilized by financial service companies to finance their short term requirements for liquidity. The Company utilizes commercial bank loans, securities lending, and repurchase agreements (through overnight, term, and repo-to-maturity transactions) to finance its short term liquidity needs (See Liquidity ). All repurchase agreements and reverse repurchase agreements are collateralized by short term U.S. Government obligations and U.S. Government Agency obligations.

The Company is focused on growing its private client and asset management businesses through strategic additions of experienced financial advisers in its existing branch system and employment of experienced money management personnel in its asset management business. In addition, the Company is committed to the improvement of its technology capability to support client service and the expansion of its capital markets capabilities while addressing the issue of managing its expenses to better align them with the current investment environment. The Company will continue to nurture the growth of OMMHF as well as its business in non-U.S. markets.

## **Regulatory and Legal Environment**

The brokerage business is subject to regulation by, among others, the Securities and Exchange Commission ( SEC ) and FINRA (formerly the NYSE and NASD) in the United States, the Financial Services Authority ( FSA ) in the United Kingdom, the Securities and Futures Commission in Hong Kong ( SFC ) and various state securities regulators in the United States. Events in recent years surrounding corporate accounting and other activities leading to investor losses resulted in the enactment of the Sarbanes-Oxley Act and have caused increased regulation of public companies. New regulations and new interpretations and enforcement of existing regulations are creating increased costs of compliance and increased investment in systems and procedures to comply with these more complex and onerous requirements. Increasingly, the various states are imposing their own regulations that make the uniformity of regulation a thing of the past, and make compliance more difficult and more expensive to monitor.

## **Table of Contents**

In July 2010, Congress enacted extensive legislation entitled the Wall Street Reform and Consumer Protection Act ( Dodd Frank ) in which it mandated that the SEC and other regulators conduct comprehensive studies and issue new regulations based on their findings to control the activities of financial institutions in order to protect the financial system, the investing public and consumers from issues and failures that occurred in the recent financial crisis. All relevant studies have not yet been completed, but they are widely expected to extensively impact the regulation and practices of financial institutions including the Company. The changes are likely to significantly reduce leverage available to financial institutions and to increase transparency to regulators and investors of risks taken by such institutions. It is impossible to presently predict the nature of such rulemaking. Rules adopted in the U.S. and Europe would create a new regulator for certain activities, regulate and/or prohibit proprietary trading for certain deposit taking institutions, control the amount and timing of compensation to highly paid employees, create new regulations around financial transactions with consumers requiring the adoption of a uniform fiduciary standard of care of broker-dealers and investment advisers providing personalized investment advice about securities to retail customers, and increase the disclosures provided to clients, and create a tax on securities transactions. In December 2012, France began applying a 0.2% transaction tax on financial transactions in American Depositary Receipts of French companies that trade U.S. exchanges. Italy is expected to implement its own financial transaction tax in March 2013. The imposition of financial transaction taxes are likely to impact the jurisdiction in which securities are traded and the spreads demanded by market participants in order to make up for the cost of any such tax. It appears increasingly likely that such a tax will be implemented throughout the Eurozone. If and when enacted, such regulations will likely increase compliance costs and reduce returns earned by financial service providers and intensify compliance overall. It is difficult to predict the nature of the final regulations and their impact on the business of the Company.

Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds (the Volcker Rule ) was published by the U.S. Federal Reserve Board as required by Dodd-Frank in 2011. The Volcker Rule is intended to restrict U.S. banks and other financial institutions that accept deposits from conducting proprietary trading activities, as well as investing in hedge funds and private equity funds for their own account. The intent of the Volcker Rule is to reduce risk to the capital of such institutions through reducing speculation and risk-taking with bank capital. The draft form of the proposed rule was exposed for comment until January 13, 2012 and is scheduled to become effective on July 21, 2014. It seems likely that additional comments will be permitted surrounding the impact of the Volcker Rule on market liquidity and importantly on the liquidity of issued sovereign debt in Europe and Asia. While it is widely expected that the impact of the Volcker Rule may significantly impact the liquidity in various capital markets, the effect cannot be predicted with any certainty. The Company believes that the Volcker Rule will not directly affect its operations, but indirect effects cannot be predicted with any certainty. Additionally, the Federal Reserve in conjunction with other U.S regulatory organizations has analyzed the U.S. financial system and the impact that might result from the failure of one or more Strategically Important Financial Institutions ( SIFI ). To date, less than 25 such institutions have been identified and will be made subject to special regulations including the requirement to create a plan for their orderly demise in the event of a failure. The identification process has not been completed and is subject to appeal by the affected institutions. The Company has no reason to believe that it will be identified as a SIFI. Recent revelations around the fixing of the LIBOR ( London Interbank Offered Rate ) during the period from 2008-2010 make it likely that more regulation surrounding the fixing of interest rates on commercial bank loans and reference rates on derivatives is likely.

The impact of the rules and requirements that were created by the passage of the Patriot Act, and the anti-money laundering regulations (AML) in the U.S. and similar laws in other countries that are related thereto have created significant costs of compliance and can be expected to continue to do so.

## **Table of Contents**

Pursuant to FINRA Rule 3130 (formerly NASD Rule 3013 and NYSE Rule 342), the chief executive officers ( CEOs ) of regulated broker-dealers (including the CEO of Oppenheimer) are required to certify that their companies have processes in place to establish and test supervisory policies and procedures reasonably designed to achieve compliance with federal securities laws and regulations, including applicable regulations of self-regulatory organizations. The CEO of the Company is required to make such a certification on an annual basis and did so in March 2012.

### ***Other Regulatory Matters***

For several quarters, Oppenheimer has been responding to information requests from the Enforcement Staff of FINRA regarding Oppenheimer's policies and procedures in relation to, and the activities of several financial advisers concerning, the sale of low-priced securities. The Company has responded to numerous document requests and there has been on-the-record testimony given by financial advisers and supervisory personnel who work in several of Oppenheimer's branch offices in connection with this inquiry.

On June 23, 2011, Oppenheimer received notice of an investigation by the SEC pursuant to which the SEC requested information from the Company regarding the sale of a number of low-priced securities effected primarily through one of Oppenheimer's financial advisers. Oppenheimer is continuing to respond to information requests as part of the investigation.

Oppenheimer is continuing to cooperate with the investigating entities and will continue to closely monitor the activities of its financial advisers and their supervisors in relation to the sale of low-priced securities.

In February 2010, Oppenheimer finalized settlements with each of the New York Attorney General's office ( NYAG ) and the Massachusetts Securities Division ( MSD ) and, together with the NYAG, the Regulators ) concluding investigations and administrative proceedings by the Regulators concerning Oppenheimer's marketing and sale of ARS. Pursuant to those settlements and legal settlements, as of December 31, 2012, the Company purchased and holds approximately \$77.1 million in ARS from its clients pursuant to several purchase offers and legal settlements. The Company's purchases of ARS from its clients will, subject to the terms and conditions of the settlements with the regulators, continue on a periodic basis thereafter pursuant to the settlements with the Regulators. In addition, the Company is committed to purchase another \$38.3 million in ARS from clients through 2016. The ultimate amount of ARS to be repurchased by the Company cannot be predicted with any certainty and will be impacted by redemptions by issuers and legal and other actions by clients during the relevant period, which cannot be predicted. The Company also held \$150,000 in ARS in its proprietary trading account as of December 31, 2012 as a result of the failed auctions in February 2008. These ARS positions primarily represent Auction Rate Preferred Securities issued by closed-end funds and, to a lesser extent, Municipal Auction Rate Securities which are municipal bonds wrapped by municipal bond insurance and Student Loan Auction Rate Securities which are asset-backed securities backed by student loans.

## **Table of Contents**

The Company's clients held at Oppenheimer approximately \$212.9 million of ARS at December 31, 2012, exclusive of amounts that 1) were owned by Qualified Institutional Buyers ( QIBs ), 2) were transferred to the Company after February 2008, 3) were purchased by clients after February 2008, or 4) were transferred from the Company to other securities firms after February 2008. See *Risk Factors* The Company may continue to be adversely affected by the failure of the Auction Rate Securities Market and *Legal Proceedings* herein.

### ***Other Matters***

A subsidiary of the Company was the administrative agent for two closed-end funds until December 5, 2005. The Company was advised by the current administrative agent for these two funds that the Internal Revenue Service ( IRS ) had asserted a claim for interest and penalties for one of these funds with respect to the 2004 tax year as a result of an alleged failure of such subsidiary to take certain actions. On October 14, 2011, Oppenheimer entered into a settlement agreement with the adviser to one of the aforementioned funds pursuant to which Oppenheimer paid approximately \$2.5 million. Oppenheimer also received approximately \$1.3 million in contribution from two other parties involved in the matter, making Oppenheimer's net payment equal to approximately \$1.2 million. The Company considers this matter now closed.

The Company operates in all state jurisdictions in the United States and is thus subject to regulation and enforcement under the laws and regulations of each of these jurisdictions. The Company has been and expects that it will continue to be subject to investigations and some or all of these may result in enforcement proceedings as a result of its business conducted in the various states.

As part of its ongoing business, the Company records reserves for legal expenses, judgments, fines and/or awards attributable to litigation and regulatory matters. In connection therewith, the Company has maintained its legal reserves at levels it believes will resolve outstanding matters, but may increase or decrease such reserves as matters warrant. In accordance with applicable accounting guidance, the Company establishes reserves for litigation and regulatory matters when those matters present loss contingencies that are both probable and reasonably estimable. When loss contingencies are not both probable and reasonably estimable, the Company does not establish reserves. In some of the matters described under *Legal Proceedings*, loss contingencies are not probable and reasonably estimable in the view of management and, accordingly, reserves have not been established for those matters. See *Legal Proceedings* herein and note 13 to the consolidated financial statements appearing in Item 8.

### ***Business Continuity***

The Company is committed to an on-going investment in its technology and communications infrastructure including extensive business continuity planning and investment. These costs are on-going and the Company believes that current and future costs will exceed historic levels due to business and regulatory requirements. This investment increased in 2008 and 2009 as a result of the January 2008 acquisition of certain businesses from CIBC and the Company's need to build out its platform to accommodate these businesses. Then Company made infrastructure investments for technology in 2010 when it built a new data center both to accommodate its existing and future business and to restructure its disaster recovery planning. The move to new headquarters will require additional outlays for this purpose although considerable savings will be realized by the availability of independent electric generating capacity for the entire building which will support the Company's infrastructure and occupancy.

## **Table of Contents**

The fourth quarter of 2012 was impacted by Superstorm Sandy which occurred on October 29<sup>th</sup> causing the Company to vacate its two principal offices in downtown Manhattan and displaced 800 of the Company's employees including substantially all of its capital markets, operations and headquarters staff for in excess of 30 days. During the displacement period the Company successfully implemented its business continuity plan by relocating personnel from both of its downtown Manhattan locations into other branch offices and back-up facilities in the region. Other than the closure of the financial markets for two business days, the Company was able to successfully clear and settle open trades that took place prior to the storm and to get its trading, operations, technology, and other support functions mobilized to process business once the financial markets reopened. As a result of the dislocation, the Company received rent abatement credits of \$1.7 million for its two downtown buildings and incurred rent and other costs of approximately \$500,000 to accommodate displaced employees.

## **Outlook**

The Company's long-term plan is to continue to expand existing offices by hiring experienced professionals as well as through the purchase of operating branch offices from other broker dealers or the opening of new branch offices in attractive locations, thus maximizing the potential of each office and the development of existing trading, investment banking, investment advisory and other activities. Equally important is the search for viable acquisition candidates. As opportunities are presented, it is the long-term intention of the Company to pursue growth by acquisition where a comfortable match can be found in terms of corporate goals and personnel at a price that would provide the Company's stockholders with incremental value. The Company may review potential acquisition opportunities, and will continue to focus its attention on the management of its existing business. In addition, the Company is committed to improving its technology capabilities to support client service and the expansion of its capital markets capabilities.

## **Results of Operations**

Net loss for the year ended December 31, 2012 was \$3.6 million or \$(0.27) per share compared to net profit of \$10.3 million or \$0.76 per share in 2011. Revenue for the year ended December 31, 2012 was \$952.6 million, a decrease of less than 1% compared to \$959.0 million in 2011.

The fourth quarter of 2012 was significantly impacted by the following matters. On January 31, 2013, a FINRA arbitration panel rendered a decision in the previously disclosed U.S. Airways case, filed in February 2009, resulting in an award against the Company's subsidiary, Oppenheimer, in the amount of \$30 million including interest and costs on a claim of approximately \$140 million (adjusted down from \$253 million). The effect of the award resulted in a fourth quarter after-tax charge of \$17.9 million. The Company is extremely disappointed with the decision of the panel and will pursue its previously filed arbitration against Deutsche Bank covering many of the issues in this case in an effort to recover the amount of the award plus all associated costs of the case.

The Company, the ultimate parent of Oppenheimer, has contributed capital into Oppenheimer, in an amount equal to the net after tax effect of the award. Accordingly, the regulatory capital of Oppenheimer did not change as a result of the award.

**Table of Contents**

Separately, at the end of 2012, all contingencies expired related to five year contingent consideration issued as part of the Company's acquisition of the U.S. capital markets division from CIBC in January 2008. As a result, the Company recorded a non-cash adjustment reducing occupancy expenses in the amount of \$6.8 million, on an after-tax basis. Also, during the fourth quarter of 2012, the Company recorded after-tax credits of \$1.9 million related to state investment and employment incentives for investments previously made. The net effect of these three items was an after-tax charge of \$9.2 million for the period.

The fourth quarter of 2012 was also impacted by Superstorm Sandy which occurred on October 29<sup>th</sup> causing the Company to vacate its two principal offices in downtown Manhattan and displaced 800 of the Company's employees including substantially all of its capital markets, operations and headquarters staff for in excess of 30 days. As a result of the dislocation, the Company received rent abatement credits of \$1.7 million for its two downtown buildings and incurred rent and other costs of approximately \$500,000 to accommodate displaced employees.

## Table of Contents

The following table sets forth the amount and percentage of the Company's revenue from each principal source for each of the following years ended December 31:

Amounts are expressed in thousands of dollars.

	2012	%	2011	%	2010	%
Commissions	\$ 469,865	49%	\$ 492,228	51%	\$ 537,730	52%
Principal transactions, net	54,311	6%	47,660	5%	78,384	8%
Interest	57,662	6%	56,779	6%	45,871	4%
Investment banking	89,477	10%	119,202	12%	134,906	13%
Advisory fees	222,732	23%	197,097	21%	187,888	18%
Other	58,565	6%	46,026	5%	51,494	5%
Total revenue	\$ 952,612	100%	\$ 958,992	100%	\$ 1,036,273	100%

The Company derives most of its revenue from the operations of its principal subsidiaries, Oppenheimer and OAM. Although maintained as separate entities, the operations of the Company's brokerage subsidiaries both in the U.S. and other countries are closely related because Oppenheimer acts as clearing broker and omnibus clearing agent in transactions initiated by these subsidiaries. Except as expressly otherwise stated, the discussion below pertains to the operations of Oppenheimer.

The following table and discussion summarizes the changes in the major revenue and expense categories for the past two years:

Amounts are expressed in thousands of dollars.

	Period to Period Change Increase (Decrease)			
	2012 versus 2011		2011 versus 2010	
	Amount	Percentage	Amount	Percentage
<b>Revenue</b>				
Commissions	\$ (22,363)	-5%	\$ (45,502)	-8%
Principal transactions, net	6,651	+14%	(30,724)	-39%
Interest	883	+2%	10,908	+24%
Investment banking	(29,725)	-25%	(15,704)	-12%
Advisory fees	25,635	+13%	9,209	+5%
Other	12,539	+27%	(5,468)	-11%
Total revenue	(6,380)	-1%	(77,281)	-7%
<b>Expenses</b>				
Compensation and related expenses	(356)	0%	(49,274)	-7%
Clearing and exchange fees	(1,241)	-5%	(763)	-3%
Communications and technology	686	+1%	(2,027)	-3%
Occupancy and equipment costs	(13,691)	-18%	2,120	+3%
Interest	(2,940)	-8%	12,276	+48%
Other	29,537	26%	10,530	+10%
Total expenses	11,995	1.3%	(27,138)	-3%
Loss before income taxes	(18,375)	-103%	(50,143)	-74%
Income tax benefit	(4,907)	-94%	(21,980)	-81%

## Edgar Filing: OPPENHEIMER HOLDINGS INC - Form 10-K

Net loss	(13,468)	-107%	(28,163)	-69%
Net profit attributable to non-controlling interest, net of tax	461	+20%	53	2%
Net loss attributable to the Company	\$ (13,929)	-135%	\$ (28,216)	-73%

57

---

**Table of Contents**

**Fiscal 2012 compared to Fiscal 2011**

*Revenue*

Commission revenue was \$469.9 million in the year ended December 31, 2012, a decrease of 4.5% compared to \$492.2 million in 2011 due to a lower volume of business in the year ended December 31, 2012 compared to 2011.

Principal transactions revenue was \$54.3 million in the year ended December 31, 2012, an increase of 14.0% compared to \$47.7 million in 2011. Revenue from equities, corporate bonds, agencies and municipals trading as well as an increase in the value of the Company's investments added \$17.4 million in the year ended December 31, 2012 compared to 2011. These gains were offset by decreases of \$9.6 million in U.S. government and agencies trading and repurchase agreements as well as the negative effect of the valuation adjustment for auction rate securities owned and committed to purchase from clients of \$3.1 million.

Interest revenue was \$57.7 million in the year ended December 31, 2012, an increase of 1.6% compared to \$56.8 million in 2011. The increase is primarily attributable to an increase of \$4.8 million in interest from higher holdings of U.S. government and agencies and reverse repurchase agreements in the year ended December 31, 2012 compared to 2011. This increase was partially offset by a decrease of \$3.2 million in margin and other interest income.

Investment banking revenue was \$89.5 million in the year ended December 31, 2012, a decrease of 24.9% compared to \$119.2 million in 2011 primarily due a decrease of \$28.1 million in revenue from corporate finance advisory fees as well as a decrease in revenue from equity issuances of \$2.9 million in 2012 compared to the same period in 2011.

Advisory fees were \$222.7 million in the year ended December 31, 2012, an increase of 13.0% compared to \$197.1 million in 2011. Asset management fees increased by \$17.3 million for the year ended December 31, 2012 compared to 2011 as a result of an increase in the value of assets under management during the year. Incentive fee income increased by \$8.3 million in the year ended December 31, 2012 compared to 2011.

Other revenue was \$58.6 million in the year ended December 31, 2012, an increase of 27.2% compared to \$46.0 million in 2011 primarily due to an increase of \$5.5 million in the fair value of our Company-owned life insurance policies that support our deferred compensation plans. In addition, fees generated by Oppenheimer Multifamily Housing & Healthcare Finance, Inc. increased \$7.1 million in the year ended December 31, 2012 compared to 2011.

*Expenses*

Compensation and related expenses were \$626.4 million in the year ended December 31, 2012, essentially flat compared to \$626.8 million in 2011.

## **Table of Contents**

Clearing and exchange fees were \$23.8 million in the year ended December 31, 2012, a decrease of 5.0% compared to \$25.0 million in 2011 primarily stemming from a \$1.3 million decrease in floor brokerage fees in the year ended December 31, 2012 compared to 2011. This decrease relates to the decrease in commission business described above.

Communications and technology expenses were \$63.4 million for the year ended December 31, 2012, an increase of 1.1% compared to \$62.7 million in 2011 due primarily to an increase in information technology-related expenses in the year ended December 31, 2012 compared to 2011.

Occupancy and equipment costs were \$62.8 million for the year ended December 31, 2012, a decrease of 17.9% compared to \$76.5 million in 2011. At the end of 2012, all contingencies expired related to five year contingent consideration issued as part of the Company's acquisition of the U.S. capital markets division from Canadian Imperial Bank of Commerce in January 2008. As a result, the Company recorded a non-cash adjustment reducing occupancy expenses in the amount of \$11.3 million.

Interest expense was \$35.1 million in the year ended December 31, 2012, a decrease of 7.7% compared to \$38.0 million in 2011 primarily due to decreased interest expenses incurred on repurchase agreements held by the government trading desk for the year ended December 31, 2012 compared to that of 2011.

Other expenses were \$141.7 million for the year ended December 31, 2012, an increase of 26.3% compared to \$112.2 million in 2011 due to the outcome of the U.S. Airways arbitration as discussed above.

During the three months ended June 30, 2012, the Company recorded adjustments of \$1.3 million, net of taxes, related to the prior periods to establish additional reserves for taxes and adjust related interest. During the three month period ended December 31, 2012 the Company recorded tax credits of \$1.9 million (net of Federal taxes) related to state investment and employment incentives for investments previously made.

## **Fiscal 2011 compared to Fiscal 2010**

### *Revenue*

Commission revenue was \$492.2 million in the year ended December 31, 2011, a decrease of 8.5% compared to \$537.7 million in 2010.

Principal transactions revenue was \$47.7 million in the year ended December 31, 2011 compared to \$78.4 million in 2010, a decrease of 39.2%. The decrease primarily stems from lower fixed income trading revenue (\$52.4 million for the year ended December 31, 2011 compared to \$66.9 million in 2010).

Interest revenue was \$56.8 million in the year ended December 31, 2011, an increase of 23.8% compared to \$45.9 million in 2010. The increase is primarily attributable to interest earned by the government trading desk.

Investment banking revenue was \$119.2 million in the year ended December 31, 2011, a decrease of 11.6% compared to \$134.9 million in 2010 primarily due to a drop in business in the third and fourth quarters of 2011 arising from uncertainty relating to credit issues in Europe.

## **Table of Contents**

Advisory fees were \$197.1 million in the year ended December 31, 2011, an increase of 4.9% compared to \$187.9 million in 2010. Asset management fees increased by \$11.6 million for the year ended December 31, 2011 compared to 2010 as a result of an increase in the value of assets under management during the period. Incentive fee income decreased by \$4.9 million in the year ended December 31, 2011 compared to 2010. In addition, fees from money market funds decreased by \$2.4 million for the year ended December 31, 2011 compared to 2010 as a result of waivers of \$25.6 million in the year ended December 31, 2011 on fees that otherwise would have been due from money market funds (\$22.7 million during the year ended December 31, 2010).

Other revenue was \$46.0 million in the year ended December 31, 2011, a decrease of 10.6% compared to \$51.5 million in 2010 primarily due to a decrease of \$6.9 million in the fair value of our Company-owned life insurance policies that support our deferred compensation plans. In addition, there was a decrease in fees from FDIC insured deposits of \$2.8 million. These decreases were partially offset by an increase of \$2.1 million in fees generated by OMHHF. in the year ended December 31, 2011 compared to 2010.

### *Expenses*

Compensation and related expenses were \$626.8 million in the year ended December 31, 2011, a decrease of 7.3% compared to \$676.0 million in 2010 primarily due to lower commission revenue resulting in a corresponding decrease in brokers' commission-based compensation as well as a decrease in incentive compensation in line with the decline in operating results of the Company in 2011 compared to 2010.

Clearing and exchange fees were \$25.0 million in the year ended December 31, 2011, a decrease of 3.0% compared to \$25.8 million in 2010.

Communications and technology expenses were \$62.7 million for the year ended December 31, 2011, a decrease of 3.1% compared to \$64.7 million in 2010 due primarily to a reduction of \$1.4 million in IT-related expenses in the year ended December 31, 2011 compared to 2010.

Occupancy and equipment costs were \$76.5 million for the year ended December 31, 2011, an increase of 2.9% compared to \$74.4 million in 2010 primarily due to overlapping rent expense and write-offs of \$2.4 million related to the move of our corporate headquarters as described above.

Interest expense was \$38.0 million in the year ended December 31, 2011, an increase of 47.7% compared to \$25.8 million in 2010 primarily due to higher interest costs of \$8.5 million on the senior secured note which was used to refinance the Senior Secured Credit Note and the Subordinated Note on April 12, 2011. In addition, interest expense incurred on positions and repurchase agreements held by the government trading desk increased by \$3.2 million for the year ended December 31, 2011 compared to 2010.

Other expenses were \$112.2 million for the year ended December 31, 2011, an increase of 10.4% compared to \$101.6 million in 2010 primarily due to an increase in legal costs of approximately \$6.2 million as a result of increased client litigation and arbitration activity as well as increased external portfolio manager fees of \$5.7 million.

The 2011 effective tax rate was 29.3% compared to 40.0% in 2010. The decrease in the effective tax rate reflects a significant decrease in pretax book earnings that magnifies the impact of permanent differences. The effective tax rate in 2011 was also favorably impacted by life insurance proceeds received in 2011 and by adjustments to reflect 2010 tax returns as filed.

## **Table of Contents**

### **Liquidity and Capital Resources**

Total assets at December 31, 2012 decreased by 24.1% from December 31, 2011 due to a reduction in government securities positions and repurchase transactions. The Company satisfies its need for short-term funds from internally generated funds and collateralized and uncollateralized borrowings, consisting primarily of bank loans, stock loans, uncommitted lines of credit, and warehouse facilities. The Company finances its trading in government securities through the use of repurchase agreements. The Company's longer-term capital needs are met through the issuance of the Notes (see "Refinancing" below). The amount of Oppenheimer's bank borrowings fluctuates in response to changes in the level of the Company's securities inventories and customer margin debt, changes in notes receivable from employees, investment in office facilities, changes in stock loan balances and financing through repurchase agreements. The Company believes that such availability will continue going forward but current conditions in the worldwide credit markets may make the availability of bank financing more challenging. Oppenheimer has arrangements with banks for borrowings on a fully-collateralized basis. At December 31, 2012, the Company had \$128.3 million of such borrowings outstanding compared to outstanding borrowings of \$27.5 million at December 31, 2011. The Company also has availability, on a limited basis, of short-term bank financing on an unsecured basis.

Volatility in the financial markets, and the continuance of credit and sovereign debt issues throughout the world, has had an adverse affect on the availability of credit through traditional sources. As a result of concerns around financial markets generally and the strength of counterparties specifically, a few lenders have reduced and, in some cases, ceased to provide funding to the Company on both a secured and unsecured basis. As of December 31, 2012, the Company did not have any exposure to European sovereign debt.

On August 5, 2011, Standard & Poor's lowered its long term sovereign credit rating on the United States of America from AAA to AA+. Credit agencies have also reduced the credit ratings of various sovereign nations in recent months. While the ultimate impact of such action is inherently unpredictable, these downgrades could have a material adverse impact on financial markets and economic conditions throughout the world, including, specifically, the United States. Moreover, the market's anticipation of these impacts could have a material adverse effect on our business, financial condition and liquidity. The negative impact that may result from these downgrades or any future downgrade could adversely affect our credit ratings, as well as those of our clients and/or counterparties and could require us to post additional collateral on loans collateralized by U.S. Treasury securities. The unprecedented nature of these and any future negative credit rating actions with respect to U.S. government obligations and the credit ratings of other sovereign nations may have an impact on our business, financial condition and liquidity. See Item 1A "Risk Factors"- The recent downgrade of U.S. long term sovereign debt obligations and issues affecting the sovereign debt of European nations may adversely affect markets and our business.

In February 2010, Oppenheimer finalized settlements with each of the New York Attorney General's office ("NYAG") and the Massachusetts Securities Division ("MSD") and, together with the NYAG, the "Regulators") concluding investigations and administrative proceedings by the Regulators concerning Oppenheimer's marketing and sale of ARS. Pursuant to those settlements and legal settlements, as of December 31, 2012, the Company purchased and holds approximately \$77.1 million in ARS from its clients pursuant to several purchase offers and legal settlements. The Company's purchases of ARS from its clients will, subject to the terms and conditions of the settlements with the regulators, continue on a periodic basis thereafter pursuant to the settlements with the Regulators. In addition, the Company is committed to purchase another \$38.3 million in ARS from clients through 2016. The ultimate amount of ARS to be repurchased by the Company cannot be predicted with any certainty and will be impacted by redemptions by issuers and legal and other actions by clients during the relevant period, which cannot be predicted. The Company also held \$150,000 on in ARS in its proprietary trading account as of December 31, 2012 as a result of the failed auctions in February 2008. These ARS positions primarily represent Auction Rate Preferred Securities issued by closed-end funds and, to a lesser extent, Municipal Auction Rate Securities which are municipal bonds wrapped by municipal bond insurance and Student Loan Auction Rate Securities which are asset-backed securities backed by student loans.

## **Table of Contents**

As discussed in Legal Proceedings above, the Company was required to make a \$30 million payment to US Airways within 30 days resulting from the decision rendered by FINRA arbitration panel on January 31, 2013. The Company, the ultimate parent of Oppenheimer, has contributed capital into Oppenheimer, the broker-dealer, in an amount equal to the net after tax effect of the award.

### ***Refinancing***

On April 12, 2011, the Company completed the private placement of \$200.0 million in aggregate principal amount of 8.75 percent Senior Secured Notes (Notes) due April 15, 2018 at par. The interest on the Notes is payable semi-annually on April 15<sup>th</sup> and October 15<sup>th</sup>. Proceeds from the private placement were used to retire the Morgan Stanley Senior Secured Credit Note due 2013 (\$22.4 million) and the Subordinated Note due 2014 (\$100.0 million) and for other general corporate purposes. The private placement resulted in the fixing of the interest rate over the term of the Notes compared to the variable rate debt that was retired and an extension of the debt maturity dates as described above. The cost to issue the Notes was approximately \$4.6 million which has been capitalized in the second quarter of 2011 and will be amortized over the period of the Notes. The Company wrote off \$344,000 in unamortized debt issuance costs related to the Senior Secured Credit Note during the second quarter of 2011. Additionally, as a result of the retirement of the Subordinated Note, the effective portion of the net loss of \$1.3 million related to the interest rate cap cash flow hedge has been reclassified from accumulated other comprehensive income (loss) on the condensed consolidated balance sheet to interest expense on the condensed consolidated statement of operations during the second quarter of 2011.

Interest expense as well as interest paid for the year ended December 31, 2012 on the Notes was \$17.1 million.

The indenture for the Notes contains covenants which place restrictions on the incurrence of indebtedness, the payment of dividends, sale of assets, mergers and acquisitions and the granting of liens. The Notes provide for events of default including nonpayment, misrepresentation, breach of covenants and bankruptcy. The Company's obligations under the Notes are guaranteed, subject to certain limitations, by the same subsidiaries that guaranteed the obligations under the Senior Secured Credit Note and the Subordinated Note which were retired. These guarantees may be shared, on a senior basis, under certain circumstances, with newly incurred debt outstanding in the future. The Notes were filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2011. At December 31, 2012, the Company was in compliance with all of its covenants.

On July 12, 2011, the Company's Registration Statement on Form S-4, filed to register the exchange of the Notes for fully registered Notes, was declared effective by the SEC. The Exchange Offer was completed in its entirety on August 9, 2011.

In November 2011, the Company repurchased \$5.0 million of its Notes at a cost of \$4.7 million resulting in the recording of a gain of \$300,000 during the fourth quarter of 2011. The Company continued to hold these Notes at December 31, 2012.

On April 4, 2012, the Company's Registration Statement on Form S-3 filed to enable the Company to act as a market maker in connection with the Notes was declared effective by the SEC.

## **Table of Contents**

### **Liquidity**

For the most part, the Company's assets consist of cash and assets which can be readily converted into cash. Receivable from dealers and clearing organizations represents deposits for securities borrowed transactions, margin deposits or current transactions awaiting settlement. Receivable from customers represents margin balances and amounts due on transactions awaiting settlement. Our receivables are, for the most part, collateralized by marketable securities. The Company's collateral maintenance policies and procedures are designed to limit the Company's exposure to credit risk. Securities owned, with the exception of the ARS, are mainly comprised of actively trading, readily marketable securities. The Company advanced \$14.6 million in forgivable notes, to financial advisers (which are inherently illiquid) for the year ended December 31, 2012 (\$15.7 million for the year ended December 31, 2011) as upfront or backend inducements. The amount of funds allocated to such inducements will vary with market conditions and available opportunities.

The Company satisfies its need for short-term liquidity from internally generated funds, collateralized and uncollateralized bank borrowings, stock loans and repurchase agreements and warehouse facilities. Bank borrowings are collateralized by firm and customer securities. In addition, letters of credit are issued in the normal course of business to satisfy certain collateral requirements in lieu of depositing cash or securities.

The Company does not repatriate the earnings of its foreign subsidiaries. Foreign earnings are permanently reinvested for the use of the foreign subsidiaries and therefore these foreign earnings are not available to satisfy the domestic liquidity requirements of the Company.

The Company obtains short-term borrowings primarily through bank call loans. Bank call loans are generally payable on demand and bear interest at various rates not exceeding the broker call rate. At December 31, 2012, bank call loans were \$128.3 million (\$27.5 million at December 31, 2011). The average bank loan outstanding for the year ended December 31, 2012 was \$73.2 million (\$92.7 million for the year ended December 31, 2011). The largest bank loan outstanding for the year ended December 31, 2012 was \$316.3 million (\$240.1 million for the year ended December 31, 2011). The average weighted interest rate on bank call loans applicable on December 31, 2012 was 1.23%.

At December 31, 2012, stock loan balances totaled \$190.4 million (\$318.8 million at December 31, 2011). The average daily stock loan balance for the year ended December 31, 2012 was \$290.3 million (\$349.3 million for the year ended December 31, 2011). The largest stock loan balance for the year ended December 31, 2012 was \$400.5 million (\$471.9 million for the year ended December 31, 2011).

The Company finances its government trading operations through the use of securities purchased under agreement to repurchase ( repurchase agreements ) and securities sold under agreement to resell ( reverse repurchase agreements ). Except as described below, repurchase and reverse repurchase agreements, principally involving government and agency securities, are carried at amounts at which securities subsequently will be resold or reacquired as specified in the respective agreements and include accrued interest. Repurchase and reverse repurchase agreements are presented on a net-by-counterparty basis, when the repurchase and reverse repurchase agreements are executed with the same counterparty, have the same explicit settlement date, are executed in accordance with a master netting arrangement, the securities underlying the repurchase and reverse repurchase agreements exist in book entry form and certain other requirements are met.

## **Table of Contents**

Certain of the Company's repurchase agreements and reverse repurchase agreements are carried at fair value as a result of the Company's fair value option election. The Company elected the fair value option for those repurchase agreements and reverse repurchase agreements that do not settle overnight or have an open settlement date or that are not accounted for as purchase and sale agreements (such as repo-to-maturity transactions described above). The Company has elected the fair value option for these instruments to more accurately reflect market and economic events in its earnings and to mitigate a potential imbalance in earnings caused by using different measurement attributes (i.e. fair value versus carrying value) for certain assets and liabilities. At December 31, 2012, the fair value of the reverse repurchase agreements and repurchase agreements were \$nil and \$nil, respectively.

At December 31, 2012, the gross balances of reverse repurchase agreements and repurchase agreements were \$1.2 billion and \$1.6 billion, respectively. The average daily balance of reverse repurchase agreements and repurchase agreements on a gross basis for the year ended December 31, 2012 was \$6.0 billion and \$6.8 billion, respectively (\$6.6 billion and \$7.6 billion, respectively, for the year ended December 31, 2011). The largest amount of reverse repurchase agreements and repurchase agreements outstanding on a gross basis during the year ended December 31, 2012 was \$8.8 billion and \$9.6 billion, respectively (\$9.3 billion and \$12.7 billion, respectively, for the year ended December 31, 2011).

At December 31, 2012, the notional value of the repo-to-maturity was \$nil. The average balance for the repo-to-maturity for the three months ended December 31, 2012 was \$nil. At December 31, 2012, the gross leverage ratio was 5.3.

OMHHF, which is engaged in mortgage brokerage and servicing, has obtained an uncommitted warehouse facility line through PNC Bank (PNC) under which OMHHF pledges Federal Housing Administration (FHA) guaranteed mortgages for a period of up to 10 business days and PNC table funds the principal payment to the mortgagee. OMHHF repays PNC upon the securitization of the mortgage by the Government National Mortgage Association (GNMA) and the delivery of the security to the counter party for payment pursuant to a contemporaneous sale on the date the mortgage is funded. At December 31, 2012, OMHHF had \$8.1 million outstanding under the warehouse facility line at a variable interest rate of 1 month LIBOR plus 1.85%. Interest expense for the year ended December 31, 2012 was \$895,000 (\$1.7 million in 2011).

On January 31, 2013, a FINRA arbitration panel rendered a decision in the previously disclosed U.S. Airways case, filed in February 2009, resulting in an award against Oppenheimer, in the amount of \$30 million including interest and costs on a claim of approximately \$140 million (adjusted down from \$253 million). The effect of the award resulted in a fourth quarter after-tax charge of \$17.9 million. The Company, the ultimate parent of Oppenheimer, has contributed capital into Oppenheimer in an amount equal to the net after tax effect of the award. Accordingly, the Net Capital of Oppenheimer did not change as a result of the award. Oppenheimer paid its respective share of the award on February 25, 2013.

## **Liquidity Management**

The Company manages its need for liquidity on a daily basis to ensure compliance with regulatory requirements. The Company's liquidity needs may be affected by market conditions, increased inventory positions, business expansion and other unanticipated occurrences. In the event that existing financial resources do not satisfy the Company's needs, the Company may have to seek additional external financing. The availability of such additional external financing may depend on market factors outside the Company's control.

## Table of Contents

### Funding Risk

Expressed in thousands of dollars.

	For the year ended December 31,	
	2012	2011
Cash provided by (used in) operating activities	\$ (9,452)	\$ 81,537
Cash used in investing activities	(14,739)	(5,192)
Cash provided by (used in) financing activities	89,228	(58,870)
Net increase in cash and cash equivalents	\$ 65,037	\$ 17,475

Management believes that funds from operations, combined with the Company's capital base and available credit facilities, are sufficient for the Company's liquidity needs in the foreseeable future. (See Factors Affecting Forward-Looking Statements).

### Other Matters

During the fourth quarter of 2012, the Company issued 5 shares of Class A Stock pursuant to the Company's share-based compensation programs.

On November 23, 2012, the Company paid cash dividends of \$0.11 per share of Class A and Class B Stock totaling approximately \$1.5 million from available cash on hand.

On January 24, 2013, the Board of Directors declared a regular quarterly cash dividend of \$0.11 per share of Class A and Class B Stock payable on February 22, 2013 to stockholders of record on February 8, 2013.

The book value of the Company's Class A and Class B Stock was \$36.80 at December 31, 2012 compared to \$37.16 at December 31, 2011, based on total outstanding shares of 13,607,998 and 13,671,945, respectively.

The diluted weighted average number of shares of Class A and Class B Stock outstanding for the year ended December 31, 2012 was 13,602,205 compared to 13,936,733 outstanding in 2011.

### Off-Balance Sheet Arrangements

Information concerning the Company's off-balance sheet arrangements is included in note 4 to the consolidated financial statements appearing in Item 8. Such information is hereby incorporated by reference.

### Contractual and Contingent Obligations

The Company has contractual obligations to make payments to CIBC in connection with the acquisition in the form of an earn-out to be paid in 2013. On April 12, 2011, the Company repaid the remaining debt assumed upon the acquisition from the proceeds of new senior secured notes issued in the amount of \$200.0 million. See note 7 to the consolidated financial statements appearing in Item 8.

The following table sets forth the Company's contractual and contingent commitments as at December 31, 2012.

**Table of Contents**

Expressed in millions of dollars.

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Minimum rentals <sup>(1)</sup>	\$ 323	\$ 42	\$ 72	\$ 55	\$ 154
Committed capital	5	5	0	0	0
Earn-out	25	25	0	0	0
Senior Secured Notes <sup>(2)</sup>	195	0	0	0	195
ARS purchase offers <sup>(3)</sup>	38	13	23	2	0
ARS arbitration award <sup>(4)</sup>	30	30	0	0	0
<b>Total</b>	<b>\$ 616</b>	<b>\$ 115</b>	<b>\$ 95</b>	<b>\$ 57</b>	<b>\$ 349</b>

- (1) On July 15, 2011, the Company signed a lease to occupy seven floors at 85 Broad Street in New York City for a term of 15 years. The commitment of \$185.4 million related to this lease has been included in the table.
- (2) The Senior Secured Credit Note and the Subordinated Note were retired on April 12, 2011 and the Company issued \$200 million in 8.75% Senior Secured Notes due April 15, 2018 and bought back \$5 million in November 2011.
- (3) Represents payments to be made pursuant to the ARS settlements entered into with Regulators in February 2010 as well as commitments to purchase ARS as a result of legal settlements.
- (4) Represents amount due to U.S. Airways as a result of FINRA arbitration award rendered on January 31, 2013.

**Inflation**

Because the assets of the Company's brokerage subsidiaries are highly liquid, and because securities inventories are carried at current market values, the impact of inflation generally is reflected in the financial statements. However, the rate of inflation affects the Company's costs relating to employee compensation, rent, communications and certain other operating costs, and such costs may not be recoverable in the level of commissions or fees charged. To the extent inflation results in rising interest rates and has other adverse effects upon the securities markets, it may adversely affect the Company's financial position and results of operations.

**Factors Affecting Forward-Looking Statements**

From time to time, the Company may publish forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act or make oral statements that constitute forward-looking statements. These forward-looking statements may relate to such matters as anticipated financial performance, future revenues or earnings, business prospects, projected ventures, new products, anticipated market performance, and similar matters. The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements. In order to comply with the terms of the safe harbor, the Company cautions readers that a variety of factors could cause the Company's actual results to differ materially from the anticipated results or other expectations expressed in the Company's forward-looking statements. These risks and uncertainties, many of which are beyond the Company's control, include, but are not limited to: (i) transaction volume in the securities markets, (ii) the volatility of the securities markets, (iii) fluctuations in interest rates, (iv) changes in regulatory requirements which could affect the cost and method of doing business and reduce returns, (v) fluctuations in currency rates, (vi) general economic conditions, both domestic and international, (vii) changes in the rate of inflation and the related impact on the securities markets, (viii) competition from existing financial institutions and other participants in the securities markets, (ix) legal developments affecting the litigation experience of the securities industry and the Company, including developments arising from the failure of the Auction Rate Securities markets and the results of pending litigation involving the Company, (x) changes in federal and state tax laws which could affect the popularity of products sold by the Company or impose taxes on securities transactions, (xi) the effectiveness of efforts to reduce costs and eliminate overlap, (xii) war and nuclear confrontation as well as political unrest and regime changes, (xiii) the Company's ability to achieve its business plan, (xiv) corporate governance issues, (xv) the impact of the credit crisis and tight credit markets on business operations, (xvi) the effect of bailout, financial reform and related legislation including, without limitation, the Dodd-Frank Act and the proposed Volcker Rule, (xvii) the consolidation of the banking and financial services industry, (xviii) the effects of the economy on the Company's ability to find and maintain financing options and liquidity, (xix) credit, operations, legal and regulatory risks, (xx) risks related to foreign operations, (xxi) risks related to the downgrade of U.S. long-term sovereign debt obligations and the sovereign debt of European nations, (xxii) risks related to the manipulation of LIBOR and (xxiii) the effects of Hurricane Sandy and the relocation of critical Company personnel. There can be no assurance that the Company has correctly or completely identified and assessed all of the factors affecting the Company's business. The Company does not

undertake any obligation to publicly update or revise any forward-looking statements. See Item 1A Risk Factors.

## **Table of Contents**

### **Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

#### **Risk Management**

The Company's principal business activities by their nature involve significant market, credit and other risks. The Company's effectiveness in managing these risks is critical to its success and stability.

As part of its normal business operations, the Company engages in the trading of both fixed income and equity securities in both a proprietary and market-making capacity. The Company makes markets in over-the-counter equities in order to facilitate order flow and accommodate its institutional and retail customers. The Company also makes markets in municipal bonds, mortgage-backed securities, government bonds and high yield bonds and short term fixed income securities and loans issued by various corporations.

*Market Risk.* Market risk generally means the risk of loss that may result from the potential change in the value of a financial instrument as a result of fluctuations in interest and currency exchange rates and in equity and commodity prices. Market risk is inherent in all types of financial instruments, including both derivatives and non-derivatives. The Company's exposure to market risk arises from its role as a financial intermediary for its customers' transactions and from its proprietary trading and arbitrage activities.

Oppenheimer monitors market risks through daily profit and loss statements and position reports. Each trading department adheres to internal position limits determined by senior management and regularly reviews the age and composition of its proprietary accounts. Positions and profits and losses for each trading department are reported to senior management on a daily basis.

In its market-making activities, Oppenheimer must provide liquidity in the equities for which it makes markets. As a result of this, Oppenheimer has risk containment policies in place, which limit position size and monitor transactions on a minute-to-minute basis.

*Credit Risk.* Credit risk represents the loss that the Company would incur if a client, counterparty or issuer of securities or other instruments held by the Company fails to perform its contractual obligations. Given the recent issues in the credit markets, there has been an increased focus in the industry about credit risk. The Company follows industry practice to reduce credit risk related to various investing and financing activities by obtaining and maintaining collateral wherever possible. The Company adjusts margin requirements if it believes the risk exposure is not appropriate based on market conditions. When Oppenheimer advances funds or securities to a counterparty in a principal transaction or to a customer in a brokered transaction, it is subject to the risk that the counterparty or customer will not repay such advances. If the market price of the securities purchased or loaned has declined or increased, respectively, Oppenheimer may be unable to recover some or all of the value of the amount advanced. A similar risk is also present where a customer is unable to respond to a margin call and the market price of the collateral has dropped. In addition, Oppenheimer's securities positions are subject to fluctuations in market value and liquidity.

## **Table of Contents**

In addition to monitoring the credit-worthiness of its customers, Oppenheimer imposes more conservative margin requirements than those of the NYSE. Generally, Oppenheimer limits customer loans to an amount not greater than 65% of the value of the securities (or 50% if the securities in the account are concentrated in a limited number of issues). Particular attention and more restrictive requirements are placed on more highly volatile securities traded in the NASDAQ market. In comparison, the NYSE permits loans of up to 75% of the value of the equity securities in a customer's account. Further discussion of credit risk appears in note 4 to the Company's consolidated financial statements appearing in Item 8.

*Operational Risk.* Operational risk generally refers to the risk of loss resulting from the Company's operations, including, but not limited to, improper or unauthorized execution and processing of transactions, deficiencies in its operating systems, business disruptions and inadequacies or breaches in its internal control processes. The Company operates in diverse markets and it is reliant on the ability of its employees and systems to process high numbers of transactions often within short time frames. In the event of a breakdown or improper operation of systems, human error or improper action by employees, the Company could suffer financial loss, regulatory sanctions or damage to its reputation. In order to mitigate and control operational risk, the Company has developed and continues to enhance policies and procedures (including the maintenance of disaster recovery facilities and procedures related thereto) that are designed to identify and manage operational risk at appropriate levels. With respect to its trading activities, the Company has procedures designed to ensure that all transactions are accurately recorded and properly reflected on the Company's books on a timely basis. With respect to client activities, the Company operates a system of internal controls designed to ensure that transactions and other account activity (new account solicitation, transaction authorization, transaction processing, billing and collection) are properly approved, processed, recorded and reconciled. The Company has procedures designed to assess and monitor counterparty risk. For details of funding risk, see Item 7 under the caption "Liquidity and Capital Resources".

*Legal and Regulatory Risk.* Legal and regulatory risk includes the risk of non-compliance with applicable legal and regulatory requirements, client claims and the possibility of sizeable adverse legal judgments. The Company is subject to extensive regulation in the different jurisdictions in which it conducts its activities. Regulatory oversight of the securities industry has become increasingly intense over the past few years and the Company, as well as others in the industry, has been directly affected by this increased regulatory scrutiny. Timely and accurate compliance with regulatory requests has become increasingly problematic within the industry, and regulators have tended to bring enforcement proceedings in relation to such matters. See further discussion of these risks in Item 7 under the caption "Regulatory Environment".

The Company has comprehensive procedures for addressing issues such as regulatory capital requirements, sales and trading practices, use of and safekeeping of customer funds and securities, granting of credit, collection activities, money laundering, and record keeping. The Company has designated Anti-Money Laundering Compliance Officers who monitor compliance with regulations under the U.S. Patriot Act. See further discussion of the Company's reserve policy in Item 7, under the captions "Critical Accounting Estimates", Item 3, "Legal Proceedings" and Item 1, "Regulation".

---

**Table of Contents**

*Off-Balance Sheet Arrangements.* In certain limited instances, the Company utilizes off-balance sheet arrangements to manage risk. See further discussion in note 4 to the consolidated financial statements appearing in Item 8.

*Value-at-Risk.* Value-at-risk is a statistical measure of the potential loss in the fair value of a portfolio due to adverse movements in underlying risk factors. In response to the SEC's market risk disclosure requirements, the Company has performed a value-at-risk analysis of its trading of financial instruments and derivatives. The value-at-risk calculation uses standard statistical techniques to measure the potential loss in fair value based upon a one-day holding period and a 95% confidence level. The calculation is based upon a variance-covariance methodology, which assumes a normal distribution of changes in portfolio value. The forecasts of variances and co-variances used to construct the model, for the market factors relevant to the portfolio, were generated from historical data. Although value-at-risk models are sophisticated tools, their use can be limited as historical data is not always an accurate predictor of future conditions. The Company attempts to manage its market exposure using other methods, including trading authorization limits and concentration limits.

At December 31, 2012 and 2011, the Company's value-at-risk for each component of market risk was as follows (in thousands of dollars):

VAR for Fiscal	VAR for Fiscal
2012	2011