

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF MARKET REGULATION

No. 2005000269003

TO: Department of Market Regulation
NASD

RE: Cowen and Company, LLC, Respondent
Broker/Dealer
CRD Number 7616

Pursuant to Rule 9216 of NASD Code of Procedure, Cowen and Company ("COWN" or "the firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against COWN alleging violations based on the same factual findings.

COWN understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against COWN; and
3. If accepted:
 - a. this AWC will become part of COWN's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about COWN's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

- d. COWN may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects COWN's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

COWN also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and relevant history are as follows:

COWN has been a member of NASD since May 1978, and the firm's registration remains in effect. COWN has the following relevant disciplinary history:

- On September 29, 2004, an AWC became final in which COWN was censured and fined \$800,000 for violations of NASD Rules 2110, 3010, and 6955(a).
- On December 26, 2003, an AWC became final in which COWN was censured and fined \$230,000 for violations of NASD Rules 2110, 2320, 3010, and 6130 and IM-2110-2, and SEC Rule 11Ac1-4.

I.

WAIVER OF PROCEDURAL RIGHTS

COWN specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against COWN;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, COWN specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

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

II.

ACCEPTANCE AND CONSENT

In connection with the 2004 Trading and Market Making Examination of COWN, 20050002690, the staff of the Department of Market Regulation ("the staff") reviewed the following items from trade dates October 6 and 7, 2004:

- 55 sale transactions for compliance with NASD Rules 3110 and 3370, and SEC Rule 10a-1;
- 111 sale transactions for compliance with NASD Rule 6130;
- Seven short sale transactions in Nasdaq National Market ("NNM") securities for compliance with NASD Rule 3350;
- Seven short sale transactions in Consolidated Quotation Service ("CQS") securities for compliance with SEC Rule 10a-1;
- 13 limit orders in market making securities for compliance with NASD Rules 2110, IM-2110-2, 2320, and 6440, and SEC Rule 11Ac1-4;
- One marketable order received while holding "non-displayed" limit orders in the same security for compliance with NASD Rule 2320;
- 22 market orders executed as principal for compliance with NASD Rule 6130;
- 50 orders executed in a principal or riskless principal capacity for compliance with NASD Trade Reporting and the Automated Confirmation Transaction Service ("ACT") rules;
- One principal order reported as riskless principal for compliance with the provisions of SEC Section 28(e)'s "safe harbor" on soft-dollar compensation;
- 25 orders in market making securities for compliance with SEC Rule 605, formerly known as SEC Rule 11Ac1-5;
- Security/size/order data statistics published on the firm's August 2004 order execution report for compliance with SEC Rule 605;
- The data published on the firm's third quarter 2004 order routing report for compliance with SEC Rule 606, formerly known as SEC Rule 11Ac1-6;
- Seven customer transactions in OTC Bulletin Board ("OTCBB") and/or OTC Equity securities for compliance with NASD Rules 3110(b) and 2320;
- The registration status of 10 persons engaged in the firm's trading and market making activities for compliance with NASD Registration rules;
- 201 order/trade records prepared and maintained for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4;
- 289 trades reported to ACT, now known as the Nasdaq Market Center, for compliance with NASD Trade Reporting and ACT rules;
- 101 customer trade confirmations for compliance with SEC Rule 10b-10; and

20050002690 (incl. 20050005747 & 20050027732)

- The firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Rule 3010.

In connection with Matter No. 20050005747, the staff conducted a review of COWN's compliance with the rules applicable to the Order Audit Trail System ("OATS") during the period October 1, 2004, through December 31, 2004.

In connection with the 2005 Trading and Market Making Surveillance Examination of COWN, 20050027732, the staff reviewed the following items from trade dates September 20 and 21, 2005:

- 194 sale transactions for compliance with SEC Rules 200(g) and/or 203(b);
- 206 sale transactions for compliance with NASD Rule 6130;
- 14 limit orders executed as principal for compliance with NASD Rules 2110 (IM-2110-2), 2320, 6440 and 6541;
- 7 "non-displayed" limit orders to price improve marketable orders received for compliance with NASD Rule 2320;
- 41 limit and market orders executed in a principal or riskless principal capacity for compliance with capacity reporting under NASD Trade Reporting and Nasdaq Market Center rules;
- One order for a Nasdaq security in a soft dollar account and 25 related executions for compliance with trade reporting rules and the safe harbor limitations of SEC Section 28(e);
- 24 trades reported in market making securities for compliance with SEC Rule 605;
- Security/size/order data statistics published on the firm's August 2005 order execution report for compliance with SEC Rule 605;
- The data published on the firm's quarterly order routing report for compliance with SEC Rule 606;
- The registration status of 12 persons engaged in the firm's trading and market making activities for compliance with NASD Registration rules;
- 50 orders in NNM and SC securities for compliance with NASD Rule 6955;
- Three customer trade confirmations for compliance with SEC Rule 10b-10;
- The firm's establishment and implementation of "regular and rigorous" reviews of the execution quality of orders sent to other market centers and internalized for compliance with NASD Rules 2320 and 3010;
- The firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Rule 3010;
- 175 transactions for preparation and maintenance of books and records in accordance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4; and
- 807 transactions reported to the Nasdaq Market Center or Trade Reporting and Comparison Services ("TRACS") for compliance with NASD Trade Reporting and Nasdaq Market Center rules.

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

20050002690

1. COWN effected seven short sales in certain securities for the firm's proprietary account(s) and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Conduct Rule 3370.

20050005747

3. COWN failed to timely report to OATS 46,022 Reportable Order Events ("ROEs"). These late ROEs represented five percent of all ROEs (862,565) submitted by COWN to OATS during the review period.
4. The conduct described in paragraph three constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

20050027732

5. COWN transmitted to OATS 14 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, six reports included an incorrect execution capacity of "P" when executed in a riskless principal capacity; six reports included incorrect Routed Order IDs; one report failed to include a Special Handling Code of "ADD"; and one report failed to match to a Nasdaq Market Center trade report.
6. COWN failed to submit to OATS required order information for one order.
7. COWN failed to submit to OATS a combined order/route ("OR") report for three orders.
8. The conduct described in paragraphs five through seven constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
9. For the month of August, 2005, COWN made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to

order execution statistics for multiple categories and failed to correctly classify a covered limit order into the correct order type and size category.

10. The conduct described in paragraph nine constitutes separate and distinct violations of SEC Rule 605.

B. COWN also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$30,000 (comprised of a \$5,000 fine for the short sale violations identified in 20050002690; a \$15,000 fine for the OATS violations; and a \$10,000 fine for the SEC Rule 605 violations identified in 20050027732).

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

III.

OTHER MATTERS

- A. COWN understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent may not deny the findings or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD nor does it reflect the views of NASD or its staff.
- B. COWN agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable, and have attached the election of payment form showing the method by which it proposes to pay any fine imposed.
- C. COWN specifically and voluntarily waives any right to claim that COWN is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Cowen and Company, LLC certifies that a duly authorized officer has read and understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce COWN to submit it.

Cowen and Company, LLC

Date: 10/20/2006

By:

Name: Robert C. Meyer

Title: Co-Head of Equities

Reviewed by:

Counsel for Respondent

Accepted by NASD:

11/20/06
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President & Deputy
Market Regulation

Signed on behalf of the Director of ODA,
by delegated authority.

Attachments:
Standard Election of Payment Form