

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014040293001**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Cowen and Company, LLC, Respondent
Broker-Dealer
CRD No. 7616

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

I.

ACCEPTANCE AND CONSENT

- A.** Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA 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 FINRA:

BACKGROUND

The Firm became a member of FINRA on May 23, 1978, and its registration remains in effect. The Firm is headquartered in New York, New York, has approximately 10 branch offices, and employs approximately 584 registered individuals. The Firm has no relevant disciplinary history.

SUMMARY

During the periods of October 1, 2013 through December 31, 2013; July 1, 2014 through September 30, 2014; April 1, 2015 through June 30, 2015; April 1, 2016 through June 30, 2016; September 2016 through May 2017; August 2016 through May 2017; and March 2015 through August 2017 (collectively, the "Review Period"), the Firm was a distribution participant in a number of securities distributions. As a distribution participant, the Firm was required to comply with the Securities Exchange Act of 1934 (the "Exchange Act") Rule 101 of Regulation M which, among other things, prohibits distribution participants to bid for or purchase, directly or indirectly, a covered security during the applicable restricted period. Additionally, the Firm was required by FINRA Rule 5190 to provide FINRA with certain notifications in connection with the distributions by specified dates.

During the Review Period, the Firm violated Exchange Act Rule 101 by bidding for a covered security during the applicable restricted period in connection with nine distributions. The Firm further violated Exchange Act Rule 101 by purchasing a covered security during the applicable restricted period in connection with six distributions. The Firm also failed to provide complete and/or timely notifications to FINRA in connection with 16 distributions as required by FINRA Rule 5190. Lastly, the Firm failed to establish, maintain, and enforce written procedures to supervise the types of business in which it engaged and the activities of its associated persons that were reasonably designed to achieve compliance with Exchange Act Rule 101 of Regulation M and FINRA Rule 5190.

Thus, during the Review Period the Firm violated Exchange Act Rule 101, FINRA Rule 5190, NASD Rule 3010(b) (for conduct occurring before December 1, 2014), FINRA Rule 3110(b) (for conduct occurring on or after December 1, 2014), and FINRA Rule 2010, as described below.

FACTS AND VIOLATIVE CONDUCT

Exchange Act Rule 101 Violations

1. Exchange Act Rule 101 states, in relevant part, that “[i]n connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period. . . .”¹
2. Cowen acted as a “distribution participant” as that term is defined in Exchange Act Rule 100 because it was a broker-dealer that “agreed to participate or is participating in a distribution.”
3. During the Review Period, the Firm violated Exchange Act Rule 101’s prohibition on purchasing shares of a covered security during the applicable restricted period. On each of the dates below, the Firm was acting as a distribution participant participating in a distribution of securities on behalf of the issuer identified herein.
 - a. On July 22, 2013, in a series of 129 transactions, the Firm purchased 32,111 shares of a covered security (*i.e.*, the common stock of Issuer “A”²) on a principal basis during the restricted period associated with the distribution (March 25, 2013 through July 29, 2013)³;

¹ A violation of the Exchange Act is also a violation of FINRA Rule 2010.

² Issuer names have been replaced throughout this document with generic references. The letters used to reference issuers do not identify any symbols associated with particular issuers.

³ Unless otherwise stated, dates and date ranges contained in parentheses throughout this document refer to restricted periods applicable to the referenced covered securities.

- b. On April 13 and 14, 2015, in a series of 16 transactions, the Firm purchased 3,204 shares of a covered security (*i.e.*, the common stock of Issuer "B") on a principal basis during the restricted period associated with the distribution (April 13, 2015 through April 14, 2015);
 - c. On January 8, 2016, in one transaction, the Firm purchased 6,242 shares of a covered security (*i.e.*, the common stock of Issuer "C") on a principal basis during the restricted period associated with the distribution (March 16, 2015 through April 3, 2017);
 - d. On March 18, 2016, in one transaction, the Firm purchased 35,500 shares of a covered security (*i.e.*, the common stock of Issuer "D") on a principal basis during the restricted period associated with the distribution (September 15, 2015 through December 26, 2017);
 - e. On June 12, 2017, in one transaction, the Firm purchased 174,308 shares of a covered security (*i.e.*, the common stock of Issuer "F") on a principal basis during the restricted period associated with the distribution (May 11, 2017 through August 10, 2017)⁴; and
 - f. On August 10, 2017, in a series of nine transactions, the Firm purchased 9,092,709 shares of a covered security (*i.e.*, the common stock of Issuer "G") on a principal basis during the restricted period associated with the distribution (August 9, 2017 through August 10, 2017).
4. During the Review Period, the Firm also violated Exchange Act Rule 101's prohibition on, directly or indirectly, bidding for shares of a covered security during the applicable restricted period. On each of the dates below, the Firm was acting as a distribution participant participating in a distribution of securities on behalf of the issuer identified herein.
- a. On March 25, 2013, the Firm bid for common stock of Issuer A, a covered security, during the restricted period associated with the distribution (March 25, 2013 through July 29, 2013);
 - b. On April 13, 2015, the Firm bid for common stock of Issuer B, a covered security, during the restricted period associated with the distribution (April 13, 2015 through April 14, 2015);
 - c. On August 28, 2015, the Firm bid for common stock of Issuer "H," a covered security, during the restricted period associated with the distribution (August 28, 2015 through March 29, 2016);

⁴ Purchases of the common stock of the Issuers C, D and F were executed in the Firm's error account.

- d. Between September 15, 2015 and September 21, 2015, the Firm bid for common stock of Issuer D, a covered security, during the restricted period associated with the distribution (September 15, 2015 through December 26, 2017);
 - e. On March 21, 2016, September 22, 2016, and September 29, 2016, the Firm bid for common stock of Issuer "I," a covered security, during restricted periods associated with two separate distributions (March 21, 2016 through May 17, 2016, and September 22, 2016 through May 1, 2017);
 - f. On May 31, 2016, the Firm bid for common stock of Issuer "J," a covered security, during the restricted period associated with the distribution (May 31, 2016 through June 9, 2016);
 - g. On August 8, 2016, the Firm bid for common stock of Issuer E, a covered security, during the restricted period associated with the distribution (August 8, 2016 through January 9, 2017); and
 - h. On January 19, 2017, the Firm bid for common stock of Issuer "K," a covered security during the restricted period associated with the distribution (January 19, 2017 through April 25, 2017).
5. The conduct described in paragraphs 3 and 4 constitutes separate and distinct violations of Exchange Act Rule 101 and FINRA Rule 2010.

Restricted Period Notification Rules Violations

- 6. In connection with distributions of securities, broker-dealers must also comply with relevant notification rules, including FINRA Rule 5190. FINRA Rule 5190(c)(1)(A) requires a firm that is acting as a manager (or in a similar capacity) of a distribution to provide written notification to FINRA regarding: (i) the determination of whether a one-day or five-day restricted period applies under Rule 101 and the basis for that determination; (ii) the contemplated date and time of the commencement of the restricted period; (iii) the security name and symbol; and (iv) identification of the distribution participants and affiliated purchasers (the "Restricted Period Notification"). The notification is due no later than the business day prior to the first complete trading session of the applicable restricted period.
- 7. In each of the distributions below, the Firm assumed the obligations of filing the Restricted Period Notifications required by FINRA Rule 5190(c)(1)(A) as a manager (or in a similar capacity).
- 8. During the Review Period, the Firm submitted to FINRA incomplete Restricted Period Notifications, each of which failed to identify all distribution participants, in connection with five different distributions on behalf of Issuer "L" (July 15, 2014 through July 21, 2014); Issuer "M" (July 16, 2014 through July 22, 2014); Issuer

- "N" (July 30, 2014); Issuer "O" (September 10, 2014); and Issuer "P" (September 17, 2014).
9. During the Review Period, the Firm also failed to submit to FINRA timely Restricted Period Notifications (each of which was between one and six business days late) in connection with nine different distributions on behalf of Issuer "Q" (January 8, 2014 through April 12, 2016); Issuer H (August 28, 2015 through March 29, 2016); Issuer I (March 21, 2016 through May 17, 2016 and September 22, 2016 through May 1, 2017); Issuer J (May 31, 2016 through June 9, 2016); Issuer "R" (November 18, 2016 through January 13, 2017); Issuer K (January 19, 2017 through April 25, 2017); Issuer E (August 8, 2016 through January 9, 2017); and Issuer D (September 15, 2015 through December 26, 2017).
 10. The conduct described in the paragraphs 8 and 9 constitutes separate and distinct violations of FINRA Rule 5190(c)(1)(A).

Trading Notification Rules Violations

11. FINRA Rule 5190(c)(1)(B) requires a firm that is acting as a manager (or in a similar capacity) of a distribution to provide written notification to FINRA concerning "the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, the restricted period, and identification of the distribution participants and affiliated purchasers, no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances" (the "Trading Notification").
12. FINRA Rule 5190(d) requires a firm that is acting as a manager (or in a similar capacity) of a distribution of any security that is considered an "actively-traded" security under Rule 101⁵ to provide a Trading Notification to FINRA that includes the determination that no restricted period applies under Rule 101 and the basis for such determination.
13. In each of the distributions below, the Firm assumed the obligations of filing the Trading Notifications required by FINRA Rules 5190(c)(1)(B) and 5190(d) as a manager (or in a similar capacity).
14. During the Review Period, the Firm submitted to FINRA an incomplete Trading Notification, which failed to identify all distribution participants, in connection with a distribution on behalf of Issuer M (July 16, 2014 through July 22, 2014).

⁵ Actively-traded securities are securities that have an average daily trading volume value of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million, provided, however, that such securities are not issued by the distribution participant or affiliate. See Exchange Act Rule 101(c)(1).

15. During the Review Period, the Firm also failed to submit to FINRA timely Trading Notifications (each of which was between three and four business days late) in connection with two different distributions on behalf of Issuer M (July 16, 2014 through July 22, 2014) and Issuer I (September 22, 2016 through May 1, 2017).
16. During the Review Period, the Firm failed to submit to FINRA timely Trading Notifications (each of which was three business days late) in connection with two different distributions of "actively-traded" securities on behalf of Issuer "S" and Issuer "T."⁶
17. The conduct described paragraphs 14 and 15 constitutes separate and distinct violations of FINRA Rule 5190(c)(1)(B).
18. The conduct described paragraph 16 constitutes separate and distinct violations of FINRA Rule 5190(d).

Supervision

19. FINRA Rule 3110(b) and its predecessor, NASD Rule 3010(b), require each member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.
20. A violation of FINRA Rule 3110(b) and its predecessor, NASD Rule 3010(b), constitutes a violation of FINRA Rule 2010, which requires each member firm, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade.
21. During the Review Period, the Firm failed to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that were reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules concerning compliance with Exchange Act Rule 101 of Regulation M and FINRA Rule 5190. The Firm's written supervisory procedures ("WSPs") failed to provide for any supervisory process to ensure its compliance with these rules. Rather, the WSPs only generally restated the Regulation M Rule 101 and FINRA Rule 5190 requirements and failed to provide for any means by which the Firm would supervise to ensure that those requirements would be met. Further, the Firm misunderstood what, in connection with a distribution of securities, triggered the obligations of Regulation M Rule 101 and FINRA Rule 5190. Specifically, the Firm incorrectly asserted the receipt of a placement notice in connection with a distribution triggered its obligations under the rules. The conduct described in this

⁶ As "actively-traded" securities, there were no restricted periods associated with these distributions. Pricing for the S and T distributions occurred on May 13, 2016 and May 4, 2017, respectively.

paragraph constitutes a violation of NASD Rule 3010(b) (for conduct occurring before December 1, 2014), FINRA Rule 3110(b) (for conduct occurring on or after December 1, 2014), and FINRA Rule 2010.

- B. Respondent also consents to the imposition of the following sanctions:
1. A censure;
 2. An aggregate fine of \$120,000, of which \$44,400 shall be paid to FINRA (comprising of \$22,200 for violating Exchange Act Rule 101 and FINRA Rule 2010, a \$11,100 fine for violating FINRA Rule 5190(c)(1)(A) and (B) and 5190(d), and \$11,100 for the supervision violation); and
 3. An undertaking to revise the Firm's WSPs with respect to the areas described in paragraph I.A.21. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a certification that the Firm has revised its WSPs to address the deficiencies described in paragraph I.A.21; and, (3) the date the revised procedures were implemented.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- B. To be notified of the 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

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

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC

in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

11/26/19
Date

Respondent
Cowen and Company, LLC

By: [Signature]

Name: STEVEN COHEN

Title: CCO

Reviewed by:

[Signature]

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

12-17-2019
Date

Signed on behalf of the
Director of OCA, by delegated authority

[Signature]
Manuel Yanez
Senior Counsel
FINRA Department of Enforcement