

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021071022201**

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

RE: Cowen and Company (Respondent)
Member Firm
(CRD No. 7616),
in its own right and as successor-in-interest to
Cowen Prime Services LLC (CRD No. 153397)

Pursuant to FINRA Rule 9216, Respondent Cowen and Company (Cowen or Respondent), in its own right and as successor-in-interest to former member firm Cowen Prime Services LLC (Cowen Prime), 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Cowen Prime became a FINRA member in 2010 and was an affiliate of Cowen. Cowen Prime offered prime brokerage services and other related services to institutional customers and registered investment advisors. On September 1, 2021, Cowen Prime and Cowen merged, with Cowen being the surviving entity and assuming Cowen Prime's prime brokerage business and Market Participant Identifiers (MPIDs¹). In October 2021, Cowen Prime filed a Uniform Request for Broker-Dealer Withdrawal (Form BDW) terminating its registration, which became effective in January 2022.

Cowen has been a FINRA member since 1978. Cowen is a full-service investment banking and brokerage firm that provides brokerage services to institutional customers. The firm is headquartered in New York, NY, employs approximately 800 registered individuals and maintains 19 branch offices.²

¹ An MPID is a unique identifier assigned to a broker-dealer to identify the firm on its orders and executions.

² For more information about Respondent, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

OVERVIEW

Between May 2020 and July 2023, Cowen Prime and Cowen published quarterly reports on their handling of customers' orders in National Market System (NMS) securities that failed to disclose required information, provided inaccurate and incomplete information, or were not timely published. Therefore, Respondent violated Rule 606(a) of Regulation NMS and FINRA Rule 2010.

Between May 2020 and October 2023, Cowen Prime and Cowen's supervisory systems, including written supervisory procedures (WSPs), were not reasonably designed to achieve compliance with Rule 606. Therefore, Respondent violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's cause examinations of Cowen Prime and Cowen.

A. Cowen Prime's and Cowen's reports of the handling of customer orders in NMS stocks and listed options violated Regulation NMS Rule 606(a).

Rule 606 of Regulation NMS is designed to foster greater transparency in connection with a broker-dealer's best execution responsibilities. To that end, Rule 606 requires every broker-dealer to make publicly available each calendar quarter a report containing information on its routing of non-directed orders³ in NMS securities. These disclosures are designed to help customers better understand how their firm routes and handles their orders; assess the quality of order handling services provided by their firm; and ascertain whether the firm is effectively managing potential conflicts of interest that may impact their firm's routing decisions.

Specifically, Rule 606(a)(1) requires broker-dealers to publish quarterly reports containing statistical information regarding the routing of held,⁴ non-directed customer orders in NMS stocks, and both held and not held, non-directed customer orders in in NMS securities that are option contracts.⁵ The reports must include the following information:

³ A non-directed order means any customer order other than a directed order. A directed order means a customer order that the customer specifically instructed the broker-dealer to route to a particular venue for execution. *See* Regulation NMS Rule 600(b).

⁴ A broker-dealer must attempt to execute a "held" order immediately, whereas "not-held" orders provide the broker-dealer with price and time discretion in handling the order.

⁵ Regulation NMS Rule 600(b)(25) defines a "customer order" as an order to buy or sell an NMS security that is not for the account of a broker-dealer, excluding "any order for a quantity of a security having a market value of at least \$50,000 for an NMS security that is an option contract [*i.e.*, listed options] and a market value of at least \$200,000 for any other NMS security."

- (i) The percentage of total orders that were non-directed, and the percentages of non-directed orders that were market orders, marketable limit orders, non-marketable limit orders, and other orders;
- (ii) The ten venues to which the largest number of non-directed orders were routed for execution, any venue to which five percent or more of non-directed orders were routed for execution, and information concerning the types of orders that were routed to the venue;
- (iii) For each venue identified, the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and per share, for specified types of non-directed orders; and
- (iv) A discussion of the material aspects of the broker-dealer's relationship with each venue identified, including a description of any arrangement for payment for order flow, any profit-sharing relationship, and any terms of such arrangements, that may influence a broker's or dealer's order routing decision, including arrangements specified in the rule.

Rule 606(a)(2) provides that a broker-dealer shall make the report required by Rule 606(a)(1) publicly available within one month after the end of the quarter addressed in the report. A broker-dealer may prepare two or more reports that correspond to functional differences in the firm's order routing practices, but only if the separate reports will provide a clearer picture of the firm's practices and the basis for the separate reports is fully disclosed to customers and the public. Each report should clearly explain the orders to which it applies, as well as identify the firm's other reports and the orders to which they apply. Customers must be able to determine which report applies to their type of orders.⁶

A violation of Rule 606(a) is also a violation of FINRA Rule 2010, which states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

1. Cowen Prime failed to disclose its basis for publishing separate Rule 606 Reports.

From May 2020 through July 2023, Cowen Prime published separate quarterly Rule 606 reports for up to nine different MPIDs that it used for entering orders. Each report was

⁶ *Division of Market Regulation: Staff Legal Bulletin No. 13A, Frequently Asked Questions About Rule 11Ac1-6* (Oct. 16, 2001) (revised), Question and Answer #5. Available at <https://www.sec.gov/interps/legal/mrslb13a.htm>. Exchange Act Rule 11Ac1-6 was the predecessor to Rule 606. Staff Legal Bulletin No. 13A notes, for example, that an introducing broker whose customer accounts are carried by two different clearing firms, with customers assigned to only one of the two firms, may generate a separate report for each clearing firm. Each report should explain that it applies only to orders submitted by customers whose accounts are carried by the particular clearing firm, and that a separate report has been issued that applies to orders submitted by customers whose accounts are carried by the other clearing firm. *Id.*

specific to a subset of Cowen Prime customers whose accounts were carried by different clearing firms. Cowen Prime failed to disclose to customers and the public the orders to which the report applied and the basis for utilizing separate reports. Rather, the firm only disclosed that separate reports were issued for each MPID, which is insufficient.

2. Cowen Prime published non-reportable equities order information.

Cowen Prime only accepted orders in NMS stocks submitted on a not held basis, which are not reportable under Rule 606(a). Due to coding errors, from May 2020 through May 2021, Cowen Prime incorrectly categorized not held equity orders entered using one MPID as held equity orders. Consequently, Cowen Prime published Rule 606 reports for the first quarter of 2020 through the first quarter of 2021 that improperly included not held equity orders.

3. Cowen Prime failed to publish required options order information.

Cowen Prime accepted non-directed, not held customer orders in listed options, which are reportable under Rule 606(a). Due to additional coding errors, from the first quarter of 2020 through the first quarter of 2021, Cowen Prime failed to publish any required options order information—i.e., order percentages, execution venues, payment for order flow calculations, and the material aspects of the firm’s relationships with execution venues—in the firm’s Rule 606 reports for as many as five of its MPIDs.

In addition, Cowen Prime’s Rule 606 reports for a sixth MPID failed to include the material aspects of the relationships with each execution venue for options for eight consecutive quarters, spanning January 2020 through December 2021. Cowen Prime published reports for the first quarter of 2020 through the first quarter of 2021 that failed to disclose any material aspects information, and a report for the second quarter of 2021 that omitted material aspects disclosures for the majority of the execution venues listed. After the September 2021 merger, Cowen published the third and fourth quarter reports for the MPID at issue that likewise omitted material aspects disclosures for the majority of the execution venues listed in those reports.

4. Cowen published quarterly Rule 606 Reports late.

Cowen also accepted non-directed, not held, customer orders in listed options. Cowen used a single MPID for entering orders. Cowen wrongly believed that not held options orders were not reportable and did not file any Rule 606 reports for 2020. After FINRA informed Cowen of its error, Cowen published its quarterly Rule 606 reports for 2020 in March 2021, which was between 35 and 282 days after publication was required. Moreover, Cowen published its third quarter 2021 report on December 31, 2021, two months after publication was required.

5. Cowen failed to publish required options information concerning its execution venues.

Cowen's Rule 606 reports for 2020 also failed to list the firm's execution venues for options orders. Instead, due to Cowen's misunderstanding of the rule, the reports listed Broker-Dealer A, which was not an execution venue.⁷ As a result, Cowen omitted most required information—i.e., execution venues, payment for order flow calculations, and disclosure of the material aspects of the firm's relationships with execution venues—from the firm's Rule 606 reports for all four quarters of 2020.

In addition, Cowen's Rule 606 reports for the first quarter of 2021 through the second quarter of 2022 failed to describe the material aspects of the firm's relationships with execution venues. Instead, Cowen merely reported a per contract rebate amount for certain execution venues.

* * *

Based on the conduct set forth above, Respondent violated Rule 606 and FINRA Rule 2010.

B. Cowen Prime's and Cowen's respective supervisory systems were not reasonably designed to achieve compliance with Rule 606.

FINRA Rule 3110(a) requires member firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) requires member firms to establish, maintain, and enforce WSPs to supervise the types of business in which they engage and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. A violation of Rule 3110 constitutes a violation of FINRA Rule 2010.

From May 2020 through April 2021, Cowen Prime's supervisory system, including its WSPs, failed to address significant amendments to Rule 606 that became effective in May 2020 and failed to require reviews of Rule 606 reports for accuracy. Cowen Prime revised its WSPs in May 2021 to address the amendments to the rule, but provided no guidance as to how to perform supervisory reviews to ensure the accuracy of its Rule 606 reports until October 2023. In addition, from May 2020 through October 2023, Cowen Prime's supervisory system, including its WSPs, failed to address compliance with the requirements for publishing separate Rule 606 reports during the same quarterly reporting period.

Cowen's supervisory system and WSPs in effect from May 2020 through July 2022 failed to require reviews of Rule 606 reports for accuracy and timely publication. Cowen

⁷ Broker-Dealer A provided Cowen with its order management system and acted as the executing broker on all of the firm's transactions. Broker-Dealer A was not involved with the decision where to route an order in any manner.

revised its WSPs in October 2023 to provide guidance as to how to perform supervisory reviews to ensure the accuracy of its Rule 606 reports.

As a result of the foregoing, Cowen Prime and Cowen failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Rule 606. Therefore, Respondent violated FINRA Rules 3110 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a censure; and
- a \$275,000 fine.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent 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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 it;
- 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 National Adjudicatory Council (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 its acceptance or rejection.

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 Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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 its subject matter 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

November 9, 2023

Date

Steven Cohen

Cowen and Company
Respondent

Print Name: Steven Cohen

Title: CCO

Reviewed by:

Jamie Dycus, Esq.

Jamie Dycus, Esq.
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Accepted by FINRA:

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

November 27, 2023

Date

James Bowden, Jr.

James Bowden, Jr.
Counsel
FINRA
Department of Enforcement
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