

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2023078230701**

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

RE: Cowen and Company (CRD No. 7616) (Respondent)
Former Member Firm
Acquired by TD Securities (USA) LLC
Member Firm
CRD No. 18476

Pursuant to FINRA Rule 9216, Respondent Cowen and Company (which was merged into TD Securities (USA) LLC) 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 became a member of FINRA in 1978. In December 2024, TD Securities (USA) LLC merged with Cowen to become the successor entity. In December 2024, Cowen filed a Uniform Request for Broker Dealer Withdrawal (Form BDW) terminating its registration, which became effective in February 2025.¹ At the time of its merger with TD Securities, Cowen had 274 registered representatives and 12 branch offices. TD Securities has approximately 1,600 registered representatives and 22 branch offices.

OVERVIEW

For one partial tender offer (PTO) in 2022, Cowen violated the Securities Exchange Act of 1934 Rule 14e-4(b)(1) and FINRA Rule 2010 by over-tendering 100,000 shares in a partial tender offer of Company 1. In addition, from October 2022 through May 2024, Cowen violated FINRA Rules 3110 and 2010 by failing to have a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance

¹ For more information about the firms, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

with Exchange Act Rule 14e-4. For these violations, Cowen is censured, fined \$80,000, of which \$40,000 will be paid to FINRA.²

FACTS AND VIOLATIVE CONDUCT

This matter originated from surveillance by FINRA's Department of Market Regulation.

Cowen over-tendered shares in a partial tender offer in violation of Exchange Act Rule 14e-4.

Exchange Act Rule 14e-4, "Prohibited transactions in connection with partial tender offers," is generally designed to preclude persons from tendering more shares in a partial tender offer (PTO) than they own. Exchange Act Rule 14e-4(b)(1)(i) provides in relevant part that "it shall be unlawful for any person³ acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer . . . [f]or his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in . . . [t]he subject security."

A PTO is defined in Exchange Act Rule 14e-4(a)(5) as "a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period."

Under Exchange Act Rule 14e-4, a person's "net long position" in a subject security equals the excess, if any, of such person's "long position" over such person's "short position." In addition, Exchange Act Rule 14e-4(a)(2) defines an equivalent security as including certain options, warrants, or other rights to purchase the subject security. When tendering for a person's own account, the calculation of the net long position must be done both at the time of tender and at the end of the proration period, or the period during which securities are accepted by lot, including any extension of these periods.

Exchange Act Rule 14e-4(a)(1)(ii) defines the components of a person's "short position." In relevant part, Exchange Act Rule 14e-4(a)(1)(ii)(D) defines "short position" as "the amount of subject securities or subject securities underlying equivalent securities that such person . . . [i]s obligated to deliver upon exercise of a standardized call option sold on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the exercise price of such

² The remainder of the fine shall be allocated to NYSE Arca, Inc.

³ Under the Exchange Act, the term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government. Exchange Act §3(a)(9).

option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security.”

A PTO involves “proration risk,” a risk to shareholders of the subject security that less than all of the securities tendered will be accepted. Accordingly, short tendering is proscribed by Exchange Act Rule 14e-4 because the practice unfairly decreases the short tendering person’s proration risk at the expense of other tenderers, who will have proportionately fewer shares accepted.

A violation of Exchange Act Rule 14e-4 also constitutes a violation of FINRA Rule 2010, which requires member firms, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”

In 2022, Company 1 announced a modified Dutch auction-style PTO⁴ with an expiration date later the same year. As part of the PTO, Cowen, acting in concert with an affiliate, tendered 150,000 shares in Company 1 without accurately calculating the firm’s net long position in the security. Cowen failed to consider that it held 1,000 short call options in its proprietary account on the expiration date of the PTO—which amounted to 100,000 shares in Company 1—with an exercise price below the highest specified tender offer price in the PTO range. Cowen failed to accurately reduce the long equity shares by those short call options when calculating its net long position. Thus, Cowen over-tendered 100,000 shares.

Therefore, Cowen violated Exchange Act Rule 14e-4 and FINRA Rule 2010.

Cowen’s supervisory system, including WSPs, was not reasonably designed to achieve compliance with Exchange Act Rule 14e-4.

FINRA Rule 3110(a) requires each member 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 each member 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. A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

From October 2022 through May 2024,⁵ Cowen’s supervisory system, including written supervisory procedures (WSPs), was not reasonably designed to achieve compliance with Exchange Act Rule 14e-4. Specifically, Cowen’s WSPs failed to define or otherwise

⁴ A modified “Dutch auction” tender offer is an auction structure in which tendering stockholders specify, from within a given range, a price at which they are willing to tender all or a portion of their shares. Once all tenders are received, the purchase price for all tendered shares accepted for payment is the lowest price per share from among the specified offer range at which the shares have been tendered that will enable the buyer to purchase the maximum number of shares, subject to the conditions of the tender offer.

⁵ Cowen updated its WSPs in May 2024.

explain how to calculate standardized short call options with an exercise price above the final tender price, yet below the highest specified tender offer price, in modified Dutch auction PTOs. Cowen has since revised its WSPs to properly account for such standardized short call options in its Rule 14e-4 net long calculations. As such, Cowen did not provide reasonable guidance to its personnel regarding the calculation of the net long position for purposes of tendering shares in a PTO pursuant to Exchange Act Rule 14e-4.

Therefore, Cowen violated FINRA Rules 3110 and 2010.

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

- a censure and
- an \$80,000 fine, of which \$40,000 will be paid to FINRA.⁶

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

⁶ The remainder of the fine shall be allocated to NYSE Arca, Inc.

- 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 prejudice 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.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

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.

08/05/2026

Date

Glenn Gibson

TD Securities (USA) LLC, as the acquirer of
Cowen and Company, Respondent

Glenn D. Gibson
Vice Chair and U.S. Regional Head

Reviewed by:

Kevin Campion

Kevin J. Campion
Counsel for Respondent
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Accepted by FINRA:

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

Kellie Shlifer

08/19/2026

Date

Kellie Shlifer
Principal Counsel
FINRA
Department of Enforcement
9509 Key West Ave.
Rockville, MD 20850