

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5874 / September 27, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20604

In the Matter of

**COWEN PRIME
ADVISORS LLC**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND 203(k)
OF THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Cowen Prime Advisors LLC (“Cowen” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Cowen's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from breaches of fiduciary duty by registered investment adviser Cowen. From January 1, 2015 through July 31, 2021 (the "Relevant Period"), Cowen received revenue sharing payments from its unaffiliated clearing broker (the "Clearing Broker") as a result of sweeping its advisory clients' cash into certain money market mutual funds ("money market funds") instead of available lower-cost money market funds for which it would not have received any revenue sharing. Until June 2020, Cowen failed to disclose its money market fund selection practices that resulted in its receipt of revenue sharing, and related conflicts of interest, to the vast majority of its advisory clients. Moreover, while Cowen determined that a government money market fund, as opposed to another type of money market fund, was an appropriate cash sweep vehicle for its advisory clients, it failed to consider alternative government money market funds offered by the Clearing Broker when selecting particular funds. Finally, Cowen failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its cash sweep selection practices.

2. As a result of the conduct described above, Cowen willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

3. Respondent Cowen Prime Advisors LLC ("Cowen") is a Delaware limited liability company, formed in March 2021, with its principal place of business in New York, New York. As of May 31, 2021, Cowen succeeded to the investment advisory business of Cowen Prime Advisors, which previously operated as a division of Cowen Prime Services LLC, a Commission-registered broker-dealer and investment adviser. As the successor to Cowen Prime Advisors, Cowen has been registered with the Commission as an investment adviser since March 2011. Cowen PB Holdings, LLC, a Delaware limited liability company, directly owns Cowen and is, in turn, primarily owned by Cowen Inc. (NASDAQ: COWN), a publicly traded company. Effective September 1, 2015, Cowen Inc. acquired Concept Capital Markets LLC ("Concept"), which became known as Cowen Prime Services LLC, and Concept's investment adviser division, Concept Asset Management, which became known as Cowen Prime Advisors. In its most recent annual updating amendment dated March 26, 2021, Cowen reported that it had approximately \$359 million in regulatory assets under management as of December 31, 2020.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Revenue Sharing from Cash Sweep Money Market Funds

4. A sweep account (“Sweep Account”) is a money market mutual fund or bank account used by broker-dealers to hold uninvested cash (*e.g.*, incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money. During the Relevant Period, Cowen selected certain money market funds to hold uninvested cash in the clients’ Sweep Accounts. A money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used in Sweep Accounts as cash sweep vehicles. The investment yields and expense ratio of a money market fund will differ from fund to fund.

5. During the Relevant Period, the Clearing Broker agreed to share with Cowen a portion of the revenue the Clearing Broker received in connection with certain money market funds offered to Sweep Accounts. Under this arrangement, the Clearing Broker offered two different types of money market fund sweep options for Cowen to sweep its clients’ cash: (1) certain money market funds that, pursuant to Cowen’s clearing agreement with the Clearing Broker, would result in “distribution assistance” or revenue sharing payments from the Clearing Broker to Cowen based on the amount of Cowen clients’ investments in these money market funds; or (2) money market funds that had lower costs and did not result in the Clearing Broker paying revenue sharing to Cowen.

6. The amount of revenue sharing Cowen received from the Clearing Broker differed depending on the money market fund that Cowen selected and the amount of assets Cowen’s clients and brokerage customers held in the fund. During the Relevant Period, even though a government money market fund that did not result in revenue sharing payments was always available to it, Cowen routinely selected government money market funds for cash sweep vehicles that resulted in Cowen’s receipt of revenue sharing rather than those that did not. For example, for one government money market fund Cowen selected for many of its advisory clients, Cowen’s clearing agreement provided that the Clearing Broker would pay Cowen up to 35 basis points in revenue sharing, depending on the amount of Cowen customer and client assets held in the fund. Cowen could also have selected a government money market fund for which Cowen would not receive revenue sharing payments and which had lower costs charged to fund investors compared to the government money market fund that resulted in the Clearing Broker making revenue sharing payments to Cowen.

7. During the Relevant Period, Cowen received \$579,232 in payments from the Clearing Broker as revenue sharing for Cowen’s clients’ investments in money market funds, when Cowen could have instead used money market funds that did not result in Cowen’s receipt of revenue sharing and which charged lower costs to clients.

8. The payments Cowen received from the Clearing Broker created a financial incentive for Cowen, when rendering investment advice to its clients, to keep client assets in cash and select a money market fund for their Sweep Accounts that paid revenue sharing over other investments.

Disclosure Failures

9. As an investment adviser, Cowen was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and its clients, that could affect the advisory relationship and how those conflicts could affect the advice Cowen provided to its clients. To meet this fiduciary obligation, Cowen was required to provide its advisory clients with full and fair disclosure that is sufficiently specific so that they could understand the conflicts of interest concerning Cowen's advice about investing in money market funds with different levels of revenue sharing and lower costs to clients, and could have an informed basis on which advisory clients could consent to or reject the conflicts.

10. Until April 2020, Cowen made no disclosures to advisory clients concerning its receipt of revenue sharing payments in connection with money market funds used as Sweep Accounts, and the conflicts of interest relating thereto. In April 2020, Cowen updated its general Form ADV Part 2A firm brochure, and the brochures for its I.S. Value and SAMJO Investment programs, to disclose, for the first time, its receipt of revenue sharing and associated conflicts of interest. Cowen, however, failed to identify the new disclosures in the Material Changes section of each brochure. Although each brochure stated that "[t]his section of our Brochure contains a summary of any material changes we have made since our last annual Brochure, and we will provide you with a copy of that summary within 120 days of the end of our fiscal year each year," Cowen did not, in fact, provide such a summary to the vast majority of its clients who were legacy clients (*i.e.*, those clients who received an initial brochure before April 2020). Instead, it was Cowen's practice to notify legacy clients when a new Form ADV was available, and then provide the applicable brochure only if requested.

11. On June 22, 2020, Cowen filed a Form CRS with the Commission and, by the end of that month, distributed the form to each of its advisory clients. The Form CRS contained disclosures concerning Cowen's receipt of revenue sharing from cash sweep money market funds and the related conflicts of interest. It also provided a link to the revised brochures that Cowen had filed in April 2020. Thus, legacy clients who were affected by Cowen's revenue sharing and cash sweep selection practices were not on notice of the new disclosures until June 2020.

Additional Misconduct

12. During the Relevant Period, Cowen determined that a government money market fund, as opposed to another type of money market fund, was an appropriate cash sweep vehicle for its advisory clients. Cowen, however, failed to consider alternative government money market funds offered by the Clearing Broker when selecting particular funds.

13. During the Relevant Period, Cowen also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its Sweep Account selection practices.

Disgorgement

14. The disgorgement and prejudgment interest ordered in Section IV.C. is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors may be transferred by the Commission to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Violations

15. As a result of the conduct described above, Respondent willfully² violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scierter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

16. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Undertakings

17. Respondent Cowen has undertaken to:
- a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning cash sweep vehicle selection and revenue sharing.
 - b. Within 30 days of the entry of this Order, evaluate whether existing clients should be moved to a lower-cost cash sweep vehicle and move clients as necessary.

² "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

c. Within 30 days of the entry of this Order, evaluate, update, and review for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with disclosures regarding cash sweep vehicle selection, and in connection with selecting or making recommendations of cash sweep vehicles that are in the best interests of Respondent's advisory clients.

d. Within 30 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices discussed above (hereinafter, "affected investors")) of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

e. Within 40 days of the entry of this Order, certify in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Corey A. Schuster, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

18. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty totaling \$768,879 as follows:

- (i) Respondent shall pay disgorgement of \$579,232 and prejudgment interest of \$74,647, consistent with the provisions of this Subsection C.
- (ii) Respondent shall pay a civil money penalty in the amount of \$115,000, consistent with the provisions of this Subsection C.
- (iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
- (iv) Within ten (10) days of the entry of this Order, Respondent shall deposit \$768,879 (the "Fair Fund") into an escrow account or segregated account for the benefit of affected investors not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and taxpayer identification number of the Fair Fund. If timely deposit into the escrow or segregated account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.
- (v) Respondent shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (vi) Respondent shall distribute from the Fair Fund to each affected investor an amount representing: (a) the revenue sharing payments attributable to the affected investor during the Relevant Period; and (b) reasonable interest paid on such amounts, pursuant to a disbursement calculation (the "Calculation") that shall be submitted to, reviewed, and approved by the Commission staff in accordance with

this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(vii) Respondent shall, within ninety (90) days of the entry of this Order, submit a calculation to the Commission staff for review and approval (the “Calculation”). At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent’s proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum, (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid. The Respondent shall exclude from the Payment File all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(ix) Respondent shall disburse all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. Respondent shall notify the Commission staff of the date[s] and the amount paid in the initial distribution.

(x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investment account or any other factors beyond Respondent’s control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury subject to Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final

accounting provided for in Paragraph xii of this Subsection C is submitted to the Commission staff. Payments must be made in one of the following ways:

- (a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Cowen Prime Advisors LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Corey A. Schuster, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, or such other address as the Commission staff may provide.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fair Fund including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xii) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but

not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred or credited to each investor; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Payment File accepted by the Commission staff. Respondent shall submit the final accounting and certification under a cover letter that identifies Respondent and the file number of these proceedings to Corey A. Schuster, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 17.a through 17.e, above.

By the Commission.

Vanessa A. Countryman
Secretary