UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100710 / August 14, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6659 / August 14, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22007

In the Matter of **Cowen and Company, LLC and Cowen Investment Management LLC,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND 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 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Cowen and Company, LLC ("Cowen & Co.") and pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Cowen Investment Management LLC ("CIM," and with Cowen & Co., "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("Offers") that the Commission has determined to accept. Respondents admit the facts set forth in Section III below, acknowledge that their conduct violated the federal securities laws, admit the Commission's jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and 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 Respondents' Offers, the Commission finds[1] that:

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers and registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the widespread and longstanding failure of Respondents' personnel, including at senior levels, to adhere to certain of these essential requirements and Respondents' own policies. Using their personal devices, these personnel communicated both internally and externally by text messages, and/or other unapproved written communications platforms, such as WhatsApp ("off-channel communications").

3. From at least January 2020, Cowen & Co. personnel sent and received off-channel communications that related to the business of the broker-dealer, and from at least January 2020 through December 15, 2023, CIM personnel sent and received off-channel communications related to investment advice given and the receipt of funds into client accounts. Respondents did not maintain or preserve the substantial majority of these written communications. Respondents' failure was firm-wide and involved personnel at various levels of authority. As a result, Cowen & Co. violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, and CIM violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. Respondents' supervisors, who were responsible for supervising junior personnel, routinely communicated off-channel using their personal devices. In fact, senior personnel responsible for supervising junior personnel themselves failed to comply with Respondents' policies by communicating using non-approved methods on their personal devices about Respondents' broker-dealer business or investment adviser business, as applicable.

5. Respondents' widespread failure to implement their policies and procedures that prohibit such communications led to their failure to reasonably supervise their personnel within the meaning of Section 15(b)(4)(E) of the Exchange Act as to Cowen & Co., and Section 203(e)(6) of the Advisers Act as to CIM.

6. During the time period that Cowen & Co. failed to maintain and preserve off-channel communications its personnel sent and received related to the broker-dealer's business, Cowen & Co. received and responded to Commission subpoenas for documents and records requests in various Commission investigations. As a result, Cowen & Co.'s recordkeeping

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

7. Commission staff uncovered Respondents' misconduct after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers. Respondents have initiated a review of their recordkeeping failures, and begun a program of remediation. As set forth in the Undertakings below, Respondents will retain an independent compliance consultant to review and assess Respondents' remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondents

8. Cowen and Company, LLC is a Delaware corporation with its principal office in New York, New York and is registered with the Commission as a broker-dealer.

9. Cowen Investment Management LLC is a Delaware corporation with its principal office in New York, New York and was registered with the Commission as an investment adviser until it withdrew its registration on December 15, 2023.

Recordkeeping Requirements Under the Exchange Act and Advisers Act

10. Section 17(a)(1) of the Exchange Act and Section 204 of the Advisers Act authorize the Commission to issue rules requiring, respectively, broker-dealers and investment advisers, to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors, or, with respect to the Exchange Act, otherwise in furtherance of the purposes of the Exchange Act.

11. The Commission adopted Rule 17a-4 under the Exchange Act and Rule 204-2 under the Advisers Act pursuant to this authority. These rules specify the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by broker-dealers or investment advisers, must be maintained and produced promptly to Commission representatives.

12. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve in an easily accessible place, originals of all communications received and copies of all communications sent relating to the broker-dealer's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

13. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

14. The rules adopted under Section 204 of the Advisers Act, including Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all communications received and copies of all written communications sent relating to, among other things: (a) any recommendation made or proposed to be made and any advice given or proposed to be given; (b) any receipt, disbursement or delivery of funds or securities; (c) the placing or execution of any order to purchase or sell any security; or (d) predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

Respondents' Policies and Procedures

15. Respondents maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

16. Respondents' personnel were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats or text messaging applications for business purposes, or forward work-related communications to unapproved applications on their personal devices.

17. Messages sent through firm-approved communications methods were monitored, subject to review, and archived. Messages sent through unapproved communications methods, such as WhatsApp and other unapproved applications on personal devices, were not monitored, subject to review or archived.

18. Respondents' policies were designed to address supervisors' supervision of personnel's training in Respondents' communications policies and adherence to Respondents' books and recordkeeping requirements. Supervisory policies notified personnel that electronic communications were subject to surveillance by Respondents. Respondents had procedures for all personnel, including supervisors, requiring annual self-attestations of compliance.

19. Respondents, however, failed to implement a system to determine that all personnel, including supervisors, were reasonably following Respondents' policies. While permitting personnel to use approved communications methods, including on personal phones, for business communications, Respondents failed to implement sufficient monitoring to ensure that their recordkeeping and communications policies were being followed.

Respondents' Recordkeeping Failures Across the Brokerage and Investment Advisory Businesses

20. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether registrants were properly retaining business-related messages sent and received on personal devices. Respondents cooperated with the investigation by voluntarily interviewing a sampling of senior personnel from Cowen & Co. and CIM and gathering and

reviewing messages found on the individuals' personal devices. These personnel included senior leadership, such as managing directors and desk heads.

21. The Commission staff's investigation uncovered pervasive off-channel communications at all seniority levels within Cowen & Co. and CIM. The investigation determined that all broker-dealer and investment adviser personnel sampled had engaged in at least some level of off-channel communications. Overall, personnel sent and received numerous off-channel communications, involving other Respondents' personnel, Cowen & Co.'s broker-dealer customers and other participants in the securities industry. Within Cowen & Co., significant numbers of senior management, managing directors, and group and desk heads participated in off-channel communications.

22. From at least January 2020, Cowen & Co. personnel sent and received off-channel messages that concerned Cowen & Co.'s broker-dealer business.

23. For example, a senior executive of Cowen & Co. enabled an autodelete function on his personal phone, meaning that iMessage and SMS messages before October 18, 2022 were lost. However, still-extant messages reflect that the executive used iMessage, SMS, and WhatsApp to communicate with at least five firm personnel and two employees of other broker-dealers or investment advisers. These messages related to Cowen & Co.'s broker-dealer business.

24. In addition, a managing director and head of a group within Cowen & Co. exchanged numerous off-channel business-related text messages with at least 38 Cowen & Co. colleagues, three employees of other broker-dealers or investment advisers, and 13 customers, investors, or other market participants. Within Cowen & Co., the individual communicated with managing directors, director, and analysts. These messages related to the broker-dealer's business.

25. From at least January 2020 until December 15, 2023, CIM personnel sent and received off-channel text messages subject to the record-keeping requirements of Advisers Act Rule 204-2.

26. For example, in one off-channel text exchange between CIM personnel, they discussed the receipt of funds into client accounts.

27. In another off-channel text exchange between a CIM employee and other Cowen personnel, the two discussed advice given to an advisory client about a securities transaction.

Cowen & Co.'s Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

28. During the period relevant to this Order, Cowen & Co. received and responded to Commission subpoenas for documents and records requests in various Commission investigations. By failing to maintain and preserve required records relating to its broker-dealer

business, Cowen & Co. likely deprived the Commission of these off-channel communications in various investigations.

Respondents' Violations and Failure to Supervise

29. As a result of the conduct described above, from at least January 2020, Cowen & Co. willfully[2] violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

30. As a result of the conduct described above, from at least January 2020, Cowen & Co. failed reasonably to supervise its personnel with a view to preventing or detecting certain of their supervised persons' aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

31. As a result of the conduct described above, from at least January 2020, CIM willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

32. As a result of the conduct described above, from at least January 2020 until December 15, 2023, CIM failed reasonably to supervise its personnel with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

Respondents' Remedial Efforts

33. In determining to accept the Offers, the Commission considered steps promptly undertaken and cooperation afforded the Commission staff by Respondents. Prior to and after being approached by Commission staff, Respondents provided some personnel with firm-issued devices or other firm-approved applications, thereby making communications through approved channels more readily retainable.

Undertakings

34. Prior to this action, Respondents enhanced their policies and procedures, and increased training and compliance reminders concerning the use of approved communications methods, and began implementing significant changes to the technology available to personnel. In addition, Respondents have undertaken to:

35. Independent Compliance Consultant.

a. Respondents shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not

[2] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act "'means no more than that the person charged with the duty knows what he is doing.'" *See 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)).

unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by Respondents.

b. Respondents will oversee the work of the Compliance Consultant.

c. Respondents shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. Respondents shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

i. A comprehensive review of Respondents' supervisory, compliance, and other policies and procedures designed to ensure that Respondents' electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.

ii. A comprehensive review of training conducted by Respondents to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that Respondents' personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

iii. An assessment of the surveillance program measures implemented by Respondents to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

iv. An assessment of the technological solutions that Respondents have begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that Respondents personnel will use the technological solutions going forward and a review of the measures employed by Respondents to track personnel usage of new technological solutions.

v. An assessment of the measures used by Respondents to prevent the use of unauthorized communications methods for business communications by personnel. This assessment should include, but not be limited to, a review of Respondents' policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (*e.g.*, trading floor restrictions).

vi. A review of Respondents' electronic communications surveillance routines to ensure that electronic communications through approved

communications methods found on Personal Devices are incorporated into Respondents' overall communications surveillance program.

vii. A comprehensive review of the framework adopted by Respondents to address instances of non-compliance by Respondents' personnel with Respondents' policies and procedures concerning the use of Personal Devices to communicate about firm business in the past. This review shall include a survey of how Respondents determined which personnel failed to comply with Respondents' policies and procedures, the corrective action carried out, an evaluation of who violated policies and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

d. Respondents shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs 35.c.i. through c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to Respondents and to the Commission staff (the "Report"). Respondents shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to Respondents' policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to Respondents' policies and procedures.

e. Respondents shall adopt all recommendations contained in the Report within ninety (90) days of the date of the Report; provided, however, that within forty-five (45) days after the date of the Report, Respondents shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that Respondents consider to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondents consider unduly burdensome, impractical, or inappropriate, Respondents need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning Respondents' policies or procedures on which Respondents and the Compliance Consultant do not agree, Respondents and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Respondents and the Compliance Consultant, Respondents shall require that the Compliance Consultant inform Respondents and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Respondents consider to be unduly burdensome, impractical, or inappropriate. Respondents shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Respondents and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Respondents shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. Respondents shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of Respondents' files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. Respondents shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. Respondents shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two (2) years from completion of the engagement, Respondents shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

j. The Report by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

36. One-Year Evaluation. Respondents shall each require the Compliance Consultant to assess Respondents' respective programs for the preservation, as required under the federal securities laws, of electronic communications, including those found on Personal Devices, commencing one year after submitting the Report required by Paragraph 35.d above. Respondents shall require this review to evaluate Respondents' progress in the areas described in Paragraph 35.c.i-vii above. After this review, Respondents shall require the Compliance Consultant to submit a report (the "One Year Report") to Respondents and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Respondents' respective policies and procedures with regard to the preservation of electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

37. Reporting Discipline Imposed. For two (2) years following the entry of this Order, Respondents shall notify the Commission staff as follows upon the imposition of any discipline imposed by Respondents, including, but not limited to: written warnings; loss of any pay, bonus, or incentive compensation; or the termination of personnel, with respect to any personnel found to have violated Respondents' respective policies and procedures concerning the preservation of electronic communications, including those found on Personal Devices: at least forty-eight (48) hours before the filing of a Form U-5, or within ten (10) days of the imposition of other discipline.

38. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, Respondents will also have their Internal Audit function conduct a separate audit(s) to assess Respondents' progress in the areas described in Paragraph 35.c.i-vii above. After completion of this audit(s), Respondents shall ensure that Internal Audit submits a report to Respondents and to the Commission staff.

39. Recordkeeping. Cowen & Co. shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings. CIM shall preserve any record of compliance with these undertakings in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the entry was made on such record, the first two (2) years in an appropriate office of CIM.

40. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the 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 to be the last day.

41. Certification. Respondents shall 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 Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Alison R. Levine, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY, 10004-2616, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act as to Cowen & Co., and pursuant to Sections 203(e) and 203(k) of the Advisers Act as to CIM, it is hereby ORDERED that:

A. Cowen & Co. cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

B. CIM cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

C. Respondents are censured.

D. Respondents shall comply with the undertakings enumerated in paragraphs 35 to 41 above.

E. Respondents, jointly and severally, shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $16,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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

(3) Respondents 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 cover letters identifying Cowen & Co. and CIM as the Respondents 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 Thomas P. Smith, Jr., Associate Regional Director, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

F. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction

of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Securities and Exchange 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 Respondents 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.

By the Commission.

Vanessa A. Countryman
Secretary