

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8472 / August 25, 2004**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 50250 / August 25, 2004**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11602**

**In the Matter of**

**SG COWEN & CO., LLC,**  
**f/k/a SG COWEN**  
**SECURITIES**  
**CORPORATION,**

**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE AND CEASE-AND-**  
**DESIST PROCEEDINGS, MAKING**  
**FINDINGS, AND IMPOSING REMEDIAL**  
**SANCTIONS AND A CEASE-AND-DESIST**  
**ORDER PURSUANT TO SECTION 8A OF**  
**THE SECURITIES ACT OF 1933 AND**  
**SECTION 15(b)(4) OF THE SECURITIES**  
**EXCHANGE ACT OF 1934**

**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 Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 15(b)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) against SG Cowen & Co., LLC f/k/a SG Cowen Securities Corporation (“SG 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 Respondent and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b)(4) of the Securities Exchange Act of 1934, as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### A. RESPONDENT

SG Cowen Securities Corporation is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of NASD, Inc. and the New York Stock Exchange, Inc. SG Cowen's principal place of business is in New York, New York.

#### B. SUMMARY

In 2001, SG Cowen received a payment in consideration for publishing research on a certain public company. SG Cowen did not disclose that payment in its research reports. The firm's failure to disclose the payment was in violation of Section 17(b) of the Securities Act.

#### C. FACTS

##### 1. Background

During the period 1999 through at least 2003, broker-dealers that were underwriting public offerings sometimes paid other broker-dealers to issue research on or "cover" their clients. These arrangements were made with regard to both initial public offerings ("IPOs") and secondary offerings. In some situations, the issuer involved in the offering directed the lead underwriter to make the payments. In others, the lead underwriter for the offering selected the firms that received the payments. Some firms issuing the research actively solicited the payment.

In certain instances, the payments were made to firms that were not participating in the underwriting, and therefore not earning investment banking fees from the issuer on the particular offering. In other instances, firms that were underwriting small portions of the offering received additional payments for publishing research. These payments often were significantly larger than the underwriting fee the firm received.

Section 17(b) of the Securities Act requires that any person who receives consideration, directly or indirectly, from an issuer, underwriter, or dealer for issuing research must fully disclose the receipt of the payment (whether past or prospective) and the amount. However, the

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<sup>1</sup> 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.

broker-dealers that received these payments failed to disclose in their research reports that they received payment for publishing research.

## 2. **SG Cowen Failed to Disclose Its Receipt of A Payment to Publish Research**

On April 30, 2001, SG Cowen was paid \$100,000 by the lead underwriter for issuing research on Flextronics International in connection with a public stock offering on February 1, 2001. In the cover letter accompanying the check, the lead underwriter described the payment as a “special research check.” SG Cowen did not perform any underwriting services in connection with the February 2001 offering. SG Cowen had previously been covering the issuer prior to its receipt of the payment. SG Cowen issued research reports on Flextronics on April 25, 2001 and on August 27, 2001 without disclosing the \$100,000 payment.

## D. **LEGAL DISCUSSION**

### **SG Cowen Violated Section 17(b) of the Securities Act**

Section 17(b) of the Securities Act provides:

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

15 U.S.C. § 77q(b).

In order to violate Section 17(b), a person must “(1) publish or otherwise circulate (using a means of interstate commerce), (2) a notice or type of communication (which describes a security), (3) for consideration received (past, currently, or prospectively, directly or indirectly), (4) without full disclosure of the consideration received and the amount.” *SEC v. Gorsek*, 222 F. Supp. 2d 1099, 1105 (C.D. Ill. 2001). Courts have held that Section 17(b) does not require a showing of scienter. *SEC v. Liberty Capital Group, Inc.*, 75 F. Supp. 2d 1160, 1163 (W.D. Wash. 1999); *SEC v. Huttoe*, 1998 WL 34078092 (D.D.C. Sept. 14, 1998).

SG Cowen published and circulated communications in the form of research reports that described a security for consideration received, but did not disclose the receipt or amount of this payment. As a result, investors did not receive information relating to the objectivity of the research.

**E. CONCLUSION**

Based on the foregoing and SG Cowen's Offer of Settlement, the Commission finds that with respect to a payment received for the issuance of research, SG Cowen willfully violated Section 17(b) of the Securities Act by publishing a communication that described a security for consideration received, directly from an underwriter, without disclosing the receipt of such consideration and the amount thereof.

**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 of Settlement.

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 8A of the Securities Act, that Respondent cease and desist from committing or causing any violations and any future violations of Section 17(b) of the Securities Act.

B. Respondent is censured pursuant to Section 15(b)(4) of the Exchange Act.

C. It is further ordered that Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$125,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies SG Cowen Securities Corporation as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801.

By the Commission.

Jonathan G. Katz  
Secretary