

FEB 21 2019

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA**

**AND**

**MICHAEL FRANCIS O'BRIEN**

**NOTICE OF HEARING**

An initial appearance (“Initial Appearance”) will be held before a hearing panel (“Hearing Panel”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) pursuant to Sections 8203 and 8205 of the Consolidated Enforcement, Examination and Approval Rules of IIROC in this matter. The purpose of the Initial Appearance is to schedule a hearing (“Hearing”).

The Initial Appearance will be held on: April 5, 2019 at 10:00 a.m.

The Initial Appearance will be held at: Bow Valley Square Conference Centre (Bow 2, 3<sup>rd</sup> Floor) – Scarth Room 205 – 5<sup>th</sup> Avenue S.W. Calgary, AB

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated February 21, 2019 (“Statement of Allegations”) in accordance with Section 8415 within 30 days from the effective date of service of this Notice of Hearing.

If the Respondent does not file a Response in accordance with Section 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with Section 8415(1), the Initial Appearance will be immediately followed by an initial prehearing conference. In preparation for the prehearing conference, the Respondent must serve and file a prehearing conference form in accordance with Section 8416(5).

The purpose of the Hearing will be to determine whether the Respondent has committed the contraventions that are alleged by the staff of IIROC (“Staff”). The alleged contraventions are contained in the Statement of Allegations.

Pursuant to Section 8409, the Hearing will be conducted as a[n]:

- Oral Hearing
- Electronic Hearing
- Written Hearing

The Initial Appearance, the Hearing and all related proceedings will be subject to the Rules of Practice and Procedure as set out in Section 8400.

Pursuant to the Rules of Practice and Procedure, the Respondent is entitled to attend the Hearing and to be heard, to be represented by counsel or by an agent, to call, examine and cross-examine witnesses, and to make submissions to the Hearing Panel at the Hearing.

If the Respondent fails to serve a Response at the Hearing the Hearing Panel may, pursuant to Section 8415(4):

- (a) proceed with the hearing as set out in this Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions set out by Staff in the Statement of Allegations; and
- (c) order sanctions and costs against the Respondent pursuant to Sections 8209, 8210 and 8214 and/or IIROC Dealer Member Rules 20.33 and 20.34.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Statement of Allegations, the Hearing Panel may, pursuant to Sections 8209 and 8210 and/or IIROC Dealer Member Rules 20.33 and 20.34 impose any one or more of the following sanctions:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) a fine not exceeding the greater of:
  - (i) \$1,000,000 per contravention; and
  - (ii) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention.

- (d) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions;
- (e) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace;
- (f) prohibition of approval in any capacity, for any period of time, including access to a Marketplace;
- (g) revocation of approval;
- (h) a permanent bar to approval in any capacity or to access to a Marketplace;
- (i) permanent bar to employment in any capacity by a Regulated Person; and
- (j) any sanction determined to be appropriate under the circumstances.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Statement of Allegations, the Hearing Panel may assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances pursuant to Section 8214 and/or IIROC Dealer Member Rule 20.49.

**DATED** this 21 day of February 2019.



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NATIONAL HEARING COORDINATOR  
Investment Industry Regulatory Organization of Canada  
Suite 2000, 121 King Street West  
Toronto, Ontario, M5H 3T9

**IN THE MATTER OF:**

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA**

**AND**

**MICHAEL FRANCIS O'BRIEN**

**STATEMENT OF ALLEGATIONS**

Further to a Notice of Hearing dated February 21, 2019, Enforcement Staff make the following allegations:

**PART I – REQUIREMENTS CONTRAVENED**

**Contravention 1**

Between May and September of 2017, the Respondent engaged in personal financial dealings with a client, without the knowledge or approval of his firm, contrary to Dealer Member Rule 43.

**Contravention 2**

In September 2017 and April 2018, the Respondent made misleading representations regarding client dealings, contrary to Dealer Member Consolidated Rule 1400.

## **PART II – RELEVANT FACTS AND CONCLUSIONS**

### **Overview**

1. This matter involves the Respondent borrowing a significant amount of money from an elderly client, without his firm's knowledge or approval.
2. The Respondent failed to act in a forthcoming and candid manner, and made false and misleading representations, during investigations by both his client's bank, and Enforcement Staff.

### **Registration History**

3. The Respondent is currently employed with Raymond James Ltd. as a Registered Representative. He has been working in the industry since 2002. The allegations occurred while the Respondent was a Registered Representative at RBC Dominion Securities Inc. ("RBC Securities").

### **Background**

4. The Respondent had been the financial advisor for the client and her husband since approximately 2002. In 2010, the client's husband passed away. After her husband's passing, the Respondent remained the client's advisor.
5. According to the Respondent, the client had employed someone to assist her with day-to-day affairs, including helping to manage her daily finances. This person left the client's employment in May 2017. The Respondent began borrowing money from the client in June 2017.

6. Between approximately May and September 2017 the Respondent borrowed at least \$156,603.82 from the client, without the knowledge or approval of his firm. At the time the client was approximately 81 years old.
7. The various payments and loans were discovered by Royal Bank of Canada's National Fraud Detection Group (the "Fraud Detection Group") as they noticed suspicious activity in the client's personal bank account. The Fraud Detection Group conducted an investigation and notified RBC Securities that the Respondent had been borrowing money from the client.
8. Acting on the direction of RBC Securities, the Respondent repaid all the money to the client. Previously, no money had been repaid.

#### **Money Borrowed from the Client**

9. The Respondent admits borrowing at least \$156,603.82, over a four-month period. The money was borrowed by way of:
  - a. a series of online electronic payments from the client's personal bank account to the Respondent's various credit cards and line of credit;
  - b. expenses incurred on the client's Visa account through a credit card he was issued as a secondary cardholder; and
  - c. an online electronic payment from the client's account to a line of credit belonging to the Respondent's mother-in-law.
10. These loans and payments include the following:
  - a. five different payments to the Respondent's American Express account, totaling: \$68,741.99;
  - b. three different payments to the Respondent's Master Card account, totaling: \$3,573.67;

- c. a payment to the Respondent's Diners Club account: \$4,985.78;
  - d. two payments the Respondent's Line of credit, totaling: \$39,758.10;
  - e. a payment to a second line of credit belonging to the Respondent's mother-in-law: 981.50; and
  - f. charges to the client's Visa account, totaling: \$38,562.78.
11. In addition to the above, the client made a further \$24,000.00 online electronic payment to the Canadian Revenue Agency ("CRA") on the Respondent's behalf.

### **Misleading Representations**

12. The Respondent made misleading representations, and failed to act in a candid and forthcoming manner over the course of investigations with the Fraud Detection Group and Enforcement Staff:
- a. Despite working in the industry since 2002, the Respondent claims he was not aware he needed his firm's approval to borrow money from his client;
  - b. The Respondent claims he borrowed money to repair damages to his home caused by a storm. However, the credit card and line of credits statements between June and September of 2017 do not reveal expenses relating to home repairs. They do show approximately \$70,000 in new charges on his American Express card, including expenses incurred in London, Paris and Las Vegas.
  - c. On September 25, 2017, the Respondent returned a phone call to the Fraud Detection Group on the client's behalf. During the conversation, he falsely claimed that he was the client's power of attorney.
  - d. In an interview with Enforcement Staff, the Respondent falsely claimed that he did not tell the Fraud Detection Group he was the client's power of attorney.

- e. When asked specific questions about the \$981.50 payment the Respondent was evasive and not forthcoming, neglecting to inform Enforcement Staff that the transaction was a transfer of money to his mother-in-law's line of credit.
- f. The Respondent was evasive and failed to adequately explain the circumstances surrounding the \$24,000.00 payment the client made to the CRA on his behalf.

**DATED** at Calgary, Alberta this 21 day of February 2019.