

MAR 26 2019

IN THE MATTER OF:

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

**AND**

**DWIGHT CAMERON MANN**

**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: May 16, 2019 at 10:00 a.m. (PDT)

The Initial Appearance will be held at: Reportex Agencies Ltd.  
1010 – 925 West Georgia Street  
Vancouver, BC

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated March 26, 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 26<sup>th</sup> day of March 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**

**DWIGHT CAMERON MANN**

**STATEMENT OF ALLEGATIONS**

Further to a Notice of Hearing dated March 26, 2019, Enforcement Staff of the Investment Industry Regulatory Organization of Canada make the following allegations:

**PART I – REQUIREMENTS CONTRAVENED**

**Contravention 1**

Between December 2015 and January 2018, the Respondent provided an unjustified promise of specific results in connection with his business, contrary to Dealer Member Rule 29.7(1)(b) and Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016);

**Contravention 2**

Between January 2015 and March 2018, the Respondent engaged in misleading, fraudulent and/or deceptive conduct with respect to backdated transactions, contrary to Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016);

### **Contravention 3**

Between January 2015 and March 2018, the Respondent engaged in misleading, fraudulent and/or deceptive conduct with respect to cancel and correct transactions, contrary to Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016); and

### **Contravention 4**

In October 2015, the Respondent failed to report a client complaint, contrary to Dealer Member Rule 3100(I)(A)(1)(c).

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

### **Overview**

1. At all material times, the Respondent, Dwight Cameron Mann (“Mann”) was a Registered Representative (“RR”) and Portfolio Manager (“PM”) with National Bank Financial Ltd., and National Bank Financial Inc. (together “NBF”) in Vancouver.
2. The majority of Mann’s client accounts were managed, fee based accounts. Mann was authorized to exercise discretionary authority over the accounts.
3. Between approximately January 2015 and March 2018 (the “Relevant Period”), Mann engaged in misleading, fraudulent and/or deceptive conduct in certain clients’ accounts when he misused internal firm policies in order to:
  - (i) Compensate clients through backdated transactions;
  - (ii) Transfer securities positions from one particular group of client accounts (which were effectively controlled by one client) to other client accounts in order to manipulate account performance; and

- (iii) Transfer securities positions between unrelated client accounts in order to manipulate account performance.
- 4. Mann misused internal firm policies to enhance the account performance of certain selected clients, in order to gain favour with them and/or to satisfy clients' individual account performance concerns.
- 5. Mann also offered to provide written account performance guarantees to five clients.
- 6. Mann also failed to report a client complaint to his Dealer Member firm.

### **Registration History**

- 7. Mann has been an RR since 1993 and was the lead RR and PM in a group of approximately ten individuals within NBF marketed as the Mann Investment Team. This group consisted of a mix of RR's, PM's, Investment Representatives, and administrative support staff.
- 8. On April 18, 2018, Mann's employment with NBF was terminated following an internal investigation. Mann had worked with NBF for 17 years.
- 9. In August 2018, he became registered as an RR and PM with Canaccord Genuity Corp., subject to certain registration terms and conditions, including strict supervision.

### **Written Performance Guarantees**

#### **i. Client SR**

- 10. In December 2015, client SR advised Mann by email that he needed to achieve a minimum 5% gain on his accounts. By email response dated December 9, 2015, Mann stated: "Yes, I will get you the 5 percent with no gimmicks. I promise, and will provide the 25k in risk free trades by the end of March. I don't offer this to anyone, but want to get back on track."

#### **ii. Client MD**

- 11. In September 2016, client MD advised Mann that he wanted to transfer his account to a credit union. In an attempt to retain MD as a client, on September 28, 2016, Mann sent MD

an email in which he proposed that he “write up a contract where I guarantee you a 5% return annually and if I fall short will reimburse you for the difference ...”

12. MD did not accept Mann’s proposed performance guarantee and transferred out his account.

### **iii. Client JS**

13. In an email exchange with client JS on June 13, 2017, Mann stated that if JS increased his investment with him by \$200,000, Mann would provide a “guarantee” of a 5% annual return over a two year period.

### **iv. Client DM**

14. In an email exchange with client DM on January 22, 2018, Mann provided DM with a written guarantee of a 10% annual return in the client’s accounts.

### **v. Client MS**

15. In an email exchange with client MS on January 23, 2018, Mann provided MS (the brother of DM) with a written guarantee of a 10% annual return in the client’s accounts.

## **Admissions**

16. In an interview with Staff on November 8 and 9, 2018 (the “Staff Interview”), Mann admitted that he had offered written performance guarantees to clients SR, MD, JS, DM and MS.
17. By offering written performance guarantees to these clients, Mann contravened Dealer Member Rule 29.7(1)(b) and Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016), which prohibit the provision of an unjustified promise of specific results through client correspondence.

## **Misleading, Fraudulent and/or Deceptive Conduct**

18. During the Relevant Period, Mann engaged in misleading, fraudulent and/or deceptive conduct when he misused his firm’s policies with respect to backdated transactions, and cancel and correct transactions.

19. His actions involved compensating clients through backdated transactions, as well as misappropriation of securities between clients' accounts through cancel and correct transactions.
20. These actions were conducted to manipulate client account performance in order to enhance the performance of certain clients' accounts.

### **Backdated Transactions**

21. NBF internal policy permitted trade error corrections for up to 30 days following a failure to place a trade. The policy was intended to address legitimate errors, in which an advisor fails to send an order to the trade desk. To rectify the error, the advisor was permitted to buy or sell a security at the current market price, with the price differential charged to the advisor through an internal error account.
22. During the Relevant Period, on many occasions with many clients, as particularized below, Mann deliberately misused the trade error correction policy and engaged in misleading, deceptive and/or fraudulent conduct when he represented illegitimate errors to his firm trade desk as legitimate errors.
23. In most cases, such transactions were made to benefit clients who were dissatisfied with account performance and Mann would use what he termed in emails "gift trades", "no risk trades" (or similar nomenclature) to appease them and/or retain them as clients.
24. Mann would identify a security whose price had increased in the last 30 days, so as to ensure a profitable trade and to fit within the trade correction policy. He would then direct a staff member to contact the NBF trade desk to falsely state that he had mistakenly failed to buy a particular security some days prior, not coincidentally prior to its increase in price and within the previous 30 days. Similarly, he would also identify securities in which the price had decreased, and backdate to avoid a loss.
25. Upon approval of the request, the trade desk would "backdate" the trade, by purchasing the security after the fact (or selling as the case may be) and charging the price differential to Mann personally through an accumulating balance in an error account.



26. Shortly thereafter, in most instances Mann would direct an order to sell the security and net a “profit” or avoid a loss for the client. Often, Mann would then advise the client accordingly that he had “flipped” them a profitable trade, or given them a “gift” or “no risk” trade.
27. His actions were intended to manipulate clients’ account performance, and in effect, personally compensate clients through the error account.
28. During the Relevant Period, the total value of the error account attributed to backdated transactions for Mann’s clients was approximately \$316,000.
29. Staff has identified at least 38 backdated transactions in the total amount of \$93,118, in which there is email correspondence and/or other documentation supporting the backdated transactions as illegitimate errors.
30. The following table summarizes the backdated transactions during the Relevant Period:

<b>Clients Benefiting from Backdated Transactions</b>	<b>Backdated Transactions</b>	<b>Value of Backdated Transactions</b>
GPM	2	1,414
PS	3	2,430
CA	1	4270
GH	3	1,991
DM	7	46,031
SR/DR	11	11,549
EAD/EID	1	1,472
AO	1	1,662
MM/DM	1	2,317
FH	1	1,242
M/L	2	2,841
MS	1	7,781
SF	1	1,900
JG	1	2,100
CW	2	4,118
<b>Total</b>	<b>38</b>	<b>\$93,118</b>

31. In the Staff interview, and in the course of an NBF internal investigation, Mann admitted that during the Relevant Period, he misused backdated transactions to enhance client account performance on at least 18 occasions, in the total amount of at least \$73,073.

### **Cancel and Correct Transactions**

32. In addition to the backdated transactions, Mann used so called “cancel and correct” transactions in order to manipulate client account performance and enhance the performance of certain clients’ accounts.
33. NBF policy permitted “cancel and correct” transactions in client accounts. The policy was intended to address legitimate errors, in which an advisor mistakenly buys or sells a security in the wrong client account. The policy permitted the advisor to request that a security bought or sold in the wrong account, be subsequently transferred to the correct account. Unlike the backdated trades error correction policy, there was no amount charged to the advisor personally through an error account for cancel and correct transactions.
34. During the Relevant Period, on many occasions with many clients as particularized below, Mann deliberately misused the cancel and correct policy and engaged in misleading, deceptive and/or fraudulent conduct when he represented illegitimate errors to his firm’s trade desk as legitimate errors. Specifically, he advised his firm that certain securities positions were bought or sold in the wrong client account, under the guise of a “mistake”, and requested that the securities transactions be cancelled, and transferred to another client account. The securities were transferred at the original price, resulting in unrealized gains and/or losses being transferred out to the benefit of certain clients, but at the expense of other clients.
35. In reality, these cancel and correct transactions were not legitimate “mistakes”. They were illegitimate transactions and a means by which Mann would misappropriate securities positions by transferring them to select clients in order to enhance these clients’ account performance to the detriment of others.
36. The selected clients were typically those who he sought to appease due to concerns of account performance, or concerns that the client would leave.
37. In addition to representing illegitimate errors as legitimate errors to his firm, Mann also advised clients that corrections in their accounts were legitimate errors when this was not true.

38. Using the cancel and correct transactions, and under the false representation that he had bought or sold a security in the wrong account, Mann misappropriated securities positions between clients in two ways:
- (i) Through a specific, intermediary set of clients' accounts (the "Client 1 Accounts"); and
  - (ii) Through unrelated clients' accounts ("Unrelated Accounts").

### **The Client 1 Accounts**

39. Client 1 and his spouse, Client 2, are British Columbia residents and long term clients of Mann.
40. Client 1 and Client 2 held and controlled several accounts with Mann at NBF personally, including an investment trust and a numbered British Columbia corporation (together the "Client 1 Accounts").
41. Although the Client 1 Accounts were discretionary, managed accounts, Client 1 was actively involved in the management of the Client 1 Accounts. Client 2 was not actively involved in the accounts. Mann would speak with Client 1 frequently by telephone, often twice or more daily, to discuss his accounts. Mann would also socialize with Client 1 regularly.
42. Client 1 and Client 2 have previously been subject to legal action by the United States Securities and Exchange Commission (SEC), whereby the SEC obtained final judgment which imposed a penny stock bar against Client 1 in the United States.
43. The vast majority of the illegitimate cancel and correct transactions directed by Mann were concentrated in the Client 1 Accounts. More specifically, securities positions were moved to or from the Client 1 Accounts to or from other clients' accounts in order to enhance certain clients' account performance.
44. Client 1 was aware that his accounts were being used for cancel and correct transactions, including having profitable positions transferred out of his accounts. Client 1 has not responded to Staff's request for an interview.

45. Mann was able to use the Client 1 Accounts as, in effect, intermediary, or inventory accounts. This permitted him to use securities positions in the Client 1 Accounts, and then allocate specific securities positions to or from targeted client accounts in order to manipulate the accounts' performance and confer financial benefits on certain selected clients.
46. Staff has identified 123 cancel and correct transactions totaling \$221,135 involving the Client 1 Accounts during the Relevant Period, which are supported by email correspondence and/ or other documentation including instances in which Mann indicates that he intends to confer a financial benefit to a client through use of terms such as "flipping" a trade, or providing a "gift trade", "risk free", or "no risk" trade.
47. In the Staff interview, and in the course of the NBF internal investigation, Mann admitted that during the Relevant Period, he misused cancel and correct transactions to enhance client account performance through the Client 1 Accounts in at least 50 transactions, in the total value of at least \$64,434.

### **Unrelated Accounts**

48. In addition to cancel and correct transactions occurring between the Client 1 Accounts and certain clients' accounts, Mann would also effect illegitimate cancel and correct transactions to transfer securities between unrelated clients' accounts to enhance specific client account performance.
49. In most cases, securities positions were allocated to clients who were dissatisfied with account performance and who Mann wished to retain as clients. However, although the transfers of securities benefitted specific clients, it had a corresponding detriment to other clients from whose account the securities were removed, as in many cases these clients were losing an unrealized gain.
50. Staff has identified 49 cancel and correct transactions totaling \$44,965 between unrelated client accounts during the Relevant Period, which are supported by email correspondence and/or other documentation including instances in which Mann indicates that he intends to

confer a financial benefit to a client through use of terms such as “flipping” a trade, or providing a “gift trade”, “risk free”, or “no risk” trade.

51. In the Staff Interview, and in the course of the NBF internal investigation, Mann admitted that during the Relevant Period, he misused cancel and correct transactions to enhance client account performance through unrelated (non Client 1 Accounts) in at least 13 transactions, in the total value of at least \$10,139.

### Cancel and Correct Transactions – Summary – Client 1 Accounts; Unrelated Accounts

52. The following table summarizes the cancel and correct transactions in both the Client 1 Accounts and the Unrelated Accounts:

Clients Benefiting from Transactions	C&C Transactions			Value of C&C Transactions Transferred		
	Client 1 Accounts	Unrelated Accounts	Total	Client 1 Accounts	Unrelated Accounts	Total
GPM	5	1	6	7,764	630	8,394
PS	0	4	4	0	1,945	1,945
HN Inc.	1	3	4	970	1,757	2,727
5 BC Ltd.	4	1	5	4,101	717	4,818
GH	5	0	5	7,930	115	8,045
DM	11	3	14	24,310	3,413	27,723
SR/DR	~27	~23	~50	67,372	21,594	88,966
6 BC Ltd.	10	2	12	12,209	2,215	14,424
EAD/EID	8	1	9	13,306	2,700	16,006
SA/AA	3	0	3	7,708		7,708
VG	3	0	3	3,250		3,250
AB	0	1	1		3,335	3,335
MB	1	0	1	1,412		1,412
MM/DM	1	0	1	1,790		1,790
MT	3	0	3	3,180		3,180
BM	7	0	7	9,929		9,929
FH	8	2	10	14,848	2,567	17,415
LS	2	1	3	3,858	198	4,056
M/L	24	5	29	37,198	3,779	40,977
RL	0	1	1			
MC		1	1			
<b>Total</b>	<b>123</b>	<b>49</b>	<b>172</b>	<b>\$221,135</b>	<b>\$44,965</b>	<b>\$266,100</b>

### **Fiduciary Duty**

53. As Mann was authorized to conduct discretionary trades, the clients individually reposed their trust in him and stood to be adversely affected by the exercise of his discretion. As such, he had a fiduciary duty to act in their best interests.
54. Mann's manipulation of the clients' accounts through the Client 1 Accounts, and the Unrelated Accounts, was enabled by Mann's status as a PM exercising discretionary authority in managed accounts, as the clients were not contacted prior to trade execution. As such, his actions also constituted a breach of his fiduciary duty to the clients.
55. Mann's deliberate misuse of the error account through backdated transactions, and through cancel and correct transactions, was to compensate clients, and to manipulate clients' account performance and enhance client account performance. These actions arose through misleading, fraudulent and/or deceptive representations to his firm, and clients. They also constituted a breach of his fiduciary duty. As such, his actions were contrary to Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016).

### **Failure to Report Client Complaint**

56. Clients EAD and EID were a retired couple, born in 1928 and 1926 respectively, who resided in British Columbia and held a several accounts with Mann. Mann did not hold discretionary authority over trading in any of their accounts.
57. EID passed away, leaving her husband EAD, and her son in law, TM, who at all material times held a general power of attorney over their affairs.
58. On October 14, 2015 TM sent an email to Mann in which he alleged that Mann had engaged in unauthorized discretionary trading in the accounts, as well as know your client, know your product and suitability failures.
59. Despite the written email complaint, Mann failed to report the complaint as required pursuant to DM Rule 3100(I)(A)(1)(c).

60. In the Staff Interview, Mann admitted that he did not advise his firm of the complaint.

**DATED** at Vancouver, British Columbia this 26<sup>th</sup> day of March, 2019