

  
AUG 01 2019

**IN THE MATTER OF:**

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

**AND**

**BARDYA ZIAIAN**

**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: September 25, 2019 at 10:00 AM

The Initial Appearance will be held at: 121 King Street West, Suite 2000, Toronto, Ontario

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated July 31, 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 an:

- 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 8210 and 8214 and/or IROC 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 8210 and/or IROC 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 1st day of August, 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**

**BARDYA ZIAIAN**

**STATEMENT OF ALLEGATIONS**

Further to a Notice of Hearing dated August 1, 2019, Enforcement Staff make the following allegations:

**PART I – REQUIREMENTS CONTRAVENED**

Between August 2013 and December 2013 (the “Relevant Period”), the Respondent engaged in improper trading activity by obtaining allocations of new issues for the purpose of proprietary trading and not for the purpose of allocating the new issues to the Dealer Member’s clients, contrary to Dealer Member Rule 29.1.

**PART II – RELEVANT FACTS AND CONCLUSIONS**

**Overview**

1. The Respondent was an Approved Person and also a director, the sole shareholder, supervisor and the Ultimate Designated Person (“UDP”) at BBS Securities Inc. (“BBS”) since its inception in October 2008.
2. During the Relevant Period, the Respondent was responsible for his firm’s syndication activities and proprietary trading.

3. As part of his syndication activities, the Respondent expressed interest in new issue allocations for his firm from various Dealer Members who were part of the syndicate for the new issue distributions.
4. The Respondent sought allocations of new issues for the purpose of engaging in proprietary trading and not for the purpose of allocating shares to the public. After receiving confirmation of the allocation the Respondent's firm would receive, the Respondent would sell the shares short in the marketplace. These short positions would be covered when the new issue closed and the shares were received.
5. The Respondent received the new issue allocations at the "drawdown price", which is the price set by the syndicate manager for intra-syndicate transfers or to the selling group. The "selling concession" is the difference between the public offering price and the drawdown price. The selling concession represents the commission earned by the broker for distributing the new issue to clients.
6. The majority of the new issues (81.7% of market value) were allocated to his firm's inventory accounts or non-arm's length client accounts over which the Respondent had control. A small number of new issues (14.2% of market value) were allocated to other retail clients. A small portion of the new issues (4.1%) were excluded from Staff's analysis because of incomplete documentation.
7. The purpose of the selling group is to assist in distributing the new issue to the public. Many of the new issues for which the Respondent received allocations contained a specific disclosure from the syndicate members that the securities were "not pro-eligible" or alternatively were "available for retail". Notwithstanding this disclosure, the Respondent allocated new issue shares into his firm's inventory accounts or non-arm's length client accounts over which he had control.

## **The Respondent**

8. The Respondent was an Approved Person with BBS during the Relevant Period. BBS is a Dealer Member, offering primarily order-execution services. Specifically, the Respondent was a director, shareholder, supervisor and the UDP at BBS since its inception in October 2008. He became a Registered Representative in November 2011.
9. The Respondent is not currently an Approved Person.
10. During the Relevant Period, the Respondent had multiple functional responsibilities at BBS including the conveying of expressions of interest to underwriting syndicates for new issue deals, as well as proprietary trading.

## **New Issue Financing**

11. When an issuer seeks to raise capital in the public markets, it will generally engage the services of one or more firms to act as underwriters of the financing. These firms are commonly referred to collectively as the "Syndicate" or, individually, as a "Syndicate Member".
12. Syndicate Members will enter into a contractual underwriting agreement with the issuer, pursuant to which the Syndicate Members purchase the new issue securities from the issuer at an agreed price, less a commission. The Syndicate Members then offer these securities to their clients at the public offering price agreed to, and receive the securities at a "drawdown price". The "selling concession" is the difference between the public offering price and the drawdown price. The syndicate also receives underwriting fees.
13. Syndicate Members may also elect to sell underwritten securities to firms which are outside the syndicate (the "Selling Group" or "Selling Group Members"). These sales are

made at the drawdown price. The Selling Group offers the new issues to its clients at the public offering price.

14. There is no contractual relationship between the Syndicate Members and the Selling Group Members. The Syndicate sends an e-mail to potential members of a Selling Group advising that a particular new issue has become available.
15. If a member of the Selling Group has demand from its clients, that demand is communicated to the Syndicate Members by way of an expression of interest. The Selling Group Member may then be allocated the new issue securities by the Syndicate.

#### **Staff's Review**

16. During the Relevant Period, the Respondent's firm was a member of the Selling Group for a number of new issues.
17. Staff reviewed 94 deals during the Relevant Period. The Respondent's practice was to express interest to the Syndicate Members for new issues when he had no intention to distribute the new issues to clients and had no demand from any client.
18. BBS received from Syndicate Members securities valued at \$93,036,065. The vast majority of securities (\$75,987,797 – or 81.7% of securities received) from the Syndicate Members were taken into a BBS inventory account, or non-arm's length client accounts over which the Respondent exercised control.
19. Table 1 summarizes the new issues allocated to BBS inventory accounts or non-arm's length client accounts controlled by the Respondent.

**TABLE 1**

<b>Account</b>	<b>Number of deals</b>	<b>Market value of Participation</b>
BBS Inventory (NIH)	29	\$43,650,537.00
BBS Inventory (NIR)	22	\$13,576,730.00
ABC Capital Management	39	\$13,191,325.00
Respondent	9	\$1,317,360.00
Client 1	6	\$4,173,820.00
Client 2	2	\$42,450.00
Client 3	2	\$35,575.00
<b>TOTAL</b>		<b>\$75,987,797.00</b>

20. In contrast, other retail client accounts received only \$13,276,208 (14.2%) of the new issue securities allocated by the Syndicate Members.
21. After the Respondent received confirmation of an allocation for a new issue, the Respondent sold short a corresponding number of securities in the marketplace. The Respondent covered his short position using the securities received from the underwriting syndicate when the distribution closed.
22. The Respondent's improper trading activity was profitable and, as the sole shareholder of BBS, he received significant financial benefits.
23. The Respondent received drawdown prices or selling concessions in the amount of \$1,480,045.10 for the new issues which were allocated to BBS inventory accounts or non-arm's length client accounts. When the Respondent closed the short positions, he had trading losses in the amount of \$317,503.21 in BBS inventory accounts and trading profits

of \$800,405.84 in the non-arm's length client accounts. The resultant net financial benefit was \$1,962,947.73.

## **Conclusion**

24. The purpose of the selling group is to distribute new issues to the public. The Respondent obtained new issues to obtain the financial benefits described above and not for the purpose of distributing new issues to the public.

**DATED** at Toronto, Ontario this 31st day of July, 2019.