

IN THE MATTER OF:

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

AND

ROBERT BARBER

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 IIROC Rule 8200, sections 8203 and 8205 in this matter. The purpose of the Initial Appearance is to schedule a hearing (“Hearing”).

The Initial Appearance will be held by way of videoconference on October 11, 2022 at 10:00 a.m. PT

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated August 11, 2022 (“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 subsection 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with subsection 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 subsection 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:

Electronic Hearing/Video Conference

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

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 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) \$5,000,000 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.

DATED this 11th day of August, 2022.

"National Hearing Officer"
NATIONAL HEARING OFFICER
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
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AND

ROBERT BARBER

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated August 11, 2022, Enforcement Staff make the following allegations:

PART I – REQUIREMENTS CONTRAVENED

Contravention 1

Between December 2017 and August 2018, the Respondent Robert Barber failed to fulfill his gatekeeper responsibilities, contrary to IIROC Rule 1400.

Contravention 2

Between 2017 and 2020, the Respondent communicated with his clients using an unapproved third-party communication application, contrary to IIROC Rule 1400.

PART II – RELEVANT FACTS AND CONCLUSIONS

Overview

1. Between December 2017 and August 2018, the Respondent facilitated activity in a client's accounts which generated indicators or red flags that suggested that the accounts' activity was suspicious.
2. The suspicious activity in the client accounts consisted of the deposit of share certificates for four issuers for values¹ ranging from \$165,000 to \$2,818,000; the sale of those securities in the days before and shortly after the share certificate deposits; and the immediate withdrawal of the majority of the proceeds of sale. For certain issuers, the trading was uneconomic. This activity was well out of line with the client's normal and historical account activity, and the client's know-your-client (KYC) information.
3. Furthermore, the suspicious activity was directed by AM, who did not have formal trading authorization over the accounts, and who in October 2012 had been convicted of market manipulation in Germany, which was reported by Canadian news outlets.
4. The Respondent executed the client's transactions without learning necessary facts related to the client and the orders accepted. By failing to make inquiries to reasonably assure himself that the activity was undertaken for legitimate investment purposes, the Respondent failed to fulfil his gatekeeper responsibilities.
5. As well, between 2017 and 2020, the Respondent used WhatsApp Messenger to communicate with clients. This was contrary to the Respondent's Dealer Member's policy, and the Dealer Member was not able to monitor the Respondent's WhatsApp communications or maintain and keep them in accordance with its regulatory obligations.

¹ Value of shares at end of day on the date of deposit

The Respondent

6. The Respondent is a Registered Representative (RR) who currently works at the Vancouver office of Research Capital Corporation, formerly Mackie Research Capital Corporation (Research Capital). He has been registered as an RR since 2009 and a RR with Research Capital since June 2015.

The Northwest Accounts and AM's Undisclosed Involvement

7. In January 2016, Northwest Marketing and Management Inc. (Northwest) opened an investment account and a margin short account at Research Capital. At all material times, the Respondent was the Registered Representative who was responsible for the Northwest accounts.
8. DT was the president and sole beneficial owner of Northwest and was introduced to the Respondent by her spouse/partner, AM.
9. The Respondent understood Northwest to be a holding company for DT and her investments. However, AM controlled Northwest. AM directed trading in the Northwest accounts but did not have formal trading authorization.
10. The Respondent frequently communicated with AM directly without DT regarding the Northwest accounts. The Respondent believed AM provided consulting services for Northwest and understood him to be a stock promoter but the Respondent did not know what companies he worked for or assisted.
11. At Research Capital, AM's involvement in the Northwest accounts was known to the Respondent alone.
12. In October 2012, AM was convicted of market manipulation in Germany, which was reported by Canadian news outlets including the Vancouver Sun.

13. Given the extent of AM's involvement in the Northwest accounts, the Respondent ought to have conducted due diligence on AM and/or disclosed AM's involvement in the Northwest accounts to Research Capital. However, the Respondent did not and Research Capital was accordingly not given the opportunity to perform heightened supervision over the Northwest accounts in circumstances where an unauthorized individual who had been convicted of market manipulation effectively had undocumented trading authorization over the accounts.

Unusual/Out of Line Account Activity

14. In January 2016, when Northwest opened its accounts, its New Client Account Form (NCAF) details included the following:

- Type of business: consulting/advisory
- Investment objectives: 100% short term trading
- Risk tolerance: 100% high
- Annual income: \$500,000
- Liquid assets: \$150,000
- Fixed assets: \$400,000
- Net worth: \$550,000

15. From account opening until April 2016, Northwest had no account activity.

16. Between May 2016 and November 2017, Northwest's:

- (a) month-end investment account value ranged between \$58,000 and \$245,000;
- (b) monthly stock receipts² ranged from \$5,000 to \$118,000 (occurring 7 times in 5 months of the 19 month period); and
- (c) monthly cash withdrawals ranged between \$4,000 and \$110,000 (occurring 13 times in 6 months of the 19 month period).

² excluding warrants

17. However, starting from December 2017, Northwest began depositing or transferring in large volumes of share certificates for four issuers, selling or short selling them in the days around the investment account's receipt of the shares, and immediately withdrawing the majority of the proceeds of sale. A summary of Northwest's activity in respect of the four issuers is detailed in Schedule "A".
18. In contrast to Northwest's account activity described at paragraph 16 above, between December 2017 and August 2018, Northwest's:
 - (a) month-end investment account value ranged between \$673,000 and \$1,321,000;
 - (b) monthly stock receipts³ ranged from \$51,250 to \$4,843,000 (occurring 19 times in 8 months of the 9 month period); and
 - (c) monthly cash withdrawals ranged between \$55,000 and \$5,250,000 (occurring 21 times in each month of the 9 month period).

(a) Abattis Bioceuticals Corp (ATT)

19. In or around early December 2017, AM or Northwest instructed the Respondent to sell shares of Abattis Bioceuticals Corp (ATT) that were or were going to be issued to Northwest.
20. On Friday, December 8, 2017, the Respondent sold 300,000 ATT shares in the Northwest accounts valued at approximately \$68,790, net of commissions. Northwest held no shares of ATT in any of its accounts at that time.
21. On Monday, December 11, 2017, Research Capital's credit department flagged Northwest's ATT short position to the Respondent, who advised that a share certificate that was supposed to have been delivered to Research Capital would be forthcoming. The Respondent, having then forwarded blank corporate resolution and power of attorney

³ excluding warrants

forms to Northwest which were required by Research Capital to be executed and delivered together with share certificate deposits, knew that Northwest had not delivered any ATT share certificates.

22. On December 12, 2017, the Northwest accounts continued to hold no ATT shares but the Respondent accepted an unsolicited order to sell a further 800,000 ATT shares. The value of those shares was approximately \$453,945, net of commissions. The Respondent sold the further ATT shares without confirming that Research Capital had received and cleared any certificates of ATT shares issued to Northwest.
23. On December 13, 2017, Research Capital's operations personnel notified the Respondent that Research Capital had received a certificate for 1,111,111 ATT shares issued to Northwest, together with corporate resolution and power of attorney forms. Notably, the share certificate was dated December 12, 2017 and the forms were signed but otherwise blank. The 1,111,111 ATT shares were deposited effective December 14, 2017 and valued at \$555,555 at the end of the day of deposit. The value of the deposited ATT shares was equivalent to Northwest's documented net worth.
24. Also on December 13, 2017, the Respondent sought a cheque to be issued to Northwest. A cheque in the amount of \$55,000 was issued to Northwest, which was the largest sum that had been issued to Northwest since account opening.
25. On December 13 and 14, 2017, the Respondent accepted unsolicited orders to sell a further 2,122,222 shares in the Northwest accounts. The value of those shares was approximately \$1,168,965, net of commissions.
26. On December 15, 2017, Research Capital's credit department again flagged Northwest's ATT short position to the Respondent, who advised that a further share certificate was going to be delivered. The further certificate for 1,000,000 ATT shares was eventually delivered to Research Capital on December 15, 2017, and 1,111,111 warrants were exercised, while the Respondent sold another 1,700,000 ATT shares, unsolicited, in the Northwest accounts, valued at \$955,300, net of commissions. Notably, the share

certificate was dated December 18, 2017, and again the accompanying corporate resolution and power of attorney forms were signed but otherwise blank.

27. On December 20, 2017, a further certificate for 2,713,178 ATT shares issued to Northwest was delivered to Research Capital, together with blank signed corporate resolution and power of attorney forms.
28. On or about December 20, 2017, the Respondent arranged for a cheque in the amount of \$1,500,000 to be issued to Northwest. This was by far the largest sum ever requested since account opening, as previous cheques issued to Northwest ranged between \$4,000 and \$55,000.
29. Between December 20 and 27, 2017, the Respondent continued to accept unsolicited orders to sell a total of 1,113,178 ATT shares from the Northwest accounts. The value of those shares was approximately \$534,774, net of commissions. On December 28, 2017, a further \$150,000 cheque was issued to Northwest.
30. On January 3, 2018, the Respondent sold 500,000 ATT shares unsolicited from the Northwest accounts. The value of those shares was approximately \$411,815, net of commissions. The Respondent also arranged for a cheque in the amount of \$1,000,000 to be issued to Northwest, being the second largest sum ever requested since account opening.
31. On January 4, 2018, Research Capital's credit department again flagged Northwest's 500,000 ATT short position to the Respondent. The Respondent advised that a certificate would be coming, and later that afternoon, a certificate dated January 4, 2018 for 2,558,139 ATT shares issued to Northwest, together with blank signed corporate resolution and power of attorney forms, was delivered to Research Capital.
32. On January 5, 2018, the Respondent sold 2,050,000 ATT shares unsolicited from the Northwest accounts. The value of those shares was approximately \$1,386,738, net of commissions.

33. On January 8, 2018, the Respondent sold a further 1,814,500 ATT shares unsolicited from the Northwest accounts. The value of those shares was approximately \$1,332,152, net of commissions.
34. Between January 9 and 12, 2018, the Respondent sold 2,739,093 ATT shares unsolicited from the Northwest accounts. The value of those shares was approximately \$1,864,620, net of commissions. A certificate for 4,545,454 ATT shares issued to Northwest was instant deposited to the Northwest account on January 11, 2018.
35. The Respondent then requested cheques to be issued to Northwest on January 16, 22 and 26, 2018, in the amounts of \$1,400,000, \$400,000 and \$350,000 respectively.
36. All of the above ATT trading and related account activity was well out of line with Northwest's historical account activity and its KYC information.

(b) Affinor Growers Inc. (AFI)

37. In or around early March 2018, AM or Northwest instructed the Respondent to sell shares of Affinor Growers Inc. (AFI) that were, or were going to be, issued to Northwest.
38. On Tuesday, March 6, 2018, the Respondent sold 446,500 AFI shares unsolicited in the Northwest accounts valued at approximately \$77,328, net of commissions. Northwest held no shares of AFI in any of its accounts at that time.
39. Between March 7 and 9, 2018, the Respondent sold a further 860,500 AFI shares, unsolicited, valued at approximately \$147,353, net of commissions.
40. On March 7 and 8, 2018, Research Capital's credit department flagged Northwest's AFI short position to the Respondent.
41. On March 9, 2018, a certificate dated March 9, 2018 for 2,333,333 AFI shares issued to Northwest, together with blank signed corporate resolution and power of attorney forms, was delivered to Research Capital. Similar to the ATT selling activity, the Respondent had

sold the AFI shares without confirming that any share certificate issued to Northwest existed, or had been received by Research Capital and cleared.

42. Between March 12 and 28, 2018, the Respondent sold a further 4,084,500 AFI shares unsolicited from the Northwest accounts, valued at approximately \$715,832, net of commissions, and certificates for 3,000,000 AFI shares issued to Northwest, valued at \$505,000, were deposited into the Northwest accounts. The Respondent arranged for a cheque in the amount of \$350,000 to be issued to Northwest on March 22, 2018.
43. All of the above AFI trading and related account activity was well out of line with Northwest's historical account activity and its KYC information.

(c) Uneconomic Trading – Beleave Inc. (BE)

44. Between July 3 and 9, 2018, the Northwest account sold 250,000 shares of BE at a weighted average sale price per share of \$1.42479.
45. On July 4, 2018, the Northwest account deposited 250,000 shares of BE that were acquired at a price per share of \$2.00, of which the Respondent was aware.
46. This trading activity resulted in a loss of \$143,801 before gross commissions of \$3,640. The loss represented over 25% of Northwest's documented annual income and net worth.
47. The Respondent was aware or ought to have been aware that the trading in BE was uneconomic.

(d) Uneconomic Trading – New Point Exploration Corp. (NP)

48. Between August 9 and 13, 2018, the Northwest account sold 5,000,000 shares of NP at a weighted average sale price per share of \$0.07141.
49. On August 10, 2018, the Northwest account deposited 5,000,000 shares of NP that were acquired at a price per share of \$0.125.

50. This trading activity resulted in a loss of \$267,913 before gross commissions of \$3,650. The loss represented approximately 50% of Northwest's documented annual income and net worth.
51. The Respondent was aware or ought to have been aware that the trading in NP was uneconomic. However, the Respondent did not ask Northwest any questions about the trading in NP.

Failure to Act on Unusual/Out of Line Account Activity and Make Reasonable Inquiries

52. All of the above account activity was well out of line with Northwest's normal and historical activities.
53. The Respondent accepted unsolicited orders from AM on behalf of Northwest or from Northwest to sell large quantities of ATT, AFI, BE and NP shares before confirming that share certificates issued to Northwest were in fact in existence, had been deposited, and had cleared. This type of trading activity created significant short positions in these securities and particularly with respect to ATT and AFI, left the Northwest account significantly undermargined. The Respondent did so despite warnings and queries from Research Capital's credit and compliance personnel.
54. After Research Capital's compliance inquiries made in December 2017, the Respondent ought to have been more alert to red flags in the Northwest accounts. For example, in January 2018, when further ATT shares were being sold from and shares were being deposited into the Northwest accounts, Research Capital's Vice President of Compliance asked the Respondent how Northwest was able to sell ATT shares that were recently acquired via private placement given the four-month hold period that typically applied, the Respondent advised that the shares were acquired "under exemption 2.24 which made them free trading." However, the Respondent:
 - (a) did not know what "exemption 2.24" was;
 - (b) did not take any steps to inform himself as to what "exemption 2.24" was; and

(c) did not take any steps to satisfy himself that the information provided by the client was legitimate.

55. Prospectus exemption 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions* relates to exemptions available to employees, executive officers, directors and consultants. However, the Respondent did not know whether Northwest was providing or had provided consulting services to any of the issuers. The Respondent also did not follow-up with Northwest to obtain a copy of any consulting agreement that Northwest may have had with ATT, as requested by the Respondent's compliance department in January 2018.
56. In light of all the foregoing circumstances, the Respondent ought to have made further inquiries to reasonably assure himself that the account activity was undertaken for legitimate investment purposes. By failing to do so, the Respondent failed to fulfill his gatekeeper responsibilities.

Assets in Accounts Greatly Exceeded Northwest's Documented Assets

57. Between December 2017 and August 2018, Northwest's month-end account balances significantly exceeded Northwest's documented liquid assets of \$150,000 and net worth of \$550,000.
58. On January 11, 2018, after Northwest deposited shares in ATT, the Respondent's Branch Manager asked the Respondent how Northwest was able to purchase \$2 million worth of shares given Northwest's KYC information. The Respondent was aware that Northwest's documented KYC information was no longer consistent with Northwest's account activity. The Respondent advised his Branch Manager that he would update Northwest's KYC but did not do so.
59. In May 2018, the Respondent updated Northwest's KYC to reflect an address change but failed to make any other changes to Northwest's KYC.

Commissions Earned

60. The Respondent charged commissions for the transactions in the four issuers as described above, which resulted in net commissions to him as follows:
- (a) ATT: \$48,926, for activity from December 8, 2017 to January 12, 2018;
 - (b) AFI: \$5,599, for activity from March 6 to 28, 2018;
 - (c) BE: \$2,184, for activity from July 3 to 9, 2018; and
 - (d) NP: \$2,190, for activity from August 9 to 13, 2018.

Prohibited Client Communications via WhatsApp Messenger

61. Research Capital's policies and procedures required the Respondent to conduct Research Capital business communications through his official email address at "mackieresearch.com" and specifically prohibited the sending of messages through outside service providers. The Respondent annually acknowledged in writing that he had reviewed Research Capital's policies and would comply with them.
62. Contrary to Research Capital's policies and procedures, the Respondent conducted Research Capital business communications with clients via WhatsApp Messenger, an outside service provider. The number of WhatsApp messages and quantity of clients with whom he exchanged WhatsApp communications is uncertain because the Respondent deleted them.
63. Research Capital was not able to capture the communications sent and received through WhatsApp Messenger so that it could supervise them, or maintain and keep them.
64. The Respondent's use of WhatsApp Messenger to communicate with clients and subsequent deletion of client communications was not consistent with his obligations to observe high standards of conduct.

DATED at Vancouver, British Columbia, this 11th day of August, 2022.

Schedule "A"

Abattis Bioceuticals Inc. (ATT)

	December 2017	January 2018
Deposit Volume	6,035,400 ⁴	7,103,593
Acquisition Cost	\$1,998,944 ⁵	\$3,100,000
Sell Volume	6,035,400	7,103,593
Net Sell Proceeds	\$3,181,774	\$4,995,324
Cheque Withdrawals	\$1,705,000	\$5,250,000

Affinor Growers Inc. (AFI)

	March 2018
Deposit Volume	5,391,500 ⁶
Acquisition Cost	\$853,333 ⁷
Sell Volume	5,391,500
Net Sell Proceeds	\$940,521
Cheque Withdrawals	\$350,000

Beleave Inc. (BE)

	July 2018
Deposit Volume	250,000
Acquisition Cost	\$500,000
Sell Volume	250,000
Net Sell Proceeds	\$352,559
Cheque Withdrawals	\$100,000

New Point Exploration (NP)

	August 2018
Deposit Volume	5,000,000
Acquisition Cost	\$625,000
Sell Volume	5,000,000
Net Sell Proceeds	\$353,437
Cheque Withdrawals	\$450,000

⁴ Including 100,000 open market buy and warrant exercise of 1,111,111.

⁵ Value of 100,000 open market buy and warrant exercise of 1,111,111 = \$327,278.

⁶ including 58,167 open market buy.

⁷ Value of 58,167 open market buy = \$8,845.