

IN THE MATTER OF:

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

AND

JEFFREY BRIAN BER

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 by way of videoconference on November 16, 2021, at 10:00 a.m. (MT)

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated September 2, 2021 (“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:

Electronic Hearing

The Respondent may object to the format of the Hearing. The objection must be made in accordance with Section 8409.

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 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 8209 and 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; [delete if not applicable]
- (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 and/or IIROC Dealer Member Rule 20.49.

DATED this 2 day of September 2021.

"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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JEFFREY BRIAN BER

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated September 2, 2021, Enforcement Staff make the following allegations:

PART I – REQUIREMENTS CONTRAVENED

Contravention 1

In March, 2017, the Respondent received an off book payment from an issuer without the approval of his Dealer Member, contrary to Consolidated Rule 1400.

Contravention 2

In March, 2017, the Respondent effected unauthorized trades in clients' accounts, contrary to Consolidated Rule 1400.

PART II – RELEVANT FACTS AND CONCLUSIONS

Overview

1. The Respondent, Jeffrey Brian Ber (“Ber”) was a Registered Representative (“RR”) with TD Waterhouse Canada Inc. (“TDW”), and prior to that, Scotia Capital Inc. (“Scotia”) in Calgary, Alberta. Ber is not currently employed as an RR with a Dealer Member firm.
2. In 2017, a junior oil and gas issuer that traded on the TSX Venture Exchange (the “Issuer”) paid \$104,568.75 to Ber personally following the closing of a financing in which TD Securities participated in an underwriting syndicate with respect to an equity offering of the Issuer’s shares. Ber did not seek approval for or disclose this payment to TDW.
3. In this financing, Ber purchased approximately \$6.7M for 55 clients (“Clients”). However, many of these purchases were not authorized by the Clients in advance of the purchase. In addition, Ber received commission payments from TDW in the amount of approximately \$152,000 with respect to these purchases.

Registration History

4. Ber first became an RR in 2007. Between January, 2011 and October, 2016, he was an RR with Scotia, in Calgary. Between October, 2016 and April, 2017, he was an RR with TDW.

The Issuer

5. In June, 2013, while Ber was at Scotia, Ber met JM, who was employed with the Issuer. The two became friends and JM became a Ber client.
6. In early 2014, the Issuer was in the process of seeking financing. Ber assisted the company with marketing and presentation materials.

Undisclosed Payment #1 to Ber

7. In October, 2014, the Issuer paid Ber \$15,000. The funds were paid by cheque dated October 16, 2014, and were paid to him personally, with the subject line of the cheque bearing the words "commission". Ber did not seek approval for or disclose this payment to Scotia.

2017 Financing

8. In October, 2016, Ber left Scotia and began working as an RR with TDW.
9. In March, 2017, TD Securities Inc. ("TD") participated in an underwriting syndicate with respect to an equity offering of the issuer's shares ("2017 Financing"). It closed on March 14, 2017.
10. In conjunction with the 2017 Financing, Ber sought and received an allotment of 12,275,000 shares (\$6,751,250) for his clients. This allotment represented approximately 90% of TD's participation in the financing.
11. Under this allotment, Ber purchased BBI shares in 55 Clients' accounts, resulting in commissions paid to Ber by TDW of \$152,210.

Undisclosed Payment #2 to Ber

12. Nine days after the closing of the 2017 Financing, on March 23, 2017, BBI provided Ber with a cheque payable to him personally in the amount of \$104,568.75. On March 29, 2017, Ber deposited this cheque into his primary bank account at another financial institution. He did not seek approval from or disclose the payment of these funds to TDW.

TDW Internal Investigation

13. In April, 2017, TDW conducted an internal investigation into Ber's conduct with respect to the 2017 Financing. On April 26, 2017, in the course of the internal investigation, Ber was interviewed by outside legal counsel on behalf of TDW. In the interview, Ber denied any knowledge of any funds received by him personally from the Issuer.
14. On April 27, 2017 (one day after the interview), Ber contacted TDW legal counsel to advise that he now recalled receiving funds from the Issuer, but that the funds were for consulting work he had done for them over several years but had only been paid in March, 2017.
15. On April 28, 2017, Ber resigned from his employment with TDW while under investigation.
16. In July, 2017, the Issuer publicly reported that the approximately \$104,000 paid to Ber in March, 2017 was paid for consulting services plus out of pocket expenses provided by Ber over a 3 year period. The Issuer also stated that Ber had been advised, prior to payment, that such payment should be disclosed to his investment firm.
17. Subsequently, TDW unwound the allocation of 7,778,000 shares to certain of the Clients' accounts, resulting in no losses or fees charged to these clients.
18. Ber's failure to disclose his receipt of funds off book from an issuer whose securities he was purchasing for clients in the 2017 Financing constitutes conduct unbecoming contrary to Consolidated Rule 1400.

Unauthorized Trading

19. Ber did not have discretionary authority over any of the Clients' accounts.

20. During an internal investigation interview, Ber stated that he had communicated with all of the Clients and was authorized to purchase the 2017 Financing in their accounts.
21. On electronic client notes recorded on the TDW internal note keeping system, Ber entered near identical generic notes for many of the Clients in early March, 2017 suggesting that he had contacted them to authorize their participation in the 2017 Financing.
22. However, many of the Clients stated that they were not aware of these transactions prior to purchase in their accounts.
23. Ber purchased the Issuer shares in many of the Clients' accounts in the 2017 Financing when he did not have the authority to do so. As such, Ber engaged in unauthorized trading contrary to Consolidated Rule 1400.

DATED at Calgary, Alberta this 2nd day of September 2021.