Re Mann

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Dwight Cameron Mann

2020 IIROC 43

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District)

Heard: June 18, July 6-7, 2020 in Vancouver, British Columbia via videoconference
Decision: July 7, 2020
Reasons for Decision: November 21, 2020

Hearing Panel:
Joseph A. Bernardo, Chair, Bradley Doney and Alexandra Williams
Appearance:
David McLellan, Senior Enforcement Counsel
Patrick Sullivan, for the Respondent
Dwight Cameron Mann (present)

REASONS FOR DECISION

¶ 1 These are the reasons for the Hearing Panel's decision to sanction Dwight Cameron Mann, the terms of which were rendered orally on July 7, 2020 and subsequently confirmed in writing on September 21, 2020. The Order is attached.

FACTS

¶ 2 The relevant facts are reviewed and discussed in the reasons for the Panel's liability decision at *Re Mann* 2020 IIROC 06.

APPLICATION TO ADMIT EXPERT EVIDENCE

¶ 3 On May 20, 2020, the Respondent applied for leave to include expert opinion evidence as part of his submissions on sanction. IIROC Enforcement Staff opposed the application.

¶ 4 On June 18, 2020, the Panel received the submissions of the parties and refused the application.

¶ 5 The proposed expert evidence consisted of an April 30, 2020 report prepared by Neil Boyd, a Professor in the School of Criminology at Simon Fraser University (Boyd Report), who the Respondent also intended to proffer as a witness.

¶ 6 Although IIROC hearing panels are not bound by the rules of evidence, the parties agreed that the underlying principles behind them should nonetheless inform a panel's exercise of discretion in the admission and weighing of evidence. In this regard, both parties relied on the Supreme Court of Canada's guidance on

the admission of expert evidence in civil proceedings in *R. v. Mohan*, [1994] 2 S.C.R. 9 and *White Burgess Langille Inman v. Abbott and Haliburton Co.,* [2015] 2 S.C.R. 182.

¶ 7 In *Mohan,* the Court set out four criteria that expert evidence must satisfy to be admissible in civil proceedings. The proposed evidence:

(a) must be relevant to a factual matter in issue;

(b) must be necessary, meaning it must go beyond being merely helpful and "provide information which is likely to be outside the experience and knowledge" of the trier of fact;

(c) cannot violate an exclusionary rule of evidence (a criterion that obviously does not apply in IIROC proceedings, where there are no such rules); and

(d) must be provided by a properly qualified expert witness.

Mohan, supra, at para 17.

¶ 8 The Court's decision in *White Burgess* supplements this analytical framework with a "second discretionary gatekeeping step", whereby the objective value of otherwise admissible expert evidence is to be assessed. Essentially, the benefit to the trier of fact of admitting expert evidence should be weighed against any undue inefficiencies or other harms it might introduce to the fact finding process.

White Burgess, supra, at para 24.

¶ 9 Professor Boyd prepared his report in response to two questions posed to him by the Respondent's counsel:

(a) What impact does the severity of sanctions have on "generally deterring" the conduct of others and preventing others from engaging in similar conduct? In considering the question, please feel free to focus on the regulatory context and/or the particular misconduct referred to above.

(b) General deterrence operates on the assumption that the consequences of wrongful conduct (sanctions) are published in various fora and as a result of this publication, others are deterred from similar conduct. Accepting this premise, what role can publication of the consequences of a [r]espondent's conduct have on the Respondent?

¶ 10 The Boyd Report endeavors to answer these questions by reviewing a substantial body of academic literature that examines the relationship between the severity of sanctions and general deterrence within the criminal law context.

¶ 11 Both counsel in their submissions addressed the admissibility criteria set out in *Mohan* and *White Burgess* in considerable detail. It is not necessary to review all of their arguments to explain why the Panel refused the Respondent's application. It is sufficient to briefly touch on the relevance and necessity criteria only.

¶ 12 The Respondent's counsel characterized Professor Boyd's proposed evidence as offering an expert opinion on how general deterrence operates in practice.

¶ 13 In counsel's submission, this made it relevant to a matter in issue, namely, the Panel's duty to determine a penalty that properly addresses general deterrence in a manner proportionate and appropriate to the particular circumstances of this case. According to this reasoning, it was necessary for the Panel to receive Professor Boyd's opinion on how deterrence works because it was helpful information germane to penalty and based in empirical research outside of the Panel's experience.

¶ 14 The Staff altogether rejected the Respondent's application as hopelessly misconceived.

¶ 15 On the relevance criterion, Senior Enforcement Counsel submitted that the Boyd Report was incapable

of being relevant because its underlying premise had not been established.

(a) The Report reviews criminological research to conclude that there is no compelling evidence to suggest that a severe criminal sentence promotes greater general deterrence than a more lenient one, provided both sentences fall within a given offence's usual sentencing range.

(b) Extending this observation to the present case, Professor Boyd says there is no reason to believe that ordering a severe penalty against the Respondent would result in any greater general deterrence than ordering a less severe penalty within the appropriate sanctioning range.

(c) This conclusion assumes that how general deterrence works, or appears to work, in criminal sentencing applies equally to the business conduct of individuals subject to IIROC's supervision. Making this assumption is the same as claiming that a finding about criminal behaviour in the general population is portable to the distinct subgroup of the population that has chosen to qualify and participate in the securities industry. This crucial premise, however, cannot be assumed but must be established, which the Boyd Report fails to do.

(d) Criminal sentencing and IIROC sanctions serve quite different purposes: one aims to uphold the basic norms of society, while the other serves the far narrower purpose of preserving the integrity of a highly regulated specific activity. An individual subject to IIROC's jurisdiction is a person who has chosen to be governed by, and has agreed to be held to, the rigorous performance standards mandated by the Rules. When such an individual fails to meet those standards, the misconduct is typically less a matter of outright anti-social behaviour than negligence or incompetence. Given these important distinctions, findings about criminal sentencing cannot be assumed to apply without qualification to the subpopulation of self-selected individuals that comprises the securities industry.

¶ 16 As to the question of necessity, Senior Enforcement Counsel submitted that the Boyd Report would not be helpful to the Panel in determining the appropriate sanction.

(a) The members of an IIROC hearing panel possess an expert understanding of the Rules, the policy objectives they are intended to achieve, their practical operational application, and the needs, expectations, and challenges of the securities industry. The essential purpose of a hearing panel is to deploy its recognized specialized expertise to achieve enforcement outcomes tailored to the industry's unique complexities.

(b) This intimate knowledge of the IIROC context is the determining factor in any consideration of deterrence. The sanctions that may be ordered under the Rules are industry specific. As expert regulatory tribunals, hearing panels are empowered to make penalty orders precisely because they possess a close understanding of the deterrent effect of sanctions on IIROC regulated persons and the industry specific compliance behaviours that they serve to encourage. An extrinsic, generic opinion on general deterrence does not materially add to this understanding.

¶ 17 The questions Professor Boyd was asked to answer were unusual. Typically, the forensic purpose of expert evidence is to assist a trier of fact in interpreting other evidence whose full significance is difficult to appreciate without specialized knowledge. Professor Boyd, however, was not engaged to assist in the interpretation of facts relating to the Respondent's misconduct. He was engaged to opine on the likely deterrent effect of sanctions generally. As a result, his opinions effectively make a policy claim about how hearing panels should exercise their sanctioning discretion. This verges dangerously close to making a legal argument.

¶ 18 This observation should not be construed as a criticism of either Professor Boyd or anything he says in his Report. The difficulty here is not in the nature or quality of his analysis. It is in the abstract nature of the

questions he was asked to answer.

¶ 19 The Respondent's counsel emphasized that the IIROC disciplinary hearing context does not require the Mohan criteria to be applied as rigorously as in the civil context. That is true, but the admissibility of any evidence always turns on relevance; and, even if relevant in a technical sense, an expert opinion must also be demonstrably useful in order to ensure a hearing stays focused on the substantive issues.

¶ 20 The Panel refused the application because the Boyd Report did not satisfy the relevance and necessity criteria for the admissibility of expert opinion evidence.

(a) The opinions in the Boyd Report were derived from the study of general deterrence in criminal sentencing. The relevance of the opinions cannot be established absent a compelling explanation for why a finding about general deterrence in the criminal law context should apply to IIROC penalty orders.

(b) The Boyd Report was tendered for the purpose of filling a gap in the Panel's knowledge that does not exist. The specialized expertise of IIROC hearing panels already includes a deep understanding of the motivations, working conditions and many other factors that are specific to the securities industry and that inform the judgment and behaviour of its participants. Even if relevant, the opinions in the Boyd Report would not have been of material assistance to the Panel.

IIROC SANCTION GUIDELINES

¶ 21 The function of penalties in IIROC proceedings is to serve the objectives of securities regulation generally: protecting the investing public and fostering public confidence in the capital markets and the securities industry. Their purpose is to prevent future harm, not punish past misconduct.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paras 59, 68.

¶ 22 To be reasonable, a penalty order must do more than serve a valid regulatory purpose. It must also be rational and fair, which is to say the order must follow "an internally coherent and rational chain of analysis". Among other things, this means a sanction decision must rationally connect the penalty to the facts such that it is demonstrably proportional to the misconduct.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 at paras 14, 85.

¶ 23 In short, the making of penalty orders in IIROC disciplinary proceedings is governed by their regulatory purposes and administrative law generally. This is reflected in the reasoning of previous decisions, which, although not binding, provide useful guidance on identifying the factors a hearing panel will typically weigh when making a sanction decision.

¶ 24 The IIROC Sanction Guidelines helpfully summarize these legal principles, as well as the key factors a hearing panel is well advised to consider in applying them. The Guidelines are not intended to be prescriptive, but rather to offer a general analytical framework for achieving rational enforcement outcomes that protect the investing public and the integrity of the securities industry.

¶ 25 The organizing theme of the Guidelines is that achieving the preventative purpose of disciplinary sanctions requires penalty orders to be proportionate to misconduct.

¶ 26 Sanction deliberations are an exercise in calibrated risk management. A hearing panel's duty is to determine sanctions that achieve an equilibrium between effectiveness and fairness: on the one hand, they must be sufficient to deter the respondent and other persons from engaging in similarly harmful misconduct while, on the other hand, they cannot exceed the bounds of fairness.

¶ 27 Carefully weighing the actual consequences of a violation is central to making this determination. This is because accurately assessing the harms caused by misconduct is the only way of objectively measuring the

risks the sanctions are intended to prevent. It is the only way of ensuring that a sanctions order is rationally defensible.

SUBMISSIONS

Enforcement Staff

¶ 28 On the Staff's behalf, Senior Enforcement Counsel submitted that the Panel should order the following sanctions:

(a) a permanent ban from registration in any capacity;

(b) a $400,000 fine; and

(c) costs in the amount of $50,000.

¶ 29 The Staff's position placed particular emphasis on several of the principles articulated in the Guidelines:

(a) The fundamental purpose of disciplinary sanctions is the prevention of future harm.

(b) When misconduct involves multiple violations, the sanctions ordered should reflect the totality of the misconduct and the harm caused by it.

(c) A permanent ban should be considered when the misconduct involved:

i) significant harm;

ii) had a criminal or quasi-criminal element; or

iii) otherwise established that the respondent cannot be trusted to refrain from engaging in future misconduct.

¶ 30 The need to prevent future harm required permanently prohibiting the Respondent from participating in the securities industry, because:

(a) The Respondent abused the error correction policies of National Bank Financial Ltd. and National Bank Financial Inc. (collectively, NBF) to manipulate client account performance. Exploiting his position as a portfolio manager in this manner caused significant harm, because it was inherently corrosive of the trust relationships upon which the securities industry is based.

(b) The misconduct can fairly be characterized as involving a quasi-criminal element, by virtue of the scale and severity of the deceptions the Respondent undertook to implement it.

(c) As a portfolio manager, the Respondent was vested with discretionary authority over a large number of client accounts. He would not have been able to perpetrate the misconduct, which took place over a period of years, absent his authority to trade without prior client approval. The Respondent's lengthy and systematic abuse of the trust placed in him by NBF and his clients amply establishes that he cannot be trusted to refrain from future misconduct.

¶ 31 The Staff's submission included a comprehensive review of the analytical factors discussed in the Guidelines. The most germane aggravating factors were as follows:

(a) The number and gravity of the violations was substantial, as was the collective value of the improper error correction transactions. Overall, the Respondent's misconduct involved:

i) making unjustified promises of specific results to five clients;

ii) using deceit to implement 103 transactions that abused and were contrary to NBF's error correction policies;

iii) wrongly conferring a total of $229,305 in value on selected client accounts; and

iv) failing to report one client complaint.

(b) The misconduct was deliberate.

(c) The Respondent followed a pattern of repeatedly engaging in deceptive misconduct for an extended period of over three years.

(d) Although it is not possible to quantify the reputational harm imposed on the capital market, it was necessarily significant: catering to unhappy clients by manipulating account performance, and in some cases expressly guaranteeing that he would do so, by definition undercut the credibility of the securities industry and the market's reputation for transparency and honesty.

Respondent

¶ 32 Through counsel, the Respondent asked that the sanctions against him be limited to:

(a) a $150,000 fine; and

(b) a period of continued supervision with respect to his use of error correction practices.

¶ 33 The Respondent's counsel submitted that the Staff's position rested on an unjustifiably punitive interpretation of the Guidelines and the relevant case law.

(a) The Guidelines state explicitly that sanction decisions are discretionary, and should be the result of a thorough assessment of the specific facts and circumstances of a case.

(b) Judicial precedents are emphatic in stressing the importance of proportionality when a person's livelihood is at stake.

(c) The Staff's submissions, by contrast, assumed that misconduct involving dishonesty should always attract a permanent ban and a severe financial penalty.

(d) This misconceives and contradicts the preventative purpose of the IIROC disciplinary process, which contemplates that sanctions will be individualized to avoid unnecessarily punitive outcomes.

(e) Moreover, one of the principles articulated in the Guidelines is that a hearing panel's sanctioning discretion goes beyond simply ordering penalties. Subject to the specific circumstances of a violation, remedial sanctions specifically tailored to misconduct can also provide effective deterrence.

(f) The need for proportionality, therefore, requires that the Panel's sanction deliberations take into account not only the circumstances of the misconduct but also the Respondent's current personal circumstances.

¶ 34 The Respondent's counsel tendered into the record client character references, affidavits sworn by investment advisors supervised by the Respondent, and other documents. The Respondent and his wife also testified in the sanction proceedings. The purpose of this evidence was to establish that the Respondent had already experienced negative consequences due to his misconduct, and was a person of good character who is contrite and will not reoffend.

¶ 35 The Respondent's counsel submitted that the Respondent's misconduct has significantly impacted his professional standing and finances.

(a) After his termination on April 18, 2018, the Respondent secured a new position with Canaccord Genuity Corp. (Canaccord), which applied to have his registration reactivated. IIROC Registration Staff opposed the application.

(b) A suitability hearing took place before a panel of the Pacific District Council Registration Sub-Committee. On August 15, 2018, the panel approved the Respondent's registration, subject to 18 months of strict supervision and other conditions. Implementation delays resulted in the Respondent being unable to engage in licensed activities from April 2018 to December 2018 and, as a result, he experienced a dramatic loss of income that year.

(c) The Respondent had built up a major book of business at NBF, managing in excess of $700 million in assets, over six hundred family accounts, and thousands of individual accounts. Following his termination, NBF sent letters to over 1,700 clients advising them of his misconduct. Subsequently, details of the misconduct were reported by media outlets on various occasions. The damage to the Respondent's reputation led to the departure of clients who declined to follow him to Canaccord. As of September 2019, the Respondent had lost over $240 million in assets under management.

(d) Following the termination, NBF withheld monies owed to the Respondent, some of which it disbursed to cover certain costs associated with addressing the misconduct.

(e) The strict supervision regime required Canaccord to employ two employees to review all of the Respondent's trades and correspondence. The Respondent was responsible for paying the bulk of their salaries.

¶ 36 With respect to the Respondent's character, counsel made the following points:

(a) The monthly reports Canaccord submitted to IIROC since the Respondent was placed under strict supervision did not disclose any issues or problems.

(b) The Respondent is a caring family man, a positive member of his community, and a good person generally.

(c) The Respondent has dedicated his working life to the securities industry. He has worked solely for Dealer Members since his graduation from university in 1993, beginning as a marketing assistant before becoming a registered representative and, eventually, a portfolio manager.

(d) The Respondent has been extra-ordinarily successful in building a large client base because of his hard work, diligence, and extraordinary loyalty to clients. As a portfolio manager, his investment approach is conservative. Although he requires the assistance a large team of investment advisors and support staff to service his many clients, he takes a hands-on approach to managing client accounts.

(e) His termination from NBF, the ensuing civil litigation, the IIROC actions taken against him, and the publicity related to his misconduct have been emotionally devastating to the Respondent and his wife.

(f) The Respondent is remorseful. He admitted having engaged in misconduct at his suitability hearing, when he was interviewed during the IIROC investigation, in the Agreed Statement of Facts, and in his testimony in these proceedings.

(g) He does not have a prior disciplinary history.

¶ 37 The substance of the Respondent's sanction submissions was that he has learned his lesson. He knows what he did was wrong and feels shame over it, but the good he has achieved in his chosen profession outweighs the harm he has caused and he asks for a second chance.

ANALYSIS

¶ 38 The Respondent's counsel was correct to emphasize the need to carefully assess the full circumstances of a case when a person's livelihood is at stake, and to assert the centrality of proportionality in the

determination of sanctions generally.

(a) In *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149, the respondent committed fraud by purporting to sell shares he did not own. The British Columbia Securities Commission ordered a permanent market ban, stating that it was "appropriate in fraud cases regardless of the circumstances of the offence or the offender". The British Columbia Court of Appeal ruled this was an error. It is unreasonable to order the most draconian of sanctions without considering the full evidence, including the respondent's individual circumstances, or the feasibility of alternative sanctions.

(b) In *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273, the Alberta Securities Commission ordered trading bans and major financial penalties after finding the respondents had engaged in insider trading. The liability and sanction decisions were both overturned on appeal. With respect to the sanction decision, the Alberta Court of Appeal held that penalties must be proportionate to a respondent's conduct and individual circumstances. Standing alone, the need for general deterrence is not a principle that can justify imposing crushing sanctions.

¶ 39 Counsel was on less firm ground in emphasizing the materiality of the financial setbacks the Respondent experienced following his termination from NBF.

(a) The hardships that respondents bring upon themselves through their own misconduct are not relevant to general deterrence.

(b) They are, at best, potentially relevant to specific deterrence under certain conditions.

i) A person's ability to pay is always pertinent when a fine is being considered. Indeed, this one of the principles articulated in the Guidelines. Nothing in the record indicates that ability to pay is an issue, and the Respondent did not plead the point.

ii) Experiencing negative consequences from their own misconduct may lead to a change in a respondent's understanding of their self-interest. Whether or not this is the case cannot be inferred merely from the bare fact of personal adversity. Rather, it is a finding that a hearing panel in its sanction deliberations must be satisfied has been objectively established on evidence.

¶ 40 The Respondent's counsel submitted that his client's remorse makes him unlikely to reoffend.

(a) The Respondent was co-operative and reasonably forthright with the IIROC investigation. This bears no relation to remorse. As an Approved Person, the Respondent did no more than meet his obligation under the Rules to be fully responsive to IIROC's inquiries and requests for information.

(b) The Guidelines address remorse indirectly when discussing the circumstances under which a respondent's corrective actions may be considered mitigating. The determining factor is that the actions must have been taken proactively without IIROC's intervention. Examples include voluntarily employing measures to prevent a recurrence of misconduct, making voluntary restitution, or rendering exceptional assistance to the IIROC's investigation. What distinguishes these corrective actions is that their circumstances objectively confirm they are motivated by genuine regret or remorse. In the present case, the Respondent's remedial actions were taken only subsequent to IIROC's intervention.

(c) In these proceedings, the Respondent has admitted his misconduct from the outset. He has also apologized for it, both through Counsel and in testimony. Following the Guidelines, however, expressions of remorse made while a person is conscious of facing jeopardy can, at best, be given only limited weight.

¶ 41 In the Staff's submission, the material sanctioning considerations in this case are the character of the

misconduct itself and the nature of the potential future harm it discloses. This is entirely accurate.

¶ 42 There was nothing inadvertent or incidental about the Respondent's misconduct. Abusing NBF's error correction policies over an extended period of years required planning, deliberation, and repeatedly misrepresenting the true purpose of trades from his firm. Central to the misconduct was the discretionary authority vested in the Respondent as a portfolio manager. It was this that made it possible for him to arbitrarily move positions in and out of selected accounts without prior client notice or approval. The Respondent's misconduct starkly contradicted the transparency and trust that are the twin pillars of the securities industry. Behaviours that threaten the cardinal objectives of regulation demand a deterrent response that is commensurate with the danger they represent.

¶ 43 The core disagreement between the parties is whether a permanent prohibition is necessary to deter the Respondent and others from engaging in similar misconduct in the future.

¶ 44 The Guidelines provide the analytical framework for resolving this question.

(a) Was there significant harm to the investing public, the integrity of the market or the securities industry?

As a matter of principle, the Respondent's misconduct was intrinsically harmful to the securities industry's reputation. It is also notoriously difficult to measure qualitative attributes like reputation. This is why panels typically use economic losses as a proxy measurement for the degree of reputational harm caused by episodes of misconduct. The approach rests on the reasonable assumption that the public's scepticism about the industry's integrity can be expected to increase in proportion to the amount of proven financial harm.

The Staff acknowledges that such a proxy measurement is not available in the present case. There were 132 improper error correction transactions. Of these, only 17 transactions resulted in losses to investors without their knowledge and consent. The losses caused by a fraction of misconduct cannot be a valid proxy measurement for the reputational harm caused by the misconduct overall.

It is possible to stipulate that certain behaviours are by their nature damaging to reputation. However, without a measure of some sort the degree or significance of such harm cannot be objectively established, only subjectively asserted. This is not a rationally defensible basis for depriving an individual of their livelihood.

(b) Did the misconduct have an element of criminal or quasi-criminal activity?

The Panel's liability decision explains why the Respondent's misconduct cannot be characterized as having criminal or quasi-criminal elements.

(c) Is there reason to believe the Respondent cannot be trusted to act in an honest and fair manner?

Another way of asking this question is whether a permanent prohibition is necessary for specific deterrence.

¶ 45 Serious misconduct is evidence that a person is capable of making harmful choices. The purpose of specific deterrence is to protect the investing public and the securities industry by neutralizing a respondent's proven potential for dangerously faulty judgment. Tailoring sanctions that are both adequate and proportionate to this task requires a hearing panel to assess the objective danger a respondent actually represents. Determining the motive behind misconduct, insofar the evidence permits, is an important element of this exercise.

¶ 46 The Respondent's intention in this case is plainly disclosed by the character of his misconduct.

(a) When it appeared he was at risk of losing certain dissatisfied clients, the Respondent promised he would deliver them positive results. He did this by artificially enhancing the performance of their accounts, and those of other selected clients, through improper error correction transactions.

(b) The Respondent personally absorbed the $83,420 cost of the 29 backdated transactions.

(c) Of the 103 cancel and correct transactions, the $126,586 cost of 84 transactions was absorbed by accounts controlled by and with the consent of Client 1.

(d) The remaining 19 cancel and correct transactions transferred a total of $19,299 in economic value between other client accounts. In two of the transactions, the misconduct was limited to the gifting of $4,761 in gains whose cancellation had been otherwise legitimately required to correct genuinely erroneous trades. In 17 transactions, transferring unrealized losses and gains between accounts resulted in the net position of certain clients being diminished by an aggregate amount of $14,538.

(e) That the Respondent has made business development a top priority throughout his career is obvious from the size of his client base. It is equally clear from the circumstances that his misconduct was motivated by the same purpose. The Respondent broke the rules in order to gratify his clients, induce their loyalty, and keep their business.

¶ 47 For specific deterrence purposes, the conclusion to be drawn from these facts is that harming the financial well-being of his clients was antithetical to the Respondent's purposes.

¶ 48 The misconduct was deliberate. But integral to the Respondent's deliberations was that the improper transactions be orchestrated in a manner that insulated his clients from their economic consequences, which he clearly intended were to be borne either by himself or Client 1. The very point of his misconduct was to enhance, not harm, the performance of client accounts.

¶ 49 The 17 cancel and correct transactions that harmed clients directly occurred in this context:

(a) During the relevant period the Respondent and his subordinates were administering over $700 million in assets and thousands of accounts, which, among other things, involved making in the range of approximately 120,000 securities transactions.

(b) The losses caused by the 17 trades was $14,538, while the total value transferred through the improper transactions was $229,305.

(c) The scale of actual investor losses can be fairly characterized as modest, relative to the size of the Respondent's overall book of business and the total volume of his trading activity. Since the purpose of his misconduct was to ingratiate the Respondent with clients, it is reasonable to infer that the losses he caused were inadvertent.

¶ 50 None of this in any way diminishes the fact that it is entirely unacceptable for an Approved Person to engage in misconduct that even risks the possibility of imposing losses on clients. There is nothing mitigating whatsoever in the fact that the losses were caused by the Respondent's carelessness or inattention. On the contrary, it surfaces the essential danger that his misconduct represents.

¶ 51 By any measure, the Respondent has been remarkably successful in his chosen profession. He built up a book of business that in 2017, the year before the misconduct came to light, earned him over $1 million in net after tax income. His client base, needless to say, was in its own right a highly valuable asset. Yet for the sake of retaining a fraction of his business the Respondent elected to engage in deceptive transactions whose value, although meaningful to the clients involved, was orders of magnitude less valuable to them than the value of his very livelihood to himself.

¶ 52 To an outside observer, the Respondent was astonishingly reckless to put his career, financial well-being, and reputation in jeopardy for the sake of relatively marginal gains. This facile indifference to the Rules reveals the true risk inherent in his misconduct: an attitude of impunity and a belief that whatever the limits that applied to everyone else, they did not apply to him. In terms of specific deterrence, this is the risk that the sanctions in this case must be concerned to address.

¶ 53 Following his termination by NBF the Respondent experienced first-hand that the Rules did indeed apply to him. The opposition of IIROC Registration Staff to his re-registration compelled him to plead for the survival of his career at a suitability hearing. In its decision, the Pacific District Council Registration Sub-Committee made the reactivation of his registration subject to the following conditions:

(a) 18 months of strict supervision;

(b) the submission of monthly supervision reports to IIROC by Canaccord;

(c) his successful rewriting of the Conduct and Practices Handbook examination; and

(d) training in the proper use of error accounts and cancel and correct transactions.

¶ 54 IIROC Staff subsequently issued the Notice of Hearing that commenced these proceedings.

¶ 55 The Respondent did his clients a grave disservice. By artificially enhancing the performance of their accounts, he denied them the transparency to which they were entitled, the effect of which was far from trivial. The Respondent's misconduct misled clients about the nature of investment risk, securities trading, and his own capacities and ethics as a portfolio manager entrusted with significant discretion over their financial well-being. In this light, the Staff's request for a permanent prohibition is scarcely surprising. The Panel might well have acceded to it had the scale of the misconduct had been greater, for example, had improper trades constituted a more material proportion of his overall trading or had the misconduct resulted in greater client losses.

¶ 56 On balance, however, the Panel cannot conclude from the evidence as a whole that the Respondent presents such a danger that the public interest requires the termination of his career.

(a) The harm his misconduct imposed on the reputation of the securities industry was real and relied on a pattern of deception that was contrary to its ethical standards. Nonetheless, it must also be acknowledged that the misconduct involved relatively few client accounts, represented barely a sliver of the assets under his management, and caused limited measurable harm to clients.

(b) It must also be recognized that the Respondent's talent at business development was not the only reason that he was able to build such a large client base. It is in the nature of investment advising that the size of a book of business is, necessarily, also a reflection of the value an investment advisor is able to deliver to clients. Although the Respondent's misconduct was indisputably wrong, it must be assessed against the legitimate service he appears to have been able to provide to the satisfaction of a large number of clients over many years.

(c) Since he resumed licensed activities in December 2018, there has been no suggestion that he has engaged in any kind of impropriety.

DECISION

¶ 57 Both parties reviewed a substantial number of cases to support of their respective positions on sanctions. Unfortunately, the guidance provided by those precedents is of limited utility given the many unusual features of this case.

¶ 58 As mentioned, the risk to be addressed for specific deterrence purposes is the attitude of impunity that led the Respondent to treat the Rules as inconveniences to be skirted at his discretion, instead of the strict

and principled directives they really are.

(a) In that regard, the Panel considers it significant that no compliance problems were identified in any of the supervision reports filed by Canaccord. It is satisfied that the Respondent is properly aware that his career, income, and overall financial position very much depend on his continuing to follow the Rules scrupulously. Neither a suspension nor a period of further supervision is necessary.

(b) The Panel is nonetheless of the view that the public interest requires that his activities remain subject to a degree of monitoring.

(c) For that reason, the Panel ordered that a qualified auditor conduct a compliance audit of the Respondent's error correction practices and related matters for the period from July 1, 2020 to June 30, 2021, to the satisfaction of IIROC Enforcement Staff and at the Respondent's expense.

¶ 59 In terms of general deterrence, the period of strict supervision the Respondent has already undergone was both appropriate and sufficient. As to the question of financial penalty, the crucial consideration as always is to determine an amount that accurately reflects the gravity of the misconduct and is sufficient to deter both the Respondent and others. After considering the respective positions of the parties, the Panel ordered that the Respondent pay a fine of $250,000.

¶ 60 The Respondent did not dispute the Staff's claim that he pay costs in the amount of $50,000, and the Panel so ordered.

Dated at Vancouver, British Columbia this 21 day of November 2020.

Joseph A. Bernardo

Bradley Doney

Alexandra Williams

ORDER

IT IS HEREBY ORDERED THAT:

1. Mann is to pay a fine in the amount of $250,000, within 60 days of this Order.
2. Mann is to pay IIROC costs in the amount of $50,000, within 60 days of this Order.
3. Within 45 days of the date of this Order, Mann shall retain an independent and appropriately qualified compliance auditor (the "Compliance Auditor") to be selected jointly by Mann and Canaccord Genuity Corp. ("Canaccord"), in order to conduct a Compliance Audit of Mann and the Mann team ("Mann Team").
4. The selection of the Compliance Auditor shall be subject to the prior written consent and approval of IIROC Staff.
5. Mann is required to exclusively pay all compensation and expenses of the Compliance Auditor.
6. The agreement with the Compliance Auditor ("Agreement") shall be in a form acceptable to Staff.
7. In July 2021, the Compliance Auditor will conduct a Compliance Audit of the Mann Team, for the period of July 1, 2020 and June 30, 2021 inclusive, in order to:
    a. Identify the existence of any offer of a performance guarantee to any client(s);
    b. Assess the appropriateness of all cancel and correct transactions processed for clients of the Mann Team;

c. Assess the appropriateness of all transactions processed in the error account of the Mann Team;

d. Identify the existence of any client complaints; and

e. Review any compliance records, including any queries and communication between the Mann Team and Canaccord compliance staff.

8. The Compliance Auditor shall have reasonable access to all of the Mann Team's books and records, including all emails sent or received by the Mann Team, necessary to complete the Compliance Auditor's mandate. The Compliance Auditor shall be provided with the software necessary to complete its mandate, with reasonable search capability, so that he/she may review the emails of the Mann Team for such terms as the Compliance Auditor determines necessary to complete its mandate.

9. The Compliance Auditor shall have the ability to meet privately with any members of the Mann Team as determined by the Compliance Auditor in his/her sole discretion. Mann shall require members of the Mann Team to cooperate fully with the Compliance Auditor. The Compliance Auditor can also ask to meet with other Canaccord employee(s) and Canaccord will work reasonably with the Compliance Auditor in attempting to facilitate any such request.

10. After completing the Compliance Audit, the Compliance Auditor will prepare a written report ("Report") detailing its review and findings.

11. The Compliance Auditor shall submit the Report and any drafts to Mann, Canaccord and IIROC Staff simultaneously.

12. The Compliance Auditor shall agree to treat all information obtained from the Mann Team relating to its business and clients in confidence, shall maintain the confidentiality of such information, and shall not use any such information for any purpose other than the purpose of fulfilling its mandate.

13. For greater certainty, the terms of the Compliance Audit do not limit in any respect the authority of IIROC Staff to undertake, as part of its normal course activities (including Enforcement Investigations pursuant to Consolidated Rule 8100), a review of all matters within the scope of the Compliance Audit or any other aspect of the Mann Team's business, including obtaining copies of all the Compliance Auditor's notes and supporting documents.

DATED at Vancouver, British Columbia this 21 day of September 2020.

"Joseph A. Bernardo"

JOSEPH A. BERNARDO, CHAIR

"Alexandra Williams"

ALEXANDRA WILLIAMS

"Bradley Doney"

BRADLEY DONEY