

Re Mann

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

Dwight Cameron Mann

2020 IIROC 06

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

Heard: November 25 - 28, 2019 in Vancouver, British Columbia
Decision: February 25, 2020

Hearing Panel:

Joseph A. Bernardo, Chair, Bradley Doney and Alexandra Williams

Appearance:

David McLellan, Senior Enforcement Counsel

Patrick Sullivan, for Dwight Cameron Mann

Dwight Cameron Mann (present)

REASONS FOR DECISION

¶ 1 The issue in this hearing is not whether the Respondent engaged in misconduct, but how it should be characterized.

Misconduct

¶ 2 The Respondent was a Registered Representative and Portfolio Manager employed in Vancouver, British Columbia by the National Bank Financial Ltd. and National Bank Financial Inc. (collectively, NBF).

¶ 3 In a March 26, 2019 Notice of Hearing and Statement of Allegations, staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) alleged that:

One

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);

Two

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);

Three

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

Four

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

¶ 4 These are extremely serious allegations. The Notice of Hearing calls the Respondent's fitness into question by asserting that, over a period of years, he abused his discretion as a portfolio manager and the trust of his employer by engaging in deliberate deception.

¶ 5 At the outset of the hearing, the Respondent's counsel acknowledged that his client had made misrepresentations to NBF when committing contraventions two and three. However, he disputed the Notice of Hearing's characterization of the misconduct as fraudulent. This is the parties' only substantive disagreement about the facts, but, to paraphrase the Respondent's counsel, the question is so central to the determination of penalty that it must be resolved before the sanction stage of the proceedings.

¶ 6 The parties entered an agreed statement of facts (ASF) into the record. It is appended to and forms part of these Reasons.

¶ 7 In the ASF, the Respondent:

- a) admitted all four contraventions;
- b) admitted engaging in misleading conduct when he committed contraventions two and three; and
- c) did not acquiesce to the allegation that contraventions two and three had involved fraudulent conduct.

¶ 8 After receiving additional evidence and hearing argument, the Hearing Panel ruled that the Respondent had committed the four contraventions as described in the ASF and reserved its decision regarding the fraud issue.

Fraud in the securities regulatory context

¶ 9 The British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (*Anderson*) provided definitive guidance on how the concept of fraud must be understood in the securities regulatory context.

¶ 10 The case concerned two individuals who had been the principals of a company that used funds raised through the issuance of promissory notes to loan money to individuals and small businesses. This came to the attention of the British Columbia Financial Institutions Commission, which concluded the company was in breach of provincial financial legislation and ordered it to cease carrying on business.

¶ 11 Subsequent bankruptcy proceedings disclosed that:

- a) The company had been insolvent for most of its operating life, but had always had sufficient cash on hand to meet its repayment obligations. This was due to investors reinvesting principal and interest when notes came due and additional capital flowing into the company from new investors.
- b) The company's loan portfolio included about \$8 million in unsecured loans made to the two principals and parties related to them. This represented twenty-five percent of the portfolio's total book value.

- c) With respect to loans made specifically to the principals, the company had forgiven approximately \$1.7 million in interest in lieu of salary.

¶ 12 The executive director of the British Columbia Securities Commission (Commission) issued a Notice of Hearing against the two individuals alleging, among other things, that they had perpetrated a fraud contrary to Section 57(b) of the *British Columbia Securities Act*, R.S.B.C. 1996, c. 418 (the Act).

Carl Glenn Anderson and Douglas Victor Montaldi, 2003 BCSECCOM 132 (*Anderson and Montaldi*)

¶ 13 At the time, Section 57(b) of the Act provided as follows:

A person in or outside British Columbia must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or acquisition of a security or trade a trade in an exchange contract if the person knows, or ought reasonably to know, that the transaction or series of transactions

.....

- b) perpetrates a fraud on any person in British Columbia [.]

.....

¶ 14 Unless a regulatory statute otherwise specifies, it is presumed that liability for a breach is established by proof of the *actus reus* alone.

R. v. Sault Ste-Marie (City of), [1978] 2 S.C.R. 1299

¶ 15 The Commission hearing panel's interpretation of Section 57(b) of the Act relied on this presumption. It construed the phrase "ought reasonably to know" as confirming that a finding of fraud under the section did not require proof that a person had acted with fraudulent intent.

Anderson and Montaldi, supra, at paras 165 to 168

¶ 16 With this understanding in mind, the Commission determined that the company's principals had committed regulatory fraud in two ways:

- a) first, after becoming aware of the company's insolvency, the principals had failed to disclose this fact when they accepted funds from investors; and
- b) second, they had failed to disclose to investors that their investments were being directed to the principals' purposes and not the company's.

¶ 17 The Court of Appeal set aside this finding as wrong in law.

¶ 18 It observed that the Commission had not applied "the common law standard of fraud which requires the mental element of a guilty mind", but had erroneously interpreted Section 57(b) as establishing a statutory test "that was broader than the common law and set an objective rather than a subjective standard." This was incorrect because fraud is a legal term with a highly specific meaning:

The section does not offer a [separate] definition of fraud. It creates a statutory prohibition which may extend to persons who ought to be aware of the fraud even though they may not be participants in it, but it does not dispense with the requirement that there must be a fraud involved in the transaction, which requires a guilty state of mind as well as an act.

Anderson, supra, at paras 23 and 24

¶ 19 To establish fraud in the securities regulatory context, the evidence must meet the same subjective standard the Supreme Court of Canada articulated for criminal and civil law in *R. v. Théroux*, [1993] 2 S.C.R. 5:

... the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Anderson, supra, at para 27, citing *R. v. Théroux, supra*, at para 20

¶ 20 Moreover, the standard of proof for securities regulatory fraud is on a balance of probabilities that must be established by compelling evidence:

Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

Anderson, supra, at para. 29

¶ 21 This is the standard the evidence in this case must meet in order for the misconduct under contraventions two and three to be characterized as fraudulent.

The evidence

¶ 22 The evidence admitted into the record consisted of:

- a) the ASF;
- b) records of the relevant transactions, correspondence, and other documents;
- c) testimony from the IIROC investigator, which was principally focused on reviewing the impugned transactions addressed by contraventions two and three; and
- d) the Respondent's testimony, which was largely devoted to explaining his state of mind when he committed the four contraventions.

¶ 23 The evidence establishes that:

- a) The Respondent commenced employment with NBF in 2000.
- b) The transactions relevant to contraventions two and three all took place between January 2015 and March 2018 (Relevant Period).
- c) During the Relevant Period:
 - i) The Respondent had discretionary trading authority over the majority of his client accounts.
 - ii) He administered assets in excess of \$700 million in over six hundred family and thousands of individual accounts. He did this with the assistance of a team of approximately ten registered representatives, portfolio managers, investment representatives, and administrative support staff that reported to him.
 - iii) The majority of the accounts managed by the Respondent were fee based.
- d) NBF had a policy for correcting situations in which an advisor had failed to execute a trade on

behalf of a client.

- i) For up to 30 days following such an error, the advisor was allowed to execute the trade at the current market price.
 - ii) In the client account, the transaction would be registered at the price at which the original trade should have occurred.
 - iii) Any cost difference arising from a price differential between the intended and actual trade dates would be charged to the advisor.
- e) During the Relevant Period, the Respondent executed 29 such backdated transactions under false pretences.
- i) He misrepresented to NBF that the transactions were required to correct failures to execute trade orders, when his real purpose in backdating them was to improve the performance of certain client accounts.
 - ii) This was achieved by buying securities that had increased in value between the supposed and actual purchase dates, effectively gifting the account with an appreciation in value it would not otherwise have enjoyed.
 - iii) Alternatively, the Respondent sold securities that had decreased in value between the supposed and actual sell dates, thereby insulating the account from a loss in value it would otherwise have suffered.
 - iv) The effect of the 29 falsified backdated transactions was to confer at least \$83,420 in economic value from the Respondent to the benefit of 14 different client accounts.
- f) NBF also had a policy for correcting orders that had been mistakenly executed in the wrong client account.
- i) The policy permitted an advisor to cancel the erroneous transaction and transfer the security position to the correct account at the original price.
 - ii) The economic effect of a “cancel and correct” transaction was to return both accounts to the capital positions they should have occupied but for the mistaken order execution.
 - iii) An advisor did not incur any charges or costs from a cancel and correct transaction.
- g) During the Relevant Period, the Respondent executed 103 cancel and correct transactions under false pretences.
- i) He misrepresented to NBF that the transactions were required to correct orders that had been executed in the wrong client accounts. In reality, the transfer of securities positions was orchestrated to benefit certain client accounts.
 - ii) 18 account holders received a total of \$145,885 in economic value by virtue of cancel and correct transactions that transferred unrealized gains and losses between accounts.
 - iii) The vast majority of these transfers involved accounts under the direction of Client 1, out of which \$126,586 in value was transferred to other accounts through 84 cancel and correct transactions. Paragraph 44 of the ASF states that this was done with Client 1’s knowledge.
 - iv) In a July 30, 2018 letter originally tendered in previous related IIROC proceedings and entered into the hearing record by consent, Client 1 states that:

“Mr. Mann has always had full discretionary authority and I have never

had any issue with any of the trades in the accounts. This includes cancelling trades on a number of occasions. I didn't have any issue with the cancellations (and still don't) even though it meant foregoing paper gains. I had been pleased with Mr. Mann's advice and had been making good returns."

- v) Nothing in the record suggests that Client 1, with whom the Respondent frequently spoke by telephone, was in any way misled about the cancel and correct transactions or the Respondent's purposes in implementing them.
- vi) The remaining 19 cancel and correct transactions involved the transfer of \$19,299 in value from accounts controlled by 18 other clients. Unrealized gains were transferred out of these accounts in 13 cancel and correct transactions that ranged between \$115 and \$3,335 in value; unrealized losses were transferred into the accounts in 6 transactions with values between \$592 and \$1,438.

¶ 24 The Respondent addressed the cancel and correct transactions in his testimony.

- a) He explained that Client 1 had allowed accounts to be used for cancel and correct transactions essentially out of gratitude. Prior to becoming the Respondent's client, Client 1 was an active investor with a poor investment record due to a penchant for making large and risky investments that lost money. The Respondent, in contrast, generated good returns for Client 1's discretionary accounts through a conservative and proactive investment approach. In addition, the Respondent heavily discounted the fees charged to Client 1 when the client made large, high value trades out of non-discretionary accounts. Given the large amount of money Client 1 sacrificed in facilitating the Respondent's scheme, it is fair to say this testimony appears incomplete. However, it was not challenged under cross-examination.
- b) The Respondent provided limited details regarding the 19 cancel and correct transactions involving other client accounts.
 - i) For 3 of the transactions, the Respondent described the circumstances of the original trades to explain why he had believed they were in error and genuinely needed to be cancelled, but acknowledged that then transferring the positions to other accounts had been inappropriate.
 - ii) With respect to another 7 transactions, he testified that at the time he did not consider they would result in the loss of unrealized gains, but was instead focused on the fact that cancelling a trade returned an account to its original capital position and made the cash available for reinvestment.
 - iii) He had no recollection of 9 transactions.
- c) The Respondent testified that either before or after he executed a cancel and correct transaction involving a Client 1 account, he discussed it with the client. He testified to having similar discussions with the holders of the other accounts in which cancel and correct transactions were made.

Contravention two

¶ 25 The *actus reus* of fraud consists of deploying deceit that results in a person being exposed to economic deprivation or the risk of it.

¶ 26 The Respondent was able to implement the backdated transactions under Contravention two only by misrepresenting them to NBF. In each instance, he falsely documented the purchase or sale of securities as

necessary to correct for a missed trade when in reality its only purpose was to enhance the performance of a favoured client account.

¶ 27 The misconduct under Contravention two, therefore, can be accurately described as involving dishonesty, the first element of the *actus reus* of fraud.

¶ 28 None of the 29 backdated transactions, however, resulted in economic deprivation, the second element of the *actus reus*. In fact, a nexus between the dishonesty and deprivation was impossible. This is because the essence of each transaction was to transfer economic value from the Respondent to a client. The transactions were incapable of exposing either NBF or clients to pecuniary risk.

¶ 29 Anderson, *supra*, holds that burdening a person with the stigma of fraud is permissible only if each of its legal elements is established by clear and convincing evidence. The Respondent's misconduct under Contravention two was indisputably deceptive, but since he was the only person who sustained financial loss, none of the backdated transactions can be characterized as fraudulent.

Contravention three - *actus reus*

¶ 30 The prohibited act of making misrepresentations to NBF was also central to the cancel and correct transactions under Contravention three.

¶ 31 Unlike the backdated transactions, though, each cancel and correct transaction resulted in a loss of economic value in the form of an unrealized gain, or loss, being transferred out of, or into, a client account.

¶ 32 Superficially, this might appear to be "deprivation caused by the prohibited act" and that both elements of the *actus reus* of fraud were therefore present when the Respondent implemented the cancel and correct transactions. It is necessary, however, to distinguish between deprivation caused by a prohibited act and that which is merely enabled by it.

Client 1 accounts

¶ 33 Paragraph 44 of the ASF establishes that the Respondent kept Client 1 informed about the cancel and correct transactions in the Client 1 accounts. The Respondent reiterated this point in his testimony. Moreover, in the July 30, 2018 letter, Client 1 directly confirmed not only being aware of the transactions but also consenting to them by stating that the client "didn't have any issue... foregoing paper gains".

¶ 34 Under *R. v. Th roux*, *supra*, the nexus between a prohibited act and deprivation must be causal; to be fraudulent, a deprivation must be the direct consequence of one or another form of deceit.

¶ 35 In the Client 1 accounts, the transactions occurred with Client 1's knowledge and consent. A loss of economic value that occurs with a client's informed consent is not "deprivation caused by the prohibited act", but rather an authorized disposition of account assets. Although misrepresentation was necessary to effect the transfers of economic value out the accounts, it was Client 1's decision to accommodate the Respondent that caused them. None of the cancel and correct transactions in the Client 1 accounts can be characterized as fraudulent because none gave rise to dishonest deprivation, the second element of the *actus reus* of fraud.

Other accounts

¶ 36 Of the 132 transactions collectively impugned under Contraventions two and three, then, the only ones even potentially capable of being characterized as fraudulent are the 19 cancel and correct transactions in which the Client 1 accounts were not involved.

¶ 37 The Respondent testified that 2 of those transactions were instigated by a valid need to cancel the original trades.

- a. One cancellation occurred because after communicating with the client, the Respondent concluded that the original trade was disproportionately large relative to the account's total

assets and not suitable for the client's investment objectives.

- b. The second cancellation was necessary because there was insufficient cash in the account to pay for the original trade.
- c. At the time of cancellation, each of these securities positions had accrued unrealized gains, which the Respondent transferred into other accounts. The total value of the transfers was \$4,761. Although the Respondent defended the cancellations as appropriate, he acknowledged he should not have then transferred the positions for the sake of benefitting other clients.

¶ 38 The Respondent's testimony regarding these cancellations was credible: the explanations provided were detailed and specific to each transaction; his assertion that he had valid reasons for the cancellations was modestly limited to two transactions; his testimony was neither challenged under cross-examination nor contradicted by other evidence.

¶ 39 Accepting the Respondent's explanation of these two transactions, neither can be characterized as fraudulent. The securities in each instance were not purchased at the client's direction, but acquired through inappropriate discretionary trades. When a security is mistakenly or inappropriately purchased on behalf of an account, the client is not liable for any subsequent loss in value while the security rests in the account; equally, a client is not entitled to any gain arising from a trade that should never have been made in the first place. There was no deprivation, dishonest or otherwise, when the two inappropriate trades were cancelled.

Contravention three - *mens rea*

¶ 40 The Respondent testified that another cancel and correct transaction occurred because of an error on his part.

- a) The original trade was a purchase of shares implemented by an assistant at a time when the Respondent was out of the office. Upon learning of the trade, the Respondent cancelled it under the mistaken belief the client had not provided instructions.
- b) The security position represented an unrealized loss, which the Respondent admitted he inappropriately transferred to another account.
- c) The Respondent realized the cancellation had been a mistake when, subsequently, the client instructed him to sell the shares. The Respondent corrected his error by purchasing shares in a valid backdated transaction and then selling them.

¶ 41 Again, this testimony was relatively granular in its detail, not challenged under cross-examination, and not contradicted by other evidence.

¶ 42 In this instance, however, even though the cancellation was undertaken for proper motives, the transfer of the position nonetheless constituted "deprivation caused by the prohibited act". This is because transferring an unrealized loss out of the account had the effect of imposing pecuniary deprivation on the receiving account. For this particular cancel and correct transaction, then, the evidence establishes both elements of *the actus reus* of fraud and the analysis must proceed to a consideration of *mens rea*.

¶ 43 The *mens rea* of fraud requires clear and convincing proof that a person had subjective knowledge of two things when carrying out the *actus reus*. The person must have been aware that:

- a) the true state of affairs was being misrepresented through a deceitful act, a falsehood or some other deceptive means; and
- b) the deception exposed another person to economic loss or the risk of it.

¶ 44 The Respondent admitted in both the ASF and in his testimony that he misled NBF about the purpose of the cancel and correct transactions. This acknowledgment concedes the first element of the *mens rea* of

fraud, knowledge of the prohibited act.

¶ 45 Therefore, whether the transfer that followed the mistaken cancellation can be characterized as fraudulent depends on whether the second *mens rea* element, knowledge of deprivation, has been established. In plain terms, the question is whether at the time he transferred the unrealized loss out of the account, the Respondent was conscious of the cost it would impose on the receiving account.

¶ 46 The same question must be asked of the Respondent's subjective knowledge when he transferred value out of client accounts in the 16 other remaining cancel and correct transactions.

¶ 47 For all 17 of these transfers, the Respondent's testimony is the only direct evidence relating to his awareness of deprivation. It is extremely limited.

- a) The Respondent did not address the issue when he discussed the transfer that followed the mistaken cancellation.
- b) Concerning 7 transactions, the Respondent did not recall any details other than that his focus when making each transfer had been on the fact it would restore the account to its original capital position. When giving this testimony, the Respondent in each instance used language that was virtually identical and so lacking in detail that it amounted to little more than a bare assertion. It is not possible to assess the reliability of the testimony given the lack of context.
- c) The Respondent was unable to recall anything at all about 9 transactions.

¶ 48 This absence of meaningful direct evidence means that the Hearing Panel must look to the circumstantial evidence to determine whether, in respect of these last 17 cancel and correct transactions, the Respondent had the awareness of deprivation required for a finding of fraud.

¶ 49 On this point, Enforcement Counsel submitted that it is simply implausible that a highly accomplished portfolio manager and active discretionary trader like the Respondent would be unaware of the economic consequences of transferring gains and losses between accounts. Being conscious of the economic interests of his clients was, after all, the essence of the Respondent's job. Moreover, in counsel's submission, it is not believable that the full economic effect of the cancel and correct transactions was not foremost in the Respondent's mind when his express purpose in undertaking them was to manage economic performance.

¶ 50 To these persuasive observations may be added another: the Respondent was keenly aware of the economics of his cancel and correction scheme. This is evident in the fact that he relied on the Client 1 accounts to implement the overwhelming preponderance of the transactions. This discloses a recognition that transferring economic value to benefit some client accounts would necessarily involve imposing a corresponding financial cost on other accounts. There was simply no need for the Respondent to use the Client 1 accounts to finance cancel and correct transactions except to insulate both himself and the rest of his clients from their cost.

¶ 51 These are observations about what the Respondent could reasonably have been expected to understand about the cancel and correct scheme in general. Following *Anderson, supra*, however, the question is not what the Respondent *ought* to have known, but rather what the evidence says concerning his specific awareness of deprivation when executing the 17 transactions. The larger context established by the evidence creates uncertainty about this.

- a) Out of the 29 backdated transactions and 103 cancel and correct transactions impugned under Contraventions two and three, respectively, only 17 cancel and correct transactions had even the potential to be construed as fraudulent. It is evident that the Respondent's misuse of NBF's error correction policies was never designed to deliberately defraud clients.
- b) The value of the 19 cancel and correct transactions that did not involve the Client 1 accounts

was \$19,299. The combined value of the two valid cancellations was \$4,761, which leaves the 17 potentially fraudulent transactions with a total economic value of \$14,538. The Respondent was administering assets in excess of \$700 million. While it is clear that he was aware of the economics of cancel and correct transactions, it is reasonably possible the Respondent had other things on his mind besides deprivation when he implemented the 17 individual transactions over the three plus years of the Relevant Period.

¶ 52 Typically, the mens rea of fraud is plain to see in the circumstances of the actus reus. Simply, it is rarely necessary to infer fraudulent intent because it is usually obvious from the deceitful act that it was deliberately orchestrated to cause deprivation. While inferring fraudulent intent from circumstantial evidence is certainly possible, such an inference must be more or less inescapable if it is to satisfy the clear and convincing proof requirement set out in *Anderson, supra*.

¶ 53 The evidence in this case allows for the strong possibility that the Respondent was aware of the economic deprivation arising from the 17 cancel and correct transactions, but it does not reach the threshold of "clear and convincing proof". This is because the same evidence also allows for the non-trivial possibility that the idea of deprivation did not occur to the Respondent when, relative to what objectively can only be described as an enormous book of business, he cancelled and transferred a handful of securities positions over a roughly three year period. For a registrant in the Respondent's position this may well be characterized as grossly negligent, but evidence that permits a finding of negligence is by definition insufficient to establish fraud.

Conclusion

¶ 54 It is evident that the Respondent's underlying purpose in committing Contraventions two and three was to advance his own financial interests by enhancing the performance of accounts that belonged to clients he wished to retain. He did this by deliberately deceiving his employer over an extended period of time, behaviour which can only be described as wrong.

¶ 55 Having said that, the evidence in this case disallows any possibility that the backdating under Contravention two resulted in dishonest deprivation. As for Contravention three, the evidence of fraudulent intent for the 17 cancel and correct transactions is equivocal and less compelling than the evidence that failed to establish *mens rea* in *Anderson, supra*. Under neither contravention, therefore, can the Respondent's misconduct be properly characterized as fraudulent.

¶ 56 These reasons are limited to addressing the narrow fraud issue raised by the parties' conflicting views of the evidence. The Hearing Panel's consideration of sanctions in respect of the Respondent's four contraventions awaits their respective submissions.

Dated at Vancouver, British Columbia this 25 day of February 2020.

Joseph A. Bernardo

Bradley Doney

Alexandra Williams

AGREED STATEMENT OF FACTS

PART 1 - INTRODUCTION

1. By Notice of Hearing dated March 26, 2019, IIROC Staff ("Staff") commenced a disciplinary proceeding against the Respondent. The Notice of Hearing alleged a number of contraventions.

PART II - CONTRAVENTIONS

2. The Respondent admits Contraventions 1 and 4.
3. With respect to Contravention 2 the Respondent admits he engaged in misleading conduct when he backdated transactions contrary to Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016).
4. With respect to Contravention 3, the Respondent admits he engaged in misleading conduct when he engaged in cancel and correct transactions contrary to Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016).

PART III - STATEMENT OF FACTS

Overview

5. Staff and the Respondent admit and agree to the facts described below:
6. The Respondent Dwight Cameron Mann ("Mann") attended the University of British Columbia and graduated in 1993 with a Bachelor of Commerce. Mann took the Canadian Securities Course in 1993 and the Canadian Investment Manager Course in 2008.
7. Mann has had no other occupation since university other than Investment Advisor. Mann worked as a marketing assistant at Richardson Greenshields from 1993-1995 and became an Investment Advisor at RBC in 1995. Mann joined NBF in 2000.
8. Mann was promoted to Senior Vice President at NBF in 2012 and has acted as a Portfolio Manager for over 10 years.
9. At all material times, Mann was a Registered Representative ("RR") and Portfolio Manager ("PM") with National Bank Financial Ltd., and National Bank Financial Inc. (together "NBF") in Vancouver.
10. Mann does not have any prior disciplinary history. The majority of Mann's client accounts were managed, fee based accounts. Mann was authorized to exercise discretionary authority over the accounts. Most of Mann's clients held a conservative mix of blue chip high quality investments
11. As at the spring of 2018, Mann and his team were administering assets in excess of \$700 million, over six hundred family accounts and thousands of family accounts.

Registration History

12. 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. Other than Mr. Mann, all of the Mann Team was young. Mann led a large team in order to be in a position to service his large client base.
13. On April 18, 2018, Mann's employment with NBF was terminated. Mann had worked with NBF for 17 years.
14. In April 2018, Canaccord Genuity Corp ("Canaccord") sought conditional registration for Mr. Mann as a Dealing Representative under the *Securities Act*, and IIROC approval in the category of Registered Representative, Securities, Retail, Portfolio Management, under IIROC's Dealer Member Rules.
15. When the Application was made, Registration Staff at IIROC commenced a suitability review. During the process commenced by Registration Staff, Mr. Mann was unable to deal with clients or otherwise engage in any licensed activities.
16. On June 13, 2018, Registration Staff of IIROC advised that they would be recommending that Pacific District Council refuse the reactivation of Mr. Mann's registration. On the same day, counsel for

Mr. Mann advised that pursuant to Rule 9406, Mr. Mann wished to be heard on Registrations Staff's recommendation in an in-person Hearing in front of Pacific District Council Registration Sub-Committee panel.

17. The oral Hearing was held on August 13, 2018. In written and oral submissions, Mr. Mann acknowledged that:
 - a. He provided a signed written guarantee and he was prepared to provide a guarantee to another client;
 - b. He made inappropriate use of his error accounts; and
 - c. He made inappropriate use of cancels and corrects.
18. On August 15, 2018, the Pacific District Council Sub-Committee Panel rendered its decision. In its decision, the Panel noted that it would approve Mr. Mann's registration as an RR and PM with Canaccord subject to the following terms and conditions:
 - a. Mr. Mann was subject to 18 months of Strict Supervision;
 - b. Canaccord was required to submit signed, written monthly supervision reports in the manner prescribed by IIROC were to be completed and filed with IIROC's Registration Department within ten business days of the end of each reporting period, and copies retained within the Member's Branch or Compliance Department;
 - c. Mr. Mann was required to re-write the CPH; and
 - d. Mr. Mann was required to attend a seminar conducted by experienced securities counsel. The seminar was suggested by Mr. Mann and focused on the proper use of error accounts and the proper use of cancel and corrects.
19. Mr. Mann has been on strict supervision since August of 2018. Canaccord has been submitting monthly supervision reports since August 2018. Mr. Mann re-wrote the CPH in December 2018. Mr. Mann arranged and paid for a seminar conducted by experienced securities counsel in November 2018. The seminar covered cancel and correct transactions, performance guarantees and use of error accounts.

Unjustified Promise of Specific Results

20. By offering unjustified promises of specific results in correspondence to his clients, Mann contravened Dealer Member Rule 29.7(1)(b) and Consolidated Rule 1400 (Dealer Member Rule 29.1 prior to September 1, 2016).
 - i. Client SR**
21. In December 2015, Mann provided SR with an unjustified promise of specific results when he sent Client SR an email in which Mann said "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**
22. In September 2016, Mann provided MD with an unjustified promise of specific results when Mann 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 ...".
23. MD did not accept Mann's proposed performance results.

iii. Client JS

24. In June 2017, Mann provided JS with an unjustified promise of specific results when he 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

25. In January 2018, Mann provided DM with an unjustified promise of specific results when Mann provided DM with a written guarantee of a 10% annual return in the client’s accounts.

v. Client MS

26. In January 2018, Mann provided MS (the brother of DM) with an unjustified promise of specific results when Mann provided MS with a written guarantee of a 10% annual return in the client’s accounts.

Misleading Conduct

27. During the Relevant Period, Mann engaged in misleading conduct when he misused his firm’s policies with respect to backdated transactions, and cancel and correct transactions.
28. These actions were conducted to enhance the performance of certain clients’ accounts.

Backdated Transactions

29. 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 situations, in which an advisor failed 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.
30. During the Relevant Period, Mann backdated transactions that he falsely represented to his firm trade desk as errors. In most cases, the improperly dated transactions were made to benefit certain clients’ account performance and Mann would use what he termed in emails to clients as “gift trades”, “no risk trades” (or similar nomenclature) to describe the transactions.
31. Mann would identify a security whose price had increased 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 earlier, prior to a price increase. Similarly, he would also identify securities in which the price had decreased, and backdate to avoid a loss.
32. 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 Mann’s error account.
33. 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.
34. During the Relevant Period, the total value of the error account attributed to backdated transactions for Mann’s clients was approximately \$316,000.
35. Mann admits that he backdated at least 29 transactions in the total amount conferred of at least \$83,420 as follows:

Clients Benefiting from Backdated Transactions	Backdated Transactions	Value of Backdated Transactions
GPM	1	274
PS	1	428
CA	1	4270
GH	1	1,128

Clients Benefiting from Backdated Transactions	Backdated Transactions	Value of Backdated Transactions
DM	7	46,031
SR/DR	9	9,239
EAD/EID	1	1,472
AO	1	1,662
FH	1	1,242
M/L	1	1,775
MS	1	7,781
SF	1	1,900
JG	1	2,100
CW	2	4,118
Total	29	\$83,420

Cancel and Correct Transactions

36. NBF policy permitted “cancel and correct” transactions in client accounts. The policy was intended to address errors in which an advisor mistakenly bought or sold 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 Mann personally through an error account for cancel and correct transactions.
37. During the Relevant Period, on many occasions as particularized below, Mann misused the cancel and correct policy. Specifically, he falsely stated to his firm and clients that certain securities positions were bought or sold in the wrong client account due to an error, 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.
38. In most cases, the cancel and correct transactions were made to benefit certain clients’ account performance and Mann would use what he termed in emails to clients as “gift trades”, “no risk trades” (or similar nomenclature) to describe the transactions.
39. Using the cancel and correct transactions, Mann transferred securities positions between clients in two ways:
 - (a) Through a specific, intermediary set of clients’ accounts (the “Client 1 Accounts”); and
 - (b) Through unrelated clients’ accounts (“Unrelated Accounts”).

The Client 1 Accounts

40. Client 1 and his spouse, Client 2, are British Columbia residents and long term clients of Mann.
41. 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”).
42. 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.
43. The vast majority of the 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.
45. Mann was able to use the Client 1 Accounts to allocate specific securities positions to or from targeted client accounts in order to confer financial benefits on certain clients.
46. During the Relevant Period, Mann misused cancel and correct transactions to enhance client account performance through the Accounts of Client 1 in at least 84 transactions, in the total value conferred of at least \$126,586.

Unrelated Accounts

47. Mann also effected cancel and correct transactions to transfer securities between unrelated clients' accounts to enhance specific client account performance.
48. Mann used cancel and correct transactions to enhance client account performance through unrelated (non Client 1 Accounts) in at least 17 transactions, in the total value conferred of at least \$19,299

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

49. 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	3	3	0	1,632	1,632
HN Inc.	1	1	2	970	928	1,898
5 BC Ltd.	4	0	4	4,101	0	4,101
GH	5	0	5	7,930	115	8,045
DM	9	0	9	20,310	0	20,310
SR/DR	10	6	16	10,178	5,177	15,355
6 BC Ltd.	10	2	12	12,209	2,215	14,424
EAD/EID	8	1	9	13,306	2,700	16,006
VG	2	0	2	2,756		2,756
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	1	0	1	1,893		1,893
FH	2	2	4	2,730	2,566	5,296
LS	2	0	2	3,858	0	3,858
M/L	20	0	20	32,198	0	32,198
Total	84	17	101	\$126,586	\$19,299	\$145,885

Failure to Report Client Complaint

50. 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.

51. At all material times TM held a general power of attorney over EAD and EID's affairs.
52. 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.
53. Despite the written email complaint, Mann failed to report the complaint as required pursuant to DM Rule 3100(I)(A)(1)(c).
54. At the time, Mann did not report the complaint because it was not from the client. He recognizes that was a mistake.

THE FOREGOING FACTS AND CONTRAVENTIONS ARE ADMITTED AND AGREED TO by the Respondent at the City of Vancouver, in the Province of British Columbia, this 28th day of October, 2019.

"Witness"

Witness

"Dwight Mann"

Dwight Mann

AGREED TO by Staff at the City of Calgary, in the Province of Alberta, this 23rd day of October 2019.

"Witness"

Witness

"David McLellan"

David McLellan

Enforcement Counsel on behalf of
the Staff of the Investment Industry
Regulatory Organization of Canada

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