

TRAVIS J. ILES  
SECURITIES COMMISSIONER



CRISTI RAMÓN OCHOA  
DEPUTY SECURITIES COMMISSIONER

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## Texas State Securities Board

208 E. 10th Street, 5th Floor  
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IN THE MATTER OF THE INVESTMENT  
ADVISER AND DEALER REGISTRATION  
OF MCNALLY FINANCIAL SERVICES  
CORPORATION AND THE INVESTMENT  
ADVISER REPRESENTATIVE AND AGENT  
REGISTRATION OF MARK ALAN KEMP

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**Order No. IC-24-CAF-04**

TO: David D. McNally, President & Sole Shareholder  
McNally Financial Services Corporation (CRD No. 121196)  
16414 San Pedro, Suite 930  
San Antonio, TX 78232

Mark Alan Kemp (CRD No. 2057200) d/b/a Kemp Financial Services  
McNally Financial Services Corporation  
5941 Patton Street  
Corpus Christi, TX 78414

### **DISCIPLINARY ORDER**

Be it remembered that McNally Financial Services Corporation ("Respondent McNally") and Mark Alan Kemp ("Respondent Kemp") (collectively, "Respondents") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Fact, Conclusions of Law and the Undertaking incorporated by reference herein.

### **FINDINGS OF FACT**

1. Respondents have waived (a) Respondents' rights to notice and hearing in this matter; (b) Respondents' rights to appear and present evidence in this matter; (c) Respondents' rights to appeal this Order; and (d) all other procedural rights granted to the Respondents by The Securities Act, Tex. Gov't Code §§ 4001.001-4008.105 ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-2001.903.

2. On or about July 31, 2002, Respondent McNally registered as a broker dealer with the Securities Commissioner. This registration is currently effective.
3. On or about August 20, 2007, Respondent McNally registered as an investment adviser with the Securities Commissioner. This registration is currently effective.
4. On or about April 20, 2010, Respondent Kemp registered as an agent of Respondent McNally with the Securities Commissioner. This registration is currently effective.
5. On or about July 9, 2018, Respondent Kemp registered as an investment adviser representative of Respondent McNally with the Securities Commissioner. This registration is currently effective.

**Respondent Kemp is an independent contractor of Respondent McNally doing business as Kemp Financial Services.**

6. Respondent McNally is an independent contractor firm. Meaning most of its registered agents operate as their own business and control the manner and means of their business operations. Respondent McNally's tag line regarding its relationship to its registered agents is: "We don't want to get in our brokers' way. At McNally, our goal is to find a solution instead of throwing up roadblocks of apprehension and indecision."
7. Respondent Kemp is a registered agent and investment adviser representative of Respondent McNally and is the sole owner and operator of Kemp Financial Services—a d/b/a for Respondent Kemp.
8. At the initiation of the investigation by the staff of the Texas State Securities Board (the "Staff"), Respondent Kemp was the subject of twelve (12) customer-initiated, investment-related claims, and four (4) of the twelve (12) were related to unsuitable sales of reverse convertibles.

**Reverse convertibles are high-risk products appropriate only for sophisticated investors capable of understanding the complexities and risks of the securities and who are willing and able to endure total loss of investment.**

9. Reverse convertibles are a type of structured product. They have complicated features that protect sophisticated bond issuers—usually large banks—at the expense of retail investors.
10. Specifically, reverse convertibles are high risk, complex products and only appropriate for investors with certain risk profiles; investment

knowledge/experience; and/or investment objective, and investors who can fully and completely understand the unique risk characteristics of the product—i.e. the risk/return profile of these securities.

11. Typically, reverse convertibles are in the form of a high-yield, short-term note issued by a large financial institution such as a bank whose performance is linked to the performance of an unrelated reference asset—usually a single stock, a stock index, or some other asset or combination of assets.
12. Reverse convertibles have two components that, together, provide a unique payoff structure: (1) a debt instrument, a note or bond, that pays a fixed coupon (interest) rate; and (2) a derivative, in the form of a put option that gives the issuer the right to repay the investor in cash or in the form of a set amount of the reference asset (for example, a specific number shares of stock) rather than cash, if the price of the reference asset drops below a predetermined level—often referred to as the “knock-in level”.
13. The reverse convertibles Respondent Kemp sold also had a call feature which allowed the issuer to redeem the note prior to its maturity date.
14. Investing in a reverse convertible means an investor benefits if the value of the reference asset remains stable or goes up modestly (but not too much, since the investors don’t benefit from the upside performance) or otherwise stays above the knock-in level (usually between 20 and 30 percent below the initial price).
15. In general, the higher the volatility of the reference asset, the higher the fixed coupon or interest payment.
16. However, if the value of the reference asset falls or drops below the knock-in level, the issuer can pay back an investor in the form of depreciated shares of the referenced asset—meaning, an investor can lose some or even all his/her principal.
17. Because investors in reverse convertibles are essentially selling a naked put on the underlying asset or assets, investors should not buy reverse convertibles unless they would be comfortable owning shares of the referenced stock.
18. For these reasons, the prospectuses of reverse convertibles emphasize the risks of investing in a reverse convertible as “significantly riskier than an investment in conventional debt securities...suitable only for investors who are capable of understanding the complexities and risks of the securities.”
19. In light of the complex nature of these products, the Financial Industry Regulatory Authority (“FINRA”)—the self-regulatory organization that regulates member

brokerage firms and exchange markets—published Regulatory Notice 10-09 (the “Regulatory Notice”) establishing industry standards of conduct and providing guidance to broker-dealers and agents regarding their sales practice obligations with respect to reverse convertibles.

20. The Regulatory Notice urged firms and agents that sell reverse convertibles to ensure, among other things, the following:

- a. Ensure that registered representatives understand the risks, terms and costs associated with reverse convertibles; and
  - i. For example, the Regulatory Notice cautioned firms that sell reverse convertibles that the firm's consideration of the benefits of the product to a particular customer (such as the promise of an above market coupon rate) must take into account the potential volatility of the reference asset, the risk that the investor may receive less than the value of the principal upon maturity, and the other risks and costs associated with the product.
  - ii. And depending upon the terms of a specific reverse convertible, even an above market coupon rate may not be reasonable given the risks and costs associated with the product for a particular customer.
  - iii. The Regulatory Notice also stated that firms should also consider the equity position that would result should the customer receive shares in the reference asset instead of a return of principal, and whether that position would be suitable for the customer.
- b. Ensure that an adequate suitability analysis is completed before recommending a reverse convertible to any customer.
  - i. For example, the Regulatory Notice stated that given the put option component of reverse convertibles, firms should consider whether purchases of reverse convertibles should be restricted to investors whose accounts have been approved for options trading, and whether it would be appropriate to apply the suitability requirements for option trading to those products, including the requirement for firms recommending opening transactions in option contracts to have reasonable grounds for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating these risks.
  - ii. The Regulatory Notice then went on to say that firms that do not limit reverse convertibles to accounts approved for options trading should develop other comparable procedures designed to ensure that reverse convertibles are only sold to persons for whom the risk of such products is appropriate and that these firms should be prepared

to demonstrate the basis for allowing investors with accounts not approved for trading options to purchase reverse convertibles.

**Many of the reverse convertibles Respondent Kemp purchased for his clients were linked to volatile equities.**

21. For example, Respondent Kemp purchased the following reverse convertibles with volatile equities for clients: Futu Holdings Limited (FUTU)—a Chinese technology company; Zillow Group, Inc. (Z)—an online real estate marketplace; Snap, Inc (SNAP)—a digital camera and social media company; Pinterest, Inc. (PINS)—an image sharing and social media service; Workhorse Group, Inc. (WKHS)—an electric vehicle equipment manufacturer; Advanced Micro Devices, Inc. (AMD)—a multinational semiconductor and computer processing development company; Digital Turbine, Inc. (APPS)—a mobile and digital advertising agency; and Baidu, Inc. (BIDU)—a Chinese multinational technology company specializing in Internet-related services, products, and artificial intelligence.
22. Notably, all the aforementioned stocks had recently experienced a huge price surge and surge in volume trading right before Respondent Kemp purchased the bonds that included these stocks as the referenced securities.
23. For example, from April 2020 to June 2021, FUTU, had gone up approximately 1,336%—from \$11 in April 2020 to \$179 in June 2021.
24. In February 2021, the trading volume tripled over a period of two (2) days from around nine (9) million trades to twenty-seven (27) million trades in and around February 8 – 11, 2021. Before then, trading volume held steady around two (2) to four (4) million trades per day.
25. Respondent Kemp purchased the notes tied to FUTU right in the middle of this price surge in August of 2021 at a price of \$109.43 a share.
26. Notably, in the one month before Respondent Kemp purchased the bond tied to FUTU, the stock experienced a 43% downturn—a loss of more than the 40% barrier protection the notes provided. And it continued this downward trend until it was finally exchanged at a price of \$44.55 on February 14, 2022.

**The majority of Respondent Kemp's clients were elderly investors on the brink or at the beginning of retirement and were rolling over their employee-sponsored 401Ks who were looking for a way to replace their loss of income to help them get through retirement.**

27. To replace the clients' loss of income, Respondent Kemp used reverse convertibles, which typically generate a higher stream of income than is available from other bonds or bank products.
28. As previously mentioned, the more volatile the referenced asset(s) linked to a reverse convertible, the higher the yields. However, this also means that if the reverse convertible exchanged for any reason, the investor is left with a specified number of shares in said volatile equity(ies).
29. That is precisely why FINRA, in the Regulatory Notice, urged firms to conduct customer-specific suitability analysis for the referenced asset(s) linked to a reverse convertible and to consider the equity position that would result should the customer receive shares of the underlying equity instead of a return of principle and whether that position would be suitable for the customer.
30. From June 2020 through February 2023 (the "Relevant Period"), 28 new clients (the "New Clients") for a total of 37 new accounts (the "New Accounts") were onboarded by Respondent Kemp and subsequently purchased a reverse convertible.
31. Nearly all the accounts were classified as moderate risk (35/37 or 95%), had an investment objective of long-term growth (28/37 or 75%), and had a limited or moderate level of investment knowledge (33/37 or 89%).
32. Notably, over half were elderly investors (20/37 of 54%). And none had options trading experience.
33. Twenty (20) of the New Accounts (or 54%) purchased a reverse convertible within the first thirty (30) days of the account opening and twenty-nine (29) of the accounts purchased a reverse convertible within the first sixty (60) days of the account opening.

**Respondent Kemp purchased reverse convertibles in certain client accounts and in quantities that exceeded the risk tolerances these clients were willing to endure.**

34. During its investigation the Staff spoke to multiple clients of Respondent Kemp, all of which indicated that Respondent Kemp never described the products as risky. But rather, described the product as "low risk, high return" and a means of "steady income".

35. In fact, one client stated that Respondent Kemp had promised an income of around \$58,000 with the purchase of certain reverse convertibles. All of the clients mentioned that Respondent Kemp always spoke about “how many clients were in reverse convertibles” and would boast about how much money he had made for other clients using reverse convertibles.
36. Many of Respondent Kemp’s recommendations that his clients purchase reverse convertibles and in the quantities he purchased the reverse convertibles, exceeded the risk tolerances the clients had indicated there were willing to endure.
37. For example, one individual (“Client A”) was 54 years old at the time he funded an account with Respondent Kemp in May 2021, had an income of \$97,000 a year, a net worth of \$149,000 and a liquid net worth of \$119,000.
38. Client A had moderate investment knowledge, no knowledge of options, an investment objective of long-term growth<sup>1</sup> and a moderate risk tolerance.
39. Client A funded his account with Respondent Kemp with \$25,000 in May of 2021—an amount that reflected Client A’s entire savings to date—and by July 1, 2021, Respondent Kemp had invested \$20,000 or 80% in reverse convertibles.
40. On September 13, 2023, the Staff spoke to Client A who represented to the Staff that upon his initial meeting with the Respondent Kemp, he recommended the purchase of reverse convertibles to the client and described the notes as “low risk with a high return”.
41. Client A also indicated he did not understand the product and was unable to answer basic questions about reverse convertibles posed by the Staff.
42. And finally, Client A told the Staff that he relied on Respondent Kemp’s knowledge and experience as he had very limited experience himself—only having previously invested in an employee-sponsored 401k (annuity).
43. Two of the reverse convertibles Respondent Kemp purchased in Client A’s account were exchanged—meaning the price of referenced equity dropped below the knock-in value—an amount equaling 20-30% below the price of the referenced asset on the date the reverse convertible is purchased—and Client A suffered

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<sup>1</sup> The form which Respondent Kemp utilized to collect investor profile information (the “Investor Profile Form”) was created by Pershing, LLC—the clearing house Respondent McNally used to facilitate its business. Notably, the form listed account investment objectives in ascending risk order—meaning the one that appeared first was congruent with a less risky strategy, and the last one would usually employ a higher risk strategy. And notably, long-term growth was the second of four options—preceded only by income.

<sup>1</sup> Similar to the account investment objectives, the Investor Profile Form listed risk exposure in ascending order from left to right; moderate-risk was the second of four options—preceded only by low-risk exposure.

losses totaling \$5,070—more than one fifth of his entire account with Respondent Kemp.

44. Another client, Client B, was fifty-nine (59) years old at the time he opened his account with Respondent Kemp. He wanted to retire and approached Respondent Kemp hoping to find a way to replace his income so that he could retire but be able to keep up with his expenses. He had an income between \$163,000 and \$168,000; a net worth between \$1,180,000 and \$1,190,000 and a liquid net worth between \$1,080,000 and \$1,090,000.
45. Client B had an investment objective of income<sup>2</sup>; medium liquidity needs; a risk tolerance of moderate<sup>3</sup>; moderate investment knowledge; and no knowledge of options.
46. On September 6, 2023, the Staff spoke to Client B who stated that he was a “skittish and panicky investor” and identified himself as “very conservative”. Client B indicated that upon meeting with Respondent Kemp, Respondent Kemp mentioned how many of his clients were in reverse convertibles.
47. According to Client B, there was “nothing about reverse convertibles [he] understood” and Respondent Kemp never mentioned the high risks involved. Client B also stated that Respondent Kemp never informed him that he could lose all of his principal.
48. Less than three months after onboarding Client B, Respondent purchased a reverse convertible in Client B’s account pursuant to an agreed ladder of bonds. In total, from October 30, 2020 through December 2, 2021, Respondent Kemp purchased eleven reverse convertibles—for a total of \$340,000. And again, three of those reverse convertibles were linked to equities whose price dropped below the knock-in level, resulting in the reverse convertible being exchanged for shares of the low-priced equity.
49. As a result of the notes being exchanged, Client B was left with shares in the referenced equities: Baidu, Inc. (BIDU)—a Chinese multinational technology company specializing in internet-related services, products, and artificial intelligence; Workhorse Group, Inc. (WKHS)—an original equipment manufacturer and technology company that makes electric delivery vans, drones, and telematics

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<sup>2</sup> As previously mentioned, the Investor Profile Form listed account investment objectives in ascending risk order—meaning the one that appeared first was congruent with a less risky strategy, and the last one would usually employ a higher risk strategy. Notably, income was the first of four options.

<sup>3</sup> Similar to the account investment objectives, the Investor Profile Form listed risk exposure in ascending order from left to right; moderate-risk was the second of four options—preceded only by low-risk exposure.



software designed for last-mile delivery; and Zillow Group Inc. (Z)—an American tech real-estate marketplace company.

50. Ultimately, Client B sold all the equity positions for a total realized loss of \$51,676.

51. Overall, across all reverse convertibles, Client B's losses totaled \$37,450.00.<sup>4</sup>

52. And another client of Respondent Kemp's ("Client C") was seventy years old at the time he opened his account with Respondent. He had an income between \$120,000 and \$125,000; a net worth between \$1,018,000 and \$1,020,000; and a liquid net worth between \$680,000 and \$690,000.

53. Client C had an investment objective of long-term growth, a risk tolerance of moderate, and had moderate investment knowledge.

54. Less than two weeks after onboarding Client C, Respondent Kemp purchased a reverse convertible in Client's C account.

55. By February 2021, Client C held a total of six reverse convertibles totaling \$248,000 which constituted 36% of Client C's liquid net worth.

56. In total, from June 31, 2020, through February 2023, Respondent Kemp purchased 22 reverse convertibles— for a total of \$888,000 in Client C's account.

57. Five (5) of the reverse convertibles were linked to equities whose price dropped below the knock-in level, resulting in the reverse convertible being exchanged for shares of the volatile, low-priced equity.

58. As a result of the notes being exchanged, Client C was left with shares in the referenced equities: Baidu, Inc. (BIDU)—a Chinese multinational technology company specializing in internet-related services, products, and artificial intelligence; Zillow Group Inc. (Z)—an American tech real-estate marketplace company; Futu Holdings Limited (FUTU)—a Chinese technology company, Snap, Inc (SNAP)—a digital camera and social media company; and Digital Turbine, Inc. (APPS) —a mobile and digital advertising agency.

59. Ultimately, Client C sold all the equity positions resulting from the exchanged notes for a total realized loss of \$124,219.00.

60. Overall, across all reverse convertibles, Client C's losses totaled \$34,277.00.<sup>5</sup>

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<sup>4</sup> This amount takes into account income received from bonds and is a net loss.

<sup>5</sup> This amount takes into account income received from bonds and is a net loss.

61. Another client of Respondent Kemp's ("Client D") was sixty-two years old at the time he opened his accounts with Respondent. He had an income between \$69,000 and \$71,000; a net worth of \$312,000 and \$315,000; and a liquid net worth between \$297,000 and \$300,000.
62. Client D had an investment objective of long-term growth; a risk tolerance of moderate; moderate investment knowledge; and no knowledge of options.
63. Two months after onboarding Client D, Respondent purchased a reverse convertible in Client's D account.
64. And less than six months later, Respondent Kemp had concentrated approximately 40% of Client D's liquid net worth in reverse convertibles.
65. Four of those reverse convertibles were linked to equities whose price dropped below the knock-in level, resulting in the reverse convertible being exchanged for shares of the low-priced equity.
66. As a result of the reverse convertibles being exchanged, Client D was left with shares in the referenced equities: Baidu, Inc. (BIDU)—a Chinese multinational technology company specializing in internet-related services, products, and artificial intelligence; Workhorse Group, Inc. (WKHS)—an original equipment manufacturer and technology company that makes electric delivery vans, drones, and telematics software designed for last-mile delivery; and Zillow Group Inc. (Z)—an American tech real-estate marketplace company.
67. Ultimately, Client D sold all the equity positions resulting from the exchanged notes for a total realized loss of \$80,303.
68. Overall, across all reverse convertibles, Client D's losses totaled \$40,679.00.<sup>6</sup>
69. In total, the New Clients had unrealized principal losses of \$680,182.90<sup>7</sup> in connection with their reverse convertible investments. By contrast, the sales credit Respondents received in connection with the sales of the reverse convertibles to the New Clients totaled \$127,880.00.

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<sup>6</sup> This amount takes into account income received from bonds and is a net loss.

<sup>7</sup> As of February of 2023, the unrealized losses totaled \$685,046.90. However, it should be noted that the losses for the individuals whose notes were redeemed for equity positions that ultimately sold or who ultimately will sell those positions will change depending on the value of the equity(ies).

**Respondent Kemp had no reasonable basis to believe that recommending reverse convertibles was in the best interest of his clients.**

70. Beginning in June 2020, broker-dealers and their associated persons were required to comply with Regulation Best Interest (“Reg BI”), the Securities and Exchange Commission’s rule establishing a new standard of conduct.
71. Reg BI establishes a standard of conduct that requires broker-dealers and associated persons, when recommending a security to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing their financial or other interest ahead of the interest of the retail customer.
72. The Best Interest Obligation is satisfied only by compliance with the following four component obligations: (1) Disclosure Obligation, (2) Care Obligation, (3) Conflict of Interest Obligation, and (4) Compliance Obligation.
73. The Care Obligation requires a broker-dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to exercise reasonable diligence, care, and skill to, among other things, have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer’s investment profile and the potential risks, rewards, and costs associated with the recommendation.
74. Reg BI defines a “retail customer investment profile” to include, but not be limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.
75. Prior to Reg BI, industry rules required broker-dealers and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities be suitable for the retail customer.<sup>8</sup> And the rule’s supplementary material defined reasonable-basis obligation as requiring broker-dealers and their associated persons to perform reasonable diligence and have an understanding of the potential risks and rewards associated with the recommended security or strategy, and to have a reasonable basis to believe, based on that reasonable diligence, that the recommendation is suitable for at least some investors.<sup>9</sup>

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<sup>8</sup> FINRA Rule 2111.

<sup>9</sup> FINRA Rule 2111 Supplementary Material .05(a).

76. As indicated earlier, reverse convertibles are high-risk, complex products appropriate only for sophisticated investors capable of understanding the complexities and risks of the securities and who are willing and able to endure total loss of investment.
77. When asked by the Staff to provide evidence of customer-specific suitability analysis or a basis for recommending reverse convertibles to the majority of his clients, Respondent Kemp was not able to provide sufficient documentation.
78. Respondent Kemp's clients were largely moderate investors not looking for that degree of risk. They had no investment knowledge. They had never traded in options. Many were elderly.

**Respondent McNally did not establish, maintain, and enforce a reasonable supervisory system to supervise the sales of reverse convertibles by Respondent Kemp.**

79. Section 115.10 of the Rules and Regulations of the Texas State Securities Board (the "Board Rules") requires that each dealer establish, maintain, and enforce a system to supervise the activities of its agents that is reasonably designed to achieve compliance with the Texas Securities Act, the Board Rules, and all applicable securities laws and regulations.
80. Respondent McNally's written supervisory procedures (the "Procedures") did not establish sufficient suitability guidelines for the sales of reverse convertibles—for example, whether, prior to purchasing a reverse convertible, investors should have a certain annual income, a certain amount in liquid assets, a certain net worth, a certain level of investment experience, or a certain risk tolerance and/or investment objective.
81. Rather than providing guidance specific to their business and sales practices, Respondent McNally simply restated excerpts from the Regulatory Notice in the Procedures.
82. For example, the Regulatory Notice stated that given the put option component of reverse convertibles, firms should consider whether purchases of reverse convertibles should be restricted to investors whose accounts have been approved for options trading, and whether it would be appropriate to apply the suitability requirements for option trading to those products.
83. In an attempt to follow the guidance contained in the Regulatory Notice, Respondent McNally included in the Procedures that representatives are prohibited from selling reverse convertibles to customers who have not been approved to open

options accounts or do not meet the suitability requirements for options trading.<sup>10</sup> And that representatives and their supervisors should be prepared to demonstrate the basis for allowing investors with accounts not approved for trading options to purchase reverse convertibles.

84. But the Procedures state no specific suitability requirements for options trading.
85. None of the New Clients that purchased reverse convertibles during the Relevant Period were approved for options trading.
86. In fact, Respondent McNally did not engage in the business of options trading at all. They simply copied from the Regulatory Notice which suggested that firms apply options suitability requirements to reverse convertibles.
87. The Regulatory Notice then goes on to say that firms that do not limit reverse convertibles to accounts approved for options trading should develop other comparable procedures designed to ensure that reverse convertibles are only sold to persons for whom the risk of such products is appropriate.
88. Respondent McNally's procedures did not provide for such assurances.
89. The Procedures simply state that representatives should attempt to understand each customer's financial status, tax status, investment objectives and other useful information.
90. The Procedures also state that investors need to be pre-qualified for structured products, such as reverse convertibles, but Respondent McNally had no system in place to supervise the sales of reverse convertibles prior to the transactions being effectuated and therefore had no way to pre-qualify investors.
91. In fact, the only review conducted by Respondent McNally was done after the trades were effectuated.
92. Notably, Respondent McNally rejected zero reverse convertible purchase requests during the Relevant Period.

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<sup>10</sup> This is due to the put option component of reverse convertibles as previously discussed.

## CONCLUSIONS OF LAW

1. Respondent Kemp's purchasing of high-risk, complex reverse convertibles notes that were linked to volatile equities in certain client accounts was unsuitable given the customers' risk tolerance, investment objective(s), and limited investment experience and therefore constitutes an inequitable practice in the sale of securities.
2. Respondent Kemp's concentration of certain clients' accounts in reverse convertible notes was also unsuitable given the customers' risk tolerance, investment objective(s), and limited investment experience and also constitutes an inequitable practice in the sale of securities.
3. Respondent Kemp's recommendation that clients purchase and hold reverse convertible notes in high concentrations without a reasonable basis to believe that doing so was in the best interest of his clients constitutes a violation of Regulation Best Interest and is therefore an inequitable practice in the sale of securities.
4. Pursuant to Section 4007.105(a)(3)(A) of the Texas Securities Act, the aforementioned inequitable practice in the sale of securities constitutes a basis for the issuance of an order suspending Respondent Kemp's registrations with the Securities Commissioner.
5. Respondent McNally's failure to establish, maintain, and enforce a system to supervise the activities of its agents that is reasonably designed to achieve compliance with the Texas Securities Act, the Board Rules, and all applicable securities laws and regulations is a violation of Section 115.10 of the Board Rules.
6. Pursuant to Section 4007.105(a)(13)(B) of the Texas Securities Act, the aforementioned violation of a Board Rule constitutes a basis for the issuance of an order reprimanding Respondent McNally.
7. Pursuant to Section 4007.108 of the Texas Securities Act, the Securities Commissioner may order a dealer, agent, investment adviser, or investment adviser representative to pay a refund to a client or a purchaser of securities or services from the person or company as provided in an agreed order or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

## ORDER

1. It is therefore ORDERED that the investment adviser representative registration and the agent registration of Mark Alan Kemp with the Securities Commissioner is hereby SUSPENDED for a period of two (2) weeks from the date this Order is entered by the Securities Commissioner.
2. It is further ORDERED that McNally Financial Services Corporation is hereby REPRIMANDED.
3. It is further ORDERED that Mark Alan Kemp and McNally Financial Services Corporation REFUND certain clients that held reverse convertible notes in their accounts pursuant to the terms of an undertaking incorporated by reference herein.
4. It is further ORDERED that McNally Financial Services Corporation COMPLY with the terms of an undertaking incorporated by reference herein which requires McNally Financial Services Corporation to implement certain procedures related to reverse convertible notes.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 14<sup>th</sup> day of October, 2024.

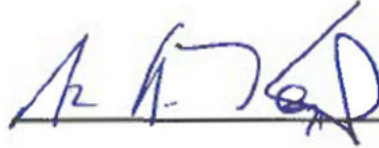


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TRAVIS J. ILES  
Securities Commissioner



**Respondents:**

A handwritten signature in blue ink, appearing to read 'Mark Alan Kemp', written over a horizontal line.

**Mark Alan Kemp  
Individually**

A handwritten signature in blue ink, appearing to read 'David D. McNally', written over a horizontal line.

**McNally Financial Services Corporation  
By: David D. McNally  
President and Owner**

Approved as to Form:



Cristi Ramón Ochoa,  
Deputy Securities Commissioner



Gary Kessler, Partner  
Kessler Collins, P.C.  
Attorney for Respondents



Nadda Rungruangphol,  
Attorney  
Legal & Investigations Division