

Re Hildebrandt

In The Matter of the Investment Dealer and Partially Consolidated Rules

and

Randy Bryan Hildebrandt

2025 CIRO 05

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: April 29 - May 2 and September 16 - 17, 2024 at Vancouver, British Columbia
Decision and Reasons: January 23, 2025

Hearing Panel:

Joseph A. Bernardo (Chair), Bruce Maranda and Johannes van Koll

Appearances:

Rob DelFrate, Senior Enforcement Counsel
Jagdeep Khun-Khun, Enforcement Counsel
Owais Ahmed, for Randy Bryan Hildebrandt
Jessica Mank, for Randy Bryan Hildebrandt
Randy Bryan Hildebrandt (present)

DECISION ON LIABILITY

INTRODUCTION

[1] On January 1, 2023, the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealer's Association of Canada merged to form a new self-regulatory organization now called the Canadian Investment Regulatory Organization (CIRO). Under CIRO's transitional provisions, the conduct addressed by these Reasons for Decision remains subject to the IIROC Rules and Bylaws in force at the time the conduct occurred.

[2] In these Reasons, client and company names have been anonymized except where their disclosure is necessary to ensure transparency.

OVERVIEW

[3] This case is about the scope of a Registered Representative's duty to act as a gatekeeper to the capital markets.

[4] In 2008, Randy Bryan Hildebrandt (Respondent) began his career as a regulated person in the securities industry when he became employed as a Registered Representative by Union Securities Ltd. in British Columbia.

[5] In October 2012, the Respondent changed his employment and became a Registered Representative in the Vancouver office of PI Financial Corp. (PI), now known as Ventum Financial Corp.

[6] On June 26, 2023, CIRO Enforcement Staff (Staff) issued a Notice of Hearing alleging that between July 2019 and March 2020 (Relevant Period), the Respondent failed to make sufficient and reasonable or diligent

inquiries in relation to client trading activity, contrary to Investment Dealer and Partially Consolidated (IDPC) Rule 1400.

[7] At the hearing, Staff sought to establish its case by relying principally on business records that were verified and interpreted by Alex Oustinov, a Senior Investigator with CIRO.

[8] On the Respondent's behalf, defence counsel tendered the testimony of Richard Thomas, who during the Relevant Period was a director, Senior Vice-President Compliance and General Counsel at PI. The defence also entered a number of business records into evidence in the course of Mr. Oustinov's cross-examination and through a legal assistant's affidavit.

[9] The purpose of the evidence in both instances was to establish the circumstances of trading in the common shares of a Canadian Stock Exchange-listed exploration stage junior mining company (the Issuer) by some of the Respondent's clients. Neither party objected to the reliability or admissibility of the other's evidence and there was no controversy about the relevant trading history.

[10] The material disagreement between the parties was over how the evidence should be interpreted and the inferences that may be properly drawn from it.

MATERIAL FACTS

[11] The material facts established by the evidence are set out below.

Accounts

[12] On November 6, 2012, the Respondent opened an investment account at PI in the name of AL (AL Account). This was an individual who had previously been one of the Respondent's clients when he had been employed by Union Securities Ltd.

[13] At some point, AL referred another individual, MV, to the Respondent as a potential client. Beginning in March 2017, the Respondent became responsible for servicing what would eventually become a number of corporate investment accounts at PI directed by MV.

[14] In August 2018 and further to a referral made by MV, the Respondent opened an investment account at PI for NV, who was MV's father (NV Account). In his New Account Application Form (NAAF), NV disclosed that his account objective was 100% short term capital gain, and his risk tolerance was 100%.

[15] In September 2018 and December 2018, MV incorporated two British Columbia companies that were named, respectively, LVP Ltd. and VC Inc. MV was the sole shareholder, director and president of each company.

[16] On July 26, 2019, MV caused the Respondent to open a corporate investment account at PI in the name of VC Inc. (VC Account).

[17] Between July and November 2019, MV instructed the Respondent to open investment accounts for eleven other persons. Six of them elected to open accounts at PI (the Referred Accounts), while the other five declined to do so.

[18] The Respondent received the instructions relating to the five persons who declined to open accounts between July 22 and September 13, 2019. One of these was an individual called NM.

- a. On August 16, 2019, MV referred NM to the Respondent as a potential client by way of an email in which he stated: "Please help [NM] open a new account he is going to be receiving shares also[.]"
- b. On September 27, 2019, NM sent two emails to the Respondent.

- i. One email stated: “Hi I want to make sure that [MV] does not use my account for any stock deals. If you can close my account, it would be greatly appreciated.”
- ii. The relevant part of the other email stated: “[MV] wanted me to be a nominee on a stock he is promoting.”

[19] The opening dates of the Referred Accounts and the names of their respective holders were as follows:

- a) July 30, 2019 — JA (JA Account).
- b) August 20, 2019 — AW (AW Account).
- c) August 21, 2019 — RG (RG Account).
- d) September 12, 2019 — LS Inc. (LS Account).
- e) November 13, 2019 — CM (CM Account).
- f) November 14, 2019 — HM (HM Account).

[20] Each of these clients indicated in their respective NAAFS that their account objective was 100% short-term capital gain, and their risk tolerance was the highest possible at 100%.

[21] On March 2, 2020, MV caused the Respondent to open a corporate investment account at PI in the name of LVP Ltd. (LVP Account).

Pre-trading shareholdings and transfers

[22] As at July 30, 2019, the Issuer had:

- a) 42,813,049 issued and outstanding common shares listed on the Canadian Stock Exchange;
- b) incurred losses in each of the previous eight quarters; and
- c) limited assets that totalled no more than \$27,353.

[23] On August 28, 2019, the Issuer published a press release that announced the closing of a private placement of 1,666,666 common shares for \$50,000, the proceeds of which were to be used for general working capital. The press release did not disclose whether the distribution had been from treasury or from a control position.

[24] On the dates and in the amounts indicated below, the following clients of the Respondent controlled shares of the Issuer that were registered in the Direct Registration System (DRS) through the Odyssey Trust Company:

- a) VC Inc. — 4,000,000 shares as at September 6, 2019.
- b) JA — 4,079,000 shares as at September 13, 2019.
- c) LS Inc. — 4,000,000 shares as at September 17, 2019.

[25] On the dates and in the amounts indicated below, these clients through DRS transfers deposited a total of 5,879,000 common shares of the Issuer into the PI accounts recently opened for them by the Respondent further to MV’s direction:

- a) On September 9, 2019, the VC Account received 3,600,000 shares.
- b) On September 19, 2019, the JA Account received 79,000 shares.
- c) On September 19, 2019, the LS Account received 2,200,000 shares.

[26] Regardless of whether the August 18, 2019 private placement had been made from treasury or a control position, in the aggregate the holdings in these accounts represented over 13% of the total issued and outstanding common shares of the Issuer.

Trading generally and market dominance

[27] During the Relevant Period:

- a) The holders of the VC Account, Referred Accounts, NV Account, AL Account and LVP Account (MV Associated Accounts) were the Respondent's only clients who traded in shares of the Issuer.
- b) The trading facilitated by the Respondent on behalf of the MV Associated Accounts represented over 33% of the total trading volume and over 56% of the total value of the shares traded.

[28] In the four months from September through to December 2019, the MV Associated Accounts dominated the market for common shares of the Issuer, being responsible for 90%, 79%, 77% and 60%, respectively, of all trading in the shares.

- a) During this time, a total of 11,767,152 Issuer shares were traded in market transactions.
- b) The MV Associated Accounts were responsible for 4,254,000 of the share sales and 1,110,200 of the share purchases.
- c) The majority of this trading consisted of sales for which three accounts alone — the MV, NV and LS Accounts — were responsible for selling 3,931,500 shares into the market.

[29] The first of the MV Associated Account holders to commence trading in the Issuer's shares during the Relevant Period was MV's father, NV, whose account made a series of relatively small purchases that caused significant rises in the market price.

- a) On August 29, 2019, the NV Account established that day's closing price for the Issuer's shares by purchasing 500 shares at \$0.20 per share. The bid exceeded the previous high bid of \$0.08 by \$0.12, or 150%.
- b) On August 30, 2019, there were four trades in the Issuer's shares. One was for only two shares. The other three were purchases made from the NV Account for a total of 3,500 shares that resulted in a closing price of \$0.40 per share.
- c) On September 11, 2019, the closing price for the Issuer's shares was \$0.40 per share.
- d) On September 12, 2019, the only trade in the Issuer's shares was a purchase from the NV Account for 5,000 shares that resulted in a closing price of \$0.50.
- e) In a span of roughly two weeks, the NV Account made nominal purchases that caused the Issuer's share price to increase by 525%.

[30] The VC Account:

- a) Between September 13 and 25, 2019, sold 178,500 and purchased 31,000 Issuer shares for net sales of 147,500 shares at prices between \$0.50 and \$0.53 per share.
- b) In addition to receiving Issuer shares by DRS transfer, acquired a further 374,500 shares through market purchases at a total cost of \$207,285.
- c) Sold a total 2,643,500 Issuer shares for proceeds of \$1,237,536.

- d) Paid a total of \$10,063.74 in early settlement fees in order to permit the withdrawal of Issuer share sale proceeds immediately after the transactions took place. VC Inc. received a total of \$1,010,374.58 of cash from the account in this fashion.
- e) Did not receive any deposits of cash.

Purchasing patterns

[31] During the Relevant Period, the MV Associated Accounts on multiple occasions purchased shares of the Issuer at or around the same prices and times as they sold them in significantly larger amounts.

[32] The VC Account:

- a) Between September 13 and September 17, 2019, purchased 6,000 shares at prices between \$0.50 and \$0.52 per share and sold 163,000 shares at prices between \$0.50 and \$0.53 per share.
- b) On September 30, made two purchases of 500 shares each at \$0.50 and \$0.51 per share, respectively. Between these purchases, the account sold 11,000 shares at \$0.54 per share.
- c) On October 23, 2019, purchased 22,000 shares at prices between \$0.51 and \$0.53 per share and sold 140,000 shares at \$0.54 per share.
- d) On October 28, 2019, purchased 27,500 shares at prices between \$0.49 and \$0.53 per share. Over the subsequent three days, the account sold 358,500 shares at prices between \$0.53 and \$0.54 per share.
- e) On November 4, 2019, purchased 44,000 shares at prices between \$0.54 and \$0.56 per share. Over the next two days, the account sold 383,500 shares at prices between \$0.53 and \$0.58 per share.
- f) On November 13, 2019, purchased 1,000 shares at \$0.64 per share and sold 47,000 shares at \$0.63 per share.
- g) On November 14, 2019, purchased 4,500 shares at \$0.64 per share and sold 9,000 shares at the same price.
- h) On November 15, 2019, purchased 20,000 shares at \$0.62 per share and sold 44,500 shares at \$0.63 per share.

[33] Between September 30 and October 4, 2019, the NV Account purchased 17,500 shares at prices between \$0.53 and \$0.54 per share and then, between October 10 and 24, 2019, sold 17,500 shares at prices in the same range of \$0.53 and \$0.54 per share.

[34] Between October 8 and 11, 2019, the LS Account purchased 15,000 shares at \$0.51 or \$0.52 per share and sold 25,000 shares at \$0.53 per share.

[35] After allowing for commissions and various costs, including early settlement and wire transfer fees, the shares purchased above were all sold either on the day they had been acquired, or shortly thereafter, at prices that could not be reasonably expected to yield a financial benefit to the account holder or, in some instances, for outright losses.

[36] Some of the MV Associated Accounts also made purchases that appear to have been inappropriately risky relative to the account holder's financial position or investment knowledge or both.

[37] The CM, HM, AW and RG accounts were all cash accounts.

- a) On November 13 and 14, 2019, the CM Account acquired 56,400 shares of the Issuer in purchases made at \$0.63 and \$0.64 per share.

- i. In her NAAF, CM stated that: her investment knowledge was limited to two years of experience; she had \$100,000 in net liquid assets; and her annual income was \$37,000.
 - ii. The total cost of CM's purchases was \$36,022.
 - iii. Prior to the purchases, CM had deposited about \$36,000 into the account. This amount represented 36% of her liquid assets and close to 100% of her total annual income.
- b) On November 15, 2019, the HM Account purchased 15,400 shares of the Issuer at \$0.64 per share.
- i. In her NAAF, HM stated that: her investment knowledge was limited to one year of experience; she had \$50,000 in net liquid assets; and her annual income was \$35,000.
 - ii. The total cost of the HM's purchase was \$9,976.
 - iii. Prior to the purchases, HM had deposited just over \$10,000 into the account. This amount represented 20% of her liquid assets and close to 30% of her total annual income.
- c) On November 25, 2019, the AW Account purchased 40,000 shares of the Issuer at \$0.54625 per share.
- i. In his NAAF, AW stated that: his investment knowledge was limited to mutual funds; he had \$10,000 in net liquid assets; and his annual income was \$60,000.
 - ii. Prior to the purchase, AW did not deposit any funds into the account.
 - iii. The total cost of AW's purchase was \$22,089. This represented about 220% of AW's stated net liquid assets and a little over 30% of his annual income. The Respondent had not personally met AW.
 - iv. Between December 5 and 17, 2019, all 40,000 shares were sold out of the account for a total of \$14,025, representing a loss of \$8,064 or almost all of AW's net liquid assets.
- d) On November 28, 2019, the RG Account acquired 100,000 shares of the Issuer in four purchases made at \$0.51 per share.
- i. In his NAAF, RG stated that he had no more than \$5,000 in net liquid assets,
 - ii. Prior to the purchases, RG did not deposit any funds into the account.
 - iii. The total cost of RG's purchases was \$51,590. This amount represented approximately 1031% of RG's stated net liquid assets. The Respondent had not personally met RG.
 - iv. Upon learning of the purchases, the credit department at PI emailed the Respondent to say: "Wow – Brand new account, no activity, no equity – the first transaction and you step out for this size! Crazy".
 - v. Between December 12 and 18, 2019, all 100,000 shares were sold out of the account for a total of \$27,385, representing a loss of \$24,205.

Cross trades

[38] During the Relevant Period, a number of cross trades occurred between MV Associated Accounts. In some instances, these trades had a material effect on the Issuer's closing price.

[39] On September 30, 2019:

- a) An order the Respondent had previously entered on September 27, 2019 for the VC Account to sell 100,000 shares of the Issuer at \$0.54 per share remained outstanding.

- b) The Respondent entered an order for the NV Account to purchase 15,000 shares at that price, \$0.54 per share.
- c) The most recent prior trade in Issuer shares made earlier that day had been at \$0.50 per share, the same as the closing price at the end of the previous day's trading.
- d) The NV Account buy order was partially filled by a sell order offering to sell 4,000 shares at \$0.53 per share.
- e) The remainder of the NV Account buy order was filled by the VC Account at \$0.54 per share. This was the last trade of the day and resulted in a closing price for the Issuer's shares that was 8% higher than the previous day's closing price.

[40] On November 6, 2019:

- a) At 10:08:38, the Respondent entered an order for the JA Account to buy 5,000 shares of the Issuer at \$0.58 per share. This resulted in the prompt filling of orders to sell 500 and 3000 shares at \$0.56 and \$0.58 per share, respectively. This left the buy order with a balance of 1,500 shares remaining to be filled.
- b) What then ensued was the entry by the Respondent of a flurry of additional buy orders and cancellations made in rapid succession on behalf of the JA and VC Accounts.
 - i. At 10:22:13, two buy orders were entered for the JA Account to purchase an additional 2,000 and 2,500 shares at \$0.56 and \$0.57 per share, respectively.
 - ii. Roughly forty seconds later, at 10:22:56 and 10:22:57, two buy orders were entered for the VC Account to make two purchases of 2000 shares each at \$0.55 and \$0.54 per share, respectively.
 - iii. A little over twenty seconds after that, at 10:23:19, the JA Account 2,500 share buy order at \$0.57 per share was cancelled and a new buy order for the account to buy 1,500 shares at \$0.57 per share was entered.
 - iv. Some thirteen minutes after that order had been entered, at 10:36:37, it was also cancelled and a new buy order for the JA Account to purchase 1,500 shares at \$0.54 per share was entered.
- c) At 10:43:51, the Respondent entered an order for the VC Account to sell 1,500 shares at \$0.58 per share. This filled the 1,500 shares remaining to be purchased at \$0.58 per share under the JA Account's original buy order.

[41] As previously noted, the CM Account was opened on November 13, 2019. This initiated two days of activity that constituted the entire sum of the account's trading history during the Relevant Period.

- a) On November 13, 2019:
 - i. At 12:47:17, the Respondent entered an order for the VC Account to sell 47,400 shares of the Issuer at \$0.63 per share.
 - ii. Fifteen seconds later, at 12:47:32, the Respondent entered an order for the CM Account to buy 47,400 shares at \$0.63 per share.
 - iii. 400 shares of the buy order were filled by a seller at another dealer.
 - iv. The remaining 47,000 shares of the buy order were filled by VC Account sell order.

v. At 14:41:37, the Respondent cancelled the remaining 400 share portion of the VC Account's sell order.

b) On November 14, 2019:

i. CM deposited an additional \$6,000 into the CM Account.

ii. At 14:41:16, the Respondent entered an order for the VC Account to sell 9,000 shares of the Issuer at \$0.64 per share.

iii. Seven seconds later, at 14:41:23, the Respondent entered an order for the CM Account to buy 9000 shares at \$0.64 per share, which immediately filled the VC Account sell order.

[42] On November 15, 2019:

a) At 14:47:47, the Respondent entered an order for the VC Account to sell 15,400 shares of the Issuer at \$0.64 per share.

b) Five seconds later, at 14:47:52, the Respondent entered a new order for the HM Account to buy 15,400 shares at \$0.64 per share.

c) 400 shares of the buy order were filled by a seller at another dealer.

d) The remaining 15,000 shares of the buy order were filled by VC Account sell order.

e) Less than ten minutes after that trade, at 14:56:57, the Respondent cancelled the remaining 400 share portion of the VC Account's sell order, and entered another sell order for the VC Account. This one was to sell 30,000 shares at \$0.63 per share.

f) Forty-five seconds later, at 14:57:42, the Respondent entered an order for the AL Account to buy 29,500 shares at \$0.63, which was immediately filled by the new VC Account sell order.

[43] On December 2, 2019:

a) At 14:20:55, the Respondent entered an order for the JA Account to sell 6,000 shares of the Issuer at \$0.49 per share.

b) Six seconds later, at 14:21:01, the Respondent entered an order for the VC Account to buy 6,000 shares at \$0.49 per share, which was immediately filled by the JA Account sell order.

Transfers between accounts

[44] During the Relevant Period, the Respondent assisted VC Inc. in preparing the corporate documentation required to transfer Issuer shares from the VC Account to other PI investment accounts.

[45] MC, who was personally known to the Respondent, was the president of an Alberta company called ITC Inc. (ITC).

[46] On September 12, 2019, the Respondent opened a corporate investment account at PI for ITC (ITC Account). In its NAAF, the company's business was initially indicated in handwriting as "marketing". This was crossed out and replaced with "holding".

[47] On September 13, 2019, the Respondent submitted documentation to transfer 200,000 shares of the Issuer from the VC Account to the ITC Account.

a) The documentation included a "Marketing and Corporate Communications Services Contract" dated September 1, 2019 and an invoice dated September 10, 2019 billing VC Inc. "\$80,000 CAD or 200,000 common shares of [the Issuer]" for such services.

- b) Prior to submitting the documentation, the Respondent played an active role in facilitating the execution of the contract, reviewing multiple versions of the signature page and directing MC until he was satisfied a version suitable for filing had been provided.
- c) PI's compliance department reviewed the documentation. At 10:01:43 on September 13, 2019, the department emailed the Respondent to advise that an anomaly needed to be addressed: when the ITC Account had been opened the previous day, ITC had been identified as a passive company serving as a holding entity when it was actually an active company being paid for services. The email also inquired as to:
 - i. The nature of the services being rendered by ITC.
 - ii. How VC Inc. had accumulated so many shares.
 - iii. The nature of the Issuer's business.
- d) At 11:16:41 on the same day, the Respondent emailed a response without first asking either MC or MV to provide any information. He explained that:
 - i. An assistant was sorting out ITC's income level, which was actually much higher than originally stated, and that "With large holdings (holding company) but also with income from same business we will get corrected to 'Active[']".
 - ii. ITC's business was "Helping with and accessing the business plan moving forward and to build market awareness". The Respondent did not explain why, if he had known ITC's business involved carrying out some kind of marketing or branding activity, he had signed the NAAF omitting that fact.
 - iii. With respect to VC Inc.'s share accumulation: "Client informed he bought them".
 - iv. The Issuer's business was gold exploration.
- e) At 11:41 a.m. on September 13, 2019, about twenty-five minutes after he had already emailed his explanation to PI's compliance department, the Respondent forwarded the department's inquiries in an email addressed to both MC and MV.
 - i. Referencing all of the inquiries, the Respondent stated: "Guys need each of the highlighted questions answered."
 - ii. The only response was from MC who, about ninety seconds after receiving the Respondent's email, replied: "I was advised to say we were a passive company. I don't know what to say there guys."
 - iii. The Respondent did not subsequently advise PI's compliance department of this response by ITC's president.

[48] On October 28, 2019, the Respondent effected a second transfer of Issuer shares from the VC Account to the ITC Account, this time for 50,000 shares.

- a) The documentation he submitted included a "Marketing and Corporate Communications Services Contract" relating to website design and branding services and an invoice billing VC Inc. for the same, both dated September 23, 2019.
- b) In the course of his investigation, Mr. Oustinov searched the internet for a website for or pertaining to VC Inc. but never found one.

[49] The Respondent was aware of plans to make two other transfers of Issuer shares from the VC Account. These did not come to fruition.

[50] One of the plans contemplated another share transfer to the ITC Account:

- a) The Respondent had in his possession the signature page of a loan agreement that had been signed by MV and MC.
- b) On September 12, 2019, the Respondent exchanged a number of emails with MC in which, among other things:
 - i. The Respondent stated: “if you can get full loan agreement sent over we can look at moving the larger piece” and “please re word invoice for loan”.
 - ii. MC provided the Respondent with an invoice that stated: “As per Loan Agreement... 1,800,000 Common Share of [the Issuer]”.
- c) On September 13, 2019, MC provided the Respondent with a copy of the full loan agreement and an authorization to transfer shares of the Issuer from the VC Account to the ITC Account.
 - i. The loan agreement indicated that VC Inc. would provide 1,800,000 shares of the Issuer as collateral for a \$100,00 loan from ITC.
 - ii. The transfer authorization had been executed by both MV and MC, but the number of shares to be transferred had been left blank.
 - iii. The portion of the authorization signed by MV included this statement: “I hereby certify that: this is an isolated transaction; it is not made in the course of continued and successive transactions of a similar nature; and, I am not, nor do I act on behalf of, any person or entity whose usual business is trading in securities.”

[51] In connection with the other transfer that was not completed:

- a) On November 27, 2019, one of the Respondent’s assistants forwarded an invoice to MV. The invoice was addressed to VC and was from DT, a foreign national and a client of another PI registered representative.
- b) The invoice stated that DT was owed \$125,000 for “Business Development/Growth Opportunities and Business Financing” to be paid by 250,000 shares of the Issuer.
- c) The Respondent was actively involved in arranging the relevant documentation for the proposed transfer, including an authorization to transfer shares executed by MV. He exchanged numerous emails with DT’s investment advisor at PI. In one of these, he stated: “being that the client is foreign, the internal matching transfer may not get approved but we can attempt. A possible easier way that you agree you can work with be to pull a DRS in [VC Inc.’s] name and have it re-registered at transfer agent to [DT]”.

Inquiries relating to the MV Associated Accounts

[52] There is no evidence the Respondent showed any curiosity about: the large concentration of common shares of the Issuer controlled by VC Inc., JA and LS Inc.; the dominant role the MV Associated Accounts played in the market for Issuer shares during the Relevant Period; the effect of the trading by the MV Associated Accounts had on the price for Issuer shares; MV’s transfer of Issuer shares to ITC and his plans to make other large transfers of shares; or the nature of the connection or connections between MV and the other holders of MV Associated Accounts.

[53] The evidence establishes, instead, that to the extent the Respondent inquired at all into the circumstances or purposes of the MV Associated Account holders and their trading in Issuer shares, it was only when PI’s internal controls forced the issue. As already discussed, when PI’s compliance department queried the Respondent about MV’s first share transfer to ITC, he forwarded the questions to MV and MC.

[54] Subsequently, the Respondent allowed each of the RG, AW, LS, JA, NV and VC Accounts to make trades in shares of the Issuer that put them into debit positions. When these aged beyond the period permitted by PI's policies, the dealer's credit department directed the Respondent to obtain immediate payments from the clients and increasingly pressed him to sell off the accounts' holdings of Issuer shares to clear the debits.

[55] The Respondent responded by forwarding assurances he had obtained from his clients that they would be depositing cheques to their accounts and relied on these to keep deferring the credit department's demands that he sell off their Issuer shares. Time and again, however, the cheques bounced and selling Issuer shares out of the delinquent accounts became unavoidable.

[56] The Respondent's emails to the credit department included the following references to the market for sell offs of Issuer shares:

- a) On November 27, 2019, regarding the LS Account: "The [Issuer] is looking to trade out at a better price tomorrow than what we have today".
- b) On December 10, 2019, regarding the RG Account: "... supposed to be some volume today...".
- c) On December 12, 2019, regarding the RG Account:
 - i. "... there is expected market strength this am..."; and
 - ii. "We are working hard on this [...], with buyers coming in and wanting to take this stock back up...".
- d) On December 16, 2019, regarding the RG Account:
 - i. "There is larger expected buying coming in next 15 mins that will take this past our \$0.30c offer..."; and
 - ii. "No sales goddamit, was supposed to be much more today...".
- e) On December 17, 2019, regarding the VC Account: "... we are selling full debit out tomorrow am and I hear it will be done buyers will be there for full \$120,000 worth...".
- f) On December 22, 2019, regarding the VC Account: "Client has informed me there is \$25k of buying for this a [sic] stock at the open at current levels and above, with another \$25k within the first 30 mins even higher...".
- g) On December 27, 2019, regarding the VC Account:
 - i. "... we are in order to get sell, supposed to be here yet today..."; and
 - ii. "...I think we finally get [VC Account] and [NV Account] paid off, should be some buying yet in next 15 mins or less".
- h) December 31, 2019, regarding the VC Account: "There is expected buying to clear entire [VC Account] debit by 8:30...".

Thomas' testimony

[57] In its questioning of Richard Thomas, the defence solicited opinion evidence from him about trading in the securities of junior issuers and practices typical of Registered Representatives with a specialty in such issuers. Prior to doing so, the defence did not seek to qualify Mr. Thomas as an expert witness. This would have been superfluous in any case, as the opinion evidence trenched on the Panel's own expertise as a specialized industry tribunal. Other evidence solicited by both parties, although relevant in the narrow sense of pertaining to PI's operational and supervisory practices, was not particularly germane to the central question of the Respondent's diligence in fulfilling his gatekeeper responsibilities.

[58] The material evidence solicited from Mr. Thomas was limited. His testimony established that:

- a) As far as PI had been aware during the Relevant Period, there had not been any situations where the Respondent or MV had not been in compliance with PI's policies relating to receiving DRS transfers and the journaling of internal transfers between PI accounts.
- b) To Mr. Thomas' knowledge, at the time PI compliance personnel had been unaware that the Respondent had received an email from NM claiming MV wanted him to serve as a nominee in a stock promotion. If the email had come to their attention, it would have provoked inquiries and greater scrutiny of the trading in shares of the Issuer. It would also have personally caused Mr. Thomas concern and coloured his perception of the trading activity in Issuer shares.

ANALYSIS

[59] Before considering the respective arguments of the parties, it is worth reviewing the language of the relevant portion of IDPC Rule 1400, which states at section 1402:

(1) A Regulated Person:

- (i) in the transaction of business must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade, and
- (ii) must not engage in any business conduct that is unbecoming or detrimental to the public interest.

(2) Without limiting the generality of the foregoing, any business conduct that:

- (i) is negligent,
- (ii) fails to comply with a legal, regulatory, contractual or other obligation, including the rules, requirements, and policies of a Regulated Person,
- (iii) displays an unreasonable departure from standards that are expected to be observed by a Regulated Person, or
- (iv) is likely to diminish investor confidence in the integrity of securities, futures or derivatives markets, may be conduct that contravenes one or more of the standards set forth in subsection 1402(1).

[60] Section 1402 of IDPC Rule 1400 is an example of principles-based regulation. It does not provide a check list of specifically prescribed things a registered person must or must not do. Instead, the section imposes on registered persons a positive obligation to ensure the transactions they facilitate are ethical or do not otherwise harm the integrity and credibility of the capital markets. In addition to requiring personal honesty from Registered Representatives, this obligation places them under a duty to assess whether the things their clients ask them to do are consistent with the public interest.

[61] This duty is a direct and logical consequence of the closed system of securities regulation, which, among other things, provides that no person may trade in securities unless registered. Accordingly, a member of the investing public who wishes to conduct open market transactions in securities can only do so through the auspices of an investment dealer, which employs representatives to advise and receive trading instructions from the dealer's clients. Under this arrangement, Registered Representatives perform the cardinal function of mediating client access to securities trading platforms. It follows that Registered Representatives are the market participants best positioned to guard against potentially abusive client trading.

[62] That is the gatekeeper role. It is not explicitly legislated. It is a necessary and obvious inference derived from the overarching principle enshrined in IDPC Rule 1400 that Registered Representatives must always perform their designated function of mediating transactions in a manner that serves to ensure the transparency and fairness of the transactions they facilitate. This obligation to consider the ethics of client instructions and to exercise professional judgment before proceeding with a proposed transaction is not incidental to the role of a Registered Representative. It is a central and absolutely crucial professional responsibility upon whose fulfillment the integrity of the closed system of securities regulation relies.

[63] The need for Registered Representatives to assess client instructions through the diligent application of professional expertise and judgment is reflected in the guidance provided in the 2018 version of the Canadian Securities Institute's Conduct and Practices Handbook that was in effect during the Relevant Period:

RRs and IRs should be able to recognize circumstances that may indicate impropriety (inadvertent or otherwise), make reasonable inquiries and look further into the situation or red flag. (Red flags are facts, activities or circumstances that **might reasonably indicate** a problem or constitute a breach of securities laws or regulations). Where warranted, they should escalate or report the issue to a supervisor or compliance personnel as appropriate in accordance with the dealer's policies and procedures. *[emphasis added]*

[64] The same point was articulated, but in sharper terms, in the Financial Sales Procedure Manual that PI's registered representatives were required to follow during the Relevant Period:

Each RR must be aware of **potential** signs of market manipulation. These would include such characteristics as market dominance, price leadership, high closing, use of jitneys to multiple firms, etc. RR's are in fact in the best position to be aware of any market scheme at its outset, because of their knowledge of their clients and their trading patterns. *[emphasis added]*

Staff submissions

[65] Staff's theory of liability in this case is straightforward. It is that during the Relevant Period, the following circumstances should have led the Respondent to ask questions about the character and purpose of the transactions in Issuer shares he was being instructed to carry out on behalf of the MV Associated Accounts.

- a) The DRS transfers of Issuer shares into the VC, JA and LS Accounts, which resulted in a significant percentage of the total issued and outstanding common shares of a junior issuer becoming concentrated in three accounts that had only recently been opened at the behest of a single individual, MV.
- b) In each of the four months from September through to December 2019, the MV Associated Accounts were responsible for the vast majority of the total market activity in Issuer shares.
- c) The only apparent common feature of those accounts was that their holders were all associates of a single individual, MV.
- d) The Referred Accounts traded primarily, or only, in common shares of the Issuer.
- e) The trading patterns, market effects and economic character of the transactions in Issuer shares conducted by the MV Associated Accounts.

[66] According to Staff, the circumstances surrounding the trading in Issuer shares by the MV Associated Accounts and the trading itself should have raised questions for the Respondent because, when viewed as a whole, they were consistent with, and therefore suggestive of, potentially manipulative trading. Staff supported this proposition by citing a number of relatively recent decisions in which hearing panels found that Registered Representatives should have recognized there was a risk that abusive trading was potentially taking place when:

- a) Trading by the Registered Representative's clients represented a significant proportion of a security's total daily volume of trading.
- b) A deposit of a large number of securities into a client account was promptly followed by their subsequent sale.
- c) More than one client account received a deposit of the same security at or around the same time.

- d) Client accounts frequently engaged in same-day trading in which they took both sides of transactions.
- e) Trading was sometimes uneconomic due to an account purchasing a security at a higher price than the price for which the same account sold the same security at or around the same time.
- f) Different client accounts gave instructions at or around the same time for the same security to be purchased or sold.
- g) The proceeds of sales were withdrawn immediately.
- h) Account activity was inconsistent with the stated value of the client's estimated net liquid assets in the client's NAAF.
- i) Debits in accounts were systematically re-aged due to the client's failure to make timely settlement.
- j) Client accounts received few or no deposits of funds.¹

[67] In Staff's submission, during the Relevant Period, the MV Associated Accounts confronted the Respondent with each of these risk indicators. Accordingly, his response should have been to make diligent inquiries of his clients or, alternatively, bring the situation to the attention of his superiors. Instead, says the Staff, the Respondent contravened IDPC Rule 1400 by doing neither.

Respondent submissions

[68] The Respondent's defence to this allegation of misconduct consists of two broad assertions:

- a) One is that the Hearing Panel's jurisdiction in this case is restricted to making findings of only such matters of fact and law as were expressly particularized in the allegations portion of the Notice of Hearing.
- b) The other is that the Staff's theory of liability is improper because it seeks to expand the scope of the gatekeeper role beyond the standard established by case law.

Particulars and jurisdiction

[69] In CIRO proceedings, a Notice of Hearing is comprised of a formal notice of a first appearance and a separate Statement of Allegations that articulates a legal allegation of misconduct and provides an outline, or particulars, of the factual context for the allegation.

[70] The Respondent relies heavily on a portion of the reasoning in *Blackmont Capital (Re)*,² to assert that the "case law is clear that the Panel does not have jurisdiction to consider allegations not made in the Statement of Allegations". In that case, an IIROC hearing panel found the respondents had contravened then IIROC Rule 29.6, which prohibited commission sharing without customer consent, by neglecting to inform certain clients of a commission sharing arrangement with a third party. On a hearing and review of the IIROC panel decision, the British Columbia Securities Commission (BCSC) set aside the finding.

[71] Obviously, one cannot obtain consent for a commission sharing arrangement without first disclosing its existence. The language of IIROC Rule 29.6, however, did not create a duty to disclose. Instead, it imposed on

¹ *Myatovic and Lowe (Re)*, 2012 IIROC 47 at paras 308, 312 and 320-322, *aff'd Lowe (Re)*, 2014 BCSC 376; *Rowlatt (Re)*, 2020 IIROC 32 at para 6; *Carri-gan and Gold (Re)*, 2019 IIROC 31 at para 6; *Martin (Re)*, 2021 IIROC 32 at para 23; *Sweeney (Re)*, 2022 IIROC 22 at para 7; *Barber (Re)*, 2023 CIRO 04 at paras 10-12

² 2011 BCSECCOM 490

Registered Representatives the sole and specific obligation to obtain client consent. A failure to disclose commission sharing might well have been evidence supportive of the inference that consent was not obtained, but it was not itself a wrongful act capable of prosecution under the Rule:

A notice of hearing is the foundation of hearings before IIROC panels and this Commission. It identifies the alleged misconduct that the respondent has to meet. It establishes the issues to be determined at the hearing. It follows that a panel does not have jurisdiction to determine matters not alleged in the notice of hearing. (Particulars need not be in the notice of hearing but must relate to an allegation that is in the notice.)³

[72] The defence interprets the BCSC's use of the word "allegation" in this phrase as comprehensively encompassing all of the representations in a Notice of Hearing. On the strength of this interpretation, the defence reads *Blackmont Capital (Re)* as defining the fact-finding jurisdiction of CIRO hearing panels as strictly limited to determining only such factual claims as may be particularized in the Notice of Hearing. This misstates not only the role of particulars in CIRO proceedings, but also the role of precedents in hearing panel deliberations.

[73] By definition, a hearing panel can only have jurisdiction over assertions of wrongdoing that relate to an infraction that actually exists under the Rules. The guidance provided by *Blackmont Capital (Re)* is not that a Notice of Hearing must particularize each and every detail of the prosecution's case. It is that allegations of misconduct in Notices of Hearing are legal accusations that, in the interests of fairness, must accurately state the terms of the Rule alleged to have been breached. Disclosure of the prosecution's case is quite another matter, as the phrase quoted by the defence makes this clear in the distinction it draws between allegations and particulars. When read in its proper context, the BCSC's observation must be understood as making the straightforward point that in any given case a hearing panel's jurisdiction is defined by the allegations of legal breaches stated in the Notice of Hearing. The ratio in *Blackmont Capital (Re)* concerned the sufficiency of a count in a Notice of Hearing, not particulars.

[74] The purpose of particulars in CIRO proceedings is same as in civil and criminal proceedings: to inform respondents of the essential elements of the case against them. It is not to lock Staff into a theory of proof or compel a recitation of every detail of Staff's case. Respondents do indeed have a right to be notified of the evidence the Staff will rely upon at a hearing — which is wholly satisfied when Staff fulfills its obligation to make full disclosure under CIRO's Rules of Procedure. The Respondent has not registered any complaints about the disclosure provided to him in this case.

[75] In making its jurisdictional argument, the defence treats its reading of *Blackmont Capital (Re)* as determinative. This reflects the great reliance the defence generally places on its interpretations of what it characterizes as "case law". While the body of previous CIRO and securities commission decisions often provides hearing panels with useful guidance, it must be recalled it is a fundamental principle of administrative law that the reasoning of past tribunal decisions do not bind future tribunals. The interpretations of the Rules found in hearing and commission panel decisions, unlike judicial interpretations, do not contribute to the common law. This is because the application of regulatory provisions must always be purposive and contextual.

[76] That previous CIRO decisions often deploy similar reasoning to arrive at similar outcomes is not because the hearing panels that decided them were bound by *stare decisis*. It is because they were expert tribunals that applied a shared industry expertise to address similar misconduct that occurred in similar fact situations. In every case, it is the duty of a CIRO hearing panel to interpret the Rules and apply them to the facts according to its own best expert judgment and in a rational manner that respects the plain language of the Rules and advances their underlying purpose of protecting the investing public. The utility of CIRO and commission precedents lies in the examples they provide of what reasonable analytical approaches look like under various circumstances. They provide guidance, not direction.

Gatekeeper standard

³ *Blackmont Capital (Re)*, *supra*, at para 24

[77] The defence interprets a number of previous cases to assert an extraordinarily narrow conception of the Respondent's gatekeeper responsibilities. Briefly, the defence contends that:

- a) Client trading related activities that are merely potentially abusive do not rise to the threshold established by "case law" for triggering a Registered Representative's gatekeeper obligation. A Registered Representative's duty to inquire is engaged, rather, only by trading that overwhelmingly indicates a client is participating in, or intends to participate, in market abuse.
- b) In attempting to prove Staff's case:
 - (i) It is incumbent on Staff to prove the Respondent was aware of trading activities that previous cases have established as questionable.
 - (ii) In doing so, however, Staff cannot advance a case that goes beyond the particulars set out in the Statement of Allegations.
 - (iii) Therefore, Staff is restricted to establishing the Respondent failed to ask his clients questions that related to the four areas of suspicion specifically identified in the Statement of Allegations, namely: the source of the shares received by MV; the nature of the relationship among the holders of the MV Associated Accounts; the economic rationale for their trading in Issuer shares; and the high concentration of Issuer shares held by them.
 - (iv) In this last regard, Staff must definitively prove the Respondent failed to make the necessary inquiries.

[78] On these grounds, the defence argues the case against the Respondent must necessarily fail because:

- a) Staff has entirely failed to tender evidence that establishes the Respondent did not make the inquiries identified in the Statement of Allegations or, for that matter, that he even encountered any red flags that ought to have caused him to make inquiries.
- b) Since the Panel is limited to finding liability solely on the basis of such factual elements as have been explicitly particularized in the Notice of Hearing, there is no other possible basis for the Respondent to be found liable for contravening his gatekeeper obligations under IDPC Rule 1400.

[79] In the Respondent's submission:

This is, therefore, a novel case advanced by Staff. None of the red flags that are typically present in gatekeeper cases are present. The only explanation for Staff's decision to advance this case in these circumstances is that it seeks to significantly alter and expand the gatekeeper obligation, and the industry standard expected from brokers. Staff should not be seeking to effect this change in the law by way of an enforcement action, but should be doing so by changing the Rules. Staff's approach is deeply unfair and problematic.

[80] When viewed as a whole, the defence argument amounts to a claim that the gatekeeper obligation consists of little more than a duty to refrain from knowingly facilitating market abuse. If this proposition were to be accepted, it would drain the gatekeeper role of virtually all its meaning and utility. It also rests on the fallacy that it is "case law" that sets the standard for meeting the gatekeeper obligation.

[81] The standard to be followed by Registered Representatives in fulfilling their gatekeeper obligations is the one set out by the words of IDPC Rule 1400. As mentioned, Registered Representatives are responsible for fulfilling a principle, namely, guarding the capital markets against any client transactions that might be harmful to their integrity and credibility. A logical consequence of this responsibility is the need to be vigilant. Hence, in the classic formulation recognized in case after case, a Registered Representative:

[...] must make reasonable inquiries and be reasonably satisfied with answers where a duly diligent person would do so in similar circumstances. In this regard **a registered representative should have an alert, curious attitude to the tasks his clients ask him to perform.**⁴

[82] The same guidance was provided during the Relevant Period by the Canadian Securities Institute's Conduct and Practices Handbook and PI's Financial Sales Procedure Manual, which were both explicit in stating that Registered Representatives are under a duty to "recognize circumstances that... might reasonably indicate a problem or constitute a breach of securities laws or regulations" and that they "must be aware of potential signs of market manipulation."

[83] For Registered Representatives, there is no fixed checklist that definitively defines when a client activity should or should not arouse concern. There is only the obligation to exercise professional judgment. Likewise, for CIRO hearing panels presented with allegations of gatekeeper failure, there is no fixed template against which to assess a respondent's conduct, but rather the responsibility to assess the allegations against the words of IDPC Rule 1400 according to the panel's expert understanding of securities practices.

Circumstantial evidence

[84] Staff has entered into the record a considerable amount of direct evidence in the form of business records to reconstruct the history of, and the Respondent's role in, the MV Associated Accounts' trading in Issuer shares during the Relevant Period. Staff says this evidence is sufficient to allow a reasonable person, on a balance of probabilities, to infer the Respondent failed to make the inquiries required of him as a gatekeeper. In other words, Staff's case rests on circumstantial evidence.

[85] There are two defensive strategies available to a respondent faced with a circumstantial case. One is to mount a due diligence defence, which is to say tender their own evidence to rebut the inference of fault for which the Staff argues. The other option is to attack Staff's case as insufficient, as the Respondent has done in this case, by arguing it would be unreasonable to infer fault from the circumstantial evidence.

[86] The defence written submissions state the correct standard of proof in CIRO proceedings by referencing this case extract:

We note that the standard of proof to be met by IIROC Staff in this case is proof on a balance of probabilities, based on clear, cogent evidence, set out in paragraph 33 of *McCabe (Re)*, 2014 BCSC 225 (affirmed by the BC Court of Appeal on other grounds at 2016 BCCA 7) as follows:

33 The onus of proof lies on [IIROC Staff] who must prove the allegations in the notice of hearing on a balance of probabilities, meaning that "it is more likely than not that the alleged event occurred". The evidence must be "sufficiently clear, convincing and cogent" to satisfy the balance of probabilities test (*F.H. McDougall*, 2008 SC 53 at paragraphs 49 and 46).⁵

[87] With another case extract, they also correctly summarize the basic understanding of circumstantial evidence under the law of evidence:

Circumstantial evidence does not itself establish the alleged fact; rather, the panel may draw an inference from the circumstantial evidence. Those inferences must be reasonably and logically drawn from a fact or group of facts established by the evidence, should be drawn from the combined weight of the evidence, and cannot be drawn from speculated facts.

For an inference to be validly drawn, it need not be the only possible inference; nor does it need to be the most obvious or the most easily drawn. However[...] if the circumstantial evidence equally supports

⁴ *Kasman (Re)*, IDA, November 13, 2007 at para 41

⁵ *Li (Re)*, 2016 IIROC 07 at para 6

two opposing inferences, one in favour of Staff and one in favour of a respondent, Staff will not have met its burden of proof.⁶

[88] The defence submissions then go on to state:

In their closing submissions, Staff simply assert that there is no evidence in the record that Mr. Hildebrandt asked questions. That is not enough. As noted above, Staff must provide “clear, cogent evidence” that no questions were asked and none has been provided. Staff bear the onus to prove this, and they have not done so.

[89] The defence supports this contention by pointing out that under cross-examination Mr. Oustinov testified that there is “no evidence to rule out the possibility” the Respondent spoke to the holders of the MV Associated Accounts about the nature of their relationship, the economic rationale for their trading, or the concentration of Issuer shares in their accounts.

[90] This leads the defence to assert that:

- a) Staff is obligated to definitively prove the Respondent did not ask questions. Since it has failed to do so, the Staff is asking the Panel to improperly infer the Respondent is at fault on the basis of speculated facts.
- b) Moreover, following *Hutchison (Re)*, the possibility the Respondent may have made inquiries of his clients demonstrates “there is an alternative explanation at least as likely as the explanation asserted by Staff” and therefore Staff has not discharged its burden of proof.

[91] Both of these propositions, in fact, starkly contradict *Hutchison (Re)*.

[92] The first proposition advances a circular argument: Staff must first prove the Respondent failed to ask questions before the Panel can properly infer he breached his gatekeeper responsibilities by failing to ask questions. For all practical purposes, this effectively means the defence contends Staff cannot prove the Respondent’s alleged failure to make appropriately diligent inquiries through circumstantial evidence at all, but only through direct evidence. This is not true. There is no obligation on Staff to prove any aspect of its case through direct evidence.

[93] To guard against the possibility the Panel might agree with Staff that it has proved the Respondent failed to make appropriate inquiries, it was open to the defence to tender evidence for the purpose of leading the Panel to draw a different inference. That is how circumstantial evidence works: a *prima facie* inference rationally supported by circumstantial facts may be rebutted by adducing additional facts to alter the balance of probabilities. That is also how the due diligence defence works. It is called a defence for a reason. There is no onus on Staff to negate potentially exonerating explanations.

[94] The second proposition asserts that the bare possibility of a fact ought to be understood as establishing it as plausible. This invites the Panel to draw an inference in favour of the Respondent not because the evidence in the record renders it as equally likely as the one Staff asks the Panel to draw, but on the basis of speculated facts, which the defence itself says, correctly, is out of bounds.

Decision

[95] The substance of Staff’s case is summed up in the concluding paragraph in the Statement of Allegations:

The trading in the Issuer shares raises a number of red flags suggesting a potential manipulation. Hildebrandt failed to recognize these flags and to ask appropriate questions to determine whether the trading activity was legitimate.

⁶ *Hutchison (Re)*, 2019 ONSEC 36 at paras 61 and 62

[96] It must be emphasized that the term “red flag” does not have a fixed meaning.

[97] Securities regulation exists to ensure fairness in securities trading. Fundamental to achieving that purpose is the need for Registered Representatives to exercise sound professional judgment to ensure they do not facilitate transactions that might be harmful to the integrity and credibility of the capital markets. That is the duty IDPC Rule 1400 imposes on Registered Representatives, nothing more and nothing less. When they receive instructions or encounter client behaviours that appear to have the potential to enable or support market abuse, their gatekeeper responsibilities require Registered Representatives to pause and then proceed to diligently make such inquiries as may be required to objectively determine the ethics of their client’s purposes; and if that is not feasible, to elevate the issue to the attention of their employing dealer’s compliance department.

[98] The issue in this case is whether the Respondent ought to have responded to the trading and other activities of the MV Associated Accounts by taking proactive steps to address the possibility that one or more of his clients might be potentially involved in market abuse.

[99] On September 27, 2019, the Respondent received emails from NM claiming that MV wanted to use him as “a nominee on a stock he is promoting”.

[100] Using nominees to orchestrate pre-arranged trades is a classic feature of manipulative trading. During the roughly two-month period prior to his receipt of the email:

- a) MV had asked the Respondent to open investment accounts at PI for nine different persons. JA, AW, RG, and LS Inc. followed through, while five of the referrals, including NM, declined to do so.
- b) A total of 5,879,000 Issuer shares had been directly deposited into the new VC, JA and LS Accounts by way of DRS transfers. From the relevant documentation, the Respondent would have been aware that the accounts therefore collectively controlled over 13% of the total issued and outstanding common shares of the Issuer.
- c) Between August 29 and September 12, 2019, nominal purchases made from the NV Account held by MV’s father had caused the price for Issuer shares to rise from \$0.08 to \$0.50 per share, an increase of 525%.
- d) Between September 13 and 25, 2019, the VC Account sold 178,500 and purchased 31,000 shares for net sales of 147,500 Issuer shares made at prices between \$0.50 and \$0.53 per share.
- e) On September 13, 2019, the Respondent forwarded to MV and MC the email from PI’s compliance department asking him to explain how VC Inc. had accumulated so many Issuer shares and why the VC Account proposed to transfer 200,000 of them to the ITC Account as compensation for services when ITC had identified itself in its NAAF as a passive, not active, company. MV did not respond. MC, the president of ITC, said only that “I was advised to say we were a passive company. I don’t know what to say there guys.”

[101] Given this context, the Respondent should have regarded his receipt of NM’s emails not so much a red flag than a ringing alarm bell. To be clear, NM was making a bare claim that the Respondent could neither accept nor discount at face value. What is significant is the simple fact the claim was made. This should have provoked the Respondent into making diligent inquiries to determine its validity, pending which he should have exercised caution before facilitating any further trades on behalf of the MV Associated Accounts. As Mr. Thomas indicated in his testimony, if NM’s emails had come to the attention of PI compliance personnel they would have provoked concern and led to closer scrutiny of the clients’ trading in Issuer shares.

[102] That the Respondent ought to have recognized there was an urgent need to carefully scrutinize the MV Associated Accounts’ trading in Issuer shares was confirmed by subsequent developments.

- a) Between September 13 and November 15, 2019, the VC Account engaged in a pattern of first purchasing Issuer shares and then, on or around the same day, selling a much larger volume of

shares for more or less the same price. The purchases were made in lots of between 500 and 27,500 shares and were followed by sales volumes that ranged from 11,000 and 383,500 shares. During the same period, the NV and LS Accounts on a number of occasions engaged in the same trading pattern — which happens to be a tactic commonly deployed in market manipulations to establish and support a target price for a security. In other words, a significant amount of the trading from these three MV Associated Accounts appeared consistent with an intention to establish and support an artificial price for a security.

- b) During the Relevant Period as a whole, the MV Associated Accounts dominated the market for Issuer shares and represented over 33% of the total trading volume and over 56% of its value. From September through to December 2019, the accounts exerted overwhelming dominance over the market, representing 90%, 79%, 77% and 60%, respectively, of the trading. By any objective measure, this was an extraordinary level of market dominance. It also meant the price for Issuer shares was routinely being set by orders made from the MV Associated Accounts. Price setting by a concealed control group is an element of any market manipulation.
- c) VC Inc., which was controlled by MV, repeatedly and consistently caused the VC Account to pay early settlement fees in order to permit the immediate withdrawal of Issuer share sale proceeds. A total of over one million dollars in cash was withdrawn from the VC Account in this fashion. Immediate profit taking through the prompt withdrawal of sales proceeds is a typical feature of market manipulation.

[103] When PI’s compliance department asked him how VC Inc. had accumulated so many Issuer shares, the Respondent answered by tersely reporting that MV had told him he had bought them.

[104] In fulfilling their gatekeeper role, Registered Representatives must do more than simply obtain assurances from their clients. It is not enough to merely follow form. When presented with the possibility that a client may be engaging or intending to engage in abusive trading, it is incumbent on a Registered Representative to put genuine effort into getting to the bottom of the question.

[105] Upon receiving NM’s emails, the Respondent at a minimum should have responded by undertaking inquiries to ascertain the source of the shares received by MV, the nature of the relationship among the holders of the MV Associated Accounts, the economic rationale for their trading in Issuer shares, and the high concentration of Issuer shares held by them. There is no evidence the Respondent did any of those things nor that his past dealings with MV gave him a basis for discounting NM’s claim.

[106] Staff’s identification of red flags in this case does not establish that a concealed control position was being exploited to create and sell into an artificially high market for the Issuer’s shares. What they establish is the Respondent received client instructions and observed trading patterns and outcomes consistent with market abuse.

[107] As a regulated person with specialized expertise in securities trading and a close understanding of industry practices and norms, the Respondent should have demonstrated “an alert, curious attitude” about the purposes of the tasks his clients were asking him to perform on their behalf. From the evidence, the Panel infers he did not. For that reason, we find the Respondent failed to make sufficient and reasonable or diligent inquiries in relation to client trading activity, contrary to IDPC Rule 1400.

Dated at Vancouver, British Columbia this 23rd day of January 2025.

“Joseph A. Bernardo”

Joseph A. Bernardo (Chair)

“Bruce Maranda”

Bruce Maranda, Industry Representative

“Johannes van Koll”

Johannes van Koll, Industry Representative

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