

Re Hildebrandt

IN THE MATTER OF

The Investment Dealer and Partially Consolidated Rules

and

Randy Bryan Hildebrandt

2025 CIRO 52

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: August 5, 2025 at Vancouver, British Columbia by videoconference

Decision and Reasons (Liability): January 23, 2025

Decision and Reasons (Sanctions): November 12, 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

REASONS FOR DECISION ON SANCTIONS

LIABILITY

[1] In *Re Hildebrandt*¹ (Liability Decision), the Hearing Panel ruled that between July 2019 and March 2020, the Respondent, Randy Bryan Hildebrandt, 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.

[2] The facts relevant to sanctioning are reviewed and discussed in the Liability Decision.

[3] Unless otherwise indicated, the defined terms used in this Sanctions Decision have the meanings assigned to them in the Liability Decision.

SANCTIONING PRINCIPLES

[4] The core objective of securities regulation is to protect the investing public and, by so doing, foster public confidence in the securities industry and capital markets. In the securities regulatory context, the function of sanctions is not to punish or otherwise condemn registrants for their past misconduct. It is to prevent future harm. The imposition of penalties should always be prospective and preventative in orientation.²

[5] The outcomes of sanction orders in CIRO disciplinary proceedings must conform to these forward-looking purposes. This by itself alone is not sufficient to ensure the validity of an order. It must also be founded on reasons that follow “an internally coherent and rational chain of analysis” that, among other things, establishes

¹ 2025 CIRO 05

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

the sanctions as rationally connected, and demonstrably proportional, to the misconduct.³

[6] In this regard, accounting for general deterrence in a balanced way is central to advancing the protective purpose of sanctions:

A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction... The respective importance of general deterrence as a factor will vary according to the breach... and the circumstances of the person charged [...]⁴

[7] It is crucial that the weight assigned to general deterrence in any given case always be based on a thorough assessment of the character and consequences of the misconduct at issue.⁵

[8] Previous hearing panel decisions have consistently identified certain principles and key factors as relevant to the determination of sanctions. These are summarized in the CIRO Sanction Guidelines published on February 1, 2024 to assist hearing panels in their sanction deliberations. The Guidelines are not intended to be prescriptive, but rather offer a general analytical framework for achieving rational enforcement outcomes.

[9] Following the principles of administrative law, the organizing theme of the Guidelines is that sanction deliberations should be an exercise in calibrated risk management. The goal is to arrive at sanctions that strike a proper balance between effective deterrence and fairness: sanctions should be sufficient to deter the respondent and other persons from engaging in similar future misconduct, while remaining proportionate to the objective gravity of the misconduct.

[10] The Guidelines identify a wide range of sanctioning factors. On the facts of this case, the following deserve particular consideration:

- (a) The number, size and character of the relevant transactions.
- (b) The time period over which the misconduct occurred.
- (c) The nature and extent of the harm caused by the misconduct.
- (d) Whether the misconduct can be fairly characterized as intentional, wilfully blind or reckless.
- (e) The financial benefit the Respondent obtained as a result of the misconduct.

SUBMISSIONS

Staff

[11] Staff submits the Respondent's misconduct warrants significant sanctions. The principal reason offered is the nature of the gatekeeper obligation. The essential role of Registered Representatives is to mediate the public's participation in the capital markets. As such, they are positioned to act as the front line of defence against abusive trading practices, and the Rules are emphatically clear that Registered Representatives are under a positive obligation to do so. Any gatekeeper failure is, by definition, a serious contravention that harms the integrity and credibility of the marketplace.

[12] In the Respondent's case, this is aggravated by a pattern of misconduct that involved:

- (a) facilitating deposits of Issuer shares into, and transfers between, MV Associated Accounts;
- (b) executing hundreds of suspect trades on behalf of the MV Associated Accounts over an extended period; and
- (c) entering multiple orders for clients on both sides of the market within seconds of each other, some of which resulted in cross trades.

³ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 14 and 85

⁴ *Cartaway Resources Corp. (Re)*, (2004) 1 S.C.R. 672 at para. 61

⁵ *Ibid.*, at para. 64

[13] On the basis of these and other factors, Staff submits it is reasonable to infer the misconduct was intentional, wilful or reckless.

[14] Staff asks for:

- (a) a sanctions order with the following terms:
 - i) suspension of approval in any capacity for a period of one year;
 - ii) a fine of \$60,000;
 - iii) disgorgement of the \$12,372.55 total commission revenue the Respondent obtained from facilitating the impugned trading; and
- (b) an order for \$50,000 in costs, which Staff supports with a Bill of Costs submitted by an affidavit that establishes CIRO's investigation and prosecution of this case cost a total of \$191,899.

Defence

[15] The Respondent entered an affidavit in which, among other things, he testifies that:

- (a) If he is suspended for more than 30 days, there is a risk the reassignment of his clients to other investment advisors would become permanent. Consequently, he expects he would have to rebuild a book of business that has taken him 17 years to develop. At his age, this would be too difficult to achieve and would likely mean the end of his career in the securities industry.
- (b) The resulting loss of income would compromise his family's ability to meet its household expenses.
- (c) A significant fine would have that same effect.
- (d) His employer has introduced a new procedure that requires Registered Representatives to obtain additional information from clients making DRS deposits of Canadian Securities Exchange listed shares over \$200,000 in value. He follows this procedure and, as well, is more rigorous about monitoring and making inquiries about client trading activities and share transfers.
- (e) At paragraphs 47(d) and (e) of the Liability Decision, the references to the Respondent's September 13, 2019 email to MV and MC do not account for the one hour difference between the time zones from which he sent the email and MC sent his response.

[16] The defence submits the sanctions proposed by Staff are disproportionately severe relative to the substance of the misconduct:

- (a) It is wrong for Staff to characterize the Respondent's misconduct as intentional, wilful or reckless because that point was neither alleged as an element of the misconduct in the Notice of Hearing nor a finding of the Panel in the Liability Decision.
- (b) The Respondent was not engaged in a pattern of misconduct. Rather, his failure to meet his gatekeeper obligations stemmed from a single lapse of judgment, namely, his failure to respond with greater diligence after he received emails from NM in September 2019 claiming that MV wanted to use him as a nominee in a stock promotion. According to the Respondent, the "Panel found that Mr. Hildebrandt's gatekeeper obligation was triggered by NM's emails".
- (c) Noting the absence of findings about the Respondent's intent in the Liability Decision, the defence asserts the Panel ".found that Mr. Hildebrandt made an 'honest mistake' and not that he acted with dishonest intent".
- (d) The period during which the contravention occurred was relatively short.
- (e) The Respondent has not been the subject of prior disciplinary proceedings.
- (f) He does not present an ongoing risk of misconduct because he has taken to heart the findings of the Liability Decision.

- (g) In the absence of quantifiable harm to investors, it would be inappropriately punitive to impose a one year suspension that would effectively terminate the Respondent's career and his ability to earn a living.

[17] The defence argues the costs order requested by Staff is so unreasonably high that it would amount to a punitive fine levied under another label. By way of a legal assistant's affidavit, the defence submitted an alternative bill of costs totalling \$15,646.40 purportedly in accord with the tariff scheme followed by the Supreme Court of British Columbia.

[18] On the strength of these arguments, the defence submits that:

- (a) no suspension of any kind is warranted, but if the Panel determines otherwise, it should be no longer than 30 days;
- (b) financial sanctions should be limited to a fine of not more than \$30,000 and disgorgement of \$12,373.55; and
- (c) costs should be limited to \$15,000.

ANALYSIS

Intentionality

[19] Staff alleged, and successfully established, the Respondent was repeatedly presented with circumstances and client instructions that ought to have provoked him into asking his clients hard questions about their purposes. Instead, for months he carried out one suspect instruction after another without any apparent reservations. Staff contends the client instructions were so obviously in aid of a nefarious purpose, it is reasonable for the Panel to infer the Respondent's failure to meet his gatekeeper obligation was intentional, wilful or reckless.

[20] From the evidence in its totality, it is rational for Staff to strongly suspect the trading in Issuer shares by the MV Associated Accounts was motivated by an improper common purpose. It is also rational for Staff to suspect the Respondent may well have been aware of that purpose.

[21] Particularly troubling are the Respondent's December 2019 email exchanges with PI's credit department. These disclose the Respondent had advance knowledge of buyers entering the market to supply demand for Issuer shares that the credit department was pressuring him to sell from certain MV Associated Accounts to clear debit positions:

"... supposed to be some volume today..."

"We are working hard on this [...], with buyers coming in and wanting to take this stock back up..."

"There is larger expected buying coming in next 15 mins that will take this past our \$0.30c offer..."

"No sales goddamit, was supposed to be much more today..."

"... we are selling full debit out tomorrow am and I hear it will be done buyers will be there for full \$120,000 worth..."

"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..."

"... we are in order to get sell, supposed to be here yet today..."

"...I think we finally get [VC Account] and [NV Account] paid off, should be some buying yet in next 15 mins or less"

"There is expected buying to clear entire [VC Account] debit by 8:30..."

[22] Coordinated trading is a key feature of manipulative trading and, as stated in the Liability Decision, much of the trading in Issuer shares by the MV Associated Accounts was consistent with market manipulation. But that is as far as the evidence goes.

[23] In the Notice of Hearing, Staff did not claim the MV Associated Accounts had traded Issuer shares for an overall improper purpose or that the Respondent had been aware of any such purpose. Nor did Staff seek to establish either point at the liability stage of the hearing. The defence argues this forecloses Staff from now asking the Panel to draw inferences from the evidence about the Respondent's intentions. This is incorrect.

[24] In CIRO disciplinary proceedings, contraventions are determined on a strict liability basis. There is no onus on Staff to establish intentionality except in fraud cases, where the very use of the term accuses a person of depriving another person of value through conscious deceit.⁶ In all other cases, whether misconduct was intentional, willful or reckless is a question of fact that may or may not be established by the evidence and, if so, may be considered by the hearing panel as an aggravating factor.

[25] A person can be credibly characterized as intending, or indifferent to, the negative consequences of their actions if it is established the person had some awareness of what those consequences would likely be.

[26] The Respondent necessarily intended the various trades and other individual actions he undertook to fulfill his clients' instructions. Given his training and long experience as a Registered Representative, the vital importance securities regulation assigns to the gatekeeper obligation should have been at the forefront of his mind when, time and again, he was presented with suspect client instructions. His consistent failure to do so can be fairly described as exhibiting reckless indifference with respect to his responsibility to act as a gatekeeper.

[27] The evidence does not establish whatever larger purpose may have been behind the MV Associated Account holders acquiring, and then trading from, a dominant position in Issuer shares. Suspicion, no matter how well grounded, is not proof. The Respondent cannot be found to have intentionally, willfully or recklessly implemented those instructions with disregard to their likely nefarious purpose when no such purpose has been established in the record.

Character of misconduct

[28] Staff submits it is an aggravating factor that the Respondent engaged in a pattern of repeated misconduct over an extended period. The defence disputes this, characterizing the misconduct as a single lapse of judgment and an honest mistake whose consequences lasted only a relatively short time.

[29] The Respondent's contravention consisted of failing to properly scrutinize and assess a series of "red flags" that all pointed to the same risk: the potential for abuse inherent in a group of associated client accounts all actively trading in the same security while they collectively dominated the market for it. It is not quite accurate to call this repeated misconduct, which more aptly describes the commission of a series of separate breaches. Rather, the Respondent's pattern of facilitating one suspect trade after another during the Relevant Period is better characterized as a continuing failure over time to address a serious ongoing risk to the market.

[30] In this case, that is the essential consideration for sanctioning purposes: over a period of nine months, the Respondent failed to fulfill his gatekeeper obligation with respect to hundreds of suspect trades involving multiple client accounts created at the behest, or otherwise connected to, a single individual, MV. This cannot be intelligibly characterized either as a single lapse of judgment that took place over a relatively short time or as an "honest mistake". The defence is incorrect to assert these as findings of the Panel. The Liability Decision identifies NM's emails as the most obvious instance of his continuing failure to meet his gatekeeper obligation, not as triggering it, and the Panel made no findings whatsoever about the Respondent's beliefs or state of mind.

Loss of livelihood

[31] When a respondent's livelihood is at stake, a hearing panel must take particular care to ensure sanctions are based on an objective assessment of the seriousness of the contravention, the risk presented by the respondent, and the respondent's personal circumstances. Observing the principle of proportionality is crucial.⁷

⁶ *Re Mann* 2020 IIROC 6

⁷ *Davis v. BC Securities Commission*, 2018 BCCA 149

[32] The assertion in the Respondent's affidavit that any suspension over 30 days would "likely" mean the end of his career in the securities industry is a statement of belief, not fact. His opinion is not supported by exhibits to his affidavit or other evidence. Even if it were, it is far from clear that such evidence would be entitled to be given any weight: the effect of a suspension on a Registered Representative is a matter that falls squarely within the expertise of this Panel.

[33] There is no doubt the suspension of one year proposed by Staff would effectively terminate the Respondent's career. However, the Panel does not agree that 30 days is a hard cutoff line after which a client base can be expected to collapse to such an extent as to end a Registered Representative's ability to earn a living. While duration is certainly the most important factor when considering the potential adverse effects of a suspension, the size and loyalty of a client base are also material considerations. A suspension of even 30 days is likely devastating for a more junior Registered Representative with a smaller book of business comprised of relatively new clients. By contrast, an experienced Registered Representative with a solid book of business built up over years of earning client trust and confidence can expect to retain long-standing client relationships after a suspension of some months.

Ability to pay

[34] As with all sanctions, a financial penalty should be proportionate to the gravity of the misconduct and the public interest in deterring it. Whether a respondent's capacity to pay is a relevant consideration depends on the respondent. The onus lies on the respondent to establish financial hardship on the basis of credible evidence.

[35] The Guidelines indicate that such evidence should be "in the form of sworn affidavits or declarations, along with standard or commonly accepted documents, such as tax returns, bank, and investment account statements, audited financial statements, or other externally verified financial statements."

[36] In his affidavit, the Respondent says a "significant fine" would jeopardize his family's ability to meet household expenses and its overall financial stability. He does not explain what, in his family's circumstances, would constitute a significant fine and no form of financial documentation supporting his claim of financial hardship accompanies the affidavit.

Costs

[37] The Bill of Costs submitted by Staff is consistent with longstanding CIRO practices. The defence does not challenge the accuracy of any of the line items in the Bill.

[38] Apart from claiming Staff's proposed costs order would impose an excessively onerous financial burden on the Respondent, the defence does not explain why it would be appropriate for the Panel to adopt an entirely novel methodology for the determination of costs.

Correction

[39] In his affidavit, the Respondent points out that paragraphs 47(d) and (e) of the Liability Decision do not account for the one hour difference between the time zones from which the Respondent and MC exchanged emails on September 13, 2019. This discrepancy was not material to the Panel's finding of liability. Reconciling the time stamps on the relevant emails indicates that the Respondent emailed MV and MC at 10:41 a.m. Pacific Time, and MC responded at 10:42 a.m. Pacific Time.

DECISION

[40] The parties each tendered a substantial number of sanctioning precedents involving gatekeeper violations. For the most part, the outcomes of these cases are highly individualized to account for the specific circumstances of both the misconduct and the respondent. As a result, the duration of suspensions and the quantum of financial sanctions vary significantly between cases.

[41] As discussed in the Liability Decision, Registered Representatives are the market participants best positioned to guard against potentially abusive client trading and under IDPC Rule 1400 they are expected to be vigilant in doing so. Any failure to guard against problematic client transactions must be treated as a serious contravention because of its deleterious effect on the credibility of the securities trading system and the capital

markets that rely on it.

[42] Over a period of nine months, the Respondent in the face of suspect client instructions, time and again, failed to take proactive steps. This indicates that in addition to general deterrence, the sanctions in this case must be tailored to address specific deterrence.

[43] The one year suspension proposed by Staff is excessive. A lengthy suspension is warranted when it has been established that a gatekeeper violation enabled some form of market abuse synonymous with investor harm. The evidence establishes the Respondent was grossly negligent in failing to question a steady stream of suspect trading and other client instructions, but does not confirm his negligence enabled market abuse. The Respondent's facilitation of hundreds of suspect trades was undeniably damaging to the credibility of the trading system, but it was not established as occurring in circumstances that would justify terminating his career.

[44] The Panel orders that the Respondent:

- (a) within 30 days from the date of this order, be prohibited from approval in any capacity in the securities industry for a period of three months;
- (b) upon readmission to the securities industry, be subject to:
 - i) a twelve-month period of strict supervision; and
 - ii) successful completion of the Code and Practices Handbook examination, or such equivalent as CIRO may introduce, by no later than December 31, 2026.
- (c) pay a fine of \$60,000;
- (d) disgorge proceeds of his misconduct in the amount of \$12,372.55; and
- (e) pay costs in the amount of \$50,000.

DATED at Vancouver, British Columbia this 12th day of November 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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