Re Engelsby and Nishimura

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Teymur Englesby and Cale Nishimura

2025 CIRO 55

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: October 6, 2025 in Vancouver, British Columbia
Decision: December 6, 2025

Panel:
John Rogers, Chair, Nigel Potts and William Wright

Appearances:
Jagdeep Khun-Khun, Senior Enforcement Counsel
David McLellan, Senior Enforcement Counsel
April Engelberg, Senior Enforcement Counsel
Owais Ahmed, McCarthy Tetrault LLP, for Teymur Englesby and Cale Nishimura
Jessica Taylor Mank, McCarthy Tetrault LLP, for Teymur Englesby and Cale Nishimura
Teymur Englesby (present)
Cale Nishimura (present)

RECONSIDERED DECISION ON LIABILITY

INTRODUCTION

[1] This disciplinary action against Teymur Englesby and Cale Nishimura (collectively **the Respondents**) was commenced pursuant to a Notice of Hearing (**Notice of Hearing**) dated September 27, 2023, issued pursuant to Rule 8200 of the Investment Dealer and Partially Consolidated Rules (the **IDPC Rules**) of the Canadian Investment Regulatory Organization (**CIRO**).

[2] Accompanying the Notice of Hearing was a Statement of Allegations also dated September 27, 2023 (the **Statement of Allegations**), which alleged that the Respondents between December 2017 and October 2018 (the **Relevant Period**), failed to fulfil their roles as gatekeepers to the capital markets contrary to Rule 1400 of the IDPC Rules.

[3] On January 19, 2024, the Respondents responded to the Notice of Hearing and the Statement of Allegations (the **Response**) denying this alleged contravention of the IDPC Rules.

[4] This matter was heard by this Panel at the hearing on the merits (**Enforcement Hearing**) held June 3-5 and 10 & 11, 2024, and the Panel rendered its decision (the **Initial Decision**) and the reasons therefor on July 22, 2024 (*Englesby and Nishimura* 2024 CIRO 63 (CanLII)), dismissing the disciplinary action against the Respondents.

[5] On August 12, 2024, CIRO Enforcement Counsel applied to the British Columbia Securities Commission (the **Commission**) under section 28 of the *Securities Act,* RSBC 1996, c.418 and Part 7 of BC Policy - Hearings (15-601) for a hearing and review of the Initial Decision and, on November 8, 2024, the Respondents applied to

strike the hearing and review application.

[6] The Commission heard the parties on January 23, 24 and February 3, 2025 and in a ruling dated April 7, 2025, the Commission issued its decision (the **Commission's Decision**) in which it remitted the entirety of the proceeding to the Panel.

[7] In response to the Commission's Decision, the Panel sought both written and oral submissions from the parties. On August 15, 2025, the Panel received written submissions from Enforcement Counsel, on August 19, 2025, written submissions from the Respondents' Counsel, and, on September 4, 2025, written reply submissions from both Counsel.

[8] Following a review of the written submissions from the parties, the Panel provided the parties with a list of questions and had the parties appear before the Panel in person on October 6, 2025 to make oral submissions on the questions asked of the parties by the Panel.

THE ALLEGATIONS IN THE STATEMENT OF ALLEGATIONS

[9] In the Initial Decision, the Panel set forth the following facts and allegations which were contained in the Statement of Allegations.

The Red Flags

[10] The contravention of the IDPC Rules alleged in the Notice of Hearing is that during the Relevant Period, the Respondents facilitated activity for several clients (the **Clients**) in the accounts of these clients (the **Client Accounts**) which activity generated a number of indicators (**Red Flags**) which suggested the occurrence of suspicious activity.

[11] The Red Flags included:

- the deposit of share certificates for shares in companies (the **Subject Issuers**) listed on the Canadian Stock Exchange (the **CSE**) in the Client Accounts and the sale of the shares represented thereby in the days before or shortly after such deposits, followed by large withdrawals of the proceeds of such sale,
- the trading in the Client Accounts being often uneconomic, and
- the trading in a particular account of the Client Accounts being out of line with the owner of that account's normal and historical account activity and not consistent with that owner's know-your-client (**KYC**) information.

[12] It was alleged that these Red Flags should have caused the Respondents to question the Clients about this trading activity in their accounts by asking the Clients:

- How the Clients obtained the shares traded in the Client Accounts,
- What was the acquisition price for such shares, and
- Whether or not the Clients had any relationship with the corporation which had issued these shares.

[13] To properly inform themselves of the relevant information with respect to the shares of the Subject Issuers being traded in the Client Accounts, it was alleged in the Statement of Allegations that prior to asking these questions, the Respondents should have reviewed the Notice of Issuance or Proposed Issuance of Listed Securities (the **Form 9**) filed on the CSE website for the shares of these Subject Issuers, which Form 9 includes:

- The name of the parties receiving the shares,
- The number of shares issued,
- The dollar value for the shares,
- The relevant prospectus exemption for the share issuance, and
- The relationship of the party receiving the shares to the issuer.

[14] By not asking such questions and by simply executing the Client's sell orders, it was alleged that the Respondents failed to fulfil their roles as gatekeepers to the capital markets and thereby breached the provisions of Rule 1400.

The Respondents' Background

[15] Mr. Englesby became a Registered Representative in 2005 and has been employed since 2009 as such at the Dealer Member formerly known as PI Financial Corp. but recently having changed its name to Ventum Financial Corp (**PI Financial**).

[16] Mr. Nishimura is Mr. Englesby's assistant and has been registered as a Registered Representative and working at PI Financial since 2012.

The Clients and the Subject Issuers

[17] The Client Accounts consist of the following 9 accounts, of which 5 are individual accounts and 4 are the corporate accounts of the respective Clients:

- Client CP and Client CP's corporate account (**CP Corp**),
- Client YK and Client YK's corporate account (**YK Corp**),
- Client JL,
- Client BB and Client BB's corporate account (**BB Corp**), and
- Client VT and Client VT's corporate account (**VT Corp**).

[18] The Clients through the Client Accounts were involved in the trading of shares in the following Subject Issuers:

- Affinor Growers Inc. (**AFI**),
- Green 2 Blue Energy Corp. (**GTBE**),
- Beleave Inc. (**BE**),
- Cryptoblok Technologies Corp. (**CRYP**),
- Preveceutical Medical Inc. (**PREV**),
- Speakeasy Cannabis Club Ltd. (**EASY**),
- Kootney Zink Corp. (**ZNK**),
- Abattis Bioceuticals Corp. (**ATT**), and
- New Point Exploration Corp. (**NP**).

EVIDENCE PRESENTED BY ENFORCEMENT COUNSEL

[19] In the Initial Decision, the Panel set forth the following summary of evidence, which was presented at the Enforcement Hearing by Enforcement Counsel.

[20] The member of Enforcement Staff's investigation team (the **Investigator**) testified at the Enforcement Hearing that he had commenced his investigation of the Respondents in 2019 as a result of information received by him concerning the investigation by the Commission of a group of entities known collectively under the name "BridgeMark Group".

[21] As part of his investigation, the Investigator stated that he had secured copies of the following documents:

- Form 9 documents relating to the issuance of shares by the Subject Issuers,
- Relevant account statements for the 9 Clients for the Relevant Period, together with relevant updated KYC statements for each of these parties,
- The trading blotter maintained by PI Financial setting out the trading activity in the Client

Accounts in the securities of the Subject Issuers during the Relevant Period,

- The broker performance reports for Mr. Englesby provided to Mr. Englesby by PI Financial during the Relevant Period, and
- Emails to which one or both of the Respondents was a party referencing the trading activity in the Client Accounts during the Relevant Period.

[22] As well, as part of his investigation, the Investigator testified that he had interviewed Mr. Englesby on March 30, 2021 and again on May 19, 2021 and Mr. Nishimura on June 21, 2021, producing transcripts of all three interviews (the **Englesby Transcripts** and the **Nishimura Transcript**, respectively).

Client CP and Client CP Corp

KYC Documentation

[23] The Investigator referenced the new client application form (**NAAF**) for each of Client CP and CP Corp noting:

- Client CP's NAAF, which was dated December 17, 2015, listed CP's occupation as a "Director of Hockey Operations" for the "North Shore Winter Club" with his net worth being $745,000 and his liquid assets being $45,000,
- Client CP's updated NAAF dated February 7, 2018, which stated CP's occupation was now a self employed "Consultant", with his net worth being $1,575,000 and his liquid assets being $75,000,
- Client CP Corp's NAAF dated February 7, 2018, noting that CP was the President of CP Corp and owned 100% of its issued shares, with the nature of CP Corp's business being listed as "Consultant/Entrepreneur" and having a net worth of $55,000 and liquid assets of $50,000, and
- CP Corp's updated NAAF dated August 15, 2028, with its net worth now listed at $1,005,000 and its liquid assets at $1,000,000.

Red Flags

[24] The Investigator testified that he had done a summary of the shares represented by the share certificates of the Subject Issuers that Client CP and CP Corp had deposited into the respective accounts and had subsequently sold during the Relevant Period. He confirmed that he had calculated the cumulative losses for these Clients during the Relevant Period to amount to $1,839,274, and that this figure included gains made on the trading in the shares of PREV of $88,381 and in ZNK of $171,455.

[25] He stated that for the purpose of his calculation, he had used the issue price of the traded shares as reflected in their respective Form 9s as the cost base for these shares.

[26] The Investigator referenced the Englesby Transcripts and the Nishimura Transcript and noted that during the interviews with the Respondents that he had asked each of them if they had monitored the accounts for Clients CP or CP Corp to determine whether or not these clients were engaged in uneconomic trading. The Inspector confirmed that, as evidenced by the Engleby Transcripts and the Nishimura Transcript, Mr. Englesby and Mr. Nishimura had responded that once the ownership of the shares evidenced by the share certificates of the respective Subject Issuers had been verified, they did not monitor these accounts for uneconomic trading.

Activity Inconsistent with Apparent Financial Standing

[27] With reference to CP Corp's original NAAF, which stated that the client had liquid assets of $50,000, the Investigator testified that the month-end equity in CP Corp's account for both June and July 2018 was well over $2 million, and that these equity amounts were the monies remaining following withdrawals of over $1 million in each of April, May and June of 2018.

[28] He noted that with the NAAF update completed by CP Corp as of August 15, 2018, CP Corp had increased its stated net worth to $1,005,000 with its liquid assets being increased to $1 million, but that on the day following this update, August 16, 2018, it had made two withdrawals from its account totalling $2.3 million.

[29] When the Investigator asked Mr. Nishimura if it did not strike him as odd that the client on the day following a professed total of $1,005,000 in liquid assets, withdraws a total $2.3 million, Mr. Nishimura stated that he did not find it odd and that he had not had any discussions concerning these withdrawals.

Significant Change in Activity

[30] The Investigator testified that prior to February 2018, Client CP had not deposited with the Respondents any share certificates representing shares for trading in his account, that the account value for his account was maintained at under $150,000, and that there were infrequent transactions in his account.

[31] At the end of January 2018, the Investigator noted that the balance in Client CP's account was $53,772.96. However, in February 2018, he stated that the activity in Client CP's account changed significantly with a month end equity totalling $474,601.11 following the deposit of share certificates representing shares amounting to a value of $450,000.

[32] Similarly, with the account of CP Corp. The Investigator testified that at the end of February 2018, the account balance for the account of CP Corp was $1.00. Thereafter, with the deposits of share certificates representing shares of the Subject Issuers having the following values:

- in March 2018 having a value of $869,999.94,
- in April 2018 having a value of $2,155,625,
- in May 2018 having a value of $685,714.80,
- in June 2018 having a value of $3,700,000.06, and
- in July 2018 having a value of $857,142.50,

followed by almost immediate cash withdrawals following the trading in these shares, with the month end account balances varying from $286.52 at the end of May 2018 to $2,569,592.67 at the end of June 2018.

[33] The Investigator testified that when shown this trading activity in the accounts of CP and CP Corp and when asked whether or not the Respondents had inquired about how CP and CP Corp had acquired the shares of the Subject Issuers, what the acquisition price was for these shares, or what the relationship CP had with the Subject Issuers, the Respondents stated that they did not ask these questions of CP.

[34] The Respondents confirmed that it was not their practice to monitor a client's activity against the information provided in the client's NAAF forms, and with respect to CP, the Respondents had not asked him if he was a consultant to the company of the Subject Issuers in whose shares he was trading or what was the acquisition price for the shares being traded.

[35] One of the results of this significant increase in trading activity in the CP and CP Corp accounts, the Investigator testified, was the increase in gross trading revenue generated and the resulting increase in commissions earned by the Respondents.

[36] He referenced the copies of the monthly commission summaries that Mr. Englesby had received from PI Financial by email, which documents highlighted the top 10 clients by revenue generated in the year to the date of the particular summary. The relevant summaries, he noted, commenced in March of 2018 and continued until the 2018 year end, and confirmed that CP Corp was listed among the top 10 revenue generators for Mr. Englesby for each month during that time period, with CP Corp being Mr. Englesby's second highest client by revenue for all of 2018.

[37] The Investigator further referenced a chart compiled by him based upon information provided to him by PI Financial, which chart, he testified, demonstrated that gross trading revenue for CP's account and CP Corp's account went from a total of $890 in 2016 to a total of $92,352 in 2018.

Client YK and Client YK Corps

KYC Documentation

[38] On August 8, 2017, the Investigator testified, Client YK opened an account with the Respondents completing her NAAF with her occupation being listed as a "Student/Homemaker", her employer as "N/A", her

annual income at $200,000, her net worth at $2M and her liquid assets at $2M.

[39] On November 14, 2017, he stated, Client YK opened an account for YK Corp, a company for which she was the president, and on the NAAF for YK Corp stated that the nature of the company's business was an "Investment Holding Co", with its net worth at $2.5M and liquid assets at $2.5M.

[40] When he asked Mr. Englesby, as evidenced by the Englesby Transcripts, as to whether or not he had inquired from YK as to the source of funds for these accounts or why the Client held them, the Investigator testified that he was advised that Mr. Englesby did not so inquire.

Red Flags

[41] On December 4, 2017, the Investigator testified that Client YK received 500,000 shares of ATT, one of the Subject Issuers, from the account at PI Financial owned by an unrelated company (**BC Corp**), which company was controlled by the chief executive officer of ATT, one of the Subject Issuers. The signed transfer document, he noted, stated that the consideration for the transfer was zero dollars, though by December 5, 2017, Client YK had sold these shares for total proceeds of $139,235.

[42] On December 5, 2017, the Investigator testified that Mr. Englesby sent by email to Client YK an Irrevocable Undertaking letter which stated that Client YK would deliver a share certificate for 500,000 shares of ATT to BC Corp, which undertaking included a prohibition on the trading of these securities until February 13, 2018.

[43] The Investigator testified that from December 13, 2017, to December 22, 2017, Client YK and YK Corps subsequently completed the following transactions:

- On December 15, 2017, Client YK deposited share certificates representing 1.5M ATT shares into her account,
- On December 20, 2017, Client YK transferred these 1.5M ATT shares to YK Corp,
- On December 21, 2017, Client YK deposited a further 700,000 ATT shares into her account,
- On December 22, 2017, Client YK transferred these 700,000 ATT shares to YK Corp, and
- From December 13, 2017 to December 20, 2017 and prior to the above referenced transfers, which totalled 2.2M shares of ATT, YK Corp sold short 2.2M shares of ATT.

[44] The Investigator testified that when asked, as demonstrated by the Englesby Transcripts, Mr. Englesby stated that he did not question Client YK about any of these transactions.

Client JL

KYC Documentation

[45] The Investigator testified that Client JL opened an account with the Respondents stating on the NAAF dated June 13, 2017, that his occupation was a "Finance Consultant", his employer was "Asiata Management", his annual income was $250,000+, his net worth was $10M, and his liquid assets were $5M+.

Red Flags

[46] On April 3, 2018, the Investigator stated, Client JL deposited share certificates representing 4 million shares of ATT to his account. Then, between April 3, 2018 and April 5, 2018, Client JL sold a total of 1,843,500 of these shares, and then on April 5, 2018, Client JL withdrew the remaining 2,156,500 shares.

[47] When asked, the Investigator stated, as demonstrated by the Englesby Transcripts, Mr. Englesby did not ask why Client JL withdrew the shares two days after their deposit, how Client JL had obtained the shares, what the acquisition price was for the shares, or whether or not Client JL had any relationship with ATT.

[48] The Respondents also stated, the Investigator testified, that at the time of the dealings in the ATT shares by both Client YK and Client JL, the Respondents were not aware that Client YK and Client JL were in a relationship.

Client BB and Client BB Corp

KYC Documentation

[49] The Investigator testified that Client BB opened an account with the Respondents stating on the NAAF dated April 18, 2018 that his occupation was an "Investor (Venture Capitalist)", he was self employed, his annual income was $300,000, his net worth was $1.250M, and his liquid assets were $200,000.

[50] On the same date, the Investigator stated, Client BB opened an account for BB Corp, a company for which he was the sole officer and President. The NAAF stated that the nature of BB Corp's business was that of an "Investor", its net worth was $1.250M, and its liquid assets were $200,000.

Red Flags

[51] The Investigator noted that Client BB sought the assistance of Mr. Englesby with respect to printing of the following documents:

- On May 17, 2018, a copy of the stock option plan of NP, one of the Securities Issuers,
- On June 4, 2018, a copy of a consulting agreement between BB Corp and NP, which Mr. Englesby was asked to leave at the front office desk after printing, and
- On June 5, 2018, a copy of a Notice of Exercise of Option between BB Corp and NP, specifically referencing the printing of the signatory page.

[52] On August 9, 2018, the Investigator testified, BB Corp deposited share certificates representing 1,208,000 shares of NP into the BB Corp account. Then on August 10, 2018, BB Corp transferred 325,000 of these NP shares for zero consideration to another account at PI Financial, which account was owned by CF Corp., also a client of the Respondents. Upon receipt of these 325,000 shares of NP, CF Corp. sold them for proceeds of $22,450, none of which proceeds were paid to BB Corp.

[53] The remaining 833,000 shares of NP owned by BB Corp were sold by August 23, 2018, he stated, for total gross sale proceeds of $44,736, which the Investigator testified, represented a loss of $65,639 based upon the issue price as reported in the Form 9 relative to their issuance.

[54] When he was asked if he had any discussions with Client BB concerning the documents Client BB sought to have printed, as these documents might have related to Client BB's relationship with NP, how BB acquired the options for the shares of BB, or if BB was consulting for any other companies other than NP, the Investigator testified that Mr. Englesby, as evidenced by the Englesby Transcripts, responded that he had not.

[55] Similarly, the Investigator testified, as also evidenced by the Englesby Transcripts, when Mr. Englesby was asked if he knew what the relationship was between Client BB, BB Corp, and CF Corp, or the reasons for the transfer of the NP shares, the Investigator testified that Mr. Englesby had responded that he had no idea.

Client VT and Client VT Corp

KYC Documentation

[56] The Investigator testified that Client VT originally opened an account with a Registered Representative at PI Financial other than the Respondents, completing at that time an NAAF dated December 7, 2017. This NAAF stated that Client VT's occupation was a "Corporate Secretary", his employer was "Self Employed/Jackson Company", his net worth was $1M, and his liquid assets were $500,000.

[57] On June 14, 2018, the Investigator stated, the Respondents took over Client VT's account and updated the NAAF for Client VT to now reflect a net worth of $3.05M and liquid assets of $3M. At the same time, an account was opened for VT Corp, a company for which Client VT was the director. The NAAF for the VT Corp account stated that the nature of the company's business was "Hold Co Provides Corporate Services", its net worth was $2M and its liquid assets were $2M.

Red Flags

[58] On June 15, 2018, the Investigator testified, VT Corp deposited share certificates representing 7,066,667 shares of CRYP, one of the Security Issuers, into its account. From June 15, 2018 to June 21, 2018, VT Corp sold all these CRYP shares for total gross sale proceeds of $606,578. The Investigator testified that based upon the relevant Form 9, which he used to establish the cost of these shares, these transactions represented a

cumulative loss to VT Corp of $453,422.

[59] The Investigator then referenced the Englesby Transcripts and noted that:

- When asked if he had noticed the increase in VT Corp's liquid assets from $500,000 in December 2017 to $3M in June 2018, Mr. Englesby responded that he "didn't notice" this increase and didn't know the reason behind it,
- Mr. Englesby hadn't inquired about how VT Corp obtained the CRYP shares or what the acquisition price of these shares was, and
- Mr. Englesby had not inquired whether or not Client VT had any relationship with CRYP.

Commissions Earned by the Respondents

[60] During the Relevant Period, the Investigator testified, the total gross commissions generated through the sales of shares of the Subject Issuers in the Client Accounts amounted to $103,332, with Mr. Englesby's payout being $51,666, and Mr. Nishimura's being $2,066.

PI's Financial Sales Procedure Manual

[61] The Investigator referenced the Financial Sales Procedure Manual (the **PI Manual**) of PI Financial and specifically, section 8.2 thereof entitled "Standard of Conduct – The RR as Gatekeeper", which includes a copy of a directive from the Vancouver Stock Exchange prior to it becoming the TSXV. He noted that the PI Manual states that the directive is very important in that it "lays out the standard of conduct expected of Investment Advisors".

[62] This directive states:

> "The Vancouver Stock Exchange and its Members are committed to being 'an honest, fair and efficient market for venture capital'. The support of all industry participants is key to the achievement of this mission. In particular, the role of the Member and its employees in upholding the integrity of the marketplace (the role of 'Gatekeeper') is of major importance.
>
> The Know Your Client rule is one of the fundamental rules of the securities industry. It is incumbent upon any RR to have as full a knowledge as possible of the personal circumstances and investment objectives of all clients, both on an initial and an ongoing basis. It follows that it is the duty of RR's to act in the best interests of their clients.
>
> However, RR's must also act in the best interests of their employers and through them, the whole securities industry. From this it follows that if the RR becomes aware, through knowledge of the client or otherwise, that the intention or effect of the trading by a client would be in breach of the Securities Act or impugn the integrity of the market place, then it is incumbent on the RR in the capacity of 'Gatekeeper' within the securities industry, to draw the matter to the attention of Management of the firm. The member shall draw the situation to the attention of the Exchange. Further, willful blindness on the part of RRs may equally be construed as failure to meet their responsibilities.
>
> 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."

[63] The Investigator then made reference to Appendix H in the PI Manual entitled "Suspicious Transactions Indicators" under the heading "Examples of Common Indicators" and under the subheading "Economic Purpose" with respect to the following four bullet points:

- transaction seems to be inconsistent with the client's apparent financial standing or usual pattern of activities,
- transaction appears to be out of the ordinary course for industry practice or does not appear to be economically viable for the client,
- transaction is unnecessarily complex for its stated purpose, and

- activity is inconsistent with what would be expected from declared business.

[64] The Investigator made further reference to the wording also in this Appendix H under the heading "Examples of Industry-Specific Indicators" and the subheading "Personal Transactions" and to the following two bullet points:

- client has no employment history but makes frequent large transactions or maintains a large account balance, and
- client acquires significant assets and liquidates them quickly with no explanation.

[65] And then, finally, in this Appendix H under the same heading "Examples of Industry-Specific Indicators" as previously set out, but under the subheading "Securities Dealers", the Investigator made reference to the following three bullet points:

- accounts that have been inactive suddenly experience large investments that are inconsistent with the normal investment practice of the client or their financial ability,
- transfers of funds or securities between accounts not known to be related to the client, and
- transaction of very large dollar size.

[66] In summary, the Investigator noted that these provisions in the PI Manual appeared to clearly set out the obligations on the Respondents as gatekeepers to ask questions of the Clients and not to simply execute the Clients' sell orders.

THE RESPONSE

[67] In the Initial Decision, the Panel noted that in their Response, the Respondents had stated that they had followed the policies of PI Financial, their employer, and that they had asked the requisite appropriate questions at all material times.

[68] With respect to the allegation that the transactions in issue were uneconomic, the Respondents submitted that although the trades referenced in the Statement of Allegations might have been unprofitable for the Clients, such trading was not uneconomic. The Respondents further noted in their Response that there was no suggestion that during the Relevant Period the trades in question were in any manner abusive to the capital markets or were otherwise improper.

[69] With respect to the allegation that the trading was out of line with the normal and historical account activity of a Client and was not consistent with a Client's KYC information, the Respondents stated that once they became aware of a change in a Client's liquid assets and net worth, the Client's NAAF form was updated in a timely manner. In any event, the Respondents submitted that a change in a Client's financial standing should not, standing alone, be considered a Red Flag.

EVIDENCE PRESENTED BY THE RESPONDENTS

[70] In the Initial Decision, the Panel set forth the following summary of evidence which was presented at the Enforcement Hearing by the Respondents.

[71] The Respondents called to give evidence, the Vice President Compliance, Corporate Secretary, and Chief Compliance Officer of PI Financial (**PI's CCO**), the person who was the chief compliance officer at PI Financial during the Relevant Period. PI's CCO testified that during his career, he has had extensive experience in the area of compliance, including ensuring that Registered Representatives operate in full compliance with the IDPC Rules.

Registered Representative's Primary Responsibility

[72] When asked, PI's CCO testified that in his opinion, PI Financial's Registered Representatives are the front line when it comes to compliance matters as they have a direct relationship with the client.

[73] However, he stated that these Registered Representatives' primary responsibility is to deal with KYC matters involving their clients. To that end, the gatekeeper role referenced in the PI Manual is mainly an offshoot of this KYC responsibility.

[74] In the KYC context, he testified that the Registered Representatives have a responsibility to identify suspicious activities other than market related activities, but that this obligation is fact-specific and very dependent upon a particular situation. As well, he added that what a particular Registered Representative considers to be suspicious can be very subjective.

PI's Financial Sales Procedure Manual

[75] PI's CCO referenced the PI Manual and confirmed that he was responsible for much of its contents, including the insertion of the directive from the Vancouver Stock Exchange referenced by the Investigator.

[76] However, he suggested, this directive references more the responsibility of a Registered Representative to be aware of client trading activities which might be in breach of securities law or impinging on the integrity of the capital markets. He noted that such trading activities were not referenced in the Statement of Allegations and that the Red Flags set out in the Statement of Allegations were not related to market manipulation or insider trading.

[77] PI's CCO noted, as well, that the PI Manual included Appendix G which is a copy of a document that he authored in 2017 dealing with PI Financial's policy to prohibit and actively prevent money laundering and any activities that might facilitate the carrying out of money laundering.

[78] He stated that the reference therein to "Suspicious Transactions Indicators" and the balance of the provisions of Appendix H were set out in the context of this money laundering concern and were not intended as an attempt to more clearly define the Respondents' overall role as gatekeepers as suggested by the Investigator.

[79] PI's CCO testified that in his opinion, the allegations made in the Statement of Allegations did not involve money laundering, so that these provisions of the PI Manual, which focused on money laundering were not necessarily directly applicable to the matter at hand.

Red Flags

Large Deposit of Shares

[80] With respect to a situation where there has been a deposit of share certificates representing a large number of shares into a client's account, PI's CCO testified that he did not believe that this activity alone should have raised Red Flags for the Respondents.

[81] He stated that it was not unusual that investors in venture companies made a determination to divest themselves of their entire share holdings when they wished to exit their investment. The obligation on the Registered Representative when a share certificate is deposited, he testified, is to confirm the validity of the ownership of the shares represented thereby and not to inquire from the client as to the origin of the shares, when they were acquired, or their acquisition price.

Trading Activity in Client CP and CP Corp's Accounts

[82] PI's CCO testified that after reviewing the dealings of the Respondents with the accounts of Client CP and CP Corp, he did not see any activities which should have triggered alarm bells for the Respondents. With respect to the trading of Client CP, PI's CCO noted that, as Client CP listed his business activity as being that of a consultant, it was not unusual for consultants to receive shares in the companies for which they were consulting and then to sell these shares into the market.

NAAF Information

[83] With respect to the NAAF of Client CP, PI's CCO testified that in his opinion, the responsibility of a Registered Representative is to ensure that when a new account is opened, a new NAAF is completed. Similarly, if there has been a significant change in a client's situation, the client's NAAF should be amended. However, he stated, the Registered Representative's obligation is to ensure that an NAAF is completed in full. The Registered Representative is not required to assure the accuracy of the information that the client has provided. And, he added, the onus is clearly on the client to advise the Registered Representative of changes to the client's situation which require an amendment to the client's NAAF.

[84] In support of this obligation on the client, PI's CCO pointed to the statement in Client CP's NAAF which

states:

> 1.4 Account Information
>
> The Client warrants that, to the best of the knowledge of the Client, the information set out on all Client's Information Forms relating to the Account is correct, and acknowledges that the Agent and his representatives may rely on that information in providing advice or recommendations to the Client in respect of the Account. The Client agrees to notify the Agent immediately of any change in such information which might be expected to affect the advice of the Agent were sought or given.

[85] In any event, PI's CCO noted, the question of the completion of a client's NAAF is a KYC issue and is not an issue involving uneconomic trading. And he observed that the client has the obligation to advise the Registered Representative of such issues as insider information or a control position in the company whose shares are being traded. There is no obligation on the Registered Representative to make inquiries in this respect.

[86] With reference to the changes in CP Corp's NAAF which demonstrated CP Corp's liquid assets increasing from $50,000 at the time of the opening of the account to $1 million in August of 2018 after sizeable trading activity in the account, PI's CCO testified that this was more of a KYC issue than a gatekeeper issue and that at the most, CP Corp's NAAF should have been updated earlier than August of 2018.

Cost of Shares

[87] As to whether or not PI Financial required that their Registered Representatives determine the acquisition price of shares that a client wished to trade or imposed an obligation on a Registered Representative to examine a Form 9 for such shares prior to executing the client's trading instructions, PI's CCO testified that PI Financial did not have such policies.

[88] PI's CCO confirmed that it was his understanding that there was no requirement on a Registered Representative to inquire as to the acquisition price of a client's shares, even when there appeared to be a series of sales of these shares into a declining market resulting in a reduced price received for these shares and a resulting overall loss to the client.

Gypsy Swaps

[89] PI's CCO was referred to evidence before the Panel of the Respondents permitting shares to be transferred from one client of PI Financial to another client of the firm without the Respondents determining by asking either the transferee or the transferor of the relationship between the transferring parties, the reason for the transfer, the acquisition price of the shares for the transferor, or the cost of the shares transferred to the transferee. PI's CCO responded by referring to such transactions as "Gypsy Swaps" and testified that there was no requirement on PI Financial's Registered Representatives to ask these questions. And, he noted that there was no prohibition on clients transferring restricted trading shares in such transactions, nor were such transactions contrary to PI Financial's policies.

[90] With respect to the evidence before the Panel referencing Gypsy Swaps involving:

- the transfer of 500,000 shares of ATT from the chief executive officer of ATT to Client YK on December 4, 2017 and the subsequent sale by Client YK of all of these shares by December 5, 2017, and
- the transfer of 325,000 shares by BB Corp to CF Corp on August 10, 2018, and their subsequent sale for $22,450,

[91] PI's CCO testified that these Gypsy Swaps appeared to have been effected in compliance with PI Financial's policies.

Obligation on Registered Representatives to Ask Questions

[92] PI's CCO testified that in his opinion, the only requirement on a Registered Representative to ask questions about a client's trading activities occurred if such trading activities clearly involved concerns around items such as market manipulation or money laundering, or when such activities were clearly out of line with the information provided by the client in the client's NAAF.

[93] He testified that upon reviewing the evidence before the Panel, apart from the Respondents having failed to have ensured that some of the NAAFs of the Clients were updated on a more timely basis, which he noted were KYC issues and not gatekeeper issues, he did not see that the Respondents had failed in their roles as gatekeepers in not asking questions of the Clients and that, therefore, he did not believe that the Respondents were in breach of Rule 1400 alleged in the Notice of Hearing.

THE INITIAL DECISION

[94] In the Initial Decision, the Panel noted that from the submissions of Enforcement Counsel and the Respondents' Counsel, it was clear to the Panel that there was no disagreement between the parties on the facts included in the evidence before the Panel.

[95] Rather, the Panel stated, the disagreement between the parties and the issue before the Panel for its decision was whether or not the activities of the Respondents over the Relevant Period as set forth in the evidence were sufficiently egregious to have breached the high standards of ethics and conduct expected of them as Registered Representatives in that they engaged in business conduct that was unbecoming or detrimental to the public interest and thereby were in contravention of Rule 1400.

What was not in Issue

[96] From the closing submissions of both Enforcement Counsel and the Respondents' Counsel, the Panel noted that it would appear that both parties acknowledged that from the evidence before the Panel what was not in issue was:

- the validity of the share certificates deposited in the Client's Accounts, the ownership of the shares represented thereby, or the entitlement of the Clients to trade in such shares,
- that any of the Clients were nominees for a third party,
- that the trading in such shares was indicative of a market manipulation or money laundering scheme,
- the suitability of the trading for the Clients, even though the trading of the shares in most instances led to a loss when the sales proceeds were compared to the issue price of the shares in the respective Form 9s,
- the failure by the Respondents to advise PI Financial's compliance department of requisite information concerning the Clients or intentionally keeping such information from PI Financial's compliance department, or
- any concern expressed by PI Financial to the Respondents about either the trading in the Client Accounts or in the KYCs of the Clients.

The Position of Enforcement Counsel

[97] In the Initial Decision the Panel observed that the submission of Enforcement Counsel was that Rule 1400 is a regulatory requirement, which includes the obligation of a Registered Representative to act as a gatekeeper to the capital markets, that this obligation was broad in scope, was not restricted to situations of manipulative or abusive trading in the capital markets, and extended to the obligation on a Registered Representative to be alert to the collective activities in a client's account.

[98] This obligation concerning the collective activities in a client's account, Enforcement Counsel submitted, required a Registered Representative to identify Red Flags raised by such activities, and was not restricted to specific market manipulation Red Flags.

[99] The Panel noted that Enforcement Counsel submitted that these additional Red Flags included:

- uneconomic trading activity,
- activity inconsistent with apparent financial standing of the account owner,
- the deposit of share certificates representing a large number of shares and the sale of these shares shortly thereafter followed by large withdrawals of the sales proceeds, and

- that the activity being out of line with the historical trading activity in the accounts and the relevant KYC information relating to the accounts.

[100] In addition, the Panel noted that Enforcement Counsel had submitted that the occurrence of these additional Red Flags imposed an obligation on the Respondents to question the relevant Client as to the reasoning behind the trading activities. The fact that the Respondents did not make such inquiries, Enforcement Counsel submitted, constituted a failure on the part of the Respondents to perform their roles as gatekeepers and thereby, contravened the provisions of IDPC Rule 1400.

The Position of the Respondents

[101] In the Initial Decision, the Panel stated that the Respondents' Counsel had submitted that the collective activities identified by Enforcement Counsel as Red Flags were not actual Red Flags but were rather trading activities, which were not unusual when trading in the shares of venture issuers listed on the CSE, such as the Subject Issuers.

[102] With specific reference to the Red Flags enumerated by Enforcement Counsel, the Panel noted that the Respondents' Counsel submitted:

- the sale of shares by the Clients into a falling market was not a Red Flag of uneconomic trading, but rather an attempt by the owner of the shares to liquidate the share position and then to withdraw the proceeds,
- as testified by PI's CCO, during the Relevant Period, PI Financial did not impose upon its Registered Representatives an obligation to review the relevant Form 9 for the shares being traded and, therefore, there was no obligation on the Respondents to be aware of the owner's cost of the shares traded, and thereby an obligation on the Respondents to be aware of whether or not a loss was being incurred, and
- as Client CP became a consultant during the Relevant Period, as it is not unusual for parties consulting to public issuers, such as the Subject Issuers, to issue shares in compensation for such consulting services, and for the consultant to subsequently monetize these issued shares by selling them in the public markets, the activities of Client CP and Client CP Corp should not have raised Red Flags imposing an obligation on the Respondents to make inquiries.

[103] As the activities focused on by Enforcement Counsel were ones that were explainable in the particular fact situation for the Clients involved, the Panel noted that the Respondents' Counsel had submitted that there was no obligation on the Respondents to make the inquiries as proposed by Enforcement Counsel, and that, therefore, there was no breach of Rule 1400 by the Respondents.

The Panel's Initial Decision

[104] In rendering the Initial Decision, the Panel commenced with what it called the "Definition of the Issue" noting that it was clear to the Panel that what was required of it in making its decision was to firstly define the gatekeeper obligation facing the Respondents during the Relevant Period with respect to the activities of the Clients and the trading involving the Client Accounts and, based on that definition, to determine whether, as alleged in the Notice of Hearing, the failure by the Respondents to make the relevant inquiries with respect to such activities constituted a breach of this obligation.

[105] The Panel stated that it was aware that it appeared that the gatekeeper role has in past decisions normally been considered in situations where the evidence is of activities involving market manipulation, money laundering, or more clearly defined suspicious behaviour, the occurrence of which coming to the attention of a Registered Representative required the Registered Representative to be proactive and to make inquiries.

[106] The Panel determined that in making its decision, it would do so by considering the particular fact situation presented by the evidence before it and by examining whether or not, based upon the experience in the investment industry of the members of the Panel, the Respondents acted reasonably in not making the inquiries.

[107] In taking what it called a three-step approach, the Panel concluded that that the evidence before it must demonstrate that there was a triggering event which came to the attention of the Respondents, which

event, the Respondents acting as a duly diligent person, who was active in the investment industry, raised a concern and should cause the Respondents to have made inquiries using all sources of information available to them. Once the inquiries have been made, the Panel stated, the obligation was then upon the Respondents to exercise their judgment as to how to act based upon the information so uncovered.

[108] In other words, the Panel stated, wilful blindness or wilful ignorance is not acceptable in the gatekeeper's role. But in order to impose upon a gatekeeper the obligation to commence the inquiry process, there must be a triggering event which in the mind of a party active in the investment industry, reasonably raises a concern and, therefore, imposes the requirement to act and make the requisite inquiries.

[109] The Panel applied this approach in the Initial Decision. In doing so, the Panel came to the conclusion that on the evidence before the Panel, it did not find a triggering event which, in the Panel's opinion, would have reasonably raised a concern to a party active in the investment industry, which would then have imposed upon that party the obligation to make further inquiries and that therefore, resulted in the Panel not finding in the evidence a breach by the Respondents of their gatekeeper's obligation as alleged in the Notice of Hearing and the Statement of Allegations. The Panel dismissed the disciplinary action against the Respondents.

THE COMMISSION'S DECISION

[110] In arriving at the conclusion to set aside the Panel's Initial Decision, the Commission determined that the Panel had proceeded on an incorrect principle, made an error in law, applied the wrong test and failed to adequately consider the public interest. The Commission stated that the Panel's error was not in its use of the three-step approach, but rather that when the Panel applied this three-step approach to the evidence before it, the Panel went too far when it treated potential speculative explanations as unsubstantiated, through inquiry, which might or might not apply as resolving obvious issues.

[111] By way of example of the Panel's use of potential speculative explanations and the legal error thereby committed, the Commission in their Decision referenced the conclusion of the Panel that the changes in Client CP's net worth and liquid assets might well have resulted in the change in occupation of Client CP from that of a director of hockey operations to that of a consultant. The Commission stated that the Panel had inferred facts that the Respondents had never ascertained and thereby avoided a number of questions, which a gatekeeper would be obligated to look into.

[112] The Commission went on to observe that it was possible that financial consultants providing consulting services to venture companies could make significant amounts of money, it was also probable that such consultants might be paid in the form of share participation, but, the Commission observed, many financial consultants work for decades building up networks of contacts and expertise in deal structures and that it was not automatic that any director of hockey operations at a local winter club can become a financial consultant and then almost instantly begin to make millions of dollars.

[113] The Commission stated that the failure by the Panel to ask itself the correct question with respect to the obligation on the Respondents to inquire of Client CP as to the source of what appeared to be his recently acquired wealth constituted an error, which the Commission observed could alternatively be characterized as failing to protect the public interest or as proceeding on an incorrect principle.

[114] Based upon this finding, the Commission determined that the decision of the Panel to dismiss the disciplinary action against the Respondents should be set aside.

[115] However, despite the submissions of the parties that the Commission should make its own decision on the merits, the Commission determined not to do so stating that although it considered the allegation with respect to the circumstances of Client CP and CP Corp to constitute an obvious Red Flag, that not every issue has such an obvious answer in that some of the other issues regarding whether there were indicators suggesting the existence of suspicious activity are subtle and would be better answered by the Panel given its better familiarity with the evidence and the specialized expertise of CIRO panels.

[116] The Commission went on to note that once a decision was made regarding what Red Flags should have been identified, there were further questions to be answered about what steps should have been taken to inquire further and then regarding whether the totality of the conduct of the Respondents amounted to "conduct unbecoming" under Rule 1400.

[117] Based upon these observations, the Commission remitted "the entirety of the proceeding to the Panel to decide on an approach consistent with" the Commission's Decision.

THE PANEL'S DECISION FOLLOWING THE REMISSION OF THIS MATTER

The Approach Consistent with the Commission's Decision

[118] As the Commission remitted this matter to the Panel to make a decision on the merits based upon the Panel's better familiarity with the evidence before it and the specialized expertise of CIRO panels, the Panel has laid out above in some detail the evidence before the Panel in coming to its Initial Decision and the positions of the parties with respect to this undisputed evidence.

[119] As noted above, following the Commission's Decision, the Panel requested and received written and oral submissions from the parties based on the Commission's Decision. After reviewing the written submissions from each party, the Panel submitted to the parties a series of questions and asked that the parties address these questions at an oral hearing. The written and oral submissions of the parties are summarized below together with the Panel's reflections thereon.

[120] Based upon these submissions of the parties, the Panel determined that for an approach to be "consistent with" the Commission's Decision, the Panel would examine the evidence before it in two different stages.

[121] The first stage would be to again review the evidence before it with respect to each of the Clients to determine whether or not the Red Flags as alleged in the Statement of Allegations were present and required action on the part of the Respondents.

[122] As the Commission stated that the Panel in arriving at its Initial Decision had employed the "wrong test", in this fresh review of the evidence, the Panel ensured that it did not treat "potential speculative explanations unsubstantiated through inquiry which might or might not apply as resolving obvious issues".

[123] The second stage undertaken by the Panel was its determination as to whether or not, based upon its findings in the first stage, the totality of the conduct of the Respondents amounted to "conduct unbecoming" under Rule 1400.

Potential Speculative Explanations

[124] In remitting this matter to the Panel, the Commission stated that the Panel is in a better position to determine the existence of Red Flags as some of the issues are subtle and could be better answered by the Panel given its better familiarity with the evidence before it and the Panel's specialized expertise in respect of standards and practices in the investment industry. The Panel is, therefore, tasked with utilizing this specialized expertise without venturing into speculation.

[125] In *Walton v. Alberta (Securities Commission)*[1], the Alberta Court of Appeal referenced the legal distinction between speculation and drawing inferences from the circumstantial and direct evidence on the record, noting that the trier of fact is permitted to do the latter, but not the former. The court stated that "speculation" could therefore be described as the drawing of an inference in the absence of any evidence to support that inference or in situations where there is no "air of reality" to the inference.

[126] In *Kimitto v. Ontario (Securities Commission)*[2], the Ontario Securities Commission in a matter involving the respondent appealing from a finding of an insider trading violation, the Commission noted that it was common in insider trading cases to have the evidence against the respondent to be entirely circumstantial. It stated that for a finding of liability, the decision maker was entitled to draw inferences from circumstantial evidence, but that it was required to do so on a proper factual foundation, not based upon speculation or unfounded assumptions.

[127] Using the legal standard as referenced by these two decisions, the Panel reviewed the evidence before it within the context of the submissions of the parties thereon to determine whether or not Red Flags existed with respect to the actions of each of the Clients.

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[1] 2014 ABCA 273 (CanLII) paras. 37 and 38

[2] 2024 ONSC 1412 (CanLII) at para. 97

Stage One – Red Flags

Clients CP and CP Corp

[128] Submissions of Enforcement Counsel:

- The Commission found that the existence of a Red Flag was "quite obvious" regarding the circumstances of Client CP and CP Corp,
- The Respondents should have asked Client CP about how and why CP Corp withdrew $6,917,445 over the five-month period from April 2018 to August 2028,
- The Respondents did not inquire of Client CP if he was consulting for any of the Subject Issuers, how he had acquired the shares that he did, or which of the Subject Issuers he had "helped go public", and
- The Respondents were obliged to inquire why Client CP, a director of hockey operations at a local winter club, had become a consultant.

[129] Submissions of the Respondents' Counsel:

- the evidence demonstrated that contrary to what was stated in the Commission's Decision, the Respondents were indeed proactive in finding out about Client CP's change in occupation as, when asked by PI Financial's compliance department about this change in occupation, the Respondents were almost immediately able to advise the compliance department about Client CP's new occupation, which advice, the compliance department appeared to accept.
- With respect to the position of Enforcement Counsel that:
    - there was an obligation placed upon the Respondents as to how Client CP and CP Corp obtained the shares of the Subject Issuers, the Respondents' Counsel noted that the Panel in the Initial Decision acknowledged:
        - there was no question of the ownership or validity of the share certificates deposited in Client CP and CP Corp's client accounts or their entitlement to trade the shares represented thereby, and
        - there was no evidence that Client CP or CP Corp were nominees for a third party, engaged in a manipulation or money laundering scheme, or suitability issues,
    - there was no obligation to inquire about the acquisition price for Client CP and CP Corp's shares and to review the Form 9s. Respondents' Counsel submitted that the Panel found that standard industry practice did not require a registrant to review a Form 9 prior to completing a trade relating to shares set out thereon and that in a declining market, it was not suspicious activity to trade shares at a reduced price to limit an overall portfolio loss,
    - there was a requirement upon the Respondents to inquire about whether Client CP was an insider of the Subject Issuers, the Respondents' Counsel submitted that the Respondents were aware based upon the KYC forms that Client CP and CP Corp were not insiders of the Subject Issuers and there appeared to be no evidence that any of the other Clients were insiders of the Subject Issuers,
- the Respondents' Counsel submitted that asking about why CP Corp withdrew a total of $6,917,445 from its account between April 2028 and August 2018 and how Client CP, formerly a director of hockey operations at a local winter club became a consultant, were not questions which advanced the objectives of the gatekeeper role to identify illegal activities and that the Respondents' therefore had no obligation to ask these questions.

[130] Overall, the Respondents' Counsel submitted that the Respondents acted reasonably based upon the information before them with respect to Client CP and CP Corp and that there were no further steps that

reasonable ought to have been taken by them.

[131] In reviewing the evidence regarding Client CP and CP Corp, the Panel noted that there was no evidence before it with respect to:

- trading activities in the accounts of these Clients, including any accounts at Dealer Members other than PI Financial, involving high closes, upticks or downticks, daily trading conducted by these Clients, or trading volumes and market patterns before, during and after the trading of these Clients, including historic closing prices, crosses, and wash trading,
- trading of PI Financial and other Dealer Members in the shares traded by these Clients, demonstrating the changes in holdings over the Relevant Period to show the Dealer Members with the largest buying and selling volumes relative to the holdings of PI Financial,
- the percentage of total trading in the shares traded by these Clients by volume and value done by PI Financial on a day-to-day basis over the Relevant Period, and
- the engagement of Client CP prior to him becoming a full-time consultant, which engagement might have involved him consulting for venture companies on a part-time basis, expanding his knowledge, and having received share compensation therefor, which he through the client accounts he proceeded to sell and then to withdraw the funds.

[132] However, as this evidence is not before the Panel, it finds that without such or similar relevant evidence the Panel can not find, as was found by the Commission, the existence of "quite obvious" Red Flags with respect to the allegations against Client CP and CP Corp.

Clients YK and YK Corp

[133] Enforcement Counsel submitted that the evidence demonstrates an obvious Red Flag in the case of Client YK and YK Corp in that Client YK:

- was a client who was identified as a "student/homemaker" with no employer information,
- she received 500,000 shares of a Subject Issuer from the CEO of the Subject Issuer for what appeared to be no consideration, and
- she subsequently sold the shares for $139,235.61.

[134] The Respondents' Counsel submitted that:

- for Client YK to have $2 million in liquid assets and $200,000 in annual income and a corporate account that reported having $2.5 million in liquid assets should surely not be a Red Flag suggesting that Client YK was engaged in illegal activity requiring further inquiry, noting that the evidence demonstrated that the Respondents had indeed inquired as to Client YK's trading experience,
- there was no evidence that there was no consideration paid for the 500,000 shares of the Subject Issuer nor that the compliance department of PI Financial, who would have been aware of the transfer, had any concerns, as PI's CCO testified that the Respondent had adhered to PI Financial's policies in respect of the journal entries with respect to these shares.

[135] The Panel does not agree with Enforcement Counsel that the identification of Client YK as a "student/homemaker" should have required the Respondents to have inquired as to the source of YK's stated wealth when the more relevant evidence before the Panel is that the Respondents had determined that she was a relatively experienced investor.

[136] From the Panel's industry expertise in the area of share transfers similar to that which occurred in relation to Client YK, the Panel is aware that Registered Representatives are required to have the clients effecting such a share transfer to back it up with written instructions relevant to both the transferor and the transferee, and that the Registered Representatives must have no involvement with the transfer other than the movement of the relevant stock being transferred. Based upon the Panel's experience in the investment industry, stock transfers of this nature are quite common in the industry and occur for various reasons.

Unfortunately, there is no evidence before the Panel of either the existence of or the lack of such written instructions with respect to the share transfers in relation to Client YK.

[137] In reviewing the evidence before the Panel with respect to the transfer of the 500,000 shares to Client YK, the Panel finds no evidence that this was anything other than a one-time authorized stock transfer or evidence that the consideration Client YK paid for the shares was in fact zero as alleged by Enforcement Counsel.

[138] On the evidence before it, the Panel therefore has difficulty finding Red Flags which should have caused the Respondents to have made inquiries.

Clients BB and BB Corp

[139] With respect to Client BB and BB Corp, Enforcement Counsel submitted the following Red Flags existed:

- the fact that Client BB emailed a copy of an option plan for the Security Issuer NP in favour of BB Corp, a copy of a consulting agreement between NP and BB Corp, and a copy of a notice of exercise of option pursuant to the stock option plan to the Respondents asking for these documents to be printed,
- the fact that the Respondents did not ask Client BB about his consulting for NP, how he acquired stock options, and whether or not he was consulting for any other companies, and
- the deposit of shares of NP into the BB Corp account, the transfer of a portion of these shares to a third-party account for zero dollars, and the sale of these shares from the third-party account for $22,450 without any form of consideration to the BB Corp account.

[140] With respect to Client BB, the Respondents' Counsel submitted that the Respondents' interaction with Client BB and BB Corp did not raise Red Flags as:

- there was nothing in the evidence before the Panel that suggested that the documents in question with respect to the NP option plan were suspicious, especially in light of Client BB in his KYC form describing himself as a self-employed "Investor(Venture Capitalist)", having an estimated net worth of $1.25 million and an annual income of $300,000, and stating that he was not an officer or director or an insider of a publicly traded issuer,
- there was nothing in the evidence before the Panel to suggest that Client BB was involved in consulting work for other companies or why Client BB should have been asked about this as alleged by Enforcement Counsel, and
- the journal transfer of the shares of NP adhered to the policies of PI Financial, there was nothing suspicious or unusual about this transfer to suggest that Client BB was involved in an illegal scheme, and PI Financial's compliance department approved this routine journal transfer without requiring that further information be collected from Client BB.

[141] Similar to the Panel's findings with respect to Client YK and YK Corp, the Panel notes the evidence before it involving Client BB stating in his KYC his occupation to be an "Investor (Venture Capitalist)" and the evidence with respect to the practice of "gypsy swaps" in the trading of venture company shares.

[142] As in the case of Client YK, the Panel notes that the evidence demonstrates only this one share transfer with no other share transfers being carried out, that PI Financial's compliance department treated this as a routine transaction, and that the share transfer appeared to be nothing other than an authorized stock transfer.

[143] Therefore, on the evidence before it, the Panel has difficulty finding the Red Flags as alleged by Enforcement Counsel with the obligation upon the Respondents to have made further inquiries.

Client JL

[144] The evidence with respect to Client JL's activities, Enforcement Counsel submitted, demonstrated a Red Flag when Client JL deposited a large number of shares of ATT into his account, sold a number of them and, two days later, withdrew the balance of these shares. Enforcement Counsel submitted that these actions were Red Flags and that the Respondents should have inquired of Client JL how he obtained the ATT shares, the

acquisition price therefore, and why he withdrew the balance of these shares.

[145] Enforcement Counsel also noted Client JL's relationship with Client YK, who also held ATT shares.

[146] With respect to Client JL, the Respondents' Counsel submitted that there was nothing unusual or suspicious about his trading activity. Indeed, the Respondents' Counsel noted, when asked, the Investigator admitted that it was not unusual for a party to deposit into his account shares he clearly owned, to immediately sell a portion of them, and then to withdraw any unsold amount. The Respondents' Counsel submitted, it was Client JL's right to do this.

[147] The Panel has difficulty accepting the position taken by Enforcement Counsel in their submissions that the Respondents' dealings with Client JL appears to impose upon the Respondents an obligation to determine where and how a client obtained shares deposited into an account and their acquisition cost. The Panel notes that there was no evidence before the Panel that when Client JL deposited the ATT shares into his account he was in a relationship with Client YK. The Panel further notes that it is not unusual for numerous clients in a Dealer Member to hold the same equities.

[148] The Panel, therefore, has difficulty in accepting Enforcement Counsel's submissions that the failure by the Respondents to make the inquiry of Client JL was a Red Flag.

Clients VT and VT Corp

[149] With respect to Client VT and VT Corp, Enforcement Counsel submitted that the evidence demonstrated the following Red Flags;

- the increase in Client VT Corp's liquid assets from $500,000 to $3,000,000 over a six-month period, and
- the sale of CRYP shares over a six-day period incurring a loss of $453,422.

[150] Enforcement Counsel submitted that the Respondents should have inquired about the reason for the sixfold increase in VT Corp's liquid assets and should have inquired about how the acquisition of the CRYP shares took place, the acquisition price therefore, and whether Client VT had any relation to CRYP.

[151] With respect to Client VT, the Respondents' Counsel submitted that:

- PI Financial's compliance department required that the Respondents update Client VT's seven-month-old KYC, which update was completed demonstrating the increase in assets and no questions were raised by PI Financial's compliance department,
- Enforcement Counsel has not demonstrated the fact that the updated KYC of Client VT increasing the net assets from $500,000 to $3,000,000 should have engaged the Respondents' gatekeeper obligations. How, the Respondents' Counsel asked, would such an action serve to indicate that Client VT might have been engaged in an illegal scheme that was abusive to the capital markets.

[152] The Respondents' Counsel submitted that Registered Representatives are not investigators. In completing KYC information, they are entitled to accept and to rely on the information they receive from their clients absent the existence of Red Flags. The Respondents' Counsel submitted that no Red Flags were present with respect to Client VT.

[153] As in the case of Clients YK, YK Corp, BB, BB Corp, and JL, the Respondents' Counsel submitted, for Clients VT and VT Corp there were reasonable explanations before the Respondents to the extent that none of the activities of these Clients amounted to a Red Flag, which would have required the Respondents to have made further inquiries other than possible inquiries with respect to KYC issues, which were not the subject of this matter.

[154] As above set out for the other Clients, the Panel does not agree with Enforcement Counsel that on the evidence before the Panel the actions of Client VT and VT Corp were suspicious and should have raised Red Flags requiring the Respondents to have made inquiries.

[155] The Panel agrees with the Respondents' Counsel in their submissions that what a particular Registered Representative considers to be suspicious can be very subjective and what might be considered "routine" is

highly contextual. The evidence before the Panel in this matter involves the trading of shares of venture companies on the CSE. The Panel from its experience in this context is aware that such trading is higher risk, often involves clients totally exiting a position with them selling their shares at a price less than the share issue price, and then immediately withdrawing the cash generated by such trades. This form of activity from the Panel's experience without other supporting evidence is not necessarily suspicious and sufficient to raise Red Flags.

Stage Two – Was It Conduct Unbecoming

Submissions of the Parties on the "Conduct Unbecoming" Standard

[156] Rule 1400 provides the following standards of conduct for a Registered Representative:

> 1402. Standards of Conduct
>
> (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).

[157] The Respondents' Counsel submitted that an action which amounts to "conduct unbecoming" as referenced in Rule 1400 must consist of an action involving gross negligence, aggravated negligence, conduct that is unethical or engaged for an improper purpose, or conduct that involves a dishonest motive or blameworthy purpose.

[158] In support of their position, the Respondents' Counsel cited the principles summarized in the Ontario Securities Commission's (**OSC**) decision in *Re Octagon Capital Corporation*[3] , which reasoning was adopted by the Commission in *Re Blackmont Capital Inc. and Duke*[4] where the Commission stated at paragraph 43 referencing the OSC's observations that "Breach of a duty of care is negligence, but it does not follow that mere negligence constitutes a disciplinary offence" and that "Only aggravated negligence could lead to that conclusion".

[159] The Respondents' Counsel also cited the decision of the IIROC Panel in *Re Trenholm*[5], noting the panel stated that the requisite conduct needed to amount to something more than mere advertence or negligence and that negligence was not a basis for discipline unless it was gross or habitual and diverged widely from that of a reasonable person. The Respondents' Counsel submitted that unlike in *Trenholm* the evidence in the matter at hand is markedly different in that there is no evidence of a market manipulation and no suggestion that PI Financial's compliance department had any concerns.

[160] An IIROC panel made a similar finding, the Respondents' Counsel submitted, in *Re Collias (Re)*[6] when

[3] [2007] IDACD No. 16
[4] 2011 BCSECCOM 490
[5] 2009 IIROC 40
[6] 2009 IIROC 27

the panel determined that in a situation where the panel found that in light of obvious Red Flags where the respondent should have asked questions and done research and chose not to do so, it was negligent on his part to have failed to act, but that this failure to act did not amount to what the panel called "moral turpitude" and the panel, therefore, found no breach of gatekeeper obligations on the part of the respondent although it did find that he did breach his gatekeeper role in that he failed in his know your client obligation.

[161] The Respondents' Counsel submitted that the claim by Enforcement Counsel that the failure by the Respondents to ask questions without something more had never been found to be a breach of Rule 1400.

[162] In summary, the Respondents' Counsel submitted that the precedents before the Panel indicated that:

- mere negligence will not be sufficient to find a gatekeeper breach under Rule 1400,
- a breach of Rule 1400 requires an element of *mala fides*, intentional misconduct, recklessness or wilful blindness, and
- often these precedents referenced harm to the public markets,

noting that none of these elements are present in the evidence before the Panel and that departing from these precedents would be deeply unfair to the Respondents as they would be held to a far higher standard than is expected and would further undermine public confidence in the investment industry.

[163] Enforcement Counsel referenced sub-paragraph 1402(2)(i) of Rule 1400, submitting that it is well-settled that business conduct that is merely negligent is sufficient to be considered to be business conduct that is unbecoming or detrimental to the public interest. That the standard is not "gross negligence" and that moral turpitude is not required.

[164] In their submissions, Enforcement Counsel stated that "the standard for a violation of IDPC Rule 1400 is mere negligence" and, in support, referenced the Request for Comments – Consolidation of IIROC Enforcement, Procedural, Examination and Approval Rules dated May 23, 2012 noting particularly the following passages:

> "proposed clause 1402(2) (i) establishes negligence as a possible basis for a determination that a general standard of conduct has been violated."
>
> While IIROC staff accept that not every negligent act or inadvertent error will constitute "conduct unbecoming" or be "detrimental to the public interest" or "inconsistent with just and equitable principles of trade," staff are firmly of the view that a negligent failure to comply with IIROC rules or policies and other negligent conduct may justify disciplinary action."

[165] In keeping with this observation, Enforcement Counsel submitted, that an explicit purpose of the updated Rule 1400 was to clarify that even a single act of negligence might be conduct unbecoming and therefore a breach of Rule 1400 and is to be determined on a case-by-case basis.

[166] To this end, Enforcement Counsel noted that the assertion that the standard for conduct unbecoming as might have been the standard established by decisions prior to the introduction of Rule 1402 would not be applicable to the matter at hand.

[167] In other words, Enforcement Counsel submitted, the Hearing Panel is to apply the current standard reflected in Rule 1402 rather than a standard that might have been applicable prior to its introduction.

[168] The Panel has reviewed the submissions of the parties and agrees with Enforcement Counsel that the standard has indeed changed with the adoption of Rule 1400. To that end, the standard the Panel is applying in determining liability in this matter is that of negligent conduct which may justify disciplinary action and that that it does not require the establishment of the more egregious forms of conduct as submitted by the Respondents' Counsel.

[169] However, the Panel does not agree with the position of Enforcement Counsel that a single act of negligence outside the context of other improper activity is sufficient to make a finding of the Respondents breaching their gatekeeper obligation. In other words, it is not a standard of strict liability where a single negligent act leads to a finding of liability. In order for a single negligent act to result in a finding of liability, this act must be demonstrated to have been clearly egregious and of such a significant failure on the part of the Respondents that the Respondents obviously acted in breach of the Rules.

[170] As the Panel finds that evidence before the Panel does not demonstrate the commission by the Respondents of such a clearly egregious significant single act, for a finding of liability under Rule 1402 against the Respondents, the Panel has determined that the evidence before it must clearly demonstrate that the Respondents were involved directly or indirectly in a pattern of activities which were negligent, and, in addition, that such activities were clearly linked together and collectively constituted conduct unbecoming and detrimental to the public interest.

Submissions of Enforcement Counsel

[171] Enforcement Counsel submitted that the gatekeeper responsibility envisioned by Rule 1400 included being alert to the totality of all activities in a client's account that could be reasonably seen to affect the integrity of the capital markets and the protection of the public and that this responsibility was not limited to manipulative or abusive conduct and would naturally include the entirety of all activities in a client's account.

[172] Enforcement Counsel in their submissions stated that Registered Representatives are not merely "order takers", they have to be "inquisitive and proactive" and that, therefore, the duty was on the Respondents in fulfilling their gatekeeper obligations was to be inquisitive and proactive and not to turn a blind eye. It was submitted that by not asking a single question in a situation with "quite obvious" Red Flags, the Respondents engaged in conduct unbecoming or detrimental to the public interest as the Respondents had a responsibility to exercise sound and professional judgement to ensure that they did not facilitate transactions that might be harmful to the integrity and credibility of the capital markets.

[173] The effect of finding that the Respondents did not breach Rule 1400, Enforcement Counsel submitted, would "reduce industry expectations on registrants" in that it leads a registrant to conclude that it is better for the registrant not to ask questions concerning account activity and is better to "assume". The expectation from a public policy perspective, they submitted, is that registrants be required to ask questions of clients so that they are best able to identify suspicious or improper activities.

[174] Enforcement Counsel submitted that the evidence demonstrates that the activities of both Client CP and CP Corp and the other Clients demonstrated Red Flags sufficient to, at a minimum, warrant an inquiry from the Respondents. As such inquiries were not made, Enforcement Counsel submitted that the Respondents breached their gatekeeper obligations contrary to Rule 1400.

[175] The decision as to whether or not the Respondents failed to meet the standards of a Registered Representative falls squarely within the Panel's specialized knowledge to determine whether or not the conduct of the Respondents "diverges widely from that of a reasonable person" (*Re Trenholm)*.

[176] In this case, Enforcement Counsel submitted, the Respondents were not "inquisitive and proactive", they were "passive and indifferent" and therefore liable for the alleged breach of Rule 1400.

Submissions of Respondents' Counsel

[177] The Respondents' Counsel submitted that in the Commission's Decision, the Commission identified a relatively narrow error of law with respect to the Panel's application of the first step of the gatekeeper test adopted by the Panel, but remitted this matter back to the Panel for further consideration based upon the Panel's expertise in respect of standards and practices in the investment industry and the fact that the Panel had heard all of the evidence at first instance and, therefore, has a better understanding of this evidence.

[178] In their submissions, the Respondents' Counsel noted that the Commission left many of the factual findings made by the Panel in the Initial Decision undisturbed, including that there was no uneconomic trading and that the following matters were "not in issue":

- the validity of the share certificates deposited to the client accounts,
- a manipulative trading or money laundering scheme,
- concerns expressed by the compliance department of PI Financial, and
- the failure by the Respondents to advise this compliance department of the requisite information or any attempt to conceal such information from the compliance department.

[179] Nor, the Respondents' Counsel noted, did the Panel in the Initial Decision find that on the evidence

before it the Respondents intentionally engaged in conduct unbecoming or otherwise acted in bad faith.

[180] The Respondents' Counsel observed that the Commission took the position that the Panel ought to have "considered whether reasonable registrants would have asked for some explanation from their clients or made some other inquiry given the particular transactions in the client accounts". However, in making this finding, the Respondents' Counsel noted the Commission acknowledged that "[a]side from their ongoing know-your-client obligations, there is no suggestion that investment advisors are obligated to question clients about routine events" and that "[w]hat is "routine" is highly contextual".

[181] The Respondents' Counsel submitted that even if it is found that the Respondents failed to ask the requisite questions, does it follow that the Respondents engaged in conduct in bad faith with dishonest intent? Did the Respondents act with an improper purpose in mind that was quasi-criminal in nature, or did they engage in unethical or other conduct that can be similarly described, such that their conduct amounted to "conduct unbecoming"?

[182] The Respondents' Counsel submitted that there was no allegation by Enforcement Counsel that the Respondents' conduct was done in bad faith, was intentional, willfully blind or reckless. Nor was there any suggestion that the Respondents were motivated by personal gain as the trading effected by the Respondents with respect to the Clients represented approximately 5% of the total commissions earned by the Respondents during the Relevant Period.

[183] The Respondent's Counsel submitted that the Panel determine that based upon the evidence before it, the matter be dismissed as against the Respondents.

The Panel's Decision on "Conduct Unbecoming"

[184] As above noted, the Panel agrees with Enforcement Counsel that the introduction of Rule 1400 has changed the standard against which the Panel is to determine the Respondents' liability. The Panel also agrees with Enforcement Counsel that the recent decision of the hearing panel in *Re Hildebrandt*[7] is of assistance to the Panel in that in that matter the hearing panel clearly referenced Rule 1400 in terms of the change in the standard applicable to Registered Representatives noting at paragraphs 60 and 104:

> [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.
>
> [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.

[185] In its opening observations in its reasons in *Re Hildebrandt*, the hearing panel noted that the matter before it was about the scope of a Registered Representative's duty to act as a gatekeeper to the capital markets. The hearing panel also noted that, similar to the matter at hand, neither of the parties before it objected to the reliability or admissibility of the evidence before the panel, with the material disagreement between the parties being how the evidence should be interpreted and the inferences that might be properly drawn from it.

[186] Given the similarities of the positions of the parties in the matter at hand with respect to the interpretation of the evidence before the Panel and the inferences that might be drawn from it with respect to the scope of the Respondents' duty to act as a gatekeeper under Rule 1400, the Panel found it useful to compare the evidence before the hearing panel in *Re Hildebrandt* with the evidence before the Panel in the matter at hand.

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[187] The undisputed evidence before the hearing panel in *Re Hildebrandt*, might be summarized as follows:

- the respondent, Mr. Hildebrandt, was a Registered Representative at PI Financial,
- after Client AL had referred Client MV to the respondent, the respondent based upon MV's instructions opened the following accounts:
    i. the two corporate investment accounts of VC Inc. and LVP Ltd. of which companies, MV was the sole shareholder, president and director,
    ii. an account for MV's father, NV, and
    iii. accounts for JA, AW, RG, LS Inc., CM and HM, the NAAF's of which claimed that the objective of the account holders was 100% short term capital gain with a risk tolerance at 100%,
- MV originally had instructed the respondent to open eleven investment accounts for other persons, but five of these people declined to have accounts opened for them. One of the five persons who declined was NM. NM emailed the respondent asking that the respondent close the account he had opened stating that NM wanted to ensure that MV did not use NM's account for "any stock deal" as MV wanted NM to "be a nominee on a stock" that MV was promoting,
- 5,879,000 common shares of a CSE listed exploration stage junior mining company (the "Company") were deposited into VC, JA and LS accounts with such shares representing 13% of the total issued and outstanding shares of the Company,
- the MV associated accounts were the respondent's only clients who traded in the shares of the Company, and:
    i. such trading representing over 33% of the total trading volume for the shares of the Company on the CSE and over 56% of the total value of such shares traded,
    ii. these trades were responsible for 90%, 79%, 77% and 60% of all the trading in such shares, and
    iii. the majority of this trading consisted of sales of 3,931,500 of these shares from the MV, NV and LS accounts.
    iv. During a twelve-day period, the VC account sold a total of 2,643,500 of the shares of the Company for proceeds of $1,237,536 and withdrew $1,010,374.58 of cash from the account,
- a number of cross trades occurred between the MV associated accounts with, in some instances, these trades having a material effect on the closing price of the Company's shares,
- the respondent assisted VC Inc. in preparing the corporate documentation to transfer the shares of the Company to other investment accounts at PI Financial and did not properly answer inquiries from PI Financial's compliance department about such documentation, and
- there was no evidence that the respondent showed any curiosity about:
    i. the large concentration of the shares of the Company controlled by VC Inc., JA and LS Inc.,
    ii. the dominant role the MV associated accounts played in the market for the shares of the Company,
    iii. the effect that the trading of the MV associated accounts had on the price of the Company's shares,
    iv. MV's transfer and the additional attempts to transfer the Company's shares to other account holders at PI Financial, or
    v. the nature of the connections between MV and the owners of the other MV accounts.

[188] The allegations made against the respondent based upon this evidence by Enforcement Staff in the Notice of Hearing in *Re Hildebrandt* alleged that during the relevant period, the respondent failed to make sufficient and reasonable or diligent inquiries in relation to client trading activity contrary to Rule 1400.

[189] In its decision finding that the respondent had "received client instructions and observed trading patterns and outcomes consistent with market abuse", the hearing panel determined that the respondent had indeed failed to make sufficient or diligent inquiries in relation to client trading activities contrary to IDPC Rule 1400.

[190] In contrast to the evidence before the hearing panel in *Re Hildebrandt*, the Panel notes what it observed in the Initial Decision and with which the Commission in the Commission's Decision did not disagree, namely that on the evidence before the Panel in the matter at hand there was no issue regarding:

- the validity of the share certificates deposited in the Client's Accounts, the ownership of the shares represented thereby, or the entitlement of the Clients to trade in such shares,
- any of the Clients being nominees for a third party,
- the trading in such shares was indicative of a market manipulation or money laundering scheme,
- the suitability of the trading for the Clients, even though the trading of the shares in most instances led to a loss when the sales proceeds were compared to the issue price of the shares in the respective Form 9s,
- the failure by the Respondents to advise PI Financial's compliance department of the information concerning the Clients or intentionally keeping such information from PI Financial's compliance department, or
- any concern expressed by PI Financial to the Respondents about either the trading in the Client Accounts or in the KYC's of the Clients.

[191] In addition, the Panel notes that, unlike in *Re Hildebrandt,* there was no evidence of a common connection between the Clients and that although the commissions earned by the Respondents from the trading of Client CP and CP Corp during the Relevant Period represented on a per client basis one of the larger amounts earned by the Respondents, the commissions generated by the trading activities of the Clients during the Relevant Period represented only 5% of the Respondents' total overall commissions.

[192] Enforcement Counsel submitted that the nature of a Registered Representative's gatekeeper role requires the Registered Representative to know their clients and to monitor the activity in their clients' accounts. To fulfil this role, they submitted, the Registered Representative must make inquiries and become fully informed. In that the Respondents were not inquisitive and proactive, but rather passive and indifferent and serving merely as order takers, Enforcement Staff submitted that the Respondents did not meet the requirement of a gatekeeper's obligation and were therefore liable for breaching Rule 1400.

[193] The evidence before the hearing panel in *Re Hildebrandt* clearly demonstrated a pattern of activities in which the respondent did not meet the requirement of his gatekeeper's obligation. However, in the matter at hand, although the Panel acknowledges that the evidence before it clearly demonstrates that the Respondents did not always ask the questions that other Registered Representatives in their position might have done, the Panel finds it difficult to conclude, as alleged in the Statement of Allegations, that the evidence before it clearly demonstrates that this failure to act and ask questions constituted negligence on the part of the Respondents sufficient to constitute the failure of their gatekeeper role and, therefore, conduct unbecoming and in breach of Rule 1400.

[194] The Panel, therefore, does not agree with Enforcement Counsel that the evidence before the Panel demonstrated that the totality of the Respondents' activities amounted to them being engaged in activities which were clearly linked together and collectively constituted conduct which was detrimental to the public interest thereby constituting "conduct unbecoming", which lead to the Respondents having failed to fulfil their roles as gatekeepers to the capital markets contrary to Rule 1400.

[195] In coming to this decision that the evidence before it has failed to demonstrate that the Respondents engaged in conduct unbecoming contrary to Rule 1400, the Panel is cognizant of the Commission's concern

expressed in the Commission's Decision that such a finding might undermine market integrity and public confidence in the markets. The Panel is, as well, concerned about the public interest aspect of this decision. However, in coming to the decision as it has, the Panel is also mindful that the rights of the Respondents are also part of this public interest concern. Industry participants in carrying out their duties must have confidence that for a member of the industry to be found to have breached one or more of the Rules, that Enforcement Counsel in making the case against such a member has clearly met the onus of proof imposed upon Enforcement Counsel in the disciplinary action in order to secure a finding of liability against the member.

[196] The Panel dismisses this disciplinary action against the Respondents.

DATED at Vancouver, British Columbia this 6th day of December, 2025.

"John Rogers"

John Rogers, Chair

"Nigel Potts"

Nigel Potts

"William Wright"

William Wright