BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re CIRO and Englesby, 2026 BCSECCOM 379 Date: 20261127

Canadian Investment Regulatory Organization (CIRO),
Teymur Englesby and Cale Nishimura

Panel	Gordon Johnson	Vice Chair
	Judith Downes	Commissioner
	Karen Keilty	Commissioner
Hearing date	June 1, 2026	
Submissions completed	August 14, 2026	
Ruling date	November 27, 2026	

Appearing

Jagdeep Khun-Khun David McLellan	For Canadian Investment Regulatory Organization
Owais Ahmed Jessica Mank	For Teymur Englesby and Cale Nishimura
Setareh Khasha	For the Executive Director

Decision

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I. Introduction

[1] This matter has a long procedural history.

[2] The underlying issue in this matter is whether the Respondents, Teymur Englesby (Englesby) and Cale Nishimura (Nishimura), failed in their roles as gatekeepers in the capital markets of British Columbia. Those allegations date back to 2023, and a CIRO hearing panel has heard arguments from the parties on them twice, rendering two separate decisions.

[3] Twice CIRO has applied to this Commission under section 28 of the *Securities Act*, RSBC 1996, c. 418 (Act) for a hearing and review, once for each of the decisions of the CIRO hearing panel. Both of those hearings and reviews were heard by this panel of Commissioners.

[4] Our findings on the first hearing and review are found at *Re CIRO and Englesby*, 2025 BCSECCOM 148 (BCSC Decision). In the BCSC Decision, we referred the matter back to the CIRO panel for reconsideration.

[5] This is our decision on the second hearing and review.

II. Factual and Procedural Background

[6] On September 27, 2023, CIRO issued a Notice of Hearing and Statement of Allegations against the Respondents alleging they had failed in their role as gatekeepers in the capital markets, contrary to Investment Dealer and Partially Consolidated (IDPC) Rule 1400.

[7] In particular, the alleged contraventions of IDPC Rule 1400 were that the Respondents facilitated activity for several clients which generated a number of what it called red flags that suggested suspicious activity. The alleged red flags included:

a) depositing share certificates for shares in Canadian Stock Exchange (the CSE) companies in the clients' accounts, and then selling those shares in the days before or shortly after their deposit, followed by large withdrawals of the proceeds of such sale;

b) uneconomic trading; and

c) trading being out of line with the account owner's normal and historical activity and inconsistent with that owner's know-your-client (KYC) information.

[8] In general, CIRO alleged the red flags should have caused the Respondents to question their clients about how the shares at issue were obtained, what the acquisition prices were of those shares, and whether the clients had any relationship with the share issuers.

[9] Following a contested hearing, a CIRO hearing panel dismissed the allegations against the Respondents in its July 22, 2024 decision, *Re Englesby and Nishimura,* 2024 CIRO 63 (the CIRO Decision).

[10] The CIRO Decision was the subject of a hearing and review before the Commission, heard by this panel, over the course of three days in January and February, 2025. As outlined above, our decision resulting from that hearing and review, setting aside the CIRO Decision and remitting the matter back to be reheard by the CIRO hearing panel, is found in the BCSC Decision. In it, we canvas the procedural history leading up to that first hearing and review, as well as review

the arguments before, and findings of, the CIRO Hearing Panel.

[11] On October 6, 2025, CIRO held a full day hearing to re-hear the matter involving the Respondents at the direction of the Commission in the BCSC Decision.

[12] On December 6, 2025, the CIRO hearing panel re-hearing the matter (CIRO Panel) issued its decision on the re-hearing, *Re Englesby and Nishimura,* 2025 CIRO 55 (the Re-Hearing Decision). In it, the CIRO Panel again dismissed the allegations against the Respondents, finding that they did not breach their gatekeeper obligations.

[13] On January 5, 2026, CIRO applied to the Commission under section 28 of the Act for a hearing and review of the Re-Hearing Decision.

[14] CIRO's hearing and review application was argued before us on June 1, 2026, with counsel appearing for CIRO, the Respondents, and the executive director. The panel subsequently requested further written submissions from the parties after the completion of oral submissions, with the last of those filed on August 14, 2026.

III. Summary of the CIRO Re-Hearing Decision

[15] The CIRO Panel reviewed the procedural steps to date, the allegations in the underlying Statement of Allegations, the CIRO Decision, as well as the BCSC Decision referring the matter back to CIRO for re-hearing.

[16] The CIRO Panel concluded that, to be consistent with the BCSC Decision, they would examine the evidence before them in two stages. First, they reviewed the evidence with respect to the clients at issue to determine if the red flags, as outlined in the Statement of Allegations and summarized above, were present and required action from the Respondents.

[17] The second stage would be for the CIRO Panel to determine, based on the findings in the first stage, whether the totality of the conduct of the Respondents amounted to "conduct unbecoming" under IDPC Rule 1400.

[18] When applying their two stage process, the CIRO Panel reviewed the share transactions in the client accounts at issue, and the evidence that was before them, and what evidence was not before them. The CIRO Panel held that relating to:

a) clients CP and CP Corp, there was no evidence before it to find, as the Commission did in the BCSC Decision, that there were "quite obvious" red flags requiring further inquiry;

b) clients YK and YK Corp, there was no evidence that the transaction at issue was anything other than a one-time authorized stock transfer, or that the payment for the transaction was zero – making it difficult to find that there were any red flags for the Respondents to inquire about;

c) clients BB and BB Corp, similar to YK and YK Corp above, the evidence demonstrated a one-time share transfer that was treated as routine – similarly with no evidence of red flags for the Respondents to inquire about;

d) client JL, they had difficulty accepting the position taken by CIRO that the Respondents had an obligation to determine where and how a client obtained shares, and the cost of

those shares, that were subsequently deposited into an account, and thus there was no evidence of a red flag; and

e) clients VT and VT Corp, like the other clients, there were reasonable explanations before the Respondents that the activities at issue were not red flags. Suspicious activity can be subjective and contextual, and the panel found that when trading shares of venture companies, selling shares at a price less than the share issue price and immediately withdrawing the cash generated by those trades can at times be "routine" and not suspicious.

[19] On the second stage, of whether the totality of the Respondents' conduct amounted to conduct unbecoming contrary to IDPC Rule 1400, the CIRO Panel disagreed that it did, holding:

> [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.

IV. Jurisdiction

A. Key provisions of the Act

[20] The relevant sections of the Act relating to reviews of decisions are as follows:

> **Recognition**
> 24 On application, the commission may recognize a person as
>
> (a) a self-regulatory body,
>
> (b) an exchange,
>
> (c) a quotation and trade reporting system,
>
> (d) a clearing agency, or
>
> (e) a trade repository.
>
> [...]

Duty to regulate, conduct and provide information

26 (1) Subject to this Act, the regulations and any decision made by the commission, a self-regulatory body, an exchange or a quotation and trade reporting system must regulate the operations, standards of practice and business conduct of its members or participants, and the representatives of its members or participants, in accordance with its bylaws, rules or other regulatory instruments.

[...]

Review of action

28 (1) The executive director or a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository may apply by notice to the commission for a hearing and review of the matter under Part 19, and section 165(3) to (9) applies.

(2) An applicant under subsection (1), other than the executive director, must send a copy of the notice requesting a hearing and review to

(a) the executive director, and

(b) the affected self-regulatory body, exchange, quotation and trade reporting system, trade repository or clearing agency.

(3) If the executive director is the applicant under subsection (1), the executive director must send a copy of the notice requesting a hearing and review to

(a) the affected self-regulatory body, exchange, quotation and trade reporting system, trade repository or clearing agency, and

(b) the persons directly affected by the direction, decision, order or ruling referred to in subsection (1).

[...]

Review of decision of executive director

165 (1) [Repealed 2007-37-37.]

(2) The commission may review any decision of the executive director and, if it intends to do so, must, within 30 days of the date of the decision, notify the executive director and any person directly affected by the executive director's decision of its intention.

(3) Except if otherwise expressly provided, any person directly affected by a decision of the executive director may, by a notice in writing sent to the commission within 30 days after the date on which the executive director sent the notice of the decision to the person, request and be entitled to a hearing and a review of the decision of the executive director.

(4) On a hearing and review, the commission may confirm or vary the decision under review or make another decision it considers proper.

(5) The commission may grant a stay of the decision under review until disposition of the hearing and review.

(6) The executive director is a party to a hearing and review under this section of any decision.

(7) A designated organization is a party to a hearing and review under this section of its decision.

(8) A self-regulatory body, an exchange, a quotation and trade reporting system, trade repository or a clearing agency is a party to a hearing and review under this section of its decision.

(9) On application or on its own motion, the commission may extend the period in subsection (2) or (3) to a date the commission considers appropriate.

B. Applicable provisions of the Commission's hearing policy

[21] The Commission has relevant provisions in its hearing policy, BCP 15-601, as follows:

PART 7 REVIEWS

7.1 Purpose – The Commission holds hearings to review decisions of the executive director, single commissioners, and Recognized Entities. The hearings may be held in circumstances where:

- a person directly affected by a decision of the executive director, a single commissioner or a Recognized Entity requests a review
- the executive director requests a review of a decision of a Recognized Entity, or
- the Commission, on its own initiative, reviews a decision of the executive director, a single commissioner or a Recognized Entity.

7.2 Requests for reviews

(a) By a person directly affected – A person directly affected by a decision referred to in paragraph **7.1 Purpose** may have the decision reviewed by sending a request to the Commission Hearing Office within 30 days of the date the decision maker sent notice of the decision to the person seeking its review. The Commission may extend the time period for seeking a review to a date the Commission considers appropriate.

The request must identify:

- the decision to be reviewed
- how the person is directly affected by the decision
- the grounds for the review, and
- the grounds for a stay of the decision, if requested

The person requesting the review must send the request to the other parties. See paragraphs **2.4 Parties** and **7.6 Persons directly affected by a decision**.

[…]

7.6 Persons directly affected by a decision - Persons directly affected by a decision are generally those named in the decision. Persons not named in the decision must satisfy the Commission that the decision directly affects them, in order to be recognized as a party to a review.

A person who is not directly affected by a decision, but who wants to be granted intervener status in a review must apply to the Commission and identify why it is in the public interest for the Commission to exercise its discretion to grant the application. On an intervener application, the Commission balances the efficiency of the proceedings with

affording the opportunity to persons with relevant evidence to make submissions and have the opportunity to be heard. The Commission may consider submissions from all the parties

[…]

7.9 Form and Scope of Reviews of a Decision Under Sections 28 and 165
(a) Where the Review of a Recognized Entity Decision Proceeds as an Appeal
The Commission does not provide parties with a second opinion on a matter decided by a Recognized Entity. If the decision under review is reasonable and was made in accordance with the law, the evidence, and the public interest, the Commission is generally reluctant to interfere simply because it might have made a different decision in the circumstances. For this reason, generally, the person requesting the review presents a case for having the decision revoked or varied and the Recognized Entity responds to that case.

The Commission generally confirms the decision of the Recognized Entity, unless:

- the Recognized Entity has proceeded on an incorrect principle
- the Recognized Entity has made an error in law
- the Recognized Entity has overlooked material evidence
- new and compelling evidence is presented to the Commission, or
- the Commission's view of the public interest is different from that of the Recognized Entity.

V. Positions of the Parties

A. CIRO

[22] CIRO submits that there are three grounds for review of the Re-Hearing Decision, arguing that the CIRO Panel:

a) misstated or ignored the ratio and direction of the BCSC Decision by overlooking and failing to consider material evidence, engaging in speculative reasoning not supported by the evidence, and substituting its own expertise for evidence;

b) misinterpreted or misstated the scope and content of IDPC Rule 1400; and

c) failed to properly consider the public interest in interpreting and applying IDPC Rule 1400.

[23] On the first ground, CIRO submits that the BCSC Decision provided explicit direction and guidance to the CIRO Panel, when the BCSC found that the CIRO Decision:

a) proceeded on an incorrect principle, made an error in law, and failed to adequately consider the public interest, and

b) erred in its reasoning by relying on "possible reasonable explanations" that had no evidentiary foundation, in particular by citing the example of Client CP and CP Corp where the BCSC Decision holds that the events underlying that transaction were not "routine" and the CIRO panel merely speculates about possible explanations.

[24] CIRO submits that while the matter was referred back in its entirety to the CIRO Panel, to be decided again based on an approach consistent with the BCSC Decision, the CIRO Panel made

findings that either misstated or ignored the direction of the BCSC Decision. In particular, the CIRO Panel expressly contradicted the BCSC Decision relating to clients CP and CP Corp. Despite the fact that the BCSC Decision found an "obvious" red flag, and stated that the CIRO panel should have considered what inquiries reasonable registrants would have made in similar circumstances, the CIRO Panel dismissed the allegations relating to CP and CP Corp as having insufficient evidence. This, CIRO submits, was an error in law and the CIRO Panel proceeding on an incorrect principle.

[25] CIRO submits that the CIRO Panel should have:

a) for client CP and CP Corp, having been told by the Commission that there existed an obvious red flag, determined what further steps should have been taken;

b) for the other clients, determined whether there were similar red flags based on the evidence and outline what further steps should have been taken; and then

c) considered whether the totality of the conduct as found was "conduct unbecoming" under IDPC Rule 1400.

[26] Rather, the CIRO Panel engaged in the two step process outlined above. CIRO submits that this process was contrary to the specific instructions in the BCSC Decision.

[27] In summary as it relates to the other specific clients, CIRO submits that the CIRO Panel overlooked and failed to consider material evidence demonstrating red flags that should have resulted in further inquiries by the Respondents, as follows:

a) client YK and YK Corp, there was no evidence of remuneration or consideration for the shares at issue, evidence as to why they were transferred into the account, or the nature of the relationship between the client and the issuer, despite the shares being sold for $139,235. Client YK and YK Corp, were described as a "student/homemaker," and CIRO submits that a transfer without consideration into this particular account, on its face, is a red flag. At the very least, the Respondents should have questioned their clients about the nature and purpose of the transaction;

b) client BB and BB Corp, a client identified as an "investor," was provided a stock option plan, a consulting agreement and an exercise of option plan in a publicly traded issuer. The Respondents were asked to print these out, and despite not knowing why, did not ask questions or have discussions with their clients about them. Over 1.2 million shares of the issuer were transferred into the clients' account without evidence of payment, 325,000 shares were transferred out to a third party, who sold them and did not provide consideration or remuneration for them. CIRO submits no questions were asked by the Respondents about this series of transactions and they do not qualify as "routine";

c) client JL, listed as a "consultant," similarly received a substantial deposit of shares into his account, selling some and withdrawing the others over the following two days. CIRO submits the Respondents should have inquired about how the shares were obtained, what the price was to obtain them, whether the client had any relationship to the issuer or to the account that they were subsequently transferred in to. Again, CIRO submits

that, given the context of the transactions, these were not routine but were red flags that required inquiry; and

d) client VT, had liquid assets that increased from $500,000 to $3,000,000 over the course of seven months, but Englesby "didn't notice." Further, VT Corp obtained a substantial deposit of shares that were sold over a six day period after they were acquired, for gross sale proceeds of $606,578 and a loss of $453,422. The Respondents did not inquire about the sixfold increase in liquid assets, the large share deposit or the subsequent liquidation and withdrawal of proceeds, none of which were routine, and CIRO submits, were red flags.

[28] In relation to the Respondents' role as gatekeepers, CIRO submits that contrary to the analysis in the Re-Hearing Decision, the Respondents should have been alert to all activities in their clients' accounts that could reasonably be seen to affect the integrity of the capital markets and the protection of the public. This role is not limited to manipulative or abusive conduct, but naturally includes the entirety of all activity in any given account.

[29] In the facts before us, CIRO submits that there was a series of gatekeeper failures on the part of the Respondents. This includes, but is not limited to, a continuing course of conduct where Clients CP and CP Corp were involved in millions of dollars of share deposits and withdrawals that the BCSC Decision already found to be a red flag.

[30] Finally, CIRO argues that when considering the public interest when interpreting the IDPC Rule, the Re-Hearing Decision does not foster public confidence in a highly regulated industry and sets a dangerous precedent. Regulated persons should be inquisitive and proactive, and should be alert to activities in a client's account where red flags are present. CIRO submits that the Re-Hearing Decision may establish a dangerous precedent to do the opposite: based on the findings, the CIRO Panel seems to suggest that it is better for a registrant to not ask questions concerning client activity that could be suspicious.

B. Englesby and Nishimura

[31] The Respondents submit that the CIRO Panel followed the BCSC Decision regarding CP and CP Corp. They submit that it is clear from the record of the proceedings before the CIRO Panel that the parties, and the CIRO Panel, acknowledged the BCSC Decision's direction and its finding of the existence of a red flag.

[32] However, the Respondents submit that the CIRO Panel was entitled to disagree as to whether there were any red flags with respect to CP and CP Corp. This disagreement, however, did not mean the CIRO Panel disregarded the factual finding of the Commission in the BCSC Decision. This regard for the findings in the BCSC Decision is demonstrated by the further analysis conducted by the CIRO Panel as to whether the Respondents' conduct amounted to conduct unbecoming; while conducting that analysis the CIRO Panel acknowledged that the Respondents "did not always ask the questions that other Registered Representatives in their position might have done."

[33] Further, the Respondents submit that the CIRO Panel's statements about its view of CP and CP Corp are obiter, and not of concern.

[34] Relating to the other clients at issue, the Respondents argue that CIRO, while taking the position that the CIRO Panel overlooked or failed to consider material evidence, have not

advanced any meaningful arguments in support of these positions – instead they have largely reiterated the arguments they made before the CIRO Panel that certain activities were red flags. This approach was similar to that taken at the first hearing and review.

[35] The Respondents submit that the CIRO Panel did not overlook material evidence, and provided fulsome reasons for their findings as it relates to each of the clients at issue. In particular, in relation to:

a) clients YK and YK Corp, CIRO did not identify the evidence overlooked by the CIRO Panel, rather they argue the circumstances of the transactions at issue are "not routine." The Respondents submit the CIRO Panel canvassed the evidence before them and properly rejected CIRO's argument that the Respondents had an obligation to make further inquiries, when the evidence before them is that the Respondents determined the client was a relatively experienced investor;

b) clients BB and BB Corp, no evidence was overlooked, rather the CIRO Panel concluded there was nothing suspicious that could trigger the Respondents' gatekeeper obligations, given the characterization of the client and that the Respondents' compliance department treated the transaction at issue as routine;

c) client JL, the evidence demonstrated the client owned the shares at issue, and there was no evidence that the client's trading was abusive. There was nothing in the evidence suggesting client JL's activities to be suspicious or otherwise indicative of potential illegal activity; and

d) client VT, the panel's findings in the Re-Hearing Decision, that there was nothing suspicious or unusual about VT's activities, including selling shares for less than their issue price and immediately withdrawing the proceeds, did not overlook any material evidence.

[36] The Respondents also submit that the CIRO Panel did not substitute its own expertise for gaps in the evidence. Rather, the Respondents submit the onus is on CIRO to prove its case, and to the extent that any evidence was "missing," it was because CIRO failed to advance it. Further, the CIRO Panel was uniquely qualified, and made no error in commenting on common practices in the securities industry.

[37] Regarding IRPC Rule 1400, the Respondents submit the CIRO Panel did not misinterpret, misstate or misapply the rule. The Re-Hearing Decision does not turn on a single negligent act, rather, the CIRO Panel considered the Respondents' conduct in its entirety, as set out in detail in that decision, and concludes:

> [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.

C. Executive director

[38] The executive director, similar to CIRO, submits that the CIRO Panel proceeded on an incorrect principle. Given that the Commission had already determined the existence of a red flag, the CIRO Panel should not have reconsidered the circumstances surrounding the transactions relating to CP and CP Corp.

[39] The executive director also submits that the CIRO Panel repeated its initial error by again substituting its own potential speculative explanations in circumstances that may have required inquiry from a registrant, while at the same time effectively disregarding suspicious circumstances, when it considered the transactions related to the other clients at issue.

D. Further submissions of the parties

[40] During the course of submissions, this panel requested further submissions from the parties including:

a) references and submissions on any further evidence in the record that any party wanted the panel to consider;

b) submissions on defenses not considered by the CIRO Panel but relevant to the matters before the Commission; and

c) if the different roles of the Respondents have an impact on liability, references to evidence in the record which would assist the Commission in differentiating between the Respondents regarding liability.

[41] The Respondents provided further submissions arguing that the analysis by this panel should be informed by the underlying Statement of Allegations, which sets out potential red flags, but confines those allegations relating to deposits and withdrawals, uneconomic trading, and inconsistent account activity to only CP and CP Corp.

[42] Further, the Respondents submit that the individual respondents are differently situated, with different roles. Nishimura is Englesby's licensed assistant with less experience than Englesby and had limited or no involvement in the events at issue.

[43] CIRO submitted that the Respondents' further submissions did not raise any new defenses and did not address any evidence that was not already fully canvassed and included in the record before the Commission. In particular, CIRO submits that any argument relating to the "scope of the Statement of Allegations" has been repeated by the Respondents multiple times and was fully canvassed on multiple occasions.

[44] Relating to any further evidence, CIRO submits that it has demonstrated what amounts to red flags relating to other clients at issue, and the CIRO Panel conducted no meaningful analysis in

finding the lack of red flags.

[45] CIRO submits that the Respondents made no meaningful distinction between their roles as gatekeepers, and while Nishimura earned significantly less in commissions, it would not be in the public interest to have divergent gatekeeper obligations between fellow registered representatives on the same team, even in circumstances where one was the team lead.

[46] The executive director submitted that the particulars in the Statement of Allegations captures the allegations relating to red flags arising from third party transfers to other clients, and the Commission is not precluded from making findings regarding clients not addressed in the first hearing and review.

VI. Analysis and Conclusions

[47] Part of BCP 15-601 seeks to reconcile several important objectives. One of those objectives is to show appropriate deference to the decision-making process of self-regulatory organizations such as CIRO which have well developed systems and competent panel members and enforcement staff involved in the decision making process. When such decision makers consider the proper evidence and follow the law, the Commission will generally not substitute its own views for those of the self-regulatory organization's decision maker. However, if the approach of the self-regulatory organization's decision maker does not reflect the Commission's view of the public interest, then the Commission should act to protect investors and market integrity.

[48] The ability, in fact the obligation of the Commission to intervene in the public interest reflects the Commission's broader statutory duty under the Act to protect the public interest. We should not defer to self-regulatory decision makers on issues about which their view of the public interest and our own diverge.

[49] This approach, of showing deference where appropriate but of clarifying the public interest where there is disagreement, was reflected in our original BCSC decision. We recognized that the CIRO panel were experienced professionals with appropriate expertise, who had heard the evidence in person and had applied their judgement. However, we explained how the CIRO panel's approach was flawed and did not reflect the public interest.

[50] Some of our conclusions in the original BCSC Decision can be summarized as follows:

a) investment advisors are not obligated to question clients about routine events;

b) defining what event is non-routine or suspicious (or whatever similar term is chosen) is a question of judgment which is context specific, but it is a responsibility of an investment advisor;

c) where non-routine events occur it is not sufficient for an investment advisor to speculate about potential explanations which might explain the non-routine event. While a potential explanation might be plausible or an even more innocent explanation might exist, inquiries should be made to seek the accurate explanation of the non-routine event;

d) The CIRO panel's "triggering event" test, applied and resolved in terms of whether an explanation for a non-routine event "might well have resulted" from an innocent explanation, reflects an error by the CIRO Panel. The approach taken does not

effectively protect the public interest because it substitutes speculative explanations for proper inquiries; and

e) At least in the example of CP and CP Corp, Englesby and Nishimura made inadequate inquiries regarding those clients. The CIRO Panel erred by finding an explanation in the form of a change of occupation by CP which "might well have resulted" in the non-routine event. The non-routine event in that case required further inquiries.

[51] At the time we received submissions in the original BCSC decision, counsel for both CIRO and Englesby and Nishimura expressed some exhaustion for the process. Suggestions were made that this panel should come to all of the conclusions needed to resolve the entire proceeding rather than refer the matter back to the CIRO Panel. However, those submissions by the parties were made with at least a partial condition that we would agree with that party before resolving the entire dispute. We decided to remit the matter to the CIRO Panel expecting that the CIRO Panel would follow our rulings and would apply its expertise and its advantage of having heard the evidence and would reconsider the facts and law.

[52] The CIRO Panel appears to have taken a closer look at the circumstances connected to clients YK and YK Corp, BB and BB Corp, client JL and clients VT and VT Corp. The CIRO panel addressed those cases by reference to whether the circumstances alleged to be red flags were sufficiently non-routine to create a basis for follow-up or inquiry by Englesby and Nishimura.

[53] Regarding these clients, we must determine if the Re-Hearing Decision falls within one of the enumerated categories in s. 7.9(a) of BC Policy 15-601 such that the Commission should substitute its own opinion, rather than confirming the decision of the CIRO panel. Having considered the Re-Hearing Decision and the submissions of the parties, it is clear that the CIRO Panel applied its industry knowledge to the facts presented by the parties and came to a conclusion after proper deliberation. We have considered the possibility that the CIRO Panel was continuing to apply the wrong approach regarding the circumstances related to those clients. We find that the CIRO Panel considered the submissions of the parties, did not make a demonstrable error of law, overlook evidence submitted by the parties or apply an incorrect principle, such that the CIRO decision would fall within a category in s. 7.9(a). This finding is contrasted in light of our conclusion below regarding how the CIRO Panel approached the circumstances related to CP and CP Corp. Despite the fact that we may have come to a different conclusion in some of the circumstances, we find that there is no basis to conclude that the CIRO Panel was applying the wrong approach in those cases or came to an unreasonable decision. As such, we do not see a basis which is consistent with BCP 15-601 for us to overturn the CIRO Panel's decision regarding whether the circumstances related to those clients created a reason that Englesby and Nishimura should have made further inquiries.

[54] We turn to the circumstances relating to CP and CP Corp. In our original BCSC Decision we were clear not only that the initial approach of the CIRO panel was in error, we were also clear that there were quite obvious red flags regarding those clients and their accounts. We expected the CIRO Panel to accept and rely upon our conclusions.

[55] The CIRO Panel's response to our conclusions are primarily contained in paragraphs 131 and 132 of the Re-Hearing Decision:

> [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.

[56] Our conclusions in the original BCSC Decision regarding CP and CP Corp were made based upon the record which existed at that time. The record could have been more complete, but the information which was not present was also not necessary to reach the conclusions which we reached. Further, although CIRO staff had the onus of proof regarding its allegations against Englesby and Nishimura, in a case of this type it was not necessary for CIRO to consider every hypothetical explanation that might possibly exist and disprove that possibility. Once again, we see the CIRO Panel noting that somewhere there might be a legitimate explanation for account activity that was unusual and we see the CIRO Panel using that potential explanation to conclude that the investment advisors had no duty to make inquiries. As we have explained, that type of reasoning does not adequately protect the public interest. The established facts which we reviewed in our original BCSC Decision demonstrated the existence of events which required an investment advisor to seek an explanation. These investment advisors did not do so.

[57] What should Englesby and Nishimura have done? They had more than one option to fulfill their duties as gatekeepers. Any one of those options would have discharged their obligations as long as they pursued it sufficiently to explain how CP Corp, whose account documents for most of the relevant period listed as having assets of $50,000 and a net worth of $55,000 was receiving share deposits of share certificates of many millions of dollars. The inquiries should have gone far enough to at least establish what kind of relationship the client had with the issuer.

[58] This brings us to the question of what to do next. Englesby and Nishimura submit that at this point the process has become more costly than the potential suspension that might result at the end and we should dismiss this application. If we do not dismiss this application our options are to identify the error made by the CIRO Panel and to seek further submissions, to send the proceeding back to the CIRO Panel with directions, or to send this back to a newly constituted CIRO panel for a re-hearing. That final option causes the most concern to Englesby and

Nishimura as it would likely involve starting the entire process over. As they noted approximately 20 months ago, the process has been unusually protracted and they were, by then, finding it exhausting and expensive. It has not become less so since. CIRO and Englesby and Nishimura are very reasonably suggesting that we seek a solution which will not add to the burden.

[59] We have identified a better option, based upon our jurisdiction under s. 165(4) of the Act to vary the CIRO Panel's decision or make another decision we deem proper. On that basis we have considered whether the conduct of Englesby and Nishimura amounted to conduct unbecoming under IDPC Rule 1400. For reasons stated below, we conclude that the answer is yes. On that basis we are referring only the issue of sanctions back to CIRO, to be addressed not by the CIRO Panel but by a newly constituted panel.

[60] Our reasons for having the parties address a new CIRO panel instead of us regarding sanction are that this shows proper deference to CIRO and the potential that a CIRO panel will understand the relative roles of advisor and registered assistant better than we do, and that it should not be more burdensome for the parties to present their sanctions submissions to a new CIRO panel compared to presenting those submissions to us.

[61] With respect to the proper interpretation of IDPC Rule 1400, the parties are in agreement that negligence, including a single act of negligence, can lead to a conclusion that the negligent conduct was unbecoming. It does not follow that every negligent step is unbecoming.

[62] Here are the basic facts with respect to CP and CP Corp as summarized by counsel for CIRO, with which we agree, except we are not addressing what CIRO define as the Other Clients:

> 21. The red flags identified by CIRO Staff included:
>
> a. The deposit of share certificates in the accounts of Client CP and CP Corp and the Other Clients, and the sale of those securities in the days before or shortly after the deposits. This, followed by large withdrawals of the proceeds of the sales; and
>
> b. The execution by the Respondents of transactions in the accounts of Client CP and CP Corp and the Other Clients without learning the necessary facts related to these clients and the orders accepted.
>
> 22. The significant withdrawals were obvious red flags. One client, Client CP Corp, withdrew $6,918,445 in the span of five months. During the majority of the withdrawals, Client CP Corp's account documentation stated the client had liquid assets of $50,000 and a net worth of $55,000. The nature of the company's business was listed as "Consultant/Entrepreneur." Near the end of this five-month period, Client CP Corp's account documentation was changed to liquid assets of $1,000,000, and a net worth of $1,005,000. On the very next day following this update, Client CP Corp withdrew $2.3 million from the account.

[63] These facts should have compelled Englesby and Nishimura to make the inquiries which we have noted above. The facts which justified concern were so clear that no registered professional with a gatekeeper obligation should have missed the concern. Their failure to do so was conduct unbecoming under IDPC Rule 1400. Sanctions should result, consistent with CIRO standards and expectations.

[64] Some submissions were made regarding the relative culpability of Englesby and Nishimura. They shared responsibility for the CP and CP Corp accounts, and there is a sufficient basis for us to conclude that they both are liable for what happened. The panel which hears the sanctions submissions will be in a better position than us to consider the questions of relative responsibility. As a result we need not form conclusions on that issue.

[65] Here is our order:

a) the conduct of Englesby and Nishimura with respect to clients CP and CP Corp was conduct unbecoming in breach of IDPC Rule 1400;

b) the issue of what sanctions are appropriate is remitted to CIRO; and

c) CIRO shall constitute a new panel which will address all issues of sanction in a manner consistent with this Decision.

November 27, 2026

For the Commission

Gordon Johnson
Vice Chair

Judith Downes
Commissioner

Karen Keilty
Commissioner