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Via Email

British Columbia Securities Commission
Hearings Office
PO Box 10142, 701 West Georgia Street
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**Canadian Investment Regulatory
Organization**
Hearings Office
Suite 2600, 40 Temperance Street
Toronto, ON M5H 0B4
hearings@ciro.ca

**Re: *Request for Hearing and Review in the Matter of the Investment Dealer and
Partially Consolidated Rules and Randy Bryan Hildebrandt***

The Respondent, Randy Bryan Hildebrandt, seeks a hearing and review of a decision of CIRO pursuant to s. 28 of *Securities Act*, [RSBC 1996, c. 418](#) (the “**Act**”) on the basis that he is a person directly affected by the decision. Section 7.2(a) of [BC Policy 15-601](#) provides that a request for a hearing and review must identify:

1. the decision to be reviewed
2. how the person is directly affected by the decision
3. the grounds for the review
4. the grounds for a stay of the decision, if requested

Each of these criteria are addressed, below.

Decision to be reviewed

Mr. Hildebrandt seeks a hearing and review of the decision of CIRO in the matter of *Re Hildebrandt*, 2025 CIRO 05 (the “**Decision**”).

Mr. Hildebrandt is a person directly affected

The Decision involves an enforcement proceeding in which Mr. Hildebrandt was the respondent. In the Decision, CIRO found that Mr. Hildebrandt breached his gatekeeper obligations as a



registered representative, contrary to Investment Dealer and Partially Consolidated (“IDPC”) Rule 1400. Mr. Hildebrandt is therefore a person directly affected by the Decision within the meaning of s. 28 of the *Act*.

Grounds for the review

Without intending to limit such other errors as Mr. Hildebrandt may identify in his forthcoming Statement of Points, Mr. Hildebrandt asserts that CIRO made, *inter alia*, the following errors in the Decision:

1. CIRO made errors of law by:
 - a. failing to correctly state, or state at all, the legal standard required of a registered representative to fulfil their gatekeeping obligations under Rule 1400;
 - b. failing to have regard to the legal standard required to establish breach of the gatekeeper obligation under Rule 1400, as set out in CIRO’s previous decisions; and
 - c. failing to provide any explanation for departing from the legal standard established by CIRO’s previous decisions in finding that Mr. Hildebrandt breached his gatekeeper obligations under Rule 1400;
2. CIRO misstated Mr. Hildebrandt’s position on the legal standard required of a registered representative to fulfil their gatekeeping obligations under Rule 1400, which had a substantial effect on their findings on this issue;
3. CIRO’s interpretation of the gatekeeper obligation under Rule 1400 is contrary to the public interest for reasons including, but not limited to, the fact that it is overly broad and does not adequately provide registered representatives with notice of the legal standard they must meet to comply;
4. CIRO made an error of law and acted beyond its jurisdiction in considering allegations beyond the scope of the Notice of Hearing and Statement of Allegations;
5. CIRO overlooked material evidence and misstated Mr. Hildebrandt’s position on the issue of the scope of the Notice of Hearing and Statement of Allegations and CIRO’s jurisdiction, which impacted their findings on this issue;
6. CIRO relied on incorrect principles and misinterpreted the ratio in *Blackmont (Re)* by concluding that this case stands for the “straightforward point that in any given case a hearing panel’s jurisdiction is defined by the allegations of legal breaches stated in the Notice of hearing”, where this case stands for the opposite conclusion;



7. CIRO erred in law and breached Mr. Hildebrandt's entitlement to natural justice and procedural fairness by concluding that document disclosure satisfied Staff's obligations to provide Mr. Hildebrandt with adequate notice under the Notice of Hearing and Statement of Allegations;
8. CIRO made an error of law and breached Mr. Hildebrandt's entitlement to natural justice and procedural fairness by improperly reversing the burden of proof in finding that, it was not the case that "Staff must first prove the Respondent failed to ask questions before the Panel can properly infer he breached his gatekeeper responsibilities by failing to ask questions";
9. CIRO made an error of law and breached Mr. Hildebrandt's entitlement to natural justice and procedural fairness by improperly reversing the burden of proof by effectively requiring that Mr. Hildebrandt tender evidence to rebut Staff's allegations, even where those allegations have not been proven on a balance of probabilities by Staff, with clear, cogent and convincing evidence;
10. CIRO made an error of law or relied on incorrect principles in inferring that Mr. Hildebrandt failed to ask questions, including in response to NM's emails on September 27, 2019;
11. CIRO overlooked material evidence and/or made a palpable and overriding error in finding that Mr. Hildebrandt failed to ask questions, including in response to NM's emails on September 27, 2019;
12. CIRO overlooked material evidence and/or made palpable and overriding errors in material findings of fact which were not supported by the evidence;
13. CIRO overlooked material evidence and/or relied on incorrect principles in finding that the defence solicited opinion evidence from Mr. Thomas without qualifying him as an expert witness, where Mr. Thomas was plainly a fact witness; and
14. Such other and further errors as Counsel to Mr. Hildebrandt may advise.

Based on the grounds above, and such further grounds as the Commission may permit, the Respondent requests that the Commission revoke or, in the alternative, vary the Decision.

Grounds for a stay of the Decision

As set out under s. 7.4 of BC Policy 15-601, the test for granting a stay is as follows:

1. Is there a serious question to be tried?
2. Will irreparable harm be suffered if the stay is not granted? and

3. Assessing any harm in granting or rejecting the stay, weighing the balance of convenience, including the public interest.

The grounds for a stay are set out below, but Mr. Hildebrandt intends to advance a more fulsome written argument in this respect in a forthcoming application to be scheduled at a hearing management meeting and he reserves the right to modify or add to the grounds for a stay in that application.

First, as demonstrated by the grounds for this hearing and review, set out above, there are a number of significant and serious issues to be tried. The Decision is deficient in a number of important respects, covering a number of fundamental issues, including the appropriate articulation of the gatekeeper standard and the high level of procedural fairness that respondents are entitled to in CIRO hearings. If Mr. Hildebrandt can establish any of the grounds set out above, he may be successful in overturning the Decision.

Second, Mr. Hildebrandt will suffer irreparable harm if the stay is not granted. If the Decision is not stayed and Mr. Hildebrandt is forced to proceed to a penalty hearing, and is successful in a hearing any review, the penalty decision will be rendered moot. However, Mr. Hildebrandt will have no ability to recover his legal fees from defending the penalty hearing, in addition to the costs he incurs in challenging the Decision, which will not be insignificant. Moreover, Mr. Hildebrandt will be adversely and unfairly impacted by such a penalty decision, and it will not be open to him to seek any relief in this respect – for example, it is unlikely he could pursue a civil claim of damages against CIRO for imposing a penalty on him that should not have been made.

Third, the balance of convenience weighs in favor of granting the stay. There is no harm to the public interest from staying the Decision and any penalty hearing. As noted above, if Mr. Hildebrandt is successful in the hearing and review, there will be no need for a penalty hearing.

There is also no urgency to a penalty hearing. The Decision makes no suggestion that Mr. Hildebrandt knowingly engaged in any kind of intentional misconduct nor could it be seriously asserted that he represents a risk to the capital markets such that a penalty must be imposed immediately. A fully informed member of the public reasonably informed of the circumstances, would have greater confidence in the enforcement process, not less, if a stay was granted.

Moreover, Staff have advanced this matter at a lackadaisical pace. The events at issue in this matter occurred in 2018 and 2019. As the investigator testified before CIRO, the investigation commenced two years later, in February 2021.¹ The investigation proceeded over the course of approximately a year and a half, and the Notice of Hearing and Statement of Allegations were issued on June 26 and 27, 2023, respectively. The hearing of this matter then occurred from April 29 to May 4 and September 16-17, 2024. Over six years has passed from the dates of the relevant events in this matter. On this record, Staff cannot seriously argue that this matter is now urgent and a stay is not appropriate.

¹ CIRO Hearing Transcript, dated April 29, 2024, p. 62:20-25.

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In any event, we expect this hearing and review to proceed expediently. We note that, in a recent hearing and review of CIRO's decision in *Re Englesby and Nishimura*, 2024 CIRO 63, Staff issued a request for a notice of hearing and review on August 12, 2024. Despite the fact that matter involved not only an appeal on the merits, but also a jurisdictional challenge, it was heard approximately five months later, in January 2025. We similarly expect Mr. Hildebrandt's matter can be heard in a matter of months.

Directions Sought

Mr. Hildebrandt asks that a hearing management meeting be scheduled to set:

1. Dates for a half day oral hearing of his application to seek a stay of the Decision and any penalty hearing, pending the hearing of this hearing and review; and
2. Dates for an oral hearing of this hearing and review.

We look forward to scheduling a hearing management meeting with the parties.

Yours truly,

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

Owais Ahmed and Jessica Mank

McCarthy Tétrault LLP

Counsel for the Respondent, Randy Bryan Hildebrandt