IN THE MATTER OF THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES

AND

RANDY BRYAN HILDEBRANDT

NOTICE OF APPLICATION

Applicant: Randy Bryan Hildebrandt

TO: BRITISH COLUMBIA SECURITIES COMMISSION AND CANADIAN INVESTMENT REGULATORY ORGANIZATION

TAKE NOTICE that an application will be made by the applicants to the British Columbia Securities Commission ("**BCSC**") at 701 West Georgia Street, Vancouver, BC V7Y 1L2 on April 24, 2025 for the orders set out in Part 1 below.

PART 1: ORDER SOUGHT

1. An order that the decision in the matter of *Re Hildebrandt* (the "**Decision**")[1] and any penalty hearing be stayed pending the outcome of the hearing and review of the Decision; and

2. Such further relief as counsel for the Respondent may request and the Commission may permit.

PART 2: BACKGROUND

1. The Decision involves an enforcement proceeding in which Mr. Hildebrandt was the Respondent.

2. On June 26, 2023, CIRO Enforcement Staff (the "**Staff"**) issued a Notice of Hearing alleging that between July 2019 and March 2020 (the "**Relevant Period**"), Mr. Hildebrandt failed to make sufficient and reasonable or diligent inquiries in relation to client trading activity, contrary to his gatekeeper obligations under Investment Dealer and Partially

[1] *Re Hildebrandt*, 2025 CIRO 05.

Consolidated ("**IDPC**") Rule 1400.[2] Mr. Hildebrandt denied the allegations in the Notice of Hearing.

3. The matter proceeded to an enforcement hearing and was heard before a panel of the Canadian Investment Regulatory Organization ("**CIRO**") from April 29 to May 2 and September 16-17, 2024.

4. On January 23, 2025, CIRO issued the Decision, which found that Mr. Hildebrandt breached his gatekeeper obligations contrary to Rule 1400.

5. On February 21, 2025, Mr. Hildebrandt sought a hearing and review of the Decision under s. 28 of the *Securities Act*, R.S.B.C. 1996, c. 418[3] (the "**Act**") and Part 7 of BC Policy 15-601[4] on the basis that he is a person directly affected by the Decision.[5]

6. Mr. Hildebrandt brings this application under s. 165(5) of the *Act*[6] for a stay of the Decision pending the outcome of the hearing and review.

PART 3: LEGAL BASIS

I. Mr. Hildebrandt has a statutory right to a hearing and review now

7. Mr. Hildebrandt has a statutory right to a hearing and review of the Decision without waiting for the conclusion of a penalty hearing[7]. It is not contested that Mr. Hildebrandt is a person directly affected by a decision of self-regulatory body and has standing to seek a hearing and review of the Decision under s. 28(1) of the *Act*.[8] Although the Decision addresses the matter of liability and any penalty is addressed in a separate hearing, Mr. Hildebrandt's right to seek a hearing and review of the Decision has crystallized. There is no basis,

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[2] Notice of Hearing dated June 26, 2023, Affidavit #1 of A. Yu, dated March 19, 2025 ("**Yu Affidavit #1**"), at para. 2, Exhibit B.

[3] *Securities Act*, R.S.B.C. 1996, c. 418, s. 28.

[4] BC Policy 15-601, Part 7.

[5] Hildebrandt Notice of Hearing and Review, dated February 21, 2025; Yu Affidavit #1 at para. 7, Exhibit D.

[6] *Securities Act*, R.S.B.C. 1996, c. 418, s. 165(5). This provision is incorporated into s. 28 by reference.

[7] This is unlike a judicial review by a court of a decision by an administrative tribunal or a statutory appeal from a British Columbia Securities Commission decision which requires that the Court of Appeal grant leave – in both scenarios the reviewing court has discretion to refuse to hear the matter.

[8] *Securities Act*, R.S.B.C. 1996, c. 418, s. 28 [emphasis added].

whether under the *Act* or otherwise, to require that a penalty hearing proceed before his rights can be effected.

8. Section 28(1) of the *Act* provides persons directly affected by a decision of a self-regulatory body, such as CIRO, with the right to seek a hearing and review of the decision:

> 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.

9. The *Act* defines a "decision" as "a direction, decision, order, ruling or requirement made under a power or right conferred by the Act or the Regulations".[9]

10. CIRO's power to make rules, such as the IDPC Rules, governing its members is derived from s. 26(1) of the *Act*.[10]

11. The Decision was issued under IDPC Rule 8200, which provides a CIRO hearing panel with the ability to hold an enforcement proceeding and make a decision. Section 8203(2) provides:[11]

> 8203. Hearings
>
> (2) A *hearing panel* may hold any *hearing* and make any *decision* that is authorized under Rule 8200 and the *Rules of Procedure*.

12. IDPC Rule 8202 broadly defines a "decision" as, "[a] determination made by a *hearing panel* under Rule 8200 and includes a *sanction* and other order or ruling".[12] In the Decision, a CIRO hearing panel made a determination on liability. Specifically, whether Mr. Hildebrandt breached his gatekeeper obligations under Rule 1400, as alleged in the Notice of Hearing.

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[9] *Securities Act*, R.S.B.C. 1996, c. 418, s. 1.

[10] *Securities Act*, R.S.B.C. 1996, c. 418, s. 26(1).

[11] Investment Dealer and Partially Consolidates Rules (the "**IDPC Rules**"), Rule 8203(2) [emphasis in original].

[12] IDPC Rules, Rule 8202 [emphasis in original].

13. Express reference to a "sanction" order or ruling in CIRO's definition of a "decision" represents an acknowledgement that liability decisions and sanction decisions are distinct. This distinction was also acknowledged by the British Columbia Court of Appeal in *Michaels v British Columbia (Securities Commission)*. The Court found that where issues of liability and penalty are bifurcated, there are "two distinct matters" resulting in "two distinct decisions":[13]

> The question begged however in this case is "what is the decision?" …. Michaels submits that it involves both decisions – liability and sanctions – flowing from the single "hearing". Michaels says that because the Sanctions Panel did not hear the evidence in the liability phase, it cannot decide the sanctions issue.
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> I disagree. **There are two distinct decisions to be made in respect of two distinct matters**: did Michaels breach the provisions of the *Act* as alleged? And if so, what penalties are to be imposed in respect of that conduct?

14. Pursuant to IDPC Rule 8204(2), regardless of whether a penalty hearing will follow, the Decision on liability is effective immediately:[14]

> 8204. Application and effective date of decisions
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> (2) A decision, other than a ruling in the course of a hearing, is effective on the date the decision is dated by the National Hearing Officer, unless Rule 8200 or the decision provides otherwise, in which case the decision is effective on the date so provided.

15. There is nothing under Rule 8200 or the Decision to suggest that it becomes effective at some later date.

16. It is plain and obvious that CIRO has issued a Decision that is captured by s. 28(1) of the *Act*. Mr. Hildebrandt has the right to seek a hearing and review of that Decision now. There is no basis to suggest a that a penalty decision must be issued before Mr. Hildebrandt can seek a hearing and review of the Decision.

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[13] *Michaels v British Columbia (Securities Commission)*, 2016 BCCA 144 at paras 105-106 [emphasis added].

[14] IDPC Rules, Rule 8204(2) [emphasis in original].

17. This procedure has been followed in other regulatory contexts. For instance, in *Cole v The Law Society of British Columbia* the respondent to a disciplinary proceeding appealed a decision on the issue of liability alone to the British Columbia Court of Appeal.[15]

II. The Decision and penalty hearing should be stayed pending the outcome of the hearing and review

18. The Commission has the ability to stay the Decision under s. 165(5) of the *Act*:[16]

> Review of decision of executive director
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> 165 (5)The commission may grant a stay of the decision under review until disposition of the hearing and review.

19. The test to be applied for granting a stay is articulated by the Supreme Court of Canada,[17] which has been adopted by the Commission in numerous decisions[18] and is reflected in s. 7.4 of the BC Policy 16-601 as follows:[19]

(a) There is a serious question to be tried;

(b) The applicant will suffer irreparable harm if a stay is refused; and

(c) The balance of convenience favours granting a stay.

20. For the reasons set out below, the test is met in this case. The Decision, and any penalty hearing, should be stayed pending the disposition of Mr. Hildebrandt's hearing and review.

a) There are serious questions to be tried

21. The requirement to establish a serious issue is determined on a low threshold. There is a serious issue so long as the underlying matter is neither vexatious nor frivolous.[20]

22. Mr. Hildebrandt's request for a hearing and review raises serious issues, including but not limited to the appropriate articulation of the gatekeeper standard, the scope of the Panel's

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[15] *Cole v The Law Society of British Columbia*, 2023 BCCA 199.

[16] *Securities Act*, R.S.B.C. 1996, c. 418, s. 165(5). Section 28(1) of the *Act* provides that sections 165(3)-(9) apply to a hearing and review.

[17] *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, at 334 (para. 48).

[18] See, for instance, *Eley (Re)*, 2020 ONSEC 30 at para. 14.

[19] BC Policy 15-601, s. 7.4.

[20] *Eley (Re)*, 2020 ONSEC 30 at para 20; *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, at 337.

jurisdiction, and the burden of proof to establish contraventions of the IDPC Rules. Without intending to limit the issues or arguments that Mr. Hildebrandt intends to raise in his Statement of Points, we address each of these categories, below.

Category #1: Errors relating to the gatekeeper standard

23. The Panel failed to correctly state, or state at all, the legal standard required of a Registered Representative to fulfill their gatekeeper obligations under Rule 1400, and ignored the long line of precedents put forward by both Staff and Mr. Hildebrandt. As a result, the gatekeeper standard which emerges from the Decision is vague and overly broad, which is not in the public interest.

24. Staff put forward nine cases regarding the gatekeeper standard, six of which it argued were analogous to Mr. Hildebrandt's circumstances.[21] Mr. Hildebrandt addressed each of the cases presented by Staff, and demonstrated that none are comparable. Mr. Hildebrandt also put forward at least five additional cases.[22] Yet there is a dearth of case law in the Decision. The only gatekeeper case even acknowledged by the Panel in the Decision is *Kasman (Re)*, cited in a footnote at paragraph 81.

25. Instead, the Panel suggests that it has no obligation to consider any prior law at all. At paragraph 80 of the Decision, the Panel states:[23]

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

26. Leaving aside, at least for the moment, the Panel's failure to correctly describe Mr. Hildebrandt's defence on this issue[24], it is precisely the "case law" which articulates the gatekeeper standard. As the Panel acknowledges at paragraphs 60-62 of the Decision, the gatekeeper standard is not expressly articulated under Rule 1400. There is no "check list" for Registered Representatives to follow under the IDPC Rules and, in that sense, the

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[21] Staff's Written Submissions on Liability, at paras. 2-16.

[22] Mr. Hildebrandt's Written Submissions on Liability, dated July 2, 2024, at paras. 56-65 and 132-146.

[23] Decision, at para. 80 [emphasis added].

[24] This is an error the Panel made repeatedly in other parts of the Decision when attempting to characterize the defence's position.

standard is not "explicitly legislated". We agree. Instead, the standard Registered Representatives must meet has evolved under the case law.

27. The Panel not only failed to articulate the standard for the gatekeeper obligation under the case law, but shirked that law. The Panel also failed to provide any basis for its findings that Mr. Hildebrandt's conduct, which cannot be found in any precedents, rises to the level of a gatekeeper breach. That is because it does not. The Panel applied its own standard.

28. While Mr. Hildebrandt does not dispute that administrative tribunals such as the Panel are not bound by *stare decesis*,[25] that does not mean that administrative tribunals can ignore an existing body of law. In *Vavilov*, the Supreme Court of Canada reiterated the following well-established principles:[26]

> It is evident that both statutory and common law will impose constraints on how and what an administrative decision maker can lawfully decide […] Where a relationship is governed by private law, it would be unreasonable for a decision maker to ignore that law in adjudicating parties' rights within that relationship: *Dunsmuir*, at para. 74. Similarly, where the governing statute specifies a standard that is well known in law and in the jurisprudence, a reasonable decision will generally be one that is consistent with the established understanding of that standard.
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> Any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide. […]

29. Departing from existing precedents without justification gives rise to the risk of arbitrariness, which undermines public confidence in administrative decision makers and the justice system as a whole.[27] In the context of this case, it also gives rise to a fundamental unfairness to Registered Representatives like Mr. Hildebrandt, who are left uncertain of the standard they need to meet.

30. The gatekeeper standard which ultimately emerges from the Decision is vague, overly broad, and represents a sea change from existing industry standards. Where changes are going to be made to an industry standard, it ought to be done with advance notice to

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[25] As the Panel asserts at paragraph 76 of the Decision.

[26] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 111-112.

[27] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, para 131.

Registered Representatives. Not retroactively through enforcement proceedings. Such an outcome is not in the public interest.

Category #2: The Panel acted beyond its jurisdiction

31. The Panel improperly considered submissions that were not made in the Statement of Allegations, and therefore fell outside the Panel's jurisdiction.

32. The centrality of the Statement of Allegations (or the Notice of Hearing) is well-established in securities regulatory proceedings. The notice of hearing not only provides the respondent with notice of the case he has to meet, but it also circumscribes the jurisdiction of the Panel. The Panel has no jurisdiction to make findings on issues not alleged in the Notice of Hearing.

33. This principal was clearly articulated in *Blackmont Capital Inc (Re)*,[28] where the BC Securities Commission found the Panel had no jurisdiction to find the respondents had contravened Rule 29.6, despite the fact that the Rule was pleaded, because the notice of hearing did not allege any misconduct that would contravene that rule.

34. Similarly, recently in *Re Impact Analytics Inc*.,[29] the Alberta Securities Commission ("ASC") found it did not have jurisdiction to consider Staff's allegations concerning alleged misrepresentations contained in the company's public disclosure not specifically identified in the notice of hearing.

35. In the Statement of Allegations in this matter, Staff allege that Mr. Hildebrandt breached his gatekeeper obligation under Rule 1400 by "failing to make sufficient and reasonable or diligent inquiries in relation to client trading activities".[30] In particular, Staff allege that Mr. Hildebrandt failed to adequately ask questions in relation to the source of the shares received by "a client", the relationship between a group of seemingly related clients, the economic rationale for the trading by those clients, and the high concentration of holdings by the clients in a single issuer.

36. The particulars identified in the Statement of Allegations relate to:

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[28] *Blackmont Capital Inc (Re)*, 2011 BCSECCOM 490, para 24.

[29] *Re Impact Analytics Inc.*, 2024 ABASC 94, paras 78-84.

[30] Statement of Allegations, Part 1.

(a) the deposit of shares of the Issuer into certain of the client accounts for which Mr. Hildebrandt was the investment advisor (paras. 10 and 16 of the Statement of Allegations);

(b) the volume of the sale of shares of the Issuer by Mr. Hildebrandt's clients (paras. 8-9, paras. 12 – 13, paras. 20 – 23);

(c) the withdrawal of proceeds from the sale of the shares (para. 10(d), paras. 12 – 13); and

(d) two alleged cross trades between CM and the VC Account (para. 19).

37. These are the particulars of the red flags that are alleged to have existed at paragraph 24 of the Statement of Allegations.

38. Staff alleges that there were red flags that suggested a "potential" market manipulation that ought to have prompted Mr. Hildenbrandt to ask further questions.[31] Staff does not allege that a market manipulation or other illegal scheme actually took place.

39. For the first time in closing submissions, Staff advanced the allegation that Mr. Hildebrandt was engaged in intentional misconduct or was willfully blind, and that the trading *was* manipulative. This is a vastly different claim than articulated in the Statement of Allegation, which only alleged that there was "hallmarks" of "potential" market manipulation leading to the obligation on Mr. Hildebrandt to ask questions to fulfill his regulatory duties.

40. Moreover, also for the first time in closing submissions, Staff alleged that there were certain red flags – not contained in the Statement of Allegations – that ought to have prompted certain conduct by Mr. Hildebrandt. Mr. Hildebrandt had no notice that Staff would make these arguments, and therefore no opportunity to respond or marshal evidence in his defence. In fact, some of these allegations are directly contradictory to the evidence elicited at the hearing from Staff's own investigator.

41. Instead of refusing to consider these new allegations, they formed a central part of the Panel's analysis. For example:

[31] Statement of Allegations, para 24.

(a) at paragraph 29, the Panel found that there were a "series of relatively small purchases that caused significant rises in the market price". This finding is then repeated at paragraph 102(a).[32] However, this was not alleged as a red flag or at all, and should not have been considered.

(b) at paragraphs 31 – 35, the Panel reviewed certain buying in VC, NV, and LS's accounts and concluded that these shares were then sold "at prices that could not be reasonably expected to yield a financial benefit to the account holder or, in some instances, for outright loses". In other words, the Panel appears to have concluded that there was uneconomic trading by these clients, although this was never alleged.

(c) At paragraphs 37 (a – d), the Panel appears to have concluded that trades by CM, HM, AW, and RG were unsuitable, although, with the potential exception of CM (see paragraph 17 of the Statement of Allegations), none of this was alleged in the Statement of Allegations.

(d) At paragraphs 38 – 43, the Panel considered a number of alleged cross-trades, despite that none of these trades were alleged to be red flags or were even particularized in the Statement of Allegations, with the exception of two trades between VC and CM which were identified.

42. By concluding that these were red flags that should have prompted Mr. Hildebrandt to make inquiries of his clients, the Panel acted beyond its jurisdiction and erred.

Category #3: The Panel improperly reversed the burden of proof and misapplied the law on circumstantial evidence

43. In order to prove its case, CIRO Staff had the burden of making out the three-step approach recently articulated in *Re Englesby and Nishimura*, 2024 CIRO 63 at paragraphs 142 - 144, the first two of which are relevant to this matter and are as follows:

(a) Does the evidence involve activities, which a party, acting as a duly diligent person who is active in the investment industry and who serves in a gatekeeper role, would

[32] To be clear, this finding is not sound and is disputed by Mr. Hildebrandt, and to the extent necessary this will be addressed in his statement of points.

reasonably consider a triggering event or a set of triggering events and of a nature which requires the party to make inquiries of the participants in the activities? In other words, were there sufficient red flags so as to trigger the duty to inquire?

(b) If there was an obligation to make inquiries, did the party make the necessary inquiries from all sources of information at the time reasonably available to the party?

44. Accordingly, Staff bore the onus of proving, based on clear and cogent evidence, that Mr. Hildebrandt failed to ask the questions identified in the Statement of Allegations.

45. The evidentiary record before the Panel demonstrated, unsurprisingly, that Mr. Hildebrandt communicated with his clients not just by email, but also by way of telephone and in-person meetings. Indeed, it is well-known that trade instructions are typically taken in the industry over the phone.

46. At the Hearing, the Staff chose not to lead any direct evidence that Mr. Hildebrandt failed to ask questions of his clients. Staff chose not to tender the transcript of Mr. Hildebrandt's compelled interview evidence. Mr. Hildebrandt did not testify at the hearing (nor was he required to). Staff also did not interview any of Mr. Hildebrandt's clients or call them as witnesses at the hearing. Therefore, there was no evidence before the Panel of Mr. Hildebrandt's phone calls or meetings with his clients, whether in the form of notes or direct evidence from Mr. Hildebrandt or the clients.

47. The only relevant evidence before the Panel on this issue was what it described as "business records". Nonetheless, based on evidence not specified in the Decision, the Panel made a finding that Mr. Hildebrandt failed to ask the necessary questions. The closest the Panel came to identifying the evidence it relied on in making this decision was as follows:

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

> required of him as a gatekeeper. In other words, Staff's case rests on circumstantial evidence.

48. Circumstantial evidence can fill the evidentiary gap created by the absence of direct evidence.[33] However, such inferences can only be drawn from existing facts that are established by the evidence.[34]

49. There was no record of evidence, circumstantial or otherwise, that Mr. Hildebrandt failed to ask the questions identified in the Statement of Allegations and which could have allowed the Panel to draw the inference that it did.

50. The Panel placed particular emphasis on NV's September 27, 2017 email to Mr. Hildebrandt, in which NM stated, *inter alia*, that "[MV] wanted me to be a nominee on a stock he is promoting". The Panel describes this at paragraph 101 as "not so much as a red flag than a ringing alarm bell" and that this "should have provoked the Respondent into making diligent inquiries to determine its validity". Although not stated, the Panel clearly concluded that Mr. Hildebrandt did not make inquiries of NM about the claims made in NM's email.

51. However, to the extent that an inference could be drawn from the record as to whether Mr. Hildebrandt made inquiries of NM about this, the only inference available was that Mr. Hildebrandt *did* speak to NM about this. The Panel omitted to reference Mr. Hildebrandt's email response to NM, by which he asked NM to telephone him:

> [NM], please give us a call to touch base on this, understand that ONLY YOU have access and authority to your account, no one else.
>
> For some reason we don't have your phone number, give me buzz.

52. The Panel further erred by improperly reversing the burden of proof onto Mr. Hildebrandt to prove that he *did* ask questions – that is not the standard. It is Staff that must prove all elements of its claim based on "clear, cogent evidence", including that the required questions were not asked by Mr. Hildebrandt. Staff did not discharge its onus in this respect.

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[33] *Hutchinson (Re)*, 2019 ONSEC 36 at paras 60-62.
[34] *Hutchinson (Re)*, 2019 ONSEC 36 at paras 61-62.

53. These grounds of appeal, if successful, could result in the Decision being set aside and reversed.

Category #4: Other appeal ground to be pursued

54. Mr. Hildebrandt's notice of hearing and review raises a number of other issues, including that (i) CIRO overlooked material evidence and/or made palpable and overriding errors in material findings of fact which were not supported by the evidence; and (ii) 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.

55. The Panel's errors in its factual findings had a material impact on the Decision. For instance, at paragraph 29 of the Decision, the Panel found that within a two week period from the end of August to early September 2019, the NV Account "made nominal purchases that caused the Issuer's share price to increase by 525%". However, this finding cherry picks a handful of trades made by NV at a time where the volume of shares of the Issuer being traded was very low. The Panel disregarded trades made by other market participants at the time, and the hundreds of trades subsequently made when the Issuer had significant volume and the share price was maintained.[35] Taken in context, NV's trades were not a "classic feature of manipulative trading", which is what the panel concluded at paragraph 100(c), in finding that Mr. Hildebrandt ought to have asked questions.

56. Mr. Hildebrandt will identify other material factual errors in his forthcoming Statement of Points.

b) Mr. Hildebrandt will suffer irreparable harm if a stay is denied

57. Mr. Hildebrandt will suffer irreparable harm if the Decision is not stayed.

[35] Hildebrandt Submissions on Liability, dated July 2, 2024, at para. 91.

58. For harm to be "irreparable", it need not be significant. Irreparable refers to the nature of the harm, not its magnitude. To satisfy this element of the test, a party seeking a stay need only establish that whatever harm would be caused cannot be cured.[36]

59. In *Eley (Re)* the Commission concluded Mr. Eley faced a real prospect of irreparable harm based on his submissions that he would suffer a loss of income pending the disposition of his hearing and review, which he would be unable to recover, harm to his reputation and the potential loss of clients.[37]

60. Similar to *Eley (Re)*, if the Decision is not stayed, Mr. Hildebrandt will suffer irreparable harm to his reputation, which could lead to the loss of current and prospective clients. It could also lead to an adverse impact on his relationships, including with his employer and colleagues.[38]

61. Mr. Hildebrandt has already suffered substantial emotional distress as a result of the Decision, including sleepless nights, loss of appetite and difficulty concentrating.[39] His distress will worsen if the Decision is not stayed and he is forced to proceed to a penalty hearing.[40]

62. More fundamentally, if Mr. Hildebrandt's hearing and review is successful, any penalty decision will be rendered moot. However, unlike CIRO, Mr. Hildebrandt will have no ability to recover his legal costs of defending a penalty hearing, which will not be insignificant.[41]

63. In the recent decision of *Cormark Securities Inc (Re)*, the Ontario Capital Markets Tribunal acknowledged that the "unfortunate consequence" of the regulatory "overreach" in that that case was that the respondents "have incurred significant costs due to this proceeding, both financial and reputational, which they cannot recover.[42] So too with respect to Mr. Hildebrandt.

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[36] *Argosy Securities Inc. and Keybase Financial Group Inc. (Re)*, 2015 LNONOSC 773; *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, at para. 341.

[37] *Eley (Re),* 2020 ONSEC 30 at paras. 29-30.

[38] Affidavit #1 of Randy Bryan Hildebrandt, dated March 19, 2025 ("**Hildebrandt Affidavit**") #1, at paras. 8-11.

[39] Hildebrandt Affidavit #1, at para. 9.

[40] Hildebrandt Affidavit #1, at paras. 10-11.

[41] Hildebrandt Affidavit #1, at para. 12.

[42] *Cormark Securities Inc (Re)*, 2024 ONCMT 26, para 192.

64. The British Columbia Court of Appeal found in *Gill v Canadian Venture Exchange Inc.* that irreparable harm arose in similar circumstances. The Court stated: [43]

> Mr. Gill submits that if the hearing proceeds and penalties or costs are imposed against him, he will suffer financially. The respondents say that he has not submitted evidence of his financial circumstances. In my view, that is not necessary in order to demonstrate that he will suffer some irreparable harm from the CDNX hearing proceeding if he is ultimately successful on his appeal to this Court. **While penalties may be reversed, the costs of preparing for and conducting the hearing will not likely be recoverable. I am satisfied that he will suffer irreparable harm if the stay is not granted.**

65. For the same reasons, Mr. Hildebrandt will suffer irreparable harm if the stay is not granted.

c) The balance of convenience favours a stay

66. At this stage of the test, CIRO's public interest mandate is balanced against the harm Mr. Hildebrandt will suffer if a stay is not granted. Explained further below, the balance of convenience weighs in favor of Mr. Hildebrandt: (i) while Mr. Hildebrandt will suffer irreparable harm if a stay is denied, there will be no harm to the public interest if the Decision is stayed; (ii) the efficiencies of this case favor granting a stay; and (iii) there is no urgency to proceed to a penalty hearing.

67. ***First***, there is no harm to the public interest from staying the Decision and any penalty hearing. Mr. Hildebrandt has no prior disciplinary history. He has continued to work as a Registered Representative since CIRO commenced its investigation in February 2021, without any restrictions imposed by either CIRO or his employer.[44]

68. The satisfactory conduct of Mr. Hildebrandt over this four year period suggests that the likelihood of any recurrent conduct is low and that the potential harm to the public is negligible, or none.[45] The Decision itself makes no suggestion that Mr. Hildebrandt knowingly engaged in any kind of intentional misconduct, nor could it be seriously asserted that he represents any risk to the capital markets such that a penalty must be imposed immediately.

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[43] *Gill v Canadian Venture Exchange Inc*, 2002 BCCA 439 at para 9 [emphasis added].

[44] Hildebrandt Affidavit #1, at para. 3.

[45] *Eley (Re),* 2020 ONSEC 30 at paras 35-36.

69. ***Second***, the efficiencies of this case favour granting a stay. Proceeding with Mr. Hildebrandt's hearing and review prior to any penalty hearing will be more efficient than the alternative. If Mr. Hildebrandt's hearing and review is heard first and is successful, the matter will be resolved without the need for Mr. Hildebrandt or CIRO to incur the time and expense of a penalty hearing. If Mr. Hilderbrandt's hearing and review is not successful, the penalty hearing will proceed in due course. In that case, whether the penalty hearing occurs before or after the hearing and review has no meaningful impact on the timeline upon which this matter will resolve.

70. In contrast, if Mr. Hildebrandt is forced to proceed to a penalty hearing now, but his hearing and review is subsequently successful, the time and effort expended on a penalty hearing will have been wasted. Surely this scenario does not serve the public interest. To the contrary, wasting public resources, as well as those of market participants like Mr. Hildebrandt, would harm public confidence in the enforcement process.

71. ***Third,*** Staff cannot credibly claim there is any urgency to a penalty hearing. Staff have advanced this matter a lackadaisical pace. As set out above, the Relevant Period in this matter is from July 2019 and March 2020. CIRO's investigation commenced approximately two years later, in February 2021.[46] After a year and a half long investigation, Staff issued the Notice of Hearing and Statement of Allegations 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.[47]

72. Almost five to six years have passed since the events which gave rise to this matter arose in the Relevant Period. On this record, Staff cannot seriously argue that this matter is now urgent and a stay is not appropriate.

73. In any event, the hearing and review will proceed expediently. In a recent hearing and review of the decision of CIRO in *Re Englesby and Nishimura*,[48] Staff issued a notice of hearing and review on August 12, 2024. In response to the hearing and review, the respondents commenced a jurisdictional application. Both the jurisdictional application

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[46] CIRO Hearing Transcript, dated April 29, 2024, p. 62:20-25, Yu Affidavit #1, at para. 2, Exhibit A.

[47] Yu Affidavit #1, at paras. 2-5.

[48] *Re Englesby and Nishimura*, 2024 CIRO 63.

and the hearing and review on the merits were heard by the Commission approximately five months later, on January 23-24, 2025.

74. We similarly expect Mr. Hildebrandt's matter can be heard in a matter of months. Indeed, at the hearing management hearing heard on March 12, 2025, the Vice Chair directed that the parties and hearing office hold August 11-12, 2025 for the hearing and review, pending the outcome of the parties' preliminary applications. If Mr. Hildebrandt obtains a stay of the Decision, it will therefore only be in effect for a short period of time. This too weighs in favour of granting a stay.[49]

PART 4: MATERIAL TO BE RELIED ON

1. Merits Hearing Record;

2. Affidavit #1 of Randy Bryan Hildebrandt made March 19, 2025;

3. Affidavit #1 of Alice Yu made March 19, 2025;

4. Such further and other materials as counsel to the Applicants may advise and the Commission may permit.

DATE: March 19, 2025

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[49] *Sterling Grace & Co (Re)*, 2013 LNOCOSC 932 at para 28.