

# Re Chau

**IN THE MATTER OF:****The Mutual Fund Dealer Rules****and****Antony Kin San Chau**

2024 CIRO 78

Canadian Investment Regulatory Organization  
Hearing Panel (Ontario District)Heard: July 23 and September 11, 2024 by electronic hearing in Toronto, Ontario  
Decision and Reasons: November 7, 2024**Hearing Panel:**Philip Anisman, Chair  
Eugene Park, Industry Representative  
Vas Pachapurkar, Industry Representative**Appearances:**Alan Melamud, Senior Enforcement Counsel  
Antony Kin San Chau, Respondent, not in attendance or represented

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## DECISION AND REASONS

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### I. INTRODUCTION

¶ 1 The trustworthiness of securities professionals is necessary for the operation of securities markets and the confidence of investors in the markets' fairness and efficiency. Accordingly, officers and advisers employed by member firms have responsibilities to their firms, their clients and to CIRO; they must deal fairly and honestly in their clients' interests, must comply with securities laws and CIRO's rules and must cooperate with CIRO in connection with its regulatory processes. This proceeding addresses these responsibilities.

¶ 2 The Notice of Hearing alleges that the respondent, Antony Kin San Chau, persuaded a client of his firm, RC, to lend \$250,000.00 to a third party in furtherance of his own interest, contrary to the Mutual Fund Dealer ("MFD") conflict of interest rule, MFD Rule 2.1.4 (Allegation No. 1), by lying to the client, contrary to MFD Rule 2.1.1 (Allegation No. 2). It also alleges that Mr. Chau did not cooperate with an investigation by staff of CIRO ("Staff") into his conduct in connection with the client's loan, contrary to MFD Rule 6.2.1.

¶ 3 Although he was properly served, Mr. Chau did not serve or file a reply, as required by MFD Rule 7.3.2, and did not attend at the first appearance hearing on May 21, 2024 (the "first appearance"). The hearing panel<sup>1</sup> then made an order (the "Order") setting a date for the hearing of this matter on the merits and ordering that the merits hearing be conducted without further notice to Mr. Chau, if he again failed to serve and file a reply or otherwise inform Staff of his intention to participate in the hearing. The Order also required that

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<sup>1</sup> The hearing panel at the first appearance was the chair of this hearing panel (the "Panel").

it be served on Mr. Chau<sup>2</sup>. Although the Order was served on Mr. Chau<sup>3</sup>, he did not attend at the merits hearing on July 23, 2024.

## II. PRELIMINARY ISSUES

### A. Confidentiality Order

¶ 4 At the request of counsel for CIRO (“Counsel”), relying on Rule 1.8 of the MFD Rules of Procedure (“ROP”), the Order also required that any personal information, as defined in CIRO’s Privacy Policy, contained in an exhibit filed in this proceeding be redacted by the CIRO Hearing Office before providing a copy of or access to the exhibit to a non-party who requests such access or production (the “Confidentiality Order”)<sup>4</sup>.

¶ 5 The Confidentiality Order was included to protect any personal information that was contained in documents filed prior to the hearing. Although similar orders to redact the identity of a respondent’s clients have been made in prior decisions<sup>5</sup>, the Confidentiality Order was not intended to continue beyond the hearing unless its continuance was justified in the merits hearing with respect to specific information. The Panel therefore asked Counsel to address this issue in the hearing, if any of the exhibits contained intimate financial or personal information.

¶ 6 MFD Rule 7.3.5 and Rule 1.8 of the ROP mandate the open hearing principle. All hearings must be open to the public, unless a hearing panel orders otherwise (Rule 7.3.5 and ROP 1.8(1)). Both Rules permit a panel to order that “all or part of a hearing be heard in the absence of the public” where it “is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing” and that “the desirability of avoiding [their] disclosure” outweighs the open hearing principle (Rule 7.3.5 and ROP 1.8(2)). If a hearing or part of a hearing is held in the absence of the public, “exhibits, documents and transcripts relating to that part of the hearing” are to be marked confidential, do not form part of the public record and access to them requires an order of the hearing panel (ROP 1.8(5)).

¶ 7 At the beginning of the hearing, the Panel invited Counsel to address the Confidentiality Order in light of ROP 1.8. Counsel responded that the Confidentiality Order does not affect the openness of the hearing, but applies only to the redaction of documents filed as exhibits to implement CIRO’s Privacy Policy. The Panel questioned whether it has authority to make such an order in light of the fact that ROP 1.8 only applies to exhibits and documents that relate to the part of a hearing that is conducted in the absence of the public.

¶ 8 The Panel asked Counsel to provide it with copies of CIRO’s Privacy Policy and identified issues that arise if it concludes that ROP 1.8 provides authority to make an order like the Confidentiality Order. It suggested that Counsel should identify any parts of the record for which redaction is requested and asked whether the standards in the Supreme Court of Canada’s recent decision concerning the Sherman Estate would be applicable.<sup>6</sup>

¶ 9 Counsel requested additional time to address these issues and offered to provide the Panel with additional submissions in writing. The Panel granted this request, with written submissions on the continuation of the confidential treatment of information contained in the exhibits to be submitted by August 12, 2024. The granting of this request was a factor in the Panel’s determination to reserve its decision pending receipt of written submissions. The Confidentiality Order continued in effect pending the Panel’s decision.

¶ 10 On August 6, 2024, the Panel was informed that Staff’s Supplementary Submissions and Supplementary

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<sup>2</sup> A copy of the Order is Appendix 1 to these reasons.

<sup>3</sup> Exhibit 1, Affidavit of Service of Terri Ash, sworn July 13, 2024.

<sup>4</sup> Order, Appendix 1, para. 4.

<sup>5</sup> See, e.g., *Re Lipovetsky*, 2013 LNCMFDA 43, para. 7 (confidentiality orders to protect the identities of respondent’s clients); *Re Lui*, 2012 LNCMFDA 59, para. 50(iv) (identity of non-parties).

<sup>6</sup> See *Sherman Estate v. Donovan*, 2021 SCC 25.

Book of Authorities were available on Case Center.<sup>7</sup> After reviewing them, the Panel asked Counsel to provide a list specifically identifying material in the record, that is, the specific words in or section of the record for which redaction was requested. The Panel asked that this list be filed as an exhibit so that paragraph 4 of the May 21 Order would apply to it pending the Panel's decision.

¶ 11 On August 23, 2024, CIRO's Hearing Office sent the Panel a document that listed the redactions identified by Staff. In essence, these redactions reflect Staff's request for the continuation of the Confidentiality Order based on CIRO's Privacy Policy. At the Panel's request, the hearing was reconvened on September 11, 2024 to provide Counsel with an opportunity to address issues raised in Staff's written Supplementary Submissions and any material identified in the requested list.

¶ 12 After considering Staff's Supplementary Submissions and Counsel's submissions in the reconvened hearing, the Panel has decided not to allow the Confidentiality Order to continue and to order redaction of the personal information specified in Schedule A to this Decision and Reasons. Although the continuation of the Confidentiality Order presented issues that had to be addressed by the Panel in this proceeding, the issue of confidentiality is not related to the merits of this proceeding against Mr. Chau. The Panel's reasons for its decision not to continue the Confidentiality Order, which are part of this Decision and Reasons, are therefore contained in Schedule A to these Reasons.

## B. Evidentiary Issues

¶ 13 MFD Rule 7.3.4 authorizes a hearing panel to accept the facts alleged in a notice of hearing as proved and impose sanctions, if the respondent does not serve a reply<sup>8</sup> or attend at the hearing specified in the notice. The Rules of Procedure address this authority specifically with respect to a failure to serve and file a reply in accordance with applicable requirements (ROP 8.4), a failure to attend the hearing specified in the notice (ROP 7.3) and a failure to attend the hearing on the merits (ROP 13.5) and make express a panel's implicit authority to accept the conclusions in a notice, as well as the facts alleged.

¶ 14 Mr. Chau did not serve a reply and did not appear at the hearing specified in the Notice of Hearing. As the Notice of Hearing identified this hearing as a first appearance before the Panel Chair, convened to address scheduling and to set a date for the hearing on the merits, Counsel did not ask the Panel to exercise its authority to accept the allegations and conclusions in the Notice. The Panel's Order, as requested, set a date for the merits hearing, provided that the hearing would proceed on that date, if Mr. Chau did not serve and file a reply and inform Staff of his intention to appear, and required that a copy of the Order be sent to Mr. Chau.<sup>9</sup>

¶ 15 Prior to the hearing, Staff filed affidavits sworn by RC, the client with whom Mr. Chau allegedly dealt, and by John Gallimore, CIRO's manager of enforcement investigations, who conducted the investigation relating to Mr. Chau's conduct, which affidavits with exhibits comprised over 600 pages.<sup>10</sup> As a result, the Panel asked Counsel to address the statements made in a recent panel decision, *Re Sadiq*, suggesting that such evidence may not be necessary.<sup>11</sup>

¶ 16 As the respondent in *Sadiq* did not file a reply and did not appear at the hearing, the *Sadiq* hearing panel considered whether in light of the rules described above there was "no need for further evidence"; because of the "explicit procedure" provided by these rules, the panel expressed its view that "the preferred, if not obligatory procedure was to apply Rule 7 and deem" the facts and conclusions in the notice of hearing as

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<sup>7</sup> Case Center is a service used by courts and CIRO for the deposit of documents relating to a proceeding that is conducted electronically.

<sup>8</sup> MFD Rule 7.3.2 and ROP 8.1 require a respondent to serve and file a reply within 20 days of service of a notice of hearing.

<sup>9</sup> Order, Appendix I, paras. 1-3.

<sup>10</sup> Affidavit of John Gallimore, sworn June 20, 2024, Exhibit 7 ("Gallimore Affidavit"); Affidavit of RC sworn May 31, 2024, Exhibit 8 ("RC Affidavit").

<sup>11</sup> See *Re Sadiq*, 2024 CIRO 48, paras. 15-22.

proved.<sup>12</sup> It said it would only admit such evidence if it cast doubt on the acceptance of the alleged facts and after reviewing the affidavits that were filed, concluded they did not.<sup>13</sup>

¶ 17 In this Panel's view, MFD Rule 7.3.4 and the procedural rules implementing it are neither exclusive nor mandatory. All of these rules say that a panel "may" accept the facts and conclusions in a notice of hearing as proved, but do not obligate it to do so. A panel's decision to exercise this authority is discretionary; depending on the circumstances and any additional evidence adduced by Staff, it may accept some or all of the facts and conclusions alleged in the notice of hearing.<sup>14</sup>

¶ 18 Hearing panels have long admitted evidence in these circumstances, both documentary and oral, to supplement the facts and conclusions alleged in a notice of hearing.<sup>15</sup> Such evidence, by providing additional context with respect to novel issues, may assist a panel in making its decision on the merits and determining appropriate sanctions.<sup>16</sup> Staff may file such evidence as a caution against a surprise appearance by the respondent and to ensure an adequate record in the unlikely event of appeal.<sup>17</sup>

¶ 19 Thus, subject to the panel's discretion concerning the exercise of its authority under CIRO's rules and the admissibility of evidence, CIRO counsel also have a discretion to determine the basis on which they wish to prove their case.<sup>18</sup> If counsel choose to adduce additional evidence, they run a risk that the panel will not accept factual allegations in the notice of hearing that are not supported by the additional evidence. In this case, Counsel adduced the affidavits of RC and Mr. Gallimore as the primary evidence to substantiate the facts, and asked the Panel to also accept the facts in the Notice of Hearing. The affidavits confirmed the allegations in the Notice, except in one instance.<sup>19</sup>

### III. FACTS

#### A. Background

##### 1. The Respondent

¶ 20 Mr. Chau was registered to sell mutual funds from 1995, when he was 32 years old, until 2021. From 2005 to 2009, he was the president of a mutual fund dealer. In September 2009, he formed TeamMax Investment Corp. ("TeamMax"), a mutual fund dealer and former member of the MFDA, of which he was the controlling shareholder, the sole director and an officer, mainly as the president and CEO, until January 29, 2021, the day after the MFDA approved a transfer of TeamMax's ownership. He also acted as TeamMax's CCO from 2010 to 2014 and sporadically in 2018 and 2019, as its UDP from 2010 until January 10, 2020 and as a branch manager from 2010 to March 1, 2021. He remained registered in Ontario and British Columbia as a dealing representative with TeamMax until March 1, 2021. Mr. Chau is no longer registered in the securities industry. TeamMax resigned from membership in the MFDA effective August 12, 2022.

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<sup>12</sup> *Ibid.*, paras. 16-17.

<sup>13</sup> *Ibid.*, paras. 19 and 21.

<sup>14</sup> See, e.g., *Re McCrae*, (2000) 23 OSCB 748, paras. 12-18 (IDAC).

<sup>15</sup> See e.g., *ibid.*; *Re Tonnies*, 2005 LNCMFDA 7, para. 9; *Re Breckenridge*, 2007 LNCMFDA 38, para. 19; *Re Chau*, 2024 CIRO 47, paras. 4-6. Even in *Sadiq*, the panel reviewed the affidavits and allowed counsel to summarize their contents; *Re Sadiq*, 2024 CIRO 48, paras. 21-22.

<sup>16</sup> See, e.g., *Re Gaunt*, 2013 LNCMFDA 63, para. 18.

<sup>17</sup> See, e.g., *Re Desgroseilliers*, 2018 LNCMFDA 172, para. 11.

<sup>18</sup> MFD Rule 7.3.4 and ROP 7.3 make consideration of the burden of proof unnecessary, as facts and conclusions in a notice that are accepted by the panel are deemed proved. If counsel choose to prove their case by affidavit or other additional evidence, they must satisfy the civil burden of proof on a balance of probabilities; see *F.H. v. McDougall*, [2008] 3 S.C.R. 41.

<sup>19</sup> The Panel did not accept the allegation in Notice of Hearing, para. 16, concerning Mr. Chau's knowledge because it was not confirmed in RC's affidavit; see below, para. 35.

¶ 21 While at TeamMax, Mr. Chau was also involved in various capacities with six other corporations of which he was a director or officer. One of these was TeamMax Financial Inc. (“TeamMax Financial”), of which he was the president and only director, and which he characterized in his registration documents as engaged in the sale of mortgage products.

## 2. Respondent’s Relationship with EF

¶ 22 In 2015, Mr. Chau met EF, who was the son-in-law of THT, a member of Mr. Chau’s cultural community and a client of TeamMax Financial. Based on EF’s representations, Mr. Chau gave \$100,000 to EF for investment in a transaction relating to parking spaces. These funds were repaid with interest.

¶ 23 Between 2016 and May 2018, Mr. Chau, personally and on behalf of clients, invested \$2,425,300 with EF.<sup>20</sup> All of these clients, but one, appear to have been clients with TeamMax Financial. One client, RC, was a client of Mr. Chau’s mutual fund dealer, TeamMax.

¶ 24 In 2016, Mr. Chau provided EF with \$350,000 obtained from one of his clients for purposes of another parking space investment. In May 2017, he had two clients wire to EF a total of \$310,000 relating to a purported property transfer. Later that month EF paid \$10,000 to Mr. Chau’s mother, but none of the remaining funds were returned.

¶ 25 In December 2017 and January 2018, in connection with another property purchase, Mr. Chau invested \$450,300, paid to EF and a corporation he identified, of which \$200,000 came from two of his clients. The following month, February 2018, Mr. Chau provided a draft for \$65,000 to EF, payable to a third party; EF said he needed these funds to pay a debt he owed to the third party.

¶ 26 By this time, Mr. Chau and his clients had given EF a total of \$1,175,300, \$315,300 of which was from Mr. Chau personally. Mr. Chau had no written agreement and no records of these payments, except for copies of the bank drafts for his personal contributions. The remaining funds appear to have been paid directly to EF by Mr. Chau’s clients. Apart from the \$10,000 paid to Mr. Chau’s mother, none of these funds had been repaid.

¶ 27 In March 2018, EF told Mr. Chau that he owed money to a “gang” and that if the gang were not paid, EF would be “exposed” and EF’s wife would be embarrassed. Although not identifying the “gang”, EF told Mr. Chau that because of his involvement with them, it would not be in Mr. Chau’s interest to litigate and that if Mr. Chau did go to court, he would never receive any of the principal of the funds he had invested with EF or a return on that investment.

¶ 28 On March 9, 2018, Mr. Chau induced RC to invest \$250,000, payable directly to EF,<sup>21</sup> to enable EF to repay the gang. In his affidavit, Mr. Chau said that he borrowed these funds from his clients.<sup>22</sup> In the same month, Mr. Chau provided EF with four more payments, totaling \$340,000, consisting of \$40,000 from a client and \$300,000 of his own and, possibly, his mother’s funds.<sup>23</sup>

¶ 29 In April 2018, Mr. Chau gave EF an additional \$250,000 of his own, and possibly his mother’s funds in

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<sup>20</sup> The facts relating to Mr. Chau’s dealings with EF are contained in the Gallimore Affidavit (Exhibit 7) and in an affidavit sworn by Mr. Chau on March 10, 2020 in a civil action against EF (“Chau Affidavit”); Mr. Chau’s Affidavit is Exhibit “B” to the Gallimore Affidavit.

The Gallimore Affidavit, para. 8(r) states that funds totaling \$2,385,300 were provided to EF by Mr. Chau. This amount is derived from the Chau Affidavit, para. 235, which contains an itemized list of the funds provided to EF from 2016 to 2018. The list, however, omits a \$40,000 draft from RC which Mr. Chau gave to EF on March 9, 2018. The amount in the text includes this \$40,000.

<sup>21</sup> This proceeding is based on this transaction, which is described more fully in section III.B, below.

<sup>22</sup> Chau Affidavit, para. 93

<sup>23</sup> Mr. Chau swore in his affidavit that some of the funds he gave EF came from his mother. It is not clear whether his mother’s funds were included in these or earlier or later payments made to EF by Mr. Chau. His mother’s contribution may have been substantial, as in July 2018, EF gave Mr. Chau a cheque for \$245,000 payable to his mother, when EF’s account did not have sufficient funds to honour it; Chau Affidavit, para. 185.

six payments, five of which (\$200,000) were requested by EF in connection with the purported closing of the property transaction from December 2017 and one of which (\$50,000) was to allow EF to pay a purported debt to Revenue Canada. In May 2018, Mr. Chau gave EF a further \$420,000 for the closing of the property purchase in five payments, \$90,000 of which were provided by clients and \$100,000 of which came from Mr. Chau's corporation, TeamMax Financial.

¶ 30 Mr. Chau sought repayment from EF over the next eighteen months without success. In February 2020, he and TeamMax Financial brought an action against EF for recovery of the funds; in connection with this action, he swore the Chau Affidavit in which he outlined various misrepresentations that induced him to provide the funds to EF. On the basis of the loans made in March 2018 and thereafter, it is reasonable to infer that when he advanced the funds, he believed that all the funds he and his clients gave EF would be repaid.

## **B. Loan from RC**

¶ 31 In February 2018, RC and her husband, having sold their home the previous month, became clients of TeamMax and invested approximately \$450,000. They met Mr. Chau when they met with their TeamMax advisers to open their accounts. RC knew that Mr. Chau owned TeamMax and she was aware of his reputation in the Chinese community. Following the meeting, Mr. Chau joined RC, her husband and their TeamMax advisers for dinner.

¶ 32 On March 9, 2018, Mr. Chau telephoned RC and asked her to make a personal loan of \$300,000 to a long-time client of his, who required funds to close a property purchase. Mr. Chau told her that this client had over \$1,000,000 in assets with him, that the client's assets had been frozen and that Mr. Chau was trying to help him. He told RC that the loan was needed for only four or five days, that she would receive interest of ten per cent and that he would himself guarantee the loan.<sup>24</sup>

¶ 33 RC obtained her husband's approval. In her affidavit, she attested that she and her husband believed they could trust Mr. Chau based on his reputation in their cultural community and his ownership of TeamMax, but they decided they could only lend \$250,000. RC so informed Mr. Chau, who asked her to provide a bank draft payable to EF the same day because of EF's urgent need for the funds.

¶ 34 RC obtained two bank drafts payable to EF from different banks, one for \$40,000 and the other for \$210,000. The funds for the first draft came from a line of credit and a GIC that she redeemed; the larger amount was withdrawn from a savings account, supplemented by \$29,000 borrowed from two lines of credit. She gave these bank drafts to Mr. Chau the same day; they met in her bank's parking lot. RC wrote on copies of each draft that the money order was received from her by Mr. Chau "being personal loan to" EF and had Mr. Chau sign them.

¶ 35 Although the Notice of Hearing alleges that she told Mr. Chau that she would have to "borrow against a line of credit",<sup>25</sup> this is not confirmed in the RC Affidavit. Mr. Chau's knowledge of this information when he obtained the loan for EF from RC would be a significant aggravating factor in consideration of an appropriate sanction. In light of its potential importance and in view of the fact that the RC Affidavit does not say that she told this to Mr. Chau, the Panel determined not to accept this allegation as having been proved.

¶ 36 Mr. Chau gave the drafts to EF the same day. In his affidavit, he said he borrowed these funds from his clients. He received a handwritten promissory note from EF promising to repay the \$250,000 to RC and her husband by March 16, 2018, one week later. Mr. Chau did not give this note or any other documentation to RC, but told her on March 13, 2018, that he would prepare a loan agreement to be signed by EF by March 16, 2018.

¶ 37 On March 16, 2018, EF gave Mr. Chau another handwritten promissory note to extend the date for repayment of the \$250,000 loan to April 30, 2018. This note promised to repay RC the \$250,000 plus interest of

<sup>24</sup> The Notice of Hearing and the RC Affidavit say that Mr. Chau told RC that she "would receive" interest of ten per cent, but do not specify a period for the calculation; Notice of Hearing, para. 13(c); RC Affidavit, para. 4. The statement of claim in an action subsequently brought by RC and her husband against Mr. Chau alleges that RC was to receive ten per cent interest, that is, \$25,000, when the loan was repaid; Exhibit "T" to RC Affidavit, paras. 9(iii) and 12.

<sup>25</sup> Notice of Hearing, para. 16.

twenty per cent. Nevertheless, on March 17, 2018, Mr. Chau told RC that the loan would be repaid with interest by March 19, 2018. He did not give her a copy of EF's second promissory note until May 17, 2018.

¶ 38 The Chau Affidavit does not say that EF was a client of TeamMax or of Mr. Chau and there is no evidence that he was. Needless to say, RC's loan has not been repaid despite RC's assiduous efforts to obtain payment from March 2018 until January 2023, when she initiated an action in the Ontario Superior Court of Justice against Mr. Chau and TeamMax Financial.

¶ 39 As relevant here, in July 2018, Mr. Chau gave RC a cheque for \$100,000 from EF, but told her not to deposit it, as there were not sufficient funds in EF's account, which RC confirmed. She also attests that Mr. Chau asked her not to disclose the loan to anyone "because it would get him into trouble."<sup>26</sup>

¶ 40 On September 27, 2019, at her insistence, Mr. Chau signed a promissory note that RC had prepared based on a template she found online. The note characterized Mr. Chau as a "borrower" and required payment of the \$250,000 plus interest of ten per cent by March 9, 2019. Mr. Chau also signed a second document promising to pay RC \$5,000 each month from October 2019 to December 2020 toward payment of the \$250,000 with interest at reasonable rates from time to time. Mr. Chau had previously paid \$18,000 to RC, three payments of \$5,000 and one of \$3,000. After signing the agreement, he made two further payments of \$5,000, in October and December 2019, bringing the total repayment to \$28,000.

¶ 41 Mr. Chau signed two further promissory notes. On August 9, 2020, he promised to pay \$21,000 plus interest by September 30, 2020.<sup>27</sup> In an email to Mr. Chau's lawyer the following day, RC said this note was "to assure our loan in the amount of \$250,000 which was requested and borrowed by Antony Chau (on behalf of [EF]) dated March 9, 2018."<sup>28</sup>

¶ 42 On November 3, 2020, RC met Mr. Chau and his lawyer in his action against EF and received an agreement, signed by Mr. Chau and witnessed by his lawyer, stating that RC was Mr. Chau's creditor and promising to pay her \$260,000 (\$225,000 + \$35,000) in six dated instalments ending on June 15, 2021. The note contained a handwritten notation stating that after receiving payment from EF, Mr. Chau would "try his best" to pay \$60,915.38 with respect to interest and expenses incurred by RC as a result of the loan.<sup>29</sup>

¶ 43 The same day, RC signed a third party release in connection with a settlement being negotiated between Mr. Chau and EF, in which RC agreed to release EF upon payment of an agreed amount by EF to Mr. Chau to settle Mr. Chau's action against him. The preamble to the release stated that RC had paid money to EF "at the direction and/or recommendation" of Mr. Chau.<sup>30</sup>

¶ 44 RC has not received payment for the loan other than the \$28,000 in instalments. In addition to the costs for use of the lines of credit, she attests that she and her family have had to sell their investments and use lines of credit to pay their living expenses, incurring withdrawal fees on their investments and interest costs on their lines of credit, that they have been unable to purchase a home, and that she has suffered "an enormous amount of stress and anxiety".<sup>31</sup>

### **C. Failure to Cooperate with CIRO Staff Investigation<sup>32</sup>**

¶ 45 On September 29, 2022, after receiving a complaint from RC, Staff opened an investigation into Mr. Chau's conduct and sent a letter to him outlining the complaint and requesting a written statement and confirmation concerning his activities with his clients and EF by October 24, 2022.

<sup>26</sup> RC Affidavit, para. 16.

<sup>27</sup> The August 9, 2020 note was in the same form as the earlier promissory note, characterizing Mr. Chau as the borrower.

<sup>28</sup> RC Email, August 10, 2020, Exhibit "L" to RC Affidavit.

<sup>29</sup> Exhibit "O" to RC Affidavit.

<sup>30</sup> Exhibit "N" to RC Affidavit.

<sup>31</sup> RC Affidavit, para. 34.

<sup>32</sup> The findings in this section are based on the Gallimore Affidavit, paras. 15-44.

¶ 46 On October 24, 2022, Mr. Chau requested an extension into 2023 for health reasons.<sup>33</sup> Staff offered a two-week extension to November 9, 2022, and said that if he could not meet that deadline, he could provide a doctor's note by October 28, 2022. On November 9, 2022, Mr. Chau sent Staff a text message with a picture of a doctor's note, saying that he had vertigo and should rest at home for two weeks. Staff replied the same day asking for an oral recorded statement by November 11, 2022, to be supplemented with a written statement by November 23, 2022.

¶ 47 Mr. Chau did not provide a recorded statement. On November 24, 2022, he sent a text message saying he had to stay in bed for health reasons that also limited his access to any electronic devices and requested an extension until his health improved.

¶ 48 On December 5, 2022, Staff agreed to an extension to December 9, 2022, to which Mr. Chau did not respond. On December 16, 2022, in a letter sent by email, Staff repeated their initial request for a statement and information, requested that Mr. Chau provide a date in February 2023 to attend for an interview and said that if he did not respond by January 6, 2023, they would consider initiating a disciplinary proceeding for his failure to cooperate. Mr. Chau did not respond by January 6, 2023.

¶ 49 In a letter dated January 17, 2023, Staff repeated their requests and informed Mr. Chau that he was required to provide the requested statement and documents immediately. It also required him to attend an interview by video on March 16, 2023, and to confirm by January 31, 2023 that he would do so. A process server attempted to serve this letter on January 20, 24 and 25, 2023. On January 30, 2023, Staff sent the letter by email and text. On February 6, 2023, the process server again attempted to serve the letter and posted the letter to the door at Mr. Chau's address, when no one responded. Mr. Chau did not respond to this letter.

¶ 50 Mr. Gallimore sent emails and text messages on March 2 and 13, 2023, reminding Mr. Chau of the March 16, 2023 interview. On March 15, 2023, he received a text message from Mr. Chau saying he would not attend the next day because his medical and mental conditions were "not in good order" and requesting that the interview be rescheduled in two or three months. Mr. Chau did not attend the following day.

¶ 51 On March 17, 2023, Mr. Gallimore sent a letter by email asking for detailed medical evidence of Mr. Chau's medical condition and for the previously requested written statement and documents. The letter also expressed a willingness to consider reasonable accommodation for the timing and conduct of Mr. Chau's interview. It requested a response by March 22, 2023.

¶ 52 On March 23, 2023, Mr. Gallimore received a text message from Mr. Chau saying that Mr. Chau was unable to access any email and had very limited access to electronic devices. Mr. Gallimore responded in a text message the same day, requiring Mr. Chau to provide by the following day a time on March 28 or 30, 2023 for a phone call with Staff to discuss the requested information and his current residential address. The message said that Staff would proceed with a disciplinary proceeding if he did not respond. Mr. Chau did not respond on March 24, 2023.

¶ 53 On April 5, 2023, Mr. Gallimore sent another letter by process server reiterating Staff's previous requests and stating that this was a final opportunity for Mr. Chau to respond. It specifically required that he provide the previously requested medical evidence and written statements and documents by April 13, 2023. The process server attempted to serve this letter at Mr. Chau's home address on April 5, 6 and 10, 2023, without success. On April 10, 2023, the process server posted the documents to the door of Mr. Chau's house. A response from Mr. Chau was not received by Staff.

¶ 54 Mr. Gallimore attests that because of Mr. Chau's failure to cooperate, Staff has been unable to determine the full extent and nature of Mr. Chau's conduct, including whether he borrowed funds from or facilitated loans to EF by other clients of TeamMax.

#### **IV. MR. CHAU'S CONTRAVENTIONS**

¶ 55 Although Mr. Chau has not been a securities registrant since 2021 and is no longer an approved person,

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<sup>33</sup> In a previous proceeding against him, which was resolved by settlement, Mr. Chau had been granted two adjournments for medical reasons; see *Re Chau*, 2022 CanLII 50806 (MFDA), para. 3.

he remains subject to CIRO's investigation and disciplinary jurisdiction.<sup>34</sup> The Notice of Hearing alleges (1) that in soliciting and arranging for RC to lend money to EF, he contravened the MFDA's conflict of interest rule, MFD Rule 2.1.4,<sup>35</sup> (2) that by lying to RC to obtain the loan, he contravened the standards in MFD Rule 2.1.1 that required him to deal fairly, honestly and in good faith with TeamMax's clients, and (3) that he failed to cooperate with Staff's investigation into his conduct, contrary to MFD Rule 6.2.1.

¶ 56 These allegations have been proved on the basis that the Panel accepts the facts and conclusions in the Notice of Hearing.<sup>36</sup> They have also been proved on a balance of probabilities; on the basis of the affidavit evidence that was filed, there is no doubt that Mr. Chau contravened these rules, as alleged.<sup>37</sup>

#### **A. The Loan Transaction**

¶ 57 Rule 2.1.1 requires each member of CIRO and each approved person of a member to deal fairly, honestly and in good faith with the member's clients and to observe high standards of ethics and conduct in the transaction of business.

¶ 58 Rule 2.1.4 applies these standards to conflicts of interest and mandates a process for dealing with actual and potential conflicts of interest by members and their approved persons. It requires an approved person who becomes aware of a conflict or potential conflict to disclose the conflict to the member and obligates them to address it through the exercise of reasonable business judgment in the best interests of the client and to disclose it to the client in writing, as the member directs, before proceeding with the transaction that gives rise to it.

¶ 59 The application of these rules with respect to personal financial dealings with clients was explained in an MFDA staff notice (the "Staff Notice") published in 2005.<sup>38</sup> The Staff Notice said that borrowing from clients raises a significant direct conflict that is almost always impossible to resolve in favour of a client. It also identified other circumstances raising such conflicts, in which approved persons had involved clients in private investment schemes, including co-investment with clients, that should be prohibited in the exercise of reasonable business judgment. Counsel argued that Mr. Chau's arranging the loan from RC was equivalent to his borrowing the funds from her to benefit his position with EF. It can also be characterized, however, as a form of co-investment. In either case, the Staff Notice stated that a member should not allow, and an approved person should not enter, transactions of this nature.

¶ 60 Although the approved person is usually the client's advisor, this need not be the case. Any approved person who deals with a client of his or her firm is subject to these rules. This is clear in Rule 2.1.1, which refers to dealing with the member's clients, and in the structure of Rule 2.1.4, which requires an approved person to address a conflict first with the member and to make disclosure to "the client" as the member directs.

¶ 61 As TeamMax's director and UDP, Mr. Chau was an approved person subject to these rules.<sup>39</sup> Mr. Chau's responsibilities as UDP required him to supervise the firm's activities to ensure compliance with CIRO's rules and to promote such compliance by TeamMax and its approved persons.<sup>40</sup>

¶ 62 In inducing RC to lend \$250,000 to EF, Mr. Chau arranged a transaction involving an obvious conflict of

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<sup>34</sup> CIRO Amended and Restated By-Law No. 1, s. 14.6(1); MFD Rule 1A, Transitional Provisions (1) and (3); MFD Rule 7.4.1.4.

<sup>35</sup> MFD Rule 2.1.4 was amended in June 2021, after the events relating to RC's loan. Accordingly, the Panel reviewed the loan and Mr. Chau's conduct in light of provisions of MFD Rule 2.1.4 that applied in 2018; see MFD Rule 1A, Transitional Provision (1)(iv).

<sup>36</sup> Except for paragraph 16 of the Notice; see paragraph 35, above.

<sup>37</sup> See note 18, above.

<sup>38</sup> See MFDA Staff Notice: Personal Financial Dealings with Clients, MSN-0047, October 3, 2005.

<sup>39</sup> See MFD Rule 1A, Definitions, "Approved Person".

<sup>40</sup> MFD Rule 2.5.2(b)

interest with a client of TeamMax, which he knew or should have known was highly risky, without disclosing the conflict to TeamMax's chief compliance officer.<sup>41</sup> More significantly, he did not disclose to the client, RC, the risks of the loan or the conflict between his and RC's interest, namely, that the loan was required to enable EF to pay the "gang" in order to protect the possibility of Mr. Chau's being repaid the \$1,165,300 that EF owed him and his clients.<sup>42</sup> Instead, he misrepresented the purpose and risk of the loan by falsely telling RC that the loan was to enable EF to close a property purchase, that EF's funds were temporarily frozen, that EF was his client with assets of over \$1,000,000 under his management and that the loan would be repaid, with interest, within a week.

¶ 63 Mr. Chau's personal interest in obtaining RC's loan is highlighted by his personally guaranteeing its repayment. In addition, the fact that four days after the loan, Mr. Chau told RC that he would prepare a loan agreement by March 16, 2018, by which time the loan should have been repaid, and the fact that on March 17 he said that she would be repaid by March 19, despite having received the second promissory note with an April 30, 2018 repayment date, suggest that Mr. Chau's misrepresentations were conscious and motivated by his conflict of interest.<sup>43</sup>

¶ 64 Mr. Chau's conduct with respect to RC and her loan to EF thus clearly contravened MFD Rule 2.1.4. It also contravened MFD Rule 2.1.1, as a failure to address a conflict of this nature without full disclosure to the client who enters the transaction is not dealing fairly and in good faith with the client. In the circumstances, inducing RC to make the loan to EF would not have involved an exercise of reasonable business judgment by Mr. Chau, even if he had fully disclosed his prior dealings with EF and the details of EF's request for additional funds to enable him to pay the "gang".

¶ 65 Mr. Chau also failed to deal honestly with RC. Indeed, although Mr. Chau's misconduct grew out of a single transaction with RC, his misrepresentations to her were themselves a contravention of MFD Rule 2.1.1.

## **B. Failure to Cooperate**

¶ 66 Self-regulatory organizations have historically required their members to cooperate in their regulatory investigations to enable them to ensure compliance by members with their rules.<sup>44</sup> These organizations did not have statutory authority to compel members and their employees to produce documents or to be examined.<sup>45</sup> Powers of compulsion are essential to the ability of a self-regulatory organization to conduct investigations and to discipline members in order to fulfill the obligations accompanying their recognition by securities regulators.<sup>46</sup>

¶ 67 MFD Rule 6.1 implements these obligations by requiring CIRO to investigate the conduct, business or affairs of a member or approved person in connection with their compliance with its rules. To this end, MFD Rule 6.2.1 requires members and approved persons, where so requested for the purpose of an investigation, to submit a report, produce or provide copies of documents, and to attend for an examination and answer questions under oath.

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<sup>41</sup> In view of Mr. Chau's ownership of TeamMax and his position as UDP, it might be argued that the member, TeamMax, was aware of the conflict, but TeamMax did not address the conflict or disclose it to RC. In the circumstances, the appropriate process would have been to disclose the transaction and conflict to TeamMax's CCO and address how to deal with it as a firm with the CCO. Had he done so, it is likely that TeamMax's CCO would have told him not to proceed with the loan transaction.

<sup>42</sup> Assuming the \$10,000 that EF paid to Mr. Chau's mother related to these loans.

<sup>43</sup> See paragraphs 36 and 37, above.

<sup>44</sup> See, e.g., J. R. Dos Passos, *A Treatise on the Law of Stock-Brokers and Stock-Exchanges* (1882; reprinted 1968), p. 852 (London Stock Exchange, Rule 14); W.H. Black, *The Law of Stock Exchanges, Stockbrokers and Customers* (1940), p. 820 (NYSE, s. 9).

<sup>45</sup> See, e.g., *Re Vitch*, 2011 LNCMFDA 63, para. 55. CIRO now has such statutory authority to conduct investigations in some provinces; see, e.g., *Securities Act*, R.S.A. 2000, c. S-4, s. 69.1.

<sup>46</sup> See e.g., *Securities Act*, R.S.O. 1990, c. S.5., as amended, s. 21.1(3); and see CIRO Recognition Order, May 11, 2023, Preamble, para. 4; Appendix A, s. 15(2); and Schedule 1, ss. 1(a)-(c), 8(1) and 10(1)(b)(i)-(iii), (ix) and (xii).

¶ 68 A failure to cooperate in an investigation thus undermines CIRO's ability to fulfill its core regulatory obligations and functions. Mr. Chau avoided Staff's requests for a statement and other information and failed to attend for the examination required by Staff. Although he claimed an inability to comply because of his health, he failed to substantiate this claim. Even where a respondent has a known history of medical difficulties, as Mr. Chau did, he must demonstrate that his current medical condition warrants accommodation by Staff in their efforts to conduct a regulatory investigation.

¶ 69 The doctor's note Mr. Chau sent was general, stating only that he had vertigo and should rest at home for two weeks. His delays extended well beyond two weeks, and he did not provide the details and explanation requested by Staff to justify the accommodation they were willing to consider. Bald assertions of medical issues, without full, substantiated evidence and an explanation of how they render an individual incapable of responding to reasonable regulatory requests cannot justify a failure to provide information or attend a required examination. In failing to respond to Staff's requests and to attend the scheduled examination, Mr. Chau contravened MFD Rule 6.2.1.

## V. SANCTIONS

### A. Sanction Principles

¶ 70 The purpose of CIRO disciplinary proceedings is to further the public interest by protecting investors, enhancing market integrity and improving its members' business standards.<sup>47</sup> MFD Rule 7.4.1.1 authorizes hearing panels to impose any one or a combination of specified sanctions if a person fails to comply with any of its rules, including a reprimand, a fine of up to \$5,000,000 or if greater, three times the profit obtained or loss avoided by a person as a result of a contravention, and suspending or prohibiting an approved person from conducting securities related business in any capacity.

¶ 71 An appropriate sanction will reflect consideration of both specific and general deterrence; it will be designed to prevent future improper conduct by the respondent and to deter others from engaging in similar misconduct and, concomitantly, encourage future compliance.<sup>48</sup> While the primary focus is the respondent's conduct and the facts relating to the contravention, the weight given to general deterrence may vary so long as the overall sanctions imposed are, together, proportionate to the respondent's conduct and circumstances.<sup>49</sup> Proportionality is determined by sanctions that are consistent with industry expectations as reflected in CIRO's Sanction Guidelines and prior decisions, recognizing that prior decisions are of assistance only to the extent that they are based on similar facts.<sup>50</sup>

### B. Sanction Factors

¶ 72 Factors influencing the determination of an appropriate sanction include the respondent's experience and position in the industry, the nature and seriousness of the contravention, whether the convention was intentional or reckless, the benefits received by the respondent from it, the respondent's prior disciplinary history, and the harm to the client.<sup>51</sup> These factors are best addressed with respect to the sanction to be imposed on Mr. Chau. One factor, however, requires further discussion.

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<sup>47</sup> See CIRO Sanction Guidelines, p. 3 (Sanction Principles, para. 1) ("Sanction Guidelines"). Although CIRO's Sanction Guidelines came into effect on February 1, 2024, after the events that gave rise to this proceeding, they continue the principles in the guidelines that applied in 2018, which themselves reflected prior self-regulatory decisions; see, e.g., *Re Mills*, 2001 IDACD No. 7, (2001) 24 OSCB 4146 (IDAC).

<sup>48</sup> Sanction Guidelines, p. 3 (Sanction Principles, para. 1).

<sup>49</sup> *Ibid*; and see, e.g., *Re Cartaway Resources Corp.*, 2004 SCC 26, paras. 60-64; *Walton v. Alberta Securities Commission*, 2014 ABCA 273, paras. 154, 156, 164-166, leave to appeal denied 2015 CanLII 14759 (SCC); see also *Re Mills*, 2001 IDACD No. 7, (2001) 24 OSCB 4146, p. 4147.

<sup>50</sup> See *Re Mills*, *ibid.*, OSCB, p. 4147.

<sup>51</sup> See Sanction Guidelines, pp. 5-6 (key factors in determining sanctions); and see, e.g., *Re Tonnies*, 2005 LNCMFDA 7, para. 48.

## 1. Mr. Chau's Previous Discipline

¶ 73 Mr. Chau's history of discipline is significant. In 2014, a compliance proceeding was brought against TeamMax and Mr. Chau based on their failure to fulfil their compliance, supervisory and other obligations and their repeated failure to respond adequately to Staff's requests for information and documents. Mr. Chau consented to an order imposing compliance obligations on TeamMax and supervisory obligations on him as TeamMax's UDP to ensure compliance with the order. The order also prohibited Mr. Chau's registration as CCO of TeamMax, without notice to Staff.<sup>52</sup>

¶ 74 In 2022, in a settlement agreement with Staff, Mr. Chau admitted that beginning in October 2016, he failed as UDP to ensure TeamMax's compliance with the 2014 order and that in 2016 and 2017, he failed to supervise the recording of know-your-client information by an approved person, despite recommendations from TeamMax's CCO and the approved person's prior history of failures to record KYC information with respect to the 2014 order. He consented to an order prohibiting him from being an officer, director or supervisory employee of a member of the MFDA for five years, expressly including acting as UDP, CCO, branch manager or a compliance officer. He also agreed to pay a fine of \$20,000 and costs.<sup>53</sup> Mr. Chau agreed to this order after he ceased to be registered in any capacity.<sup>54</sup>

¶ 75 In a proceeding earlier this year,<sup>55</sup> in which Mr. Chau did not serve a reply or attend at the hearing, the hearing panel found that he sold his shares in TeamMax in December 2020, and at the same time entered into a separate agreement with the purchaser under which Mr. Chau retained effective control over the operations of TeamMax and its adviser network. Mr. Chau directed the purchaser not to disclose this agreement when the purchaser sought MFDA approval of the transfer of ownership. The MFDA approved the transfer in January 2021 and learned of this agreement only in October 2021, after Mr. Chau brought an action against the purchaser for breach of the secret agreement. The hearing panel permanently prohibited Mr. Chau from conducting any securities related business for a mutual fund dealer member of CIRO and imposed a fine of \$65,000.

## C. Sanctions

¶ 76 Based on the seriousness of Mr. Chau's contraventions, his disciplinary history and the harm to RC, Counsel requested that Mr. Chau (1) be permanently prohibited from conducting any securities related business for any member of CIRO and (2) that he be required to pay a fine of \$347,000 comprised of (a) \$222,000, that is, \$250,000 less the \$28,000 he paid RC, as disgorgement of the amount obtained from the loan transaction with RC, (b) plus \$50,000 for the contravention of MFD Rules 2.1.1 and 2.1.4, and (c) a fine of \$75,000 for his failure to cooperate in Staff's investigation.

### 1. Prohibition

¶ 77 The seriousness of Mr. Chau's contravention of MFD Rules 2.1.1 and 2.1.4 in inducing RC to loan \$250,000 to EF cannot be overstated. He contacted RC and solicited the loan in order to preserve the potential recovery of loans of over \$1,000,000 that he understood would be lost if EF did not pay the "gang". As the UDP of TeamMax, with over twenty years as a registrant, he should have been aware of his obligations to avoid such conflicts, especially in light of the industry guidance advising against personal financial dealings with clients.<sup>56</sup> Even if he believed that RC would be repaid with substantial interest, as he likely did, he should not have solicited the loan from RC.

¶ 78 Instead, he misrepresented all aspects of the loan, except its amount and his urgent need for it. He presented EF as a client with substantial assets, lied about the purpose of the loan, and characterized it as a short-term loan, thus presenting it as a secure transaction with an attractive return, one he was prepared to

<sup>52</sup> Gallimore Affidavit, para. 47 and Exhibit "CC".

<sup>53</sup> *Ibid.*, para. 48 and Exhibit "DD"; see also *Re Chau*, 2022 CanLII 50806 (MFDA) (settlement reasons).

<sup>54</sup> Mr. Chau's registration ended on March 1, 2021; see paragraph 20 above.

<sup>55</sup> *Re Chau*, 2024 CIRO 47; Gallimore Affidavit, para. 49 and Exhibit "EE".

<sup>56</sup> See (MSN-0047) paragraphs 58 and 59, above.

guarantee personally.

¶ 79 Mr. Chau’s ability to persuade RC to provide \$250,000, without a written agreement, payable to a person she did not know, on the same day the loan was requested, when she had to cash in a GIC and draw on lines of credit to provide the funds, was based on her trust in him as the owner of TeamMax and a person of repute in their cultural community. Mr. Chau abused this trust in inducing RC to enter this transaction. He also abused his position as a registrant in the securities industry in asking RC not to disclose the loan to others. The latter request demonstrates his awareness of the impropriety of the transaction. His conduct with respect to RC is consistent with the disregard for MFDA rules and orders and his supervisory and ethical responsibilities reflected in his disciplinary history. In light of these factors and the harm to RC, financially and in its impact on her living circumstances,<sup>57</sup> the Panel is of the view that Mr. Chau should be prohibited from employment in the securities industry.

¶ 80 This conclusion is reinforced by his failure to cooperate in Staff’s investigation. This contravention also warrants prohibition. In view of the importance of cooperation by approved persons to CIRO’s ability to fulfill its regulatory role, a prohibition is invariably imposed for a contravention of MFD Rule 6.2.1.<sup>58</sup>

¶ 81 Mr. Chau was permanently prohibited from conducting securities related business in a proceeding earlier this year.<sup>59</sup> Because the existing prohibition applies only to members of CIRO who are mutual funds dealers, Counsel requested that the Panel extend the prohibition to members who are securities dealers, as well. As authorized by MFD Rule 7.4.1.1(e), the Panel will make an order permanently prohibiting Mr. Chau from conducting securities related business for any member of CIRO.

¶ 82 Rule 8210(1)(ix) of CIRO’s Investment Dealer and Partially Consolidated Rules (“IDPC”) authorizes a hearing panel to impose a permanent bar to employment in any capacity by a person subject to CIRO’s jurisdiction. Because “securities related business” is defined in the MFD Rules as limited to business or activity which constitutes trading or advising in securities under securities legislation, the Panel does not have authority under MFD Rule 7.4.1.1 to make such an order.<sup>60</sup> Had it authority to prohibit Mr. Chau from being employed in any capacity by a member of CIRO, the Panel would have made a more comprehensive prohibition order of this nature.

## 2. Fines

¶ 83 As Counsel said in his written submissions, a permanent prohibition is “the ultimate specific deterrent”. Nevertheless, prohibition alone may not fully address specific or general deterrence. A fine may also be an appropriate sanction for a serious contravention that reflects a clear disregard of professional responsibilities or from which contravention the respondent obtained a personal benefit. Although such a fine has been explained in terms of general deterrence when it accompanied a prohibition order,<sup>61</sup> as a matter of principle both specific and general deterrence may warrant a fine in these circumstances, especially if the respondent obtained a financial benefit from the contravention.<sup>62</sup> Multiple sanctions of this nature were consistently imposed in ten cited precedents that involved personal financial dealings with clients.<sup>63</sup> In the Panel’s view, a fine is warranted

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<sup>57</sup> See paragraph 44, above.

<sup>58</sup> See, e.g., *Re Armani*, 2017 LNCMFDA 185; *Re Hylton*, 2018 LNCMFDA 254; *Re Chow*, 2022 LNCMFDA 9; *Re Cudmore*, 2018 LNCMFDA 177.

<sup>59</sup> *Re Chau*, 2024 CIRO 47; see paragraph 75, above.

<sup>60</sup> MFD Rule 1A, Definitions, “securities related business”; Rule 7.4.1.1(c)-(g) authorize sanctions limiting an approved person’s authority to “conduct securities related business”.

<sup>61</sup> See, e.g., *Re Chau*, 2024 CIRO 47, para. 22(g).

<sup>62</sup> See, e.g., *Re Mutual Fund Dealers Association*, 2021 LNONOSC 400, para. 32.

<sup>63</sup> See, e.g., *Re Nunweiler*, 2012 LNCMFDA 46; *Re Lui*, 2012 LNCMFDA 59; *Re Lipovetsky*, 2013 LNCMFDA 43; *Re Latour*, 2016 LNCMFDA 180; *Re Chapman*, 2021 LNCMFDA 99; *Re Boldt*, 2017 LNCMFDA 26. All of these cases, except *Lui*, also involved a failure to cooperate.

in this case, as well.

**(a) The Loan Transaction**

¶ 84 Unlike CIRO’s investment dealer rules,<sup>64</sup> MFD Rule 7.4.1.1 does not expressly authorize disgorgement of the benefits obtained by an approved person as a result of a contravention as a separate sanction independent of a fine. Nevertheless, it has long been recognized that Rule 7.4.1.1 and its predecessors, by authorizing a fine up to three times the profit made or loss avoided by a respondent, contemplates that a fine will reflect the benefits obtained as a result of a contravention.<sup>65</sup> A basic principle in CIRO’s Sanction Guidelines is that a wrongdoer should not benefit from his or her wrongdoing; the Sanction Guidelines state, “where the respondent benefitted financially as a result of the misconduct, the sanction should require disgorgement of some or all of any amounts obtained ... directly or indirectly, as a result of the contravention” in order to remove any incentive to contravene its rules.<sup>66</sup> Indeed, disgorgement of financial benefits should ordinarily set the minimum level of a fine.

¶ 85 Relying on this principle, Counsel argued vigorously that Mr. Chau should be fined \$272,000, comprised of the \$222,000 that RC was not repaid, plus an additional \$50,000. He argued that RC’s loan benefitted Mr. Chau and should be treated as if he had borrowed the funds, himself, and then lent them to EF. In Counsel’s submission, Mr. Chau should not be allowed to benefit because he had RC pay the \$250,000 directly to EF. The additional \$50,000, in his submission, is necessary to ensure that the fine is a true deterrent.

¶ 86 The Panel agrees that a fine should exceed the amount of the financial benefit that a respondent is required to disgorge. As stated in *Re Shields*:

The deterrent effect of disgorgement is necessarily limited, as depriving a respondent of the benefits obtained as a result of a contravention leaves the respondent in a “break-even” position. Disgorgement alone, therefore, may provide weak deterrence specifically and weaker deterrence generally because detection of a contravention is less than certain. For this reason, prevention of similar future conduct, especially by persons other than the respondent, usually requires a fine in addition to disgorgement.<sup>67</sup>

¶ 87 The Panel has some difficulty, however, in treating RC’s loan to EF as a financial benefit obtained by Mr. Chau. The promissory notes that he signed as “borrower” were templates that RC obtained from the internet. Although Mr. Chau described himself in his affidavit as having borrowed the \$250,000 from RC, this description does not reflect the evidence concerning RC’s loan transaction.

¶ 88 On the evidence, Mr. Chau’s purpose in obtaining the loan to EF, and in lending EF additional personal funds of \$340,000, was to ensure repayment of previous loans made to EF.<sup>68</sup> RC, herself, described the loan as a “personal loan” to EF, when she had Mr. Chau sign copies of the bank drafts she gave him, and the two promissory notes signed by EF on March 9 and 16, 2018, were payable to RC.<sup>69</sup> Mr. Chau did not obtain a direct financial benefit as a result of the loan and there was no evidence that would enable the Panel to quantify the value to him of his efforts to ensure the potential for repayment of all the loans that had been previously made to EF.

¶ 89 In the Panel’s view, Mr. Chau’s arrangement with RC was closer to having her enter a common business venture with him.<sup>70</sup> As a result, although it is arguable that the \$250,000 loaned by RC were “obtained” as a result of his contravention, it is less than clear that he obtained them within the meaning of the disgorgement

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<sup>64</sup> See IDPC Rule 8210(1)(ii).

<sup>65</sup> See, e.g., *Re Mills*, 2001 IDACD No. 7, (2001) 24 OSCB 4146, at p. 4153.

<sup>66</sup> Sanction Guidelines, p. 4 (Sanction Principle 2).

<sup>67</sup> *Re Shields*, 2021 IIROC 31, para. 35 (footnotes omitted).

<sup>68</sup> See paragraphs 27 and 28, above.

<sup>69</sup> See paragraphs 34 and 36-37, above.

<sup>70</sup> See paragraph 59, above.

provision in IDPC Rule 8210(1)(ii) and the principle in CIRO's Sanction Guidelines.<sup>71</sup> It is not necessary, however, to attempt to resolve this issue in this proceeding.

¶ 90 There is no doubt concerning the seriousness of Mr. Chau's contravention. In light of his position as the owner and UDP of TeamMax, his history of failing to comply with the MFD Rules and the 2014 order relating to his management of TeamMax, his willingness to put TeamMax's clients at risk, his request that RC not reveal the transaction to the MFDA, and the effect on RC, a significant fine that reflects the value of the contravention and the harm he caused RC is warranted.<sup>72</sup> In short, he intentionally induced RC to make a substantial loan through misrepresentations concerning the circumstances and the nature of the risk she incurred. This type of conduct is clearly unbecoming an approved person, especially one with supervisory responsibilities. In the Panel's view, a fine exceeding the amount of the loan is appropriate.<sup>73</sup>

¶ 91 On the basis of these facts, the Panel has determined to impose a fine in the amount of \$300,000 for Mr. Chau's contraventions of Rules 2.1.1 and 2.1.4. This amount is consistent with the precedents cited by Counsel concerning personal financial dealings by an approved person,<sup>74</sup> is fitting for Mr. Chau's conduct and should make clear to others that such conduct is unacceptable and should be avoided.

### **(b) Failure to Cooperate**

¶ 92 A failure to cooperate in a self-regulatory investigation has always been treated as significant. Contraventions of this nature have consistently resulted in prohibition orders with a fine. Counsel provided sixteen precedents concerning failures to cooperate. The fines in these cases ranged from \$25,000 to \$125,000.<sup>75</sup>

¶ 93 Precedents that imposed specific fines for this contravention usually started from a minimum fine of \$50,000, as earlier MFDA penalty guidelines suggested a minimum fine of \$50,000 for a failure to cooperate.<sup>76</sup> Counsel requested a fine of \$75,000.

¶ 94 As an approved person's failure to cooperate tends to prevent a full investigation of possible contraventions and their scope, as occurred here, the amount of a fine for this type of contravention is often influenced by the seriousness of the conduct that was being investigated.<sup>77</sup> In this case, Mr. Chau's refusal to respond to Staff's request for documents and other information and his failure to attend the scheduled examination precluded an assessment of whether RC's loan was an isolated abuse or one of many.

¶ 95 Mr. Chau's failure to serve a reply and attend the hearing is also relevant to the Panel's consideration of an appropriate sanction.<sup>78</sup> This is the second proceeding this year in which Mr. Chau has failed to participate. Mr. Chau gave up his status as a registered representative in March 2021 and, despite his settlement in 2022, he appears to have decided to put the securities industry behind him. In these circumstances, his conduct reflects the lack of an incentive to cooperate with CIRO in any respect, even though he has a continuing

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<sup>71</sup> See, e.g., *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, paras. 94-114 and 134-135.

<sup>72</sup> See Sanction Guidelines, pp. 5-6, (Key Factors 1, 4, 5, 8, 9, 19 and 20).

<sup>73</sup> See, e.g., *Re Chapman*, 2021 LNCMFDA 99.

<sup>74</sup> See, e.g., *ibid* (\$300,000 fine); *Re Bangyay*, 2013 LNCMFDA 41 (\$250,000 fine); *Re Lui*, 2012 LNCMFDA 59 (unpaid loans of \$118,000; \$150,000 fine); *Re Boldt*, 2017 LNCMFDA 26 (unpaid loans of \$812,295; \$950,000 fine). Although the amount of unpaid loans and the harm to clients were factors in the determination of the fines in these cases, none of them discussed disgorgement.

<sup>75</sup> See *Re Davies*, 2020 LNCMFDA 88 (\$25,000); *Re Cudmore*, 2018 LNCMFDA 177 (\$125,000).

<sup>76</sup> See, e.g., *Re Latour*, 2016 LNCMFDA 180, para. 25; *Re Phillips*, 2015 LNCMFDA 106, para. 30.

<sup>77</sup> See, e.g., *Re Chow*, 2022 LNCMFDA 9, para. 109; *Re Armani*, 2017 LNCMFDA 185, para. 25; *Re Hylton*, 2018 LNCMFDA 254, paras. 20-21.

<sup>78</sup> *Cf. Re Boldt*, 2017 LNCMFDA 26, paras. 33-35.

obligation to do so.<sup>79</sup>

¶ 96 Nevertheless, specific deterrence remains a reasonable goal with respect to a fine in view of the fact that CIRO may register an order with the Superior Court of Justice of Ontario and enforce it as an order of the Superior Court.<sup>80</sup> Because Mr. Chau is no longer a registrant and has failed to appear in this proceeding and the proceeding earlier this year, an appropriate fine should reflect the possibility, albeit remote, that he will receive further requests to cooperate in a future investigation.

¶ 97 Although the primary focus of considerations relevant to a sanction should be on factors relating to specific deterrence in order to ensure the sanction's proportionality,<sup>81</sup> general deterrence is also relevant to the determination of a fine.<sup>82</sup> In the circumstances of this case, general deterrence warrants additional weight in determining an appropriate fine in order to encourage cooperation in CIRO investigations by persons who are similarly situated.

¶ 98 In view of Mr. Chau's position as a former UDP, his history of conscious supervisory failures contrary to MFDA rules, the fact that he is no longer in the industry and is unable to return, his failure to cooperate in Staff's investigation and his decision not to participate in this proceeding and the one that preceded it, the Panel has decided that a fine of \$100,000 is appropriate for his contravention of MFD Rule 6.2.1.

## VI. COSTS

¶ 99 Counsel presented a bill of costs with Staff time totaling \$22,961.25 for Mr. Melamud, as counsel, and Mr. Gallimore, the senior investigator. The Panel has reviewed the bill of costs and considers the time spent and the applicable hourly rates to be reasonable.

¶ 100 As is usual in these proceedings, Counsel has requested only partial payment of costs by Mr. Chau in the amount of \$15,000. The Panel grants this request.

## VII. ORDER

¶ 101 For these reasons, the Panel orders that

(1) Mr. Chau:

- (a) is prohibited permanently from conducting any securities related business while in the employ or associated with any member of CIRO;
- (b) shall pay a fine of \$400,000, payable as of this date; and
- (c) shall pay costs in the amount of \$15,000, payable as of this date;

(2) paragraph 4 of the Order of May 21, 2024 is revoked and shall have no effect; and

(3) the information specified in paragraph 42 of Schedule A to this Decision and Reasons shall be redacted from the record of this proceeding.

**DATED** at Toronto, Ontario this 7<sup>th</sup> day of November 2024

"Philip Anisman"

Philip Anisman, Chair

"Eugene Park"

Eugene Park, Industry Representative

<sup>79</sup> MFD Rule 7.4.1.4; and see note 34, above.

<sup>80</sup> *Securities Act*, R.S.O. 1990, c. S.5, s. 151, as amended.

<sup>81</sup> See, e.g., *Re Mills*, 2001 IDACD No. 7, (2001) 24 OSCB 4146, p. 4147; *Walton v. Alberta Securities Commission*, 2014 ABCA 273, paras. 154, 156 and 164-166, leave to appeal denied, 2015 CanLII 14759 (SCC).

<sup>82</sup> See *Re Cartaway Resources Corp.*, 2014 SCC 26, paras. 55-56 and 60-64; *Re Chau*, 2024 CIRO 47, para. 22(g).

“Vas Pachapurkar”  
Vas Pachapurkar, Industry Representative

## SCHEDULE A: REASONS CONCERNING THE CONFIDENTIALITY ORDER

### I. Introduction: Hearing Process

- ¶ 1 As outlined in the Decision and Reasons, at the request of counsel for CIRO (“Counsel”), relying on Rule 1.8 of the MFD Rules of Procedure (“ROP”), the Panel’s Order of May 21, 2024 required that any personal information, as defined in CIRO’s Privacy Policy, contained in an exhibit filed in this proceeding be redacted by the CIRO Hearing Office before providing a copy of or access to the exhibit to a non-party who requests such access or production (the “Confidentiality Order”)<sup>1</sup>.
- ¶ 2 Although similar orders to redact the identity of a respondent’s clients have been made in prior proceedings<sup>2</sup>, the Confidentiality Order was not intended by the Panel to continue beyond the hearing unless its continuance was justified in the merits hearing with respect to specific information. In light of the terms of MFD Rule 7.3.5 and Rule 1.8 of the ROP, the Panel asked Counsel to address this issue in the hearing, if any of the exhibits contained intimate financial or personal information.
- ¶ 3 MFD Rule 7.3.5 and Rule 1.8 of the ROP mandate the open hearing principle. All hearings must be open to the public, unless a hearing panel orders otherwise (Rule 7.3.5 and ROP 1.8(1)). Both Rules permit a panel to order that “all or part of a hearing be heard in the absence of the public” where it “is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing” and that “the desirability of avoiding [their] disclosure” outweighs the open hearing principle (Rule 7.3.5 and ROP 1.8(2)). If a hearing or part of a hearing is held in the absence of the public, “exhibits, documents and transcripts relating to that part of the hearing” are to be marked confidential, do not form part of the public record and access to them requires an order of the hearing panel (ROP 1.8(5)).
- ¶ 4 At the beginning of the hearing, the Panel invited Counsel to address the Confidentiality Order. Counsel responded that the Confidentiality Order does not affect the openness of the hearing, but applies only to the redaction of documents filed as exhibits to implement CIRO’s Privacy Policy. The Panel questioned whether it has authority to make such an order in light of the fact that ROP 1.8 only applies to exhibits and documents that relate to the part of a hearing that is conducted in the absence of the public.
- ¶ 5 The Panel asked counsel to provide it with copies of CIRO’s Privacy Policy and identified issues that arise if it has authority to make an order like the Confidentiality Order. It suggested that Counsel should identify any parts of the record for which redaction is requested and asked whether the standards in the Supreme Court of Canada’s recent decision concerning the Sherman Estate would be applicable.<sup>3</sup>
- ¶ 6 In response to Counsel’s request, the Panel granted time for additional written submissions on the continuation of the Confidentiality Order to be submitted. The Confidentiality Order continued in effect pending the Panel’s decision.
- ¶ 7 After reviewing Staff’s Supplementary Submissions and Supplementary Book of Authorities, the Panel asked Counsel to file a list specifically identifying material in the record for which redaction was requested on the basis that the Confidentiality Order would apply to it pending the Panel’s decision. The hearing was reconvened on September 11, 2024 to provide Counsel with an opportunity to address issues raised in Staff’s Supplementary Submissions and material identified in the requested list. Prior to this hearing, Counsel also filed a copy of CIRO’s Policy Regarding the Use, Disclosure and Redaction of Personal Information in Disciplinary and Regulatory Proceedings (the “Redaction Policy”).<sup>4</sup>
- ¶ 8 The Panel has decided not to allow the Confidentiality Order to continue and to order redaction of specific, identified personal information for the following reasons.

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<sup>1</sup> Order, Appendix 1, para. 4.

<sup>2</sup> See, e.g., *Re Lipovetsky*, 2013 LNCMFDA 43, para. 7 (confidentiality orders to protect the identities of respondent’s clients); *Re Lui*, 2012 LNCMFDA 59, para. 50(iv) (identity of non-parties).

<sup>3</sup> See *Sherman Estate v. Donovan*, 2021 SCC 25.

<sup>4</sup> This Policy was adopted in June 2023.

## II. MFD Rule Regime: Panel’s Authority to Redact.

¶ 9 MFD Rule 7.3.5 and ROP 1.8 adopt the open hearing principle. This principle has long been treated as essential to the functioning of courts and disciplinary tribunals in order to ensure the fairness of their proceedings.<sup>5</sup> Openness is important to maintaining the independence and impartiality necessary to guarantee that decisions are made in a non-arbitrary manner, free of executive or other influence, in order to achieve public confidence in the integrity of the system and an understanding of its administration.<sup>6</sup> It is protected by the constitutional guarantee of freedom of expression and has been characterized as “a central feature of a liberal democracy”.<sup>7</sup>

¶ 10 These considerations also apply to regulatory authorities<sup>8</sup> and are equally applicable to proceedings before CIRO hearing panels.<sup>9</sup> Openness assures the fair treatment of all participants in CIRO proceedings and is necessary to engender confidence in them by CIRO’s supervising securities regulatory authorities, its members and approved persons, their clients, public investors and the general public. All of this is reflected in the adoption of the open hearing principle in MFD Rule 7.3.5 and its primacy in ROP 1.8(1).

¶ 11 Rule 7.3.5 and ROP 1.8(2) authorize a hearing panel to ameliorate the impact of this principle by conducting all or part of a hearing in the absence of the public where the harm to any person from disclosure of “intimate financial or personal matters or other matters” that may be disclosed outweighs the desirability of adherence to openness. ROP 1.8 also deals with the operation of the principle as a matter of procedure. ROP 1.8(5) provides that if a hearing or part of a hearing is held in the absence of the public, exhibits, documents and transcripts (“documents”) must be separated from the public record and access to these materials is permitted only by order of the hearing panel.

¶ 12 By providing that access to materials relating to a closed hearing may be accessed if a panel so orders, ROP 1.8(5), in effect, authorizes a panel to order redaction of such materials by determining the parts of the material to which access is allowed. A panel’s authority to redact in such circumstances is confirmed by ROP 15.2 concerning settlement hearings, which are invariably held in camera.<sup>10</sup> ROP 15.2(3) and (4) authorize a panel to redact the record of the settlement hearing if it is of the opinion that the record contains information that “should not be available to the public, having regard to the principles in” ROP 1.8.

¶ 13 In this case, no request to close the hearing or any part of it was made and the hearing was conducted openly with members of the public in attendance. As the MFD Rules do not expressly authorize a hearing panel to make a sealing order or redact documents when a hearing has not been closed to the public,<sup>11</sup> the Panel questioned whether they confer authority to make the Confidentiality Order.

¶ 14 While acknowledging that ROP 1.8(5) authorizes a hearing panel to limit access only to documents relating to the part of a hearing held in camera, Counsel argued that a “strictly textualist” interpretation of ROP

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<sup>5</sup> See, e.g., *Sherman Estate v. Donovan*, 2021 SCC 25, para. 39; *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 9; see also Linden, “Limitations on Media Coverage of Legal Proceedings: A Critique and Some Proposals for Reform”, in P. Anisman and A.M. Linden, eds., *The Media, The Courts and the Charter* 301 (1986), pp. 301-302.

<sup>6</sup> *Ibid.*; *Sherman Estate*, para. 39.

<sup>7</sup> *Sherman Estate*, para. 1; see also para. 30 (“essential to the proper functioning of our democracy”).

<sup>8</sup> See, e.g., *Re Hudbay Minerals Inc.*, 2009 LNONOSC 350, paras. 22–23; *CBC v. Chief of Police*, 2021 ONSC 6935 (Div. Ct.), paras. 26–28.

<sup>9</sup> See CIRO’s Recognition Order, Appendix A, para. 17, (2023) 46 OSCB 4437 at 4445; and see, e.g., *Re Rha*, 2021 CIRO 12 (IIROC), para. 5.

<sup>10</sup> ROP 15.2(2) authorizes a hearing panel on its own initiative or at a party’s request, to conduct a settlement hearing in the absence of the public, having regard to the principles in ROP 1.8; see, e.g., *Re Moro*, 2007 CanLII 80234 (MFDA), pp. 1–2; *Re Duhan*, 2015 CanLII 93982 (MFDA), para.1; *Re Tachauer*, 2024 CIRO 17 (CanLII) (MFDA), paras. 11 and 14. Hearings based on an agreed statement of facts (“ASF”) have not been closed; see, e.g., *Re Fauth*, 2017 CanLII 12358 (MFDA), para. 4 (agreed statement of facts; staff and respondent agreed that hearing should be open).

<sup>11</sup> See *Re Rana*, 2023 CIRO 40 (MFDA), para. 21.

1.8 would be inconsistent with the liberal and purposive interpretation required by ROP 1.3(1), which mandates that the ROP's Rules "be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness". Counsel also relied on ROP 1.3(2), which permits a hearing panel to determine matters of practice that are not provided for in the ROP by analogy to the ROP Rules, submitting that the redaction of exhibits contemplated by the Confidentiality Order is analogous to holding a part of the hearing in the absence of the public, as permitted by ROP 1.8(2).

¶ 15 Counsel informed the Panel that the Confidentiality Order is a standard provision that is used in virtually all MFDA hearings. Its purpose is to facilitate the open conduct of hearings and accommodate CIRO's Privacy Policy by having hearings proceed without the need for in camera motions and by allowing CIRO's Hearing Office to implement CIRO's Privacy Policy in the event that it receives a request for access to hearing documents.

¶ 16 In Counsel's submission, it would otherwise be necessary to conduct all or part of every hearing in camera in order to protect personal information contained in an exhibit even though the personal information is not relevant to an issue and will not be referred to in the proceeding; a strict reading of ROP 1.8 would thus result in less expeditious and costlier hearings and less openness and would be inconsistent with both ROP 1.3(1) and the principle of openness in ROP 1.8. To avoid these consequences, Counsel also argued that the Panel can order the redaction required by the Confidentiality Order on the basis of its authority under ROP 1.3(2) to determine practice by analogy to ROP 1.8 itself, as neither ROP 1.8 nor any other ROP rule provides for it.

¶ 17 The Panel had some difficulty accepting these submissions in view of the fact that independent authority to seal a record or to order redaction (which is in effect the sealing of a part of a record) is usually treated as requiring specific authorization, as was provided, for example, in Rule 8406(10) of IIROC's Rules of Procedure.<sup>12</sup> In this respect it should be noted that IIROC's Recognition Order expressly authorized IIROC to "order a closed-door hearing or prohibit the publication or release of information or documents if it determines that it is required to protect confidential information,"<sup>13</sup> while the MFDA's Recognition Order, issued the same day, did not contain a similar provision.<sup>14</sup> As the authority conferred by MFD Rule 7.3.5 and ROP 1.8 is a matter of interpretation, the mandate in the MFDA Recognition Order is relevant.

¶ 18 The experience of CIRO's principal regulator, the Ontario Securities Commission ("OSC"), provides another illustration. Until 2019, the OSC was authorized to allow confidential treatment of documents, including redaction, by the open hearing provision of Ontario's Statutory Powers Procedure Act, section 9 of which is substantially identical to MFD Rule 7.3.5 and ROP 1.8(1)-(2)<sup>15</sup>; as a result, documents adduced in the part of the hearing held in the absence of the public were redacted.<sup>16</sup> In 2019, the Tribunal Adjudicative Records Act, 2019 gave the OSC authority to order redaction of any records on its own motion or on the application of a party or a person who would be affected by disclosure of specific information.<sup>17</sup> The Rules of Procedure of the OSC's Capital Markets Tribunal ("CMT") reflect this authority in their provisions concerning public access to its

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<sup>12</sup> See now IDPC Rule 8406(10), which states:

Subject to Corporation requirements, a document that is filed must be made available by the National Hearing Officer for public inspection in the office in which the document is filed during the Corporation's normal business hours, unless confidentiality is requested and a hearing panel applying the standard in clause 8203(5)(iii) or 8203(5)(iv) orders otherwise.

<sup>13</sup> IIROC Recognition Order, Appendix A, para. 9, (2021) 44 OSCB 2557 at 2561-62 (italics added); see now CIRO Recognition Order, Appendix A, para. 17, (2023) 46 OSCB 4437 at 4445.

<sup>14</sup> See MFDA Recognition Order, Schedule A, para. 8(H), (2021) 44 OSCB 2569 at 2574.

<sup>15</sup> RSO 1990, c. S.22, s. 9(1)(b); see, e.g., *Re Hudbay Minerals Inc.*, 2009 LNONOSC 350, paras. 25-27.

<sup>16</sup> See, e.g., *ibid.*, para. 7.

<sup>17</sup> S.O. 2019, c. 7, Sched. 60, s. 2(2) (may order "adjudicative record or portion of adjudicative record" to be treated as confidential and not be disclosed to the public).

proceedings.<sup>18</sup> Most of the OSC decisions cited by Counsel ordered redaction under this authority.<sup>19</sup>

¶ 19 Even the courts, which have inherent authority to address such issues, are expressly authorized both to close a hearing and to order that a document filed in a proceeding be treated as confidential and sealed or redacted.<sup>20</sup> Unlike a superior court, a CIRO hearing panel does not have inherent jurisdiction. It has only the authority conferred on it expressly or impliedly by the MFD Rules and ROP.

¶ 20 Although ROP 1.8(5), by authorizing a panel to allow access to “this material”,<sup>21</sup> confers authority to redact a document that is introduced in a hearing held *in camera*, it is not clear that it grants such authority where, as in this case, no part of the hearing is conducted in the absence of the public. The liberal and purposive approach to interpreting the ROP mandated by ROP 1.3(1) does not enable a hearing panel to expand its authority by making an order, however desirable it may be, that extends the authority granted by MFD Rules, especially when the rule in question embodies an important principle.<sup>22</sup> Nor does ROP 1.3(2), as by ordering redaction, the Panel would arguably be amending the Rule rather than merely determining practice by analogy to it.

¶ 21 The question, therefore, is whether the Rule 7.3.5 and Rule 1.8 themselves give a hearing panel implied authority to seal or redact documents that are presented to it when a hearing is not closed. Counsel informed the Panel that the question of a hearing panel’s authority to order redaction in these circumstances has not previously been raised in any proceeding. Nevertheless, in addition to a verbal analysis of these Rules, the practice of prior hearing panels is relevant to their interpretation.

¶ 22 In a number of early proceedings, enforcement counsel filed redacted affidavits and requested confidential treatment of exhibits that could not be redacted. In these cases, hearing panels accepted the redacted documents and made confidentiality orders with respect to the specified exhibits in reliance on ROP 1.8(2) and (5) without any indication in their reasons that part of the hearing had been closed.<sup>23</sup> In one such case, the panel accepted redacted and unredacted versions of the hearing record, treated the unredacted version as an exhibit that was received *in camera*, and marked it as confidential pursuant to ROP 1.8(2) and (5).<sup>24</sup>

¶ 23 Subsequent hearing panels, at the request of MFDA staff, commonly included in their orders a provision substantially like the Confidentiality Order after holding open hearings, without referring to ROP 1.8 in their reasons.<sup>25</sup> This provision was described by one panel as “a conventional term ... designed to protect against the

<sup>18</sup> See CMT, *Rules of Procedure* (July 5, 2024), Rule 8(4).

<sup>19</sup> See *Re Kitmitto*, 2022 LNONOSC 477, para. 80; *Re Ali*, 2023 LNONOSC 366, paras. 54-55 and Order, September 22, 2023, (2023) 46 OSCB 7743. The British Columbia Securities Commission has addressed redaction of documents in its policy on hearings; see BC Policy 15-601, para. 8.4(b); and see, e.g., *Re BridgeMark Financial*, 2019 LNBCSC 190, paras. 9-15.

<sup>20</sup> See, e.g., *Courts of Justice Act*, R.S.O. 1990, c. C.43, ss. 135 and 137(2); *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789 (CanLII), para. 34. The Supreme court of Canada has held that it has implied authority to make sealing orders and to order redaction of documents; see *R. v. T.W.W.*, 2024 SCC 19, paras. 58 and 68 (“implied jurisdiction of courts to control their own process and records”). Needless to say, a hearing panel is neither “the apex appellate court”, *ibid.*, para. 69, nor a lesser court.

<sup>21</sup> What part of the material and how it is to be accessed are left to the panel to determine.

<sup>22</sup> The redaction of documents ordered in the cases cited by Staff on this issue either followed an *in camera* hearing or was authorized by legislation; see notes 16 and 19 above.

<sup>23</sup> See, e.g. *Re Parkinson*, 2005 CanLII 77678 (MFDA), p. 6; *Re Tonnies*, 2005 LNCMFDA 7, para. 13; *Re Headley*, 2006 CanLII 79855 (MFDA), pp. 8-9; *Re Graveline*, 2006 CanLII 79870 (MFDA), p. 3 (exhibits only); *Re Breckenridge*, 2007 LNCMFDA 38, paras. 20-22. See also *Re Freynet*, 2007 CanLII 80204 (MFDA), pp. 15-16 (order: redaction of names of former clients).

<sup>24</sup> *Re Coleman*, 2006 CanLII 79860 (MFDA), pp. 4-5.

<sup>25</sup> See, e.g., *Re Lloyd*, 2008 CanLII 87754 (order); 2008 CanLII 87888 (MFDA) (reasons); *Re Longchamps*, 2010 CanLII 86158 (order); 2010 CanLII 86136 (MFDA) (reasons); *Re Brown*, 2010 CanLII 92428 (MFDA), para. 136; *Re Lui*, 2012 LNCMFDA 59, para. 50(iv); *Re Lipovetsky*, 2013 LNCMFDA 43, para. 7.

unnecessary public disclosure of personal information ... pertaining to clients or investors.”<sup>26</sup> This practice continues today.<sup>27</sup> As Counsel informed the Panel, the Confidentiality Order is currently included as part of the order in every proceeding.

¶ 24 Similar provisions have long been included in orders contained in settlement agreements, usually without comment.<sup>28</sup> Although settlement hearings are held in the absence of the public until the settlement agreement has been accepted, it is significant that ROP 15.2 leaves the decision concerning the closing of a settlement hearing to a panel’s discretion and authorizes the panel to redact the record of the settlement hearing without reference to whether or not it is held in public, “having regard to the principles set out in Rule 1.8”. The principles referred to are those specified in ROP 1.8(2) governing a decision to close all or part of a hearing.<sup>29</sup> The express authority to seal or redact the hearing record in ROP 15.2(3) and (4) suggests that similar authority was intended to be conferred under ROP 1.8, as hearing panels have consistently assumed.

¶ 25 In view of the amalgamation of the MFDA and IIROC into a single self-regulatory organization, that is, into CIRO, it is desirable to interpret the MFD Rules and the IDPC Rules in a manner that harmonizes their practices, to the extent the terms of the Rules permit. In light of the practice consistently followed by hearing panels over the last twenty years, the express authority in ROP 15.2, and IDPC Rule 8406(10), it is reasonable to conclude that MFD Rule 7.3.5 and ROP 1.8 confer implied authority on the Panel to order redaction of the hearing record in this proceeding. This interpretation is confirmed by CIRO’s Redaction Policy, which recognizes the discretion of hearing panels to seal or redact parts of the hearing record and suggests guidelines with respect to its exercise in all proceedings under both the MFD Rules and the IDPC Rules.<sup>30</sup> For all of these reasons, the Panel has concluded that it would have authority to allow the Confidentiality Order to continue, if it were appropriate to do so.

### III. The Confidentiality Order

¶ 26 The redaction of personal information in documents relating to a hearing is a matter of discretion.<sup>31</sup> Counsel accepted that the test adopted by the Supreme Court of Canada in its *Sherman Estate* decision applies to the Panel’s exercise of this discretion with respect to the Confidentiality Order.<sup>32</sup> In his submission, the Confidentiality Order satisfies this test, when CIRO’s position as a self-regulatory organization and its regulatory mandate are taken into account.

¶ 27 Reflecting the centrality of the open hearing principle to adjudicative decision making in a democratic polity, like ours, *Sherman Estate* establishes “a high bar” for a party who requests confidential treatment of material in a document filed in a proceeding. To overcome the “strong presumption” of openness, the party

<sup>26</sup> *Re International Capital Management Inc.*, 2017 CanLII 35029 (MFDA), para. 27.

<sup>27</sup> See, e.g., *Re Fan*, 2024 CIRO 20 (CanLII) (MFDA), para. 59.

<sup>28</sup> See, e.g., *Re Malech*, 2009 CanLII 79449 (reasons); 2009 CanLII 79439 (MFDA) (order); *Re Griffiths*, 2009 CanLII 79451 (MFDA), pp. 18-21 (order: para. 1); *Re Potter*, 2012 CanLII 9809 (MFDA), paras. 3-5; 2011 CanLII 72464 (order); and see, e.g., *Re Rana*, 2023 CIRO 40 (MFDA); Order, File No. 202309, para. 6.

<sup>29</sup> See also IDPC Rule 8406(10), which authorizes redaction of filed documents by a hearing panel “applying the standard in clause 8203(5)(iii) or 8203(5)(iv)”.

<sup>30</sup> CIRO Redaction Policy, pp. 2-3.

<sup>31</sup> See *ibid.*

<sup>32</sup> The open court principle is now embodied in the right to freedom of expression under subsection 2(b) of the *Canadian Charter of Rights and Freedoms*; *Sherman Estate v. Donovan*, 2021 SCC 25, paras. 1, 30 and 39. Staff submitted that CIRO is not subject to the *Charter*, citing a decision of the Ontario Divisional Court, affirming an Investment Dealer Association of Canada (“IDAC”) panel decision. Although the IDAC panel decision held that the *Charter* did not apply to the IDAC, it said that *Charter* values should influence procedural and other determinations made by a hearing panel, where they are relevant; see *Re Derivative Services Inc.*, (1999) 22 OSCB 5544 (IDAC), p. 5553, affirmed 2005 CanLII 18303 (ON SCDC). It is not necessary to address the application of this decision to the MFDA or CIRO in view of Staff’s acceptance of the applicability of *Sherman Estate*. In any event, CIRO’s Redaction Policy recognizes that the effect of a redaction on freedom of expression is part of the balancing process required by ROP 1.8(2).

must establish (1) that disclosure of the information presents a serious risk to an important public interest, (2) that the order is necessary to prevent this risk, and (3) as a matter of proportionality, that the benefits of the order outweigh the negative effect of denying an open hearing.<sup>33</sup> The latter two steps require consideration of alternatives to address the risk presented by disclosure and the balancing of interests contemplated by ROP 1.8(2) with respect to intimate, personal information as a factual matter in the circumstances of the proceeding. Both are reflected in the factors identified in CIRO's Redaction Policy for consideration by a hearing panel when deciding whether to order redaction.<sup>34</sup>

¶ 28 *Sherman Estate* establishes that privacy alone is not sufficient to present a serious risk to the principle of openness; “neither individual sensibilities nor mere personal discomfort” that may result in embarrassment or inconvenience warrants exclusion of the public. Only information disclosure of which would result in an affront to the personal dignity of an individual, information of a “highly sensitive character” that “strikes at ... the core identity of the individual concerned”, that is, at his or her “biographical core”, may satisfy the first requirement and permit consideration of whether confidential treatment is necessary and appropriate in the circumstances.<sup>35</sup> Protection against such an affront to an individual's dignity “transcends the interests of the individual” and is itself an important public interest that may justify limits on the open hearing principle.<sup>36</sup> This concept of privacy is narrower than the general concept reflected in CIRO's Redaction Policy.

¶ 29 CIRO's Redaction Policy reflects the Supreme Court's approach to confidential treatment of information contained in hearing documents, except in this one respect. The Redaction Policy recognizes that the open hearing principle is fundamental and that a hearing panel should take an approach that “least constricts” it when determining whether to order redaction of information to protect an individual's privacy interests. Focusing on individuals other than parties to a proceeding, the Redaction Policy identifies factors that a hearing panel should consider, in particular, (a) whether the personal information in question is necessary or relevant to the proceeding, (b) whether redaction would minimally interfere with the public's ability to understand the panel's decision, (c) whether redaction would be targeted and be a reasonable limit on the open hearing principle, and (d) whether the benefits of redaction outweigh any harmful effects on the public interest in open and accessible proceedings.<sup>37</sup> These considerations reflect the values inherent in freedom of expression and the Supreme Court's necessity and proportionality standards.<sup>38</sup>

¶ 30 As Counsel acknowledged, however, the “personal information” that CIRO's Redaction Policy protects goes beyond *Sherman Estate*'s public interest test. CIRO's Redaction Policy, like its Privacy Policy, is aimed at protecting privacy. Its exemplary list of personal information includes types of information that may not affect an individual's “biographical core”, for example, a person's name, date of birth, social insurance number, driver's licence and licence plate numbers, passport number, health card number, residential and email addresses, and the names of relatives, as well as sensitive financial and medical information.<sup>39</sup> Much of this information would not be protected under *Sherman Estate*.<sup>40</sup>

¶ 31 Unlike *Sherman Estate*, however, CIRO's Redaction Policy does not focus on the parties to a proceeding. Its concern is with “individuals who are not subject to CIRO proceedings”, for example, clients of a respondent

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<sup>33</sup> *Sherman Estate v. Donovan*, 2021 SCC 25, paras. 3 and 38.

<sup>34</sup> CIRO Redaction Policy, p. 3.

<sup>35</sup> *Ibid.*, paras. 7 and 31-35.

<sup>36</sup> *Ibid.*, para. 33.

<sup>37</sup> CIRO Redaction Policy, pp. 2-3.

<sup>38</sup> See paragraph 27, above.

<sup>39</sup> CIRO Redaction Policy, pp. 1 and 4 (Appendix: Personal Information). The Redaction Policy does not apply to information that relates to a business or professional position.

<sup>40</sup> See, e.g., *Sherman Estate v. Donovan*, 2021 SCC 25, para. 91 (residential address not within “biographical core”).

and third parties.<sup>41</sup> As Counsel argued, CIRO's regulatory mandate reflects public interests that warrant protection of the privacy interests of such persons.<sup>42</sup> CIRO's investigation and disciplinary proceedings are frequently based on the receipt of complaints from clients of its members and their approved persons, and testimony of these clients may be required in a disciplinary proceeding that results from the complaint.<sup>43</sup> As CIRO lacks the ability to compel a person to provide information in an investigation or to testify in a proceeding in four provinces, including Ontario,<sup>44</sup> their cooperation is necessary to the fulfillment of its regulatory obligations; such persons should be encouraged to bring matters involving improper conduct to CIRO's attention and to participate in disciplinary proceedings that may follow. Even where CIRO may compel testimony, the cooperation of victims of a member's or approved person's impropriety is more easily obtained, when they are not exposed to the embarrassment of having the fact of their victimization publicized or to the possibility of identity theft or fraudulent scams by persons who might obtain their names, addresses, or licence or bank account numbers.<sup>45</sup> In most cases, although contained in an exhibit, such information is not relevant to the issues in a proceeding and is not referred to by the parties.<sup>46</sup>

¶ 32 CIRO's Redaction Policy attempts to minimize the need for redaction orders by encouraging parties to a disciplinary proceeding to make reasonable efforts to limit the disclosure of personal information by redacting third parties' sensitive personal information in documents that they file in a proceeding. It also requires that an unredacted version of filed documents be available "for viewing at the request of a hearing panel".<sup>47</sup> This procedure enhances both the efficiency and fairness of proceedings by ensuring that unnecessary, redacted personal information does not become part of the hearing record, while allowing a party to challenge a redaction in the hearing and enabling the hearing panel to request disclosure of redacted information that it believes may be relevant, thus retaining the panel's discretion to decide otherwise. In the context of CIRO's regulatory responsibilities, this procedure is a reasonable limit on the open hearing principle that in the Panel's view satisfies the principles addressed in *Sherman Estate*.<sup>48</sup> Indeed, it parallels the procedure adopted by CIRO's principal regulator for its own proceedings.<sup>49</sup>

¶ 33 CIRO's Redaction Policy, adopted in June 2023, followed with minor variations, a similar policy adopted

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<sup>41</sup> CIRO Redaction Policy, p. 1.

<sup>42</sup> Counsel's submissions in this respect related to his attempt to justify the Confidentiality Order.

<sup>43</sup> The identity and personal information of victims of wrongdoing and of vulnerable individuals and individuals who are peripherally involved in a proceeding are frequently redacted in other types of proceedings; see, e.g., *Fedeli v. Brown*, 2020 ONSC 994, para. 9, approved in *Sherman Estate*, para. 77; *S.E.C. v. M.P.*, 2023 ONCA 821, paras. 65-66; *Muslim Association of Canada v. Canada (Attorney General)*, 2024 ONCA 663.

<sup>44</sup> Six provinces and the three territories have empowered CIRO to compel testimony in an investigation, a proceeding or both; see, e.g., *Securities Act*, RSA 2000, c. S-4, ss. 69 and 69.1 (both).

<sup>45</sup> See, e.g., CIRO, Investor Alert: Uptick in Investment Recovery Scams Impersonating CIRO, September 27, 2024; and see, e.g., *Re Kitmitto*, 2022 LNONOSC 477, paras. 77-84 (respondents' information). Counsel argued that a client's identity should not be accessible on a google search. This risk can be addressed by a Panel's anonymization of the client's identity in its reasons, as exhibits are not available electronically and must be obtained from the Hearing Office.

<sup>46</sup> CIRO's Redaction Policy states that a panel may exercise its discretion to redact personal information of a party that is not "relevant to a proceeding before it"; p. 4 (Appendix). It should be noted that in court proceedings, a lack of relevance, like privacy, may not alone justify redaction; see, e.g., *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789 (CanLII), para. 60.

<sup>47</sup> Redaction Policy, p. 2. See also *Re Coleman*, 2006 CanLII 79860 (MFDA), paras. 9-10 (pp. 4-5).

<sup>48</sup> See, e.g., *Muslim Association of Canada v. Canada (Attorney General)*, 2024 ONCA 663, paras. 12-16. It should be noted that CIRO's policies are included in the definition of "rule" in CIRO's Recognition Order; see Recognition Order, May 11, 2023, Appendix A, para. 1, (2023) 46 OSCB 4437 at 4440 ("rule"). It goes without saying that a hearing panel cannot disregard a CIRO policy.

<sup>49</sup> See OSC Practice Guidelines, (2017) 40 OSCB 9010, paras. 2(1) and 3; CMT, *Rules of Procedure*, Rule 11 ("personal information"); see also CMT, *Guide to Capital Markets Tribunal Proceedings*, p. 7.

by IIROC in 2015.<sup>50</sup> Although it applies to both MFDA and IIROC proceedings, it was not followed in this case, presumably because CIRO disciplinary proceedings have continued to follow the rules of its predecessor self-regulatory organizations, which have operated largely in silos pending the integration of their rules pursuant to CIRO's Rule Consolidation Project.

¶ 34 Instead of redacting materials before they were filed in accordance with CIRO's Redaction Policy, Counsel requested the Confidentiality Order in the first appearance in this proceeding and it was included in the order made on May 21, 2024.<sup>51</sup> For ease of reference, the Confidentiality Order states:

If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the CIRO Hearing Office shall not provide to the non-party, copies of or access to the requested exhibits without first redacting from them any and all intimate financial and personal information, pursuant to Rule 1.8(2) and (5) of the ROP.

¶ 35 The Confidentiality Order presents a number of difficulties. First, it was requested on the initial appearance, which was intended for scheduling of the hearing on the merits. As only evidence relating to service of the Notice of Hearing was presented at this hearing, the Panel was not in a position to exercise the discretion necessary to determine whether redaction should be ordered and the information that should be redacted, as contemplated by *Sherman Estate* and CIRO's Redaction Policy. The Redaction Policy reflects an expectation that a hearing panel will base its determination on the information for which redaction is requested in the context of a proceeding, and *Sherman Estate* mandates that such a determination be based on the circumstances of each case.<sup>52</sup> This was customary in the precedents cited by Counsel, in which redaction was addressed in the hearing on the merits or in the order that followed the hearing.<sup>53</sup> The practice often followed by IIROC hearing panels, when making a general redaction order early in a proceeding, is to qualify the order by making it subject to specific rulings that the panel may make in the course of the hearing.<sup>54</sup> In each of these cases, a redaction order is made when the hearing panel has heard the evidence and is aware of the full context.

¶ 36 The Confidentiality Order requires CIRO's Hearing Office, before providing a copy of or access to a document to a non-party to this proceeding, to redact "personal information" as defined by CIRO's Privacy Policy.<sup>55</sup> Although the definition of "personal information" in CIRO's Privacy Policy is much like, albeit less precise than, the exemplary list of types of personal information in CIRO's Redaction Policy,<sup>56</sup> the Privacy Policy does not address the conduct of hearings or the exercise of a hearing panel's discretion. It describes in general terms CIRO's treatment of "personal information" with respect to its regulatory activities.<sup>57</sup> Although these

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<sup>50</sup> See IIROC, *Policy Regarding Use and Disclosure of Personal Information in IIROC Disciplinary Proceedings*, May 1, 2015. This policy succeeded an earlier IIROC policy; see *Policy on Requests for Access to Disciplinary Hearing and Settlement Hearing Records* (undated).

<sup>51</sup> See Appendix 1, para. 4.

<sup>52</sup> CIRO Redaction Policy, p. 3; *Sherman Estate v. Donovan*, 2021 SCC 25, paras. 35, 42, 62 and 76.

<sup>53</sup> See, e.g., *Re Lipovetsky*, 2013 LNCMFDA 43, para. 7; *Re Lui*, 2012 LNCMFDA 59, para. 50(iv); see also *Re Fan*, 2024 CIRO 20 (CanLII), para. 59.

<sup>54</sup> See, e.g., *Re Li*, 2015 IIROC 26 (CanLII), para. 2.

<sup>55</sup> The Confidentiality Order requires redaction of "any and all intimate financial and personal information"; see ROP 1.8(2). Counsel argued that "personal information" as defined in CIRO's Privacy Policy is intimate financial or personal information.

<sup>56</sup> For example, CIRO's Privacy Policy treats a person's age as personal information; the Redaction Policy includes a person's birth date, but not the year of birth.

<sup>57</sup> This was acknowledged in IIROC's initial policy on access to hearing records; see IIROC, *Policy on Requests for Access to Disciplinary Hearing and Settlement Hearing Records* (undated), para. 2 (directing other information requests to IIROC's Privacy Policy). CIRO's Privacy Policy is substantially identical to IIROC's Privacy Code.

include, and the Privacy Policy refers to, disciplinary proceedings, the Privacy Policy does not address the conduct of such proceedings by a hearing panel or refer to the open hearing principle. The Confidentiality Order thus leaves to CIRO's Hearing Office the determination of the information to be redacted on the basis of a policy that does not address this issue.

¶ 37 The Confidentiality Order does not identify the documents that contain any such information, nor the specific information to be redacted. The effect of the order is to delegate a decision that should be made by the Panel to staff of the Hearing Office. In the Panel's view, this does not accord with the scheme inherent in ROP 1.8, which requires a determination by a hearing panel both to treat a document as confidential and to allow access to any information in such a document.<sup>58</sup> Nor does it satisfy the test in *Sherman Estate*, which requires confidentiality to be determined based on the circumstances of each case.<sup>59</sup> As confidential treatment was requested, the Panel must determine both that redaction is necessary and the information that is to be redacted; it does not have authority to subdelegate this decision to others.

¶ 38 In this Panel's view, the preferable procedure is that the parties identify the specific parts of the record for which redaction is requested. Such specificity will enable a hearing panel to consider the factors identified in CIRO's Redaction Policy, including the relevance of personal information to the issues in the proceeding and the targeted nature of the requested redaction, and to conduct the balancing of personal privacy and the open hearing principle that the Redaction Policy and *Sherman Estate* require. Although Counsel argued that the Confidentiality Order permits greater efficiency, the approach required by CIRO's Redaction Policy with respect to redaction by the parties addresses this concern.<sup>60</sup> In this respect, it is significant that orders made in OSC decisions allowing redaction list the specific parts of the record to be redacted.<sup>61</sup> A similar practice has been adopted by some MFDA and IIROC hearing panels.<sup>62</sup>

¶ 39 For these reasons, the Panel requested Counsel to provide a list that specifically identified the material in the record for which redaction was requested under the terms of the Confidentiality Order. Counsel's list identified redaction of information contained in the RC Affidavit and the Gallimore Affidavit, including anonymization of RC's, EF's, third parties' and RC's spouse's names, the name of an unidentified party, and redaction of residential addresses, telephone numbers, personal email addresses of RC's advisers at TeamMax, bank and CRA account numbers, and information concerning the holdings in an account statement from August 2019 for RC's and her husband's account at TeamMax. In accordance with the guidelines in CIRO's Redaction Policy, the Panel would ordinarily accede to requests like these and order redaction of the items identified, as the information is neither relevant to the issues nor necessary to understand the Panel's reasons and decision.

¶ 40 In this case, however, much of the information for which Counsel sought redaction is already public. The RC Affidavit includes as exhibits copies of the statement of claim in RC's and her husband's action against Mr. Chau and TeamMax Financial and the statement of claim in Mr. Chau's action against EF and his wife; and the Gallimore Affidavit includes a copy of an affidavit sworn by Mr. Chau in the latter action, which Staff had

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<sup>58</sup> See ROP 1.8(2) and (5). See also IDPC Rule 8406(10), which requires CIRO's Hearing Office ("National Hearing Officer") to make filed documents available for public inspection, unless a hearing panel orders otherwise. CIRO's Redaction Policy appears to contemplate redaction of a hearing record by the Hearing Office without a panel's order; see Redaction Policy, p. 3 (hearing record); see also IIROC *Policy Regarding Use and Disclosure of Personal Information in IIROC Disciplinary Proceedings*, May 1, 2015, p. 3 ("Public access to the hearing record will be limited to a redacted version with all personal information expunged").

<sup>59</sup> *Sherman Estate v. Donovan*, 2021 SCC 25, paras. 35, 42, 62 and 76.

<sup>60</sup> See paragraph 32 above.

<sup>61</sup> See, e.g., *Re Kitmitto*, Order, (2021) 44 OSCB 4953, Appendix A – List of Redacted Documents, pp. 4954-4971; *Re Ali*, Order, 46 OSCB 7743, Appendix A – List of Redactions to the Amended Record of Original Proceedings, pp. 7743-7751. See also *Re BridgeMark Financial*, 2019 LNBCSC 190, paras. 3-7 and 16-17 (redactions made by hearing panel).

<sup>62</sup> See, e.g., *Re Popovich*, 2013 CanLII 27384 (MFDA), paras. 8-10; *Re Sawisky*, 2017 IIROC 28 (CanLII), paras. 38-40 and Appendix B; *Re Jones*, 2021 IIROC 1 (CanLII), paras. 6-7.

obtained from the court file.<sup>63</sup> Although Counsel requested that these documents be redacted, redaction of information contained in the court files in these two actions does not satisfy the necessity or proportionality tests in *Sherman Estate*, would not be a reasonable limit on the open hearing principle and would not outweigh the public interest in open and accessible CIRO proceedings.<sup>64</sup> The documents are already in the public domain, available in the court system, and the information, including the parties' and other persons' names, would not be more easily accessible through or more broadly disseminated by CIRO.<sup>65</sup> Moreover, effective protection of the information in the statements of claim would require redaction of the court file numbers, as well. In the circumstances, the Panel will not order redaction or anonymization of information that is contained in the statements of claim and in Mr. Chau's affidavit.<sup>66</sup>

¶ 41 Nor will the Panel order redaction of the information concerning Mr. Chau's medical condition identified in the note from his doctor that was provided to Staff in connection with their attempt to investigate Mr. Chau's conduct.<sup>67</sup> This information is less than sensitive and its general nature is a significant element in the pattern of conduct that led the Panel to conclude that Mr. Chau failed to cooperate.<sup>68</sup>

¶ 42 In all of the circumstances, the Panel orders that paragraph 4 of the May 21, 2024 Order is revoked and that the following information be redacted from the record of this proceeding:

- a. RC's and her husband's residential address, telephone number and email addresses;<sup>69</sup>
- b. the account information on copies of void cheques contained in Exhibits F, G and H to the RC Affidavit;
- c. the personal email addresses of RC's advisers at TeamMax, but not their TeamMax email addresses;
- d. Mr. Chau's residential address, personal email address, personal telephone number and his birth date at page 2 of the copy of Form 33-109F4 relating to his registration, but not the year of his birth and not his TeamMax email address; and
- e. the residential address of the purchaser of Mr. Chau's shares in TeamMax contained in Exhibit F to the Gallimore Affidavit.

¶ 43 The Panel has not attempted comprehensively to redact the record. If there is information in the record that has not been addressed in these reasons and that in Counsel's view requires further redaction, the Panel is prepared to entertain a motion.<sup>70</sup>

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<sup>63</sup> Gallimore Affidavit, para. 7.

<sup>64</sup> See CIRO Redaction Policy, p. 3 (factors); *Sherman Estate v. Donovan*, 2021 SCC 25, para. 38.

<sup>65</sup> See *ibid.*, para. 81.

<sup>66</sup> Nevertheless, the Panel has anonymized the names of individuals, other than Mr. Chau and RC's professional advisers at TeamMax, in its reasons. Anonymization of clients of a respondent is customary in reasons for decisions in CIRO disciplinary proceedings and is often, but not always, adopted with respect to other non-parties for the reasons advanced by Staff and because identification of such persons by name is not necessary for an understanding of the Panel's discussion of the issues and the reasons for its decision. This practice is a matter of the Panel's discretion in explaining its reasons for a decision, as stated in CIRO's Redaction Policy, pp. 2-3.

<sup>67</sup> See Reasons and Decision, para. 46.

<sup>68</sup> See *ibid.*, paras. 68-69; see also *Sherman Estate v. Donovan*, 2021 SCC 25, para. 77 ("stigmatized medical information").

<sup>69</sup> The Panel is not ordering redaction of the holdings shown in RC's TeamMax account statement for August 2019 because this information is not sensitive in view of the fact that TeamMax is no longer in business and the account no longer exists; see Reasons and Decision, para. 20.

<sup>70</sup> See CIRO Redaction Policy, p. 3 (requests may follow a hearing); and see, e.g., *Re Jones*, 2021 IIROC 1 (CanLII).