Re Debus

In the matter of:

THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE DEALER MEMBER RULES

and

Joseph Debus

2024 CIRO 74

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: September 19, 2024 in Toronto, Ontario
Decision: October 21, 2024
Reasons for Decision: October 21, 2024

Hearing Panel:
Martin Sclisizzi, Chair, Steven Garmaise and David Lang

Appearances:
Joe Kelly and Michael Mantle, Enforcement Counsel
Joseph Debus, Self-Represented (present)

Decision on Sanctions

INTRODUCTION

¶ 1 This is the Decision on Sanctions arising from the Decision on the Merits in this proceeding dated August 1, 2024 (the "Merits Decision")[1]. Following a disciplinary merit hearing under the Investment Dealer and Partially Consolidated Rules ("IDPC") held on May 13, 14, 15, 17 and July 15, 2024, the Hearing Panel found that the Respondent, Joseph Debus:

a) failed to identify and address a material conflict of interest, contrary to Dealer Member Rule 42 of the Investment Industry Regulatory Organization of Canada ("IIROC"), the predecessor of the Canadian Investment Regulatory Organization ("CIRO");

b) violated the terms of his strict supervision by not bringing transactions for his Dealer Member's approval, contrary to IDPC Rule 1400; and

c) facilitated off-book transactions without the knowledge or approval of his Dealer Member, contrary to IDPC Rule 1400.

¶ 2 The contraventions occurred between March 2019 and September 2021, while Mr. Debus was a Registered Representative with Echelon Wealth Partners Inc. ("Echelon") under strict supervision. Mr. Debus is not currently employed in the investment industry. The issue in this hearing is the appropriate sanctions to be imposed on Mr. Debus for those contraventions.

¶ 3 For the reasons that follow, the Panel determines that the appropriate sanctions for the contraventions are as follows:

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[1] *Re Debus* 2024 CIRO 65

a) The Respondent shall be suspended from approval by, or registration with CIRO for 18 months from the date of this Decision.

b) The Respondent shall pay a fine in the amount of $150,000.

c) The Respondent shall be barred from applying for approval or registration with CIRO unless and until he has paid in full all outstanding fines and costs including the fine, disgorgement and costs imposed in the previous disciplinary proceeding referred to below[2] and the costs of the Respondent's appeal from that proceeding to the Divisional Court in the total amount of $110,000, as well as the aforesaid fine and costs ordered herein.

d) The Respondent shall be required to successfully re-write and pass the Conduct and Practices Handbook examination, and all such other courses required to qualify as a Registered Representative and/or Portfolio Manager within six months of any application for approval or registration with CIRO.

e) The Respondent shall pay the sum of $20,000 towards CIRO's costs of the investigation and prosecution of the contraventions.

¶ 4 These Reasons address the appropriateness of these sanctions for the contraventions and how the Panel arrived at these sanctions.

¶ 5 To explain the sanctions imposed by the Panel, we provide a brief overview of the key facts and background to the contraventions, without repeating the details of the contraventions and the findings made by the Panel contained in the Merits Decision.

BACKGROUND

¶ 6 Mr. Debus was employed in the investment industry with various firms for 27 years, from April 1995 until January 2022. During the relevant period, he was employed with Echelon as a Registered Representative and Portfolio Manager. Mr. Debus has had a lengthy history of heightened supervision imposed by his firms and IIROC. Except for about five months in 2011, from 2009 until 2013, he was under firm-imposed close or strict supervision. In September 2017, IIROC placed Mr. Debus under close supervision by Echelon and from November 2019 until the termination of his employment on January 24, 2022, he was under strict supervision by Echelon.

¶ 7 Mr. Debus was the respondent in a previous CIRO disciplinary proceeding. On March 18, 2018, a hearing panel found Mr. Debus guilty of improperly recommending that clients purchase shares outside their firm accounts without disclosing these recommendations to his firm, effecting unauthorized trades in two clients' accounts, engaging in discretionary trading in a client's non-discretionary account, and failing to use due diligence to ensure recommendations were suitable for a particular client.[3] In a decision issued on June 25, 2019, the hearing panel imposed fines of $65,000, ordered disgorgement of $10,000, and the payment of $30,000 for costs of the proceeding. The panel suspended Mr. Debus for nine months from approval by or registration by CIRO and imposed strict supervision by Mr. Debus' firm for 12 months upon re-registration.[4] Mr. Debus' appeal and review of the decisions of the IIROC hearing panel to the Ontario Securities Commission and subsequently to the Ontario Divisional Court were dismissed. He was ordered to pay costs in the amount of $5,000. The fines, disgorgement and costs in the total amount of $110,000 remain unpaid. In this Panel's Merits Decision and in this Decision on Sanctions, we refer to the previous proceeding as the "2019 Proceeding".

¶ 8 The contraventions in this proceeding centre around transactions involving shares of Zoompass Holdings Inc. ("Zoompass"), a software financial technology company that developed, acquired and provided blockchain and payment technology software. Zoompass shares were traded on the over-the-counter market. Mr. Debus' wife and her corporations, including 2425287 Ontario Inc. ("287 Ontario Inc.") owned shares of Zoompass. Mr. Debus had trading authority for his wife's accounts and the accounts of her corporations. Mr. Debus' wife was an officer and director of the corporations in name only. Mr. Debus was a signing officer of the corporations, and he managed and conducted their affairs. Mr. Debus' wife and her corporations were clients of Echelon. Mr.

[2] Re Debus 2019 IIROC 18

[3] Re Debus 2019 IIROC 05

[4] *Supra* note 2

Debus also had several clients at Echelon that traded in Zoompass shares.

¶ 9 In September 2018, 287 Ontario Inc. entered into an Investor Relations Consulting Agreement, dated September 18, 2018, with Zoompass (the "Investor Relations Agreement"), whereby 287 Ontario Inc. was to provide various consulting services to Zoompass including introducing investors for the purpose of purchasing Zoompass' publicly available shares. The Investor Relations Agreement provides that Zoompass will compensate 287 Ontario Inc. for its services by way of 2,500,000 Zoompass shares issued to Mr. Debus' wife in four phases. Mr. Debus did not inform Echelon of the Investor Relations Agreement. In fact, when he was asked several times by Echelon whether his wife had a consulting agreement or other agreement with Zoompass, Mr. Debus denied it.

¶ 10 Between December 2019 and January 2021, Mr. Debus facilitated several private stock purchase agreements whereby 287 Ontario Inc. sold Zoompass shares to Mr. Debus' clients. Echelon approved two stock purchase agreements, which were not printed on Echelon's letterhead. However, Mr. Debus prepared seven additional stock purchase agreements, signed by him on behalf of 287 Ontario Inc., which were not approved by Echelon. These seven stock purchase agreements were printed on Echelon's letterhead without Echelon's knowledge or approval.

The Contraventions

¶ 11 The first contravention relates to the Investor Relations Agreement and the stock purchase agreements. The crux of this contravention is that by facilitating the stock purchase agreements and the sale of his wife's Zoompass shares to his clients, Mr. Debus advanced his own interests ahead of the interests of his clients, thereby creating a reasonably foreseeable material conflict of interest. The Panel found that the purchase of Zoompass shares by Mr. Debus' clients at the same time as he sold the same securities in his wife's accounts and the stock purchase agreements between 287 Ontario Inc. and his clients were entered into placed Mr. Debus in a conflict of interest with his clients. The Panel determined that the fact that Echelon was in possession of documents and other information from which it could have identified a conflict did not constitute notice of the conflict by Mr. Debus and did not relieve him of his obligation to report a conflict to Echelon. Mr. Debus was obligated to clearly and sufficiently report the conflict to Echelon and to obtain Echelon's approval to engage in these activities. He failed to do so clearly and sufficiently, contrary to Dealer Member Rule 42.

¶ 12 The second contravention relates to trades in Mr. Debus' wife's personal account at Mackie Research Capital ("Mackie"), over which Mr. Debus had full trading authority, and Mr. Debus' failure to obtain pre-approval from Echelon for these trades. During the relevant time, Mr. Debus was under strict supervision. While under strict supervision, all orders of Mr. Debus, both buy and sell, required review and pre-approval by a qualified Echelon supervisor prior to a trade occurring. Mr. Debus did not obtain pre-approval of the trades in his wife's account at Mackie. Echelon knew of Mr. Debus' wife's account at Mackie and that Mr. Debus had full trading authority over the account. Echelon also received and reviewed monthly account statements but never questioned Mr. Debus about any of the trades. Mr. Debus argued that given Echelon's knowledge of his wife's account and its review of the monthly account statements without any question concerning the trades, it was reasonable for him to conclude that no trading approvals were required from Echelon. The Panel rejected this argument and determined that notwithstanding Echelon's knowledge of the account, its receipt and review of monthly account statements and its failure to question Mr. Debus concerning the account and the trades in Mr. Debus' wife's account, Mr. Debus was required to expressly obtain pre-approval of the trades. He failed to do so, contrary to the terms of his strict supervision.

¶ 13 The third contravention relates to the off-book transactions pursuant to the seven stock purchase agreements prepared by Mr. Debus on Echelon's letterhead. Echelon's Chief Compliance Officer assisted Mr. Debus with and approved two private stock purchase agreements between two Echelon clients. Mr. Debus prepared the seven other stock purchase agreements between 287 Ontario Inc. and Mr. Debus' clients. Mr. Debus printed these agreements on Echelon's letterhead and proceeded with these transactions without Echelon's approval or knowledge.

¶ 14 In the Merits Decision, the Panel rejected Mr. Debus' argument that given Echelon was in possession of his wife's monthly account statements and all his trades in his clients' accounts were approved by Echelon, Echelon should have been able to identify any conflicts and other non-compliance with the terms of his strict

supervision. He submitted that Echelon should have identified the conflict and not granted trading approval. The Panel rejected this submission and determined that the obligation to comply with the regulatory requirements and the terms of strict supervision was on Mr. Debus in the first instance. However, the Panel noted that Echelon's supervision of Mr. Debus was neither strict nor very well supervised.

SANCTION PRINCIPLES

¶ 15 The issue in this hearing is the appropriate sanction to be imposed on the Respondent in light of all the circumstances described above. In determining that sanction, regard must be paid to the specific facts applicable to Mr. Debus, the circumstances of his conduct, the CIRO Sanction Guidelines (the "Guidelines)[5] and previous securities industry disciplinary decisions in similar circumstances. As the sanctions in each case must be determined on its own facts, precedents can serve only a limited function. However, prior decisions are relevant to ensure that Mr. Debus is dealt with fairly in relation to other persons in similar circumstances and to promote consistency in determining the appropriate sanctions for similar misconduct.

¶ 16 The Guidelines set out general principles that provide a framework as well as key factors that should be considered when determining the appropriate sanctions. The overarching principle is that the primary purpose of sanctions in a regulatory proceeding is to protect the public interest by deterring future conduct that may harm the capital markets. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity and improve overall business standards and practices. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the particular respondent (specific deterrence) and to deter others in the industry from engaging in similar misconduct (general deterrence). The primary goal of sanctions is not to punish the respondent but rather to prevent and discourage a respondent and others in the industry from engaging in misconduct.

¶ 17 Industry expectations and understanding are particularly relevant to general deterrence. General deterrence can be achieved if the sanction strikes an appropriate balance by addressing a respondent's specific misconduct but is also in line with industry expectations.[6]

¶ 18 The sanctions imposed on a respondent should be proportionate to the conduct involved and should be within an acceptable range of sanctions imposed on respondents for similar contraventions in similar circumstances. Sanctions consistent with previous securities industry disciplinary decisions foster both specific and general deterrence and public confidence in the securities industry. However, the determination of the appropriate sanctions is fact-specific and discretionary. The appropriate sanction depends on the facts of the particular case and the circumstances of the respondent's conduct. Sanctions should be tailored to the particular misconduct in each case. This necessitates a review of the nature of the misconduct, both mitigating and aggravating factors and the degree of responsibility of the respondent.

¶ 19 The Guidelines recommend more severe sanctions for a respondent with a prior disciplinary record. A prior disciplinary record for a similar contravention strongly suggests that the prior sanction was not a sufficient deterrent and may demonstrate a respondent's general disregard for compliance with regulatory requirements, the investing public or market integrity in general.

¶ 20 Although not a predominant or determining factor, a respondent's ability to pay may be a relevant consideration in determining appropriate financial sanctions to be imposed on a respondent. The burden is on the respondent to raise the issue and provide evidence of financial hardship.

¶ 21 The Guidelines recommend considering a suspension for serious, multiple, repeated, fraudulent, willful or reckless misconduct or misconduct that has caused harm to investors, the integrity of a marketplace, or to the securities industry as a whole.

¶ 22 The Guidelines recommend consideration of a permanent bar from registration for contraventions involving significant harm to the investing public, the integrity of the capital market, or the securities industry, where the misconduct has an element of criminal or quasi-criminal activity, or where there is reason to believe that the respondent cannot be trusted to act honestly and fairly in their dealings with the public, their clients and the securities industry as a whole.

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[5] CIRO Sanction Guidelines, February 1, 2024

[6] *Re Mills*, [2001] IDACD No. 7 at p. 3; *Re Wong* 2020 IIROC 50 at para. 29

¶ 23 The Guidelines are intended to promote consistency, fairness and transparency by providing a framework to guide the hearing panel's exercise of discretion in determining sanctions which meet the general sanctioning objectives. Still, the Guidelines are not intended to fetter, and do not fetter, the discretion of the hearing panel in determining the appropriate sanction. The hearing panel retains the discretion to impose the sanctions it considers appropriate considering the circumstances of the particular case.

¶ 24 In determining the sanctions appropriate to the Respondent's conduct in this case, we have considered the aforesaid principles, the prior decisions cited by Enforcement Counsel, and the written and oral submissions of the parties.

POSITION OF THE PARTIES ON SANCTIONS

Staff's Submissions

¶ 25 CIRO Enforcement Staff ("Staff") submit that Mr. Debus is a recidivist. He has previously been subject to disciplinary proceedings.[7] Staff submit that Mr. Debus' misconduct in this proceeding demonstrates a pattern of misconduct warranting a permanent bar to approval. Staff submit that the following sanctions should be imposed:

a) a permanent ban to approval in any capacity,

b) a fine in the amount of $150,000,

c) payment of costs in the amount of $40,000.

¶ 26 Staff submit that the following key factors outlined in the Guidelines amply support these sanctions:

a) The misconduct involved numerous acts, and the contraventions in this proceeding, coupled with the contraventions in the previous disciplinary proceeding, demonstrate a pattern of misconduct and indicates a continued disregard for regulatory requirements, Mr. Debus' clients and the investment industry.

b) Mr. Debus engaged in the misconduct over a period of approximately 30 months.

c) The misconduct was intentional.

d) Mr. Debus has a disciplinary history. He was the subject of the 2019 Proceeding in which a nine-month suspension, a 12-month strict supervision, a $65,000 fine, a $10,000 disgorgement order and a $30,000 cost payment were imposed. Mr. Debus has not paid the fine, disgorgement or costs from the 2019 Proceeding and unsuccessful appeal therefrom, in the total amount of $110,000.

e) Mr. Debus has shown that he is ungovernable.

Respondent's Submissions

¶ 27 In his submissions on sanctions, Mr. Debus has shown remorse. He acknowledged the errors he made and that he has "learned [his] lesson." He submits that the sanction sought by Staff "does not fit the crime." He submits that a permanent bar on approval by CIRO is excessive and unwarranted on the facts of this case for several reasons. Mr. Debus submits that he has essentially already been barred from the industry as he has not worked in it since January 2022. He acknowledges that it is unlikely he will ever be re-employed in the investment industry. He submits that a permanent bar imposed by the Panel will create a stigma that will disqualify him from employment in certain industries and will impair his ability to find employment in many other industries.

¶ 28 The Respondent submits that there was no malfeasance in his conduct and that he did not purposely hide any transactions. He submits that at no time did he do anything for personal gain and there is no evidence of any client losses.

¶ 29 The Respondent submits that the fine of $150,000 sought by Staff is excessive and unwarranted as a deterrent in the circumstances of this case and disproportionate to the seriousness of the contraventions. He

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[7] *Supra* notes 2 and 3

submits that he is unable to pay a fine of this magnitude and that a fine of $150,000 in addition to the 2019 unpaid sanctions will force him into bankruptcy.

¶ 30 Finally, Mr. Debus submits that costs of $40,000 sought by Staff is grossly excessive.

ANALYSIS

Permanent Bar

¶ 31 Staff submit that Mr. Debus' actions reflect an extraordinary level of disregard for his clients, his firm, and the responsibilities of a Registered Representative and showed a disdain of regulatory requirements. Staff submit that following the 2019 Proceeding, Mr. Debus was placed on strict supervision and given a "second chance". Instead of using that opportunity to change course and improve his conduct, he chose to circumvent his strict supervision. Staff further submit that Mr. Debus' attitude to the regulatory requirements imposed on him can be seen in his failure to atone for his previous misconduct, including not changing his behaviour and failing to make any attempt to pay the unpaid sanctions. In short, Staff submit that Mr. Debus' conduct has shown that he is simply ungovernable and that he does not deserve another opportunity to be employed in the investment industry as he has not shown that he can abide by the ethical and regulatory standards required of a Registered Representative. Staff submit that the seriousness of Mr. Debus' misconduct warrants the ultimate sanction of permanent bar to registration with CIRO in any capacity.

¶ 32 Conflict of interest takes many forms and invites many different definitions depending on the profession, the circumstances and the relationship between the parties. In the investment industry, a conflict of interest arises where the interests of a client and those of a registrant are inconsistent or divergent, or where registrants may be influenced to put their interests ahead of their client's interests. By facilitating the sale of his wife's Zoompass shares to his clients, Mr. Debus put his own interest ahead of the interests of his clients. The failure to disclose and properly address this conflict of interest is serious misconduct.

¶ 33 In support of their submission that Mr. Debus' failure to identify and address the conflict of interest warrants a permanent bar from registration, Staff rely on *Re Noronha*[8] and *Re Sammy*[9].

¶ 34 In *Re Noronha*, an uncontested hearing, the respondent was found liable for failure to disclose and to address a conflict of interest and for undisclosed and off-book transactions for the very purpose of obtaining compensation from issuers in which his clients were investing without that fact being disclosed to his firm. He arranged for the compensation totalling $669,500 to be paid to his wife to hide or disguise those arrangements, a scheme which the hearing panel found to be a sham. The hearing panel described Mr. Noronha's misconduct as flagrant and egregious stating that his intentional and duplicitous misconduct "over an extended period of time contravened every conceivable aspect of the obligation of good faith of a participant in the investment industry". He conducted himself in that fashion for the purpose of earning $665,000 over three years. The hearing panel ordered disgorgement of $669,500, imposed a $200,000 fine and permanently barred Mr. Noronha from registration.

¶ 35 In *Re Sammy,* the respondent was found to have been in a conflict of interest with his clients as he purchased or recommended the purchase of securities in client accounts on the same day that he sold or intended to sell the securities of these same issuers from his personal account. He was also found to have purchased securities for managed client accounts on the same day he sold or intended to sell securities of these same issuers from his personal account without the written consent of his clients. Staff proposed that Mr. Sammy be permanently barred from approval. Since deceit and dishonesty were neither alleged nor proved, the hearing panel declined to impose a permanent bar but imposed a fine of $250,000 and suspended Mr. Sammy from approval for five years.

¶ 36 Despite Enforcement Counsel's forceful submissions, the Panel declines to impose a permanent bar against the Respondent in this case. As stated above, Enforcement Counsel submitted that Mr. Debus' misconduct demonstrates that he cannot be trusted to act honestly and fairly with the public or his clients and, therefore, he should not be permitted to work in the industry again as a Registered Representative. Enforcement Counsel submitted that a permanent bar is necessary to achieve specific and general deterrence in

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[8] 2017 IIROC 16
[9] 2016 IIROC 4

this case. While we view Mr. Debus' misconduct as very serious, calling for a very serious sanction, we are not persuaded that the ultimate sanction of a permanent bar is warranted. We do not believe that it is necessary for the protection of the public interest and for general deterrence that Mr. Debus be permanently removed from the capital markets if other sanctions are appropriately severe and commensurate with the contraventions in the circumstances of the case.

¶ 37 While principles which are applied in criminal cases are not directly applicable in regulatory proceedings, we find the principle that the maximum sentence is reserved for the worst offence and the worst offender[10] relevant in this case to the application of the sanction principles in the Guidelines. As set out in *Re Mills*[11] :

> [...] If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Association's [IDA's] disciplinary process; ***similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect.*** Thus, the responsibility of the District Council [Hearing Panel] in a penalty hearing is to determine ***a penalty appropriate to the conduct and respondent before it,*** reflecting that its primary purpose is prevention rather than punishment. [Emphasis added]

¶ 38 Without in any way minimizing the seriousness of the Respondent's misconduct, his offences do not rank in the worst category of offences. His misconduct did not have any element of fraud, criminal or quasi-criminal activity. There was no evidence presented that Mr. Debus financially benefitted from his misconduct nor was there any evidence of any client losses.

¶ 39 In our view, the facts and circumstances in the *Re Noronha* and *Re Sammy* cases involved misconduct which was far more egregious than in this case. They clearly demonstrated dishonesty, deception and a lack of integrity on the part of the respondents. While Mr. Debus' misconduct was very serious, the Panel does not view his misconduct as reaching the same level as the misconduct in the cases referred to us. Moreover, we are not persuaded by Staff's submission that Mr. Debus actively attempted to conceal his misconduct or to lull into inactivity, mislead, deceive or intimidate a client, regulatory authorities or members of his firm. Echelon was aware of the private stock purchase agreements and Echelon's Chief Compliance Officer assisted Mr. Debus with the preparation of two of them. Echelon received and ostensibly reviewed Mr. Debus' wife's monthly account statements, and his trades in his wife's and his clients' accounts were approved by Echelon without question. Although we rejected the argument that Echelon's knowledge relieved Mr. Debus from his obligations to expressly disclose the conflict of interest to Echelon and to comply with the terms of his strict supervision, Echelon's knowledge of Mr. Debus' activities and the information available to it, demonstrates that Mr. Debus did not actively conceal information from Echelon or actively mislead or deceive Echelon about the trading activity. Moreover, in the Merits Decision, the Panel found that Mr. Debus informed his clients that his wife was the seller of the Zoompass shares they were buying and that she was the principal of 287 Ontario Inc.

¶ 40 In our view, in all the circumstances, the sanction principles of protection and prevention can be met in this case by a significant suspension and a significant fine.

Suspension

¶ 41 A sanction would not be adequate in this case if it did not include a significant suspension. For specific deterrence and for general deterrence, as well as for the integrity of the regulatory framework, a significant suspension is necessary in this case to bring home to the Respondent the very serious nature of his misconduct and to signal a warning to deter others. The suspension must be sufficiently long that it recognizes the seriousness of the misconduct, but not so long that the practical effect of it is a permanent bar.[12]

¶ 42 As noted in *Re Debus*[13], in many of the suspension decisions, the suspension would not affect the individual respondent, often because the respondent had already left the industry and had no intention of returning. In other cases, lengthy suspensions were imposed in the context of settlements and usually where the respondent has been out of the industry for some time with no intention of returning, and in other cases the

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[10] *Re Peroni and Hetu*, [2006] IDACD
[11] *Supra* note 6 at para. 6
[12] *Supra* note 10
[13] *Supra* note 2 at para. 33

respondent failed to appear and therefore, the suspensions were unopposed.

¶ 43 The Respondent submits that, in effect, he has been suspended for over 32 months, since the termination of his employment in January 2022. He submits that he has fully experienced specific deterrence by the effective 32-month suspension, and in the circumstances, a suspension for the "time served," namely from January 2022 to date is appropriate. We disagree.

¶ 44 There are many cases in which a suspension was determined to commence when a respondent's employment was terminated as a result of the misconduct at issue in the case and had not since worked in the industry.[14] In our view, in an appropriate case, an allowance can and should be made by a hearing panel for the time during which the respondent is effectively suspended from acting as a registrant. In the circumstances, the Panel concludes that this is not an appropriate case for such an allowance. The Panel concludes that a suspension commencing on the date of termination of Mr. Debus' employment to date would not satisfy the objectives of general and specific deterrence and market integrity.

¶ 45 There is no doubt that the Respondent has already paid a heavy price for his misconduct. Regarding specific deterrence, we considered the fact that the Respondent lost his job as a result of his misconduct, that he has been out of the industry for over 32 months, that he suffered financially and that an additional suspension may result in additional financial loss. A suspension usually has a significant financial impact on respondents and their book of business. However, in arriving at the appropriate length of suspension, the Panel must also give sufficient weight to general deterrence and the public interest.[15]

¶ 46 In all the circumstances, considering the seriousness of the contraventions, the Panel concludes that a suspension of 18 months from the date of this Decision, together with a fine and the payment of costs are appropriate sanctions to satisfy the objectives of specific and general deterrence, market integrity and the public interest.

Fine

¶ 47 Staff seek a fine of $150,000. Staff rely on several cases in support of their position. All the cases involving fines imposed in off-book transactions cited by Staff are settlement approval cases.[16] The fines imposed in those cases range from $20,000 to $50,000. Comparing results in other cases is not always helpful because the circumstances of cases are rarely the same. The Panel does not find the cases cited by Staff particularly helpful in setting the appropriate fine in this case.

¶ 48 The Respondent submits that it is impossible for him to pay a fine of $150,000 as his income cannot support it. He submits that any significant fine will drive him into bankruptcy. Inability to pay and financial hardship are relevant considerations in determining the appropriate financial sanctions to be imposed on a respondent. Evidence of inability to pay can result in the reduction or waiver of a fine and/or the imposition of an installment payment plan.[17] The burden is on the respondent to raise the issue and provide evidence of financial hardship. Evidence of financial hardship should be in the form of an affidavit, declaration or sworn statement of affairs accompanied by commonly accepted financial documents such as tax returns, notices of assessment, bank statements, audited financial statements or other externally verified financial records and statements.

¶ 49 To demonstrate impecuniosity, Mr. Debus provided his CRA notice of assessment for the 2023 tax year showing his declared 2023 total income and that he owes CRA approximately $164,000. A debt of $164,000 alone does not prove impecuniosity or financial hardship. Mr. Debus provided no other evidence of his income, assets and liabilities nor any other reliable evidence of financial hardship or his financial circumstances. We are not satisfied on the evidence presented that Mr. Debus is suffering financial hardship. He has failed to meet the evidentiary burden of providing reliable evidence of his financial circumstances and financial hardship.

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[14] *Re Eley* 2014 IIROC 52 at paras. 69-70; *Re Smith* 2014 IIROC 16; *Re Conville* 2013 IIROC 5; *Re Little,* [2007] I.D.A.C.D. No.24; *Re Parkinson* 2012 IIROC 18; *Re Nott* 2011 IIROC 26; *Re Vargas* 2019 IIROC 6

[15] *Re Pariak-Lukic,* 2015 LNONOSC 357 at paras. 82 and 103

[16] *Re MacEachern* 2014 IIROC 37; *Re Pariak-Lukic, ibid.*; *Re Blackmore* 2014 IIROC 43; *Re Gaudet* 2010 IIROC 29; *Re Schiesser* 2011 IIROC 78; *Re Laroche* 2012 IIROC 26

[17] Guidelines, Principle 5

¶ 50 At the hearing, Mr. Debus expressed remorse for his misconduct. He submits that a fine of $150,000 is excessive and unwarranted as a deterrent. However, he did not propose a fine which he considers more appropriate in the circumstances. We accept that the fine proposed by Staff is in the public interest as an appropriate specific deterrent to the Respondent and as a general deterrent to others. In our view, an 18-month suspension and a global fine of $150,000 will send the message that there will be painful financial consequences for serious misconduct of this nature and will achieve the objectives of specific deterrence and general deterrence.

¶ 51 We note that the fine, disgorgement and costs of the 2019 Proceeding in the total amount of $110,000 remain unpaid. Mr. Debus must pay this amount as well as the $150,000 fine and costs of this proceeding in full before he can apply to CIRO for approval or registration.

Costs

¶ 52 Staff seek costs in the amount of $40,000 from the Respondent. Staff filed an Enforcement Staff Bill of Costs and an affidavit indicating that the total costs incurred for investigation and prosecution are $246,154. Enforcement Counsel's costs of approximately $127,200 represents 560 hours for two lawyers. The investigation costs of approximately $119,000 represents 806 hours of the investigator's time. The total number of hours spent on the investigation and prosecution is 1,366.

¶ 53 The Respondent does not challenge the hourly rates applied in the bill of costs. However, he submits that the time spent on the investigation and the prosecution is grossly excessive, especially given that he and Echelon voluntarily provided all documents and information requested by CIRO. We agree that the time spent seems excessive.

¶ 54 In considering all the circumstances and the submissions of the parties, the Respondent shall pay CIRO's costs in the amount of $20,000.

DISPOSITION

¶ 55 Accordingly, for these reasons, the Panel imposes the following sanctions and costs on the Respondent:

a) a suspension from approval by, or registration with CIRO, for a period of 18 months from the date of this Decision;

b) a fine in the amount of $150,000;

c) costs of $20,000 towards CIRO's investigation and prosecution of the contraventions;

d) a bar from applying for approval or registration with CIRO unless and until he has paid in full all outstanding fines and costs including the fine, disgorgement and costs imposed in the 2019 Proceeding in the total amount of $110,000,

e) a requirement to successfully re-write and pass the Conduct and Practice Handbook examination, and all other courses required to qualify as a Registered Representative and/or Portfolio Manager within six months of any application for approval or registration with CIRO.

Dated at Toronto, Ontario this 21st day of October 2024.

"Martin Sclisizzi"

Martin Sclisizzi, Chair

"Steven Garmaise"

Steven Garmaise

"David Lang"

David Lang

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