Re Metcalfe

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Donald Warren Metcalfe

2023 CIRO 38

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: October 23 and 24, 2023 in Vancouver, British Columbia by videoconference
Decision: December 11, 2023

Hearing Panel:
John Rogers (Chair), Barbara Fraser and Johannes van Koll
Appearances:
Joe Kelly, Enforcement Counsel
Donald Warren Metcalfe (absent)

DECISION ON THE MERITS

INTRODUCTION

¶ 1 This matter was commenced pursuant to a Notice of Hearing ("Notice of Hearing") dated November 2, 2020, issued pursuant to what were then sections 8203 and 8205 of the Consolidated Enforcement Examination and Approval Rules of the Investment Industry Regulatory Organization of Canada ("IIROC"), the predecessor of the Canadian Investment Regulatory Organization ("CIRO").

¶ 2 The Notice of Hearing notes that between November 2018 and January 2020, the Respondent, Donald Warren Metcalfe, was an Approved Person with Chippingham Financial Group Limited ("Chippingham") and PI Financial Corp ("PI Financial"), both Dealer Members, and held the position of President and Chief Operating Officer at Chippingham and, later, the position of Executive Vice Chairman and a member of the Board of Directors of PI Financial.

¶ 3 The Notice of Hearing alleges that during this time period, contrary to Rule 1400 of the CIRO Investment Dealer and Partially Consolidated Rules (the "Consolidated Rules"), the Respondent engaged in fraudulent conduct with respect to making false representations as to the ownership of and as to the value of assets offered as collateral in order to secure loan financing in the amount of $172 million.

¶ 4 It is further alleged that the Respondent, contrary to section 8104 of the Consolidate Rules, failed to cooperate, in August 2020, with Enforcement Staff who were conducting an investigation into claims relating to this fraudulent conduct.

¶ 5 Following the issuance of the Notice of Hearing, the Respondent, on December 3, 2020, served his response ("Response") denying these allegations against him.

¶ 6 Although initially represented by counsel who appeared on his behalf at all but one of the prehearing conferences prior to the hearing on the merits and who submitted to the Panel on the Respondent's behalf the notices of motion referred to below, the Respondent dismissed his counsel, by way of a Notice of Intention to Act in Person dated September 11, 2023, immediately prior to the hearing on the merits, after instructing his counsel to advise Enforcement Staff that he had chosen to act on his own behalf. Although he was in regular communication with Enforcement Staff following his decision to act on his own behalf, the Respondent elected not to appear at the final prehearing conference held prior to the hearing on the merits, and, similarly, elected not to appear at the hearing on the merits.

¶ 7 The Panel was asked by Enforcement Staff to proceed with the hearing on the merits in the Respondent's absence.

¶ 8 These are the Panel's reasons for proceeding with the hearing on the merits in the absence of the Respondent, for our decisions on the Respondent's motions, and for our decisions on the alleged contraventions.

THE ALLEGATIONS IN THE NOTICE OF HEARING

The Allegation of Fraudulent Conduct

¶ 9 The fraudulent conduct alleged against the Respondent in the Notice of Hearing involved the Respondent's relationship with Gary Man King Ng ("Mr. Ng"). During the relevant time period, Mr. Ng was an Approved Person and a Registered Representative with firstly Chippingham, and, subsequently, with PI Financial. As referenced below, the Panel determined, in *Re Ng* 2022 IIROC 15 (the "*Ng* Decision"), that Mr. Ng was liable for the fraudulent conduct alleged in the Notice of Hearing and sanctioned him for this conduct.

¶ 10 Mr. Ng was the founder of Chippingham which he owned through a structure of various entities controlled by him (the "Ng Group").

¶ 11 In November of 2018, Mr. Ng, through the Ng Group, acquired a 100% controlling interest in PI Financial for a cash purchase price of $100 million, money partially financed by two lenders, Lender One, who advanced approximately $80 million, and Lender Two, who advanced approximately $20 million (collectively, the "PI Purchase Loans").

¶ 12 As security for these and other loans, Mr. Ng provided his personal guarantee and granted security to Lender One, Lender Two and another lender ("B Corp") (collectively, the "Lenders") over financial assets contained in securities accounts purportedly owned by him, firstly at Chippingham and, later following his purchase of PI Financial, at PI Financial.

¶ 13 Despite his representations to the contrary:

- Mr. Ng did not own, control or have trading authority over the securities accounts pledged as collateral to the Lenders, and/or
- Such securities accounts did not exist, and/or
- the account documentation provided to the Lenders by Mr. Ng were modified to grossly overstate the value of the financial assets purportedly held in these securities accounts.

¶ 14 With respect to the Respondent, the Notice of Hearing alleges that the Respondent perpetrated a fraud as he directly and actively participated with Mr. Ng in the falsification and distribution of this false and/or fictitious account documentation to the Lenders.

The Allegation of Failure to Cooperate

¶ 15 Enforcement Staff scheduled an interview with the Respondent for August 13, 2020. The Respondent failed to attend this interview.

¶ 16 It is alleged that this failure to attend by the Respondent constituted a failure to cooperate contrary to section 8104 of the Consolidated Rules.

THE RESPONSE

¶ 17 In the Response, the Respondent submits that:

- the Respondent was an Approved Person working closely with Mr. Ng, firstly at Chippingham and later at PI Financial,
- the Respondent joined Chippingham at the request of Mr. Ng in December of 2012,
- as Vice Chairman of PI Financial, the Respondent reported directly to Mr. Ng and was at all material times acting under the instructions of Mr. Ng, and
- as an employee of PI Financial, the Respondent was paid an annual salary and bonus and did not receive shares or any equity interest in PI Financial.

¶ 18 With respect to the allegations of fraudulent conduct, the Response affirms that:

- the Respondent was not party to any discussions with the Lenders who advanced funds to Mr. Ng and had no knowledge of what was discussed with respect to the PI Purchase Loans or other loans, and
- the Respondent did not falsify any Chippingham or PI Financial account statements, and any account statements allegedly emailed by the Respondent were sent on behalf of and at the direction of Mr. Ng.

¶ 19 If the Respondent is found to have breached the standards of conduct required under Rule 1400 of the Consolidated Rules, the Respondent asks that any sanction imposed should take into account that:

- the Respondent acted under instructions and pressure from Mr. Ng,
- the Respondent trusted Mr. Ng as an experienced and successful businessperson and as the Respondent's boss,
- the Respondent's actions were carried out under duress, and
- the Respondent received no financial, personal or other material benefit in respect of the activities referenced in the alleged fraudulent conduct.

¶ 20 In reference to the allegation of failure to cooperate contrary to section 8104 of the Consolidated Rules, the Respondent in the Response states that his counsel attended the interview and made a statement on his behalf.

PROCEDURAL HISTORY

The Proceedings Against Gary Man Kin Ng

¶ 21 As was noted above, this matter was commenced pursuant to the Notice of Hearing dated November 2, 2020.

¶ 22 When issued, the Notice of Hearing named the Respondent and Mr. Ng. As is also noted above, the Respondent delivered a Response to the Notice of Hearing while Mr. Ng chose not to do so.

¶ 23 The initial prehearing in this matter was held by videoconference on January 6, 2021. At this initial prehearing, Mr. Ng was not present. Indeed, Mr. Ng did not participate in any manner during the entire enforcement hearing process despite having been provided with notice thereof on each occasion at which his presence was required. Therefore, at the prehearing held on January 26, 2022, with the consent of both Counsel for the Respondent and Enforcement Counsel, the matter was severed and a hearing on the merits against Mr. Ng was held on May 9, 2022 (the "Ng Merits Hearing"). Again, Mr. Ng chose not to participate in any manner at the Ng Merits Hearing.

¶ 24 Following the submissions of Enforcement Staff at the Ng Merits Hearing, the Panel determined to exercise its authority under section 8415(3) of the Consolidated Rules and to proceed with the hearing in Mr. Ng's absence.

¶ 25 The Panel found that Mr. Ng:

- Between November 2018 and January 2020, engaged in fraudulent conduct with respect to loan financing, contrary to Rule 1400 of the Consolidated Rules, and
- in July 2020, failed to cooperate with Enforcement Staff who were conducting an investigation contrary to section 8104 of the Consolidated Rules.

¶ 26 Following the Ng Merits Hearing, a hearing on penalty was held on May 27, 2022 at which, again, Mr. Ng chose not to attend.

¶ 27 In the *Ng* Decision, dated June 17, 2022, the Panel set out the reasons for its decisions on the contraventions alleged against Mr. Ng, issued its decision on the penalty to be assessed against Mr. Ng, and set out the reasons therefor. By way of penalty, the Panel ordered that:

- The maximum fine permissible under the Consolidated Rules in the amount of $5,000,000 be imposed on Mr. Ng,
- Mr. Ng be permanently banned from registration in any capacity, and
- Mr. Ng pay costs in the amount of $194,000.

The Proceedings Against the Respondent

¶ 28 As was noted above, the Respondent, until September 11, 2023, was represented in this matter by counsel. At the initial prehearing of this matter on January 6, 2021, as the Respondent advised he was ill and unable to attend, his counsel attended on his behalf.

¶ 29 Subsequent prehearings were held on March 9, 2021, September 15, 2021, November 18, 2021, January 26, 2022, November 10, 2022, January 18, 2023, March 9, 2023, August 15 ,2023, and October 17, 2023. At all of these prehearings Respondent did not attend due to illness. However, at all of these prehearings, save and except for the prehearing on October 17, 2023, the Respondent was represented by counsel and at the prehearing conference on January 18, 2023, with the agreement of both Enforcement Counsel and the Respondent's Counsel, the hearing on the merits was scheduled to proceed from October 23, 2023 to October 27, 2023, pending any reasons for delay acceptable to the Panel.

The Respondent's Motions Prior to the Hearing on the Merits

¶ 30 By way of a notice of motion dated January 11, 2023, the Respondent sought from the Panel an order (the "Stay Motion") permanently staying the proceedings against him commenced by the Notice of Hearing. In support of his application for the Stay Motion, the Respondent filed material disclosing certain details of the Respondent's then current medical condition together with personal medical histories that were not publicly available (the "Confidential Medical Information") and submitted that, in view of the Respondent's medical situation, he would not be able to prepare for, attend, or give instructions to his counsel in respect of any hearing, nor would he be able to participate in any manner in the hearing process. In his application for the Stay Motion, the Respondent submitted that as there was no reliable indication of when or if at all the Respondent's medical condition would improve, that the proceeding against the Respondent should be permanently stayed.

¶ 31 By way of a further notice of motion dated March 1, 2023, the Respondent sought an additional order from the Panel (the "Sealing Order") placing a sealing order over the contents of the Confidential Medical Information to ensure that it was not made public, and ordering that the prehearing scheduled for March 9, 2023 be held *in camera* with only the Panel, Enforcement Counsel, the Respondent and his counsel in attendance.

¶ 32 In response to the Respondent's application for the Sealing Order, the Panel agreed that the prehearing scheduled for March 9, 2023 would, initially, be held *in camera*, and, if the Panel determined to grant the Sealing Order, that the balance of the prehearing, including the portion dealing with the Stay Motion would be held *in camera* rather than open to the public.

¶ 33 The prehearing scheduled for March 9, 2023 with the consent of counsel was adjourned to be held on August 15, 2023, to be held *in camera* and with counsel being instructed by the Panel to come to this prehearing prepared to make additional submissions on:

- what details of the Stay Motion should be disclosed by the Panel in its published reasons concerning its decision on whether or not to grant the Stay Motion, and
- should the Panel determine not to grant the sought for Stay Motion, how the scheduled hearing on the merits should be structured to have the least deleterious effect on the Respondent in order to ensure that he was able, as much as possible, to participate in the hearing given his medical condition.

¶ 34 In addition, as the Panel had not been in receipt of a medical update from an attending physician of the Respondent since November 2022, the Panel requested that Respondent's counsel provide to the Panel prior to the prehearing scheduled for August 15, 2023 current and complete medical evidence, including psychological evidence if relevant, to clearly meet the high threshold imposed upon the Respondent in order to demonstrate to the Panel that due to the Respondent's current medical condition it would not be appropriate for the hearing to proceed notwithstanding available reasonable accommodations to the format of the hearing that would enable the Respondent to participate in light of his medical condition.

¶ 35 The prehearing scheduled for August 15, 2023 was further adjourned to October 17, 2023, at which the Respondent did not attend. Nor was the medical evidence requested by the Panel prior to the August 15, 2023 date produced.

¶ 36 During the prehearing held on October 17, 2023, the Panel determined, on the evidence before it, that it was not willing to grant the Stay Motion and that the hearing on the merits scheduled to begin on October 23, 2023 would proceed.

¶ 37 In the absence of the Respondent, the Panel instructed Enforcement Counsel to contact the Respondent now unrepresented by counsel and to advise the Respondent:

- That his application for the Stay Motion had not been granted by the Panel and that the hearing on the merits would be proceeding as a public hearing,
- However, if the Respondent attended the hearing on the merits and if he so wished at that time, the Panel would permit him on an *in camera* basis to provide additional medical evidence to support a further application by him as to why the Panel should reconsider and grant the Stay Motion, and
- If the Respondent attended the hearing on the merits, the Panel would be willing to accept from him any submissions as to what accommodation should be made to the hearing format to permit the Respondent, given his medical condition, to actively participate in the hearing on the merits.

HEARING ON THE MERITS

The Respondent's Absence

¶ 38 At the commencement of the hearing on the merits, Enforcement Counsel provided to the Panel confirmation that he had contacted the Respondent on October 17, 2023, that Enforcement Counsel had advised the Respondent of the Panel's instructions as above set out, and that Enforcement Counsel had received confirmation from the Respondent that the Respondent would not be attending the hearing on the merits. The reason given for his nonattendance was that he had medical appointments which, he alleged, conflicted with the timing of the commencement of the hearing on the merits.

¶ 39 Enforcement Counsel submitted that the Respondent had been served with the Notice of Hearing, had provided a Response, and, through his counsel for a period of almost three years had been party to the proceedings leading to this hearing on the merits. He referenced his communication with the Respondent on October 17, 2023 confirming that the Respondent was aware that this hearing on the merits was proceeding by way of videoconference and that the Respondent had advised Enforcement Counsel in this communication with him that the Respondent did not intend to attend or to participate in the hearing on the merits.

Enforcement Counsel referenced section 8423(12) of the Consolidated Rules and asked that in accordance with this provision the Panel proceed with the hearing on the merits in the Respondent's absence. In addition, Enforcement Counsel referenced the following decisions, where hearing panels had determined to use their powers under this section: *Re McCarthy* 2021 IIROC 33, *Re Woodward* 2018 IIROC 6, *Re MacArthur* 2017 IIROC 29, *Re Turcotte* 2017 IIROC 33, *Re Scerbo* 2017 IIROC 57, *Re Armstrong* 2015 IIROC 34, *Re Malley)* 2014 IIROC 29, *Re Ryan* 2012 IIROC 29, *Re Connacher* 2011 IIROC 28, *Re Movassaghi* 2021 IIROC 16 and *Re Storelli* 2021 IIROC 20.

¶ 40 Section 8423(12) of the Consolidated Rules provides:

> **8423. Conduct of hearing on the merits**
> (12) If a respondent who has been served with a notice of hearing does not attend the hearing on the merits, the hearing panel:
>
> (i) may proceed with the hearing in the respondent's absence and may accept as proven the facts and contraventions alleged in the notice of hearing and statement of allegations, and
>
> (ii) if it finds that the *respondent* committed the alleged contraventions, may hear submissions on sanctions from Enforcement Staff immediately, without a further hearing on sanctions and costs, and may impose sanctions and costs pursuant to sections 8209 or 8210, as it considers appropriate.

¶ 41 The Panel determined to use the authority given it by section 8423(12) of the Consolidated Rules and to proceed with the hearing on the merits in the Respondent's absence on the basis that the Respondent was properly advised that the hearing on the merits was taking place, and that given his alleged medical condition, if requested to do so, the Panel would have considered adopting whatever reasonable accommodation as to the hearing's format that the Respondent felt necessary in order to permit the Respondent to attend despite such medical condition.

¶ 42 Given the Respondent's participation in this matter to date, most of which time he was represented by counsel, the Panel was satisfied that the Respondent was aware of the Panel's ability to proceed with the hearing on the merits in the Respondent's absence, was aware that findings of fact might be made against him, and that sanctions and costs might be imposed on him.

¶ 43 However, the matter at hand was unlike the situation as set out in the Panel's reasons in the *Ng* Decision and unlike the situation in the decisions cited by Enforcement Counsel as set out above, other than the *Movassaghi* decision.

¶ 44 In this matter, the Respondent filed the Response and through his counsel had participated in the hearing process until he determined to be self-represented as advised in his notice of September 11, 2023. This being the case, the Panel did not accept as proven the facts and contraventions alleged in the Notice of Hearing and therefore required Enforcement Staff to proceed to present the evidence against the Respondent upon which the allegations in the Notice of Hearing are based.

The Stay Motion

¶ 45 As well as the nonattendance of the Respondent at the hearing, at the commencement of the hearing on the merits, the Panel dealt with the Respondent's application for the Stay Motion and the Sealing Order.

¶ 46 As above referenced, the Panel had considered the Stay Motion at the previous prehearings held on March 9, 2023 and on August 15, 2023 and had notified the Respondent that the Panel did not consider that the evidence before it was sufficient to grant the Stay Motion sought by the Respondent. However, as was also above referenced, the Panel provided the Respondent with the opportunity at the commencement of the hearing on the merits to attend the hearing and to provide to the Panel additional evidence as to his medical condition which would warrant further consideration by the Panel in order for the Panel to grant the sought for Stay Motion. As the Respondent chose not to attend the hearing on the merits, it would appear that he also chose not to take up this opportunity offered to him by the Panel.

¶ 47 As was set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney-General)*, [1994] 1 SCR 311, the test to be applied for the grant of a stay is the following three-part test:

- that there is a serious issue to be tried,
- that the party seeking the stay would suffer irreparable harm if the stay were refused, and
- the balance of convenience favours granting the stay.

¶ 48 The allegations against the Respondent, if proven, are very serious. Although the Respondent in his submissions noted that he was no longer an Approved Person and that, therefore, by granting the Stay Motion there would be no prejudice or harm to investors, the Respondent's position does not address the basic factors that should be considered by the Panel in determining whether or not to grant the sought for Stay Motion.

¶ 49 A person's ability to secure registration as an Approved Person pursuant to the Consolidated Rules is a privilege and not a right. With this privilege comes an obligation on the person seeking such registration to strictly abide by the rules. Where there have been allegations about a serious breach of the Consolidated Rues, as in the matter at hand, the Panel has a commensurate obligation not just to the Respondent, but as well to the Investment industry and to the public to ensure that a breach of the Consolidated Rules is dealt with in an appropriate manner and with appropriate consequences.

¶ 50 The Panel, therefore, determines that there is definitely a serious issue to be tried.

¶ 51 As to the second part of the test, the Panel has attempted both in directions to the Respondent's counsel when he was represented and, following his decision to be self-represented, through communications he had with Enforcement Counsel, to modify the hearing process in what ever manner the Respondent considered reasonable to enable him to fully participate in the hearing on the merits despite his medical condition. The Respondent has elected not to take advantage of these efforts and, instead, has advised Enforcement Counsel that he has chosen not to attend. As there is no evidence before the Panel of irreparable harm to the Respondent if the hearing on the merits proceeds and as the Respondent would have appeared to not in any manner have considered the Panel's offer of accommodating his needs by modifying the hearing format, the Panel finds that the second element of the test has not been met.

¶ 52 With respect to the third element of the test, the Panel is cognizant of its public interest obligation with respect to the protection of investors, the integrity of public markets and to the investment industry as a whole. It is clearly in the public interest that this matter proceeds and that it does so in a public forum.

¶ 53 The Panel therefore found that the balance of convenience did not favour granting the Stay Motion sought by the Respondent.

¶ 54 In summary, the Panel has determined that the Stay Motion, as sought by the Respondent, would not be granted, that the hearing on the merits would proceed as scheduled and be opened to the public.

The Sealing Order

¶ 55 However, given the Panel's decision on the Stay Motion, the Panel directed its attention to the Respondent's application for the Sealing Order. The Panel determined that such an order would be appropriate given the circumstances. The Panel, therefore, made an order pursuant to the Investment Dealer and Partially Consolidated Rules 8203(5)(iii) and 8406(10) that any personal information, such as defined in CIRO's Policy Regarding the Use, Disclosure and Redaction of Personal Information in Disciplinary and Regulatory Proceedings, should be redacted from the Hearing Record prior to any part of the Hearing Record being made public.

THE AMENDED STATEMENT OF ALLEGATIONS

¶ 56 Following the Panel's decision on January 26, 2022 to sever the proceeding against Mr. Ng from the proceeding against the Respondent as above referenced, Enforcement Counsel in his submissions noted that the allegations against Mr. Ng contained in the Notice of Hearing were dealt with at the Ng Merits Hearing and that, therefore, the allegations contained in the Notice of Hearing to be dealt with at this hearing on the merits

should be limited to those against the Respondent.

¶ 57 To that end, Enforcement Counsel produced an amended statement of allegations (the "Amended Statement of Allegations") which contained allegations referencing only the Respondent.

¶ 58 Enforcement Counsel advised the Panel that a copy of the Amended Statement of Allegations had been provided to the Respondent by email on September 12, 2023 following the Respondent's advice that he would be self-represented.

¶ 59 The Panel accepted this amended document as submitted by Enforcement Counsel and confirmed that this hearing on the merits would proceed on the basis of the Amended Statement of Allegations.

The Facts Alleged in Support of the Allegation of Fraudulent Conduct

¶ 60 The Amended Statement of Allegations set out the following history of the Respondent's relationship with Mr. Ng and of the Respondent's involvement in the alleged fraudulent conduct.

¶ 61 In 2012, Mr. Ng co-founded Chippingham, a small Winnipeg based firm, and was the Executive Chairman, a director, and a 100% beneficial indirect owner of Chippingham through the Ng Group, of which Mr. Ng was the sole beneficial owner.

¶ 62 In November 2018, Mr. Ng through the Ng Group acquired a 100% controlling interest in PI Financial for a cash purchase price of $100 million. Following this purchase, Mr. Ng became the Executive Chairman, a director, and a 100% beneficial indirect owner of PI Financial through the Ng Group, in addition to in his registration as an Approved Person and a Registered Representative at PI Financial.

¶ 63 The Respondent was also an Approved Person with both firms, at the material time being the President and Chief Operating Officer of Chippingham and later the Executive Vice Chairman and a director of PI Financial.

¶ 64 The purchase of PI Financial was partially financed by loans made to the Ng Group advanced by two outside unrelated lenders, Lender One in the amount of approximately $80 million (the "Lender One Loan") and Lender Two in the amount of approximately $20 million (the "Lender Two First Loan").

¶ 65 On July 5, 2019, Lender Two advanced to the Ng Group an additional amount of $20 million (the "Lender Two Second Loan") for the purpose of purchasing a 50% interest in the shares of B Corp, a private Canadian company.

¶ 66 On June 21, 2019, the Ng Group borrowed approximately $32 million from B Corp (the "B Corp Loan").

¶ 67 In January 2020, Lender Two agreed to lend to the Ng Group an additional $20 million (the "Lender Two Third Loan").

¶ 68 The fraudulent conduct alleged relates to the procurement by the Ng Group of a total of $172 million in loans from the three separate lenders, as above described, on the basis of falsified collateral records provided by Mr. Ng in support of the provision of security for these loans.

¶ 69 At the end of January 2020, PI Financial became aware of the issues concerning Mr. Ng's purported ownership of and the value of the securities accounts as reflected in these falsified records and reported these matters to IIROC at the time.

¶ 70 On February 11, 2020, Mr. Ng and the Respondent resigned their positions at PI Financial.

¶ 71 The Amended Statement of Allegations contains the following statement of facts surrounding each of the loans constituting the referenced $172 million total of loans (the "Ng Group Loans"):

The Loans for the Purchase of PI Financial – The Lender One Loan

¶ 72 Lender One is an investment firm based in the United States.

¶ 73 To provide security for the approximately $80 million loaned by Lender One to the Ng Group for the purchase of PI Financial, Mr. Ng:

- supplied his personal guarantee in the amount of $16 million,
- provided security in the form of a securities pledge agreement (the "Lender One Securities Pledge Agreement") over two securities accounts at Chippingham (the "J Accounts"), which at the time of granting this security had a market value of approximately $27 million, and
- represented that he owned the J Accounts.

¶ 74 A securities pledge agreement was mandated by the terms of the Lender One Loan and was required to be verified by a person with the requisite authority to do so at Chippingham. The Respondent signed the Lender One Securities Pledge Agreement on behalf of Chippingham thereby verifying the legitimacy of the accounts purportedly secured and pledging the assets of these accounts to Lender Two, despite the fact that these accounts had been falsified by Mr. Ng.

¶ 75 The J Accounts were, in fact, not owned by Mr. Ng, but by J Corp, a client of Chippingham.

¶ 76 Mr. Ng had the statements for the J Accounts falsified by changing the name on the account statements, on the summaries and, therefore, on the resulting screen shots for the J Accounts from that of the true owner of the J Accounts to that of himself.

¶ 77 Following the initial granting of security over the J Accounts, Lender One, on April 1, 2019, requested that Mr. Ng advise Lender One of the current market value of the J Accounts, and Mr. Ng again supplied Lender One with falsified summaries of the J Accounts indicating the then market value of approximately $22 million as at March 31, 2019.

¶ 78 On July 3, 2019, Mr. Ng advised Lender One that as he had moved his personal trading account from Chippingham to PI Financial, the account numbers for the J Accounts previously supplied to Lender One were no longer valid and he undertook to promptly provide Lender One with the new PI Financial account numbers.

¶ 79 The motivation for this action by Mr. Ng, as described below, was Lender Two discovering that its purported security interest in the J Accounts was subordinate to that of Lender One.

¶ 80 On July 4, 2019, Mr. Ng by email provided the new replacement account numbers for the J Accounts as being the 013 Account ("013 Account") and the 023 Account ("023 Account"). As part of this communication, Mr. Ng provided an account snapshot for the 013 Account, which snapshot stated that 013 Account was in his name and that it had a current market value of $20,634,368.87.

¶ 81 However, contrary to what Mr. Ng stated in this July 4, 2019 email to Lender One:

- The 013 Account and the 023 Account were not replacement accounts for the J Accounts, but were entirely new accounts,
- The 013 Account did not contain any securities and had a zero balance, and
- The 023 Account was a fictitious account and did not exist at PI Financial.

¶ 82 On July 5, 2019, Mr. Ng executed and delivered an amended securities pledge agreement (the "Amended Lender One Securities Pledge Agreement") in favour of Lender One purportedly granting security over the 013 Account, which had no value, and the 023 Account, which did not exist.

¶ 83 As he had done with the Lender One Securities Pledge Agreement, the Respondent signed the Amended Lender One Securities Pledge Agreement on behalf of PI Financial thereby verifying the legitimacy of the accounts purportedly secured and pledging the assets of these accounts to Lender One, despite the fact that these accounts had been falsified by Mr. Ng and despite the Respondent having no authority to execute such a document on behalf of PI Financial.

¶ 84 On October 8, 2019, Mr. Ng again emailed Lender One sending falsified account summaries for the 013 Account and the 023 Account purporting to show that the 013 Account had a current market value of $20,843,710.40 and the 023 Account had a current market value of $1,238,001.01.

¶ 85 On October 8, 2019, the 013 Account still had a zero balance and the 023 Account still did not exist.

¶ 86 Again, on January 8, 2020, Mr. Ng emailed Lender One falsified account summaries for the 013 Account and the 023 Account purporting to show that the 013 Account had a current market value of $21,139,490.78 and the 023 Account had a current market value of $1,339,929.14, when the 013 Account continued to have a zero balance and the 023 Account did not to exist.

¶ 87 On January 27, 2020, the Respondent executed and delivered another securities pledge agreement (the "The Lender One Second Securities Pledge Agreement") in favour of Lender One as additional security for the Lender One Loan. The Lender One Second Securities Pledge Agreement reference two other securities accounts at PI Financial supposedly owned by Mr. Ng (the "184 Accounts"). The 184 Accounts were represented to have a market value of approximately $91 million when, in fact, the 184 Accounts did not exist.

¶ 88 Again, the Respondent signed the Lender One Second Securities Pledge Agreement on behalf of PI Financial despite the fact that the accounts purportedly secured by this document had been falsified by Mr. Ng and despite the fact that the Respondent had no authority to sign such a document on behalf of PI Financial.

The PI Purchase Loans – The Lender Two First Loan

¶ 89 Lender Two is an asset management firm based in Canada.

¶ 90 On November 22, 2018, to secure the Lender Two First Loan, Mr. Ng:

- granted his personal guarantee to secure the indebtedness of the Ng Group to Lender Two,
- provided security over the same J Accounts over which he had previously granted security to Lender One,
- represented that these accounts had a market value of approximately $26 million, and
- represented that he owned the J Accounts.

¶ 91 As with the situation with Lender One, Mr. Ng did not own the J Accounts and had the statements, the summaries and the resulting screen shots of the J Accounts provided by Mr. Ng to Lender Two falsified by changing the client's name on the account records from J Corp to that of his own.

¶ 92 On April 30, 2019, Mr. Ng executed and delivered an amended securities and restated securities account pledge and control agreement in favour of Lender Two (the "Lender Two Security Agreement") and specifically referenced the J Accounts but with new PI Financial account numbers.

¶ 93 As with respect to the transactions with Lender One, the Respondent signed the Lender Two Security Agreement on behalf of PI Financial despite the fact that the accounts purportedly secured by this document had been falsified by Mr. Ng and despite the fact that the Respondent had no authority to sign such a document on behalf of PI Financial.

¶ 94 On May 21, 2019, the Respondent emailed the falsified account statements for the J Accounts to Lender Two for the month of April 2019. These falsified account statements purported to show securities owned by Mr. Ng with a market value of $26 million.

The B Corp Purchase Loan – The Lender Two Second Loan

¶ 95 On June 20, 2019, Mr. Ng having represented to Lender Two that he held an additional account at PI Financial with a market value of $87,385,816.96 (the "R Account"), Lender Two agreed to advance the Lender Two Second Loan in the amount of $20 million to the Ng Group to purchase the 50% interest in shares of B Corp. This Lender Two Second Loan was secured by a securities control and pledge agreement ("Lender Two Securities and Control Pledge Agreement") executed by Mr. Ng on June 21, 2019, and purporting to secure the R Account in Lender Two's favour.

¶ 96 In fact, the R Account was owned by the R Corp, a client of PI Financial. Mr. Ng had the name on the account statement for this account changed from that of R Corp to that of his own. In addition, the market

account statement for this account changed from that of R Corp to that of his own. In addition, the market value of the holdings in this account had been altered to show a 10-fold increase the market value from approximately $8.7 million to the value of approximately $87 million, which amount he had represented to Lender Two on June 20, 2019 to secure its agreement to advance the Lender Two Second Loan.

¶ 97 On July 3, 2019, Lender Two emailed Mr. Ng querying why it appeared that the J Accounts were pledged to another company in priority to Lender Two and Mr. Ng replied that it was "an error".

¶ 98 This was not an error. Mr. Ng, despite not actually owning the J Accounts, had purported to pledge them to Lender Two without disclosing to Lender Two the prior security interest thereon which had been granted in favour of Lender One.

¶ 99 On July 5, 2019, Lender Two advanced the Lender Two Second Loan in the amount of $20 million to the Ng Group secured in part by accounts Mr. Ng represented to Lender Two that he owned at PI Financial. In reality, as of July 5, 2019, Mr. Ng owned only two accounts at PI Financial with values of $4 and USD $222,359.

¶ 100 On July 9, 2019, Mr. Ng emailed Lender Two a falsified account summary for the R Account and followed up on July 11, 2019 with falsified account summaries for the J Accounts and the R Account. The account summaries indicated that the accounts were owned by Mr. Ng when they were not, that the J Accounts had a current market value of approximately $20.5 million, and that the R Account had a market value of approximately $90.5 million when, in fact, its market value was approximately $8.6 million.

¶ 101 Between July 16, 2019 and September 24, 2019, the Respondent, on behalf of Mr. Ng, emailed to Lender Two falsified account statements and/or screenshots for the J Accounts and the R Account on at least seven different occasions for the purpose of providing to Lender Two monthly account value updates.

The Lender Two Third Loan

¶ 102 In January 2020, Lender Two loaned the Ng Group the Lender Two Third Loan in the amount of $20 million, which loan was secured by:

- the personal guarantee of Mr. Ng, and
- a securities account pledge and control agreement dated January 15, 2020 (the "Third Lender Two Securities Pledge Agreement") whereby Mr. Ng purported to pledge the J Accounts and the R Account.

¶ 103 At no time did Mr. Ng own, control or have any ownership interest in any of the J Accounts or the R Account.

¶ 104 Again, as in the transactions with Lender One and Lender Two, as above referenced, the Respondent executed the Third Lender Two Securities Pledge Agreement on behalf of PI Financial despite the fact that the accounts purportedly secured by this document had been falsified by Mr. Ng and despite the fact that the Respondent had no authority to sign such a document on behalf of PI Financial.

The B Corp Loan

¶ 105 At approximately the same time that the Ng Group borrowed the $20 million Lender Two Second Loan for the purpose of acquiring a 50% share ownership interest in B Corp, on June 21, 2019, B Corp loaned to the Ng Group the B Corp Loan in the amount of $32 million secured by:

- the personal guarantee of Mr. Ng, and
- a general security and pledge agreement and a securities account control agreement whereby Mr. Ng pledged as collateral an account owned by him at PI Financial ("Account 58"), purportedly having a market value of $90,444,768.18.

¶ 106 Account 58 was indeed owned by Mr. Ng, but it had an actual value of a mere $4.

EVIDENCE OF WITNESSES AT THE HEARING

¶ 107 To provide specific details of the Respondent's involvement in the fraudulent acts committed by Mr. Ng and as above set out, Enforcement Counsel called Mr. Mark Pallas, Manager, Investigations for the Prairie Provinces for CIRO ("Mr. Pallas") and Mr. Richard Thomas, Senior Vice President Compliance, General Counsel, PI Financial ("Mr. Thomas") to give oral evidence.

Evidence of Mark Pallas

¶ 108 Mr. Pallas testified that he has worked for over 20 years in financial regulation. He stated that he became involved in the investigation of the matters leading to the allegations of fraudulent conduct in which Mr. Ng and the Respondent are alleged to have been engaged when he was alerted to certain questionable communications involving Mr. Ng and the Respondent by Mr. Thomas in February of 2020.

¶ 109 After this initial communication with Mr. Thomas, Mr. Pallas testified, CIRO commenced an investigation into the concerns expressed by Mr. Thomas about the activities of the Respondent and Mr. Ng with respect to fraudulent conduct involving the Ng Group Loans.

The Respondent's Willingness to Cooperate

¶ 110 Mr. Pallas in his testimony referenced his conversation with the Respondent's counsel on June 17, 2020, in which Mr. Pallas discussed with the Respondent's Counsel the Respondent's obligation to cooperate with IIROC in its conduct of the investigation of the alleged fraudulent conduct.

¶ 111 Mr. Pallas produced a copy of his notes made at the time which referenced the Respondent's Counsel asking Mr. Pallas if any information provided by the Respondent at an interview with Mr. Pallas could be shared with other members of law enforcement, as she was concerned that such information could be used against the Respondent in another legal proceeding. Mr. Pallas advised the Respondent's Counsel that IIROC only provided such information when presented with a Production Order or Search Warrant.

¶ 112 Mr. Pallas testified that Respondent's Counsel expressed concerns relative to her client's evidence and the possibility that it might be used against him in another legal venue. She stated that the Respondent was still considering his position as to whether it was in his interests to participate in an interview as the Respondent's Counsel stated that she did "not want to put her client in any precarious legal situations".

¶ 113 His notes referenced a subsequent call with Respondent's Counsel on July 2, 2020, when she advised Mr. Pallas that the Respondent had considered his position and that the Respondent had decided that it was not in the Respondent's "interest" to participate in a voluntary interview.

¶ 114 Mr. Pallas noted that his notes reflect his message to Respondent's Counsel that if the Respondent determined not to participate in the investigative process that IIROC would pursue enforcement against the Respondent on the basis of his failure to cooperate with the investigation.

¶ 115 Mr. Pallas testified that Respondent's Counsel stated that she understood what Mr. Pallas was saying.

¶ 116 Mr. Pallas testified that at the video conference held on August 13, 2020 during which the Respondent was supposed to be present to be interviewed, Respondent's Counsel was present representing him and advised IIROC staff that the Respondent did wish to cooperate with IIROC staff with respect to its investigation, but that due to the Respondent's medical condition, he was not able to provide the requested interview at that time, but that if IIROC staff wished to provide the Respondent with its questions in writing that the Respondent would consider whether or not he was able to respond.

Documentation and Email Correspondence Involved in the Alleged Fraudulent Conduct

¶ 117 Mr. Pallas in his evidence referenced a document entitled "Chronology of Key Documents" prepared by CIRO and which sets out in chronological order reference to the creation of the fraudulent documents by Mr. Ng and subsequent email correspondence with representatives of the Lenders to which these fraudulent documents were attached. This document also includes a more detailed reference to the Respondent's participation in the fraudulent conduct both by way of the Respondent providing copies of actual account statements to Mr. Ng, which Mr. Ng would then use to produce the fraudulent documents, and then, upon receipt of these fraudulent

documents from Mr. Ng, to forward them by email to the representatives of the Lenders.

¶ 118 From the email correspondence in evidence, Mr. Pallas testified, it appears that the method deployed by Mr. Ng to use the J Accounts to provide the required security for the Ng Group Loans and to assure the Lenders of the continuing value of his falsely represented net worth was to provide on a regular basis monthly account statements setting out the assets purportedly secured by the various securities pledge and control agreements and the supposed value of such assets.

¶ 119 Initially, to accomplish this regular reporting of his purported net worth, Mr. Ng provided to the representatives of the Lenders falsified account statements of actual clients of Chippingham, on which account statements Mr. Ng changed the name of the owner of the account to that of his own and the name of the advisor on the account to that of his own.

¶ 120 The Respondent's involvement in this procedure, Mr. Pallas testified, was for the Respondent to send to Mr. Ng by email a copy of the actual account statement for Mr. Ng to modify. Once having done so, Mr. Ng either sent a copy of the modified statement to one or more of the representatives of the Lenders directly in order to satisfy his required reporting protocol for the Loans, or Mr. Ng sent this document to the Respondent, who then sent it along to the requisite party.

The J Accounts

¶ 121 Mr. Pallas noted that among the evidence listed in the Chronology of Key Documents were the following transactions on November 8, 2018:

- an email from Mr. Ng to the Respondent dated November 8, 2018, whereby Mr. Ng asks the Respondent to send to Mr. Ng a copy of the account statement of the J Account at Chippingham. In response to this email, the Respondent sends to Mr. Ng a copy of the investment portfolio statement for the J Account dated as of October 31, 2018. The account statement sent by the Respondent to Mr. Ng shows a specific client identification number (the "J Account Client ID"), a cash and investment total of $26,589,511.23, and the name of the investment adviser on the account (the "J Account Investment Advisor").
- By way of an email from Mr. Ng to himself dated November 8, 2018, Mr. Ng sends a copy of an account statement as an attachment. This account statement (the "October 31, 2018 Fraudulent J Account Statement") has the same client identifier, being the J Account Client ID, has the same cash and investment total of $26,589,511.23, but is in the name of Mr. Ng and lists Mr. Ng as the investment advisor on the account rather than the J Account Investment Advisor.
- In a subsequent email dated November 8, 2018, Mr. Ng sends a copy of the October 31, 2018 Fraudulent J Account Statement to a representative of Lender One.

¶ 122 Mr. Pallas noted the following similar pattern of behaviour on January 14, 2019:

- Mr. Ng on this date sends a modified copy of a statement of the J account (the "December 31, 2018 Fraudulent J Account Statement") by email to the Respondent following receipt of a copy of the real account statement from the Respondent on January 9, 2018.
- Similar to the October 31, 2018 Fraudulent J Account Statement, the December 31, 2018 Fraudulent J Account Statement has the same Client ID #, the cash and investment total of $25,495,644.61, all as on the original account statement as previously sent by the Respondent to Mr. Ng, and the name of the account owner has been changed to that of Mr. Ng. But with the December 31, 2018 Fraudulent J Account Statement, the name of the investment advisor on the account has been changed from that of the J Account Investment Advisor to that of a different party (the "J Account False Investment Advisor").
- The Respondent sends a copy of the December 31, 2018 Fraudulent J Account Statement by email on January 14, 2019 to the representatives of Lender Two.

¶ 123 Mr. Pallas noted the evidence of a similar pattern of emails between the Respondent and Mr. Ng and

the Respondent and representatives of the Lenders on February 21, 2019, March 18, 2019, April 16, 2019, May 21, 2019, and July 15, 2019.

¶ 124 He pointed out that the email from Mr. Ng to the Respondent dated February 21, 2019 to which was attached the fraudulent account statement for January 31, 2019 asked the Respondent to "Check it".

¶ 125 Mr. Pallas noted, as well, the email from the Respondent to Mr. Ng on May 17, 2019, sending along a copy of the J account statement for April 30, 2019, stated "Ng Statements". Attached to the email was not an account statement in Mr. Ng's name, but in fact the real copy of the April 30, 2019 statement of the J Account for modification by Mr. Ng.

The R Account and the PI Financial J Account

¶ 126 With respect to the R Account, Mr. Pallas referenced from the Chronology of Key Documents the following emails involving the Respondent, Mr. Ng and representatives of the Lenders:

- An email dated June 25, 2019, from the Respondent to Mr. Ng with the subject line "10X". Attached to this email were copies of account statements from the R Account of PI Financial, dated March 31, 2019, April 30, 2019, and May 31, 2019, and having total asset amounts of $8,653,623.03, $9,061,059.09, and $8,738,581.67, respectively. Each of these statements included the account number for the R Account (the "R Account Number").
- An email dated June 26, 2019, from the Respondent to the representatives of Lender Two with reference in the email to "Last three months statements". attached to this email were copies of PI Financial account statements dated March 31, 2019, April 30, 2019, and May 31, 2019 for the R Account Number, but these account statements differed from the copies of the account statements sent by the Respondent to Mr. Ng on June 25, 2019 in that:
    - they were in the name of Mr. Ng rather than in the name of the actual owner of the R Account as set out on the copies of the statements sent by the Respondent to Mr. Ng,
    - the name of the investment advisor associated with these accounts had been changed to that of the J Account False Investment Advisor, and
    - the total asset amounts had been increased by a factor of 10 to read $86,536,230.30, $90,610,590.90, and $87,385,816.70, respectively.
- An email from the Respondent to the representatives of the Lenders dated July 11, 2019, attaching a copy of account summaries, which had been similarly modified to be in the name of Mr. Ng for the R Account and for the J Accounts which had now been moved to PI Financial, both dated as of July 10, 2019, and showing a total portfolio value of $90,551,946.98 for the R Account and a total portfolio value of $20,588,673.86 for the J Accounts, but with the added note on both account documents that no asset removal was permitted from these accounts without the authorization of Lender Two,
- Emails from the Respondent to the representatives of Lender Two dated July 16, 2019 and August 14, 2019, attaching copies of account statements for the J Accounts and the R Account, amended as above reflected to be purportedly owned by Mr. Ng, and
- An email from the Respondent to the representatives of Lender Two dated September 17, 2019, attaching an amended copy of the R Account, again purporting the assets therein to be owned by Mr. Ng.

The Screen Shots

¶ 127 Mr. Pallas testified that the Chronology of Key Documents referenced the copy of the email dated August 14, 2019, from the Respondent to representatives of Lender Two, with the subject line stating "RE: PI Accts", with the statement "Attached is what was set up for the mailing of the statements" by way of reference to the screenshots attached to the email.

¶ 128 The screenshots attached to this email of August 14, 2019 purport to show that Mr. Ng as the owner of the J Accounts and the R Account.

¶ 129 Mr. Pallas noted that the Chronology of Key Documents contains references to subsequent emails from the Respondent to the representatives of Lender Two on August 16, 2019, August 27, 2019, September 6, 2019, and September 24, 2019 forwarding as attachments similar fraudulent screen shots.

The Security Documents Executed by the Respondent

¶ 130 The Chronology of Key Documents contains, Mr. Pallas testified, references to copies of the security documents executed by the Respondent, including the following:

- the Lender Two Security Agreement dated November 22, 2018, which the Respondent, as well as witnessing the signature of Mr. Ng's, signed on behalf of Chippingham in his capacity of President. Attached to this document, as above referenced, were copies of fraudulent statements of the J Accounts,
- the Amended Lender One Securities Pledge Agreement dated as of July 5, 2019, signed on behalf of PI Financial by the Respondent as Executive Vice-Chaiman and COO of PI Financial. This agreement pledged the 013 Account and the 023 Account at PI Financial, which accounts, as referenced above, either had a zero balance or did not exist, and
- the Third Lender Two Securities Pledge Agreement signed by the Respondent on behalf of PI as Executive Vice Chairman, which agreement pledged in favour of Lender Two the R Account and the J Accounts purported to be in the name of Mr. Ng. Attached as schedules to this agreement are copies of the fraudulent account summaries for these accounts dated as of January 15, 2020.

¶ 131 In referencing the latter two documents, Mr. Pallas noted, the Respondent had no authority to sign these documents on behalf of PI Financial.

¶ 132 Mr. Pallas testified that he believed that the evidence before the Panel as summarized in the Chronology of Key Documents clearly demonstrated that the Respondent was well aware of and participating in the fraudulent conduct being committed by Mr. Ng.

Evidence of Richard Thomas

¶ 133 Mr. Thomas testified that he has worked in his present capacity at PI Financial since about 2003. He has a staff of 3 to 4 compliance people reporting to him, and he, in turn, reports to the Chief Executive Officer of PI Financial.

Account Control Agreements

¶ 134 One of the duties required of him in this position, he stated, is to review and to approve situations whereby a lender is given security by a client of PI Financial over the financial assets in the client's accounts at PI Financial. This process involves requiring the lender to in advance provide to Mr. Thomas a draft form of the security or account control agreement which the client will be required to enter into so that Mr. Thomas is able to ensure that PI Financial is in a position to comply with the requirements set out by the lender in the draft agreement.

¶ 135 He testified that if he approved the format of the draft agreement provided by the lender and if the client subsequently entered into the agreement, a copy of the signed security or account control agreement would be placed on the client's file, trading in the relevant security accounts would be restricted to comply with the terms of the security or account control agreement, and no assets would be permitted to be removed from the accounts the subject of the agreement without the prior approval of the compliance department of PI Financial.

¶ 136 To this end, Mr. Thomas testified, if the accounts of Mr. Ng at PI Financial had been subject to account control agreements in favour of the Lenders as Mr. Ng and the Respondent represented to the Lenders, then Mr. Thomas would certainly have been aware of such agreements. He confirmed that only he has the authority at

PI Financial to approve the affixing of account control or security agreements to accounts at PI Financial and, during the relevant time period, the Respondent certainly did not have such authority.

The Respondent's Authority at PI Financial

¶ 137 Mr. Thomas testified that he first met the Respondent in April 2019 when the Respondent was facilitating the transfer of security accounts owned by Mr. Ng from Chippingham to PI Financial after the Ng Group had purchased PI Financial. He stated that Mr. Ng had requested that the Respondent be hired by PI Financial as its Executive Chairman of the Board of Directors of PI Financial as its board of directors had changed with the purchase of it by the Ng Group.

¶ 138 In his new role with PI Financial, Mr. Thomas stated, the Respondent had no direct managerial or supervisory responsibilities. His main function was to serve as Mr. Ng's representative at PI Financial.

¶ 139 Mr. Thomas referenced the copy of the Lender Two Security Agreement in evidence before the Panel. He noted that it had purportedly been signed on behalf of PI Financial by the Respondent. Mr. Thomas testified that as the Respondent was not an authorized signatory at PI Financial at the time of the signing this document, that the Respondent had no authority to sign this document on PI Financial's behalf.

The PI Financial Investigations

¶ 140 Mr. Thomas testified that the transfer of Mr. Ng's personal accounts from Chippingham to PI Financial were overseen by the Respondent. He testified that it was in January 2020 that he became aware that these accounts, might the subject of account control agreements with the Lenders, which encumbrances had been placed on them prior to the transfer of the assets in the accounts from Chippingham to PI Financial.

¶ 141 His investigation of these accounts, Mr. Thomas stated, revealed a number of questions. It appeared that some of the accounts referenced did not exist, that some of the assets referenced were not transferred, and that some of the accounts previously held at Chippingham were in the name of a party other than Mr. Ng.

¶ 142 On January 30, 2020, Mr. Thomas advised the CEO of PI Financial and, on the following day, representatives of IIROC, of his concerns. Following an information request from IIROC, the IT department at PI Financial conducted email searches of emails between the Respondent, Mr. Ng and the Lenders.

¶ 143 A more complete review of these emails by Mr. Thomas, he testified, firmly established in his mind a clear pattern of providing falsified account information to the Lenders, including nonexistent account control agreements which purported to secure assets at PI Financial.

¶ 144 On February 11, 2020, a meeting of the Board of Directors of PI Financial was held to consider what was called "evidence that serious misconduct had been committed" by Mr. Ng and the Respondent. Attached to the notice calling the meeting as evidence of this allegation were documents in the form of a summary of the evidence discovered to the date of the notice, a sample of the falsified documents of PI Financial, and a sample of an account control agreement purportedly entered into by PI Financial.

¶ 145 In summary, Mr. Thomas testified, the notice calling the meeting referred to evidence that made it appear that Mr. Ng and the Respondent had falsified company documents to make it appear as though Mr. Ng held significant assets at PI Financial as collateral for the loans advanced by the Lenders, when in fact these represented assets did not exist and/or they existed in accounts not belonging to Mr. Ng and falsely represented as belonging to him.

¶ 146 On February 11, 2020, Mr. Thomas stated, the Respondent and Mr. Ng tendered their resignations from their positions at PI Financial, confirming in these letters of resignation that they acknowledged that their salaries, and participation in PI Financial's employee benefits program would cease immediately.

¶ 147 On March 20, 2020, Mr. Thomas confirmed, he attended the IIROC offices for an interview with IIROC investigators including Mr. Pallas and provided copies of the documents that had led to his concerns about the activities of Mr. Ng and the Respondent.

¶ 148 He testified that his concerns were confirmed in the report of a special committee of the Board of

Directors of PI dated May 13, 2020 and addressed to Mr. Ng and the Respondent in which the special committee after a thorough investigation listed the evidence that it had uncovered disclosing the four different methods used by Mr. Ng and the Respondent to commit these fraudulent activities. This report concluded that committee's investigation showed that the actions of Mr. Ng and the Respondent "involved fraud and forgery and are egregious and wilful" and even though this conduct did not involve client losses, that IIROC should consider the maximum sanctions against both parties.

Enforcement Counsel's Closing Submissions

¶ 149 Enforcement Counsel submitted that although Mr. Ng was the predominant figure in the alleged fraudulent conduct, the evidence clearly demonstrated that the Respondent played an important role in that during the relevant time period, he was President and CEO of Chippingham and, subsequently the Executive Vice Chairman and a director of PI Financial. Based upon his profile in the investment industry, Enforcement Counsel submitted, the Respondent gave credibility to the fraudulent transactions committed with the Lenders. He noted that the evidence demonstrates that it was mainly the Respondent who was communicating with the Lenders and providing them with the fraudulent documentation, an occurrence, which the evidence demonstrates, he submitted, happened on at least 13 occasions.

¶ 150 Although there were no client losses from the fraudulent conduct of the Respondent, Enforcement Counsel submitted that the allegations contained in the Amended Statement of Allegations, notwithstanding the Respondent's denials, had been clearly demonstrated on a balance of probabilities to have occurred, and that the Panel should find the Respondent clearly in breach of Consolidated Rules 1400 and 8104.

THE PANEL'S DECISION ON THE CONTRAVENTIONS

Opening Observations

¶ 151 This matter commenced over three years ago with the Notice of Hearing dated November 2, 2020. As noted above, Mr. Ng has elected not to participate in the resulting hearing process and, as set out in the *Ng* Decision, the Panel found him liable for the contraventions alleged against him in the Notice of Hearing. The allegations for which the Panel has found Mr. Ng liable are based upon the same statement of facts as is before the Panel with respect to the allegations contained in the Amended Statement of Allegations.

¶ 152 However, the Respondent has chosen to participate in the hearing process, albeit through his Counsel. This form of engagement, he alleged, was due to very serious medical conditions which appeared to have afflicted him following the issuance of the Notice of Hearing. In any event, unlike Mr. Ng, he did file a Response and has participated in this process leading to a number of adjourned hearings pending a hoped-for recovery from his medical conditions.

¶ 153 As above noted, as the Respondent filed the Response denying liability, unlike with Mr. Ng, the Panel required Enforcement Counsel to present evidence proving the facts behind the allegations contained in the Notice of Hearing. To that end, although the Respondent elected not to attend the hearing on the merits, Enforcement Counsel provided to the Panel in addition to the oral testimony of Mr. Pallas and Mr. Thomas, a total of 433 evidentiary items, including those referenced in the Chronology of Key Documents.

¶ 154 The Panel in these reasons has above set out in some detail firstly the process which it has been required to go through to arrive at the hearing on the merits. In addition, it has set out above some of the detailed evidence before it in an attempt to reflect the large trove of evidence placed before it by Enforcement Counsel to prove the allegations contained in the Amended Statement of Allegations. The purpose of this lengthy detailed recital of both the process and the evidence is to put in context our decisions on the contraventions alleged in the Amended Statement of Allegations.

Decision on the Allegation of Breach of Consolidated Rule 1400 by the Respondent

¶ 155 The evidence before the Panel clearly confirms the finding of the report of a special committee of the Board of Directors of PI dated May 13, 2020, referenced above, which concluded that the actions of Mr. Ng and the Respondent "involved fraud and forgery and are egregious and wilful".

¶ 156 With particular respect to the actions of the Respondent, from the evidence before us, some of which is detailed above, the Respondent was obviously a willing participant in and willing enabler of Mr. Ng's attempts to convince the Lenders of a net worth that did not exist.

¶ 157 How the Respondent could not have known or suspected that by providing Mr. Ng with the sought for documentation, which Mr. Ng proceeded to have fraudulently modified, and then to forward the subsequently modified documents to the Lenders was not participating in the commission of fraudulent acts is beyond belief. And then to execute legal documents on behalf of Chippingham and PI Financial, both Dealer Members, which contained such fraudulent documents is clearly, in itself, a definite breach of the Consolidated Rules.

¶ 158 In the Response, the Respondent claims not to have had any discussions with the Lenders about the monies loaned by them to Mr. Ng. The evidence before the Panel clearly demonstrates that this is false, and that the Respondent was actively engaged in dealings with the Lenders on behalf of Mr. Ng with respect to the Ng Group Loans.

¶ 159 Also in the Response, the Respondent claims that he was merely acting on instructions as an employee of Mr. Ng and that the interactions with the Lenders by the Respondent were carried out under duress. Again, the Panel finds this claim difficult to accept. The Respondent was not a young person, newly introduced into the Canadian investment industry by Mr. Ng. The Respondent was an experience Approved Person who had worked in the Canadian investment industry for a number of years in senior positions. Given such industry experience, not only should the Respondent have not assisted Mr. Ng in his clearly fraudulent practices, but the Respondent should also have recognized his obligation to the Canadian investment industry and, as soon as the Respondent became aware of Mr. Ng's fraudulent activities, reported the clear breach of the Consolidated Rules to the relevant authorities and participated in assisting with the investigation into Mr. Ng's fraudulent conduct.

¶ 160 The Panel, therefore, does not accept the defences set out by the Respondent in the Response and finds that the Respondent committed continuous egregious breaches of Consolidated Rule 1400 by participating in and enabling the fraudulent acts committed by Mr. Ng with the Lenders, clearly conduct unbecoming contrary to Consolidated Rule 1400.

Decision on the Allegation of Breach of Consolidated Rule 8104 by the Respondent

¶ 161 Following the presentation of the formal medical opinion on the Respondent's medical condition in November of 2022, the Respondent through his Counsel advised the Panel on a regular basis of the alleged medical challenges facing the Respondent. As above referenced, following the dismissal of his Counsel, the Respondent did not respond to the Panel's request and provide definitive medical evidence to satisfy the Panel that he was not able to participate in the hearing on the merits notwithstanding the Panel's offer of making whatever reasonable accommodation in the format and/or venue for the holding of the hearing on the merits the Respondent might have requested.

¶ 162 As above set out, based upon the evidence of the Respondent's medical condition presented to the Panel prior to the hearing on the merits, the Panel was not willing to grant the Stay Motion.

¶ 163 As was testified by Mr. Pallas, the Respondent, through his counsel, alleged medical conditions sufficiently serious to prevent him from appearing by videoconference at the required interview with Enforcement Staff on August 13, 2020. The Panel notes that in the Response, dated December 3, 2020, there was no reference to the Respondent's alleged medical condition as being the reason he did not attend the required interview. Rather, in the Response, the Respondent submits that he cooperated with Enforcement Staff by having his counsel attend on his behalf and claims to rely on his rights under the *Canadian Charter of Rights and Freedoms.*

¶ 164 In addition, the first formal evidence of the Respondent's medical condition was presented to the Panel by way of a letter from the Respondent's doctor dated September 8, 2021, over a year after the date of the scheduled interview. Apart from the submissions of his Counsel on the Respondent's alleged medical conditions, which supposedly prevented him from complying with his required attendance at the interview, there is no formal evidence before the Panel dated prior to the September 8, 2021 letter which attests to the Respondent's

professed serious medical condition.

¶ 165 Finally, the Panel is particularly troubled by Mr. Pallas' evidence of his preliminary discussions with the Respondent's Counsel at the commencement of this hearing process. Despite the Respondent's professed medical challenges, it suggests that there was an additional motive for the Respondent in failing to attend the required interview with Enforcement Staff.

¶ 166 The Panel, therefore, finds that by failing to attend an interview with Enforcement Staff on August 13, 2020, the Respondent failed to cooperate and, therefore, committed a breach of Consolidated Rule 8104.

¶ 167 Following the Panel's decision on the Respondent's liability with respect to the breaches of Consolidated Rules 1400 and 8104 as set out in the Notice of Hearing, the Panel directs that a hearing be held pursuant to Rule 8210 of the Consolidated Rules to determine what sanctions it determines appropriate for imposition on the Respondent.

Dated at Vancouver, British Columbia this 11th day of December 2023.

"John Rogers"

John Rogers, Chair

"Barbara Fraser"

Barbara Fraser

"Johannes van Koll"

Johannes van Koll