Re Hossain

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Abid Hossain

2026 CIRO 27

Canadian Investment Regulation Organization (CIRO)
Hearing Panel (Ontario District)

Heard: July 29, 2026, by videoconference
Decision and Reasons (Motion): August 21, 2026

Hearing Panel:
Marvin Huberman, Chair, sitting alone on the consent of the parties

Appearances:
Jennie Brodski, Enforcement Counsel
Jordan Glick and Tiffany Dang, for Abid Hossain
David Hausman, for TD Investment Services Inc. (non-party)
Abid Hossain, Respondent (present)

DECISION AND REASONS ON A MOTION

I. INTRODUCTION AND OVERVIEW

[1] This is a motion by Abid Hossain (**the Respondent**), for an order compelling a non-party – TD Investment Services Inc. (**TDIS**) – to produce fourteen categories of banking records to him in advance of a disciplinary hearing on the merits. For the reasons that follow, the motion is dismissed.

[2] CIRO Enforcement Staff (**Staff**) alleges that between February and September 2020 the Respondent, then a dealing representative registered with TDIS and a branch manager employed by the Toronto-Dominion Bank (**TD Bank**), redeemed approximately $1,001,456 from the Guaranteed Investment Certificates (**GICs**) of a client (**client X**) and thereafter misappropriated, misapplied or failed to account for most of those proceeds, contrary to Mutual Fund Dealer Rule 2.1.1; and that commencing in August 2024 he failed to cooperate with Staff's investigation, contrary to Mutual Fund Dealer Rule 6.2.1.[1]

[3] The Respondent denies the allegations. In his Reply, he asserts, among other things, that he acted under the direction of client X; that client X maintained a safety deposit box into which large sums of cash were placed; that he can neither confirm nor deny the amounts in client X's accounts or the specific transactions alleged; and that he had no knowledge of client X's complaint to the Bank or of any payment by the Bank to client X other than through CIRO's documents. The Reply is in one respect expressly provisional: the Respondent pleads that he has not had sufficient time to review the disclosure carefully, and that he hopes to update his response once he has done so.[2]

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[1] Affidavit of Christine Le Dressay affirmed July 20, 2026 with Exhibits "A" to "L" (**Le Dressay Affidavit**), Exhibit B, Statement of Allegations dated July 30, 2025 (**SOA**), Contraventions 1 and 2 and paras 1–46.

[2] Le Dressay Affidavit, Exhibit D, Reply to Notice of Hearing (**NOH**) dated March 30, 2026.

[4] The Respondent moves under Mutual Fund Dealer Rule 7.3.6.2 for an order requiring TDIS, or an appropriate employee or designate, to produce for inspection and provide copies of the records described in paragraphs 1(a) to (n) of the Notice of Motion (**NOM**) (collectively, **the Bank Records**) by August 7, 2026. In the alternative, he seeks a direction for a production motion against TD Bank. He also seeks an order vacating any previous order regarding the timing of delivery of his witness statements and documents.[3]

[5] Staff opposes the motion in substantial part. Staff says that it has discharged its disclosure obligations; that the source transaction records sought have already been requested of TDIS and disclosed; that the destination account histories, the safety deposit box records and the curricula vitae sought are irrelevant; and that the request as a whole is neither specific nor proportionate and amounts to a fishing expedition. Staff takes no position on the categories concerning TD Bank's policies, procedures and records of large transactions, save that any production order must not disturb the hearing dates.

[6] TDIS, which is not a party to this proceeding, appeared by counsel and opposed the motion. Mr. Hausman made oral submissions only; TDIS filed no written materials and no evidence. TDIS acknowledges that it is a "Member" within the meaning of the Mutual Fund Dealer Rules and therefore a person over whom this Hearing Panel may exercise the production jurisdiction conferred by Rule 7.3.6.2. Its position is that none of the records sought are its own records; that all of them are records of TD Bank, a separate legal entity that is not a Member and not subject to CIRO's jurisdiction; that its practice of obtaining records from its bank affiliate in answer to requests for information from its regulator does not establish that those records are within its possession and control; and that production would in any event engage significant privacy, confidentiality and burden concerns.

[7] Three questions arise. First, does this Hearing Panel have jurisdiction to make the order sought? Second, if it does, has the Respondent established that the Bank Records are books, records or accounts of TDIS, or within TDIS's possession and control? Third, if he has, should the Panel exercise its discretion to order production of all or some of the Bank Records, having regard to likely relevance, specificity and proportionality, fairness to the Respondent, and the interests of the non-parties whose records and privacy are implicated?

[8] My conclusions may be stated shortly.

(a) The Panel has jurisdiction under Rule 7.3.6.2 over TDIS, which all counsel agree is a Member. The Panel has no jurisdiction over TD Bank, which is not a Member, an Approved Person, or any other person under the jurisdiction of the Corporation.

(b) The Respondent has not discharged his onus of establishing, on a balance of probabilities, that the Bank Records are books, records or accounts of TDIS or within TDIS's possession and control. He filed no evidence directed to that question. That failure is dispositive of the motion as brought under Rule 7.3.6.2.

(c) In any event, and were I wrong on the second question, I would decline to exercise my discretion to order production of any of the fourteen categories. Taken category by category, the records sought are either already in the Respondent's hands, or not shown to exist, or not likely relevant to an issue on the pleadings, or so broadly framed as to be neither specific nor proportionate; and in each case the deleterious effects of an order — principally the privacy interests of non-party bank customers, the confidentiality of internal fraud-prevention controls, the burden on a non-party, and the risk to peremptory hearing dates — outweigh the salutary effects.

(d) The dismissal of this motion does not leave the Respondent without the means to make full answer and defence. He has the particulars, the Chronology Summary, the underlying TD Bank Transaction Records, the Client Transfer Chronology and the correspondence with TDIS. Staff's witnesses will testify live and will be cross-examined. Staff bears the burden of proving its allegations on a balance of probabilities and remains subject to a continuing obligation of disclosure — an obligation which, on this record, has four identified subjects still outstanding, and in respect of which I make directions below.

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[3] NOM dated July 20, 2026, paras 1–4.

[9] I want to record at the outset that I found the submissions of all three counsel to be careful, candid and of real assistance. Mr. Glick in particular advanced his client's position with force and with commendable fairness to the tribunal, including by acknowledging matters that I need not decide on this motion. That the motion does not succeed is no reflection on the quality of the advocacy.

II. PRELIMINARY AND PROCEDURAL MATTERS

A. The form of the proceeding

[10] The motion was listed by the Hearings Office as a pre-hearing conference. Nothing turned on the label. The parties had exchanged written materials in the manner of a motion, a timetable had been set, and all counsel understood that a motion was to be argued.

[11] I raised with counsel whether the matter should proceed as a pre-hearing conference or as a motion. Under Rule 9 of the Mutual Fund Dealer Rules of Procedure (the **Rules of Procedure**) a pre-hearing conference is conducted by a pre-hearing conference officer who, absent the written consent of the parties, may not thereafter preside over the hearing of the proceeding or any step in it. There was no reason to engage that machinery. All counsel, and counsel for TDIS, agreed that the matter should be dealt with simply as a motion under Mutual Fund Dealer Rule 6. It was so ordered.

[12] The NOM was returnable before a Hearing Panel. My colleagues did not sit. Counsel for the Respondent and Enforcement Counsel each expressly consented on the record to my hearing the motion alone as Chair of the Hearing Panel; counsel for TDIS confirmed that the point was a matter of indifference to a non-party but raised no objection.

[13] Rule 1.5(1)(b) of the Rules of Procedure provides that a panel may waive or vary any of the Rules at any time on such terms as it considers appropriate. Relying on the consent of the parties, and being satisfied that it was appropriate, expeditious and cost-effective to do so within the meaning of Rule 1.3(1), I waived the requirement that the motion be heard by a full hearing panel and heard the motion sitting alone. These Reasons are issued in that capacity.

B. The record before me

[14] The Respondent relied on his Motion Record, consisting of the **NOM** dated July 20, 2026 and the **Le Dressay Affidavit**, together with his Factum and Book of Authorities. Staff relied on its Submissions of CIRO Enforcement Staff in Response to the Respondent's Motion for Production and Disclosure of Records dated July 27, 2026 and its Brief of Authorities. TDIS filed nothing and relied on oral submissions.

[15] It is convenient to say at once what the evidentiary record on this motion is, and what it is not. The only evidence before me is the Le Dressay Affidavit and its exhibits. Ms. Le Dressay is an office manager and law clerk at the firm representing the Respondent. Her affidavit is, in substance, a document-transmittal affidavit: it identifies and attaches the pleadings, the Affidavit of Tracey Mackay sworn March 3, 2026 with its exhibits, the disclosure correspondence, and the correspondence between Staff and TDIS. She deposes to two substantive matters, and does so on information and belief at two removes — that she is advised by Mr. Glick, who was in turn told by the Respondent, that the general ledger accounts in question may carry dozens or hundreds of transactions daily and may hold millions of dollars, and that the Respondent recalls that large sums could not be removed from TD Bank without multiple approvals and supporting documentation, including a "Large Cash Transaction Record".[4]

[16] The Respondent did not file an affidavit of his own. Neither Staff nor TDIS filed any affidavit. Mr. Glick was right to remind me, in reply, that submissions are not evidence and that I should not make findings on matters on which I have no evidence. I accept that admonition, and I apply it even-handedly. I do not treat Mr. Hausman's account of TDIS's record-keeping arrangements, or Ms. Brodski's account of what was requested of and received from TD, as evidence. But the corollary must also be accepted: where the moving party bears the onus on a question of fact, the absence of responding evidence does not discharge that onus. It leaves it

[4] Le Dressay Affidavit, para 16(a)–(b).

undischarged. I apply the same principle to Ms. Brodski's account of what was requested of, and received from, TD, a matter to which I return at paragraph [33].

III. FACTUAL BACKGROUND

A. The Respondent, the Dealer Member and the Bank

[17] One further preliminary matter should be recorded. The SOA refers to the complainant as "client X", and I have followed that convention. The exhibits to the Le Dressay Affidavit do not: they name client X, they name individuals into whose accounts funds are said to have been transferred, and they reproduce account numbers, an investor profile number and a residential address.[5] These Reasons are public. I have therefore refrained from naming any non-party customer, and where I have drawn on the exhibits, I have omitted identifying particulars. Nothing turns on those omissions as between the parties, each of whom has the unredacted material, as will the Hearing Panel seized of the merits.

[18] Between September 2006 and September 8, 2020, the Respondent was registered in Ontario as a dealing representative for TDIS, a Dealer Member of CIRO and formerly a Member of the Mutual Fund Dealers Association of Canada. Between February 7, 2014 and September 8, 2020, he was also designated as a branch manager with TDIS.[6]

[19] Throughout that period the Respondent was employed by TD Bank, an affiliate of TDIS. All TDIS dealing representatives are employed by TD Bank.[7] On September 8, 2020 TD Bank terminated the Respondent's employment and TDIS terminated his registration, for reasons unrelated to the matters now alleged. The Respondent is not currently registered in the securities industry in any capacity.

[20] TDIS and TD Bank are separate legal entities. TDIS is registered as a mutual fund dealer and is not also registered as an investment dealer; other TD affiliates, such as TD Waterhouse Canada Inc. and TD Securities Inc., are investment dealers. TD Bank is not a Member of CIRO.

B. The allegations

[21] The SOA alleges, in summary, that in or about February 2020 client X discussed his personal circumstances with the Respondent and either asked the Respondent, or agreed to the Respondent's recommendation, to "hide" his GICs; and that the Respondent thereafter processed a series of transactions by which he:

(a) redeemed approximately $1,001,456 from client X's GICs;

(b) deposited $554,000 of the redemption proceeds to a TD Bank temporary suspense account (**GL 66**) so as to offset a negative balance of approximately $554,000 that he had himself created in that account earlier in February 2020;

(c) transferred the remaining proceeds to a succession of new term deposits held in client X's name; and

(d) redeemed monies from those term deposits and deposited them to other individuals' accounts, to TD Bank general ledger accounts to offset negative balances he had created, or withdrew them as cash.

[22] On the Mackay Affidavit's breakdown, $323,464 was transferred from the term deposits to other customers' accounts, $75,000 was "cashed out" in three withdrawals of $10,000, $30,000 and $35,000, and $135,376 remained in the term deposits when the Respondent was terminated.[8] The SOA further alleges that

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[5] The exhibits name client X and other bank customers and reproduce account numbers, an investor profile number and a residential address: see, for example, Le Dressay Affidavit, Exhibits H and K.

[6] SOA, paras 6–7; Le Dressay Affidavit, Exhibit C, Affidavit of Tracey Mackay sworn March 3, 2026 (the **Mackay Affidavit**), paras 4 and 6. The Reply acknowledges the Registration History pleaded at paragraphs 6–11, save and except paragraph 9: Le Dressay Affidavit, Exhibit D, para 1.

[7] Mackay Affidavit, paras 3 and 5; SOA, para 8.

[8] Mackay Affidavit, para 25(f)–(h).

the Respondent removed the relevant accounts from client X's investor profile and moved them to a duplicate profile he created in or about May 2020, in which he altered the spelling of client X's name, his date of birth and his address.

[23] The allegations came to light in December 2022, when client X attended at the branch and complained to the branch manager that he could not access his investments. TD Bank's Global Security Investigations department investigated. Following that investigation, TD Bank paid compensation to client X totalling approximately $1,045,000.[9]

[24] The second contravention alleges that, commencing in August 2024, the Respondent failed to respond to five written requests from Staff for information and documents, delivered by registered and regular mail, by process server and by email, and failed to schedule or attend an interview. Staff pleads that as a consequence it has been unable to determine, among other things, the ultimate destination and use of the amounts redeemed from the term deposits, the circumstances in which the negative balance in the suspense account arose, the relationship between the Respondent and the owners of the recipient accounts, and the circumstances surrounding the duplicate profile.[10]

C. The Mackay Affidavit and its exhibits

[25] Ms. Mackay is a Senior Manager in the Insider Threat Management and Investigations department of TD Bank, formerly the Global Security Investigations department, a position she has held since March 2025; she has been a member of that department since 2012. She deposes that she is familiar with the investigation into the Respondent's conduct, which was completed by a lead investigator who retired late in 2025.[11]

[26] It is important, given the way the motion was argued, to be precise about what the Mackay Affidavit contains. It exhibits, among other things: the branch manager's December 2022 escalation email; client X's account statement as at February 8, 2020; a "Chronology Summary" prepared by TD Bank during its investigation, in which the transactions relevant to this proceeding are numbered 1 to 19; and, as Exhibits "5" to "18", TD Bank's Transaction Records in respect of those transactions. The Transaction Records are records generated from TD Bank's internal systems. Each includes an "Initiator" column identifying the employee who processed the transaction; Ms. Mackay deposes that "HOSSAA2" is the Respondent's initiator code.[12] The affidavit works through the transactions line by line, tying each entry on the Chronology Summary to the corresponding line of the corresponding Transaction Record. I note, looking ahead, that the Bank has itself qualified the reliability of the February 2020 account statement in material disclosed to the Respondent on June 22, 2026, to which I turn below.

D. Disclosure and the requests that led to this motion

[27] Staff issued the NOH and SOA on July 30, 2025. The Respondent retained counsel in March 2026. On March 13, 2026 Staff delivered its disclosure index and a disclosure brief containing the pleadings and the Mackay Affidavit with exhibits. The Reply was delivered on March 30, 2026.

[28] By letter dated May 16, 2026 the Respondent requested additional disclosure.[13] Staff responded on May 20, 2026, answering item by item the seven numbered requests, the fifth of which had four sub-items.[14] In that response Staff:

(a) advised that it had asked TD Bank for such further receipts or slips as it may have and would provide what was received, while noting its understanding that the Respondent already had TD Bank's internal transaction reports showing date, time, origin, destination and initiating employee for every relevant transaction;

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[9] SOA, paras 36–37; Mackay Affidavit, paras 10–17.
[10] SOA, paras 42–46, and in particular para 45(a)–(e).
[11] Mackay Affidavit, paras 1–2 and 15.
[12] Mackay Affidavit, paras 20–33 and Exhibits "4" to "18".
[13] Le Dressay Affidavit, Exhibit E, letter of Jordan Glick to Jennie Brodski dated May 16, 2026.
[14] Le Dressay Affidavit, Exhibit F, response of Jennie Brodski dated May 20, 2026, reproduced in the email chain at Exhibit G.

(b) advised that it had requested the "Large Cash Transaction Record" and related documentation, while maintaining that such material went only to TD Bank's supervision of the Respondent;

(c) declined, as overly broad or irrelevant, the requests for all general ledger movements for all customers over 2018–2020 and for client X's complete account history;

(d) advised that the records identifying the recipient individuals and the $52,155.25 and $22,717.60 transactions were contained in the spreadsheets disclosed and in the exhibits to the Mackay Affidavit;

(e) advised that it had requested information about any clawback, while taking the position that it went to penalty rather than liability; and

(f) declined to request anything concerning a safety deposit box, on the basis that the question was no more relevant than whether client X carried a wallet in his pocket; and

(g) answered the request for documents showing the approvals, overrides or multi-person authentication required for the transactions at issue by cross-reference to its answer on the Large Cash Transaction Record — that is, that it had asked TD Bank for the material and would provide what it received, while maintaining that the subject went to TD Bank's supervision of the Respondent rather than to his conduct.

[29] On May 29, 2026 Mr. Glick wrote at length explaining his client's position: that he had instructions from client X; that he received none of the funds; that of some $400,000 that moved out of the general ledger, $75,000 was provided to client X in cash and, on the Respondent's belief, placed by client X directly into a safety deposit box; that the Respondent has no relationship with the two individuals who received the two sums of approximately $150,000; that the $22,717.60 said to have gone to a family member must have belonged to a different transaction; and that the general ledger was used broadly and was not reconciled daily, so that it is not possible to say that what came out was what went in. Staff replied the same day that its position was unchanged and invited the Respondent to bring a third-party records application if so advised.[15]

[30] On June 22, 2026 Staff wrote to Mr. Glick enclosing three documents which, on reviewing its records, it had located and which had inadvertently not been disclosed. Staff apologized for the oversight. All three concern a summons issued by the Ontario Securities Commission to TD Bank dated June 19, 2025, and they include a letter of response from Fasken Martineau DuMoulin LLP dated June 23, 2025 written expressly on behalf of TD Bank.[16]

[31] That letter requires close attention, because a good deal of what the Respondent seeks on this motion has already been answered in it. In it TD Bank: describes the ordinary use of each of the eight general ledger accounts in issue, including that the suspense account is one used for items being investigated; states that not all such accounts are required to have a zero balance at the end of each business day, that balances are instead monitored against pre-established tolerance periods which vary by account, that entries outstanding beyond the tolerance period are flagged for follow-up with the branch, and that an unresolved debit entry may ultimately be written off; explains, transaction by transaction, how the negative balance of $554,000 in the suspense account came to be created in February 2020 and how it was subsequently cleared; states that TD Bank is not aware of any documentation confirming that the Respondent had authorization from client X to effect the transfers in issue; states that the $52,155.25 credited to one of client X's term deposits in February 2020 did not originate from client X; sets out the address changes recorded on the duplicate investor profile in May 2020, while stating that TD Bank is unable to identify any change made on the date pleaded; qualifies the account statement of February 8, 2020 as a document generated from TD Bank's internal system which nonetheless reflects transactions completed by the Respondent, so that further analysis is required before it can be taken accurately to depict client X's holdings; and sets out, in a dated table identifying individual

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[15] Le Dressay Affidavit, Exhibit G, email exchange of May 20 and 29, 2026.

[16] Le Dressay Affidavit, para 10 and Exhibit H, comprising the email of Jennie Brodski to Jordan Glick dated June 22, 2026 and the letter of Fasken Martineau DuMoulin LLP to the Ontario Securities Commission dated June 23, 2025 responding to a summons to The Toronto-Dominion Bank dated June 19, 2025.

redemptions, transfers and cash withdrawals, the composition of two earlier losses totalling $14,995 arising in February and December 2019.[17]

[32] The letter also bears on a matter Staff pleads it has been unable to determine, namely the relationship between the Respondent and the holders of the accounts to which funds were transferred. TD Bank was asked about seven named individuals. It identifies one as the Respondent's spouse and two as his parents, each of the latter having granted him a power of attorney over their accounts, and states that it is unaware of any relationship between the Respondent and the remaining four.[18] Whether those four include the holders of the accounts that received the two sums of approximately $150,000 is not something I can determine on this record. I note only that the answer is, on its face, capable of supporting rather than contradicting the Respondent's assertion of May 29, 2026 that he has no relationship with those two individuals.

[33] One correction should be recorded. Ms. Brodski submitted on the motion that the June 22, 2026 transmittal also enclosed material received from TD Bank in answer to the Respondent's request for source documents, and Mr. Glick did not contest the submission. The exhibit itself, however, identifies and encloses three items, all of them correspondence concerning the Ontario Securities Commission summons. Consistently with what I have said at paragraph [16] about the status of counsel's account of what was requested and received, I make no finding that the source documents requested on May 16, 2026 have been produced. I proceed instead on the footing that Staff's undertaking of May 20, 2026 to provide such further receipts or slips as TD Bank may have is a continuing one, and I return to the point at paragraphs [117] and [150].

[34] On July 2, 2026 Staff sent a request for information addressed to a Vice-President of TD Bank, care of Fasken Martineau DuMoulin LLP, seeking two things: whether TD Bank had clawed back the funds transferred to other clients 'accounts, and TD Bank's policies regarding large transactions and whether or how the Respondent was able to override them. A response was sought by July 10, 2026. Staff did not request the balance of the information sought by the Respondent. Staff provided its request to Mr. Glick on July 8, 2026. It should be noted, because the Respondent makes something of it and because it is to Staff's credit rather than otherwise, that the two subjects on which Staff chose to press TD Bank were the two which it had, six weeks earlier, characterized as going only to TD Bank's supervision of the Respondent or only to penalty.[19]

[35] Although the request was addressed to an officer of TD Bank, the response of July 16, 2026 came from counsel for TDIS, who identified TDIS as "the Member" and answered on its behalf. A further response followed on July 17, 2026. Three aspects of those responses matter on this motion. First, in answer to the clawback question, TDIS advised that no funds were clawed back in connection with the matter and that "the bank was unable to verify the specific amounts in issue due to the complexity of Hossain's movement of funds among various General Ledger (**GL**) accounts to which he had access."[20] It added that the misappropriated funds had been reimbursed to client X as a loss to the Bank. Second, in answer to the policy question, the letter of July 16, 2026 stated that the Member had engaged the relevant partners and would provide an update once confirmation of the historical policies was received.[21] Third, on July 17, 2026, TDIS advised that the Respondent's conduct was unsanctioned and in clear breach of TD Bank's Code of Conduct and Ethics, and that "while there was no specific policy respecting large transactions at the time," the Respondent exceeded his authority in breach of the terms of his employment and processed unauthorized transactions in a manner designed to conceal his activities.[22]

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[17] Le Dressay Affidavit, Exhibit H, letter of Fasken Martineau DuMoulin LLP to the Ontario Securities Commission dated June 23, 2025, answers to questions 2 to 10.
[18] Ibid., answer to question 1. Compare SOA, para 45(c).
[19] Le Dressay Affidavit, paras 11–12 and Exhibits I and J. The request of July 2, 2026 is addressed to a Vice-President of TD Bank and was sent to counsel; it sought a response by July 10, 2026.
[20] Le Dressay Affidavit, Exhibit K, letter of Fasken Martineau DuMoulin LLP to CIRO dated July 16, 2026, written on behalf of TDIS., described in it as "the Member".
[21] Le Dressay Affidavit, Exhibit K, answer to question 2.
[22] Le Dressay Affidavit, Exhibit L, email of Jonathan Wansbrough to CIRO dated July 17, 2026, forwarded to Mr. Glick the same day.

[36] The promised update has not been provided — or at least the record before me does not disclose that it has been. The answer to the second of Staff's two questions of July 2, 2026 is therefore incomplete on its face, and the answer given on July 17, 2026 is best understood as an interim one. That is a matter of some importance to the disposition of this motion, and I return to it at paragraphs [111], [117] and [150].

[37] The NOM was issued on July 20, 2026. The hearing on the merits is scheduled for three days, September 29 and 30, and October 1, 2026.[23]

IV. THE MOTION AND THE POSITIONS OF THE PARTIES AND OF TDIS

A. The order sought

[38] Paragraph 1 of the NOM seeks production by TDIS, by August 7, 2026, of fourteen categories of records lettered (a) to (n). At my invitation, and helpfully, Mr. Glick grouped them into five categories, which I adopt for the balance of these Reasons:

1. Source transaction and tracing records — items (a), (f), (h), (i) and (j);
2. Destination account records — item (g);
3. Controls, policies and approvals — items (b), (c), (d), (e) and (l);
4. Safety deposit box records — item (k); and
5. Investigator records — items (m) and (n).

[39] I asked Mr. Glick whether he was prepared to withdraw any item on the basis that it was not a TDIS document, was not within TDIS's possession or control, was not relevant to the matters being considered, or that its absence would not render it unfair to proceed to the hearing. He declined to withdraw any item, submitting that every item satisfied each of those criteria. He was entitled to take that position. It does, however, mean that the motion must be assessed as it was framed, including in its most expansive elements.

[40] Paragraph 2 seeks an order vacating any previous order regarding the timing of the delivery of the Respondent's witness statements and documents. Paragraph 3 seeks, in the alternative to paragraph 1, a direction for a production motion as against TD Bank. Paragraph 4 seeks such further relief as counsel may advise, including any protective orders necessary to preserve the privacy of individual clients.

B. The Respondent' s position

[41] Mr. Glick's central submission is that Staff's case depends almost entirely upon the Mackay Affidavit, which reconstructs the movement of funds through a complex series of banking transactions and attributes specific amounts to particular transfers, withdrawals and accounting entries; that Ms. Mackay was not the investigator who performed the underlying investigation and does not identify who was, what steps were taken, what records were reviewed, or what methodology was employed; and that the Respondent is therefore asked to accept the conclusions of an investigation without access either to the investigators or to the primary records upon which the conclusions depend.

[42] He submits that Rule 7.3.6.2(b) is disjunctive: it reaches not only a Member's own books, records and accounts but also anything "within such person's possession and control". He offered the analogy of a physician's file: the records belong to the patient, but the physician may be ordered to produce them because they are in the physician's possession and control. He submits that TDIS has demonstrated, by its words and conduct, that it has the requisite possession and control: Staff's requests for information were directed to TDIS, not to TD Bank, and TDIS answered them without ever distinguishing between its own records and those of its affiliate.

[23] The NOM, para 22, and the Factum of the Respondent record the hearing dates as September 28–30, 2026. At the hearing of this motion the dates were referred to as September 29 and 30 and October 1, 2026. Nothing in these Reasons turns on the discrepancy; the parties should confirm the dates with the Hearings Office. On either version the hearing is imminent and, as Staff advised without contradiction, the dates are peremptory upon the Respondent.

[43] He submits that the reconstruction cannot be tested without the source documents; that Ms. Mackay must herself have reviewed all of the transactions into and out of the general ledger accounts in order to conclude that the money that came out was the money that went in; and that, absent the underlying records, the Respondent has no means of challenging that conclusion. He deployed a vivid image: the exercise is akin to pouring a cup of water into a lake, walking to the other side, drawing out a cup of water, and asserting that it is the same cup.

[44] He points to the tension he perceives between Ms. Mackay's precision — amounts stated to the penny, including interest — and TDIS's advice of July 16, 2026 that the Bank was unable to verify the specific amounts in issue. He submits that he need not establish that the two positions are irreconcilable; it is enough that there is an apparent conflict, and that the conflict makes it reasonable to seek the source documentation.

[45] On fairness, he submits that it is inherently unfair for Enforcement Counsel to act as gatekeeper of relevance while simultaneously prosecuting the matter; that documents were provided readily when they assisted the prosecution but are said to be unavailable when the Respondent seeks them; and that his client would not be seeking these records if he did not genuinely believe that the conclusions in the Mackay Affidavit are wrong. On privacy, he submits that it does not lie in TDIS's mouth to object, given that the identities and account information of the recipient individuals appear in Staff's own materials.

[46] Finally, he submits that the Mackay Affidavit is in substance an expert report, or at least the report of a "participant expert", and that the qualifications of its author and of the original lead investigator must be capable of being tested.

C. Staff's position

[47] Ms. Brodski submits that the request fails on the second limb of the very test the Respondent advances: it is not sufficiently specific or proportionate. Asserting that a request is not a fishing expedition does not make it so. She emphasizes that it is Staff that directs and conducts the investigation and that makes the initial assessment of relevance, subject to review; that Staff need not conduct the investigation the Respondent would have conducted; and that the sheer volume of what is sought, and the repetition of requests already answered, points to an exploratory exercise.

[48] As to items (a), (f), (h), (i) and (j), Staff says that it passed the request for source documents to TD Bank, that TD Bank provided documentation in response, and that Staff disclosed it on June 22, 2026, together with the spreadsheets referenced in the Mackay Affidavit and the Client Transfer Chronology delivered on May 29, 2026. Staff does not know what more the Respondent expects to exist; that material may take the form of database extracts rather than paper vouchers does not deprive it of its character as primary source material. That account of what was requested of, and received from, TD Bank was given from the bar. It is not evidence, and I have addressed its status at paragraph [33].

[49] As to item (g), the complete account history of the recipient individuals is irrelevant and engages the privacy of non-party bank customers; the documents underlying the alleged transactions have been disclosed. As to item (k), the safety deposit box is a red herring: whether client X had a box into which cash could have been placed says nothing about whether the Respondent processed the transactions alleged, and the same reasoning applies with greater force to security footage, which may run to thousands of hours if it exists at all. As to items (m) and (n), Ms. Mackay's professional background is summarized in her affidavit, and any witness will be the subject of a brief biography; the curriculum vitae of a non-witness is irrelevant.

[50] Staff takes no position on items (b), (c), (d), (e) and (l), while maintaining that it does not require them to prove its case and that they pertain to TDIS's supervision of the Respondent rather than to his conduct. Staff's only stipulation is that if production of those items were ordered, the timeline must not disturb the hearing dates. In answer to my question, Staff indicated that a deadline of August 31, 2026 would be acceptable.

[51] Staff also confirmed on the record, in terms that I regard as significant, that: Ms. Mackay will not be tendered as an expert; Staff does not intend to serve an expert report; and Staff's witnesses will give their evidence in chief live rather than by affidavit.

D. TDIS's position

[52] Mr. Hausman candidly acknowledged that TDIS is a mutual fund dealer and a Member, and therefore a person over whom the Panel may exercise its production jurisdiction in respect of its own records. His submissions were directed to what follows from that concession, and to what does not.

[53] He submits that none of the records sought are TDIS's own records; all of them pertain to transactions effected through TD Bank and are records of TD Bank, a non-member. In the ordinary course CIRO delivers requests for information to TDIS; TDIS complies and, where necessary, forwards the request to its bank affiliate. It does so because of its responsibilities as a regulated entity to its regulator. That, he submits, is a function of the regulatory relationship, and does not establish that its affiliate's records are in TDIS's custody or control. A dealer member that does not stand on ceremony when its regulator asks should not thereby be taken to have assumed a wider set of obligations to a respondent in a disciplinary proceeding to whom it owes no duty of disclosure.

[54] He submits further that the destination account information concerns other bank customers whose banking information is highly sensitive and who are strangers to this proceeding; that access to records and video relating to a safety deposit box are acutely sensitive; that internal policies and procedures designed to prevent misappropriation should not be produced and deployed in a public hearing where they may serve as a roadmap for circumvention; that TDIS does not know whether the policies sought exist; that a production order compels the production of existing documents and not the creation of new ones, so that no order should issue in respect of a curriculum vitae that may not exist; and that production would be burdensome, particularly over the summer months and particularly where TDIS must reach across a corporate boundary to obtain the material. He proposed that any further information required should be obtained through the established process of a request for information from CIRO.

V. THE LEGAL FRAMEWORK

A. The production power: Mutual Fund Dealer Rule 7.3.6.2

[55] The motion is brought under Rule 7.3.6.2 of the Mutual Fund Dealer Rules, headed "Attendance or Production", which provides:

> Every Member, Approved Person and other person under the jurisdiction of the Corporation may be required by a Hearing Panel:
>
> (a) to attend before it at any of its proceedings and give information respecting any matter involved in the proceeding; and
>
> (b) to produce for inspection and provide copies of any books, records and accounts of such person, or within such person's possession and control, relevant to the matters being considered.

[56] The Rule contains three cumulative requirements. The person from whom production is sought must be a Member, an Approved Person, or another person under the jurisdiction of the Corporation. The material sought must be books, records and accounts of that person, or within that person's possession and control. And the material must be relevant to the matters being considered. If any of the three is absent, the power is not engaged. If all three are present, the Rule is permissive — the person "may be required" — and a discretion arises.

B. The Rules of Procedure

[57] Rule 1.3(1) of the Rules of Procedure directs that the Rules be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness. Rule 1.3(2) permits the practice, where a matter is not provided for, to be determined by analogy. Rule 1.5(1)(b) permits a panel to waive or vary any Rule. Rule 6 governs motions. Rule 7.1 requires Staff to provide particulars of its allegations with the Notice of Hearing. Rule 10 governs Staff's disclosure obligations

[58] The Respondent invites me to draw an analogy to Rule 8421 of the Investment Dealer and Partially Consolidated Rules, which provides that the Tribunal may order any person to produce documents. I do not find

the analogy of assistance. Rule 1.3(2) permits recourse to analogy "where matters are not provided for in these Rules". Third-party production is provided for: Rule 7.3.6.2 addresses it directly and, in doing so, defines the class of persons over whom the power may be exercised. To read the broader language of a different rule book into Rule 7.3.6.2 would not be to fill a gap by analogy; it would be to enlarge, by interpretation, a jurisdiction that the applicable Rule has deliberately bounded.

C. Staff's first party disclosure obligation

[59] It is common ground that Staff's disclosure obligation in a CIRO disciplinary proceeding is of a standard analogous to that imposed on the *Crown by R. v. Stinchcombe.*[24] In *Re BDO Canada LLP* the Ontario Securities Commission described the exercise in terms I adopt as an accurate statement of the approach applicable here: Staff must initially assess which non-privileged documents it considers relevant to an allegation, and in exercising that judgment — which is later reviewable — must include not only documents on which it intends to rely but documents that might reasonably assist a respondent in making full answer and defence, including by helping the respondent make tactical decisions; assess relevance in the context of the specific allegations; reasonably anticipate defences or issues that a respondent might properly raise; include both inculpatory and exculpatory documents; and err on the side of inclusion.[25]

[60] The obligation is broad, but it is not unlimited. As the Commission put it, relevance ultimately depends on there being a sufficient connection between the document in question and the respondent's ability to make full answer and defence to Staff's allegations; and the standard is "relevant to an allegation", not "possibly relevant". The burden lies on the respondent to articulate a basis for requesting further disclosure.[26]

[61] Critically for present purposes, Staff's obligation does not extend to documents in the exclusive possession of a third party. In *IIROC v. Crandall* the New Brunswick Court of Appeal held that IIROC's obligation at the adjudicative stage was to disclose all relevant, non-privileged information in its possession or control, whether inculpatory or exculpatory; to inquire of its investigators to ensure the disclosure was complete; and to disclose relevant information obtained from third parties in the course of the investigation — but that it had no duty to disclose documents in the exclusive possession of any third party. The Court expressly rejected the proposition that the position was altered by the fact that IIROC's regulatory regime applied to the firm in question and that the firm's employees had seemingly complied with IIROC's requests. The firm remained a third party, and documents that had not been given to IIROC fell under the O'Connor regime.[27]

D. Third party production: the O'Connor regime

[62] Records in the hands of a third party are governed by R. v. O'Connor.[28] An O'Connor application is a two-step process. At the first step the applicant must demonstrate that the records sought are likely relevant to an issue at trial, which includes the credibility or reliability of a witness. In view of the privacy interests at stake, the applicant bears the burden of demonstrating that the documents sought are logically probative to an issue at trial or to the competence of a witness to testify. If the likely relevance threshold is met, the documents are produced to the adjudicator, who must then weigh the salutary and deleterious effects of a production order and determine whether a non-production order would constitute a reasonable limit on the ability of the applicant to make full answer and defence.

[63] The Supreme Court's caution in O'Connor, quoted with approval by the IIROC hearing panel in *Re Hirani*, is directly in point on this motion. The Court observed that perfect justice, viewed from the accused's perspective alone, might suggest an entitlement to "every scintilla of information" that could conceivably be useful to the defence, including anything usable to discredit a Crown witness. But the picture changes once other perspectives are weighed — the need for a justice system that is workable, affordable and expeditious; the danger of diverting the trier of fact from the true issues; and the privacy interests of those caught up in the

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[24] *R. v. Stinchcombe*, 1991 CanLII 45 (SCC), [1991] 3 SCR 326.
[25] *Re BDO Canada LLP* 2019 ONSEC 21, at paras 14 and 19.
[26] *ibid*, at paras 16–19; and see *Re Cormark Securities Inc.* 2023 ONCMT 23, at para 19.
[27] *IIROC v. Crandall*, 2020 NBCA 76, at paras 71–72.
[28] *R. v. O'Connor* 1995 CanLII 51 (SCC), [1995] 4 SCR 411.

process. Those considerations point instead to a more realistic disclosure standard consistent with fundamental fairness, and, the Court concluded, that is all the law requires.[29]

[64] *R. v. McNeil* refines the line between the two regimes.[30] Records genuinely within the prosecuting authority's possession or control fall under *Stinchcombe*; records in the hands of a genuinely third party fall under O'Connor. The distinction is not merely formal, and it is at the heart of this motion. It is precisely because the O'Connor threshold protects the interests of persons who are strangers to the proceeding that the characterization matters[31].

[65] In *Re Hirani* a respondent sought disclosure of documents in the possession of his former member firm, including his own emails and internal correspondence. The hearing panel dismissed the motion, observing that it was unlikely there would be many, if any, documents identified and determined as likely relevant.[32] In *Re Cormark Securities Inc.* the Capital Markets Tribunal dismissed a disclosure motion where the request was insufficiently clear and, even given its most generous meaning, sought documents that were not relevant.[33] And in *Re Carbonelli & Conway* the hearing panel confirmed that it is Staff that determines relevancy in fulfilling its disclosure obligations in the context of the specific allegations.[34]

E. Production against a non-party: Echelon

[66] Both parties relied on *Re Echelon Wealth Partners Inc. and Burns*.[35] I accept, as the Respondent submits, that Echelon reflects the governing considerations on a production motion of this kind: whether the requested records bear a reasonable relationship to the issues raised by the pleadings; whether the request is sufficiently specific and proportionate; and whether the records are capable of assisting the respondent in making full answer and defence. Conversely, production may properly be refused where a request is speculative, overly broad, or amounts to a fishing expedition.

[67] Staff is right, however, that the Respondent's formulation at paragraph 29 of his factum is incomplete. It states the considerations that bear on the exercise of the discretion, but it omits the two anterior questions posed by the text of Rule 7.3.6.2 itself — jurisdiction over the person, and the character of the records as the person's own or within their possession and control — and it omits the balancing of salutary and deleterious effects that O'Connor requires once likely relevance is shown. A test which begins and ends with relevance to the pleadings would afford no weight at all to the position of the non-party, and that cannot be right.

F. Full answer and defence in a regulatory proceeding

[68] This is a disciplinary proceeding, not a criminal prosecution. Section 7 of the Canadian Charter of Rights and Freedoms is not engaged. What is engaged is the common law duty of procedural fairness, which in this context is a demanding one: the allegations are serious, the potential consequences for the Respondent's livelihood and reputation are grave, and the proceeding is public. The disclosure standard is accordingly modelled on *Re Stinchcombe*[36]. But the adaptation runs both ways. The right to make full answer and defence in a regulatory hearing is not a right to require a regulator, still less a non-party, to conduct the investigation that the respondent would have conducted. As Staff put it, it is not Staff's role to conduct an investigation at the Respondent's behest.

VI. THE TEST FOR THIRD-PARTY PRODUCTION IN CIRO PROCEEDINGS

[69] Drawing these authorities together, and applying them to the text of Rule 7.3.6.2, I would state the test on a motion of this kind as follows.

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[29] *ibid*, quoted in *Re Hirani* 2018 IIROC 33. The passage is paraphrased; the Panel adopts its reasoning.
[30] *R. v. McNeil* 2009 SCC 3.
[31] *Supra* at note 28
[32] *Re Hirani* 2018 IIROC 33.
[33] *Re Cormark Securities Inc.* 2023 ONCMT 23, at paras 19 and 27.
[34] *Re* Carbonelli & Conway 2011 IIROC 74.
[35] *Re Echelon Wealth Partners Inc. and Burns* 2024 CIRO 94.
[36] *Supra* at note 24

A. What the moving party must establish

[70] The onus is on the party seeking production. That party must establish, on a balance of probabilities:

(a) Jurisdiction. That the person from whom production is sought is a Member, an Approved Person, or another person under the jurisdiction of the Corporation within the meaning of Rule 7.3.6.2.

(b) Possession or control. That the records sought are books, records or accounts of that person, or are within that person's possession and control. This is a question of fact requiring evidence. It is not established by showing that the person has, on request, previously obtained similar material from someone else.

(c) Likely relevance. That the records are relevant to the matters being considered — that is, that they are likely relevant to an issue raised on the pleadings or to the credibility or reliability of a witness, in the sense of being logically probative to such an issue. Speculation that records might assist is not enough; nor is a bare assertion of relevance, however sincerely held.

(d) Specificity and proportionality. That the request is framed with sufficient precision, and is proportionate to the issues in the proceeding and to the burden production would impose.

(e) Necessity. That the records are capable of assisting the moving party in making full answer and defence, such that production is necessary in the interests of justice.

B. What the responding party must establish

[71] Where, as here, the motion is resisted by Enforcement Staff, Staff must be able to satisfy the Panel that it has discharged its own first-party disclosure obligations under Rule 10 and *Stinchcombe*[37]: that it has disclosed all relevant, non-privileged material in its possession or control, whether inculpatory or exculpatory; that it has made reasonable inquiry of its investigators; and that it has disclosed relevant material obtained from third parties in the course of the investigation. Staff's initial assessment of relevance is entitled to respect but is reviewable by the Panel. Staff does not, however, bear an onus to disprove the relevance of records it does not hold; the onus on a third-party production motion remains on the moving party throughout.

C. The position of the third party

[72] A non-party from whom production is sought does not bear the burden of disproving relevance. Its role is to assist the Panel, and it is entitled to be heard on: whether the records are its own or within its possession and control; the privacy, confidentiality, privilege or commercial-sensitivity interests engaged, including those of persons who are strangers to the proceeding; the practical burden and cost of compliance; and the practicability of any timetable. Where the third party asserts such interests, the Panel must weigh them; it should not accept bare assertion, but neither should it disregard interests that are obvious on the face of the request.

D. The balancing

[73] If the moving party clears the likely relevance threshold, the Panel must weigh the salutary against the deleterious effects of the order sought and determine whether refusing production would constitute an unreasonable limit on the moving party's ability to make full answer and defence. The relevant considerations include: the probative value of the records to a live issue; the extent to which the same ground is already covered by material in the moving party's hands; the privacy and dignity interests of non-parties; the confidentiality or security sensitivity of the material; the burden imposed on a non-party who owes no duty of disclosure to anyone in the proceeding; the effect on the hearing timetable; and the availability of other means — cross-examination, the burden of proof, objections to admissibility — by which the moving party's legitimate concerns may be addressed.

[74] This last consideration deserves emphasis. CIRO hearing panels must balance a respondent's right to a full and fair defence against the burden placed on non-parties. Persons who are not parties to a disciplinary proceeding have not chosen to be caught up in it. Where those persons are bank customers whose financial

[37] *Supra* at note 24

affairs are sought to be laid open, or a financial institution asked to marshal historical records across a corporate boundary on short notice, the burden is real and must be given genuine weight rather than formal acknowledgment. That does not mean a non-party may shelter behind inconvenience where records are truly necessary to a fair hearing. It means that necessity must be demonstrated, not assumed.

VII. ANALYSIS AND FINDINGS

A. Jurisdiction: TDIS is a Member; TD Bank is not

[75] I raised the jurisdictional question at the outset, and all counsel addressed it. TDIS, through Mr. Hausman, acknowledged without qualification that it is a dealer member registered as a mutual fund dealer in accordance with securities legislation and not also registered as an investment dealer, and therefore a "Member" as defined in the Mutual Fund Dealer Rules. Staff and the Respondent agreed. I accept the concession, which appears to me to be correct.

[76] It follows that TDIS is a person over whom this Panel may exercise the production power in Rule 7.3.6.2, and that jurisdiction — in the sense of jurisdiction over the person — is established. Mr. Hausman was careful to add, and I accept, that the concession is confined to TDIS's own records.

[77] TD Bank stands in a different position. It is a Schedule I bank and an affiliate of TDIS. It is not a Member, it is not an Approved Person, and it is not otherwise a person under the jurisdiction of the Corporation. Rule 7.3.6.2 does not reach it. This Panel therefore has no jurisdiction to order TD Bank to produce anything, and no jurisdiction to give a "direction for a production motion" as against it. The alternative relief sought in paragraph 3 of the Notice of Motion must be dismissed for want of jurisdiction. Any remedy the Respondent may have against TD Bank lies, if anywhere, in another forum, and I say nothing about it.

B. Possession and control: the dispositive question

[78] I accept Mr. Glick's construction of Rule 7.3.6.2(b). The word "or" is disjunctive. The Rule reaches two categories: books, records and accounts of the person; and books, records and accounts within that person's possession and control. The physician's file is a sound illustration. A Member cannot defeat a production order merely by showing that legal title to the documents rests elsewhere.

[79] But accepting the construction does not answer the question. The second branch requires possession and control, and possession and control must be proved. It is a question of fact. And on this motion the Respondent bears the onus of proving it.

[80] The difficulty for the Respondent is that he adduced no evidence directed to it. The Le Dressay Affidavit does not depose to where the requested records are held, in whose systems they reside, which entity generates or maintains them, on what terms TDIS may access them, or whether TDIS has any contractual, corporate or operational entitlement to obtain them. Ms. Le Dressay could not have given such evidence; she is a law clerk in the office of the Respondent's solicitors. Her two substantive paragraphs are hearsay upon hearsay and go to entirely different subjects. The Respondent, who was a branch manager at the Bank for more than six years and who might have been expected to know a good deal about how these records are created and held, did not file an affidavit of his own.

[81] What the Respondent points to instead is conduct: Staff addressed its requests for information to TDIS, and TDIS answered them, drawing on material obtained from TD Bank, without ever distinguishing between its own records and its affiliate's. Mr. Glick submits that I should infer possession and control from that course of dealing, and that on a balance of probabilities the inference is available.

[82] I am not prepared to draw that inference, for four reasons.

[83] First, the conduct is equally, and more naturally, explained by the regulatory relationship. A Dealer Member that receives a request for information from its regulator is under a positive obligation to cooperate. It is neither surprising nor probative that TDIS met those requests by asking its affiliate for the underlying banking records and passing them on. The willingness of a regulated entity to accommodate its regulator is a feature of self-regulation, not evidence of custody. To convert cooperation into control would create a perverse incentive:

the more readily a Member assists its regulator, the wider the obligations it would be taken to have assumed toward respondents in disciplinary proceedings to whom it owes no duty of disclosure at all.

[84] Second, this reasoning is not novel. It is what the New Brunswick Court of Appeal decided in Crandall. The Court expressly addressed, and rejected, the argument that because IIROC's regulatory regime applied to the firm and the firm's employees had complied with IIROC's requests, the firm's documents ceased to be third-party documents. The firm remained a third party; documents not given to the regulator fell under O'Connor.[38] The same analysis applies with at least equal force here, where the entity that generated the records is not even the Member but the Member's non-member affiliate.

[85] Third, the material actually before me tends the other way. The Mackay Affidavit is deposed to by a Senior Manager in a department of TD Bank. It describes an investigation conducted by TD Bank's Global Security Investigations department. It exhibits TD Bank's Chronology Summary and TD Bank's Transaction Records. The correspondence relied on by the Respondent as demonstrating control is correspondence in which counsel for TDIS reports that "the Member engaged partners related to TD's policies and will provide an update once we receive confirmation for historical policies" — language that describes a request being made of someone else, not a search of one's own filing cabinet.

[86] Fourth, and most tellingly, the correspondence in evidence does distinguish between the two entities, and does so carefully and consistently. When the Ontario Securities Commission wished to compel the banking records underlying this investigation, it issued a summons to TD Bank; and the response of June 23, 2025 was given by Fasken Martineau DuMoulin LLP expressly on behalf of TD Bank, in terms which reserve the Bank's privilege and assert the confidentiality of the Bank's and its customers' information. When CIRO sought information in July 2026, the response was given by the same firm expressly on behalf of TDIS, identified as "the Member". The submission that TDIS has never distinguished between its own records and those of its affiliate is therefore not borne out by the documents on which it is founded. What those documents show is closer to the opposite: that where the Bank's own records have been compelled, they have been compelled from the Bank, by a body possessed of a statutory power to summons it. I say nothing about whether any such avenue is open to the Respondent, or on what terms. It is not a matter for this Panel.

[87] I therefore find that the Respondent has not established, on a balance of probabilities, that the Bank Records are books, records or accounts of TDIS, or that they are within TDIS's possession and control. The second requirement of Rule 7.3.6.2(b) is not met, and the production power is not engaged.

[88] I add this. An order requiring a Member to obtain from a non-member affiliate records that the Member does not itself hold is, in substance, an order against the non-member. It would achieve indirectly what Rule 7.3.6.2 does not permit directly. That consideration reinforces, rather than displaces, the conclusion I have reached.

[89] That finding is dispositive. Because the motion was fully argued, however, and because the Respondent is entitled to know how his request would have fared had he cleared that hurdle, I go on to consider whether I would exercise the discretion under Rule 7.3.6.2 in his favour. I would not. I consider each of the five categories in turn.

C. Category 1 – Source transaction and tracing records: items (a), (f), (h), (i) and (j)

[90] This is the heart of the motion, and it rests on a premise stated at paragraph 31 of the Respondent's factum: that "the reproduction of the alleged movement of funds is based on spreadsheet entries clearly prepared by legal counsel but not the source documents themselves."

[91] With respect, that premise is not made out on the record. The Mackay Affidavit exhibits, as Exhibits "5" to "18", TD Bank's Transaction Records for the impugned transactions. Those are extracts from the Bank's internal systems. They show, for each transaction, the accounts debited and credited, the amounts, the dates, and an "Initiator" column identifying the employee who processed it. They are not the work product of counsel. The affidavit ties each numbered entry on the Chronology Summary to specific lines of specific Transaction Records — line 1 of Exhibit 5 to the redemption of $350,000 from GIC No. 2, line 2 to the redemption of

[38] *supra* at note 27

$204,000 from GIC No. 1, line 3 to the transfer of $554,000 to GL 66, and so on through nineteen transactions. Whatever else may be said about the strength of the inferences Staff invites, the Respondent is not confronted with a bare assertion. He has the underlying entries.

[92] That the records take the form of system extracts rather than paper vouchers or withdrawal slips does not deprive them of their character as primary source material. Ms. Brodski's observation — that transactional banking records of this vintage are generated from databases — is a matter of common experience, and I do not understand it to be seriously disputed. More to the point, Staff asked TD Bank on May 20, 2026 for whatever further receipts or slips existed and undertook to provide what it received. For the reasons given at paragraph [33] I make no finding that anything further has been produced; but neither is there any evidence before me that a further body of source documentation exists. What the record does show is that when TD Bank was asked by the Ontario Securities Commission to explain particular movements of funds, it answered at the level of individual transactions and by reference to its systems, and produced a dated table of redemptions, transfers and withdrawals rather than any underlying voucher. A production order operates on documents that exist; it cannot conjure them, and it should not issue on the speculative footing that something more may be found.

[93] Item (f) requires separate comment, because it illustrates the difficulty with the motion as a whole. It seeks "all documents showing the movement of funds into, out of, and within the Bank Suspense Account ... or general ledger accounts, for all transactions involving the Respondent's login for all customers from within the years 2019 to 2020 inclusive." On the Respondent's own evidence, such accounts may carry dozens or hundreds of transactions each day and may hold millions of dollars at any time. The request therefore extends to every general ledger transaction the Respondent touched, for every customer of the branch, over a two-year period — including transactions that Staff has expressly excluded from the scope of this proceeding, and including the banking affairs of an indeterminate number of customers who have nothing whatever to do with these allegations.

[94] A request in those terms is not tethered to the pleadings; it is tethered only to the Respondent's employee login. It fails the specificity and proportionality requirement identified in Echelon[39] by a wide margin. It is the paradigm of the request that O'Connor describes: every scintilla of information which might possibly be useful. And it would visit a serious and wholly unjustified intrusion upon the privacy of non-party bank customers[40].

[95] Mr. Glick's underlying point is a different and better one, and I want to address it directly rather than dispose of it by label. His submission is that Ms. Mackay's conclusion — that the money that left the general ledger accounts for the recipient accounts was client X's money rather than the proceeds of some other transaction entirely — is an inference which, on the nature of a pooled and unreconciled general ledger, cannot be tested without seeing everything that passed through it. The cup of water and the lake.

[96] That is a serious submission about the sufficiency and weight of Staff's evidence. It is not, however, a submission that establishes the likely relevance of two years of general ledger activity for all customers. The distinction matters. If Staff cannot prove that the funds deposited to the recipient accounts were traceable to client X's redemptions, Staff will fail to prove that part of its case. The Respondent does not need the Bank's entire ledger to make that argument; he needs only to make it, and Staff bears the burden of meeting it on a balance of probabilities. Disclosure is not the mechanism by which the sufficiency of a prosecutor's proof is tested. The hearing is.

[97] I would add, for completeness, that the Respondent's theory is available to him on the material he already has — and that the June 22, 2026 disclosure gives him a good deal more than a foothold. It contains TD Bank's own statement that not all of the general ledger accounts in question are required to balance at the end of each business day; that balances are instead monitored against tolerance periods which vary by account according to its use; that entries outstanding beyond the tolerance period are flagged for follow-up with the branch; and that an unresolved debit may in the end simply be written off. It contains TD Bank's description of

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[39] *Supra* at note 35
[40] *Supra* at note 28

the suspense account as an account used for items being investigated. And it contains TD Bank's transaction-level account of how the negative balance in that account was created and cleared in February 2020. If the Respondent wishes to argue that a pooled and imperfectly reconciled ledger cannot bear the tracing inference Staff invites, he has the Bank's own description of the ledger with which to argue it.

[98] Items (h), (i) and (j) concern identified transactions: the $52,155.25 transferred from a general ledger account to a term deposit; the $150,246.85 and $150,500 said to have been transferred to the Other Individuals' Account; and the $22,717.60 said to have been transferred to the Other Individual's Account. To the extent these items seek the transaction records for those transactions, the records are already in the Respondent's hands: they are described and exhibited in the Mackay Affidavit. The Bank has, in addition, answered directly the question of provenance which item (h) raises, stating that the $52,155.25 credited to client X's term deposit did not originate from client X. To the extent they seek what the recipients did with the money, how the Bank "dealt with" it, and whether it was clawed back, Staff put precisely that question to TDIS on July 2, 2026, TDIS answered it on July 16, 2026, and the answer was disclosed. The remainder — "what use the Other Individuals' Accounts made of these deposits" — is a request for the banking history of non-parties, considered under Category 2 below.

[99] I turn to the TDIS response of July 16, 2026, on which the Respondent placed considerable weight, and rightly so. It is his strongest point, and it deserves a direct answer.

[100] The Respondent submits that TDIS's statement that "the bank was unable to verify the specific amounts in issue due to the complexity of Hossain's movement of funds among various General Ledger (GL) accounts to which he had access" cannot be reconciled with Ms. Mackay's affidavit, which specifies amounts to the penny including accrued interest; and that this apparent conflict both undermines the reliability of Staff's reconstruction and justifies production of the underlying records.

[101] Three things may be said. First, the statement was made in answer to a specific question — whether TD Bank clawed back the funds transferred to other clients' accounts. Read in that context, it is capable of being understood as a statement about the Bank's ability to attribute and recover particular funds once they had reached the accounts of other customers, rather than as a retraction of the transaction-level chronology. That reading is supported by the Bank's letter of June 23, 2025, in which the Bank did attribute movements of funds at the level of individual transactions, while itself cautioning that further analysis was required before the February 8, 2020 account statement could be taken accurately to depict client X's holdings. The Bank has, in other words, been careful throughout to distinguish between what its records show and what conclusions may safely be drawn from them. Second, whether the two positions can in fact be reconciled is a live question going to the weight and reliability of the evidence Staff proposes to call. Mr. Glick fairly acknowledged that I need not decide it on this motion, and I do not. Third, and decisively, the apparent tension does not establish the likely relevance of the sweeping categories sought. The Respondent already possesses both statements. The tension is ammunition he has, not ammunition he needs an order to obtain. He is free to deploy it in cross-examination of whichever witness Staff calls, and in argument. That is the ordinary and appropriate way for such a conflict to be resolved.

[102] For these reasons I would refuse production of items (a), (f), (h), (i) and (j).

D. Category 2 – Destination account records: item (g)

[103] Item (g) seeks the complete account history, for 2019 and 2020, of the holders of the Other Individuals' Account and the Other Individual's Account, including all bank accounts, investment accounts, term deposits, GICs, suspense accounts and related sub-accounts.

[104] The individuals in question are not parties to this proceeding. They have not been alleged to have done anything wrong. What is sought is the entirety of their banking relationship with TD Bank over two years.

[105] The transactions that connect them to these allegations — the deposits of $246.85 and, in aggregate, $172,964.45 in July 2020, the $150,500 in August 2020, and the $22,717.60 — are documented in the Mackay Affidavit and in Staff's disclosure. The theory advanced for going further is that those deposits may have "belonged to a different transaction entirely". But there is no evidence identifying any such transaction. The Respondent does not depose that he recalls one; his position, as pleaded in the Reply, is that he can neither

confirm nor deny the specific transactions alleged, and his counsel advised that he has no way of recalling why the sums were placed into those accounts six years ago. I recognize that the Reply is expressly provisional on this point, the Respondent having pleaded that he hopes to update his response once he has reviewed the disclosure. But this motion falls to be decided on the record as it stands, and a pleading which reserves a position is no more evidence of the underlying facts than one which asserts it. More than four months passed between delivery of the disclosure brief and the hearing of this motion, and the Respondent filed no affidavit. The request is, in substance, an invitation to search the accounts of strangers in the hope that something exculpatory will emerge. That is speculation, and speculation does not satisfy the likely relevance threshold. I add that one purpose for which item (g) might have been thought necessary — establishing the relationship, if any, between the Respondent and the holders of the recipient accounts — has already been addressed in the material disclosed on June 22, 2026, and addressed in terms which do not contradict the Respondent's own account.

[106] Even if the threshold were met, the balancing would come out against production. The privacy interests of individual banking customers in the entirety of their financial affairs are substantial, and they are engaged here to a very high degree. Mr. Glick answers that it does not lie in TDIS's mouth to raise privacy when Staff's own materials name these individuals and identify their account numbers. There is some rhetorical force in the point, but it does not survive analysis. Disclosure of the specific transactions said to constitute the misconduct is a necessary incident of pleading the allegation; it does not waive, and cannot waive, the privacy interest of non-parties in the balance of their financial lives. A limited intrusion, justified by necessity, is not a licence for an unlimited one. Nor is the Bank's concern for its customers' confidentiality merely a submission from the bar: it is asserted in writing in the letter of June 23, 2025 which forms part of the Respondent's own motion record.

[107] I would refuse production of item (g).

E. Category 3 – Controls, policies and approvals: items (b), (c), (d), (e) and (l)

[108] This is the category on which Staff took no position, and it is the category on which I explored with counsel, in the course of argument, what a workable production deadline might be. I did so because it seemed to me at the time that this was the category most likely to survive scrutiny, and it was appropriate to canvass the practicalities before deciding. Having reflected on the whole of the record, I have concluded that production should not be ordered.

[109] I begin with the argument in favour, because it is not without merit. The Respondent pleads, and his counsel argued, that large sums could not have been moved or withdrawn without multiple approvals, signatures and supporting documentation, including a "Large Cash Transaction Record". If that is so, then the presence or absence of such documentation may bear on the "failure to account" branch of Contravention 1 and may bear on whether the transactions could have occurred in the manner alleged. Mr. Glick added a further and more particular point: the conduct in question occurred in the months following the onset of the COVID-19 pandemic, when ordinary signature requirements may have been modified, and the Bank's policies for that period may explain the documentary record. Those are not frivolous propositions.

[110] Against them, however, stand the following.

[111] First, the question has already been answered. On July 17, 2026 TDIS advised Staff, and Staff forwarded to the Respondent, that "while there was no specific policy respecting large transactions at the time, Mr. Hossain exceeded his authority in breach of the terms of his employment, processed unauthorized transactions in a manner designed to conceal his activities and appropriated client assets for himself and/or others associated with him." That answer is in evidence before me, in the Respondent's own motion record. It is not evidence of the truth of the characterization of the Respondent's conduct, and I place no weight on that characterization. But it is TD Bank's response, on the record, to the very inquiry item (c) makes. A production order cannot compel the production of a policy that is said not to have existed. I must, however, record the qualification that appears on the face of the letter of July 16, 2026. Answering the same question, TDIS said that it had engaged the relevant partners and would provide an update once confirmation of the historical policies was received. The answer of July 17, 2026 is accordingly an interim one, and the position may yet change. If historical policies are located and provided to Staff, they will fall to be disclosed under Staff's

continuing obligation, and I so provide below. What I am not prepared to do is to make a production order against a non-party in respect of documents whose existence remains, on the evidence, unestablished, when the very inquiry which would establish it is already under way.

[112] Second, and relatedly, there is no evidence that the policies described in items (d) and (e) exist. Mr. Hausman advised, and I accept as a matter of common sense rather than evidence, that TDIS does not know whether historical policies of this kind can be located. The Respondent's evidence on the point is his own recollection, conveyed at two removes through his solicitor, that a Large Cash Transaction Record was required. That may well be right. But an order for the production of documents which may not exist, directed to an entity which does not hold them and must ask a non-member for them, is not an order I should make on this record.

[113] Third, the relevance of this category to the pleaded contraventions is real but marginal. Contravention 1 alleges that the Respondent misappropriated, misapplied or failed to account for redemption proceeds. Contravention 2 alleges a failure to cooperate. The adequacy of TD Bank's internal controls is not an element of either. As Mr. Hausman put it, if the controls were absent the system could be gamed, and if they were present and circumvented the system was gamed; on neither footing is the Respondent assisted. Staff put the same point in a different way: the existence or non-existence of large transaction records or policies does not tend to show that the Respondent did or did not commit the misconduct alleged. Whether the transactions occurred, and how they are properly characterized, will be determined from the transaction records and the evidence of the witnesses.

[114] Fourth, there is a legitimate confidentiality concern. Internal policies and procedures designed to prevent the misappropriation of customer funds are, by their nature, sensitive. CIRO hearings are open to the public and these Reasons are public. There is a genuine public interest in not producing, into a public proceeding, a map of the strictures a financial institution employs to prevent large or irregular transactions, absent a demonstrated need. That concern is not conclusive — protective orders and confidentiality undertakings exist, and paragraph 4 of the NOM contemplates them — but where the demonstrated need is marginal, the concern properly weighs in the balance.

[115] Fifth, there is the question of burden and timing. The hearing dates are imminent and are peremptory upon the Respondent. Compliance would require TDIS to identify internal policy owners at TD Bank, over the summer months, and to locate historical policies from 2020. Mr. Hausman was unable to say whether that could be done by the end of August; he asked for the first week of September. Where the material sought is of marginal relevance and may not exist, I am not prepared to impose that burden on a non-party, still less to accept any risk to hearing dates that have already been fixed on a peremptory basis.

[116] Item (l) — documents showing the approvals, overrides or multi-person authentication required for the transactions at issue, and identifying the employees involved — stands on a slightly different footing, in that it is directed to identified transactions rather than to policies at large. But the Transaction Records already identify the initiator of each transaction, and Ms. Mackay deposes that each transaction bearing the code "HOSSAA2" was processed by the Respondent. If the Respondent contends that other employees were involved, or that approvals were required and given, that contention can be put to Staff's witnesses. No further production is necessary to enable him to advance it. Two further matters bear on item (l). Staff undertook on May 20, 2026, in answer to the seventh item of the disclosure request, to provide such documentation concerning approvals, overrides and multi-person authentication as it received from TD Bank; that undertaking, like the others I have identified, continues. And the Bank has already stated, in the material disclosed on June 22, 2026, that it is not aware of any documentation confirming that the Respondent had client X's authorization for the transfers in issue — a statement the Respondent is free to characterize, as he may be advised, either as evidence of an incomplete documentary trail or as an absence of proof.

[117] I would refuse production of items (b), (c), (d), (e) and (l). That refusal is subject to, and is made in reliance upon, the continuing disclosure obligations to which Staff remains subject. On the record before me those obligations presently have four identified subjects: (i) such further receipts, vouchers, slips or other source documents as TD may provide in answer to Staff's request of May 2026; (ii) the Large Cash Transaction Record, the signed receipt and related documentation for the cash withdrawals in issue; (iii) documents showing the approvals, overrides or multi-person authentication required for the transactions in issue; and (iv) the update on

TD Bank's historical large-transaction policies promised by TDIS on July 16, 2026. Staff is obliged, under Rule 10 and *Stinchcombe*[41], to disclose each of those things without delay as and when it is received, whether or not Staff regards the material as helpful to its case, and whether or not Staff regards it as going to penalty rather than to liability. Nothing in these Reasons qualifies that obligation. Should it not be met, the Respondent's remedy is to return to the Hearing Panel.

F. Category 4 – Safety deposit box records: item (k)

[118] Item (k) seeks confirmation of whether client X held a safety deposit box at the Bank in 2019 and 2020 and, if so, records, logs, security video, receipts or any other record of the dates and times the box was accessed during those two years.

[119] Mr. Glick's answer to the charge of speculation is a good one so far as it goes: this is not a request untethered to the pleadings, because the Respondent's Reply expressly pleads that client X maintained a safety deposit box and withdrew large sums of cash which were placed into it. A pleaded fact is not a fishing expedition. I accept that framing as the correct starting point, and I do not accept Staff's characterization of the request as merely a "red herring". The Respondent is entitled to advance the defence he has pleaded.

[120] The difficulty is that a pleaded assertion is not evidence, and likely relevance must be established on evidence. There is nothing before me — not a word — tending to show that client X held a safety deposit box at all. The Respondent filed no affidavit. The Le Dressay Affidavit does not mention a safety deposit box. The only material touching the subject is Mr. Glick's letter of May 29, 2026, which states his client's belief. Counsel's letter conveying his client's belief, tendered as an exhibit to a law clerk's affidavit, is not evidence of the underlying fact. The Respondent was in a position to swear to what he says he did with the cash and to what he says client X told him. He chose not to. I draw no adverse inference from that choice, but I cannot supply the evidentiary gap it leaves.

[121] Beyond that, the request would not assist even if the records existed and were produced. Suppose it were established that client X accessed a safety deposit box on or about August 17, August 24 and September 8, 2020, the three dates of the cash withdrawals. That would show that client X went to his box on those days. It would not show that the $10,000, $30,000 and $35,000 withdrawn from term deposits held in his name were handed to him, and it would not show that the underlying redemptions were authorized. The inference the Respondent needs is several steps removed from anything the records could establish. Material of that character is not logically probative in the sense O'Connor[42] requires.

[122] The proportionality problem is acute. The cash component is approximately $75,000 of an alleged $1,001,456 — a small fraction of the total, and one to which the safety deposit box theory has no application at all in respect of the remaining internal transfers and the $554,000 used to offset the suspense account balance. Against that limited potential utility must be set the request for two years of vault access logs and "security video". Video surveillance of a bank vault, if it was ever retained, would not ordinarily survive six years, and a request framed across 2019 and 2020 in the alternative to specific dates is on any view disproportionate.

[123] The privacy intrusion is also of a high order. A customer's safety deposit box is among the most private of banking arrangements. Records of when a named individual attended a bank vault, and video of him doing so, engage the dignity and privacy interests that O'Connor[43] and McNeil[44] require me to weigh. Client X is not a party. He is, on Staff's case, the person from whom approximately a million dollars was taken. He is not to be subjected to that intrusion on the strength of an untested belief.

[124] I record one matter in fairness to the Respondent. Staff has indicated that it does not intend to call client X. The Respondent says he is therefore unable to cross-examine the person best placed to say whether he received the cash. That is a legitimate forensic complaint, and it is one the Respondent is fully entitled to press before the Hearing Panel on the merits — as a submission about the weight of Staff's evidence, about the

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[41] *Supra* at note 24
[42] *Supra* at note 28
[43] ibid
[44] *Supra* at note 30

inferences Staff invites, and about whether Staff has discharged its burden. He is also entitled to give evidence himself. What he is not entitled to is an order compelling a non-party bank to open a customer's vault records to him on the present record.

[125] I would refuse production of item (k).

G. Category 5 – Investigator records: items (m) and (n)

[126] Item (m) seeks the curriculum vitae of Tracey Mackay. Item (n) seeks the name and curriculum vitae of the original lead investigator.

[127] The premise of both requests is that the Mackay Affidavit is, in substance, an expert report, or the report of a "participant expert", whose author's qualifications must be capable of being tested. A good deal of argument was devoted to whether Ms. Mackay could qualify as an expert under *R. v. Mohan*,[45] whether her employment relationship deprives her of independence, and whether the "participant expert" framework recognized in *Westerhof v. Gee Estate* applies to an investigator who examines events after the fact.[46]

[128] Those are interesting questions, and they may yet require decision. They do not require decision now, because Staff confirmed on the record three matters that reframe the issue entirely:

(a) Ms. Mackay will not be tendered as an expert at any stage of this proceeding;

(b) Staff does not intend to serve an expert report; and

(c) Staff's witnesses will give their evidence in chief live, and not in reliance on an affidavit.

[129] Those confirmations are binding on Staff for the purposes of this proceeding, and I record them as such. Their consequence is that the Mackay Affidavit will not stand as Ms. Mackay's evidence in chief. If Staff calls her, she will testify orally and be cross-examined in the ordinary way.

[130] On that footing, a curriculum vitae is not required. A witness who is not tendered as an expert may not give opinion evidence beyond the narrow compass permitted to a lay witness — what she perceived with her senses, or encountered in the ordinary course of common experience. If, in the course of her testimony, Ms. Mackay strays into opinion, the Respondent may object, and it will be for the Hearing Panel to control the boundaries of her testimony. I want to be clear that Mr. Glick's concern on this point is a substantial one: the reconstruction of a chain of transactions through pooled ledger accounts, and the attribution of particular outflows to particular inflows, may well be argued to be opinion rather than observation. That argument is fully preserved to him. It is simply not an argument that requires the production of a curriculum vitae to advance.

[131] Should Staff change its position and seek to tender expert evidence, the obligations under the Rules of Procedure governing expert reports will engage, and the qualifications of the proposed expert will have to be disclosed in the ordinary course. Leave is not required for the Respondent to raise the matter again in that event.

[132] There is a further and independent answer to both items. A production order operates upon documents that exist; it does not compel a person to create one. There is no evidence that either Ms. Mackay or the retired lead investigator has a curriculum vitae. An order requiring a non-party employee to prepare one would exceed the power conferred by Rule 7.3.6.2, which speaks of producing "books, records and accounts" for inspection.

[133] As to the name of the original lead investigator, sought by item (n), I have considered whether that stands differently from a curriculum vitae. In principle the identity of the person who performed an investigation on which a case is built may be relevant — for example, if a party wished to seek that person's attendance. But on this record the individual is a retired employee of a non-member bank who is not a Staff witness, whose work Ms. Mackay reviewed, and whose identity has not been shown to bear on any issue the Hearing Panel must decide. If Staff's witness list changes, the Respondent may raise the matter again. As matters stand, likely

[45] *R. v. Mohan* 1994 CanLII 80 (SCC), [1994] 2 SCR 9.
[46] *Westerhof v. Gee Estate* 2015 ONCA 206.

relevance is not established, and the privacy interest of a retired individual in not being drawn into a public proceeding is entitled to some weight.

[134] I would refuse production of items (m) and (n).

H. Fair to the Respondent

[135] The second of the two principal considerations I identified at the outset of argument was whether it would be unfair to require the Respondent to proceed to a hearing without some or all of these records. I have kept that question at the centre of my analysis, and I return to it directly.

[136] The Respondent goes to the hearing with the following. He has the SOA, which particularizes each impugned transaction by date, source, destination and amount. He has the Mackay Affidavit with its eighteen exhibits, including client X's February 2020 account statement, the Chronology Summary, and the TD Bank Transaction Records that underlie each numbered entry. He has the Client Transfer Chronology delivered on May 29, 2026. He has the June 22, 2026 disclosure, and in particular the Bank's letter of June 23, 2025, which describes the function of each general ledger account in issue and the tolerance and write-off practice governing them, explains transaction by transaction how the negative balance in the suspense account was created and cleared, states that the Bank is unaware of any documentation of client X's authorization, states that the $52,155.25 did not originate from client X, qualifies the February 2020 account statement on which Staff relies, and answers in part the question of the Respondent's relationship with the holders of the recipient accounts. He has the whole of the disclosure correspondence, including Staff's requests to TDIS and TDIS's answers of July 16 and 17, 2026 — answers which include the two statements he regards as most helpful to him.

[137] He will have more than that at the hearing. Staff's witnesses will testify live. They will be cross-examined. Any document Staff seeks to put in will be subject to objection as to admissibility, and any opinion a lay witness attempts to give will be subject to objection. Staff bears the burden of proving each allegation on a balance of probabilities, and it must prove not merely that transactions occurred but that they amounted to misappropriation, misapplication or a failure to account. If the reconstruction cannot bear the weight Staff places on it — if, to adopt Mr. Glick's image, Staff cannot show that the cup drawn out was the cup poured in — then Staff will not succeed. As Mr. Hausman fairly put it: if CIRO does not meet its onus, it does not meet its onus.

[138] I should address squarely the submission that it is inherently unfair for Enforcement Counsel to determine relevance while prosecuting. I do not accept it. It is Staff that directs and conducts the investigation and that makes the initial assessment of what is relevant to the allegations it has framed. That assessment is not final: it is reviewable, and the mechanism for reviewing it is precisely the motion the Respondent has brought. That the review has not succeeded on this record does not establish that the structure is unfair. Nor is there anything before me suggesting that Staff has withheld material it recognized as helpful to the Respondent. On the contrary: Staff disclosed the TDIS answer of July 16, 2026, which is among the most useful documents the Respondent has obtained on this subject, and disclosed it promptly. There is a further answer. Whatever position Staff took in correspondence on May 20, 2026, it in fact asked TD Bank on July 2, 2026 both about the clawback and about the large-transaction policies and the Respondent's ability to override them — the two subjects it had earlier said went only to penalty or only to supervision — and it disclosed the answers when they came. It also disclosed, unprompted and with an apology, three documents it had overlooked, one of which contains a good deal of the material the Respondent now says he has been denied. That is not the conduct of a party seeking only inculpatory material.

[139] Mr. Glick referred in oral submissions to a decision he described as "Watson" involving the Law Society, said to be critical of a regulator for seeking out only documents that assist the prosecution. No citation was provided, and the decision was not in the Respondent's Book of Authorities. In those circumstances I place no reliance on it. Had the proposition been made out on the facts — that Staff sought only inculpatory material — it would have been a matter of real concern. It is not made out here.

[140] Applying the second stage of the O'Connor analysis[47], I am satisfied that a non-production order does not constitute an unreasonable limit on the Respondent's ability to make full answer and defence. In every category, the salutary effects of production are slight — because the ground is already covered, or the documents are not shown to exist, or the connection to a live issue is speculative — while the deleterious effects are substantial: the privacy of non-party customers and of client X; the confidentiality of internal controls; the burden on a non-party owing no duty of disclosure; and the risk to a peremptory hearing date.

I. Paragraph 2 — Timing of the Respondent's witness statements and documents

[141] The Respondent seeks an order vacating any previous order regarding the timing of delivery of his witness statements and documents, so that the timelines prescribed by the Rules of Procedure apply. In argument, Mr. Glick put the request on the footing that if production were ordered, the existing timetable would need to be revisited.

[142] Since no production is ordered, the premise of the request falls away. The relief sought in paragraph 2 is dismissed.

J. Paragraph 3 — Alternative relief against TD Bank

[143] For the reasons given at paragraphs [75] to [77] above, this Panel has no jurisdiction over TD Bank, which is not a Member, an Approved Person, or any other person under the jurisdiction of the Corporation within the meaning of Rule 7.3.6.2. The relief sought in paragraph 3 is dismissed.

K. Paragraph 4 — Further relief

[144] Paragraph 4 seeks such further and other relief as counsel may advise, including any protective orders necessary to preserve the privacy of individual clients. No further relief was pressed, and as no production is ordered, no protective order is required. Nothing in these Reasons prevents any party from seeking a protective or confidentiality order at the hearing on the merits in respect of material tendered there, and I would expect the Hearing Panel to be alive to the privacy interests of client X and of the other individuals named in the disclosure.

VIII. CONCLUSION

[145] The Respondent faces serious allegations and is entitled to a fair hearing. Nothing in these Reasons diminishes that entitlement, and nothing in them should be read as a comment on the merits of the allegations, which remain to be determined by the Hearing Panel on the evidence adduced at the hearing. The Respondent is presumed to have committed no contravention unless and until Staff proves otherwise.

[146] The motion fails for two independent reasons.

[147] First, and dispositively, the Respondent has not established that the Bank Records are books, records or accounts of TDIS or within TDIS's possession and control. He led no evidence on the point. The records are, on the material before me, records of TD Bank — an entity over which this Panel has no jurisdiction. TDIS's practice of obtaining records from its affiliate in answer to requests from its regulator is a function of the regulatory relationship and does not establish custody or control. The production power in Rule 7.3.6.2 is therefore not engaged.

[148] Second, and in any event, I would not exercise the discretion conferred by Rule 7.3.6.2 in the Respondent's favour in respect of any of the fourteen categories. Taken category by category, the records sought are already in his hands, or are not shown to exist, or are not likely relevant to an issue on the pleadings, or are sought in terms so broad as to be neither specific nor proportionate. In each case the deleterious effects of production outweigh the salutary effects, and the refusal of production does not unreasonably limit the Respondent's ability to make full answer and defence.

[149] I close by repeating two things I said in the course of argument. Documentary production does not equate to admissibility, and admissibility does not equate to weight. Everything I have said on this motion is directed to pre-hearing production and to nothing else. Questions of admissibility, relevance at the hearing,

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[47] *Supra* at note 28

probative value, weight and sufficiency remain entirely for the Hearing Panel seized of the merits. And Staff's obligation of disclosure is a continuing one: if further material relevant to an allegation comes into Staff's possession, it must be disclosed, promptly, whether or not it assists Staff's case. That obligation is not discharged by the dismissal of this motion. It is, on this record, engaged in respect of four identified subjects, and I have made directions accordingly.

IX. DISPOSITION

[150] The Order of the Panel is as follows:

1. The Respondent's motion for an order requiring TD Investment Services Inc., or an appropriate employee or designate, to produce for inspection and provide copies of the records described in paragraphs 1(a) to (n) of the NOM dated July 20, 2026 is dismissed.
2. The Respondent's request, in paragraph 2 of the NOM, for an order vacating any previous order regarding the timing of delivery of the Respondent's witness statements and documents is dismissed.
3. The Respondent's request, in paragraph 3 of the NOM, for a direction for a production motion as against TD Bank is dismissed for want of jurisdiction.
4. For greater certainty, and as recorded in these Reasons, Enforcement Staff remains subject to a continuing obligation of disclosure under Rule 10 of the Mutual Fund Dealer Rules of Procedure and the principles in *R.* v. *Stinchcombe*[48] in respect of any material received from TDIS or TD Bank in answer to requests for information already made, and in particular in respect of: (a) such further receipts, vouchers, slips or other source documents as may be received from TD Bank; (b) the Large Cash Transaction Record, the signed receipt and related documentation for the cash withdrawals in issue; (c) documents showing the approvals, overrides or multi-person authentication required for the transactions in issue; and (d) the update on TD Bank's historical large-transaction policies promised by TDIS on July 16, 2026. Any such material shall be disclosed to the Respondent without delay upon receipt.
5. Enforcement Staff shall advise the Respondent and the Hearing Panel seized of the merits, in writing and no later than fourteen days before the first day of the hearing, whether any of the material described in paragraph 4 has been received and disclosed and, if it has not, of the status of the request.
6. The hearing on the merits shall proceed on the dates fixed.

X. COSTS

[151] Enforcement Staff and the Respondent did not address costs on the motion, and TDIS, as a non-party, sought none. In my view the appropriate course is to defer the question. The costs of and incidental to this motion are reserved and are to be addressed at the conclusion of the hearing of this proceeding on the merits, before the Hearing Panel seized of that hearing. Any party seeking costs of the motion shall so advise at that time and shall be given an opportunity to make submissions, in writing or orally as the Hearing Panel may direct.

DATED at Toronto, Ontario, this 21st day of August, 2026.

"Marvin J. Huberman"

Marvin J. Huberman, Chair

[48] *Supra* at note 24