

**INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA**

**ON BEHALF OF**

**INVESTMENT DEALERS ASSOCIATION OF  
CANADA**

**In the matter of:**

**THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF  
CANADA**

**THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY  
REGULATORY ORGANIZATION OF CANADA**

**AND**

**DANIEL BERGERON**

**NOTICE OF HEARING**

**TAKE NOTICE** that, pursuant to Part 10 of Dealer Member Rule 20 and s. 1.9 of Schedule C.1 to Transition Rule N<sup>o</sup> 1 of the Investment Industry Regulatory Organization of Canada ("**IIROC**"), a hearing will be held before a hearing panel of IIROC ("**Hearing Panel**") from September 24 to 28, 2012, at 10 a.m., or as soon thereafter as the hearing can be heard, at Centre Mont-Royal, 2200 Mansfield Street, Montréal, Québec, Mansfield 2 Room.

**TAKE FURTHER NOTICE** that pursuant to Rule 6.2 of IIROC's Dealer Member Rules of Practice and Procedure, the hearing shall be designated on:

The Standard Track

The Complex Track

**TAKE FURTHER NOTICE** that on June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada ("**IDA**") and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

**THE PURPOSE OF THE HEARING** is to determine whether Daniel Bergeron, the Respondent, has committed the following contraventions that are alleged by Staff of IIROC ("**Staff**"):

- a) Between 2002 and 2009, the Respondent, while a registered representative with CIBC World Markets Inc. ("**CIBC Wood Gundy**"), by recommending investments in Ressources Dasserat shares to seven (7) of his clients, failed in his role of gatekeeper by not using due diligence to verify the nature of the investment and subsequently, by not doing adequate follow-up of his clients' investments, contrary to IIROC Dealer Member Rule 29.1 [formerly IDA By-law 29.1];
- b) Between June 2002 and September 2003 or thereabouts, the Respondent, while a registered representative with CIBC Wood Gundy, facilitated a presumed purchase of shares in Ressources Dasserat by seven (7) of his clients, in a private off-book investment, which constituted an outside business activity without the knowledge of his firm, contrary to IIROC Dealer Member Rule 29.1 [formerly IDA Bylaw 29.1].

## **PARTICULARS**

**TAKE FURTHER NOTICE** that the following is a summary of the facts alleged by Staff and which are to be relied upon at the hearing of this matter.

### **SUMMARY**

1. It is alleged that the Respondent failed to act with all due diligence when he recommended to seven (7) of his clients, namely GB, MN, JS, RS, GG and PG, and JL (the "Clients"), a private investment in the form of a share purchase in the company Ressources Dasserat without verifying the nature of the offering and without doing adequate follow-up of his clients' investments;
2. The Clients paid a total of \$181,500 for the purchase of shares in Ressources Dasserat;
3. In addition, it is alleged that the Respondent facilitated the placement in Ressources Dasserat, without the knowledge and without the authorization of CIBC Wood Gundy;
4. To date, the Respondent's 7 Clients still have not received any shares from Ressources Dasserat. They have all recovered 50% of their initial investment as part of settlements with CIBC Wood Gundy;

### **RESPONDENT'S PRESENTATION**

5. The Respondent began his career in the securities industry in 1983;
6. From 2001 to 2009, he was a registered representative with CIBC. Since October 2009 he has been registered with Desjardins Securities Inc.;

## **THE FACTS**

### ○ THE PRIVATE PLACEMENT

7. Ressources Dasserat is a mining company active in the precious metals industry. It was incorporated in Québec in 1996 and has its head office in Rouyn-Noranda;
8. LV, a so-called businessman from New Brunswick, approached Ressources Dasserat in 2002 and offered to amass the \$200,000 needed for the company to go public;
9. LV then approached the Respondent as the promoter of Ressources Dasserat in order to talk to him about this investment opportunity;
10. In 2007, LV started having problems with the authorities, initially for nonpayment of income taxes, and was subsequently sued for fraud for which he was sentenced to 30 months of jail time in May 2009, and to 77 months of jail time in October 2010;

### ○ COUNT A)

11. In 2002, LV approached the Respondent as the promoter of Ressources Dasserat in order to speak to him about the opportunity of investing in shares of this company. LV told him he had a contact within the company;
12. The Respondent then approached certain of his clients to suggest that they invest in shares of Ressources Dasserat, which he presented as an excellent investment; he did not run a check on Ressources Dasserat, nor did he obtain documents or hand out documents about the investment to his Clients; he did not run a check on LV even though it was the first time that he had dealt with this promoter for investment purposes;

13. Between June 2002 and September 2003 or thereabouts, the Respondent's clients, GB, MN, JS, RS, GG and PG, and JL, invested some \$181,500 in shares of Ressources Dasserat;
14. The Respondent prepared handwritten share purchase agreements for the Clients, which agreements were signed by the Clients;
15. The Respondent's Clients issued cheques and bank drafts made out to the trust accounts of two (2) attorneys, as well as to LV, for the purchase of the shares.
16. In fact, the Respondent has admitted (1) having acted as the "go-between" in the transactions, (2) having informed his Clients of the existence of an attractive investment in Ressources Dasserat, (3) that none of his Clients ever met LV. They all dealt solely with the Respondent in order to realize their investment;
17. The Respondent, as his Clients' investment advisor and their only contact in connection with their investment in Ressources Dasserat, therefore had a duty to do adequate follow-up of the investment;
18. The Respondent's Clients called him regularly to find out what had become of their investment; none of them had received any share certificates following the placement;
19. Yet, the Respondent never did any serious follow-up of his clients' investment in Ressources Dasserat;
20. In sporadic contact with LV once or twice a year, the Respondent contented himself with vague answers and reasons that he qualified as "inventive" to explain the delay in receiving the share certificates;

21. Moreover, even in 2007, when he learned that Ressources Dasserat's plans to go public had failed and that LV was having problems with the tax authorities, he took no action and did not inform his clients;
  22. At no time did the Respondent inquire directly with Ressources Dasserat regarding his clients' shareholder status, even though he had acknowledged during the above-mentioned interview that it was the best avenue for determining what had become of the investment;
  23. By his own admission, the Respondent "did not push enough" and "did very little" to follow up on the investment; he contented himself with passing along to his clients the vague and evasive answers regarding the investment;
  24. The Respondent therefore exhibited gross negligence in the follow-up of his clients' investments in Ressources Dasserat;
  25. To date, the Respondent's 7 Clients have still not received any shares in Ressources Dasserat;
  26. All have recovered 50% of their initial investment pursuant to settlements with CIBC Wood Gundy;
  27. Clearly, the Respondent failed to ensure adequate follow-up of the investment for his clients and exhibited behaviour that is tantamount to turning a blind eye, thus failing in his gatekeeper duty;
- o COUNT B)
28. The private placements involving the purchase of shares in Ressources Dasserat had not been authorized by CIBC Wood Gundy and the Respondent sought to conceal these investments from the firm:

- a. the share purchase agreements drafted by the Respondent were handwritten, on paper that did not display the official CIBC Wood Gundy letterhead;
  - b. the Respondent allegedly told PG that he was unable to make the purchase through CIBC Wood Gundy, which is why the Respondent and PG met at another financial institution to issue the July 2002 bank draft;
  - c. the bank draft from GG, another of the Respondent's clients, was issued from his personal account and not from his CIBC Wood Gundy account, and there was no transfer between the two;
  - d. the bank draft from JS, for his part, was made from his account with another financial institution, whereas for GB, the bank draft came from the CIBC bank and was made out to LV;
  - e. no share purchase agreements involving Ressources Dasserat shares were found in the CIBC Wood Gundy client files in October 2009;
  - f. it was only on or around June 15, 2009 that branch manager JB learned from his staff that LV had been convicted of fraud and that the latter had had past contact with the Respondent who denied ever doing business with him;
29. It was only after the Respondent left the company that the branch manager JB, having become the investment advisor for the Respondent's former clients, learned from these clients about an alleged investment in Ressources Dasserat;

30. It was at this point that CIBC initiated an internal investigation into the investment in Ressources Dasserat, at the end of which it concluded that the investment had never been authorized;
31. Thus, the Respondent executed a private investment that was never approved by CIBC Wood Gundy, thereby engaging in outside business activity without the knowledge of his firm.

### **GENERAL PROCEDURAL MATTERS**

**TAKE FURTHER NOTICE** that the hearing and related proceedings shall be subject to the Rules of Practice and Procedure.

**TAKE FURTHER NOTICE** that, pursuant to Rule 13.1 of the Rules of Practice and Procedure, the Respondent is entitled to attend and be heard, be represented by counsel, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

### **RESPONSE TO NOTICE OF HEARING**

**TAKE FURTHER NOTICE** that the Respondent must serve upon IIROC Staff a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure, within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

### **FAILURE TO RESPOND OR ATTEND HEARING**

**TAKE FURTHER NOTICE** that, if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;

- (b) accept as proven the facts and contraventions alleged by Staff of IIROC in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to Dealer Member Rule 20.33, 20.34 and 20.49.

### **PENALTIES AND COSTS**

**TAKE FURTHER NOTICE** that, if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by IIROC Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rule 20.33 and 20.34, impose any one or more of the following penalties:

**Where the Respondent is/was an Approved Person:**

- (a) a reprimand
- (b) a fine not exceeding the greater of
  - (i) \$1,000,000 per contravention;
  - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) revocation of the rights and privileges of approval;
- (g) revocation of approval
- (h) a permanent bar from approval with the Association

(i) any other fit remedy or penalty.

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Association in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rule 20.49, assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Montréal, this 7th day of June, 2012.

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**CARMEN CRÉPIN**  
Vice-President, Québec

**INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA**  
5 Place Ville-Marie, Suite 1550,  
Montréal (Québec) H3B 2G2  
Telephone: (514) 878-2854  
Fax: (514) 878-3860