

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

**AND**

**SCOTT BATEMAN**

## NOTICE OF HEARING

**TAKE NOTICE** that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 of the Investment Industry Regulatory Organization of Canada (“IIROC”), a hearing will be held before a hearing panel of IIROC (“Hearing Panel”) on May 28, 2014 at UBC Robson Square 800 Robson St., Vancouver, B.C., Room C400 & C215, at 10:00 a.m., or as soon thereafter as the hearing can be heard.

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

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 Scott Bateman (“the Respondent”) has committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

### **Count 1**

Between approximately March 2008 and June 2009, the Respondent acted contrary to IIROC Dealer Member Rule 1300.1(q) (before June 2008 – IDA Regulation 1300.1(q)) by failing to use due diligence to ensure that the recommendations made in relation to the account of client RF were suitable;

### **PARTICULARS**

**TAKE FURTHER NOTICE** that the following is a summary of the facts alleged and to be relied upon by Staff at the hearing:

#### **Overview**

1. These particulars relate to the period of time between March 17, 2008 and June 15, 2009 (the “Relevant Time Period”) while the Respondent, Scott Bateman, was an Registered Representative with the Kamloops office of Raymond James Ltd. (“Raymond James”).
2. The Respondent made recommendations for purchases in his client RF’s account that were unsuitable given RF’s investment objectives, risk tolerance, investment knowledge, financial circumstances and the account’s initial investment portfolio composition and risk level. These unsuitable recommendations resulted in significant losses in RF’s account during the Relevant Time Period.

#### **Registration History**

3. The Respondent was first registered in the securities industry with the Mutual Fund Dealers Association in 2002 while working with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”). In April 2007, the Respondent moved from Sun Life to Raymond James Ltd. where he was employed as a Registered Representative until March 2012.
4. The Respondent became registered with IIROC in April 2007. The Respondent is not currently registered in any capacity with IIROC and has not been registered since March 21, 2012.

**Client RF**

5. RF first became a client of the Respondent's when the Respondent was employed at Sun Life. RF transferred his accounts to Raymond James in May 2007 after the Respondent joined Raymond James.
6. In April 2007 RF opened an RRSP account at Raymond James. In May 2007, RF transferred approximately \$84,000 in cash to his RRSP account at Raymond James.
7. The New Client Application Form ("NCAF") for RF's RRSP account at Raymond James was signed by RF in April 2007 and recorded the following information:
  - a. he was born in 1958;
  - b. he was married and his spouse was not employed;
  - c. his investment objectives were 100% growth;
  - d. his risk tolerance was 50% medium and 50% high;
  - e. he had an annual income of approximately \$100,000;
  - f. he had estimated net liquid assets of \$530,000;
  - g. he had estimated net fixed assets of \$50,000;
  - h. he had limited investment knowledge and had only previous investment experience with T-Bills/GICs and Mutual Funds; and
  - i. he did not have any other brokerage accounts with any other firms.
8. The NCAF for RF's account was updated in April 2009 and included the following updates:
  - a. his employer had changed and his annual income was approximately \$115,000;
  - b. he had estimated net fixed assets of \$400,000; and
  - c. he had estimated net liquid assets of \$100,000.
9. The update to the NCAF in April 2009 did not change RF's investment objectives or risk tolerance.
10. The NCAF for RF's account was further updated in July 2011 to change the risk tolerance to 100% high risk. The investment objective of 100% growth did not change in the update.

### **Suitability for RF's Account**

11. RF trusted the Respondent and relied on his knowledge and expertise to manage his RRSP account.
12. The Respondent made almost all, if not all, of the recommendations for the purchase and sale of securities in RF's account.
13. Starting in March 2008, the Respondent recommended the purchase of securities in RF's RRSP account which increased the risk profile of the account beyond the risk tolerance recorded in the NCAF. The details of these purchases are found in Appendix "A" to this Notice.
14. As of March 31, 2008, RF's account contained securities that were 98% high risk.

### **Horizons BetaPro S&P/TSX Global Gold Bull Plus ETF**

15. Horizons BetaPro S&P/TSX Global Gold Bull Plus ETF ("HGU") is a leveraged sector-specific ETF that provides daily investment results that endeavor to correspond to two times (200%) the daily performance of the S&P/TSX Global Gold Index. Units of HGU are speculative, high-risk securities.
16. The Respondent recommended the purchase of units of HGU for RF's account on or about March 17, March 19 and September 9, 2008. RF did not have any understanding of the risks of investing in leveraged sector-specific ETFs and the Respondent did not adequately explain the risks to him.
17. As of September 30, 2008, the value of the HGU units held RF's account constituted approximately 57% of the total account value.
18. Sometime after his initial purchase of units of HGU, RF had a discussion with the Respondent about the losses that he had suffered relating to these purchases. The Respondent made a recommendation to RF to continue to hold the units until they recovered their initial value.
19. The recommendations made by the Respondent to RF to purchase units of HGU were not suitable for RF given his investment objectives, risk tolerance, investment knowledge, financial circumstances, the account's initial investment portfolio composition and risk level and his time horizon for retirement.

20. The recommendations made by the Respondent to purchase units of HGU resulted in a concentration of HGU in RF's account that was not suitable given his investment objectives, risk tolerance, investment knowledge, financial circumstances, the account's initial investment portfolio composition and risk level and his time horizon for retirement.
21. The recommendations made by the Respondent to continue to hold units of HGU in RF's account after it had dropped significantly in value were not suitable given his investment objectives, risk tolerance, investment knowledge, financial circumstances, the account's initial investment portfolio composition and risk level, his time horizon for retirement and the particulars of HGU including its daily trading focus and short term investment objective.

#### **Active Control Tech Inc. and Appleton Exploration Inc.**

22. Active Control Tech Inc. ("ACT") is an issuer that is involved in the design, manufacture and marketing of wireless devices for the commercial access control industry and for underground mining communications and locating. Shares of ACT are speculative, high-risk securities. ACT is listed as a tier 2 company on the TSX Venture Exchange.
23. The Respondent recommended the purchase of shares of ACT for RF's account on or about April 23 and June 15, 2009 at prices of \$0.32 and \$0.20 per share, respectively.
24. Appleton Exploration Inc. ("AEX") is an issuer that is involved in evaluating, acquiring, exploring and developing natural resource properties. Shares of AEX are speculative, high-risk securities. AEX is listed as a tier 2 company on the TSX Venture Exchange.
25. The Respondent recommended the purchase of shares of AEX for RF's account on or about May 21, 2009 at a price of \$0.20 per share.
26. The recommendations made by the Respondent to RF to purchase shares of ACT and AEX were not suitable for RF given his investment objectives, risk tolerance, investment knowledge, financial circumstances, the account's initial investment portfolio composition and risk level and his time horizon for retirement.

#### **Losses**

27. The Respondent sold all of the units of HGU in RF's account in June 2009 for a total loss of \$31,840. This represented a 58% loss in value from the initial purchase prices of these units.
28. At the end of June 2009, RF's account had decreased in value by \$45,682.05, representing a 54% loss in value since February 29, 2008.

## **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 or an agent, 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 the Staff of IIROC 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 in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

## **PENALTIES & COSTS**

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rules 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; and
  - (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) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the IIROC; or
- (i) any other fit remedy or penalty.

**Where the Respondent is/was a Dealer Member:**

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$5,000,000 per contravention; and
  - (ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention;
- (c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued Membership;
- (e) termination of the rights and privileges of Membership;
- (f) expulsion of the Dealer Member from membership in the IIROC; or
- (g) 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 Staff 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 Toronto, this 13th day of March, 2014.

**“Warren Funt”**  
WARREN FUNT  
VICE-PRESIDENT, WESTERN REGION  
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA  
Suite 2800 – 1055 West Georgia Street  
Vancouver, BC V6E 4N9

**APPENDIX "A"**

**RF'S RRSP ACCOUNT**

Trade Date	Security	Qty	Share Price	Total (Including Commission and ticket charges)	Commission	% in High Risk at Month End
Mar-17-2008	Horizons Beta S&P Gld Bull	1,000	\$35.64	\$35,722.50	\$75	98%
Mar-19-2008	Horizons Beta S&P Gld Bull	500	\$28.55	\$14,357.50	\$75	98%
Sep- 9-2008	Horizons Beta S&P Gld Bull	400	\$10.88	\$4,484.50	\$125	98%
Apr-23-2009	Active Control Tech. Inc.	15,000	\$0.32	\$4,932.50	\$125	91%
May-21-2009	Appleton Exploration Inc.	15,000	\$0.20	\$3,132.50	\$125	100%
Jun-15-2009	Active Control Tech Inc.	20,000	\$0.20	\$4,132.50	\$125	38%
Total					\$650	