

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

**AND**

**EDWARD PETER BODNARCHUK**

## AMENDED NOTICE OF HEARING

**TAKE NOTICE** that pursuant to Part 10 of Dealer Member Rule 20 of the Investment Industry Regulatory Organization of Canada (“IIROC”), a hearing will be held before a hearing panel of IIROC (“Hearing Panel”) on November 20 – 24, 2017, at the Delta Winnipeg – Charleswood A, 350 St. Mary Avenue Winnipeg, Manitoba, 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

**THE PURPOSE OF THE HEARING** is to determine whether Edward Peter Bodnarchuk (“the Respondent”) has committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

### Client GS

#### Count 1

Between July of 2008 and November of 2012, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to GS, contrary to Dealer Member Rule 1300.1(a);

**Count 2**

Between July of 2008 and November of 2012, the Respondent made unsuitable recommendations for the account of GS, contrary to Dealer Member Rule 1300.1(q);

**Count 3**

Between July of 2008 and November of 2012, the Respondent made discretionary trades in the accounts of GS, contrary to Dealer Member Rule 1300.4;

**Client TB**

**Count 4**

Between August of 2010 and April of 2016, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to TB, contrary to Dealer Member Rule 1300.1(a);

**Count 5**

Between August of 2010 and April of 2016, the Respondent made unsuitable recommendations for the account of TB, contrary to Dealer Member Rule 1300.1(q);

**Count 6**

Between August of 2010 and April of 2016, the Respondent made discretionary trades in the accounts of TB, contrary to Dealer Member Rule 1300.4; and

**Conduct Unbecoming**

**Count 7**

Between October of 2010 and December 2012 the Respondent failed to disclose to his firm activities that fell outside the scope of his duties as a Registrant that created a real or potential, conflict of interest between the Respondent and his clients, contrary to Dealer Member Rule 29.1.

**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. This matter involves:

- a. The Respondent's handling of the accounts for two unrelated clients, GS and TB. In both cases the clients ended up investing the majority of their liquid assets in high risk investments, resulting in significant losses in their accounts. Many of the trades were carried out on a discretionary basis.
- b. The Respondent's failure to notify his firm of an existing, or potential, conflict of interest. This conflict stemmed from his activities involving the issuers of two securities he had recommended to his clients.

### Registration History

2. The Respondent is currently employed with PI Financial Corp. in Winnipeg, Manitoba, where he has been a Registered Representative since in 2012. His previous registration history includes:

From	To	Firm	Registration Category
July 2010	December 2012	National Bank Financial Ltd.	Registered Representative (Securities) (Retail)
March 2008	July 2010	Union Securities Ltd.	Registered Representative (Securities) (Retail)
April 2006	March 2008	DMW Securities Inc. (Dundee Securities Corporation)	Registered Representative <i>restricted to Mutual Funds</i>
February 2005	April 2006	Dundee Private Investors Inc.	Mutual Fund Dealer Salesperson
July 2003	January 2005	Ten Star Financial Inc.	Mutual Fund Dealer Salesperson

### The Clients

3. GS and TB are two unrelated clients of the Respondent. Both had been clients of the Respondent while he was a Registrant at Union Securities Ltd. (March of 2008 to August of 2010) and then at National Bank Financial Ltd. (August of 2010 to December of 2012). TB also followed the Respondent to PI Financial Corporation in January of 2013.

4. For both GS and TB, the Respondent:
  - a. failed to know his client;
  - b. made unsuitable recommendations; and
  - c. made trades on a discretionary basis.

### **The Accounts of GS**

5. Between July of 2008 and November of 2012, (GS's Material Period) GS held an RRSP account and a Spousal RRSP account (the "GS Accounts"), first at Union Securities, and then National Bank. During this period the GS Accounts contained the majority of GS's liquid assets.

### **Failure to Know GS**

6. GS filled out two New Client Account Forms ("NCAFs") between of March 2008 and November 2012. The first, when she moved her accounts to Union Securities Ltd. ("Union") and the second, when she moved to National Bank Financial Ltd. ("National Bank"). Both NCAFs overstated GS's risk tolerance, identifying them as 100% high risk (while at Union) and 100% very high risk (while at National Bank).
7. These stated risk tolerances were inconsistent with GS's personal and financial circumstances during GS's Material Period, which included the following essential facts:
  - a. GS was 42 years old and had an annual income of approximately \$38,000.00 a year when she opened her account at Union Securities in 2008;
  - b. GS did not have a pension. Her investments were intended to be used for her retirement, and initially accounted for the majority of her liquid assets;
  - c. GS's net worth ranged from \$275,000.00 to \$300,000.00 with her liquid assets ranging from \$75,000.00 to \$100,000.00; and
  - d. GS had limited investment knowledge and experience. GS understood that high risk investments would be subject to fluctuation, but she did not appreciate that she could lose a significant portion, if not all, of her investments.

### **Unsuitable Recommendations for GS**

8. GS had placed her trust and confidence in the Respondent and was reliant on his advice. Unsuitable recommendations made by the Respondent resulted in an inappropriate level of risk in GS's account holdings.
9. During GS's Material Period the high risk portion of her accounts grew to a substantial percentage of her account's holdings. During GS's Material Period the high risk allocation

ranged from approximately 2 % to 97%. Most of the issuers GS had invested in did not report any revenue on their financial statements.

10. GS's holdings became significantly concentrated in the metals and mining sector. During GS's Material Period the concentration in that sector ranged from approximately 2% to 88%.

11. Of significance:

- a. Between March of 2010 and December of 2012 (with the exception of September 2010) over 80% of GS's holdings were high risk;
- b. Between November of 2009 and December of 2012 over 50% of GS's holdings were in junior mining companies that had not reported any significant earnings; and
- c. For the one year period between March of 2010 and March 2011 (with the exception of September 2010) the concentration in junior mining companies exceeded 80% of GS's accounts holdings.

12. During GS's Material Period she had expressed concerns to the Respondent about the losses in her accounts. Despite these concerns the Respondent did not recommend that GS rebalance her account to contain less risk.

#### **Discretionary Trading in GS's Accounts**

13. Most of the trades executed in GS's accounts were done so on a discretionary basis. While the Respondent would occasionally contact GS he only did so to discuss her accounts in general terms and did not discuss the specific details of trades. In most cases the Respondent did not advise GS of one or more of the following:

- a. which security would be purchased;
- b. the quantity of the security to be purchased;
- c. the price of the security to be purchased; or
- d. the timing of the purchase.

14. At no time were any of GS's accounts designated or approved as discretionary accounts. As such, the accounts were not being supervised as discretionary accounts. At no time did the Respondent meet the proficiency requirements necessary to act as a Portfolio Manager.

#### **Losses for GS**

15. Over GS's Material Period, her combined accounts incurred a loss of approximately \$30,457. This represented a loss of approximately 61% of the value of her accounts. During the same time, the S&P/TSX Composite Total Return Index declined 9.96%.

### **Commissions earned in GS's Accounts**

16. The Respondent earned approximately \$722.00 in commissions from GS's account during the National Bank period.

### **The TB Accounts**

17. Between August 1<sup>st</sup>, 2010 and April 30, 2016 ("TB's Material Period") TB held three accounts at National Bank (the "TB Accounts"). During this period the TB Accounts held the majority of TB's liquid assets.

### **Failure to Know TB**

18. The NCAF's pertaining to TB's Material Period all overstated TB's risk tolerance, identifying it as 100% very high risk (while at National Bank) and 100% high risk (while at PI Financial).
19. These stated risk tolerances were inconsistent with TB's personal and financial circumstances during TB's Material Period, which included the following essential facts:
  - a. When TB completed his National Bank NCAF in September of 2010:
    - i. he was 53 years old; and
    - ii. he had previously sold his company and was saving for retirement;
  - b. When TB completed his PI Financial NCAF in January of 2013:
    - i. He was 55 years old;
    - ii. He was still saving for retirement, as he only had a small pension worth approximately \$40,000.00;
    - iii. The value of his investments had recently declined by 53%; and
    - iv. All of TB's liquid assets were invested in the TB Accounts.
  - c. TB had been investing the proceeds from the sale of his company which were intended to be used for his retirement;
  - d. TB's net worth ranged from \$400,000.00 to \$500,000.00 with his liquid assets valued at approximately \$100,000.00;
  - e. Despite having business experience, TB had limited investment knowledge and experience and was relying on the Respondent for his expertise and advice; and
  - f. TB understood that high risk investments would be subject to fluctuation, but did not appreciate that he could lose a significant portion, if not all, of his investments.

### **Unsuitable Recommendations in the TB Accounts**

20. TB had placed his trust and confidence in the Respondent and was reliant on his advice. Unsuitable recommendations made by the Respondent resulted in an inappropriate level of risk in TB's account holdings.
21. Despite the fact that TB was over fifty years old and saving for his retirement, almost all of his investments were in high risk holdings. Over TB's Material Period the high risk portion of his investments accounted for almost all of TB's liquid investments. Between April of 2011 and April of 2016 high risk allocation ranged from 91% to 97% of his holdings. Most of the issuers TB had invested in did not report any revenue on their financial statements.
22. TB's holdings became significantly concentrated in the metals and mining sector. During TB's Material Period the concentration in that sector ranged from 55% to 93%.
23. Of significance:
  - a. Between April of 2011 and April of 2016 over 90% of TB's holdings were high risk;
  - b. Between November of 2010 and February of 2016 over 70% of TB's holdings were in junior mining companies, most of which had not reported any significant earnings; and
24. During TB's Material Period he had expressed concerns to the Respondent about the losses in his Accounts. Despite these concerns the Respondent did not recommend that TB rebalance his Accounts to contain less risk.

### **Discretionary Trading in TB's Accounts**

25. Most of the trades executed in TB's accounts were done so on a discretionary basis. While the Respondent would occasionally contact TB he only did so to discuss his accounts in general terms and did not discuss the details of trades. In most cases the Respondent did not advise TB of one or more of the following:
  - a. which security would be purchased;
  - b. the quantity of the security to be purchased;
  - c. the price of the security to be purchased; or
  - d. the timing of the purchase.
26. At no time were any of TB's accounts designated or approved as discretionary accounts. As such, the accounts were not being supervised as discretionary accounts. At no time did the Respondent meet the proficiency requirements necessary to act as a Portfolio Manager.

### **Losses for TB**

27. Over the Material Period, TB's combined accounts incurred a loss of approximately \$212,570.00. This represented a loss of approximately 92% of the value of his Accounts. During the same time, the S&P/TSX Composite Total Return Index rose 17%.

### **Commissions Earned in TB Accounts**

28. The Respondent earned approximately \$1,188.50 in commissions from TB's account during the National Bank period.

### **Failure to Disclose Activities Involving Issuers**

29. The Respondent failed to disclose to his firm his activities involving two issuers that he had been recommending to his clients. These activities fell outside the scope of the Respondent's duties as a Registrant with National Bank and created either a real, or potential, conflict of interest between himself and his clients. These activities involved assisting in the collection of proxies and affidavits from his clients, on behalf of AM.
30. AM was involved with two issuers in question, Bison Gold Resources Inc. ("Bison Gold") and RPT Resources Ltd. ("RPT"). AM had been attempting to replace various board members of Bison Gold and RPT through dissident shareholder action.
31. In addition to being a shareholder, AM also had further ties to Bison Gold. He was:
- a. declared insider as of March 2011;
  - b. acting CFO as of June 2011;
  - c. the CFO in August 2011; and
  - d. appointed to the board of Bison Gold in May of 2012.
32. At the time, Bison Gold and RPT were both penny stock issuers listed on the TSXV. While neither issuer had a history of earnings at the time, a large number of the Respondent's clients, including GS and TB, purchased these securities.
33. By November of 2010 the Respondent's clients collectively held approximately 19% of the outstanding shares in RPT. By June of 2011 his clients collectively held approximately 30% of the outstanding shares of Bison Gold.
34. The Respondent also personally held a significant number of these securities. By November of 2010 the Respondent held 1,054,423 shares of RPT. By September of 2011 he held 684,000 shares of Bison Gold.
35. In an attempt to assist AM, the Respondent helped collect proxy votes from his clients in support of AM's dissident shareholder actions in relation to both Bison Gold and RPT. He provided further assistance to AM by collecting affidavits from his clients. The affidavits

were to be used to support litigation that was initiated by AM after the failed attempt to take over the board of Bison Gold.

36. These activities were carried out using National Bank resources such as email accounts, letterhead. As well, the Respondent had his assistant help organize the collection of these documents.
37. The Respondent failed to disclose, and receive approval for, his conduct pertaining to Bison Gold and RPT. This is contrary to National Bank's internal policies. The Respondent had signed an attestation that he had read, and would adhere to, those policies.
38. The Respondent's actions had the potential to:
  - a. Create a conflict of interest where he may not be able to provide independent investment advice to his clients;
  - b. Give his client's the impression that his solicitation of proxies and affidavits was endorsed by National Bank; and
  - c. Expose himself and National Bank to possible accusations that his actions contributed to the demise of Bison Gold's and RPT's stock price.
39. While not an alleged violation, those parts of the Respondent's conduct which took place after March 26, 2012, would also be in contravention of IIROC's *Conflict of Interest* rule, Dealer Member Rule 42. Relevant parts of this rule came into force in March 26, 2012, and also requires existing or potential material conflicts of interest be reported to the Dealer Member 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 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, Ontario, this 26<sup>th</sup> day of July, 2017.

**“ELSA RENZELLA”**  
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