

July 17, 2014

Personal Service and Registered Mail

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Ms. Sandra Weinstein
National Hearing Coordinator
Investment Industry Regulatory Organization of Canada
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Toronto ON M5H 3T9

Dear Sir/Madam:

**In the Matter of Bryan Andrew Vickers and the Investment Industry Regulatory
Organization of Canada**

We are counsel to Bryan Andrew Vickers. Enclosed and served upon you pursuant to the Ontario Securities Commission Rules of Procedure is the Notice of Application for a Hearing and Review with respect to the Decision and Reasons of the Hearing Panel of the Ontario District Council of the Investment Industry Regulatory Organization of Canada dated June 19, 2014 and sent to Mr. Vickers on June 24, 2014.

A transcript of evidence is required for the review, and is being requested.

Very truly yours,



Jeremy Devereux
Partner

JD/nal

Enclosure

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ONTARIO SECURITIES COMMISSION

**IN THE MATTER OF AN APPLICATION FOR HEARING AND REVIEW OF A DECISION OF
THE ONTARIO DISTRICT COUNCIL OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA PURSUANT TO SECTION 21.7 OF THE *SECURITIES ACT*,
R.S.O. 1990, C. S.5 AS AMENDED**

- and -

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

BETWEEN

BRYAN ANDREW VICKERS

- and -

STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

NOTICE OF APPLICATION FOR A HEARING AND REVIEW

TAKE NOTICE THAT Bryan Andrew Vickers (the "Applicant") applies for a hearing and review by the Ontario Securities Commission (the "Commission") pursuant to section 21.7 of the Ontario *Securities Act* of the Decision and Reasons of a Hearing Panel of the Ontario District Council of the Investment Industry Regulatory Organization of Canada ("IIROC") dated June 19, 2014, but sent to the Applicant on June 24, 2014, imposing sanctions on the Applicant pursuant to IIROC Dealer Member Rules 20.33 and 38.4 (the "Decision and Reasons").

THE APPLICANT RESPECTFULLY REQUESTS:

- 1 An order setting aside the Decision and Reasons and substituting, as the appropriate sanctions:

- (a) a fine of \$15,000, and
- (b) a requirement to re-write the Supervisor's course upon re-approval as a Branch Manager;

2 In the alternative, an order setting aside the Decision and Reasons and substituting the decision of the Commission respecting the appropriate sanctions to be imposed on the Applicant;

3 In the further alternative, an order setting aside the Decision and Reasons and remitting the matter to a newly constituted Hearing Panel of the Ontario District Council for a re-hearing;

4 Costs of the hearing and review; and

5 Such further and other relief as counsel for the Applicant may request and the Commission deem just.

THE GROUNDS FOR THE APPLICATION ARE:

1 After an investigation by IIROC Staff, the Applicant and IIROC Staff entered into an Agreed Statement of Facts.

2 In the Agreed Statement of Facts, the Applicant and IIROC Staff agreed to the following contravention of IIROC Dealer Member Rules:

From April 2010 to August 2011, in the manner described herein, Vickers failed to adequately supervise a registered representative ("RR") and certain of his client accounts, when the RR recommended certain inverse exchange-traded funds to clients, contrary to IIROC Dealer Member Rule 38.4.

3 The Agreed Statement of Facts then set out detailed and specific facts that had been
agreed upon by the Applicant and IIROC Staff.

4 The Applicant and IIROC Staff did not agree on the sanctions that should be imposed
based on the agreed-upon contravention and facts. Instead, the Applicant and IIROC
Staff agreed that the Agreed Statement of Facts would be placed before an IIROC
Hearing Panel, the parties would each make submissions to the Hearing Panel, and the
Hearing Panel would decide upon the appropriate sanctions based upon the
contravention and facts set out in the Agreed Statement of Facts.

5 On June 10, 2014 the hearing was conducted before a Hearing Panel. IIROC Staff
counsel and the Applicant's counsel made written and oral submissions to the Hearing
Panel.

6 The Hearing Panel issued the Decision and Reasons on June 19, 2014, which was sent
to the Applicant's counsel by email on June 24, 2014.

7 The Hearing Panel imposed the following sanctions on the Applicant:

- (a) A suspension or prohibition on the Applicant becoming a Supervisor for six
months;
- (b) A fine of \$30,000; and
- (c) A requirement that the Applicant re-write the Supervisor's course before
becoming re-registered as a Branch Manager.

8 The Hearing Panel erred in law and proceeded on incorrect principles in a number of
respects, including those set out below.

9 The Hearing Panel erred in law and proceeded on incorrect principles in referring to and considering the contents of an IIROC Guidance Note on Leveraged and Inverse Exchange-Traded Funds dated June 11, 2009 (the "Guidance Note") and in concluding that, if the Applicant knew what the Guidance Note stated then his conduct showed a serious error of judgment, and that if he did not know what it stated then he was at least negligent in not knowing, when:

- (a) The Guidance Note was not referred to in the Agreed Statement of Facts;
- (b) Counsel for Staff and the Applicant both advised the Hearing Panel that the Guidance Note was not in the Agreed Statement of Facts and that no conclusions should be drawn from the Guidance Note;
- (c) The Guidance Note is only a statement of the opinion of Staff regarding the risks of leveraged and inverse ETFs and not an IIROC by-law, rule or regulation;
- (d) The statements in the Guidance Note are not admissible without evidence, of which there was none;
- (e) If the statements in the Guidance Note were potentially admissible, the Hearing Panel failed to give the Applicant an opportunity to lead evidence and/or make argument as to the validity of the statements in the Guidance Note;
- (f) The Hearing Panel was not entitled to reach the conclusion it did about the Applicant's conduct based on the statements in the Guidance Note when there was no admission in the Agreed Statement of Facts that the Applicant's conduct showed a serious error of judgment because he knew what the Guidance Note said, nor any admission that he was negligent because he did not know what the Guidance Note said, nor any other admission with respect to the Guidance Note;

- (g) The Hearing Panel was not entitled to draw the inferences it did about the Applicant's conduct based on the statements in the Guidance Note when there was no expert evidence regarding the conduct expected of branch managers in the circumstances; and
 - (h) If the Hearing Panel was otherwise entitled to draw the inferences it did based on the statements in the Guidance Note, the Hearing Panel failed to give the Applicant the opportunity to lead evidence or make submissions to contest the assertion that his conduct showed a serious error of judgment because he knew what the Guidance Note said, or that he was negligent because he did not know what the Guidance Note said.
- 10 The Hearing Panel erred in law and proceeded on incorrect principles in concluding that, if the Applicant knew what the prospectuses for the two exchange traded funds stated then his conduct showed a serious error of judgment, and that if he did not know what they stated then he was at least negligent in not knowing, when:
- (a) This conclusion is necessarily based on the statements in the prospectuses being valid when the Agreed Statement of Facts contains no such admission;
 - (b) If the Hearing Panel was potentially entitled to treat the statements quoted from the prospectuses as valid, the Hearing Panel failed to give the Applicant an opportunity to lead evidence and/or make argument as to the validity of the statements from the prospectuses;
 - (c) The Hearing Panel was not entitled to reach the conclusion it did about the Applicant's conduct based on the statements in the prospectuses when there was no admission in the Agreed Statement of Facts that the Applicant's conduct

showed a serious error of judgment because he knew what the prospectuses said, nor that he was negligent because he did not know what the prospectuses said;

(d) The Hearing Panel was not entitled to draw the inferences it did about the Applicant's conduct based on the statements in the prospectuses in the absence of expert evidence regarding the conduct expected of branch managers in the circumstances;

(e) If the Hearing Panel was otherwise entitled to draw the inferences it did based on the statements in the prospectuses, the Hearing Panel failed to give the Applicant the opportunity to lead evidence or make submissions to contest the assertion that his conduct showed a serious error of judgment because he knew what the prospectuses said, or that he was negligent because he did not know what the prospectuses said.

11 The Hearing Panel erred in law and proceeded on incorrect principles in imposing sanctions that are disproportionate to the conduct agreed to in the Agreed Statement of Facts. The conduct agreed to does not warrant any period of suspension and does not warrant a fine of \$30,000.

12 The Hearing Panel erred in law and proceeded on incorrect principles in failing to provide adequate reasons for its decision with respect to sanctions.

THE BASIS OF THE COMMISSION'S JURISDICTION IS:

1 Sections 8 and 21.7 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5.

- 2 Section 12 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22.
- 3 Rules 2.2 and 14 of the Ontario Securities Commission *Rules of Procedure*.
- 4 Such further basis as counsel for the Applicant may advise and the Commission deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the review:

- 1 The Agreed Statement of Facts;
- 2 The documents filed at the sanctions hearing;
- 3 The transcript of the sanctions hearing on June 10, 2014;
- 4 The Decision of the Hearing Panel dated June 19, 2014; and
- 5 Such further evidence as counsel for the Applicant may advise and the Commission may permit.

July 17, 2014

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