

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20531**

**In the Matter of**

**HORTER INVESTMENT  
MANAGEMENT, LLC and DREW  
K. HORTER,**

**Respondents.**

**ANSWER AND AFFIRMATIVE  
DEFENSES OF RESPONDENTS HORTER  
INVESTMENT MANAGEMENT, LLC  
AND DREW K. HORTER TO THE  
ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE AND  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 203(e), 203(f) AND 203(k) OF  
THE INVESTMENT ADVISERS ACT OF  
1940 AND NOTICE OF HEARING**

Pursuant to Rule 220 of the Securities and Exchange Commission's (the "Commission") Rules of Practice, Respondents Horter Investment Management, LLC ("HIM") and Drew K. Horter ("Horter") (collectively, "Respondents"), by and through their attorneys, hereby submit the following Answer and Affirmative Defenses to the Order Instituting Administrative and Cease and Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 and Notice of Hearing (the "OIP").

**I.**

Section I of the OIP contains no factual allegations, and thus, no response is required. To the extent Section I can be considered to contain factual allegations asserted against HIM and/or Horter, they are denied.

**II.**

**SUMMARY**

1. In response to Paragraph 1, Respondents admit that HIM is a registered investment advisor, and that Horter is HIM's founder and CEO. Answering further, Respondents

admit that Kimm Hannan (“Hannan”) was once an investment advisor representative (“IAR”) registered with HIM. Respondents deny the remaining allegations of Paragraph 1.

2. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2, and therefore deny same.

3. In response to Paragraph 3, Respondents admit that Horter had supervisory responsibility for HIM during the relevant period alleged in the OIP (the “Relevant Time Period”). Respondents deny the remaining allegations of Paragraph 3.

4. Respondents deny the allegations of Paragraph 4.

### **RESPONDENTS**

5. In response to Paragraph 5, to the extent the allegations of this Paragraph assert that the December 8, 2017 Commission order, Advisers Act Release No. 4823, has any relation to Hannan or the claims in the OIP, Respondents deny same. Respondents admit the remaining allegations of Paragraph 5.

6. Respondents admit the allegations of Paragraph 6.

### **OTHER RELEVANT ENTITIES AND INDIVIDUALS**

7. In response to Paragraph 7, Respondents admit that Hannan was an IAR with HIM from December 1, 2014 through March 24, 2017; that Hannan was located in Canton, Ohio during his registration with HIM; and that Hannan held Series 7 and 63 licenses. Upon information and belief, Respondents admit that Hannan is currently serving a prison term in Ohio. Respondents lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 7, and therefore deny same.

## FACTS

### Horter Investment Background.

8. In response to Paragraph 8, Respondents admit that the majority of the IARs registered with Horter during the Relevant Time Period were not located in Cincinnati, Ohio. Respondents are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 8, and therefore deny same.

9. In response to Paragraph 9, Respondents state that the Commission's December 2014 deficiency letter speaks for itself and deny any allegations that alter or mischaracterize the content or meaning of the letter. Answering further, Respondents state that the consultant report quoted by the Commission speaks for itself and deny any allegations that alter or mischaracterize the content or meaning of the report. Respondents deny any remaining allegations of Paragraph 9.

### Horter's Supervisory Responsibilities and Delegations.

10. Respondents admit the allegations of Paragraph 10.

11. In response to Paragraph 11, Respondents admit that Horter delegated certain supervisory responsibilities. Respondents deny the remaining allegations of Paragraph 11.

12. In response to Paragraph 12, Respondents admit that Horter delegated responsibility for annual review of HIM's policies and procedures in 2015, 2016, and 2017. Respondents deny the remaining allegations of Paragraph 12.

### Horter Investment Hires Hannan.

13. In response to Paragraph 13, Respondents state that the November 14, 2014 U5 was not authored by Respondents and that it speaks for itself and deny any allegations that alter

or mischaracterize the content or meaning of the U5. Upon information and belief, Respondents admit the remaining allegations of Paragraph 13.

14. Respondents admit the allegations of Paragraph 14.

15. In response to Paragraph 15, Respondents state that the FINRA letter speaks for itself and deny any allegations that alter or mischaracterize the content or meaning of the letter. Answering further, Respondents admit that Hannan forwarded the FINRA letter to the Compliance Officer on December 10, 2014.

16. In response to Paragraph 16, Respondents admit that HIM did not terminate Hannan's registration upon receipt of the FINRA letter. Respondents deny the remaining allegations of Paragraph 16.

17. In response to Paragraph 17, Respondents deny that Hannan was designated a high-risk advisor upon his registration. Respondents admit the remaining allegations of Paragraph 17.

**Hannan Fraudulently Solicits and Receives \$728,001 in Horter Investment Client Funds for his Outside Business Activities**

18. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18, and therefore deny same.

19. Paragraph 19 contains legal conclusions to which no responsive pleading is required. To the extent a response is required, Respondents deny same. Answering further, Respondents deny any allegations that suggest that either Hannan Properties or HR Resources were approved outside business activities ("OBAs") of Hannan, that Respondents knew that either Hannan Properties and/or HR Resources were investment-related OBAs, or that Respondents knew Hannan was soliciting funds for investments in either Hannan Properties

and/or HR Resources from HIM clients. Respondents admit the remaining allegations of Paragraph 19.

20. In response to Paragraph 20, Respondents admit that Hannan submitted Distribution Requests to HIM that were signed and authorized by four (4) HIM clients between November 19, 2015 and March 8, 2017. Respondents deny the remaining allegations of Paragraph 20.

21. The allegations of Paragraph 21 contain legal conclusions to which no responsive pleading is required. To the extent a response is required, Respondents deny same. Answering further, Respondents admit that Hannan submitted Distribution Requests to HIM that were signed and authorized by HIM clients for processing, which indicate Hannan Properties as the recipient of the distributions, and those Distribution Requests were subsequently confirmed by HIM staff with the HIM clients. Respondents deny all remaining allegations of Paragraph 21.

22. In response to Paragraph 22, Respondents state the email communications referenced speak for themselves and deny any allegations that alter or mischaracterize the content or meaning of the emails.

23. In response to Paragraph 23, Respondents state the December 2016 email speaks for itself and deny any allegations that alter or mischaracterize the content or meaning of the email.

24. In response to Paragraph 24, Respondents deny any of the third-party distributions alleged in Paragraph 21 of the OIP from the HIM clients were directed to HR Resources. Respondents lack knowledge or information sufficient to form a belief as to the truth of any allegation as to what Hannan did with the funds after transfer to Hannan Properties, and therefore deny same. Answering further, Respondents specifically state that HR Resources was not an

approved OBA for Hannan, and Hannan was not permitted to solicit clients to invest in HR Resources. Respondents admit the remaining allegations of Paragraph 24.

25. In response to Paragraph 25, Respondents deny any investigation of Hannan by Respondents concluded there was violations of “investment related statutes, regulations, rules, or industry codes of conduct.” Respondents admit the remaining allegations of Paragraph 25.

26. Respondents admit the allegations of Paragraph 26.

### **Hannan Commits Securities Fraud**

27. The allegations of Paragraph 27 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 27 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 27, and therefore deny same.

28. The allegations of Paragraph 28 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 28 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 28, and therefore deny same.

29. The allegations of Paragraph 29 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 29 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 29, and therefore deny same.

30. The allegations of Paragraph 30 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 30 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 30, and therefore deny same.

31. The allegations of Paragraph 31 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 31 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 31, and therefore deny same.

**Hannan is Convicted and Imprisoned**

32. The allegations of Paragraph 32 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 32 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 32, and therefore deny same.

33. The allegations of Paragraph 33 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 33 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 33, and therefore deny same.

34. The allegations of Paragraph 32 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the

Respondents state that Section 1707.44(M)(1)(a)-(b) speaks for itself and deny any allegation that alters or mischaracterizes the content or meaning of the Ohio Revised Code.

35. The allegations of Paragraph 35 contain legal conclusions to which no response is required. To the extent a response is required, Respondents deny same. Answering further, the allegations of Paragraph 35 are not directed to Respondents, and therefore Respondents deny same. Respondents lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 35, and therefore deny same.

36. Respondents deny the allegations of Paragraph 36.

37. Respondents deny the allegations of Paragraph 37.

**Horter Investment and Horter Fail Reasonably to Establish Supervisory Policies and Procedures**

38. Respondents deny the allegations of Paragraph 38.

**A. High-Risk Advisers and Heightened Supervision**

39. In response to Paragraph 39, Respondents admit that between 2014 and March 2020, 11.4% of the IARs registered with HIM were identified as high risk, 43.7% were identified as moderate risk, and 44.9% were identified as low risk. Answering further, Respondents state that as of October 2021, there are fifty-five (55) total IARs registered with HIM, and none of them are identified as high risk. Respondents deny any remaining allegations of Paragraph 39.

40. In response to Paragraph 40, Respondents specifically deny that any advice or direction provided by consultants or HIM's Compliance Officer were "warnings." Answering further, Respondents state that the consultant report and September 2016 communication speak for themselves and deny any allegation that alters or mischaracterizes the content or meaning of the report and/or communication.



41. In response to Paragraph 41, Respondents specifically deny that any advice or directions provided by consultants or HIM's Compliance Officer were "warnings." Respondents admit the remaining allegations of Paragraph 41.

42. In response to Paragraph 42, Respondents admit that Hannan was designated a "high-risk adviser" in April 2016 based on objective factors set by HIM and deny that designation was given based on any alleged subjective "concern." Horter admits the remaining allegations of Paragraph 42.

**B. Field Visits and Branch Audits of Remote IARs**

43. In response to Paragraph 43, Respondents admit that the majority of the IARs registered with Horter during the Relevant Time Period were not located in Cincinnati, Ohio. Respondents are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 43, and therefore deny same.

44. In response to Paragraph 44, Respondents state that the Commission's December 2014 deficiency letter and outside consultant report speaks for themselves and deny any allegations that alter or mischaracterize the content or meaning of the letter and report.

45. In response to Paragraph 45, Respondents specifically deny that Respondents failed to heed any "warnings." Respondents admit the remaining allegations of Paragraph 45.

**C. Third-Party Distribution Requests**

46. Respondents admit the allegations of Paragraph 46.

47. In response to Paragraph 47, Respondents state the contents of the October 4, 2017 email correspondence quoted by the Commission in Paragraph 47 speaks for itself. Respondents specifically deny Paragraph 47's mischaracterization of the email correspondence's contents and meaning.

48. In response to Paragraph 48, Respondents state that the \$300,000 transfer was the result of a fraudulent phishing email and not the result of any actions of HIM, Horter, or its IARs. Answering further, Respondents specifically deny that they “required no review of the distribution log and established no further procedures” for the distribution log. Respondents admit the remaining allegations of Paragraph 48.

49. Respondents deny the allegations of Paragraph 49.

50. Respondents deny the allegations of Paragraph 50.

**Horter Investment and Horter Fail Reasonably to Implement Policies and Procedures**

51. Respondents deny the allegations of Paragraph 51.

**A. Outside Business Activities**

52. In response to Paragraph 52, Respondents admit that its April 1, 2016 Policies and Procedures Manual contained a policy concerning OBAs. Answering further, Respondents deny that it was the “only policy” during “Hannan’s tenure” because it was also contained in HIM’s November 10, 2016 Policies and Procedures Manual. Respondents state that the contents of the policies and procedures manuals speak for themselves and deny any allegation that alters or mischaracterizes the content or meaning of its manuals. Respondents deny the remaining allegations of Paragraph 52.

53. Respondents deny the allegations of Paragraph 53.

54. Respondents deny the allegations of Paragraph 54.

55. Respondents deny the allegations of Paragraph 55.

56. Respondents deny the allegations of Paragraph 56.

**B. Supervisory Review**

57. In response to Paragraph 57, Respondents state that HIM's policies and procedures speak for themselves and deny any allegations that alter or mischaracterize the contents or meaning of the policies and procedures.

58. Respondents deny the allegations of Paragraph 58.

**C. Third-Party Distribution Request Log and Distribution Procedures**

59. Respondents admit the allegations of Paragraph 59.

60. In response to Paragraph 60, Respondents state that the June 1, 2016 email speaks for itself and deny any allegation that alters or mischaracterizes the contents or meaning of the email.

61. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61, and therefore deny same.

62. In response to Paragraph 62, Respondents state that the Third-Party Distribution Logs speak for themselves and deny any allegation that alters or mischaracterizes the contents or meaning of the logs.

63. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63, and therefore deny same.

64. In response to Paragraph 64, Respondents state that to the extent the allegations of Paragraph 64 are derived from the investigation testimony of Horter, Horter's testimony speaks for itself, and Respondents deny any allegations that alters or mischaracterizes the content or meaning of the testimony.

65. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 65, and therefore deny same.

66. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 66, and therefore deny same.

**D. Onboarding of Hannan**

67. Respondents deny the allegations of Paragraph 67.

68. In response to Paragraph 68, Respondents state that Hannan completed the HIM onboarding process in seven days. Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 68, and therefore deny same.

69. Respondents admit the allegations of Paragraph 69.

70. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70, and therefore deny same.

71. In response to paragraph 71, Respondents admit that Horter was the only person who could authorize hiring IARs at HIM during the Relevant Time Period and made the decision to retain Hannan. Respondents deny the remaining allegations of Paragraph 71.

72. Respondents deny the allegations of Paragraph 72.

**Horter Investment and Horter Fail Reasonably to Follow Up on Red Flags.**

73. Respondents deny the allegations of Paragraph 73.

74. In response to Paragraph 74, Respondents admit HIM reviewed Hannan's IAPD disclosure reports as part of its due diligence process. Respondents deny the remaining allegations of Paragraph 74.

75. In response to Paragraph 75, Respondents admit that the Compliance Officer recommended to Horter that Hannan be terminated. Respondents deny the remaining allegations of Paragraph 75.

76. In response to Paragraph 76, Respondents admit that Hannan was designated a “high-risk adviser” in April 2016. Respondents deny that they “failed reasonably to monitor Hannan’s conduct” and that it ignored red flags. Respondents admit the remaining allegations of Paragraph 76.

77. In response to Paragraph 77, Respondents admit that they received, processed, and executed third-party distribution requests and confirmed the distributions with the clients. Respondents deny the remaining allegations of Paragraph 77.

78. Respondents deny the allegations of Paragraph 78.

79. Respondents deny the allegations of Paragraph 79.

**Horter Unreasonably Delegated Supervisory Authority**

80. Respondents admits the allegations of Paragraph 80.

81. In response to Paragraph 81, Respondents admit that Horter delegated supervisory responsibility as needed. Respondents deny the remaining allegations of Paragraph 81.

82. In response to Paragraph 82, Respondents specifically deny the characterization that a purported “approach” was “apparent” in any of Respondents’ activities. Respondents admit that Horter delegated responsibilities for the 2015-2017 annual reviews. To the extent the balance of the allegations contained in Paragraph 82 are derived from the investigation testimony of Horter, the testimony speaks for itself, and Respondents deny any allegation that alters or mischaracterizes the content or meaning of the testimony.

83. In response to Paragraph 83, Respondents admit that Horter delegated supervisory responsibility as necessary. Answering further, Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 83, and therefore deny same.

84. Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 84, and therefore deny same.

### **VIOLATIONS**

85. The allegations of Paragraph 85 are not directed to Respondents, and therefore Respondents deny same.

86. Respondents deny the allegations of Paragraph 86.

### **III.**

Section III of the OIP contains no factual allegations, and thus, no response is required. To the extent Section I can be considered to contain factual allegations asserted against HIM and/or Horter, they are denied.

### **IV.**

Section IV of the OIP contains no factual allegations, and thus, no response is required. To the extent Section I can be considered to contain factual allegations asserted against HIM and/or Horter, they are denied.

### **AFFIRMATIVE DEFENSES**

Respondents assert the following affirmative defenses and reserve the right to amend their Answer to assert other and further affirmative defenses when and if, in the course of his investigation, discovery, or preparation for hearing, it becomes appropriate.

#### **FIRST DEFENSE**

The OIP fails to state a claim for which relief can be granted.

#### **SECOND DEFENSE**

The Commission cannot meet the applicable standards for any of the relief it is seeking in the OIP.

### **THIRD DEFENSE**

Respondents have established procedures, and a system for applying such procedures, that would reasonably be expected to prevent and detect insofar as practicable, any violation of the Investment Advisers Act of 1940 and its rules.

### **FOURTH DEFENSE**

Respondents reasonably discharged their duties and obligations incumbent upon them by reason of HIM's procedures and system without cause to believe that such procedures and system were not being complied with.

### **FIFTH DEFENSE**

Respondents lack the required scienter for the stated violations.

### **SIXTH DEFENSE**

Respondents did not aid, abet, counsel, command, induce, or procure the violation by Hannan of any violation of the Investment Advisers Act of 1940.

### **SEVENTH DEFENSE**

Respondents' supervision of Hannan was reasonable.

### **EIGHTH DEFENSE**

Horter's supervisory responsibility was clearly and reasonably delegated.

### **NINTH DEFENSE**

Given the change in HIM's firm structure and Horter's role within HIM during the almost five years since Hannan's termination, there is no likelihood of future violations required to support sanctions.

**TENTH DEFENSE**

No remedial purpose exists that would be served by the imposition of a cease-and-desist order against Respondents.

**ELEVENTH DEFENSE**

The Commission's claims and the remedial action sought are neither necessary nor appropriate, and they are not in the public interest.

**TWELFTH DEFENSE**

Respondents assert all other affirmative defenses as may be discovered during the course of this action and expressly reserve the right to amend their Answer to the OIP.

Dated: October 6, 2021

Respectfully submitted,

*/s Matthew L. Fornshell*

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**UNITED STATES OF AMERICA**  
**Before the**  
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**File No. 3-20531**

**In the Matter of**

**HORTER INVESTMENT  
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**Respondents.**

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true copy of the foregoing *Answer and Affirmative Defenses of Respondents Horter Investment Management, LLC and Drew K. Horter to the Order Instituting Administrative and Cease and Desist Proceedings Pursuant To Sections 203(e), 203(f) and 203(k) of The Investment Advisers Act of 1940 and Notice of Hearing* on the following on this 6th day of October, 2021 in the manner indicated below:

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Dated: October 6, 2021

*/s Matthew L. Fornshell* \_\_\_\_\_  
Matthew L. Fornshell