

## Notice of Certification as a Class Action

TO: Any person in Ontario and elsewhere who held units of HVI (BetaPro S&P 500 VIX Short-Term Futures Daily Inverse ETF) at the close of the Toronto Stock Exchange ("TSX") on February 5, 2018 (the "Class" or "Class Members")

Re: GRAHAM WRIGHT v. HORIZONS ETFS MANAGEMENT (CANADA) INC.

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

Court File No. CV-18-00597284-00CP (the "Lawsuit")

### **PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.**

*You are receiving this notice because your rights may be affected by the certification of the Lawsuit as a class action. You do not have to do anything to participate in this class action.*

*For more information about this class action, please visit: [www.horizonsclassaction.ca](http://www.horizonsclassaction.ca) or contact Class Counsel as set out below.*

### **The Proceeding**

On May 3, 2021, the Ontario Superior Court of Justice ordered that certain claims in the above-noted Lawsuit be certified as a class action against Horizons ETFs Management (Canada) Inc. ("Horizons"), and appointed Graham Wright as the Representative Plaintiff. The Lawsuit seeks, on behalf of the Representative Plaintiff and on behalf of the Class Members, compensation and such other relief as set out in the Amended Statement of Claim.

The Amended Statement of Claim alleges, among other things, that Horizons was negligent in the design, implementation, testing and marketing of HVI, that HVI was too complex and risky to be offered to retail investors, and that flaws in its design caused losses to the Class Members. The Amended Statement of Claim can be found at [www.horizonsclassaction.ca](http://www.horizonsclassaction.ca).

By certifying certain claims in this action as a class proceeding, the Court has not determined the merits of the claims or defences to them. The Representative Plaintiff will be required to prove his allegations at a trial in order to obtain the relief that he seeks for the Class.

The law firm **Crawley MacKewn Brush LLP** ("Class Counsel") is representing the Class Members and may be contacted at:

Crawley MacKewn Brush LLP  
179 John Street, Suite 800  
Toronto, ON M5T 1X4  
Tel: 416.217.0740  
Fax: 416.217.0220  
[Admin@HorizonsClassAction.ca](mailto:Admin@HorizonsClassAction.ca)

### **How to Join the Class Action**

Under Ontario law, if you are a person falling within the Class addressed above and defined below, you will automatically be included in the Class unless you choose to be excluded from this proceeding. This includes Class Members who reside anywhere in Canada, not just in Ontario.

By order of the Ontario Superior Court of Justice dated May 3, 2021, the following persons are automatically included in this class action:

All persons and entities, wherever they may reside, who held units in BetaPro S&P 500 VIX Short-Term Futures Daily Inverse ETF ("**HVI**") on the Toronto Stock Exchange ("**TSX**") as at the close of business on February 5, 2018, excluding the defendant, its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns.

Any judgment made by the Court, whether favourable or not, will bind all Class Members who do not opt out of the proceeding as instructed below. That means that Class Members who do not opt out will not be able to start their own actions for any of the relief sought in the Lawsuit.

### **How to be Excluded from the Class Action/Opt Out of the Class**

To exclude yourself from this proceeding, you must complete the opt out form found at <https://www.horizonsclassaction.ca/> and submit via mail to the Notice Administrator using the address details provided on the form. The deadline for excluding yourself from this class action is July 4, 2022.

If you decide to exclude yourself from the Class, you will be excluded from any settlement or award of damages awarded by the Court, you will receive no further communications regarding this action from Class Counsel, and you will take full responsibility for initiating your own claim, if any, against Horizons, and for taking all legal steps necessary to protect any such claim.

### **What are the Financial Consequences of the Lawsuit?**

There is no upfront cost to the Class Members to participate in the Lawsuit and the Class Members will not be personally liable to pay any legal fees or disbursements to Class Counsel.

If the Lawsuit is successful at trial, or at any subsequent appeal, or if there is a settlement, the Court may award compensation to the Class Members as a whole (of which you may receive a portion). The Court may further determine which Class Members should be entitled to compensation and the method for distributing the compensation to those Class Members. Alternatively, the Court may establish a process, which may include individual hearings, for determining the amount of compensation, if any, each individual Class Member may be entitled to receive.

If the class action is successful, legal fees and disbursements incurred by Class Counsel will be deducted from the total amounts recovered on behalf of the Class. The amount of such legal fees and disbursements must be approved by the Court.

The Class Proceedings Fund (the "Fund") has agreed to reimburse the Representative Plaintiff for some disbursements incurred in pursuing this Lawsuit, and the Fund will be responsible for costs that may be awarded against the Representative Plaintiff in this case. In exchange, the Fund will be entitled to recover the amount of its funded disbursements (except amounts repaid by the Representative Plaintiff or ordered paid by Horizons) from any court award or settlement in favour of the Class. The Fund will also be entitled to 10% of any amounts that may be payable to Class Members.

If the class action is unsuccessful, Class Members will not be awarded compensation and you and other Class Members will not have any financial obligations in respect of the Lawsuit.

### **Class Counsel**

Class Counsel will be paid legal fees only if the Lawsuit is successful. Those legal fees will have to be approved by the Court prior to being paid.

The Court filings in this Lawsuit are available for inspection at the office of the Superior Court of Justice at the Toronto Courthouse located at 330 University Avenue, Toronto, Ontario, M5G 1R7, Court File Number CV-18-00597284-00CP.

All questions about the Lawsuit should be directed to Class Counsel or the Notice Administrator and should not be directed to the Court.

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*This notice is published pursuant to section 17 of the Ontario Class Proceedings Act, 1992 and was approved by the Ontario Superior Court of Justice.*