

JOHN MORGAN  
SECURITIES COMMISSIONER



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## Texas State Securities Board

208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
www.ssb.texas.gov

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CHAIR

E. WALLY KINNEY  
MEMBER

DAVID A. APPLEBY  
MEMBER

ALAN WALDROP  
MEMBER

MIGUEL ROMANO, JR.  
MEMBER

IN THE MATTER OF THE  
INVESTMENT ADVISER  
REGISTRATION OF RUBICON  
INVESTMENT MANAGEMENT &  
ANALYTICS, LLC

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Order No. IC16-CAF-15

TO: Michael Yves Heridia, President  
Rubicon Investment Management  
& Analytics, LLC (CRD# 141219)  
202 Lundblade  
San Antonio, Texas 78213

### DISCIPLINARY ORDER

Be it remembered that Rubicon Investment Management & Analytics, LLC ("Respondent") and Michael Yves Heridia ("Heridia") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Facts and the Conclusions of Law contained herein.

### FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-44 (West 2010 & Supp. 2016) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West 2008 & Supp. 2016) ("Administrative Procedure Act").
2. On January 1, 2007, Respondent registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
3. On January 1, 2007 Heridia registered with the Securities Commissioner as an investment adviser representative of the Respondent. This registration is currently effective.

4. Heridia has been Respondent's President since January 1, 2007.

#### **2010 Inspection of Respondent**

5. In March 2010, the Staff of the Texas State Securities Board ("Staff") conducted an inspection of Respondent.

6. Respondent's written supervisory procedures were inadequate to achieve compliance with the Texas Securities Act, Rules and Regulations of the Texas State Securities Board ("Board Rules"), and all applicable securities laws and regulations.

7. Specifically, the procedures failed to address supervisory reviews to determine the suitability of recommendations in client accounts; supervisory review of investment adviser representatives' correspondence; investment adviser representative registration; and hiring and training of new investment adviser representatives.

8. At the conclusion of the 2010 inspection, Staff requested Respondent correct the aforementioned deficiencies with Respondent's procedures.

9. Heridia provided Staff with procedures addressing the deficiencies found during the 2010 inspection of Respondent.

#### **Failure to Establish & Enforce Procedures**

10. In November 2014 Staff conducted an inspection of Respondent.

11. Respondent's 2014 procedures were once again inadequate and did not include the supplemental procedures Heridia provided to Staff at the conclusion of the 2010 inspection.

12. As in 2010, Respondent again did not have procedures established to address the suitability of recommendations in client accounts; supervisory review of investment adviser representatives' correspondence; and investment adviser representative registration.

13. Additionally, Respondent did not have procedures in place to address the supervisory review of trading in client accounts.

14. Respondent did not have procedures in place to address investment adviser representatives' communications with clients. Specifically, Respondent does not have procedures prohibiting investment adviser representatives from using personal email addresses to communicate with clients.

15. An investment adviser representative ("Representative") of Respondent used a personal e-mail address to communicate with clients.
16. On or about December 15, 2014, Representative received a complaint (the "Complaint") through Representative's personal email address alleging unsuitable investments of penny stocks in the account of a ninety-three (93) year old client.
17. Respondent did not review Representative's personal email address for correspondence with clients of Respondent.
18. Respondent's procedures require Heridia to review all complaints, communicate with clients to resolve complaints and to keep a complaint file; because Respondent did not have procedures regarding correspondence with client's, Respondent was unaware of the Complaint and did not enforce Respondent's procedures regarding complaints.
19. Respondent's procedures state:

The firm's CCO shall make and keep true, accurate and current the following books and records relating to its investment business: ...for each client, a separate folder containing at least (but not limited to)...client financial information, investment objectives and any other information the firm uses to determine the suitability of recommendations or investments; and documents related to the review of the client's portfolio to ensure it is in agreement with stated investment objectives

20. For certain clients Respondent did not maintain a record identifying client financial information, investment objectives and other suitability information.
21. Pursuant to §116.5(a)(9) of the Rules and Regulations of the Texas State Securities Board (the "Board Rules"), Respondent is required to keep a record listing clients' birth year; employment status, including occupation; annual income; net worth, excluding the value of the client's primary residence; investment objectives; and risk tolerance.
22. Respondent does not have complete records for all clients regarding clients' birth year, employment status, including occupation; annual income; net worth; investment objectives; and risk tolerance.

#### CONCLUSIONS OF LAW

1. Respondent's failure to establish procedures addressing the suitability of recommendations in client accounts; supervisory review of investment adviser

representatives' correspondence; investment adviser representative registration; and the supervisory review of trading in client accounts constitute a failure to establish a system to supervise the activities of its investment adviser representatives that is reasonably designed to achieve compliance with the Texas Securities Act, the Board Rules, and all applicable securities laws and regulations and are violations of §116.10 of the Board Rules.

2. Respondent's failure to maintain records identifying client financial information, investment objectives and other suitability information constitute failures to enforce Respondent's written supervisory procedures and are violations of §116.10 of the Board Rules.
3. Respondent's failure to keep a record listing clients' birth year; employment status, including occupation; annual income; net worth, excluding the value of the client's primary residence; investment objectives; and risk tolerance are violations of §116.5(a)(9) of the Board Rules.
4. The foregoing violations of the Board Rules constitute bases for the issuance of an Order reprimanding the Respondent pursuant to Section 14.(A)(6) of the Texas Securities Act.
5. Pursuant to Section 23-1 of the Texas Securities Act, the aforementioned violations of a Board Rule constitute bases for the assessment of an administrative fine against the Respondent.

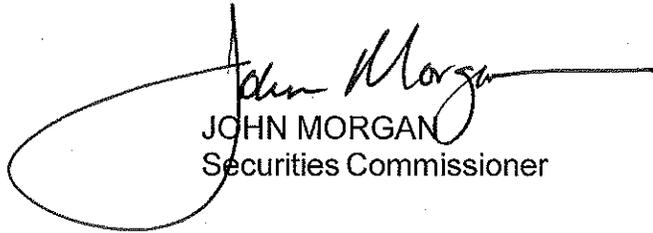
#### UNDERTAKING

1. Respondent and Heridia undertake and agree that Michael Yves Heridia (CRD #1870395) will not serve in any principal or supervisory capacities on behalf of Respondent for a period of eight (8) years.
2. Respondent and Heridia further undertake and agree that Respondent will submit to legal counsel for the Inspections & Compliance Division of the Texas State Securities Board ("Counsel"), within thirty (30) days of entry of this order, written policies and procedures that achieve compliance with the Texas Securities Act, the Board Rules, and all applicable securities laws and regulations.
3. Respondent and Heridia further undertake and agree to withdraw the registration of all investment advisor representatives of Respondent, excluding Heridia.
4. Respondent and Heridia represent that Respondent and Heridia understand that a failure to comply with the Undertaking constitutes a basis for disciplinary proceedings against Respondent and Heridia pursuant to Section 14 of the Texas Securities Act.

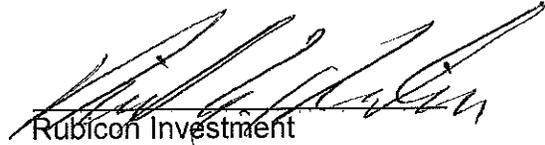
ORDER

1. It is further ORDERED that Rubicon Investment Management & Analytics, LLC is hereby REPRIMANDED.
2. It is further ORDERED that Rubicon Investment Management & Analytics, LLC shall pay an ADMISTRATIVE FINE in the amount of Five-Thousand Dollars (\$5,000). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Five-Thousand Dollars (\$5,000) payable to the State of Texas, contemporaneously with the delivery of this Order.
3. It is further ORDERED Rubicon Investment Management & Analytics, LLC and Michael Yves Heridia COMPLY with the terms of the Undertaking contained herein.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 20<sup>th</sup>  
day of September, 2016.

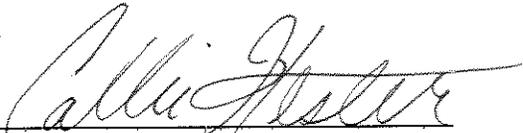
  
JOHN MORGAN  
Securities Commissioner

Respondent:



Rubicon Investment  
Management & Analytics, LLC  
By: Michael Yves Heridia, President

Approved as to Form:



Callie A. Hester  
Attorney, Inspections and Compliance Division

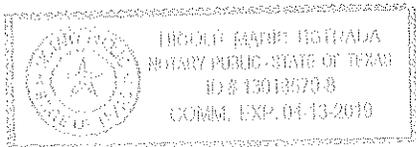


Cristi Ramón  
Attorney, Inspections and Compliance Division

**ACKNOWLEDGMENT**

On the 16<sup>th</sup> day of September, 2016, Michael Yves Heridia personally appeared before me, executed the foregoing Order, and acknowledged that:

1. Michael Yves Heridia has read the foregoing Order and Undertaking incorporated by reference herein;
2. Michael Yves Heridia has been fully advised of his rights under the Texas Securities Act and the Administrative Procedures Act;
3. Michael Yves Heridia knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein and Undertaking incorporated by reference herein; and
4. Michael Yves Heridia, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



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R. Estrada

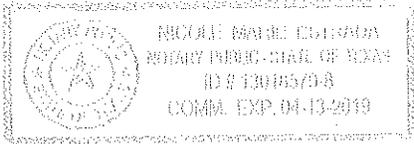
Notary Public in and for  
the State of Texas

My commission expires on: 4/13/19

**ACKNOWLEDGMENT**

On the day of 16<sup>th</sup> September, 2016, Rubicon Investment Management & Analytics, LLC ("Respondent"), by and through Michael Yves Heridia, its President, appeared before me, executed the foregoing Order, and acknowledged that:

1. Michael Yves Heridia is duly authorized to enter into the foregoing Order and Undertaking on behalf of Respondent;
2. Michael Yves Heridia has read the foregoing Order and Undertaking;
3. Respondent has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and
5. Respondent, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.



[affix notary seal here]

M. Ghada

Notary Public in and for  
the State of TEXAS

My commission expires on: 4/13/19