

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA (IIROC)**

AND

**THE BY-LAWS OF THE
INVESTMENT DEALERS ASSOCIATION OF CANADA (IDA)**

AND

RICHARD ALLAN MACDONALD

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Richard Allan MacDonald, consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Richard Allan MacDonald.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“the Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contravention of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
 - a) From June, 2004 to March, 2009, while the Branch Manager at DWM Securities Inc., he failed to take the supervisory steps that were reasonably required with respect to the suitability of holdings in the accounts of six clients, contrary to IIROC Dealer Member Rules 38.4(a) and 2500 [IDA Regulation 1300.2 and Policy No. 2 prior to June 1, 2008].
8. Staff and the Respondent agrees to the following terms of settlement:
 - a) The Respondent agrees to pay a fine to IIROC in the sum of forty thousand dollars (\$40,000.00); and
 - b) The Respondent shall be prohibited from acting in a supervisory capacity for five years.
9. The Respondent agrees to pay costs to IIROC in the sum of three thousand dollars (\$3,000.00).

III. STATEMENT OF FACTS

(i) Acknowledgment

10. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

11. Six clients (three married couples), all inexperienced investors and retired or approaching retirement, suffered losses between 50%-74% respectively as a result of unsuitable recommendations from their Registered Representative, James Jones ("Jones").
12. The Respondent, Richard Allen MacDonald ("MacDonald"), was the Branch Manager and was responsible for supervising Jones. MacDonald failed in his supervisory duties as he did not take sufficient steps to ensure that the recommendations were suitable for these clients.

Respondent

13. MacDonald has been a Registered Representative since 1998 and also a Branch Manager since 1999 with various IIROC member firms.
14. At all material times, MacDonald was a Branch Manager with DWM Securities Inc. ("Dundee") in Calgary.
15. As the Tier 1 supervision, MacDonald was responsible for the supervision of a Dundee sub-branch operated by Jones.

Registered Representative

16. Jones became an RR in 1993. In 2001, he joined Dundee Securities Corporation, the predecessor to Dundee.
17. At all material times, Jones was an RR, and the lead in a team of three employees in the sub-branch.
18. In March, 2009 Dundee suspended Jones as a result of a public complaint from a client. In December, 2009 Jones' employment at Dundee was terminated.
19. On June 4, 2012, an IIROC Hearing Panel accepted a settlement agreement entered into between Staff and Jones in which Jones admitted that, relative to individual time periods between March, 2004 and March, 2009 with respect to clients RR/JS; DM/MM; and NC/LC (collectively, "the Clients"), he:
 - a. Failed to use due diligence to learn and remain informed of the essential facts relative to these clients, and
 - b. Failed to ensure that recommendations were suitable for these clients based on factors including financial situation, investment knowledge, investment objectives and risk tolerance
20. Jones agreed to a penalty comprised of a fine of \$200,000; a five (5) year prohibition from registration with IIROC in any capacity and costs of \$10,000.

Supervision

21. Jones was supervised at the Tier 1 level (branch level) in Calgary by MacDonald.
22. As Branch Manager, MacDonald's duties included the review and approval of new client application forms ("NCAF's") and client account updates, as well as the review of daily and monthly trading summary reports.

23. Although MacDonald was not situated at the sub-branch, he would periodically visit the Jones sub-branch and would also view records remotely.

Clients - RR and JS

24. In or around October, 2001, RR and JS opened accounts with Jones. RR was then a 53 year old teacher and his spouse, JS, was a 55 year old physiotherapist.
25. The 2001 NCAF for their RSP states that the couple had a stated net worth of \$350,000, and a combined income of \$111,000. Although they had limited investing experience, their investment knowledge is listed as “good”.
26. The NCAF lists investment objectives of 0% - 80% -20% (income - capital appreciation - speculative) and risk tolerance of 0% - 80% - 20% (low – medium - high). They also held a non-registered trading account with identical parameters.
27. RR and JS were looking to Jones for financial advice and direction as they approached retirement. RR would be entitled to a small pension in retirement but they were going to be relying on their investments for income. They also owned portions of some rental properties from which they received minimal income after expenses.
28. In April, 2005, RR and JS, then aged 57 and 59 respectively, met with Jones and/or his staff in order to update their RSP account documentation as they were now retired.
29. Although retired, their NCAF listed investment objectives of 0% - 30% - 70% (income - capital appreciation - speculative) and risk tolerance of 0% - 30% - 70% (low – medium - high). These stated investment objectives and risk tolerance parameters were actually higher than when they had first opened the account in 2001 and before they retired.
30. The stated investment objectives and risk tolerance parameters were inconsistent with the clients’ true financial situation, investment knowledge, investment objectives and risk tolerance.
31. There were no NCAF updates after April, 2005.
32. RR and JS relied upon and followed Jones’ recommendations for the investments in their accounts. In addition, approximately 90% of the trades were solicited.
33. Through Jones’ own research, investment ideas and trading activity, the risk exposure in the portfolio increased over time.
34. As of January, 2008, approximately 59% of the RR/JS investment portfolio held oil and gas stocks including 26% in junior issuers. Nearly all of the remainder of their portfolio held financial stocks and equity mutual funds. They did not hold fixed income securities to generate income.

35. These holdings, which were highly concentrated in resource stocks, reflected an extremely high degree of risk and were not suitable for a retired couple needing income from their investments.
36. Between January, 2007 and December, 2008, the RR/JS portfolio lost approximately \$176,000, or a 51% decline. During the same time period the S&P/TSX Index declined approximately 27%.
37. RR and JS have received total compensation from Dundee in the amount of \$37,439.00 with respect to their losses.

Clients – DM and MM

38. DM and MM were long time clients of Jones. In 2004, they retired from their employment as a physician and music teacher. Although no client account updates were completed at that time, in September, 2006 they converted their accounts from RRSP's to RRIF's and completed an NCAF.
39. The September 2006 NCAF states that the couple, then 62 and 59, had a combined stated net worth of \$900,000, and an income of \$40,000. Although they had limited investing experience, their investment knowledge is listed as "good".
40. The NCAF lists investment objectives of 0% - 60% -40% (income - capital appreciation - speculative) and risk tolerance of 0% - 60% - 40% (low – medium - high).
41. DM and MM did not have employment pensions and relied on their investments for income.
42. The stated investment objectives and risk tolerance parameters were inconsistent with the clients' true financial situation, investment knowledge, investment objectives and risk tolerance.
43. Between 2004 and December, 2008, MM corresponded with Jones' staff and expressed concerns on many occasions with respect to the very high level of risk in their portfolio. She asked if they should be reallocating their portfolio to "something more conservative". Despite these concerns, Jones did not make any substantial changes to the portfolio to reduce the risk.
44. DM and MM relied upon and followed Jones' recommendations for the investments in their accounts. In addition, approximately 90% of the trades were solicited.
45. Through Jones' own research, investment ideas and trading activity, the risk exposure in the portfolio increased over time.
46. As of January, 2008, approximately 68% of the DM/MM investment portfolio held oil and gas stocks including 39% in junior issuers. Nearly all of the remainder of their

portfolio was in financial stocks and equity mutual funds. Their portfolio did not contain any fixed income securities to generate income.

47. These holdings, which were highly concentrated in resource stocks, reflected an extremely high degree of risk and were not suitable for a retired couple needing income from their investments.
48. Between January, 2007 and March, 2009, the DM/MM portfolio lost approximately \$724,000, or a 59% decline. During the same time period the S&P/TSX Index declined approximately 31%.
49. DM and MM have received total compensation from Dundee in the amount of \$238,792.00 with respect to their losses.

Clients – NC and LC

50. NC, a retired business owner and his wife, LC were long time clients of Jones. They were unsophisticated investors who had both achieved a grade 10 education. They had no pensions and relied on their investments for income.
51. NC and LC had numerous accounts with Jones. In October 2001, LC completed a NCAF for her registered account which states that the couple had a combined net worth of \$550,000, income of \$32,000 each, and despite limited investment knowledge, her investment knowledge is listed as “good”. She was then 64 years old.
52. The 2001 NCAF lists investment objectives of 10% - 80% -10% (income - capital appreciation - speculative) and risk tolerance of 10% - 80% - 10% (low – medium - high).
53. Despite the couple’s ongoing need to rely on their investments for income, beginning in 2004 the investment objectives and risk tolerance parameters in their accounts were increased on multiple occasions. By April, 2008 the investment objectives in the accounts had reached 0% - 30% -70% (income - capital appreciation - speculative) with risk tolerance of 0% - 30% - 70% (low – medium - high).
54. The stated investment objectives and risk tolerance parameters were inconsistent with the clients’ true financial situation, investment knowledge, investment objectives and risk tolerance.
55. NC and LC relied upon and followed Jones’ recommendations for the investments in their accounts. In addition, approximately 90% of the trades were solicited.
56. Through Jones’ own research, investment ideas and trading activity, the risk exposure in the portfolio increased over time.

57. As of January 31, 2008, approximately 89% of the NC/LC RRIF account held resource stocks including approximately 59% in junior issuers and/or private companies. Their portfolio did not contain any fixed income securities to generate income.
58. These holdings, which were highly concentrated in resource stocks, reflected an extremely high degree of risk and were not suitable for a retired couple needing income from their investments.
59. Between January, 2007 and March, 2009, the NC/LC portfolio lost approximately \$274,000, or a 74% decline. During the same time period the S&P/TSX Index declined approximately 31%.

Supervisory Failures

60. As Branch Manager, MacDonald had certain duties and responsibilities including the supervision of Jones, the approval of account updates, and the supervision of account activity.
61. There were numerous red flags with respect to the Clients' accounts for which MacDonald failed to take any meaningful action to investigate. These red flags included the following:
 - a. The Clients were retired or nearing retirement;
 - b. The Clients' investment objectives and risk tolerance parameters were *increasing* as they grew older;
 - c. Nearly all of the trades were solicited;
 - d. There was an extremely high concentration of holdings in junior issuers, resource stocks, and speculative private placements;
 - e. There were virtually no fixed income holdings.
62. Despite the presence of many red flags, MacDonald failed to use due diligence to ensure that the Clients' stated investment objectives and risk tolerances were consistent with their true financial situation, investment knowledge, investment objectives and risk tolerances.
63. MacDonald failed to conduct any meaningful supervision of Jones with respect to the Clients. He failed to question the trading activity in the accounts and whether the holdings were suitable for the Clients.
64. MacDonald relied to a great extent on the fact that the Clients had signed NCAF's, without taking the necessary steps to determine whether they in fact understood the high degree of risk in their holdings.

65. MacDonald failed to give due regard to the risks to the Clients, and allowed Jones to pursue a highly aggressive strategy which was not suitable for them and ultimately resulted in substantial losses when the market declined.

IV. TERMS OF SETTLEMENT

66. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
67. The Settlement Agreement is subject to acceptance by the Hearing Panel.
68. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
69. The Settlement Agreement will be presented to the Hearing Panel at a hearing (“the Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
70. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
71. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
72. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
73. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
74. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
75. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Calgary in the Province of Alberta,
this 9 day of November, 2012.

“Witness”

WITNESS

“Richard MacDonald”

RESPONDENT

AGREED TO by Staff at the City of Calgary in the Province of Alberta,
this 6 day of November, 2012.

“Witness”

WITNESS

“David McLellan”
DAVID MCLELLAN
Enforcement Counsel on behalf of
Staff of the Investment Industry
Regulatory Organization of Canada

ACCEPTED at the City of Calgary in the Province of Alberta,
this 9 day of November, 2012, by the following Hearing Panel:

Per: “Brian Foster”

Panel Chair

Per: “Martin Davies”

Panel Member

Per: “Peter McWilliams”

Panel Member