

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

AND

KELLY RICHARD JONES

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Kelly Richard Jones, consent and agree to the full and final settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) in the conduct of Kelly Richard Jones.
3. 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

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
 - a) Between approximately January, 2008 and May, 2012, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to three clients contrary to Dealer Member Rule 1300.1(a) (IDA Regulation 1300.1(a) prior to June 1, 2008);

- b) Between approximately January, 2008 and May, 2012, the Respondent failed to use due diligence to ensure that recommendations were suitable for three clients, based on factors including the client's financial situation, investment knowledge, investment objectives and risk tolerance contrary to IIROC Dealer Member Rule 1300.1(q) (IDA Regulation 1300.1(q) prior to June 1, 2008).
6. Staff and the Respondent agree to the following terms of settlement:
- a) A fine in the amount of \$75,000; and
 - b) A suspension from registration with IIROC in any capacity for one year.
7. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

9. The Respondent, Kelly Richard Jones ("Jones"), was a Registered Representative responsible for the accounts of three clients (the "Clients").
10. Jones failed to know the Clients, who were retired or semi-retired, reliant on their investments for income, and were inexperienced investors.
11. Jones failed to use due diligence to ensure that his recommendations were suitable when he recommended highly concentrated positions in individual sectors and securities (including commodity based leveraged exchange traded funds) with virtually no low risk holdings.
12. The Clients sustained total losses in their accounts of 25% and 53% of the average equity value.

Registration History

13. Jones has been a Registered Representative since 1999. Beginning in January, 2008, he was employed by Richardson GMP Limited and its predecessor GMP Private Client LP (together "RGMP") at a branch located in Red Deer, Alberta.

14. In May, 2012, Jones ceased working with RGMP. In November, 2012, his employment was formally terminated.
15. Jones has no previous discipline history and cooperated throughout with IIROC in addressing this matter.

Client - NC

(i) Failure to Know Your Client

16. NC is a 61 year old retired widow who resides in Red Deer. She has a high school education and limited investment experience.
17. She worked with her husband in their small business doing office work until it was sold in 2003. Shortly thereafter, her husband died in a motor vehicle accident.
18. NC first opened an account with Jones in or around 2004, when he was employed by another firm. In January, 2008, she moved her accounts with him to RGMP. At that time she was 54 years old. In total, NC held a margin account; an RRSP account; a corporate account (remaining from the previous small business); a TFSA account and RESP accounts for her four grandchildren.
19. A January 2008 New Client Account Form (“NCAF”) for all the accounts (with the exception of the TFSA account) estimates NC’s assets at \$1.4 million in fixed assets and \$800,000 in liquid assets. Her stated annual income was \$60,000, and her stated investment knowledge was “good”. Under investment objectives/risk tolerance parameters, the “growth” section is selected, with investment objectives of 10% capital preservation; 15% income; 85% capital gains, and risk tolerance of 10% low risk; 50% medium risk; and 40% high risk.
20. In February, 2009, NC completed a NCAF to open the TFSA account. It contained the identical investment objective and risk tolerance parameters as the NCAF described above.
21. There are no other account updates after February, 2009.
22. From January, 2008 onward, the stated investment objectives and risk tolerance parameters of the accounts were too aggressive for NC, a retired widow with limited investment knowledge who was relying on her investments for income.
23. Jones failed to learn and remain informed of the essential facts relative to NC as the stated investment objectives and risk tolerance parameters for her accounts were inconsistent with her true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

24. As NC relied on her investments for income, she required a low risk investment strategy which would accommodate her need to withdraw \$5,000 monthly from her accounts.
25. NC was not a knowledgeable investor. She relied upon and followed Jones' investment recommendations.
26. During the period between February, 2008 and May, 2012, and in all of NC's accounts, Jones primarily recommended that she hold highly concentrated positions in individual securities in the oil and gas and metals sectors, as well as commodity based leveraged exchange traded funds ("LETF"). Low risk securities comprised less than 5% of her holdings.
27. For example, in April, 2009, 54% of her holdings were comprised of oil and gas, including a natural gas LETF. In July, 2009, 61% of her holdings were comprised of oil and gas securities. Between March and May, 2012, a single gold LETF comprised 20% of her holdings.
28. There were consistently high levels of security and sector concentration in her accounts throughout the relevant period.
29. In addition, the trading of LETFs across all of her accounts, including the RESP accounts, greatly increased the degree of risk. Between May, 2008 and October, 2011, there were 108 trades in LETF securities in her accounts, generating losses of \$6,491 (including commissions of \$34,812).
30. The average hold period for the LETF securities was approximately 5 months. Positions held longer than 5 months generated total losses of \$169,047, while positions held less than 5 months generated gains of \$162,556.
31. Jones' recommendation to take highly concentrated positions in these securities increased the volatility of her investment returns and was indicative of the high level of risk in her accounts.
32. Between February, 2008 and June, 2012, her accounts lost a total of \$276,610, reflecting a loss of 25.2% of the average equity. During the same time period, the S&P TSX Total Return Index increased 0.3%.
33. The holdings in NC's accounts were speculative, and in combination with the concentrated positions, presented far too much risk for a retired widow who was relying on her investments for income. These recommendations were therefore not suitable for this client in light of her age, employment status, investment knowledge, and experience.

Clients – KM and LM

(i) Failure to Know Your Client

34. KM and LM, who are married, are 65 and 67 years old, semi-retired, and have been involved in various small businesses. KM was previously employed as a plumber. LM has worked as a bookkeeper and continues that role in their current small business, which involves selling older model vehicles.
35. Like NC, KM and LM moved with Jones from his previous firm to RGMP in early 2008. At that time, they were 59 and 62 years old respectively.
36. KM and LM held a joint cash account (later converted to joint margin account); an RRSP account for KM; a RRIF account for LM; and a TFSA account for both KM and LM.
37. The funds held in their RGMP accounts reflected the entirety of their liquid assets. They relied on their investments for income, and they planned to withdraw \$3,000 per month from their RGMP accounts.
38. A February, 2008 NCAF (for the joint cash account/RRSP and RRIF accounts) reports that KM and LM had fixed assets of \$1,250,000; liquid assets of \$500,000; an annual income of \$50,000 and “good” investment knowledge. Under investment objectives/risk tolerance parameters, the “growth” section is selected, with investment objectives of 10% capital preservation; 15% income; and 85% capital gains, and risk tolerance of 10% low risk; 50% medium risk; and 40% high risk.
39. A January, 2009 NCAF for the TFSA accounts contained identical information to the February, 2008 NCAFs.
40. A March, 2012 NCAF for the joint margin account reports that KM and LM had investment objectives of 100% capital gains; and a risk tolerance of 100% high risk.
41. There are no other known NCAFs or updates.
42. From at least February, 2008 onward, the stated investment objectives and risk tolerance parameters of these accounts were too aggressive for KM and LM, a semi-retired couple with limited investment knowledge who were relying on their investments for income.
43. Jones failed to learn and remain informed of the essential facts relative to KM and LM as the stated investment objectives and risk tolerance parameters for their accounts were inconsistent with their true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

44. KM and LM relied on their investments for income. Although they had small business experience, they were not knowledgeable investors and they relied upon and followed Jones' recommendations for the selection of securities in their accounts.
45. During the period of February, 2008 to May, 2012, and across all of their accounts, Jones primarily recommended that they hold highly concentrated positions in individual securities in the oil and gas and metals sectors, as well as commodity based LETFs. Low risk securities comprised less than 5% of their holdings.
46. For example, in December, 2009, 48% of the holdings in their accounts were comprised of LETFs. Between June and October, 2010, more than 90% of their holdings were comprised of oil and gas securities. In April, 2012, 90% of their holdings were comprised of a single gold LETF.
47. There were consistently high levels of security and sector concentration in all of KM's and LM's accounts throughout the relevant period.
48. In addition, the trading of LETFs across all of the accounts greatly increased the degree of risk. Between May, 2008 and June, 2012, there were 56 trades in LETF securities in their accounts, generating losses of \$54,761 (including commissions of \$10,177).
49. The average hold period for the LETF securities was approximately 5 months. Positions held longer than 5 months generated total losses of \$98,132, while positions held less than 5 months generated gains of \$43,371.
50. Jones' recommendation to take highly concentrated positions increased the volatility of the investment returns and was indicative of the high level of risk in their accounts. In addition, his recommendation to hold LETFs on a longer term basis further increased the level of risk.
51. Between February, 2008 and May, 2012, their accounts lost a total of \$165,843, reflecting a loss of 53% of average equity. During the same time period, the S&P TSX Composite Total Return Index decreased 4%.
52. The holdings in KM's and LM's accounts were speculative, and in combination with the concentrated positions, presented far too much risk for a semi-retired couple who were relying on their investments for income. These recommendations were therefore not suitable for these clients in light of their age, employment status, investment knowledge, and experience.

IV. TERMS OF SETTLEMENT

53. 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.
54. The Settlement Agreement is subject to acceptance by the Hearing Panel.
55. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
56. 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.
57. 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.
58. 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.
59. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
60. 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.
61. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
62. 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 “Red Deer” in the Province of “Alberta”, this “23” day of “December”, 2014.

“Witness”

Witness

“Kelly Jones”

Respondent

AGREED TO by Staff at the City of “Calgary” in the Province of “Alberta”,
this “5” day of “January”, 2015.

“Witness”

Witness

“David McLellan”

David McLellan
Senior 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 “23” day of “January”, 2015, by the following Hearing Panel:

Per: “Shelley Miller”

Panel Chair

Per: “Peter McWilliams”

Panel Member

Per: “Bradley Whyte”

Panel Member