

Re Dunn & Wimble

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada (IIROC)**

and

Thomas William Dunn and Gordon Joseph Wimble

2015 IIROC 16

Investment Industry Regulatory Organization of Canada
Hearing Panel (Manitoba District)

Heard: April 21, 2015, at Winnipeg, Manitoba

Decision: April 21, 2015

Written Reasons Released: May 14, 2015

Hearing Panel:

Michael F. C. Radcliffe, Q.C., Chair, Kathleen Jost and Eric Wray

Appearances:

Tayen Godfrey, Enforcement Counsel, IIROC

Sheri Walsh, Respondents' Counsel

Thomas William Dunn and Gordon Joseph Wimble, Respondents

DECISION ON SETTLEMENTS HEARING

Introduction

¶ 1 Pursuant to Investment Industry Regulatory Organization of Canada (IIROC) Transitional Rule No. 1, Schedule C.1, Part C, this Panel was constituted to consider whether to accept a settlement agreement (the “Settlement Agreement”) negotiated between IIROC’s Enforcement Department and Thomas William Dunn (hereinafter referred to as “Dunn”) and Gordon Joseph Wimble (hereinafter referred to as “Wimble”) under IIROC Dealer Member Rule 20.35.

¶ 2 At the conclusion of a settlement hearing held in Winnipeg, Manitoba on April 21, 2015, and after considering the submissions by the parties and the terms of the Settlement Agreement, we determined unanimously to accept the Settlement Agreement and we executed a copy of the Settlement Agreement. We advised the parties that our written reasons would follow. These are our reasons.

Settlement Agreement Terms

¶ 3 The Settlement Agreement, a copy of which is annexed to this Decision contains a summary of the facts of this case, the contraventions admitted by Dunn and Wimble, and the agreed terms of settlement. The Settlement Agreement complies with Rule 14 of the IIROC Rules of Practice and Procedure.

¶ 4 The parties agreed to settlement terms as follows:

Thomas William Dunn

- a) a fine in the sum of \$65,000;
- b) successfully rewrite the conduct and practices handbook examinations;
- c) a period of six (6) months of close supervision; and
- d) costs to IIROC in the sum of \$5,000

Gordon Joseph Wimble

- a) a fine in the sum of \$20,000;
- b) in the event of a return to the Industry, must not act in a supervisory capacity for a period of six (6) months and must rewrite the branch manager’s examination; and
- c) costs to IIROC in the sum of \$2,500

Jurisdiction of Panel

¶ 5 Mr. Godfrey referred us to the decision in *Re Milewski* [1999] IDACD No. 17 regarding the role of the Panel in considering the Settlement Agreement. The *Milewski* decision has been referenced and applied in a number of subsequent hearing panel decisions. The panel in *Milewski* noted at page 11:

“... a District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.”

Ms. Walsh, Counsel for the Respondents also emphasized the applicability of the aforementioned decision.

¶ 6 Counsel both advised us that considerable time was spent negotiating the terms of the settlement, and pointed out the public interest benefits of the settlement process. Both Counsels submitted that the settlement negotiations were reasonable in the circumstances. Counsel for both parties recommended that the Panel accept the settlement as negotiated by the parties. Dunn and Wimble both agreed to accept the Settlement Agreement which had been negotiated.

Joint Settlement Recommendations

¶ 7 The Respondents admit to the following contraventions of the IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Thomas William Dunn

- a) Between April 2009 and December 2010, Dunn failed to use due diligence to learn and remain informed of the essential facts relative to his client, BC, contrary to Dealer Member Rule 1300.1(a);
- b) Between April 2009 and December 2010, Dunn made unsuitable recommendations in the accounts of his client, BC, contrary to Dealer Member Rule 1300.1(q);
- c) Between April 2009 and December 2010, Dunn, failed to use due diligence to learn and remain informed of the essential facts relative to his client, TA, contrary to Dealer Member Rule 1300.1(a); and
- d) Between April 2009 and December 2010, Dunn made unsuitable recommendations in the accounts of his client, TA, contrary to Dealer Member Rule 1300.1(q); and

Gordon Joseph Wimble

- e) Between June 2009 and December 2010, Wimble failed to properly supervise Registered Representative, Dunn in the handling of the accounts of the clients, BC and TA, contrary to IIROC Dealer Member Rules 38.4(a) and 2500.

Statement of Facts

¶ 8 The Respondent Dunn was a Registered Representative (“RR”) responsible for the accounts of two clients – BC and TA.

Registration History

¶ 9 Dunn is a Registered Representative for CIBC World Markets Inc. (formerly CIBC Wood Gundy) from the period of April 1994 to the present in Winnipeg, Manitoba.

Background

¶ 10 BC and TA were clients of Dunn while he was Registered Representative with a CIBC Wood Gundy branch in Winnipeg, Manitoba. BC and TA became Dunn’s clients in 1996 after a previous financial advisor had retired.

¶ 11 In 1996, TA had limited experience with financial investments. She also relied on BK (who is her father) to help manage her financial investments.

¶ 12 In 1996, BC was an elderly person with limited financial knowledge. She was last employed in the 1950’s as a secretary. Previously she had relied on her husband to handle all of her financing. When he passed away in 1981, her friend BK began helping BC manage her financial investments.

¶ 13 BK had been provided with trading authority over the accounts of BC and TA and had been dealing with Dunn directly on their behalf since 1996 (in the case of BC) and 2000 (in the case of TA). In 2008, BK became too ill to continue assisting BC and TA and both made the decision to continue dealing with Dunn directly.

Failure to Know Clients

¶ 14 When BC and TA began dealing with Dunn directly in 2008:

- a) Dunn had been BC and TA’s financial advisor of record for approximately twelve (12) years but had never met either client;
- b) BC’s New Client Account Form (“NCAF”) had not been updated for approximately six (6) years (since 2003); and
- c) The NCAF for TA’s accounts had not been updated for approximately eleven (11) years (however two accounts were opened in trust for her children in 2003).

¶ 15 Dunn met with both clients for the first time in two separate meetings in April 2009. However, Dunn did not take this opportunity to interactively update either BC’s or TA’s NCAF. Nor did Dunn discuss specific risk tolerances or financial objectives at either client’s meeting.

¶ 16 Both BC and TA would later receive prefilled updates to their NCAF in the mail for their signatures.

¶ 17 In total, TA received prefilled updates to her NCAF in the mail on two occasions after her April 2009 meeting. The first came in November 2009, and the second came in March 2010. In both instances, the prefilled forms increased her risk tolerance. However, these changes were not adequately discussed with TA and were not specifically brought to her attention when she received her forms in the mail.

¶ 18 Dunn failed in his due diligence obligations and failed to know the essential facts relative to each of these clients. In particular:

- a) Dunn failed to ascertain that BC:
 - (i) had a low to medium tolerance for risk;

- (ii) did not want a more aggressive investment strategy in order to receive greater returns;
 - (iii) was an unsophisticated investor, with little investment experience; and
 - (iv) wanted to continue the previous investment strategy established by BK which involved infrequent trading;
- b) Dunn failed to ascertain that TA:
- (i) did not wish to increase the level of risk in her account holdings;
 - (ii) was an unsophisticated investor, with little investment experience; and
 - (iii) wanted to continue the previous investment strategy established by BK which involved infrequent trading;

Suitability

¶ 19 After their respective meetings with Dunn in April 2009 both BC and TA expected that Dunn would continue the investment strategy that had been established when BK had been exercising his trading authority. Instead, Dunn engaged in a trading strategy that employed frequent trading and granted a large increase in revenue for CIBC Wood Gundy from the accounts of BC and TA. Both BC and TA trusted Dunn and were reliant upon his advice. Dunn recommended all of the trades and both clients routinely followed Dunn's trade recommendations.

BC's Account

¶ 20 BC's combined account balance between June 2009 and December 2010 range from approximately \$600,167 to \$711,251. In this nineteen (19) month period:

- a) Dunn conducted 304 trades including 181 trades in her investment account and 113 trades in her registered account and ten (10) trades in her TFSA;
- b) Dunn generated approximately \$128,755.77 in revenue for CIBC Wood Gundy;
- c) Dunn received compensation of approximately \$58,221.97 (of the \$128,755.77) from the trades conducted in BC's account; and
- d) BC paid approximately \$60,611 in commission fees directly, with a balance of the revenue (\$68,144.77) coming from new issue fees.

¶ 21 Of the above trading amounted to 192 events and \$85,837 in revenue annually. In contrast when BK was assisting BC (2002 to 2008), her account averaged 32 trades and generated an approximate average of \$4,892 in revenue annually.

¶ 22 This represents a 600% increase in trades and a 1,640% increase in revenue from her accounts.

TA's Account

¶ 23 TA's account during the period from April 2009 to November 2010 rose from \$398,231 to \$518,042. In this twenty (20) month period:

- a) Dunn conducted 184 trades in TA's RSP account;
- b) Dunn generated approximately \$66,819.70 in revenue for CIBC Wood Gundy;
- c) Dunn received compensation of approximately \$29,885.20 in the way of commission from the revenue allotted to CIBC Wood Gundy;
- d) TA paid approximately \$34,399 in commission fees directly, with the balance of \$32,420.70 coming from new issue fees.

¶ 24 This averages out to approximately 110 trades and \$45,187 in revenue annually. Prior to Dunn working directly on the account during the period 2001 to 2008 when BK was directing the account, there were 25 trades and an average of \$2,832 in revenue annually.

¶ 25 This represents a 439% increase in trades and 1,496% increase in revenue from TA's accounts.

Unsuitable Use of Margin

¶ 26 BC's account saw a marked increase in the use of margin. In the 14 month period between September 2009 and November 2010, the margin balance in BC's account increased from \$40,304 to \$500,210. In November 2010, when the margin balance was at its height, BC's client account form indicated that her net worth was \$500,000 with an annual income of \$30,000 from pensions and Old Age Security.

¶ 27 Dunn did not take steps to reduce the margin balance in BC's account until being directed to do so by Wimble who in turn received an email from compliance staff at CIBC Wood Gundy's head office inquiring into whether the margin balance was appropriate. In order to reduce the margin balance, Dunn sold off eight (8) different securities in the account, for a combined loss for this transaction of approximately \$8,626.

Account Performance

¶ 28 BC and TA did not suffer any net losses as a result of Dunn's trading. Between April 2009 and December 2010:

- a) BC's accounts increased in value from \$564,948.92 to \$808,581.27 (less net withdrawals of \$77,538.68). This is an increase of value of 44% net of fees; and
- b) TA's account increased in value from \$381,075.34 to \$534,904.65 (minus net deposits of \$1,526.67). This is an increase of value of 39% net of fees.

¶ 29 During the same period the S&P/TSX Index increased by 31%.

Failure to Supervise

¶ 30 Wimble has worked in the financial industry since 1976. He was Branch Manager and Supervisor at CIBC Wood Gundy (now CIBC World Markets). He was responsible for supervising Dunn and his client's accounts. Wimble is currently retired.

¶ 31 As Branch Manager, Wimble's responsibilities included:

- a) a review of daily trading;
- b) a review of account opening documents and account update documents (NCAF's); and
- c) a review of accounts which produced commissions over \$1,500 on a monthly basis.

¶ 32 Wimble failed to adequately supervise Dunn's activities in regard to BC's and TA's accounts. While Wimble did make some inquiries with Dunn into the handling of those accounts, his supervisory actions were insufficient, given:

- a) BC's and TA's accounts appeared on the monthly commissions over \$1,500 report a combined 18 times between August 2009 and November 2010, after never having appeared on it before;
- b) BC's and TA's client account forms had not been updated in approximately 6 (BC) and 11 (TA) years prior to the KYC updates in 2009 and 2010;
- c) there was a large increase in short term trading in both BC's and TA's accounts and the revenue generated from the accounts increased significantly;
- d) the inappropriate use of margin in BC's account, for which Wimble took corrective action after receiving a query from CIBC Wood Gundy head office compliance department, on November 22, 2010; and

- e) TA's client account updates (November 2009 and March 2010) increased her stated risk tolerance to 50% high risk allocation. This occurred despite her being in her fifties and previously having a 0% high risk objective.

Disciplinary History

¶ 33 In 2010, Wimble entered into a Settlement Agreement with the Manitoba Securities Commission and received a \$7,500 fine. Wimble admitted to failing to detect on a timely basis that certain client accounts had a greater percentage of high risk investments in their accounts than was specified in their account documents.

Terms of Settlement

¶ 34 This settlement is agreed upon in accordance with the IIROC Dealer Member Rules 20.35 to 20.40 inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

¶ 35 Upon the Hearing Panel accepting the Settlement Agreement, the Respondents waive their right under the IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

¶ 36 The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

Panel Reasons and Decisions

¶ 37 We adopt the comments of the Panel in *Milewski* regarding our role when considering a negotiated settlement. In particular, the Panel's role is to give serious consideration to the settlement negotiated by the parties and to not reject the settlement unless there are good reasons for doing so or unless the settlement is unreasonable or contrary to the public interest. We are of the unanimous view that the acceptance of the Settlement Agreement is consistent with the foregoing principles.

¶ 38 Dunn and Wimble both admitted to the allegations set out in the Settlement Agreement and admitted that their conduct breached the IIROC Dealer Member Rules as cited. The Panel accepts the admissions of Dunn and Wimble and we conclude that this conduct in these cases amounts to a contravention of those requirements.

¶ 39 We acknowledge the assistance of counsel for IIROC and the counsel for the Respondents who made helpful submissions regarding the application of the Guidelines in this case. We accept the submissions of counsel as summarized above.

¶ 40 The securities industry is a business of trust and confidence. Registrants must meet significant responsibilities and supervisors play an important role in protecting investors and maintaining the integrity of the capital markets. It is important for the registrants and firms to appreciate that there will be significant penalties, including suspensions and/or significant fines as a result of disciplinary action for failure to comply with the regulatory requirements.

¶ 41 The Panel considered a number of factors in determining whether to accept the Settlement Agreement including whether the terms of the settlement:

- a) Were reasonable, given the conduct of Dunn and Wimble;
- b) Addressed both specific and general deterrence;
- c) Will prevent the type of conduct described from occurring in the future;
- d) Will protect investors as a result of the proposed penalty; and
- e) Will foster confidence in the integrity of the capital markets, IIROC, and the regulatory process.

¶ 42 We are satisfied that Dunn and Wimble are unlikely to engage in similar conduct in the future and that

the penalties in this case will deter others from engaging in similar misconduct. We are also satisfied that the settlement will improve compliance by the industry participants and foster confidence in the industry and the regulatory process.

Conclusion

¶ 43 The Panel, after careful consideration, concluded that the settlement terms:

- a) Are reasonable and within the appropriate range for sanctions, given the facts and circumstances as set out in the Settlement Agreement, the submissions of counsel, and the authorities cited; and
- b) Meet the IIROC's *Dealer Member Disciplinary Sanction Guidelines* and the principles of specific and general deterrence.

¶ 44 For the reasons set out above, the Panel unanimously accepts the Settlement Agreement. In accordance with the terms of the Settlement Agreement, the Panel orders effective on the date of the Settlement Hearing that:

Thomas William Dunn

- a) will pay a fine in the sum of \$65,000;
- b) will successfully rewrite the conduct and practices handbook examinations;
- c) will undergo a period of six (6) months of close supervision; and
- d) will pay costs to IIROC in the sum of \$5,000.

Gordon Joseph Wimble

- a) will pay a fine in the sum of \$20,000;
- b) will, in the event of a return to the Industry, must not act in a supervisory capacity for a period of six (6) months and will rewrite the branch manager's examination; and
- c) will pay costs to IIROC in the sum of \$2,500.

THIS DECISION may be signed in counterpart and transmitted electronically to Investment Industry Regulatory Organization of Canada to form part of the record herein.

DATED as of May 14, 2015.

Michael F. C. Radcliffe, Chair

Kathleen Jost, Member

Eric Wray, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondents, Thomas William Dunn and Gordon Joseph Wimble, consent and agree to the 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 Thomas William Dunn and Gordon Joseph Wimble.

3. The Investigation discloses matters for which the Respondents 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 Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondents admit to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Thomas Dunn

- a. Between April 2009 and December 2010, Thomas Dunn failed to use due diligence to learn and remain informed of the essential facts relative to his client BC, contrary to Dealer Member Rule 1300.1(a);
- b. Between April 2009 and December 2010, Thomas Dunn made unsuitable recommendations in the accounts of his client BC, contrary Dealer Member Rule 1300.1(q);
- c. Between April 2009 and December 2010, Thomas Dunn failed to use due diligence to learn and remain informed of the essential facts relative to his client TA, contrary to Dealer Member Rule 1300.1(a);
- d. Between April 2009 and December 2010, Thomas Dunn made unsuitable recommendations in the accounts of his client TA, contrary Dealer Member Rule 1300.1(q); and

Gordon Wimble

- e. Between June 2009 and December 2010, Gordon Wimble failed to properly supervise Registered Representative Thomas Dunn in the handling of the accounts of clients BC and TA, contrary to IIROC Dealer Member Rules 38.4 (a) and 2500.

6. Staff and the Respondents agree to the following terms of settlement:

Thomas Dunn

- a. a fine in the sum of \$65,000;
- b. successfully rewrite the Conduct and Practices Handbook examination;
- c. a period of 6 months of close supervision; and
- d. costs to IIROC in the sum of \$5,000.00.

Gordon Wimble

- a. a fine in the sum of \$20,000;
- b. in the event of a return to the industry, must not act in a supervisory capacity for a period of 6 months, and must rewrite the Branch Manager’s Examination and
- c. costs to IIROC in the sum of \$2,500.00.

III. STATEMENT OF FACTS

(i) Acknowledgment

7. Staff and the Respondents 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

8. This matter arises from Thomas Dunn’s handling of the accounts of two of his clients, BC and TA, and the related supervision of Dunn by CIBC Wood Gundy Branch Manager Gordon Wimble. Originally both clients had been dealing with Dunn through a third party who had trading authority over their accounts. This third party became ill and BC and TA began dealing with Dunn directly. Dunn then began recommending trades for both clients that were inconsistent with their personal and financial circumstances.

Registration History of Thomas Dunn

9. Dunn is currently working in a registered capacity at CIBC World Markets Inc. (“CIBC”) in Winnipeg. Below is a summary of his registration history.

From	To	Firm	Registration Category
CIBC World Markets Inc. (Formerly CIBC Wood Gundy)	April 1994	Present	Registered Representative (Securities) (Options) (Retail) Officer (Trading) (Securities) Portfolio Management

Background

10. BC and TA were clients of Dunn while he was a Registered Representative with a CIBC Wood Gundy branch in Winnipeg, Manitoba. Both BC and TA became Dunn’s clients in 1996 after their previous financial advisor retired.
11. In 1996, TA was 37 years old, married and worked as a nurse. She had limited experience with financial investments. She also relied on BK (who is her father) to help manage her financial investments.
12. In 1996, BC was a 64 year old widow with limited financial knowledge. She was last employed in the 1950s as a secretary. Previously, she had relied on her husband to handle all of her finances. When he passed away in 1981 their friend BK began helping BC manage her financial investments.
13. BK had been provided with trading authority over the accounts of both BC and TA, and he had been dealing with Dunn directly on their behalf since 1996 (in the case of BC) and 2000 (in the case of TA). In 2008 BK became too ill to continue assisting BC and TA, and both made the decision to continue dealing with Dunn directly. By then, BC was 76 years old and TA was 49 years old.

Failure to Know Clients

14. When BC and TA began dealing with Dunn directly in 2008:
- a. Dunn had been BC’s and TA’s financial advisor of record for approximately 12 years, but had never met either client;
 - b. BC’s New Client Account Form (“NCAF”) had not been updated for approximately 6 years (since 2003); and
 - c. the NCAF for TA’s accounts not been updated for approximately 11 years (however two accounts were opened in trust for her children in 2003).
15. Dunn finally met with both clients for the first time in two separate meetings held in April of 2009. However, Dunn did not take this opportunity to interactively update either BC’s or TA’s NCAF. Nor did Dunn discuss specific risk tolerances or financial objectives at either client’s meeting.
16. Both BC and TA would later receive pre-filled updates to their NCAFs in the mail for their signatures.
17. In total, TA received pre-filled updates to her NCAFs in the mail on two occasions after her April 2009

meeting. The first came in November 2009, and the second came in March 2010. In both instances the pre-filled forms increased her risk tolerance. However, these changes were not adequately discussed with TA and were not specifically brought to her attention when she received her forms in the mail.

18. Dunn failed in his due diligence obligations and failed to know the essential facts relative to each of these clients. In particular:
 - a. Dunn failed to ascertain that BC:
 - i. had a low to medium tolerance for risk;
 - ii. did not want a more aggressive investment strategy in order to receive greater returns;
 - iii. was an unsophisticated investor with little investment experience; and
 - iv. wanted to continue the previous investment strategy established by BK, which involved infrequent trading.
 - b. Dunn failed to ascertain that TA:
 - i. did not wish to increase the level of risk in her account holdings;
 - ii. was an unsophisticated investor with little investment experience, and
 - iii. wanted to continue the previous investment strategy established by BK, which involved infrequent trading.

Suitability

19. After their respective meetings with Dunn in April of 2009, both BC's and TA's expectation was that Dunn would pursue an investment strategy similar to the one that had been established when BK had been exercising his trading authority over their accounts. This strategy involved minimal trading and commissions.
20. Instead, Dunn engaged in a trading strategy that employed frequent trading and which generated a large increase in revenue for CIBC Wood Gundy from the accounts of BC and TA.
21. Both BC and TA had placed their trust and confidence in Dunn, and were reliant on his advice. Dunn recommended all of the trades, and both clients routinely followed Dunn's trade recommendations.

BC's Account

22. BC's combined account balance between June 2009 and December 2010 ranged from approximately \$600,167.00 to \$711, 251.00. In this 19 month period:
 - a. Dunn conducted 304 trades, including 181 trades in her investment account and 113 trades in her Registered Account and 10 trades in her TFSA; ;
 - b. Dunn generated approximately \$128,755.77 in revenue for CIBC Wood Gundy;
 - c. Dunn received compensation of approximately \$58,221.97 (of the \$128,755.77) from the trades conducted in BC's account; and
 - d. BC paid approximately \$60,611.00 in commission fees directly, with the balance of the revenue (\$68,144.77) coming from new issue fees.
23. This averages out to approximately 192 trades and \$85,837.00 in revenue, annually. In contrast, when BK was assisting BC (2002 to 2008), her account averaged 32 trades and generated an approximate average of \$4,892.00 in revenue, annually.
24. This represents a 600% increase in trades and a 1,640% increase in revenue from her accounts.

TA's Account

25. TA's combined account balance between April 2009 and November 2010 ranged from approximately \$398,231.00 to \$518,042.00. In this 20 month period:
 - a. Dunn conducted 184 trades in TA's RSP account ;
 - b. Dunn generated approximately \$66,819.70 in revenue for CIBC Wood Gundy;
 - c. Dunn received compensation of approximately \$29,885.20 (of the \$66,819.70) from the trades conducted in TA's account; and
 - d. TA paid approximately \$34,399.00 in commission fees directly, with the balance of the revenue (\$32,420.70) coming from new issue fees.
26. This averages out to approximately 110 trades and \$45,187.00 in revenue, annually. In contrast, when BK was assisting TA (2001 to 2008), her account averaged 25 trades and generated an approximate average of \$2,832.00 in revenue annually.
27. This represents a 439% increase in trades and 1,496% increase in revenue from her accounts.

Unsuitable Use of Margin

28. BC's account also saw a marked increase in the use of margin. In the 14 month period between September 2009 and November 2010, the margin balance in BC's account increased from \$40,304.00 to \$500,210.00. In November 2010, when the margin balance was at its height, BC's client account form indicated that her net worth was \$500,000.00, with an annual income of \$30,000.00 (from pensions and Old Age Security).
29. Dunn did not take steps to reduce the margin balance in BC's account until being directed to do so by his Branch Manager, Wimble (who in turn received an email from compliance staff at CIBC Wood Gundy's head office inquiring into whether the margin balance was appropriate). In order to reduce the margin balance Dunn sold off 8 different securities in the account, for a combined loss for this transaction of approximately \$8,626.00.

Account Performance

30. BC and TA did not suffer any net losses as a result of Dunn's trading. Between April of 2009 and December of 2010:
 - a. BC's accounts increased in value from \$564,948.92 to \$808,581.27 (less net withdrawals of \$77,538.68). This is an increase of value of 44% net of fees; and
 - b. TA's account increased in value from \$381,075.34 to \$534,904.65 (minus net deposits of \$1,526.67). This is an increase in value of 39% net of fees.
31. During that same period the S&P/TSX Index increased by 31%.

Failure to Supervise

32. Gordon Wimble has worked in the financial industry since approximately 1976. He was the Branch Manager and Supervisor at CIBC Wood Gundy (now CIBC World Markets) who was responsible for supervising Dunn, and his client's accounts. Wimble is currently retired.
33. As Branch Manager, Wimble's responsibilities included:
 - a. reviewing daily trading;
 - b. reviewing account opening documents and account update documents (NCAFs); and
 - c. reviewing accounts which produced commissions over \$1,500.00 on a monthly basis.

34. Wimble failed to adequately supervise Dunn's activities in regard to BC's and TA's accounts. While Wimble did make some inquiries with Dunn into the handling of those accounts, his supervisory actions were insufficient given: :
- a. BC's and TA's accounts appeared on the monthly commissions over \$1,500.00 report a combined 18 times between August 2009 and November 2010, after never having appeared on it before;
 - b. BC's and TA's client account forms had not been updated in approximately 6 (BC) and 11 (TA) years prior to the KYC updates in 2009/2010;
 - c. there was a large increase in short term trading in both BC's and TA's accounts and the revenue generated from the accounts increased significantly;
 - d. the inappropriate use of margin in BC's account, for which Wimble took corrective action after receiving a query from CIBC Wood Gundy head office compliance department, on November 22, 2010; and
 - e. TA's client account updates (November 2009 and March 2010) increased her stated risk tolerance to 50% high risk allocation. This occurred despite her being in her fifties and previously having a 0% high risk objective.

Disciplinary History

35. In 2010 Wimble entered into a Settlement Agreement with the Manitoba Securities Commission and received a \$7,500.00 fine. Wimble admitted failing to detect on a timely basis that certain client accounts had a greater percentage of high risk investments in their accounts than was specified in their account documents.

IV. TERMS OF SETTLEMENT

36. 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.
37. The Settlement Agreement is subject to acceptance by the Hearing Panel.
38. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.
39. 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.
40. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive their right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
41. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
42. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
43. Staff and the Respondents 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.
44. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents are payable immediately upon the effective date of the Settlement Agreement.

45. 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 Winnipeg in the Province of Manitoba, this 13 day of April, 2015.

“Witness”

Witness

“Thomas Dunn”

Thomas Dunn

“Witness”

Witness

“Gordon Wimble”

Gordon Wimble

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 15 day of April, 2015.

“Witness”

Witness

“Tayen Godfrey”

Tayen Godfrey

Enforcement Counsel on behalf of Staff of the
Investment Industry Regulatory Organization of
Canada

ACCEPTED at the City of Winnipeg in the Province of Manitoba, this 21 day of April, 2015, by the following Hearing Panel:

Per: “Michael Radcliffe”

Panel Chair

Per: “Eric Wray”

Panel Member

Per: “Kathleen Jost”

Panel Member

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