

# Re MacDonald

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**

2012 IIROC 68

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

Hearing: November 9, 2012

Decision: December 5, 2012

**Hearing Panel:**

D. Brian Foster, Q.C. – Chair, Peter McWilliams, Martin Davies

**Appearances:**

David McLellan, Senior Enforcement Counsel

Richard Allan MacDonald – Respondent

Barrie J. Marshall, Q.C. - Counsel for Mr. MacDonald

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## REASONS FOR DECISION SETTLEMENT AGREEMENT

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### **I. INTRODUCTION**

¶ 1 On November 9, 2012 the parties signed a Settlement Agreement in accordance with Dealer Member Rules 20.35 to 20.40 inclusive, and Rule 15 of the IIROC *Rules of Practice and Procedure*.

¶ 2 The Hearing Panel was provided with a Settlement Hearing Book that contained copies of the various applicable Dealer Member Rules and case authorities. On November 9, 2012, after submissions were made by counsel for both parties, the Hearing Panel retired to consider whether it would accept the Settlement Agreement on the basis of the material before us. After consideration of the Settlement Agreement and the submissions of counsel the Hearing Panel resumed the Settlement Hearing and advised the parties that the Settlement Agreement was accepted. We also advised the parties that we would provide written reasons for our Decision. Below are those reasons.

### **II. FACTS AND ADMISSIONS**

¶ 3 The Settlement Agreement is attached to these Reasons. We will not repeat all of the admissions and facts set out in the Settlement Agreement. Some of the more relevant admissions and facts are:

- (a) The Respondent admits the following contravention of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

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].

- (b) Staff and the Respondent agree to the following terms of settlement:
- (i) the Respondent agrees to pay a fine to IIROC in the sum of Forty Thousand Dollars (\$40,000.00); and
  - (ii) the Respondent shall be prohibited from acting in a supervisory capacity for five years; and
  - (iii) the Respondent agrees to pay costs to IIROC in the sum of Three Thousand Dollars (\$3,000.00);
- (c) Six clients (three married couples) were all inexperienced investors and retired or approaching retirement. They suffered losses of between 50% to 74% as a result of unsuitable recommendations from their registered representative, James Jones ("Jones");
- (d) The Respondent was the branch manager and was responsible for supervising Jones. The Respondent failed in his supervisory duties as he did not take sufficient steps to ensure that the recommendations made by Jones were suitable for the clients;
- (e) There were numerous red flags with respect to the clients' accounts for which the Respondent failed to take any meaningful action to investigate. Those red flags included the following:
- (i) the clients were retired or nearing retirement;
  - (ii) the clients' investment objectives and risk tolerance parameters were increasing as they grew older;
  - (iii) nearly all of the trades were solicited;
  - (iv) there was an extremely high concentration of holdings and junior issuers, resource stocks and speculative placements. The investment portfolios reflected a very high degree of risk that was not suitable for the clients;
  - (v) there were virtually no fixed income holdings;
  - (vi) the clients were all inexperienced investors. The investments in their portfolios were overly aggressive;
  - (vii) the total cumulative losses to the investors were approximately \$1,174,000.00; and
  - (viii) the failure to properly supervise was an ongoing situation that took place over a number of years during which the Respondent failed to exercise his supervisory responsibilities.

¶ 4 The Respondent has been a registered representative since 1998 and a branch manager since 1999 with various IIROC member firms. There is no history of other regulatory breaches by him.

¶ 5 Jones entered into a Settlement Agreement with IIROC that was approved by a hearing panel. The Reasons for Decision of that hearing panel are found at 2012 IIROC 48. That Decision sets out many of the facts that are found in the Settlement Agreement presented to this Panel.

### **III. REASONS FOR DECISION**

¶ 6 The Respondent admits to the contraventions of IIROC Rules, IDA By-Laws, Regulations or Policies that are set out above. The Hearing Panel accepts that the contraventions have been established. The contraventions are contrary to IIROC Dealer Member Rules 38.4(a) and 2500:

## RULE 38

### COMPLIANCE AND SUPERVISION

38.4(a) A Supervisor must fully and properly supervise each partner, Director, Officer, Registered Representative, Investment Representative or agent in accordance with the supervisory responsibilities assigned to the Supervisor, the Rules of the Corporation and the written policies and procedures of the Dealer Member so as to ensure their compliance with the Rules of the Corporation and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business.

¶ 7 Dealer Member Rule 2500 sets out the minimum standards for retail customer account supervision and are not repeated in their entirety in this Decision. The Respondent, as a branch manager, was responsible for first-tier reviews to detect on a daily and then monthly basis various types of compliance breaches. The Respondent was also responsible for the review of new client account applications. A review of new client account applications must include a review to ensure that recommendations made for any account are appropriate for the client and in keeping with his or her investment objectives. Branch management supervision includes a review of suitability, a review of any inappropriate or high risk trading strategies and excessive trade activity.

¶ 8 The decision in *Youden (Re)*, [2005] I.D.A.C.D. No. 52, at paragraph 95, refers to the *Re Mills* decision that commented on the duties of a branch manager. In *Re Mills* the panel described the role of branch managers as follows:

Branch managers have an important role under the self-regulatory system in our securities markets. The obligations requiring supervision of retail client accounts are intended to ensure appropriate handling of client accounts for the benefit of both the client and the firm....

... A branch manager should be alert to facts that, even with honest and trustworthy registered representatives, may indicate a need for further investigation. It is sometimes necessary that a manager go beyond discussions with a registered representative and address an issue directly with the client.

¶ 9 The Hearing Panel accepts the above statement as a proper general description of the role and responsibilities of a branch manager. In this case there is no evidence that the Respondent carried out any real supervision of these accounts and there is no evidence that he engaged in any conversations with Jones in which the Respondent raised concerns about the suitability of the client investment portfolios. He did not speak directly with any of the clients. There is ample evidence before us in the Settlement Agreement to establish the contraventions.

¶ 10 The issue that remains is whether or not the sanctions proposed in the Settlement Agreement are "within a reasonable range, taking into account the settlement process and the fact that the parties have agreed." (*Re Milewski*, [1999] I.D.A.C.D. No. 17 at page 11 of 14). As stated in *Milewski*, which has been followed in many cases, a hearing panel should not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

¶ 11 At the Settlement Hearing counsel for IIROC reviewed the decisions that are included with the Settlement Hearing Book, and that are identified below:

- A. *Re Bergh* 2011 IIROC 41
- B. *Re Donnelly* 2010 IIROC 32
- C. *Re Racine* [2006] I.D.A.C.D. No. 24
- D. *Re Youden* [2005] I.D.A.C.D. No. 52
- E. *Re Graham* [2005] I.D.A.C.D. No. 21

- F. *Re Stevenson* 2008 IIROC No. 24
- G. *Re Bouchard* 2010 IIROC 13
- H. *Re Jones* 2012 IIROC 48
- I. *Re Milewski* [1999] I.D.A.C.D. No. 17

¶ 12 The Dealer Member Disciplinary Sanction Guidelines (the "Guidelines") provide a framework for assessing the gravity of a particular breach and assistance to determine sanctions that are reasonable in the circumstances. The main concerns when determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization's membership;
3. Protection of the integrity of the Investment Industry Regulatory Organization's process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

¶ 13 Sanctions must be based on the circumstances of the particular misconduct by a Respondent with an aim at general deterrence.

¶ 14 In determining whether the proposed sanctions described in the Settlement Agreement are appropriate, the Hearing Panel considered the Guidelines and also considered decisions of other Hearing Panels dealing with similar circumstances. However, the Guidelines are not mandatory. Further, care must be used when considering other decisions of Hearing Panels. Ultimately, this Hearing Panel must determine the appropriateness of the proposed sanctions on the evidence before it and the particular circumstances in this case.

¶ 15 Counsel for IIROC made submissions with respect to each of the following Key Considerations as are described in the Guidelines:

**3.1 Harm to Clients, Employer and/or the Securities Market**

The three client couples suffered significant losses, although the Respondent's employer has provided some compensation to the clients. The losses before compensation were \$1,174,000.00.

**3.2 Blameworthiness**

Counsel for IIROC conceded that the conduct in this case was negligent, and not manipulative or fraudulent or deceptive.

**3.3 Degree of Participation**

There was no direct participation in this case. The more direct perpetrator in this case was the investment advisor, Jones.

**3.4 Extent to which the Respondent was Enriched by the Misconduct**

There was no enrichment to the Respondent.

**3.5 Prior Disciplinary Record**

The Respondent has no prior disciplinary history.

**3.6 Acceptance of Responsibilities, Acknowledgment of Misconduct and Remorse**

IIROC's counsel advised that the Respondent has been forthcoming and cooperative and accepted responsibility.

**3.7 Credit for Cooperation**

The Respondent has cooperated in the investigation.

### 3.10 **Planning and Organization**

There was no pre-mediation or planning associated with the misconduct.

### 3.11 **Multiple Incidents of Misconduct over an Extended Period of Time**

This case does involve misconduct over approximately five years during which he failed to exercise appropriate supervision.

### 3.12 **Vulnerability of Victim**

The victims in this case were retired and were dependent on their savings to provide income during their retirement years. They also had limited investment knowledge. As a result, they were vulnerable.

### 3.14 **Significant Economic Loss to the Client and/or Dealer Member Firm**

In this case, as is stated above, there was significant monetary loss to the clients. The Dealer Member firm also paid significant sums as compensation to the clients.

## **IV. REVIEW OF PRIOR DECISIONS**

### **A. *Re Bergh 2011 IROC 41***

¶ 16 Bergh was a branch manager that failed to adequately perform his supervisory duties. He approved a number of new accounts without adequately questioning whether the risk tolerance and investment objectives information in the new client account forms was consistent with the client's age, net worth, investment experience and knowledge. The investment advisor that was supervised by Bergh opened accounts for approximately 179 individuals that purchased non-brokered private placement investments. The total amount invested by all the clients was \$10.5 Million. This amount was a substantial portion of their net worth. Bergh was assessed a fine of \$22,000.00 and was prohibited from acting in a supervisory capacity for one year and was also required to pay costs of \$3,000.00. In Bergh there were mitigating circumstances in that he did question the investment advisor and had become concerned about the high degree of risk that the clients were taking on. Bergh required that the investment advisor advise the clients of the risk and it was his understanding that the investment advisor had personally spoken with all of the clients and advised them of the risk. He also understood that the investment advisor had provided to each of the clients a letter advising that their portfolio reflected a high degree of risk. So in Bergh, there is evidence of steps taken to provide supervision, which evidence is lacking in our case.

### **B. *Re Donnelly 2010 IROC 32***

¶ 17 Donnelly was a branch manager. Two of his investment advisors opened accounts for 60 clients from May, 2004 to January, 2005. The investment advisors represented on the new client account forms that the clients resulted from "cold call" or "personal contact" and referrals from various sources. In fact, the investment advisors deceived the branch manager since all of the accounts were from the same referral source. Further the investment advisors did not disclose to Donnelly that the company that was sold as the investment was a company controlled by the referral source. The majority of the clients had low income and low net worth, yet the client account opening forms showed 100% high risk tolerances. Donnelly made limited inquiries of the investment advisors. The fine imposed was \$50,000.00 plus a 45 day suspension as branch manager and payment of costs of \$8,500.00. A mitigating factor was that the branch manager had been misled by his investment advisors, a factor that is not present in our case.

### **C. *Re Racine [2006] I.D.A.C.D. No. 24***

¶ 18 Racine was a branch manager. One of his investment advisors opened an account for a client who was elderly and had conservative investment objectives. The client profile was then modified to that of a client with more aggressive objectives and a higher risk tolerance. Then the investment advisor requested approval for a high risk option strategy for the account. There was no real intervention on the part of Racine having regard to

the fact that the investment objectives and risk tolerance of a client with that sort of profile had been changed to accommodate a very high risk options strategy. As in this case, Racine did not question the fact that the objectives and risk tolerances for the clients were becoming increasingly riskier. In Racine there was a fine of \$30,000.00, a suspension as branch manager for six months, a re-write of a Branch Manager's Course and costs assessed in the amount of \$5,000.00. While the fine in Racine is lower than in this case, the suspension is for a shorter period of time than proposed in this case.

**D. *Re Youden [2005] I.D.A.C.D. No. 52***

¶ 19 Youden was a branch manager whose reviews and supervisory efforts were inadequate in that he failed to notice or he ignored trading irregularities with respect to a client account, even when prompted by the dealer's compliance department to conduct a closer review. A client with grade 11 education and limited investment experience invested an inheritance in the amount of approximately \$155,000.00. Prior to the account being transferred to the negligent investment advisor it had been invested in secure investments. When the negligent investment advisor took over the account, he then recommended to the client and implemented a far more aggressive investment strategy, including investing on margin. There was a finding, after a full hearing, that the evidence demonstrated that Youden failed to reasonably supervise the client accounts, did not adequately address the high turn rates in many of the investment advisor's client accounts and repeatedly accepted the investment advisor's explanations in spite of numerous red flags "which cried out for investigation and action." Youden was assessed a fine of \$70,000.00, assessed costs of \$15,000.00 and as a condition of his continued approval, was required to rewrite and pass the Branch Manager's course by a certain date, failing which Youden would be suspended from approval as a branch manager. While the fine is higher in Youden than is proposed in this case, in Youden the branch manager could have avoided suspension if he successfully completed the Branch Manager's course by a certain date. In the case before us the suspension proposed is for five years.

**E. *Re Graham [2005] I.D.A.C.D. No. 21***

¶ 20 The branch manager in Graham answered questions of his investment advisor about BCI Debentures. Graham's advice was incorrect. Further, Graham had not reviewed any further literature or research with respect to the BCI Debentures. The investment advisor then began purchasing BCI Debentures for his clients. There were high concentrations of BCI Debentures in various client accounts. The Hearing Panel in Graham held that Graham's initial error when describing the characteristics of the BCI Debentures was a concern. The Hearing Panel found that it was "abundantly clear that he knew what it was not (the BCI Debenture) - he knew that it was not a debenture of BCE and BCE and BCI were separate companies and he took no steps to further research the issue, despite Gareau having come to him for advice on the issue." In Graham the fine was \$50,000.00, costs in the amount of \$15,000.00 and a requirement to rewrite and pass the CSC, the CPH and the PDO examinations by a certain date, failing which Graham was to be suspended from approval as a branch manager.

**F. *Re Stevenson 2008 IIROC No. 24***

¶ 21 Stevenson, as branch manager, failed to properly exercise his gatekeeper duty in his supervision of the opening of 20 off-shore corporation accounts with the same designated beneficiary without properly inquiring and approving them when the required information was incomplete, inadequate or missing on the forms. He also failed to keep proper tracking of and record his branch supervisory reviews. He placed himself in a conflict of interest in obtaining a personal loan from one of his subordinates. He failed to obtain the prior approval of his employer before entering into a personal financial business with an employee under his direct supervisory authority. The fine in Stevenson was \$50,000.00, a 12 month suspension as branch manager and a required rewrite of examinations. The mitigating factors in Stevenson were that there was no harm to the clients and Stevenson had an unblemished record for over 40 years in the industry. In Stevenson there were multiple failures, not just supervisory failures. Further, he faced a 12 month suspension as branch manager. A significant mitigating factor in Stevenson was that there was no harm done to the clients, unlike the facts in the case before us.

## **G. *Re Bouchard* 2010 IIROC 13**

¶ 22 The branch manager Bouchard failed to properly supervise transactions of an insider. He also failed to track and keep a proper record of his daily supervision reviews and his inquiries and follow-up. He also breached the Code of Practices Handbook when he covered the losses of a client with his own funds, without the knowledge of his firm. There was a fine of \$30,000.00, a prohibition of approval from IIROC in any capacity for six months, a required rewrite of the Conduct and Practices Handbook examination and a permanent prohibition on approval as branch manager, assistant or co-branch manager or in any other supervisory capacity. In the case before us we have more aggravating circumstances. We have three couples with limited knowledge that suffered significant losses.

¶ 23 Counsel for IIROC summarized the aggravating and mitigating circumstances as:

### **Aggravating**

- Three client couples with limited investment knowledge who were retired and therefore more vulnerable;
- Repeated opportunities by the Respondent to review and prevent the problem over a five year period;
- A failure to act on what was an extreme lack of diversification in the client accounts having regard to their personal characteristics;
- Ninety percent of the trades were solicited; and
- A failure that went to the very heart of the role of a branch manager as a person required to supervise the activities of the registered representative, which failure resulted in large losses to the clients.

### **Mitigating Factors**

- The Respondent has been cooperative;
- The clients were long-term clients of Jones which could have caused the Respondent to assume that they were comfortable with the investment strategies and that the investment strategies were appropriate;
- The Respondent is in his 60's, has been a registrant in the securities industry for a long time and has no prior regulatory compliance breaches; and
- The Respondent has accepted responsibility for his failures and has entered into a negotiated resolution of the dispute.

¶ 24 Counsel for IIROC stated that setting appropriate sanctions is "an art, not a science." While the fine proposed here may be a bit lower than in other supervisory failure cases, the suspension is longer. It was not felt necessary to impose a condition to rewrite any examinations since the Respondent is in his 60's and has been in the business a long time.

¶ 25 Counsel for the Respondent stated that the terms of the Settlement Agreement reflect a vigorous and protracted negotiation between the parties and that the sanctions balance the needs of IIROC and of the Respondent.

## **V. CONCLUSION**

¶ 26 Having considered all of the foregoing, the Hearing Panel has determined that the sanctions are, in the circumstances, reasonable and that the same are consistent with the considerations and penalties recommended in the Guidelines and as are evidenced in the above noted cases. The Hearing Panel accepts the Settlement Agreement, effective November 9, 2012.

**DATED** at the City of Calgary, in the Province of Alberta, this 5<sup>th</sup> day of December, 2012.

D. Brian Foster, Q.C.

Peter McWilliams

Martin Davies

## 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
9. The Respondent shall be prohibited from acting in a supervisory capacity for five years. 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<sup>th</sup> day of November, 2012.

**Witness**

**Respondent**

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 6<sup>th</sup> day of November , 2012.

**Witness**

**David McLellan**

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

ACCEPTED at the City of Clagary in the Province of Alberta , this 9<sup>th</sup> day of November, 2012, by the following  
Hearing Panel:

Per: “Brian Foster”  
Panel Chair

Per: “Martin Davies”  
Panel Member

Per: “Peter McWilliams”  
Panel Member

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