



THE SECURITIES ACT

Sections 148.1(1) and 154

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Order No. 6158

June 18, 2010

LORI DIANE JOHNSON and  
GORDON JOSEPH WIMBLE

**WHEREAS:**

(A) On April 29, 2009, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice") giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to grant an order pursuant to subsection 8(1) of The Securities Act ("Act") with respect to Lori Diane Johnson (JOHNSON) and Gordon Joseph Wimble (WIMBLE).

(B) Staff of the Commission and JOHNSON and WIMBLE entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated June 14, 2010 ("Settlement Agreement") which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission.

(C) JOHNSON and WIMBLE have consented to the issuance of this Order and have waived their right to a full hearing.

(D) On June 18, 2010, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement.

(E) At the Settlement Hearing the Commission approved the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

**IT IS ORDERED:**

1. **THAT** the Settlement Agreement (Schedule "A") be and the same is hereby approved;
2. **THAT** pursuant to subsection 148.1(1) of the Act:
  - a) JOHNSON pay an administrative penalty of \$10,000.00 on or before November 15, 2010;

- b) WIMBLE pay an administrative penalty of \$7,500.00 on or before November 15, 2010;
- 3. JOHNSON and WIMBLE pay costs to the Commission in the amount of \$7,500.00 each, on or before July 15, 2010.

**BY ORDER OF THE COMMISSION**

  
\_\_\_\_\_  
Director - Legal and Enforcement



## SCHEDULE "A"

**IN THE MATTER OF: THE SECURITIES ACT**

**- and -**

**IN THE MATTER OF: CIBC WORLD MARKETS INC.  
LORI DIANE JOHNSON and  
GORDON JOSEPH WIMBLE**

### SETTLEMENT AGREEMENT

#### **A. INTRODUCTION**

A.1 By way of Notice of Hearing and Statement of Allegations of Staff of The Manitoba Securities Commission (the "Commission"), notice was given to Lori Diane Johnson ("JOHNSON") and Gordon Joseph Wimble ("WIMBLE") of the Commission's intention to hold a hearing under *The Securities Act* (the "Act").

A.2 Discussions have been held between JOHNSON, WIMBLE and Staff of the Commission ("Staff") in an effort to settle the matters set out in the Notice of Hearing and Statement of Allegations ("Proceedings"). A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("Settlement Agreement").

A.3 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against WIMBLE and JOHNSON be resolved and disposed of in accordance with the terms and conditions of the Settlement Agreement as set forth below. JOHNSON and WIMBLE each for themselves consent to the Settlement and to the making of the consent order referred to in Part D below, on the terms and conditions set forth in this Settlement Agreement.

**B. STATEMENT OF FACTS**

B.1 JOHNSON and WIMBLE agree with the facts set out in this Part B.

**Registration**

B.2 JOHNSON is a resident of the City of Winnipeg, in the Province of Manitoba.

B.3 WIMBLE is a resident of the City of Winnipeg, in the Province of Manitoba.

B.4 CIBC World Markets Inc. is registered under the Act as an investment dealer.

B.5 CIBC World Markets Inc. was previously registered as an investment dealer under the name CIBC Wood Gundy Securities Inc. (CIBC World Markets Inc. and CIBC Wood Gundy Securities Inc. are hereinafter referred to as "CIBC").

B.6 JOHNSON was first registered under the Act as a salesperson on January 25, 1995 and at all material times was registered as a salesperson with CIBC.

B.7 WIMBLE at all material times was registered under the Act as a branch manager and trading officer with CIBC.

### **Supervision and Compliance**

B.8 CIBC at all material times operated and continues to operate its head office in Toronto, Ontario and has a branch office in the City of Winnipeg ("Winnipeg Branch").

B.9 WIMBLE at all material times was the branch manager of the Winnipeg Branch.

B.10 At all material times, WIMBLE had a role in the ongoing monitoring of client accounts and salespersons in the Winnipeg Branch. The monitoring by WIMBLE included reviewing New Account Application Forms, reviewing daily and monthly trading and making enquiries of salespersons with respect to potential problems identified by those reviews and investigating client complaints.

**Clients - ROBERT KOTYK and BARBARA KOTYK**

B.11 In or about June, 1999, ROBERT KOTYK and BARBARA KOTYK became clients of JOHNSON.

B.12 A number of accounts were opened in BARBARA KOTYK's and ROBERT KOTYK's name. For each account, a Know Your Client ("KYC") form was completed by JOHNSON which included objectives and risk tolerance for each account.

B.13 The accounts opened by ROBERT KOTYK and BARBARA KOTYK included, but are not limited to, the following accounts:

Account No.	Type	Owner	Objectives	Risk Tolerance	Initial Investment
552-48673	LIRA	ROBERT KOTYK	100% long term gain	Low – 0% Med – 80% High – 20%	\$151,631.18 *
552-41904	RRSP	ROBERT KOTYK	100% long term gain	Low – 0% Med – 80% High – 20%	\$77,152.79 **
551-76519	LIRA	BARBARA KOTYK	100% Long term gain	Low – 10% Med – 80% High – 10%	\$66,414.34 ***

\* as of August 23, 1999  
 \*\* as of July 30, 1999  
 \*\*\* as of October 28, 1999

B.14 When ROBERT KOTYK and BARBARA KOTYK met JOHNSON, they were ages 51 and 48 respectively. ROBERT KOTYK and BARBARA KOTYK advised JOHNSON they:

- Retired from their jobs in Winnipeg;
- Planned to move to Seattle, Washington so ROBERT KOTYK could work for a few years;
- Would return to Canada in a few years in order to retire in Canada.

B.15 Prior to leaving Canada, ROBERT KOTYK and BARBARA KOTYK advised JOHNSON they had to liquidate their assets which, in turn, they wished to invest with JOHNSON and have her provide investment advice on.

B.16 ROBERT KOTYK and BARBARA KOTYK held their accounts at CIBC for the period of 1999 to 2002 with JOHNSON as their registered representative.

B.17 During the period 1999 – 2002, JOHNSON made numerous recommendations to ROBERT KOTYK and BARBARA KOTYK as to securities to hold within their accounts.

B.18 As a result of some recommendations made by JOHNSON, together with some unsolicited transactions requested by the Kotyks, the risk level in ROBERT KOTYK's and BARBARA KOTYK's accounts increased and a percentage of the portfolios became unsuitable based on ROBERT KOTYK's and BARBARA KOTYK's risk profiles.

B.19 ROBERT KOTYK's and BARBARA KOTYK's risk profile in their KYCs was not updated while their accounts were held at CIBC.

B.20 ROBERT KOTYK and BARBARA KOTYK suffered losses in their accounts and in 2002 they transferred their accounts from CIBC to another dealer.

**Client – Tony PROSICK**

B.21 In or about February, 2001, Tony Prosick (“PROSICK”) became a client of JOHNSON

B.22 When PROSICK became a client of JOHNSON, he completed a KYC form which identified his objectives and risk tolerances. Particulars of PROSICK’s account is as follows:

<b>Account No.</b>	<b>Type</b>	<b>Objectives</b>	<b>Risk Tolerance</b>	<b>Initial Investment</b>
552-69204	RRSP	100% long term gain	Low risk - 0% Med. risk – 90% High risk – 10%	\$24,500.52*

\* as of February 21, 2001

B.23 When PROSICK opened his account at CIBC, he advised JOHNSON he was 50 years old.

B.24 PROSICK held his account at CIBC for the period 2001 – 2004 with JOHNSON as his registered representative.



B.25 During the period 2001 – 2003, PROSICK contributed a further \$17,000.00 to his account.

B.26 During the period 2001 – 2003, JOHNSON made recommendations to PROSICK as to the securities he should hold in his account. PROSICK followed this advice.

B.27 During the period 2001 – 2003, PROSICK, on JOHNSON's advice, purchased securities and increased the high risk holdings in his account beyond the 10% high risk component identified in his KYC form. As a result, a percentage of PROSICK's account became over weighted in high risk securities, based on the original profile set out in his KYC.

B.28 PROSICK's risk profile on his KYC form was not updated while the account was held at CIBC.

B.29 PROSICK suffered losses in his account while held at CIBC.

**Client – Sharon POLET**

B.30 In or about November, 1999, Sharon Polet ("POLET") became a client of JOHNSON.

B.31 When POLET became a client of JOHNSON, she completed a KYC form which identified her objectives and risk tolerances. Particulars of POLET's accounts are as follows:

Account No.	Type	Objectives	Risk Tolerance	Initial Investment
710-08092	Margin/open	50% - medium term 50% - long term gain	Medium risk 100%	\$28,968.99 *
552-49056	RRSP	50% - medium term 50% - long term gain	Medium risk 100%	\$84,360.59 **

\* as of December 31, 1999

\*\* as of December 31, 1999

B.32 When POLET opened her accounts at CIBC, she advised JOHNSON the money being transferred into these accounts were her life savings, she did not wish to lose any of the principal and that she wanted to retire at age 62. POLET was 57 years of age when she became a client of JOHNSON.

B.34 POLET had her accounts at CIBC for the period 1999 – 2002 with JOHNSON as her registered representative.

B.35 During the period 1999 – 2002, JOHNSON made recommendations to POLET concerning the securities she should hold in her accounts. POLET followed this advice.

B.36 During the period JOHNSON was POLET's advisor, POLET's accounts became over weighted with mutual funds which exceeded her medium risk profile.

B.37 POLET's risk profile on her KYC form was not updated while a client at CIBC.

B.38 POLET suffered losses in her account held at CIBC and subsequently in 2002 transferred her accounts from CIBC.

**Clients – George LAKE and Kelly LAKE**

B.39 George Lake and Kelly Lake (the "LAKES") became clients of JOHNSON in February, 2000.

B.40 When the LAKES became clients of JOHNSON, they completed a KYC form which identified their objectives and risk tolerance. Particulars of the LAKES' accounts opened at CIBC with JOHNSON as their registered representative are as follows:

Account No.	Type	Owner	Objectives	Risk Tolerance	Initial Investment
710-08248	Margin/cash	George Lake and Kelly Lake	50% mid-term 50% - long term growth	Low – 0% Med – 90% High – 10%	\$421,741.25 *

710-08338	Cash	George Lake and Kelly Lake (ITF SA)	100% long term growth	Med – 100%	\$16,382.03 **
710-08337	Cash	George Lake and Kelly Lake (ITF SAB)	100% long term growth	Med – 100%	\$14,340.36 ***

\* as of March 3, 2000

\*\* as of March 31, 2000

\*\*\* as of March 31, 2000

B.41 Between February 2000 – 2003, JOHNSON made recommendations to the LAKES concerning securities to hold in their accounts. The LAKES followed JOHNSON's recommendations.

B.42 During the period JOHNSON was the LAKES' advisor, their accounts included certain securities which exceeded the LAKES' risk levels as indicated on the KYC forms.

B.43 The LAKES suffered losses in their accounts at CIBC.

B.44 The LAKES' KYC forms were not updated while they held accounts at CIBC.

B.45 The LAKES settled outstanding matters concerning their accounts with CIBC prior to the commencement of these proceedings.

**Other matters**

B.46 Since 2003, CIBC has implemented a number of measures to enhance supervision of branches and supervision within branches. These measures include, but are not limited to, creation of a Business Risk and Sales Supervision Department and CIBC Wood Gundy Field Risk Services Department whose respective mandates are to provide guidelines and direction to branch managers ensuring adequate supervision procedures are implemented and maintained and to conduct on-site examinations of CIBC Wood Gundy branches to identify and address supervisory issues.

B.47 Staff acknowledge that WIMBLE and JOHNSON were cooperative with Staff during the course of the investigation.

**COMPENSATION FOR FINANCIAL LOSS**

B.48 Financial loss claims under the Act have been filed by BARBARA KOTYK, ROBERT KOTYK, TONY PROSICK and SHARON POLET (the "Claimants") with the Director, Legal and Enforcement ("Director") of the Commission. The financial loss claims have been resolved with the Claimants and each of the Claimants is prepared to withdraw his or her claim if the Settlement Agreement is approved. Upon approval of the Settlement Agreement, the agreed upon sums to be paid to the Claimants will be paid forthwith. Staff is satisfied adequate arrangements have

been made to forward the agreed upon sums to the Claimants upon approval of this Settlement Agreement.

**C. ACKNOWLEDGEMENTS**

C.1 JOHNSON acknowledges and agrees that she:

- a) failed to update Know Your Client forms;
- b) recommended certain unsuitable investments to the clients named in the Statement of Allegations (“Clients”) given those Clients’ personal circumstances, financial circumstances and risk tolerance.

C.2 WIMBLE acknowledges and agrees that he failed to detect on a timely basis the fact the Clients had a greater percentage of high risk investments in their accounts than what is specified in their KYCs.

**D. TERMS OF SETTLEMENT**

D.1 Staff seek a Consent Order from the Commission consistent, with the terms contained in D.2 of the Settlement Agreement pursuant to the provisions of the Act.

D.2 The Consent Order sought by Staff is as follows:

- a) that the Settlement Agreement be approved;

- b) pursuant to subsection 148.1(1) of the Act, JOHNSON pay an administrative penalty of \$10,000.00 on or before November 15, 2010;
- c) pursuant to subsection 148.1(1) of the Act, WIMBLE pay an administrative penalty of \$7,500.00 on or before November 15, 2010;
- d) JOHNSON and WIMBLE pay costs to the Commission in the amount of \$ 7,500.00 each, on or before July 15, 2010.

D.3 In the event the Settlement Agreement is approved, Staff will discontinue the proceedings as against CIBC World Markets Inc.

**E. PROCEDURE FOR APPROVAL OF SETTLEMENT**

- E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the Notice of Hearing.
- E2. Staff, JOHNSON and WIMBLE agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and JOHNSON and WIMBLE hereby waive their respective rights to a full hearing and appeal of this matter.
- E.3 Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the

Commission or the Consent Order referred to in Section D above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to, the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, CIBC, JOHNSON and WIMBLE shall have all of the usual rights of a person subject to such proceedings.

- E.4 If the Settlement Agreement is not approved or the Consent Order set out in Section D above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and shall not be raised in this or any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications in furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
- E.5 If this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
- E.6 JOHNSON and WIMBLE agree that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, JOHNSON and WIMBLE will not raise as a basis for attack on the Order, this Settlement Agreement, or the negotiation or




process of approval of this Settlement Agreement, alleged bias, alleged unfairness, or any such other challenges to the validity of the Consent Order.

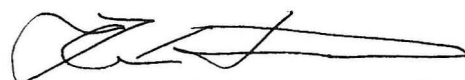
E.7 It is agreed by all parties that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, none of them will make any statements inconsistent with the terms of this Agreement.

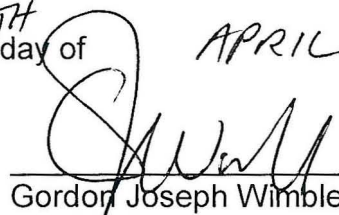
DATED at Winnipeg, Manitoba, this 28<sup>th</sup> day of April, 2010.

  
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Witness

  
\_\_\_\_\_  
Lori Diane Johnson

DATED at Winnipeg, Manitoba, this 27<sup>th</sup> day of APRIL, 2010.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Gordon Joseph Wimble

DATED at Winnipeg, Manitoba, this 14<sup>th</sup> day of JUNE, 2010.

Staff of the Manitoba Securities Commission

Per:   
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Director, Legal and Enforcement