Unofficial English Translation

Re JitneyTrade

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

The Universal Market Integrity Rules

and

Jitney Trade Inc.

2013 IIROC 42

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

Hearing: April 26, 2013
Decision: April 26, 2013
Reasons issued: July 7, 2013

Hearing Panel
M[e] Jean Martel Ad. E., Chair; John Ballard and Danielle Le May
Appearances
M[e] Sébastien Tisserand, Enforcement Counsel, Investment Industry Regulatory Organization of Canada
M[e] Paul Déry-Goldberg (Spiegel Sohmer inc.), Counsel for Respondent

DECISION ON SETTLEMENT AGREEMENT

¶ 1 A hearing was held before the Committee for purposes of approving a Settlement Agreement, in accordance with the procedures described in Policy 10.8 of the Universal Market Integrity Rules (**UMIR**).[1]

¶ 2 Respondent is a Dealer Member of the Investment Industry Regulatory Organization of Canada (**IIROC**, or the "**Organization**"). It is a "*participant"* within the meaning of UMIR (**Participant**).

¶ 3 Following a Trade Desk Review of the Respondent's business activities conducted by IIROC in June 2010, the Organization concluded that during two specific periods, namely from February to September 2010, and from February 2011 to February 2012 (the "**material periods**"), Respondent did contravene UMIR Rule 7.1 and Policy 7.1 (collectively, the "**requirements**"), thus rendering itself liable for the penalties or remedies under UMIR 10.5.

¶ 4 These provisions stipulate the following, among others:

[1] For the purposes these Reasons for Decision, the term "**Policy"** shall in all cases refer to a UMIR policy.

Rule 7.1 of the UMIR:

"(1) Each Participant shall adopt written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with these Rules and each Policy. […]*"*

Policy 7.1 – *Trading Supervision Obligations*

" For the purposes of Rule 7.1, a Participant shall supervise its employees, directors and officers and, if applicable, partners to ensure that trading in securities on a marketplace […]*is carried out in compliance with the applicable Requirements (which includes provisions of securities legislation, UMIR, the Trading Rules and the Marketplace Rules of any applicable Exchange or QTRS). An effective supervision system requires a strong overall commitment on the part of the Participant, through its board of directors, to develop and implement a clearly defined set of policies and procedures that are reasonably designed to prevent and detect violations of Requirements.* […] *The obligation to supervise applies whether the order is entered on a marketplace* […] *directly by a client and routed to a marketplace through the trading system of the Participant;* […]*"*

Rule 10.5 of the UMIR

"(1) The Market Regulator may, following a hearing and a determination that a Regulated Person, other than a marketplace for which the Market Regulator is or was the regulation services provider, has contravened a Requirement or is liable for the contravention of a Requirement in accordance with Rule 10.3, by an order impose on such person one or more of the following penalties or remedies as the Market Regulator considers appropriate in the circumstances:

(a) a reprimand;

(b) a fine not to exceed the greater of:

(i) $1,000,000, and

(ii) an amount equal to triple the financial benefit which accrued to the person as a result of committing the contravention;

(c) the restriction of access to the marketplace for such period and upon such terms and conditions, if any, considered appropriate;

(d) the suspension of access to the marketplace for such period and upon such terms and conditions, if any, considered appropriate;

(e) the revocation of access to the marketplace; and

(f) any other remedy determined to be appropriate under the circumstances.[…]"

¶ 5 For purposes of application of the UMIR to the Respondent in the circumstances and for the material periods in this matter, IIROC shall be the "*Market Regulator"* with jurisdiction and our Committee, by virtue of the Organization's bylaws and regulations, shall have jurisdiction to render the order of acceptance of the Settlement Agreement, which the parties require.

Settlement Agreement

¶ 6 Based on a statement of the facts agreed to by the parties and an admission by the Respondent that it did violate the requirements, Staff of IIROC served an Offer of Settlement on the Respondent on March 27, 2013, and which the Respondent accepted on March 28, 2013, in accordance with Part 3 of UMIR Policy 10.8. The text of the Settlement Agreement thus concluded (the "Settlement Agreement" or "Settlement") is appended hereto.

¶ 7 In the Agreement, Respondent admits having contravened the rules according to the following terms:

> *"The Respondent agrees that between February 2010 and September 2010 and between February 2011 and February 2012, it failed to implement an appropriate trade supervision system reasonably well designed to prevent and detect violations of UMIR requirements for the size and nature of its Direct Market Access Clients' business, contrary to UMIR 7.1 and Policy 7.1".*[2]

¶ 8 The parties also agreed, conditionally on the settlement's approval by the Committee, that violations committed by the Respondent should be sanctioned by a fine of $90,000 payable to IIROC, together with costs in the amount of $10,000.[3]

¶ 9 Part 3.4 of UMIR Policy 10.8 provides that a settlement agreement shall be submitted to a Hearing Panel for approval within 20 days following the acceptance of the offer of settlement.

¶ 10 In the matter before us, the offer of settlement was accepted by the Respondent on March 28, 2013, whereas the settlement was only submitted for our approval on April 26, 2013. Since the aforesaid 20-day prescribed time period was not met, the parties agreed to proceed consensually to a hearing of the matter. Thus, pursuant to Part 1.2(1)(c) and 1.5(6) of Policy 10.8, our Committee was seized of the text of the Settlement Agreement recommended for its approval.

¶ 11 Following the conclusion of the Settlement Hearing, after consideration of the terms of the Settlement and hearing the pleadings of counsel for both parties, we issued an order approving the Settlement for the reasons which we are delivering now.

Outline of the Agreed Essential Facts

¶ 12 Direct Market Access (DMA) is a mechanism by which the clients of a Participant may forward orders directly on to Canadian marketplaces regulated by IIROC without involving the Participant's staff, by using the electronic link to these markets afforded them by the Participant's trading system.

¶ 13 DMA services may only be provided to clients who are eligible to use them by virtue of the rules of the marketplace concerned,[4] pursuant to the terms and conditions stated in a systems interconnect agreement that has been approved by said marketplace.[5]

¶ 14 At the material times, Respondent provided DMA services to several clients, and notably to the clients who we shall designate, for discussion purposes, by the letters A, B, C and D (collectively, the "**DMA clients**")

¶ 15 Client A was, at all material times, a licensed member of the *Financial Services Regulatory Authority* (FINRA).[6] In this capacity, it was subject to the application of that organization's rules in the United States.

¶ 16 Client A was involved in day-trading securities for its clients (which included traders) and executed orders for trading firms located around the world. As an underlying benefit, Client A provided these clients with access to IIROC-regulated marketplaces, through Respondent's electronic connection, which the latter offered to Client A.

¶ 17 As we will see, the stock exchange orders channeled to the Respondent by the DMA clients represented a very substantial percentage of the volume of trading on the Canadian markets at the material time.

¶ 18 In July 2011, following a corporate restructuring, Client A transferred its business to Client B, a new

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[2] Settlement Agreement, Part A, s. 8, on p. 2.

[3] Settlement Agreement, Part C, s. 10, on p. 2.

[4] For example, Toronto Stock Exchange Rule 2-501 — *Designation of Eligible Clients*.

[5] See for example, Toronto Stock Exchange Rule 2-502, *Conditions for Connections*, and Policy 2-502 par. 2.

[6] The FINRA is a securities self-regulatory organization (SRO) recognized by the appropriate regulators in the United States.

corporate entity dedicated to the pursuit of the same activities. Client B was not a member of FINRA, however. During the restructuring, Client A's margin account was closed and immediately replaced with a margin account in the name of Client B, under the terms of a system interconnect agreement that was identical to the one signed in August 2009 between the Respondent and Client A.

¶ 19 For purposes of the Settlement Hearing and the acceptance of the Settlement Agreement, we chose, for the second material time period, to consider Respondent's experience with these two clients as though they were one and the same entity.

¶ 20 During the material time periods, Respondent did not possess a true real-time market tracking system. Rather, it applied the following supervision procedures.

¶ 21 It fulfilled its obligation of supervision of its DMA clients by basing itself on daily and monthly reports. These reports contained the transaction statements for the previous day or month, as applicable.

¶ 22 It also relied on the supervision work of Client A's internal compliance team, and the latter's tracking of its own clients' trading activities.

¶ 23 Finally, Client A gave Respondent access to the registry that it maintained of all warnings, suspensions and terminations that it imposed on its own clients following incidents or attempts at market manipulation to which their orders could be linked. As we will see, this registry showed that Client A imposed numerous such measures.[7] This should normally have made the Respondent realize that it lacked the resources to do as well with its own clients, but this was not really the case until IIROC entered the scene.

¶ 24 Following a review conducted in June 2010 by its "Trade Desk" compliance team, IIROC determined that these supervision procedures of the Respondent were inadequate, since they were ill-adapted to the reality of its business as a participant.

¶ 25 In the report on this review, as Counsel for the prosecution pointed out to us, the Organization's principal grievance was that during the material periods, Respondent's supervision system did not allow it to detect and prevent "spoofing", "layering" or the entry of orders that might facilitate other deceptive or manipulative trading practices pursuant to UMIR Rule 2.2 and Policy 2.2 (collectively, **"directed trades"**).

¶ 26 IIROC concluded that the Respondent had failed to implement an appropriate trade supervision system that was reasonably well designed to prevent and detect violations of UMIR requirements for the size and nature of the DMA clients' business with the Respondent. It is what led subsequently to the disciplinary action against it.

¶ 27 In December 2010, in response to the trade desk review, Respondent informed IIROC that it had decided to use the "**SMARTS**" monitoring system[8] on a temporary free trial basis.

¶ 28 Since IIROC was confident of this system's capacity to satisfy the requirements of the supervision obligation incumbent on the Respondent, it made no allegations against the latter for failing to meet the UMIR requirements for the duration of the trial period – i.e., for the interval that separates the material time periods concerned by these proceedings.

¶ 29 Apparently IIROC's confidence was justified given that, in October 2010, the SMARTS system did in fact enable the Respondent to detect numerous trades that were potentially directed in connection with orders submitted via Client A's direct market link.

¶ 30 At the end of the trial period, however, Respondent decided not to purchase the SMARTS system because, in its opinion, its use would trigger too large a volume of alerts, given the large number of orders generated by the DMA clients, among them Client A.

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[7] See infra, par. 58.

[8] SMARTS is a managed real-time marketplace monitoring system designed to detect potentially objectionable trading activity, including spoofing and layering.

¶ 31 Respondent opted instead to develop its own electronic trade supervision system, which would be customizable to its circumstances. Since the in-house system was only implemented in July 2011, the alerts intended to detect directed trades, with the attendant gatekeeper obligations, only became operational at the end of the second material time period.

¶ 32 Between the end of the SMARTS system trial period and the rollout of the Respondent's in-house system, it continued to supervise the activities of its DMA clients by relying on simple *a posteriori* reports and on Client A's own internal supervision of its clients, as we have seen.

Acceptability of Settlement Agreement

¶ 33 Pursuant to Part 3.4 of UMIR Policy 10.8, upon conclusion of a settlement hearing, the Committee may either approve or reject the settlement agreement submitted for its consideration.

¶ 34 The jurisprudence of the tribunals and hearing panels of IIROC, and previously the Investment Dealers Association of Canada and Market Regulation Services Inc., teaches us that the Hearing Panel seized of a settlement agreement may not decide whether, in the absence of a settlement, it would have reached the same decision as the parties. Rather, it must determine whether, on the one hand, the penalty agreed upon in the Settlement is reasonable in the circumstances and whether, on the other hand, it satisfies the objectives of protecting the public and the best interests of the client sought in the UMIR disciplinary process.

¶ 35 It is widely recognized that a hearing panel of IIROC must not interfere lightly in a negotiated settlement. The landmark decision in the matter, *Re Milewski* [1999] I.D.A.C. No. 17*,* established that a hearing panel invited to consider a settlement agreement should accept it if, after consideration of the agreed-upon facts, the disciplinary measures that it proposes appear to fall within "*a reasonable range of appropriateness*" given the misconduct in question.[9]

¶ 36 The same rule must apply when a hearing panel is seized of a settlement agreement negotiated between IIROC and a participant under the UMIR. Indeed, the hearing panel presiding at a settlement hearing pursuant to these rules is an internal tribunal whose methods of exercising its jurisdiction, with the necessary modifications in consideration of the matters before it, are substantially the same as those of a hearing panel sitting by virtue of the IIROC Dealer Member Rules. There is therefore no reason to make any distinction in this regard.

Appropriateness of the penalty

¶ 37 To ensure that the criteria of fairness and reasonable appropriateness of the proposed penalty are met, the Committee initially considered UMIR 10.5 and the *UMIR Disciplinary Sanction Guidelines* (April 2009 edition) (**Guidelines**).

¶ 38 We also took into account certain factors arising from the agreed-upon facts, and relied on *Re BMO Nesbitt Burns Inc.*, supra*, Re Standard Securities Capital Corporation* [2006] R.S.D.D. No. 2, *Re Credit Suisse Securities (Canada) Inc.* [2011] IIROC No. 10 and *Re Morgan Stanley Canada* [2011] IIROC No. 45, which present certain analogies with the present matter.

¶ 39 In our opinion, the criteria have been met with respect to the mitigating and aggravating factors, which we were able to appreciate from the agreed-upon facts and the parties' representations. We discuss these factors below.

Mitigating factors

¶ 40 In terms of mitigating factors, we note that Respondent acknowledged its misconduct and admitted that, based on what the UMIR required of it, its system of supervising the trades of its DMA clients was deficient.

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[9] *Re Milewsky* [1999] I.D.A.C. No. 17, p. 11. See *Re Groome* [2013] IIROC No. 120 and *Re BMO Nesbitt Burns* [2012] IIROC No. 21, which still more recently confirm this rule.

¶ 41 Also, Respondent cooperated fully with the IIROC staff during their investigation, which avoided a protracted and doubtless more costly investigation, thus optimizing the efficiency of the disciplinary proceeding initiated by IIROC. In this respect, Respondent acted in the best interests of the investment industry, the other participant-members of IIROC, the users of these markets, and the investing public in general.

¶ 42 The corrective measures taken by Respondent to remedy its non-compliance are also relevant. The Committee thinks that Respondent should be given credit for the efforts it deployed for nearly two years, as well as for the time and money it spent implementing a custom-designed in-house electronic supervision system capable of meeting the requirements while being adapted to Respondent's affairs and business with DMA clients.

¶ 43 Indeed, Counsel for IIROC emphasized to the Committee that Respondent's executive management had demonstrated a real commitment to ensuring improved compliance of its affairs and business with the UMIR requirements, in order to avoid any future violation and to contribute to the integrity of the markets to which its clients are allowed direct access via its systems.

¶ 44 Finally, we have taken into consideration that, in the present matter, Respondent was not accused of having totally failed in its duty to supervise the trading activity of its DMA clients in accordance with the requirements. Rather, IIROC alleged that Respondent followed supervision policies and procedures that were inadequate to detect the directed trades. This is what, in our opinion, sets it apart from *Re Credit Suisse Securities (Canada) Inc.*, supra, in which the fine imposed was higher than that provided in the settlement agreement.

Aggravating factors

¶ 45 By virtue of UMIR Policy 7.1, when a Participant provides a client with direct access to a marketplace for which IIROC is the Market Regulator, Participant retains full responsibility for any order entered on this marketplace by the Direct Access Client.

¶ 46 This added duty, and the caution that it aims to instill, is justified by the fact that an order entered directly on a marketplace, without the involvement of the Participant's staff, exposes this market and even the Participant to substantially higher risks of disrupted operations or fraud.[10] It is why the Participant owes it to itself to have supervision policies and procedures that can help prevent these risks from materializing at the outset.

¶ 47 The DMA clients (Client A among them) represented a percentage of the volume of trading on Canadian markets that could practically be termed colossal.

¶ 48 Indeed, the evidence reveals that, during certain financial quarters, Client A by itself generated some 13% of the total volume of trading on all Canadian equity markets, accounting for 6.5% of the total value of the trading on these markets during these quarters.[11]

¶ 49 Similarly, during the material time periods, the number of monthly trades executed by Client A alone ranged between 1.8 and 4 billion securities.[12]

¶ 50 Respondent had to address the situation. It had an obligation to implement compliance and supervision procedures that took into account the scope of the order trading activities introduced by its DMA clients on Canadian marketplaces. Such procedures had to be adapted to the size and nature of the activities, in order to fulfill their role of appropriately.

¶ 51 Respondent tolerated this inadequate system, which remained in use for a long time. During this time,

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[10] See UMIR Policy 7.1, Part 1, p. 7.1-2, and Market Integrity Notice No. 2007-010 (April 20, 2007) - *Compliance Requirements for Dealer-Sponsored Access Trading*, cited in *Re Crédit Suisse Securities (Canada), Inc.*, supra, pp. 7 and 8.

[11] See Stenographer's Notes, p. 19.

[12] Ibid, p. 20.

the gaps in its supervision might well have given free rein to directed trades that would have compromised the smooth operation of these marketplaces and tarnished their reputation for integrity.

¶ 52 Respondent could not relieve itself of the obligation of supervision by delegating it in part to Client A, or by relying on the latter's in-house monitoring system. That this MDA client was regulated by a foreign SRO that imposed on its members obligations that were similar to the Canadian requirements imposed on participants was no excuse.

¶ 53 We do not deny that the Respondent, had it wanted to, could have outsourced the task of supervising client orders to a third-party supplier of regulatory compliance services that was acceptable to IIROC, such as the SMARTS system. [13]

¶ 54 But Client A was not in business to offer such services. It was the one that routed to the Respondent orders whose legality the latter might have doubted, and it was the one that was invited to self-supervise its activity, to monitor on its own the flow of orders that Respondent was allowing it to introduce onto Canadian marketplaces. The flaw in this reasoning is obvious and it is understandable that IIROC found it unacceptable.

¶ 55 In its role of gatekeeper dedicated to protecting the public and the best interests of its client, Respondent was obligated to act to detect any potentially inappropriate or illegal activity and, if applicable, to report it to IIROC.

¶ 56 During the material time periods, IIROC Market Surveillance staff was able to observe several trades that were, really or apparently, directed in connection with orders from the Respondent's DMA clients. The same was true for other participants in the fulfillment of their gatekeeper obligation. Yet Respondent neither saw nor reported anything, even though its own DMA services were directly involved.

¶ 57 Respondent knew that Client A suspected, or had determined in the course of its own supervision, that certain of its trader clients (individuals to which Respondent indirectly provided DMA services in Canada) were forwarding it orders that were of concern in that they might be used to carry out directed trades. Respondent was aware that, for this reason, its Client A was taking internal measures of a disciplinary nature against these clients, and had done so very frequently.

¶ 58 Between August 28, 2009 and July 14, 2011, Client A issued no fewer than 368 warnings, 173 suspensions and 17 cancellations in respect of these clients. Though the Respondent cooperated in the majority of these interventions in conjunction with Client A, it reported none of these incidents to IIROC. Once again therefore, it failed in its gatekeeper duty.[14]

¶ 59 This reality should long before have driven the Respondent to conduct a thorough examination of all orders generated by its DMA clients, to identify those that might be linked to directed trades and to promptly interview these same clients, and then make a full report to IIROC.

¶ 60 In short, when one considers:

(i) the care that Respondent normally should have shown in mitigating the regulatory risk posed by the enormous volume of trading done by its DMA clients on Canadian marketplaces;

(ii) the fact that IIROC and other participants were able to detect, in the orders introduced by the DMA clients, trading strategies that could give rise to directed trades, whereas the Respondent detected none; and

(iii) Respondent's knowledge of the numerous incidents detected by Client A involving clients who were routing their trading orders through it;

one can but conclude negligence on the Respondent's part — simple but real — in its compliance with

[13] See also on this point: *Re Morgan Stanley Canada*, supra, par. 12 and ss.

[14] Stenographer's Notes, p. 30.

the requirements.

Conclusions

¶ 61 In matters like this one, where we find ourselves in the presence of a participant that failed in its supervision obligations and whose non-performance could have seriously affected operations on the Canadian securities markets, the Guidelines recommend that the committee consider imposing a fine of up to $1 million per violation.

¶ 62 In this instance, however, we are not confronted with a total failure of the compliance obligation, nor has there been any wilful wrongdoing or gross negligence in meeting the requirements, which might justify such severity.

¶ 63 In the present instance, the mitigating factors which we have taken into account demonstrate that the Respondent took measures which, though spread out over time in order to adapt them to its business model, nonetheless have managed to correct the situation. What's more, there is every indication that, with these measures, it will be able to meet the UMIR requirements in future.

¶ 64 Similarly, the $90,000 fine provided in the Settlement Agreement does not seem abnormal to us, when compared to the penalties imposed in the precedents invoked before us, which include the *BMO Nesbitt Burns Inc.*, *Standard Securities Capital Corporation* and *Credit Suisse Securities (Canada) Inc.* decisions.

¶ 65 For this reason, the Committee has concluded that this fine falls within the range of applicable legal parameters for fairness and reasonable appropriateness, and fulfills the standard of suitability sought by the Disciplinary Sanction Guidelines.[15]

¶ 66 We are of the same opinion regarding the costs in the amount of $10,000.

¶ 67 To our mind, the sanctions agreed to in the Settlement Agreement in every respect coincide with the facts and with the criteria that were meant to guide us, and for these reasons, we have accepted the joint recommendation of the parties and approved the Settlement Agreement before us.

FOR THE REASONS ISSUED ON THIS DATE, THE HEARING PANEL:

CONFIRMS its order of acceptance, rendered April 26, 2013, for the Settlement Agreement appended hereto, and notably assesses the following penalties against the Respondent:

1) a fine of $90,000; and

2) costs in the amount of $10,000.

Montréal, July 7, 2013

Jean Martel, Chair

John Ballard, Committee Member

Danielle Le May, Committee Member

APPENDIX

OFFER OF SETTLEMENT

1. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers

[15] See s. 2 of the Guidelines.

Association of Canada and Market Regulation Services Inc. (RS). Pursuant to the *Administrative and Regulatory Services Agreement* between RS and IIROC, effective June 1, 2008, RS has retained IIROC to provide services for RS to carry out its regulatory functions.

2. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of Jitneytrade Inc. (the Respondent).

3. The Investigation has disclosed matters for which IIROC seeks certain sanctions against the Respondent pursuant to Rule 10.5 of the Universal Market Integrity Rules (UMIR).

4. If this Offer of Settlement is accepted by the Respondent, the resulting settlement agreement (the Settlement Agreement), which has been negotiated in accordance with Part 3 of UMIR Policy 10.8, is conditional upon the approval by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1 (the Hearing Panel).

5. The Respondent agrees to waive all rights under UMIR to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.

6. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.

7. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

A. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

8. The Respondent agrees that between February 2010 and September 2010 and between February 2011 and February 2012, it failed to implement an appropriate trade supervision system reasonably well designed to prevent and detect violations of UMIR requirements for the size and nature of its Direct Market Access Clients' business, contrary to UMIR 7.1 and Policy 7.1.

B. ADMITTED FACTS

9. For the purposes of this Settlement Agreement, Staff and the Respondent agree with and rely upon the admitted facts and conclusions which are set out in the Statement of Allegations attached as Appendix "A" to this Settlement Agreement.

C. DISPOSITION

10. For the contraventions in paragraph 8 above, Staff and the Respondent have agreed upon disposition as follows:

    (i) a fine of $90,000.00 payable by the Respondent to IIROC; and

    (ii) Costs of $10,000.00 payable by the Respondent to IIROC.

11. If this Settlement Agreement is accepted by a Hearing Panel, the Respondent agrees to pay the amounts referred to in paragraph 10 within 30 days of such acceptance.

D. PROCEDURES FOR ACCEPTANCE OF OFFER OF SETTLEMENT AND APPROVAL OF SETTLEMENT AGREEMENT

12. The Respondent shall have until the close of business on Monday April 5, 2013 to accept the Offer of Settlement and serve an executed copy thereof on Staff.

13. This Settlement Agreement shall be presented to a Hearing Panel at a public hearing (the Approval Hearing) held for the purpose of approving the Settlement Agreement, in accordance with the procedures described in UMIR Policy 10.8 in addition to any other procedures as may be agreed upon between the parties. The Respondent acknowledges that IIROC shall notify the public and media of the Approval Hearing in such manner and by such media as IIROC sees fit.

14. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement

Agreement.

15. In the event the Settlement Agreement is accepted by a Hearing Panel, the matter becomes final, there can be no appeal or review of the matter, the disposition of the matter agreed upon in this Settlement Agreement will be included in the permanent record of IIROC in respect of the Respondent and IIROC will publish a summary of the Requirements contravened, the facts, and the disposition agreed upon in the Settlement Agreement.

16. In the event the Hearing Panel rejects the Settlement Agreement, IIROC may proceed with a hearing of the matter before a differently constituted Hearing Panel pursuant to Part 3.7 of UMIR Policy 10.8 and this Settlement Agreement may not be referred to without the consent of both parties.

17. The Respondent agrees that, in the event he fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce this settlement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend the Respondent's access to marketplaces regulated by IIROC until IIROC determines that the Respondent is in full compliance with all terms of the Settlement Agreement.

18. The Respondent agrees that neither he, nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

IN WITNESS WHEREOF the parties have signed this Settlement Agreement as of the dates noted below.

DATED at Montréal, Québec on the 28th day of March 2013.

(s) Jean-François Sabourin	(s) Francesco Pasin
NAME: JEAN-FRANÇOIS SABOURIN	NAME: FRANCESCO PASIN
TITLE: PRÉSIDENT DU CONSEIL FOR JITNEYTRADE INC.	TITLE: PRESIDENT & CEO FOR: JITNEYTRADE INC.

DATED at Montréal, Québec on the 27 day of March, 2013.

Per: (s) Carmen Crépin

Carmen Crépin

Vice President, Québec

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

APPENDIX "A"

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

THE UNIVERSAL MARKET INTEGRITY RULES

AND

JITNEYTRADE INC.

STATEMENT OF ALLEGATIONS

I. REQUIREMENTS CONTRAVENED

1. Between February 2010 and September 2010 and between February 2011 and February 2012, Jitneytrade inc. ("Jitneytrade") failed to implement an appropriate trade supervision system reasonably well designed to prevent and detect violations of UMIR requirements for the size and nature of its Direct Market Access ("DMA") Clients' business, contrary to UMIR 7.1 and Policy 7.1.

2. Schedule "A" sets out the text of the relevant Requirements.

II. RELEVANT FACTS AND CONCLUSIONS

Overview:

3. Jitneytrade is registered as an investment dealer, is a Participant under UMIR and provides DMA (or dealer-sponsored access) to IIROC-regulated marketplaces to institutional and order-execution clients.

4. IIROC Enforcement Staff undertook a review of Jitneytrade supervision system and found that Jitneytrade was not able to adequately detect, prevent and address potential events of spoofing and layering, and other suspicious trading activities by some of its DMA clients.

5. Jitneytrade supervised its DMA clients through the review of T+1 reports, which was not appropriate for the size and nature of its business.

6. In addition, to complement Jitneytrade's T+1 reviews being conducted, Jitneytrade was supplementing its review with the DMA client A's own internal compliance department reviews to supervise its trading activities and ensure compliance with UMIR, which was not appropriate to fulfill its UMIR obligations.

7. Jitneytradre also failed in its gatekeeper obligations by relying partially on the client own compliance department reviews to identify patterns of potential manipulative activities.

UMIR requirements:

8. UMIR 2.2 and Policy 2.2 prohibit manipulative and deceptive activities on IIROC-regulated marketplaces, including, among other activities, entering an order or series of orders for a security that are not intended to be executed.

9. "Spoofing" and "layering" are forms of manipulative trading activity whereby orders are entered with no intention that they be executed ("non-*bona fide* orders") in order to manipulate, or attempt to manipulate, the price of a security in order to secure a price advantage.

10. Spoofing is a practice using limit orders that are not intended to be executed, to manipulate prices. Some strategies are related to the ope*n or the* close of regular market hours that involve distorting disseminated market imbalance indicators through the entry of non-*bona fide* orders, checking for the presence of an "iceberg" order, affecting a "Calculated Opening Price" ("COP") and/or aggressive trading near the open or close for an improper purpose. .

11. Layering is a strategy which initiates a series of orders and trades in an attempt to ignite a rapid price move either up or down and induce others to trade at artificially high or low prices. It involves a trader (or traders working in concert) entering multiple non-*bona fide* orders on one side of the market to create or attempt to create a movement in the price of the security, then entering an active order on the other side of the market to take advantage of the price movement. Shortly before or after the trade, the orders entered to induce the price movement are cancelled.

12. UMIR 7.1 and Policy 7.1 requires a Participant to develop and implement policies and procedures that are reasonably well designed to ensure that orders entered on a marketplace by or through a Participant are not part of a manipulative or deceptive method, act or practice nor an attempt to create an artificial price or a false or misleading appearance of trading activity in or interest in the purchase or sale of a security.

13. In providing DMA to IIROC-regulated marketplaces, a Participant is not relieved from any obligations under UMIR with respect to the supervision of trading activities by a DMA client. The Participant retains responsibility for any order entered by a DMA client even where that order is directly routed to a marketplace. A Participant must adequately address the additional risk exposure posed by orders entered by its DMA clients.

DMA relationships

14. On or about August 13, 2009, client A opened a margin account at Jitneytrade.

15. On or about August 14, 2009, Jitneytrade and client A entered into a system interconnect agreement, pursuant to TSX Rule 2-501 and Policy 2-501, allowing the client to transmit orders directly to IIROC-regulated marketplaces through Jitneytrade.

16. At that time, client A was a licensed member of the Financial Services Regulatory Authority ("FINRA") in the U.S., involved in day-trading securities for one or more clients. Client A provided access to markets to its clients, including to Canadian marketplaces through Jitneytrade, and executed orders for traders located around the world.

17. On or about July 11, 2011, client A's account at Jitneytrade was closed and was immediately replaced by client B with an identical system interconnect agreement.

18. Client B describes itself as a fund, specializing in day-trading strategies, including trend following, range trading, news playing, and intra-day market making.

19. Clients A and B licensed software allowing direct access to IIROC-regulated marketplaces from a technology provider which also supported and developed the software.

20. The technology provider designed and maintained the trading infrastructure and provided certain compliance consulting and administrative services to clients A and B. The technology provider was controlled by Client B.

21. During the period under review, Jitneytrade also had several other agreements with other DMA clients, namely client C, an equity Day Trader, and client D a Canadian corporation, to provide direct or sponsored access to the Canadian market places through various trading platforms.

Failure to Supervise

i. Failure to implement an appropriate trade supervision system for the size and nature of its DMA clients' business

22. At all relevant times, Jitneytrade's compliance department was composed of a Chief Compliance Officer in charge of the daily and monthly reviews, a designated trading supervisor, in charge of the daily trading, a sales compliance manager, responsible for opening accounts, and an administrative assistant.

23. In addition, Jitneytrade employed three (3) IT employees tasked with the development of compliance reports and systems. Furthermore, the Ultimate Designated Person (UDP) and the branch manager performed multiple compliance related tasks and were involved in the escalation and resolution of issues.

24. Jitneytrade's DMA clients represented an important percentage of the volume of shares transacted on Canadian marketplaces. In some quarters Jitneytrade share volume was close to 13% and the dollar trade value was close to 6.5% of the entire Canadian marketplace.

25. During the period under review, the volume of shares traded on a monthly basis on IIROC-regulated marketplaces by client A and then client B, varied from more than 1,800,000,000 to almost 4,000,000,000.

26. These transactions represented by themselves more than 718,000 trading tickets, for an average of 44,878 trade tickets per month, or approximately 2,243 trade tickets per day of trading. These numbers

do not include the orders that were entered on IIROC-regulated marketplaces but not filled (either changed or cancelled).

27. In June 2010, IIROC Trading Conduct Compliance ("TCC") conducted a compliance review. The review revealed that no testing methodology for spoofing, high closing and unexecuted orders at the close of markets was in place as required by UMIR provisions.

28. Jitneytrade was at that time relying on the review of T+1 reports and monthly reports for some of the electronic platforms offered to its DMA clients and was in addition relying on the client A's compliance department to monitor its activities.

29. On December 1, 2010 in response to TCC's report, Jitneytrade informed TCC that it was testing the SMARTS system on a free trial basis on all of its trading platforms and that SMARTS had real-time filters for artificial pricing, including for possible spoofing and layering.

30. SMARTS is a managed service designed for brokers and other market participants to assist them in complying with market rules, regulations and internal market surveillance policies by allowing a real time monitoring and analysis of every quote and trade to highlight unusual activity.

31. Jitneytrade indicated that as a result of using SMARTS in October 2010, it had self-reported, among other things, spoofing to IIROC Market Surveillance, including specific suspicious activities by DMA client A.

32. However, Jitneytrade decided not to purchase the SMARTS system, and rather to develop its own in-house monitoring system that would address UMIR supervision requirements, allow for customized alerts to be created rapidly and that would ultimately be adequate to the nature of Jitneytrade's business.

33. Jitneytrade internal electronic trade monitoring system was implemented in July 2011 and the relevant customized spoofing and layering alerts became operational early 2012.

34. However, the temporary measures and the daily review of T+1 reports were not adequate to detect and prevent potential patterns of layering and spoofing by Jitneytrade's DMA clients, due to the volume of activities generated on a daily basis.

ii. Partial reliance on the compliance department of a client

35. During the relevant period, Jitneytrade partially relied upon client A's internal compliance department to maintain a registry of all warnings, suspensions and terminations of its own traders.

36. Hence, for the period August 28, 2009 to July 14, 2011, this registry indicated approximately 558 interventions by client A on its traders. In particulars, 368 cautionary warnings, 173 suspensions and 17 terminations were issued during that period.

37. The majority of these 558 interventions were not referenced or recorded in any supervision reports maintained by Jitneytrade, but the majority of the suspension and almost all terminations were done by or in collaboration with Jitneytrade.

38. Under UMIR 7.1 and Policy 7.1, a Participant cannot discharge its trading supervision obligations by relying on a client, specifically a client using its own trading platform with direct access to Canadian Market places, to supervise its own activity.

iii. Failure to act as a proper gatekeeper

39. During the period under review, some of Jitneytrade's DMA clients engaged in events of, or attempts at, spoofing and layering.

40. Some of these events were brought to IIROC's attention through Gatekeeper Reports filed by Jitneytrade itself, but mostly the events were brought to IIROC's attention through Gatekeeper Reports filed by other Participants, complaints from market participants and through IIROC Market Surveillance.

41. Privy to the gatekeeper reports, the volume of activity generated by its DMA clients on Canadian Market places and the incidents self-detected by the technology provider of client A, Jitneytrade ought reasonably to have known that some of its DMA clients were potentially engaged in forms of manipulative trading, and that its supervision system was not sufficient to detect and prevent such activities.

42. Notwithstanding the filing of gatekeeper reports, Jitneytrade still failed to identify some potential manipulative activities.

43. In return for the privilege of access to the marketplaces, Participants are expected to act as gatekeepers to prevent and detect manipulative and deceptive activities and to take adequate steps to prevent reoccurrences of potential manipulative activities in client accounts.

44. The filing of Gatekeeper Reports by Jitneytrade concerning manipulative or potentially manipulative activities, proactive and concrete measures to address such activities, was not sufficient to discharge itself from its gatekeeper obligations.

III. Conclusion

45. Orders entered by a DMA client that are entered directly on a marketplace without the involvement of employees of the Participant present heightened risks to both the integrity of the market and the Participant through whom the orders are routed. The Participant retains full responsibility for those orders.

46. In performing its trading supervision obligations, the Participant must act as a gatekeeper to help prevent and detect violations of applicable UMIR Requirements.

47. During the period under review, Jitneytrade while developing its own in house real time supervisory system, relied partially on the supervisory reviews of a client to compliment the T+1 reviews being conducted on potential spoofing and layering activities.

48. In doing so, Jitneytrade failed to comply with certain requirements of its trading supervision obligations contrary to UMIR 7.1 and Policy 7.1, which resulted in repeated potentials events of manipulative trading activity by some of its DMA clients.

49. IIROC Staff has considered in connection with the imposition of the fine and costs the following mitigating factors:

    (i) Jitneytrade's acceptance of responsibility for and acknowledgement of its misconduct,

    (ii) the costs and efforts related to the development of its own in house real time supervisory system,

    (iii) Jitneytrade's on-going commitment to actively maintain good standards of compliance, and

March 27th, 2013

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SCHEDULE "A"

EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES

7.1 Trading Supervision Obligations

(1) Each Participant shall adopt written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with these Rules and each Policy.

(2) Prior to the entry of an order on a marketplace by a Participant, the Participant shall comply with:

(a) applicable regulatory standards with respect to the review, acceptance and approval of orders;

(b) the policies and procedures adopted in accordance with subsection (1); and

(c) all requirements of these Rules and each Policy.

(3) Each Participant shall appoint a head of trading who shall be responsible to supervise the trading activities of the Participant in a marketplace.

(4) The head of trading together with each person who has authority or supervision over or responsibility to the Participant for an employee of the Participant shall fully and properly supervise such employee as necessary to ensure the compliance of the employee with these Rules and each Policy.

POLICY 7.1 – TRADING SUPERVISION OBLIGATIONS

Part 1 – Responsibility for Supervision and Compliance

For the purposes of Rule 7.1, a Participant shall supervise its employees, directors and officers and, if applicable, partners to ensure that trading in securities on a marketplace (an Exchange, QTRS or ATS) is carried out in compliance with the applicable Requirements (which includes provisions of securities legislation, UMIR, the Trading Rules and the Marketplace Rules of any applicable Exchange or QTRS). An effective supervision system requires a strong overall commitment on the part of the Participant, through its board of directors, to develop and implement a clearly defined set of policies and procedures that are reasonably designed to prevent and detect violations of Requirements. The board of directors of a Participant is responsible for the overall stewardship of the firm with a specific responsibility to supervise the management of the firm. On an ongoing basis, the board of directors must ensure that the principal risks for non-compliance with Requirements have been identified and that appropriate supervision and compliance procedures to manage those risks have been implemented.

Management of the Participant is responsible for ensuring that the supervision system adopted by the Participant is effectively carried out. The head of trading and any other person to whom supervisory responsibility has been delegated must fully and properly supervise all employees under their supervision to ensure their compliance with Requirements. If a supervisor has not followed the supervision procedures adopted by the Participant, the supervisor will have failed to comply with their supervisory obligations under Rule 7.1(4).

When the Market Regulator reviews the supervision system of a Participant (for example, when a violation occurs of Requirements), the Market Regulator will consider whether the supervisory system is reasonably well designed to prevent and detect violations of Requirements and whether the system was followed.

The compliance department is responsible for monitoring and reporting adherence to rules, regulations, requirements, policies and procedures. In doing so, the compliance department must have a compliance monitoring system in place that is reasonably designed to prevent and detect violations. The compliance department must report the results from its monitoring to the Participant's management and, where appropriate, the board of directors, or its equivalent. Management and the board of directors must ensure that the compliance department is adequately funded, staffed and empowered to fulfil these responsibilities.

The obligation to supervise applies whether the order is entered on a marketplace:

- by a trader employed by the Participant,
- by an employee of the Participant through an order routing system,
- directly by a client and routed to a marketplace through the trading system of the Participant, or
- by any other means.

In performing the trading supervision obligations, the Participant will act as a "gatekeeper" to help prevent and detect violations of applicable Requirements.

Where an order is entered on a marketplace without the involvement of a trader (for example by a client with a systems interconnect arrangement in accordance with Policy 2-501 of the Toronto Stock Exchange), the Participant retains responsibility for that order and the supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. For example, it may be appropriate for the Participant to sample for compliance testing a higher percentage of orders that have been entered directly by clients than the percentage of orders sampled in other circumstances.

In addition, the "post order entry" compliance testing should recognize that the limited involvement of staff of the Participant in the entry of orders by a direct access client may restrict the ability of the Participant to detect orders that are not in compliance with specific rules. For example, "post order entry" compliance testing may be focused on whether an order entered by a direct access client:

- has created an artificial price contrary to Rule 2.2;
- is part of a "wash trade" (in circumstances where the client has more than one account with the Participant);
- is an unmarked short sale (if the trading system of the Participant does not automatically code as "short" any sale of a security not then held in the account of the client); and
- has complied with order marking requirements and in particular the requirement to mark an order as from an insider or significant shareholder (unless the trading system of the Participant restricts trading activities in affected securities).

Part 2 – Minimum Element of a Supervision System

For the purposes of Rule 7.1, a supervision system consists of both policies and procedures aimed at preventing violations from occurring and compliance procedures aimed at detecting whether violations have occurred.

The Market Regulator recognizes that there is no one supervision system that will be appropriate for all Participants. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective jurisdiction can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve Participants from complying with specific Requirements that may apply in certain circumstances. In particular, Participants are reminded that, in accordance with subsection (2) of Rule 10.1, the entry of orders must comply with the Marketplace Rules on which the order is entered and the Marketplace Rules on which the order is executed. (For example, for Participants that are Participating Organizations of the TSE, reference should be made to the Policy on "Connection of Eligible Clients of Participating Organizations").

Participants must develop and implement supervision and compliance procedures that exceed the elements identified in this Policy where the circumstances warrant. For example, previous disciplinary proceedings, warning and caution letters from the Market Regulator or the identification of problems with the supervision system or procedures by the Participant or the Market Regulator may warrant the implementation of more detailed or more frequent supervision and compliance procedures.

Regardless of the circumstances of the Participant, however, every Participant must:

1. Identify the relevant Requirements, securities laws and other regulatory requirements that apply to the lines of business in which the Participant is engaged (the "Trading Requirements").
2. Document the supervision system by preparing a written policies and procedures manual. The manual must be accessible to all relevant employees. The manual must be kept current and Participants are advised to maintain a historical copy.

3. Ensure that employees responsible for trading in securities are appropriately registered and trained and that they are knowledgeable about the Trading Requirements that apply to their responsibilities. Persons with supervisory responsibility must ensure that employees under their supervision are appropriately registered and trained. The Participant should provide a continuing training and education program to ensure that its employees remain informed of and knowledgeable about changes to the rules and regulations that apply to their responsibilities.

4. Designate individuals responsible for supervision and compliance. The compliance function must be conducted by persons other than those who supervised the trading activity.

5. Develop and implement supervision and compliance procedures that are appropriate for the Participant's size, lines of business in which it is engaged and whether the Participant carries on business in more than one location or jurisdiction.

6. Identify the steps the Participant will take when a violation or possible violation of a Requirement or any regulatory requirement has been identified. These steps shall include the procedure for the reporting of the violation or possible violation to the Market Regulator if required by Rule 10.16. If there has been a violation or possible violation of a Requirement identify the steps that would be taken by the Participant to determine if:

    - additional supervision should be instituted for the employee, the account or the business line that may have been involved with the violation or possible violation of a Requirement; and
    - the written policies and procedures that have been adopted by the Participant should be amended to reduce the possibility of a future violation of the Requirement.

7. Review the supervision system at least once per year to ensure it continues to be reasonably designed to prevent and detect violations of Requirements. More frequent reviews may be required if past reviews have detected problems with supervision and compliance. Results of these reviews must be maintained for at least five years.

8. Maintain the results of all compliance reviews for at least five years.

9. Report to the board of directors of the Participant or, if applicable, the partners, a summary of the compliance reviews and the results of the supervision system review. These reports must be made at least annually. If the Market Regulator or the Participant has identified significant issues concerning the supervision system or compliance procedures, the board of directors or, if applicable, the partners, must be advised immediately.

Part 3 - Minimum Compliance Procedures for Trading on a Marketplace

A Participant must develop and implement compliance procedures for trading in securities on a marketplace that are appropriate for its size, the nature of its business and whether it carries on business in more than one location or jurisdiction. Such procedures should be developed having regard to the training and experience of its employees and whether the firm or its employees have been previously disciplined or warned by the Market Regulator concerning the violations of the Requirements.

In developing compliance procedures, Participants must identify any exception reports, trading data and/or other documents to be reviewed. In appropriate cases, relevant information that cannot be obtained or generated by the Participant should be sought from sources outside the firm including from the Market Regulator.

The following table identifies minimum compliance procedures for monitoring trading in securities on a marketplace that must be implemented by a Participant. The compliance procedures and the Rules identified below are not intended to be an exhaustive list of the provisions of UMIR and procedures that must be complied with in every case. Participants are encouraged to develop compliance procedures in relation to all the Rules that apply to their business activities.

The Market Regulator recognizes that the requirements identified in the following table may be capable of

being performed in different ways. For example, one Participant may develop an automated exception report and another may rely on a physical review of the relevant documents. The Market Regulator recognizes that either approach may comply with this Policy provided the procedure used is reasonably designed to detect violations of the relevant provision of UMIR. The information sources identified in the following table are therefore merely indicative of the types of information sources that may be used.

Minimum Compliance Procedures for Trading Supervision

UMIR and Policies	Compliance Review Procedures	Potential Information Sources	Frequency and Sample Size
Synchronization of Clocks Rule 10.14	• confirm accuracy of clocks and computer network times • remove unused or non-functional machines	• time clocks • Trading Terminal system time • OMS system time	• Daily
Audit Trail Requirements Rule 10.11	• ensure the presence of: -time stamp -quantity -price (if limit order) -security name or symbol -identity of trader (initial or sales code) -client name or account number-special instructions from any client -information required by audit trail requirements • for CFOd orders, ensure the presence of second time stamp and clear quantity or price changes	• order tickets • the Diary List	• quarterly • check 25 original client tickets selected randomly over the quarter
Electronic Records Rule 10.11	• verify that electronic order information is: -being stored -retrievable -accurate	• firm and service bureau systems	• annually
Manipulative and Deceptive Trading Rule 2.2(1), (2) Policy 2.2	• review trading activity for: -wash trading -unrelated accounts that may display a pattern of crossing securities -off-market transactions which require execution on a Marketplace	• order tickets • the diary list • new client application forms • monthly statements	• quarterly • review sampling period should extend over several days

UMIR and Policies	Compliance Review Procedures	Potential Information Sources	Frequency and Sample Size
Establishing Artificial Prices Rule 2.2(1), (3) Policy 2.2	• review tick setting trades entered at or near close • look for specific account trading patterns in tick setting trades • review accounts for motivation to influence the price • review separately, tick setting trades by Market on Close (MOC) or index related orders	• order tickets • the diary list • Equity History Report (available on TSE market data website for TSE-listed securities) • closing report from Market Regulator (delivered to Participants) • new client application forms	• monthly • emphasis on trades at the end of month, quarter or year (for trades not on MOC or index related) • for MOC or index related orders, check for reasonable price movement
Grey or Watch List Rule 2.2	• review for any trading of Grey or Watch List issues done by proprietary or employee accounts	• order tickets • the diary list • trading blotters • firm Grey List or Watch List • monthly statements	• daily
Restricted List Rule 2.2 Rule 7.8 Rule 7.9	• review for any trading of restricted list issues done by proprietary or employee accounts	• order tickets • the diary list • trading blotters • firm Restricted List • monthly statements	• daily
Frontrunning Rule 4.1	• review trading activity of proprietary and employee accounts prior to: -large client orders -transactions that would impact the market	• order tickets • the diary list • equity history report	• quarterly • sample period should extend over several days
Sales from Control Blocks Securities legislation incorporated by Rule 10.1	• review all known sales from control blocks to ensure regulatory requirements have been met • review large trades to determine if they are undisclosed sales from	• order tickets • trading blotter • new client application form • OSC bulletin • Exchange company	• as required • sample trades over 250,000 shares

UMIR and Policies	Compliance Review Procedures	Potential Information Sources	Frequency and Sample Size
	control block	bulletins	
Order Handling Rules Rule 5.1 Rule 5.3 Rule 6.3 Rule 8.1	• review client-principal trades of 50 standard trading units or less for compliance with order exposure and client principal transactions rules • verify that orders of 50 standard trading units or less are not arbitrarily withheld from the market	• order tickets • equity history report • trading blotters • the diary list	• quarterly • sample, specifically: -trader managed orders of 50 standard trading units
Order Markers Rule 6.2	• verify that appropriate client, employee, and proprietary trade markers are being employed	• order tickets • trading blotters • the diary list	• quarterly • samples should include one full

Part 4 – Specific Procedures Respecting Client Priority and Best Execution

Participants must have written compliance procedures reasonably designed to ensure that their trading does not violate Rule 5.3 or 5.1. A Participant must have policies and procedures in place to "diligently pursue the execution of each client order on the most advantageous execution terms reasonably available under the circumstances". The policies and procedures must:

- outline a process designed to achieve best execution;
- require the Participant, subject to compliance by the Participant with any Requirement, to follow the instructions of the client and to consider the investment objectives of the client;
- include the process for taking into account order and trade information from all appropriate marketplaces and foreign organized regulated markets; and
- describe how the Participant evaluates whether "best execution" was obtained.

In order to demonstrate that a Participant has "diligently pursued" the best execution of a particular client order, the Participant must be able to demonstrate that it has abided by the policies and procedures. At a minimum, the written compliance procedures must address employee education and post-trade monitoring.

The purpose of the Participant's compliance procedures is to ensure that pro traders do not knowingly trade ahead of client orders. This would occur if a client order is withheld from entry into the market and a person with knowledge of that client order enters another order that will trade ahead of it. Doing so could take a trading opportunity away from the first client. Withholding an order for normal review and order handling is allowed under Rules 5.3 and 5.1, as this is done to ensure that the client gets a good execution. To ensure that the Participants' written compliance procedures are effective they must address the potential problem situations where trading opportunities may be taken away from clients.

Potential Problem Situations

Listed below are some of the potential problem situations where trading opportunities may be taken away from clients.

1. Retail brokers or their assistants withholding a client order to take a trading opportunity away from

that client.

2. Others in a brokerage office, such as wire operators, inadvertently withholding a client order, taking a trading opportunity away from that client.
3. Agency traders withholding a client order to allow others to take a trading opportunity away from that client.
4. Proprietary traders using knowledge of a client order to take a trading opportunity away from that client.
5. Traders using their personal accounts to take a trading opportunity away from a client.

Written Compliance Procedures

It is necessary to address in the written compliance procedures the potential problem situations that are applicable to the Participant. Should there be a change in the Participant's operations where new potential problem situations arise then these would have to be addressed in the procedures. At a minimum, the written compliance procedures for employee education and post-trade monitoring must include the following points.

Education

- Employees must know the Rules and understand their obligation for client priority and best execution, particularly in a multiple market environment.
- Participants must ensure that all employees involved with the order handling process know that client orders must be entered into the market before non-client and proprietary orders, when they are received at the same time.
- Participants must train employees to handle particular trading situations that arise, such as, client orders spread over the day, and trading along with client orders.

Post-Trade Monitoring Procedures

- All brokers' trading must be monitored as required by Rule 7.1.
- Complaints from clients and Registered Representatives concerning potential violations of the rule must be documented and followed-up.
- All traders' personal accounts and those related to them, must be monitored daily to ensure no apparent violations of client priority occurred.
- At least once a month, a sample of proprietary inventory trades must be compared with contemporaneous client orders.
- In reviewing proprietary inventory trades, Participants must address both client orders entered into order management systems and manually handled orders, such as those from institutional clients.
- The review of proprietary inventory trades must be of a sample size that sufficiently reflects the trading activity of the Participant.
- Potential problems found during these reviews must be examined to determine if an actual violation of Rule 5.3 or 5.1 occurred. The Participant must retain documentation of these potential problems and examinations.
- When a violation is found, the Participant must take the necessary steps to correct the problem.

Documentation

- The procedures must specify who will conduct the monitoring.
- The procedures must specify what information sources will be used.
- The procedures must specify who will receive reports of the results.

- Records of these reviews must be maintained for five years.
- The Participant must annually review its procedures.

Part 5 – Specific Procedures Respecting Manipulative and Deceptive Activities and Reporting and Gatekeeper Obligations

Each Participant must develop and implement compliance procedures that are reasonably well designed to ensure that orders entered on a marketplace by or through a Participant are not part of a manipulative or deceptive method, act or practice nor an attempt to create an artificial price or a false or misleading appearance of trading activity or interest in the purchase or sale of a security. The minimum compliance procedures for trading supervision in connection with Rule 2.2 and Policy 2.2 are set out in the table to Part 3 of this Policy.

In particular, the procedures must address:

- the steps to be undertaken to determine whether or not a person entering an order is:
  - o an insider,
  - o an associate of an insider, and
  - o part of or an associate of a promotional group or other group with an interest in effecting an artificial price, either for banking and margin purposes, for purposes of effecting a distribution of the securities of the issuer or for any other improper purpose;
- the steps to be taken to monitor the trading activity of any person who has multiple accounts with the Participant including other accounts in which the person has an interest or over which the person has direction or control;
- those circumstances when the Participant is unable to verify certain information (such as the beneficial ownership of the account on behalf of which the order is entered, unless that information is required by applicable regulatory requirements);
- the fact that orders which are intended to or which effect an artificial price are more likely to appear at the end of a month, quarter or year or on the date of the expiry of options where the underlying interest is a listed security; and
- the fact that orders which are intended to or which effect an artificial price or a false or misleading appearance of trading activity or investor interest are more likely to involve securities with limited liquidity.

A Participant will be able to rely on information contained on a "New Client Application Form" or similar know-your-client record maintained in accordance with requirements of securities legislation or a self-regulatory entity provided such information has been reviewed periodically in accordance with such requirements and any additional practices of the Participant.

While a Participant cannot be expected to know the details of trading activity conducted by a client through another dealer, nonetheless, a Participant that provides advice to a client on the suitability of investments should have an understanding of the financial position and assets of the client and this understanding would include general knowledge of the holdings by the client at other dealers or directly in the name of the client. The compliance procedures of the Participant should allow the Participant to take into consideration, as part of its compliance monitoring, information which the Participant has collected respecting accounts at other dealers as part of the completion and periodic updating of the "New Client Application Form".

Part 6 – Specific Provisions Respecting the Best Price Obligation

Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the "best price obligation". The policies and procedures must set out the steps or process to be followed by the Participant that constitute the "reasonable efforts" that the Participant will take to ensure that orders receive the "best price" when executed on a marketplace. These

policies and procedures must address the factors which the Participant will take into account:

- initially in determining whether order on a protected marketplace need to be considered; and
- on an on-going basis once the Participant has determined that orders on a particular protected marketplace should be considered.

The policies and procedures adopted by the Participant:

- must take into account the factors and other requirements enumerated in Policy 5.2; and
- may take into account other additional factors which are reasonable and of particular importance to the type of business conducted by the Participant provided any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument.