

# Re Instinet Canada

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of  
Canada**

**and**

**Instinet Canada Ltd.**

2020 IIROC 18

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

Heard: June 3, 2020 in Toronto, ON

Decision: June 3, 2020

Written Reasons: June 23, 2020

## **Hearing Panel:**

The Hon. Karen Weiler, M.C. (Chair), Christopher Hill and Neil Murphy

## **Appearance:**

Andrew Werbowski, Senior Enforcement Counsel

René Sorell for Instinet Canada Ltd.

Torstein Braaten, Respondent's Chief Operating and Chief Compliance Officer

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## **REASONS FOR DECISION**

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### **I. OVERVIEW**

¶ 1 This Panel was convened to consider whether the Settlement Agreement entered into between the Staff of the Investment Industry Organization of Canada ("IIROC") and Instinet Canada Ltd. ("Instinet"), a Dealer Member of IIROC and the Respondent in these proceedings, should be accepted.

¶ 2 For the purposes of the Settlement Agreement, the Respondent admitted that it failed to comply with UMIR Rule 7.1 and UMIR Policy 7.1 respecting its supervision obligations to prevent and detect manipulative and deceptive trading practices by a direct electronic access client. Manipulative and deceptive practices, here, quote manipulation, secure an illegal price advantage to the client to the detriment of other market participants and distort the genuine price formation process of the marketplace. They are prohibited under UMIR Rule 2.2 and Policy 2.2. The Respondent's omission was not deliberate; it did not have in place an adequate system of supervisory controls to prevent such practices between January 2016 and February 2018.

¶ 3 By way of penalty, the Respondent agreed to pay a fine of \$155,000 and costs of \$15,000 within 30 days unless otherwise agreed. In addition, the Respondent agreed to provide a report to IIROC Staff outlining the remedial measures it has taken within six months of approval of the Settlement Agreement.

¶ 4 We recognize that we must accept or reject the Settlement Agreement: Rule 8215(5) of the Consolidated Rules. After considering the Agreed Facts in Part III of the Settlement Agreement we accepted

the proposed penalty and remedial measures as being reasonable and not contrary to the public interest with reasons to follow. These are those reasons.

¶ 5 The circumstances of how the quote manipulation took place, when the deficiencies in the Respondent's supervision of potential quote manipulation came to light and what steps were taken are detailed in the Agreed Facts section of the Settlement Agreement and constituted all of the evidence at the Settlement Hearing. Because the Agreed Facts informed our decision to accept the proposed settlement, we have incorporated them into these reasons. The Settlement Agreement in its entirety is appended as Exhibit A to these reasons.

## **II. AGREED FACTS**

### **Overview**

¶ 6 Between January 2016 and February 2018 (the "Relevant Period"), the Respondent failed to comply with its trading supervision obligations to prevent and detect potential contraventions of UMIR 2.2 and UMIR Policy 2.2 by one of its direct electronic access clients.

¶ 7 In particular, orders were entered on visible IIROC-regulated marketplaces that changed the best bid price or best ask price and affected the price at which trades would occur with orders posted in marketplaces where orders are not visible to marketplace participants.

### **Background**

¶ 8 The Respondent is registered as an investment dealer and is a Participant under UMIR. The Respondent provides clients with direct electronic access to IIROC-regulated marketplaces.

¶ 9 The Respondent's client is engaged in proprietary trading and has an electronic routing agreement with an affiliate of the Respondent whereby its orders are routed by the affiliate through the Respondent directly to IIROC-regulated marketplaces.

¶ 10 The client's trading is routed through one User ID through which multiple unique Trader IDs trade. The trading activity in question originated from a small number of Trader IDs.

¶ 11 In providing direct electronic access to IIROC-regulated marketplaces, a Participant is not relieved from any obligations under UMIR with respect to the supervision of trading activities by a direct electronic access client. The Participant retains full responsibility for any order entered by a direct electronic access client and the Participant must adequately address the additional risks posed by orders entered directly by clients to the marketplaces.

¶ 12 UMIR 7.1 and UMIR Policy 7.1 require a Participant to develop and implement policies and procedures that are reasonably well designed to ensure that orders entered on a marketplace 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 on the purchase or sale of a security.

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

¶ 14 Quote manipulation is a manipulative trading practice whereby orders are entered with no intention that they be executed in order to temporarily manipulate the price of a security in order to secure a price advantage to the detriment of other market participants. This manipulative trading practice disrupts and distorts the genuine price formation process of the marketplace.

¶ 15 On February 14, 2013, IIROC issued Rules Notice 13-0053, Guidance on Certain Manipulative and Deceptive Trading Practices, which described quote manipulation:

*IIROC is concerned about potential manipulative activity intended to affect the price at which dark orders that are tied to prices on visible markets, trade in dark pools or visible markets. It is the position of IIROC that entering non-bona fide orders on visible markets in an attempt to change the best bid price and/or the best ask price and affect the price calculation at which a trade will occur with a dark order, contravenes Rule 2.2(1), (2)(b) and Policy 2.2, Part 2(e). This activity (which may be combined with liquidity detection) results in a trade with a dark order at an improved price, following which orders are removed from the visible market.*

- ¶ 16 Enforcement Staff identified the following characteristics which indicate potential quote manipulation:
- (a) an Trader ID entered an order on a lit, protected market (the “visible order”);
  - (b) the visible order improved the National Best Bid (“NBB”) or National Best Offer (“NBO”);
  - (c) the same Trader ID entered an order on the opposite side of the market in the dark market;
  - (d) the dark order generally received a fill at the improved price; and
  - (e) the visible order was cancelled within 10 seconds of the dark order being filled.

### **Supervision of Potential Quote Manipulation**

¶ 17 In December 2014, an IIROC Trading Conduct Compliance (“TCC”) staff review first noted perceived deficiencies in the Respondent’s supervision of potential quote manipulation. The Respondent addressed this matter on January 22, 2015, noting that it was planning to enhance its internal compliance surveillance system functionality for the detection and supervision of quote manipulation practices.

¶ 18 In October 2015, IIROC Trade Review & Analysis (“TR&A”) requested that the Respondent provide its NBBO quote manipulation supervision policies and procedures and an update on the status of an anticipated new alert for its internal compliance surveillance system. The Respondent advised that in-house development of its monitoring system was progressing at a very slow pace and that it was not fully satisfied with the closest alert available from its third party compliance monitoring system (both as to appropriate parameters and cost) so it would continue to review for a means to implement review procedures.

¶ 19 In December 2016, TCC noted at the conclusion of its field review as a repeat deficiency the Respondent’s supervision of potential quote manipulation. In January 2017, the Respondent advised TCC that it would be adding to or modifying its internal monitoring and testing procedures, including those for potential quote manipulation.

¶ 20 In early March 2017, TCC asked the Respondent to provide a timeline for its proposed additions or modifications. In late March 2017, the Respondent advised that it was reviewing an internal system solution for monitoring and testing procedures and anticipated having resources and procedures by the end of May 2017.

¶ 21 In May 2017, TR&A, which had initiated the review that led to the enforcement referral, asked the Respondent whether it had identified certain instances of trading activity occurring at various points in 2016 and which exhibited the characteristics of potential quote manipulation. TR&A also asked the Respondent for its quote manipulation policies and procedures.

¶ 22 In May 2017, the Respondent confirmed that it did not detect any of the instances referred to in the TR&A inquiry. It also confirmed the following regarding its methodology for supervising quote manipulation:

- (a) Quote manipulation supervision was performed manually;
- (b) 25 trades that were executed on the dark market were selected randomly for each calendar quarter;
- (c) pertinent information, such as Client ID, Trader ID, order entry time, execution time, quantity,

price and whether the order was passive or aggressive for the randomly selected trades was recorded;

- (d) each selected trade was then reviewed for order entry activity in the lit markets within 1 to 2 seconds of the executed trade in the dark market, including whether there was any movement of the Bid or Ask that would allow the trader to obtain a favourable price execution in the dark market;
- (e) whether there was a subsequent cancellation of any order in the lit market;
- (f) if there were multiple Trader IDs involved, the office location of the Trader IDs was identified; and
- (g) if any potential trends had been created by the same client or Trader ID.

¶ 23 The Respondent also noted that the third party vendor it used for compliance monitoring did not provide a quote manipulation alert and it had not been able to find any third party compliance monitoring system vendors that provided such an alert.

¶ 24 In October 2017, the TR&A made a referral to Enforcement Staff.

#### **Enforcement Staff Investigation**

¶ 25 Enforcement Staff analyzed the quote manipulation supervision in the context of the total number of dark trades by the Respondent's client as disclosed on regulatory feed data received by IIROC from Canadian equity marketplaces.

¶ 26 In 2016 and 2017, IIROC's surveillance system showed that the Respondent's client generated approximately 2.9 million dark trades. The Respondent sampled 96 of these trades (approximately 0.003%). The Respondent identified no instances of quote manipulation during this period.

¶ 27 In 2016, IIROC's surveillance system detected approximately 500 "High & Very High Alerts" generated by the Respondent's client on trading volume in the dark market of well over a billion shares. These alerts are considered in IIROC's surveillance system to be of higher intensity based on criteria such as the time elapsed between the execution of the trade and the deleted order and the liquidity of the security. Between January and August 2017, the client generated approximately 2,500 "High & Very High Alerts" in IIROC's surveillance system based on trading volume in the dark market of approximately 1.07 billion shares.

#### **August 2017 - January 2018**

¶ 28 Enforcement Staff analyzed the Respondent's client's trading using the following criteria:

- (a) an order was entered on a lit, protected market by one of the client's Trader IDs;
- (b) the order improved the NBB or NBO;
- (c) a Trader ID from the same office location received a fill on his or her dark order on the opposite side of the market with the improved price; and
- (d) the duration of the visible order entry to the cancellation of the order was 12.5 seconds or less and:
  - (i) the visible order was not entered more than five seconds before the first trade execution;
  - (ii) the time elapsed between the first and last fills was not longer than two and a half seconds; and
  - (iii) the cancellation of the visible order occurred within 5 seconds of the last fill of the

trade.

¶ 29 Enforcement Staff also excluded instances which they considered might generate false positive alerts, including:

- (a) where there was any execution on the same side as the visible order;
- (b) where there was any better-priced order on the same side as the visible order at the time of the cancellation;
- (c) where staff could not ascertain the sequence of activities when transactions occurred within the same millisecond.

¶ 30 Between August and December 2017, the Respondent's client generated the following number of potential quote manipulation alerts:

- (a) August - 466;
- (b) September - 416;
- (c) October - 490;
- (d) November - 443; and
- (e) December - 320.

¶ 31 Over 50% of the potential quote manipulation alerts were generated by seven of the client's Trader IDs.

¶ 32 The statements about methodology, numbers of trades and numbers of alerts in paragraphs 26 to 29 are not disputed by the Respondent but have been derived by Staff from voluminous data of which the Respondent has seen only samples.

### **February 2018 – December 2018**

¶ 33 In early December 2017, Enforcement Staff notified the Respondent of its concerns relating to the potential quote manipulation alerts generated by the Respondent's client and the supervision of its client's trading. The Respondent promptly took corrective measures. Specifically, the Respondent:

- (a) requested that its client issue a notice to its traders entitled "Prohibition on Certain Trading Practices in Canada," which referenced IIROC Rules Notice 13-0053. This notice was issued on or about January 22, 2018; and
- (b) altered its smart order routing protocol, in consultation with its client and at its request, so that orders were not exposed to the dark market on the way to lit markets and questionable alerts were minimized. Later, in consultation with its client and at its request, dark market routing was gradually reintroduced in 2019 as the Respondent became more rapidly able to evaluate the alerts generated by its supervision system.

¶ 34 These measures significantly reduced the number of potential quote manipulation alerts.

### **III. OUR TASK AND THE TERMS OF THE PENALTY**

¶ 35 In deciding whether to approve the Settlement Agreement, our task was to determine whether, in the circumstances set out in the Agreed Facts, the penalty agreed upon in the Settlement Agreement was appropriate. That is, was the penalty reasonable having regard to the range of penalties given for similar offences in similar circumstances. In addition, we had to consider whether the penalty was sufficient to protect the public, that is, whether it would act as a deterrent to similar conduct. See e.g. *Jitneytrade Inc. (Re)*, 2013 LNIROC 42 at 34-35.

¶ 36 Finally, we took into consideration that the Settlement Agreement would be in the Respondent's best interests in that, if accepted, it would bring an end to the matter and save further litigation costs.

¶ 37 As indicated at the outset of these reasons, the proposed penalty is a fine of \$150,000 plus costs of \$15,000 payable within 30 days. In addition, within six months of acceptance of the Settlement Agreement, the remedial measures contained in paragraph 37 of the Settlement Agreement and set out below are to be implemented.

#### **Remedial Measures**

¶ 38 In conjunction with a consultant approved by IIROC Staff, the Respondent shall review and test the Respondent's alerts for "quote manipulation" and any related written policies and procedures relating to the implementation of the alerts to ensure that (a) such alerts are effective in the detection of "quote manipulation" as described by IIROC in its UMIR rules and related public policies and notices, (b) the procedures are specifically tailored to the Respondent's business and are consistent with prudent business practices and industry standards where direct electronic access arrangements are used to convey the orders of direct electronic access clients to marketplaces, (c) the procedures are designed to prevent non-compliance by direct electronic access clients with applicable UMIR rules respecting quote manipulation and, if non-compliance is detected, detection occurs at an early enough stage to allow for correction of the conduct in a timely manner and to allow escalation of breaches for appropriate disciplinary or other action and all applicable Respondent staff are trained to ensure compliance with applicable rules.

#### **IV. APPROPRIATENESS OF THE PENALTY**

¶ 39 In our opinion, the proposed penalty is appropriate for the following reasons.

¶ 40 First, the Respondent acknowledged its misconduct and admitted that its system of supervising the trades of its direct market access clients was deficient. This admission is an expression of remorse that is further borne out by the fact the Respondent cooperated fully with IIROC Staff during their investigation. There is value in reaching a settlement because it avoids costly and unnecessary litigation.

¶ 41 Second, the potential quote manipulation alerts triggered in the IIROC surveillance system related to a very small percentage of the overall trading volume undertaken by the Respondent's client in the dark market, and concerned only a limited number of the client's Trader IDs.

¶ 42 Third, although the contraventions took place over a considerable period of time, they were not deliberate.

¶ 43 Fourth, the Respondent is not likely to reoffend. The Respondent has taken and is taking steps to remedy the deficiencies in its surveillance system and to implement an adequate system. More specifically, once the Respondent received notice of the deficiency in its system, it altered its smart order routing protocol to prevent orders from making their way to the dark market before they were entered on the lit market. Thus, there was no ability to post orders on the dark market and potential quote manipulation activity was substantially curtailed as a result. In 2018, the Respondent developed a new alert for potential quote manipulation, and the Respondent is working with third party vendors to supplement the internal alert and provide a better designed alert. There is every indication that with the further remedial measures to which it has agreed, it will have a system that is compliant with its obligations. Specific deterrence is not an issue.

¶ 44 Fifth, the amount of the fine, namely, \$150,000 is within the range of monetary penalties in cases with similar parallels. In *Jitneytrade Inc. (Re)*, 2013, *supra*, the respondent had an inadequate supervision system that remained in use over a long time. The penalty was a fine of \$90,000 and an acknowledgment that certain remedial actions had been taken. There was no requirement that an independent consultant be hired. In *Jitneytrade Inc. (Re)*, 2017 LNIROC 25, a case involving the same respondent a few years later, there was a similar type of failure to supervise. In recognition that this was a second offence, the fine was \$200,000, and

this time the respondent was required to engage an independent consultant. Here, Instinet’s fine of \$150,000 and its acceptance of the requirement for an independent consultant sit comfortably between these two decisions. We also note that in *Credit Suisse Securities (Canada) Inc. (Re)*, 2011 LNIROC 10, although the contravening conduct involved was not the same, Credit Suisse failed to comply with its trading supervision obligations respecting a direct market access client and the fine imposed was \$150,000. Thus, it appears that the goal of general deterrence, namely, that the proposed penalty be a warning to others not to engage in this type of conduct is met and the public will be protected.

¶ 45 For these reasons, we concluded that the Settlement Agreement was appropriate in that the penalty was a reasonable punishment of the Respondent and that it was in the public interest to accept it because it served the purpose of deterring others from failing to comply with their supervisory obligations. Accordingly, we approved the Settlement Agreement.

Dated at Toronto, Ontario this 23 day of June, 2020.

Karen Weiler

Christopher Hill

Neil Murphy

## **SETTLEMENT AGREEMENT**

### **PART I – INTRODUCTION**

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Instinet Canada Ltd. (“the Respondent”).

### **PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

### **PART III – AGREED FACTS**

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement

#### **Overview**

4. Between January 2016 and February 2018 (the “Relevant Period”), the Respondent failed to comply with its trading supervision obligations to prevent and detect potential contraventions of UMIR 2.2 and UMIR Policy 2.2 by one of its direct electronic access clients.
5. In particular, orders were entered on visible IIROC – regulated marketplaces that changed the best bid price or best ask price and affected the price at which trades would occur with orders posted in marketplaces where orders are not visible to marketplace participants.

#### **Background**

6. The Respondent is registered as an investment dealer and is a Participant under UMIR. The Respondent provides clients with direct electronic access to IIROC-regulated marketplaces.

7. The Respondent's client is engaged in proprietary trading and has an electronic routing agreement with an affiliate of the Respondent whereby its orders are routed by the affiliate through the Respondent directly to IIROC-regulated marketplaces.
8. The client's trading is routed through one User ID through which multiple unique Trader IDs trade. The trading activity in question originated from a small number of Trader IDs.
9. In providing direct electronic access to IIROC-regulated marketplaces, a Participant is not relieved from any obligations under UMIR with respect to the supervision of trading activities by a direct electronic access client. The Participant retains full responsibility for any order entered by a direct electronic access client and the Participant must adequately address the additional risks posed by orders entered directly by clients to the marketplaces.
10. UMIR 7.1 and UMIR Policy 7.1 require a Participant to develop and implement policies and procedures that are reasonably well designed to ensure that orders entered on a marketplace 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 on the purchase or sale of a security.
11. UMIR 2.2 and Policy 2.2 prohibit manipulative and deceptive trading activity on IIROC-regulated marketplaces, including, among other activities, quote manipulation and the entering of an order or series of orders for a security that are not intended to be executed.
12. Quote manipulation is a manipulative trading practice whereby orders are entered with no intention that they be executed in order to temporarily manipulate the price of a security in order to secure a price advantage to the detriment of other market participants. This manipulative trading practice disrupts and distorts the genuine price formation process of the marketplace.
13. On February 14, 2013, IIROC issued Rules Notice 13-0053, Guidance on Certain Manipulative and Deceptive Trading Practices, which described quote manipulation:

*IIROC is concerned about potential manipulative activity intended to affect the price at which dark orders that are tied to prices on visible markets, trade in dark pools or visible markets. It is the position of IIROC that entering non-bona fide orders on visible markets in an attempt to change the best bid price and/or the best ask price and affect the price calculation at which a trade will occur with a dark order, contravenes Rule 2.2(1), (2)(b) and Policy 2.2, Part 2(e). This activity (which may be combined with liquidity detection) results in a trade with a dark order at an improved price, following which orders are removed from the visible market.*
14. Enforcement Staff identified the following characteristics which indicate potential quote manipulation:
  - a) an Trader ID entered an order on a lit, protected market (the "visible order");
  - b) the visible order improved the National Best Bid ("NBB") or National Best Offer ("NBO");
  - c) the same Trader ID entered an order on the opposite side of the market in the dark market;
  - d) the dark order generally received a fill at the improved price; and
  - e) the visible order was cancelled within 10 seconds of the dark order being filled.

#### **Supervision of Potential Quote Manipulation**

15. In December 2014, an IIROC Trading Conduct Compliance staff ("TCC") review first noted perceived deficiencies in the Respondent's supervision of potential quote manipulation. The Respondent addressed this matter on January 22, 2015, noting that it was planning to enhance its internal compliance surveillance system functionality for the detection and supervision of quote manipulation practices.

16. In October 2015, IIROC Trade Review & Analysis (“TR&A”) requested that the Respondent provide its NBBO quote manipulation supervision policies and procedures and an update on the status of an anticipated new alert for its internal compliance surveillance system. The Respondent advised that in-house development of its monitoring system was progressing at a very slow pace and that it was not fully satisfied with the closest alert available from its third party compliance monitoring system (both as to appropriate parameters and cost) so it would continue to review for a means to implement review procedures.
17. In December 2016, TCC noted at the conclusion of its field review as a repeat deficiency the Respondent’s supervision of potential quote manipulation. In January 2017, the Respondent advised TCC that it would be adding to or modifying its internal monitoring and testing procedures, including those for potential quote manipulation.
18. In early March 2017, TCC asked the Respondent to provide a timeline for its proposed additions or modifications. In late March 2017, the Respondent advised that it was reviewing an internal system solution for monitoring and testing procedures and anticipated having resources and procedures by the end of May 2017.
19. In May 2017, TR&A, which had initiated the review that led to the enforcement referral, asked the Respondent whether it had identified certain instances of trading activity occurring at various points in 2016 and which exhibited the characteristics of potential quote manipulation. TR&A also asked the Respondent for its quote manipulation policies and procedures.
20. In May 2017, the Respondent confirmed that it did not detect any of the instances referred to in the TR&A inquiry. It also confirmed the following regarding its methodology for supervising quote manipulation:
  - a) Quote manipulation supervision was performed manually;
  - b) 25 trades that were executed on the dark market were selected randomly for each calendar quarter;
  - c) pertinent information, such as Client ID, Trader ID, order entry time, execution time, quantity, price and whether the order was passive or aggressive for the randomly selected trades was recorded;
  - d) each selected trade was then reviewed for order entry activity in the lit markets within 1 to 2 seconds of the executed trade in the dark market, including whether there was any movement of the Bid or Ask that would allow the trader to obtain a favourable price execution in the dark market;
  - e) whether there was a subsequent cancellation of any order in the lit market;
  - f) if there were multiple Trader IDs involved, the office location of the Trader IDs was identified; and
  - g) if any potential trends had been created by the same client or Trader ID.
21. The Respondent also noted that the third party vendor it used for compliance monitoring did not provide a quote manipulation alert and it had not been able to find any third party compliance monitoring system vendors that provided such an alert.
22. In October 2017 the TR&A made a referral to Enforcement Staff.

#### **Enforcement Staff Investigation**

23. Enforcement Staff analyzed the quote manipulation supervision in the context of the total number of

dark trades by the Respondent's client as disclosed on regulatory feed data received by IIROC from Canadian equity marketplaces.

24. In 2016 and 2017, IIROC's surveillance system showed that the Respondent's client generated approximately 2.9 million dark trades. The Respondent sampled 96 of these trades, (approximately 0.003%). The Respondent identified no instances of quote manipulation during this period.
25. In 2016, IIROC's surveillance system detected approximately 500 "High & Very High Alerts" generated by the Respondent's client on trading volume in the dark market of well over a billion shares. These alerts are considered in IIROC's surveillance system to be of higher intensity based on criteria such as the time elapsed between the execution of the trade and the deleted order and the liquidity of the security. Between January and August 2017, the client generated approximately 2500 "High & Very High Alerts" in IIROC's surveillance system based on trading volume in the dark market of approximately 1.07 billion shares.

#### **August 2017 - January 2018**

26. Enforcement Staff analyzed the Respondent's client's trading using the following criteria:
  - a) an order was entered on a lit, protected market by one of the client's Trader IDs;
  - b) the order improved the NBB or NBO;
  - c) a Trader ID from the same office location received a fill on his or her dark order on the opposite side of the market with the improved price; and
  - d) the duration of the visible order entry to the cancellation of the order was 12.5 seconds or less and:
    - i. the visible order was not entered more than five seconds before the first trade execution;
    - ii. the time elapsed between the first and last fills was not longer than two and a half seconds; and
    - iii. the cancellation of the visible order occurred within 5 seconds of the last fill of the trade.
27. Enforcement Staff also excluded instances which they considered might generate false positive alerts, including:
  - a) where there was any execution on the same side as the visible order;
  - b) where there was any better-priced order on the same side as the visible order at the time of the cancellation;
  - c) where staff could not ascertain the sequence of activities when transactions occurred within the same millisecond.
28. Between August and December 2017, the Respondent's client generated the following number of potential quote manipulation alerts:
  - a) August - 466;
  - b) September - 416;
  - c) October - 490;
  - d) November - 443; and
  - e) December - 320.

29. Over 50% of the potential quote manipulation alerts were generated by seven of the client's Trader IDs.
30. The statements about methodology, numbers of trades and numbers of alerts in paragraphs 26 to 29 are not disputed by the Respondent but have been derived by Staff from voluminous data of which the Respondent has seen only samples.

#### **February 2018 - December 2018**

31. In early December 2017, Enforcement Staff notified the Respondent of its concerns relating to the potential quote manipulation alerts generated by the Respondent's client and the supervision of its client's trading. The Respondent promptly took corrective measures. Specifically, the Respondent:
  - a) requested that its client issue a notice to its traders entitled "Prohibition on Certain Trading Practices in Canada," which referenced IIROC Rules Notice 13-0053. This notice was issued on or about January 22, 2018; and
  - b) altered its smart order routing protocol, in consultation with its client and at its request, so that orders were not exposed to the dark market on the way to lit markets and questionable alerts were minimized. Later, in consultation with its client and at its request, dark market routing was gradually reintroduced in 2019 as the Respondent became more rapidly able to evaluate the alerts generated by its supervision system.
32. These measures significantly reduced the number of potential quote manipulation alerts.

#### **PART IV – OTHER FACTORS**

33. In 2018, the Respondent developed a new alert for potential quote manipulation. The internally developed alert remains the same but the Respondent is working with third party vendors to supplement the internal alert and provide a better designed alert.
34. In 2016, the Respondent was attempting to develop a quote manipulation alert. The Respondent's progress in implementing a quote manipulation alert was delayed because it was necessary to develop one with its own internal resources.
35. The identification of quote manipulation entails subjective judgments.
36. The potential quote manipulation alerts triggered in the IIROC Surveillance system related to a very small percentage of the overall trading volume undertaken by the Respondent's client in the dark market, and concerned only a limited number of the client's Trader IDs.

#### **Remedial Measures**

37. In conjunction with a consultant approved by IIROC Staff, the Respondent shall review and test the Respondent's alerts for "quote manipulation" and any related written policies and procedures relating to the implementation of the alerts to ensure that (a) such alerts are effective in the detection of "quote manipulation" as described by IIROC in its UMIR rules and related public policies and notices, (b) the procedures are specifically tailored to the Respondent's business and are consistent with prudent business practices and industry standards where direct electronic access arrangements are used to convey the orders of direct electronic access clients to marketplaces, (c) the procedures are designed to prevent non-compliance by direct electronic access clients with applicable UMIR rules respecting quote manipulation and, if non compliance is detected, detection occurs at an early enough stage to allow for correction of the conduct in a timely manner and to allow escalation of breaches for appropriate disciplinary or other action and all applicable Respondent staff are trained to ensure compliance with applicable rules.

#### **PART V – CONTRAVENTIONS**

38. By engaging in the conduct described above, the Respondent committed the following contraventions

of IIROC's Rules:

Between January 2016 and February 2018, the Respondent failed, to comply with its trading supervision obligations to prevent and detect potential contraventions of UMIR 2.2 and UMIR Policy 2.2 by one of its direct electronic access clients, contrary to UMIR 7.1 and UMIR Policy 7.1.

#### **PART VI – TERMS OF SETTLEMENT**

39. The Respondent agrees to the following sanctions and costs:
  - a) a fine of \$155,000, payable by the Respondent to IIROC; and
  - b) costs of \$15,000, payable by the Respondent to IIROC.
40. The Respondent agrees to implement the remedial measures described in paragraph 37 and provide a report to Staff outlining the implementation and adoption date of the remedial measures within six (6) months of the acceptance date of the Settlement Agreement.
41. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

#### **PART VII – STAFF COMMITMENT**

42. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
43. If the Hearing Panel accepts this Settlement Agreement and Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

#### **PART VIII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT**

44. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
45. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
46. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
47. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
48. 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 based on the same or related allegations.
49. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
50. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.

51. If this Settlement Agreement is accepted, the Respondent agrees that neither it nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.
52. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

**PART IX – EXECUTION OF SETTLEMENT AGREEMENT**

53. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
54. A fax or electronic copy of any signature will be treated as an original signature.

**DATED** this “28” day of “MAY”, 20”20”.

“Witness”

Witness

“Instinet Canada Limited”

Instinet Canada Limited

Per: Torstein Braaten

Chief Operating Officer and

Chief Compliance Officer

“Ricki Ann Newmarch”

Witness

“Andrew P. Werbowski”

Andrew P. Werbowski

Senior Enforcement Counsel on

behalf of Enforcement Staff of the

Investment Industry Regulatory

Organization of Canada

The Settlement Agreement is hereby accepted this “3” day of “June”, 20”20” by the following Hearing Panel:

Per: “Karen Weiler”

Panel Chair

Per: “Christopher Hill”

Panel Member

Per: “Neil Murphy”

Panel Member

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