

Re Li

IN THE MATTER OF:

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

and

The Universal Market Integrity Rules (“UMIR”)

and

Zhenyu Li (Respondent”)

2015 IIROC 26

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

Heard: July 20, 2015
Decision: July 20, 2015

Hearing Panel:

Mr. Frederick Webber, Chair, Ms. Debbie Archer and Mr. Richard Austin

Appearances:

Charles Corlett, Enforcement Counsel
Brand Moore, Counsel for the Respondent
Zhenyu Li, Respondent

DECISION AND REASONS

Settlement Agreement

¶ 1 As a result of a Settlement Agreement between IIROC and the Respondent dated June 25, 2015, which is attached to these reasons, a Settlement Hearing was conducted on July 20, 2015 in Toronto pursuant to the IROC UMIR Rules.

¶ 2 At the beginning of the hearing the Panel ordered that any personal information, as defined in IIROC’s Policy Regarding Use and Disclosure of Personal Information in IIROC Disciplinary Proceedings, shall be redacted from the Hearing Record prior to any part of the Hearing Record being made public, subject to any specific rulings the Panel may make in the course of this hearing.

¶ 3 The Hearing Panel received and considered oral submissions from IIROC counsel and Respondent’s counsel with reference to the IIROC Settlement Book containing the Settlement Agreement, relevant UMIR Rules, the IIROC Dealer Member Disciplinary Sanction Guidelines, and decisions of previous hearing panels. Respondent’s counsel advised the Panel that he agreed in substance with the IIROC submissions.

Contravention and Sanctions

¶ 4 The contravention alleged by IIROC and admitted by the Respondent is, as set out in the Settlement

Agreement:

Between August 2012 and November 2012 (the “Relevant Period”), the Respondent, while a proprietary trader at National Bank Financial Inc. (“NBF”), entered orders that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase or sale of the securities or an artificial sale price for the securities, contrary to Universal Market Integrity Rule (“UMIR”) 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1).

¶ 5 IIROC and the Respondent agreed to the following terms of settlement as set out in the Settlement Agreement :

- (i) a fine of \$10,000.00 payable by the Respondent to IIROC, which includes the profit made by the Respondent as a result of the contraventions;
- (ii) a suspension of access to IIROC-regulated marketplaces for 1 month beginning on the date of the approval of the Settlement Agreement; and
- (iii) costs of \$1,500.00 payable by the Respondent to IIROC.

Facts

¶ 6 The salient facts are set out in the Settlement Agreement and need not be repeated in these reasons. In summary:

During the Relevant Period, the Respondent entered non-bona fide orders in the pre-opening on the TSX and TSXV that he ought to have known would affect the Calculated Opening Price (the “COP”) of the securities to his own advantage. The Respondent’s pattern of order entry, a practice commonly known as “spoofing”, misrepresented the supply, demand, or price for the securities.

Acceptance of Settlement Agreement

¶ 7 Under UMIR 10.8, paragraph 3.4, the Panel may either approve or reject the Settlement Agreement. As set out in numerous prior decisions, several of which were in the IIROC Settlement Book, the Panel “should not interfere lightly in a negotiated settlement” and should accept the settlement provided that it falls within ‘a reasonable range of appropriateness’. (see e.g. *Re Zhang*, [2013] IIROC No.35). This Panel agrees with the principles from these cases and has followed them in this case.

Determining the Reasonable Range

¶ 8 The “reasonable range” is generally informed by reference to the Disciplinary Sanction Guidelines (“the Guidelines”), precedent cases and what the panel views as the public interest.

¶ 9 The parties have agreed that the proposed settlement and sanctions included therein fall within the reasonable range of appropriateness, are in the public interest and achieve the objectives of specific and general deterrence.

The Reasonable Range-the Guidelines

¶ 10 The Panel considered the general principles set out in the Guidelines, the need to address both general and specific deterrence and the key considerations outlined in the Guidelines as applicable to this case in determining whether the proposed sanctions are appropriate.

¶ 11 In the context of a settlement hearing, the panel agrees that the proposed sanctions are consistent with the Guidelines which are published by IIROC to reflect industry understandings and expectations.

Mitigating Factors

¶ 12 IIROC counsel referred the Panel to several mitigating factors in this case as follows:

- the Respondent has been in the industry since 2005, but has no prior disciplinary history with

IIROC;

- the Respondent admitted his misconduct and cooperated with IIROC;
- the incidents were few in number and took place over a limited time;
- the profit realized by the Respondent was small and is covered by the proposed fine.

The Reasonable Range-Cases

¶ 13 IIROC counsel reviewed with the Panel a number of cases contained in the IIROC Settlement Book for guidance in determining the appropriate sanctions in this case. The Panel has reviewed each of these cases from the standpoint of the specific conduct and the penalties imposed and has concluded that the sanctions agreed to in this case fall within a reasonable range of possible sanctions.

Conclusion and Order

¶ 14 The Panel was concerned that the proposed sanctions did not adequately address the principle of general deterrence and discussed this with both counsel at the hearing. The Panel wishes to state that, if this had been a contested hearing in which it concluded that the Respondent had committed the misconduct which he admitted in the Settlement Agreement, the sanctions would have been more severe than set out in the Settlement Agreement. However, given the principles applicable to settlement hearings set out above, it is this Panel's decision that the sanctions proposed in the Settlement Agreement fall within a reasonable range of possible sanctions. Accordingly the Panel accepted the settlement proposed and signed the requested order at the conclusion of the hearing.

Dated as of the 20th day of July, 2015.

Frederick Webber – Chair

Debbie Archer – Member

Richard Austin – Member

OFFER OF SETTLEMENT

A. INTRODUCTION

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the “Investigation”) into the conduct of Zhenyu Li (the “Respondent”).
2. 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”).
3. 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”).
4. 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.
5. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

7. The Respondent agrees that between August 2012 and November 2012, while a proprietary trader at National Bank Financial Inc., he entered orders that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase or sale of the securities or an artificial sale price for the securities, contrary to UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1).

C. ADMITTED FACTS

8. For the purposes of this Settlement Agreement only, 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.

D. DISPOSITION

9. For the contraventions in paragraph 7 above, Staff and the Respondent have agreed upon disposition as follows:
- (i) a fine of \$10,000.00 payable by the Respondent to IIROC, which includes the profit made by the Respondent as a result of the contraventions;
 - (ii) a suspension of access to IIROC-regulated marketplaces for 1 month beginning on the date of the approval of the Settlement Agreement; and
 - (iii) costs of \$1,500.00 payable by the Respondent to IIROC.

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

10. The Respondent shall have until the close of business on Friday, June 26, 2015 to accept the Offer of Settlement and serve an executed copy thereof on Staff.
11. 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.
12. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement Agreement.
13. 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.
14. 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.
15. 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.

16. 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 Toronto, Ontario on the 25 day of June, 2015.

“Witness” _____

Witness Signature

“Zhenyu Li” _____

Zhenyu Li

Name of Witness

Address of Witness

DATED at Toronto, Ontario on the 22nd day of June, 2015.

Per: “Elsa Renzella” _____

ELSA RENZELLA

VICE-PRESIDENT, ENFORCEMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Suite 2000, 121 King Street West

Toronto, Ontario M5H 3T9

This foregoing Settlement Agreement is hereby approved this 20 day of July, 2015 by the following hearing panel constituted to review the terms thereof:

Per: “Fred Webber” _____

Panel Chair

Per: “Debbie Archer” _____

Panel Member

Per: “Richard Austin” _____

Panel Member

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF
CANADA**

AND

STATEMENT OF ALLEGATIONS

I. REQUIREMENTS CONTRAVENED

1. Between August 2012 and November 2012 (the “Relevant Period”), Zhenyu Li (“Li”), while a proprietary trader at National Bank Financial Inc. (“NBF”), entered orders that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase or sale of the securities or an artificial sale price for the securities, contrary to Universal Market Integrity Rule (“UMIR”) 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1).
2. Schedule “A” sets out the text of the relevant UMIR Requirements.

II. RELEVANT FACTS AND CONCLUSIONS

Overview

3. During the Relevant Period, Li entered non-*bona fide* orders in the pre-opening on the TSX and TSXV that he ought to have known would affect the Calculated Opening Price (the “COP”) of the securities to his own advantage.
4. Li’s pattern of order entry, a practice commonly known as “spoofing”, misrepresented the supply, demand, or price for the securities.

Background

5. National Bank Financial Inc. (“NBF”) is registered as an investment dealer and is a Participant under UMIR.
6. Li has been employed in the securities industry since 2005. Li was a proprietary trader at NBF from December 2005 to late November 2012, when NBF closed the proprietary trading desk where he was employed. Li is currently employed as a proprietary trader at RBC Dominion Securities Ltd. Li has no prior disciplinary history.
7. Li’s trading activity in the pre-opening on November 1, 2012 triggered an IIROC surveillance alert. IIROC’s Trade Review and Analysis department identified further instances of potentially manipulative trading by Li in the pre-opening.
8. IIROC Staff investigated Li’s trading activity in the pre-opening for the period August 2012 to November 2012 and identified twenty instances whereby Li entered non-*bona fide* orders that he ought to have known would affect the COP of securities to his own advantage (the “Trading Activity”).

The Trading Activity

9. The COP indicates the price at which trading in a listed issuer will commence at the open based on the orders entered to that point on the marketplace.
10. The Trading Activity, pursuant to which Li affected the COP to his own advantage, occurred in several TSX and TSXV-listed securities. Li did not have Marketplace Trading Obligations for any of the securities in question. Over the prior year (November 2011 to November 2012), Li had traded nineteen of the twenty securities infrequently, or not at all.
11. Li’s Trading Activity often occurred in relatively illiquid securities where the COP for the security was out of line from the previous trading day’s closing price. In eighteen of the twenty instances of the

Trading Activity, the COP was out of line relative to the previous day's closing price because of a client market order. These market orders were often large orders relative to the average daily trading volume of the security.

12. The illiquidity of the securities and the price discrepancy with the previous trading day's closing price provided Li with the opportunity to misrepresent the true supply, demand or price for the securities to secure a price advantage.
13. In eight instances, Li's Trading Activity took place on the bid side and in twelve instances, on the ask side. On the bid side, Li would enter an order or a series of orders to raise the COP and on the ask side, he would enter an order or series of orders to lower the COP.
14. Li would then cancel or amend one or more of these orders close to the open of trading at 9:30 a.m. In nineteen instances, his cancellation or amendment occurred within a minute to the open (in the remaining instance, there was a little over a minute to the open). The cancellations and amendments lowered the COP when Li was on the bid side and raised it when Li was on the ask side.
15. The effect of this order entry was the creation of a price advantage for Li's open orders that remained in the book at better prices. Except in one instance, Li was able to secure a fill or fills for a lower price (in the case of a buy) and at a higher price (in the case of a sell) as a result of his last minute cancellation or amendment.
16. The timing of the cancellation or amendment left little time for other marketplace participants to participate in the pre-opening at the newly set COP, thereby increasing the likelihood that Li would secure the price advantage for his own orders.
17. Immediately after the open, Li would attempt to close his position for a profit. The Trading Activity resulted in a cumulative gross profit of \$8,160 of which Li retained \$4,080.

Trading in TBL on August 8, 2012

18. Li's trading in the pre-opening on the TSX for the security "TBL" is representative of the Trading Activity:

Row	Time	Orders	Volume	Price	COP after order entry	Change
1	7:00:37	Client Buy Order	2000	Market	0.74	+0.12
2	7:27:59	Client Buy Order	3000	0.62	0.74	-
3	8:06:32	Client Buy Order	6000	Market	0.75	+0.01
4	8:33:08	Li Sell Order #1	5000	0.70	0.74	-0.01
5	8:33:34	Li Sell Order #2	8000	0.65	0.65	-0.09
6	8:33:52	Li Modifies Sell Order #1	7000 (+2000)	0.70	0.65	-
7	8:50:21	Client Buy Order	6500	0.59	0.65	-
8	9:29:26	Li Cancels Order #2	8000	0.65	0.74	+0.09
9	9:30:00	Li Sell Order #1 Trades at Open	7000	0.74		
10	9:30:00	Client Trade at open	1000	0.74		
11	9:33:23	Li Buy Order	7000	0.63		

19. The initial COP when the pre-opening session began was \$0.74, \$0.12 higher than the previous day's

closing price, as a result of an overnight market buy order for 2000 shares (row 1). A subsequent client buy order for 6000 shares at the market moved the COP to \$0.75 (row 3). The next best bid in the book was a client buy order for 3000 shares at 0.62 (row 2).

20. Li entered his first order to sell 5000 shares at \$0.70 moving the COP to \$0.74 (row 4). Twenty-six seconds later, Li entered an order to sell 8000 shares, matching the volume of the market buy orders, at a limit price of \$0.65, which was significantly lower than the posted COP, and thereby lowered the COP by \$0.09 (row 5). Li's order had no legitimate purpose given the posted COP, his better priced order in the book, which had already set the COP, and the orders of other market participants. Furthermore, immediately after entering Order #2, Li increased the volume of his first sell order at the higher price of \$0.70 to 7000 shares (row 6).
21. Almost an hour later, with no intervening market interest impacting the COP, and thirty-four seconds before the open of trading, Li cancelled Order #2, moving the COP back to the higher price level previously set by Li at \$0.74 (row 8). As a result of the cancellation of Order #2, Li's first order received a fill at \$0.74 at the open (row 9).
22. Li ought to have known that his entry and cancellation of Order #2 would misrepresent the true supply or price for the security, and would secure a price advantage for him.
23. The summary table at Schedule "B" sets out further particulars of the Trading Activity.

III. CONCLUSION

24. The purpose of UMIR 2.2(1) and Policy 2.2 is to prohibit the use of manipulative or deceptive methods, acts or practices which harm market integrity and undermine market confidence.
25. As an experienced trader, Li ought to have known that the Trading Activity constituted a manipulative or deceptive method, act or practice. The Trading Activity misrepresented the supply, demand, or price for the securities in the pre-opening and was undertaken to achieve a profit.

June 22, 2015

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

121 King Street East, Suite 2000

Toronto, Ontario M5H 3T9

SCHEDULE "A"

EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES

2.2 Manipulative and Deceptive Activities

- (2) A Participant or Access Person shall not, directly or indirectly, enter an order or execute a trade on a marketplace if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:
 - (a) a false or misleading appearance of trading activity in or interest in the purchase or sale of the security; or
 - (b) an artificial ask price, bid price or sale price for the security or a related security.

POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES

Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price

For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of

the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:

...

- (e) entering an order or orders for the purchase or sale of a security to:
 - (i) establish a predetermined sale price, ask price or bid price,
 - (ii) effect a high or low closing sale price, ask price or bid price, or
 - (iii) maintain the sale price, ask price or bid price within a predetermined range;
- (f) entering an order or a series of orders for a security that are not intended to be executed;

SCHEDULE "B"

SUMMARY OF THE TRADING ACTIVITY

	Date	Symbol	Market	Frequency Li traded security (Nov. 2011-Nov. 2012)	Li set COP hc= highly contributed	Li's order side in the pre-open	Closing Price Prior Day	Time of Li's Last Order Cancel/Amend	COP before Li's Last Order Cancel/Amend	Opening COP	Impact on COP	Client Market Order volume	Security 14 day average daily volume	Li's total order volume entered in the pre-open	Li's open order volume at the open	Li's trade volume at the open (9h30 AM)	Li's transaction value at the open	Trade Profit and Loss
1	8/8/2012	RRX	TSXV	1	yes	buy	\$2.21	9:29:56.600	\$2.20	\$2.08	-\$0.12	n/a	120,000	13,500	3,000	2,100	\$4,368	\$21
2	8/8/2012	TBL	TSX	0	yes	sell	\$0.62	9:29:26.280	\$0.65	\$0.74	\$0.09	6,000	2,400	20,000	7,000	7,000	\$5,180	\$420
3	8/13/2012	BRY	TSX	2	yes	sell	\$2.60	9:29:52.540	\$2.65	\$2.88	\$0.23	13,000	4,500	20,000	7,000	4,500	\$12,960	\$325
4	8/14/2012	GBN	TSXV	0	yes	buy	\$0.165	9:29:50.550	\$0.165	\$0.16	-0.005	100,000	67,000	50,000	30,000	30,000	\$4,800	\$150
5	8/14/2012	SVV	TSXV	3	yes	sell	\$0.39	9:29:57.820	\$0.40	\$0.445	\$0.045	10,000	20,200	20,000	10,000	10,000	\$4,450	\$38
6	8/16/2012	CVT	TSX	0	yes	buy	\$1.10	9:29:54.060	\$1.08	\$1.01	-\$0.07	26,200	3,600	101,000	15,000	15,000	\$15,150	\$679
7	8/29/2012	SUL	TSXV	0	yes	buy	\$0.045	9:29:50.910	\$0.04	\$0.035	-\$0.005	200,000	86,900	120,000	30,000	30,000	\$1,050	\$150
8	9/4/2012	CWT.UN	TSX	7	hc	sell	\$29.30	9:29:50.080	\$29.34	\$29.41	\$0.07	n/a	225,400	3,000	800	800	\$23,528	(\$72)
9	9/4/2012	SDS	TSXV	0	yes	buy	\$0.455	9:29:07.010	\$0.40	\$0.37	-\$0.03	10,000	4,500	15,000	5,000	5,000	\$1,850	\$150
10	9/18/2012	FTN	TSX	frequent	hc	buy	\$4.90	9:29:39.390	\$4.87	\$4.84	-\$0.03	2,800	11,200	5,500	2,500	2,500	\$12,100	(\$494)
11	9/18/2012	PNP	TSX	11	yes	sell	\$1.24	9:29:55.240	\$1.25	\$1.26	\$0.01	52,000	490,000	140,000	20,000	20,000	\$25,200	\$200
12	9/25/2012	CPC	TSXV	0	yes	sell	\$0.055	9:28:52.580	\$0.07	\$0.08	\$0.01	140,000	19,700	115,000	15,000	15,000	\$1,200	\$0
13	9/27/2012	GZD	TSXV	2	yes	sell	\$0.145	9:29:51.440	\$0.165	\$0.165	\$0.000	26,000	27,800	36,000	26,000	26,000	\$4,290	\$390
14	10/11/2012	AXL	TSX	5	yes	sell	\$0.255	9:29:57.600	\$0.255	\$0.26	\$0.01	10,000	191,700	14,000	4,000	4,000	\$1,040	\$40
15	10/12/2012	CVV	TSX	0	yes	sell	\$0.22	9:29:58.180	\$0.23	\$0.245	\$0.015	70,000	41,400	180,000	60,000	60,000	\$14,700	(\$190)
16	10/23/2012	DND	TSX	1	yes	sell	\$1.81	9:29:51.267	\$1.88	\$1.98	\$0.10	11,000	3,200	5,000	4,000	4,000	\$7,920	\$488
17	10/24/2012	TCK.A	TSX	11	hc	buy	\$32.43	9:29:57.223	\$32.40	\$31.78	-\$0.62	1,000	1,100	1,900	1,200	500	\$15,890	\$524
18	10/26/2012	VEF	TSX	0	yes	sell	\$26.05	9:29:55.695	\$26.30	\$26.80	\$0.50	4,600	5,900	10,000	5,000	4,100	\$109,880	\$3,198
19	10/31/2012	HW	TSX	6	hc	sell	\$14.16	9:29:54.705	\$14.30	\$14.46	\$0.16	12,000	326,200	12,000	6,000	6,000	\$86,760	\$1,261
20	11/1/2012	GDL	TSX	5	yes	buy	\$8.43	9:29:57.107	\$8.30	\$7.87	-\$0.43	4,000	1,600	10,000	5,500	2,800	\$22,036	\$882
																		\$8,160

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