Re Canaccord Genuity Corp.

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

the Universal Market Integrity Rules

and

Canaccord Genuity Corp.

2024 CIRO 18

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: December 20, 2023 in Vancouver, British Columbia (via videoconference)
Decision: December 20, 2023
Reasons for Decision: January 24, 2024

Hearing Panel:
Susan E. Ross, Chair, David Duquette and Brian Worth
Appearances:
Francis Larin, Senior Enforcement Counsel
John Fabello and Marie-Noël Rochon, for Canaccord Genuity Corp.

DECISION ON ACCEPTANCE OF SETTLEMENT AGREEMENT

INTRODUCTION

¶ 1 This Hearing Panel held a settlement hearing to consider whether to accept a settlement agreement dated November 1, 2023, between Enforcement Staff of the Canadian Investment Regulatory Organization ("CIRO") and the Respondent, Canaccord Genuity Corp. ("Settlement Agreement").

¶ 2 The Settlement Agreement was reached and the hearing conducted pursuant to section 8215 (Settlements and Settlement Hearings) and section 8428 (Settlement Hearings) of the Investment Dealer and Partially Consolidated Rules ("IDPC Rules").

¶ 3 The Respondent is a Dealer Member and is a Participant under the Universal Market Integrity Rules ("UMIR").

¶ 4 In the Settlement Agreement, the Respondent admitted that from January 2017 to March 2021, it contravened UMIR Rules and Policies 7.1 and 7.13 by failing to comply with its supervision obligations respecting market access by some of its direct electronic access ("DEA") clients.

¶ 5 The monetary sanction and costs agreed to in the Settlement Agreement are:

(a) a fine of $475,000; and

(b) costs of $25,000.

¶ 6 The Settlement Agreement also includes non-monetary terms for the Respondent to:

(a) retain an independent expert to review and report with remedial recommendations on the Respondent's ongoing compliance with UMIR policies and procedures, including the specific contraventions in the Settlement Agreement;

(b) implement the expert's recommendations; and

(c) report to Enforcement Staff on the Respondent's implementation and adoption of the expert's recommended remedial measures within six months of the acceptance of the Settlement Agreement.

¶ 7 As provided in sections 8203(5)(i) and 8215(2)(vi) of the IDPC Rules, the Settlement Agreement was conditional on acceptance by a hearing panel, and the settlement hearing was closed to the public until the Settlement Agreement was accepted.

¶ 8 At the conclusion of the hearing, we accepted the Settlement Agreement with reasons to follow. These are our reasons for decision.

AGREED FACTS

¶ 9 The agreed facts are set out in full in Part III of the attached Settlement Agreement.

¶ 10 On or about June 5, 2018, the Respondent's parent company became the sole owner of 100% of the shares of another Dealer Member and UMIR Participant, Jitney Trade Inc. ("Jitney"), thus assuming any regulatory liability arising from Jitney's failure to comply with its regulatory obligations.

¶ 11 In November 2019, the Respondent entered into an agreement to assume the provision of DEA to Jitney's former clients. The Respondent began providing that access as of December 2019.

¶ 12 The contraventions occurred during two periods: from January 2017 to December 2019 before the Respondent began providing DEA to Jitney's former clients ("Jitney Period"), and from December 2019 to March 2021 during which the Respondent provided DEA to Jitney's former clients ("CG Period").

The Jitney Period (January 2017 – December 2019)

¶ 13 During the Jitney Period, Clients A and B were DEA clients accessing marketplaces through Jitney's trading system.

¶ 14 Jitney did not receive or request Clients A and B to provide their list of authorized personnel pursuant to UMIR 7.13.

¶ 15 Clients A and B executed 14,484 and 1,364 trades, respectively, that involved no change in beneficial or economic ownership ("wash trades").

¶ 16 Jitney's tools in place to monitor wash trades executed by DEA clients had a gap that resulted in the failure to detect and prevent such activity on one marketplace. Consequently, over 10,000 wash trades were executed without detection and not prevented as intended, and Jitney's ability to initiate client trade interventions and file gatekeeper reports with CIRO was impeded.

¶ 17 Lapses in supervisory controls, policies and procedures also resulted in a smaller number of uncancelled wash trades, executed primarily on another marketplace, and impeded Jitney's initiation of client trade interventions and filing of timely gatekeeper reports.

The CG Period (December 2019 - March 2021)

¶ 18 During the CG Period, the Respondent employed most of Jitney's staff responsible for monitoring and supervising trading by Jitney's DEA clients.

¶ 19 Client A was a DEA client accessing marketplaces through the Respondent's trading system.

¶ 20 The Respondent did not receive or request Client A to provide their list of authorized personnel pursuant to UMIR 7.13.

¶ 21 Client A executed 5,546 wash trades.

¶ 22 The Respondent's tools in place to monitor wash trades executed by DEA clients had a gap that resulted in the failure to detect and prevent such activity on one marketplace. Consequently, several thousand wash trades were executed without detection and not prevented as intended, and the Respondent's ability to initiate client trade interventions and file gatekeeper reports with CIRO was impeded.

¶ 23 The Respondent used a tool to monitor possible instances of "Algo Manipulation (opposite side trade near cancel)", by generating an alert "where a trader enters a relatively large buy or sell order to create short term apparent liquidity...whilst it executes a trade on the opposite side of the market." This tool primarily generated false positives.

¶ 24 During the CG Period, 1,667 alerts were issued for Client A, including the Algo Manipulation alert. While the Respondent made some efforts to monitor and query the alerts, its post-trade monitoring reports and review records did not provide adequate written explanation of the reviews performed respecting the alerts and the factors considered in dismissing them.

Other Factors

¶ 25 The Respondent has taken additional steps to regularly monitor, prevent or cancel wash trades.

¶ 26 The wash trades that were not identified by the Respondent were a small fraction of the total DEA trades executed during the Jitney and CG Periods.

¶ 27 Since acquiring Jitney, the Respondent has undertaken and continues to improve its compliance with UMIR policies and procedures, with the help of an independent expert.

¶ 28 The contraventions admitted in the Settlement Agreement were unintentional and historical in nature.

¶ 29 Jitney has a relevant disciplinary history reported in two settlement decisions: *Re Jitney Trade* 2013 IIROC 42, and *Re Jitney Trade* 2017 IIROC 25.

¶ 30 In the *Re Jitney Trade* (2013), Jitney agreed that during two periods, February to September 2010 and February 2011 to February 2012, it contravened UMIR Rule and Policy 7.1 by failing to implement an appropriate trade supervision system reasonably well designed to prevent and detect violations of UMIR requirements for the size and nature of Jitney's Direct Market Access ("DMA")[1] client business. Following an IIROC review, Jitney used a third-party real-time marketplace monitoring system for a trial period during which that system flagged numerous trades associated with orders submitted by a particular high-volume DMA client. Jitney decided not to purchase the third-party system on the reasoning that it would trigger too many alerts, and instead opted to develop its own in-house electronic trade surveillance system which only became operational in February 2012.

¶ 31 The *Re Jitney Trade* (2013) settlement decision observed that during the periods of non-compliance, Jitney's DMA clients "represented a percentage of the volume of trading on Canadian markets that could practically be termed colossal" (para. 47) and Jitney's non-compliance with its supervision obligations could have seriously affected Canadian securities markets (para. 61). A $90,000 fine was imposed in the settlement.

¶ 32 In the *Re Jitney Trade* (2017) settlement, Jitney agreed that, between September 2013 and October 2014, it contravened UMIR Rule and Policy 7.1 by failing to adequately comply with its supervision obligations to prevent and detect trading violations by one of its DEA clients. Jitney's in-house electronic trade surveillance system generated numerous alerts, daily, respecting potential manipulative trading activity by the DEA client. However, Jitney did not quantify or analyze the type or number of alerts generated with the result that Jitney could not adequately measure or assess the volume of potentially manipulative trading by the DEA client that was being flagged. Despite filing multiple gatekeeper reports relating to manipulative marketing practices by the DEA client, and the alerts generated by the surveillance system, Jitney did not implement heightened supervision of the DEA client's trading. Jitney's surveillance system generated an alert for only one of the potentially manipulative trading events flagged in the multiple gatekeeper reports. Jitney also had no ability to determine the trader responsible for the manipulative trading as all the DEA client's trading activity was

[1] DMA is the predecessor of DEA.

entered under a common trading identification number.

¶ 33 Investment Industry Regulatory Organization of Canada ("IIROC")[2] staff concluded that the DEA client had engaged in hundreds of manipulative trading events. The *Re Jitney* Trade (2017) settlement imposed a $200,000 fine on the firm. The Ontario Securities Commission also prosecuted the DEA client for engaging in deceptive and manipulative trading on Canadian markets between November 2013 and December 2014 and reached a settlement imposing a $225,000 fine and remedial measures on the DEA client.

THE CONTRAVENTIONS

¶ 34 UMIR Rule and Policy 7.1 require every Participant to develop, implement and maintain policies and procedures that are reasonably designed to ensure compliance with applicable regulatory requirements.

¶ 35 UMIR Rule 7.13 imposes requirements on every Participant respecting the granting of DEA to its clients. Amongst those provisions, UMIR 7.13(3)(b)(i) requires each DEA client to agree to notify the Participant in writing of the names of the personnel that the client has authorized to enter an order using DEA, and UMIR 7.13(a)(ii) requires each DEA client to agree not to permit any person to transmit an order using DEA other than the personnel authorized and named by the DEA client under UMIR 7.13(b)(i).

¶ 36 In providing DEA to CIRO-regulated marketplaces, a Participant is not relieved of its obligations under the UMIR respecting supervision of the trading activities of DEA clients but retains full responsibility for any order entered by a DEA client, and must adequately address additional risks posed by such orders.

¶ 37 The Respondent has admitted, with reference to the agreed facts in the Settlement Agreement, that from January 2017 to March 2021, it contravened UMIR Rules and Policies 7.1 and 7.13 by failing to comply with its trading supervision obligations to maintain a system of risk management and supervisory controls, policies and procedures that are reasonably designed to ensure compliance with the applicable Rules and Policies, specifically as they relate to market access by some of its DEA clients.

ANALYSIS

ROLE OF THE HEARING PANEL

¶ 38 A hearing panel may accept or reject a settlement agreement after a settlement hearing (IDPC Rule 8215(5)). We have no authority to modify the Settlement Agreement or to consider facts outside the Settlement Agreement without the consent of the parties (IDPC Rule 8428(6)). Our role is to decide whether the proposed sanctions fall within a reasonable range of appropriateness, not whether we would have imposed the same sanctions as those negotiated by the parties in the Settlement Agreement.

¶ 39 Enforcement Counsel referred us to several decisions explaining the principles that guide our role. A widely cited summary of those principles is found in *Re Mileski*, [1999] IDACD No. 17, where the hearing panel said:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.
>
> This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to "accept", rather than approve, a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so in a settlement hearing differ

[2] IIROC is one of the predecessors of CIRO, formed on January 1, 2023, by way of an amalgamation with the Mutual Fund Dealers Association of Canada.

> from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one. (pp. 9-10)

¶ 40 Enforcement Counsel also cited *Re Jacob* 2017 IIROC 17, where a hearing panel considered whether to prefer a more stringent test than *Mileski*, derived from the criminal case of *R. v. Anthony-Cook*, 2016 SCC 43.

¶ 41 *Anthony-Cook* raised the threshold for when a judge can reject a joint sentencing submission in a criminal proceeding. The court held (paras. 32-34) that a joint submission may be departed from only where its acceptance, despite the public interest considerations supporting it, would bring the administration of justice into dispute or otherwise be contrary to the public interest. This public interest test will only be met where the joint submission is so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable persons aware of all the circumstances, including the importance of providing certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

¶ 42 After discussing differences between regulatory and criminal processes, the hearing panel in *Re Jacob* concluded that the *Mileski* test, which has stood the test of time, should be retained in the context of settlements in the investment industry. The hearing panel in Re *M Partners and Isenberg* 2018 IIROC 25, also cited by Enforcement Counsel, followed *Re Jacob* and concluded that:

> We agree with the reasoning in *Jacob*. The use of the *Anthony Cook* test is not appropriate in the regulatory context for a hearing panel to use in considering whether to accept a settlement agreement between IIROC and the subject of IIROC enforcement. IIROC panels have expertise interpreting UMIR. They have no expertise in criminal law. Although application of the two tests will likely produce the same result, it is better to use only the test in *Mileski*. (para. 27)

¶ 43 In *Re Scotia Capital* 2017 IIROC, para. 10, the tests in *Mileski* and *Anthony-Cook* were described as virtually the same except that Anthony-Cook "presents a stronger presumption in favour of acceptance of joint settlement submissions than does *Mileski*." In Re Ber 2022 IIROC 08, para. 12, the *Anthony-Cook* test was characterized as a fuller articulation of the *Mileski* test.

¶ 44 In our view, the *Anthony-Cook* test is more stringent than the *Mileski* test, although the difference between the tests may not be substantial enough to affect the result in most cases.

¶ 45 We agree with the hearing panels in *Re Jacob, Re M Partners* and *Isenberg*, and *Re Fairclough* 2011 IIROC 20, paras. 20-23, that the regulatory process governing CIRO settlements and the plea bargain process in criminal proceedings are not equivalent contexts.

¶ 46 Some self-regulatory regimes may have rules and procedures that closely parallel the process and standard for criminal proceedings in Anthony-Cook. However, in the CIRO process: a settlement agreement is conditional and only effective on acceptance by a hearing panel (IDPC Rule 8215(2)(vi)); a settlement hearing is confidential and only becomes public if and when the settlement agreement is accepted (IDPC Rule 8203(5)(i)); a settlement agreement may impose obligations that could not have been imposed by a hearing panel (IDPC Rule 8215(4)); if a settlement agreement is rejected, the parties may enter into another one (IDPC Rule 8215(8)(i)); and a hearing panel's reasons for rejecting a settlement agreement must be made available to a hearing panel considering a subsequent settlement agreement based on the same or related allegations (IDPC Rule 8215(8)(ii).

¶ 47 As the hearing panel in *Re Fairclough* also explained:

> The range of appropriateness and its reasonableness [in IIROC proceedings] are determined in light of IIROC's Sanction Guidelines, which are intended to assist hearing panels in deciding whether to accept settlements, as well as in determining appropriate sanctions in contested proceedings. Thus, protection of the public interest requires consideration of the conduct admitted by a settling respondent with respect to specific deterrence of the respondent, general deterrence of similar conduct by others and the proportionality of the agreed sanctions in light of industry expectations and prior hearing panel decisions. (para. 23, referring to the Sanctions Guidelines, Principle 1)

¶ 48 In exercising our role, we considered the facts in the Settlement Agreement, the Sanction Guidelines, the

parties' submissions, and comparable settlement decisions provided to us and approved the Settlement Agreement on the basis of the *Mileski* test.

THE SANCTION GUIDELINES

¶ 49 The Sanction Guidelines, while non-exhaustive and non-binding on hearing panels, are intended to reinforce consistency, fairness, and transparency in the sanctioning process. They cover such principles as the expectation that sanctions are preventative, not punitive; that offenders should not be able to benefit financially from their misconduct; that multiple violations should be sanctioned proportionately to the totality of the misconduct; and that repeat offenders should be treated more severely.

¶ 50 The Sanction Guidelines explain that sanctions should address specific and general deterrence, weigh relevant mitigating and aggravating factors, and conform to sanctions in comparable prior cases. They list key factors that are commonly considered when determining appropriate sanctions. The listed factors, not all of which will apply to every case, include the number, size, extent and duration of the transactions in issue, whether there was a pattern of misbehaviour, the extent of harm caused by the misconduct, the vulnerability of victims and efforts to compensate them, financial benefit to the respondent, prior disciplinary history, whether the misconduct was intentional, wilfully blind or reckless respecting regulatory requirements, and whether the misconduct occurred notwithstanding prior warnings from regulators or supervisors.

¶ 51 When the sanctions are pursuant to a settlement agreement, the sanctioning process is affected by the limitations on the role of the hearing panel. This includes recognition that proposed sanctions are arrived at through the give and take of negotiations between the parties and settlements usually bring the benefits of reducing the expenditure of regulatory resources and being more expeditious than contested hearings.

REASONABLENESS OF THE PROPOSED SETTLEMENT

¶ 52 The monetary and non-monetary sanctions in the Settlement Agreement are:

(a) a fine in the amount of $475,000;

(b) costs in the amount of $25,000;

(c) the Respondent will retain an independent expert to review and report with remedial recommendations on the Respondent's ongoing compliance with UMIR policies and procedures, including the specific contraventions in the Settlement Agreement;

(d) the Respondent will implement the expert's recommendations; and

(e) the Respondent will report to Enforcement Staff on the implementation and adoption of the expert's recommended remedial measures within six months of the acceptance of the Settlement Agreement.

¶ 53 The contraventions involved a significant number of transactions that occurred over two significant periods of time. During each period, there was a gap in the Respondent's system for monitoring trading activity that was compounded by the Respondent's failure to maintain the required list of DEA client personnel authorized to enter orders for some of its DEA clients. These factors weigh in favour of more severe sanctions.

¶ 54 General Principle 2 of the Sanction Guidelines states that: "A prior disciplinary record for a similar or identical contravention strongly suggests that the prior sanction was not a sufficient deterrent, thereby necessitating an increased sanction in order to address specific deterrence." *Re Jitney Trading* (2013) and *Re Jitney Trading* (2017) are a serious prior disciplinary record for similar contraventions. This also weighs in favour of more severe sanctions.

¶ 55 We agree with Enforcement Counsel that General Principle 7 of Sanction Guidelines, inability to pay, is not a factor in this case.

¶ 56 The contraventions were not intentional. The Respondent has taken additional steps to monitor, prevent and cancel wash trades. By entering into the Settlement Agreement, the Respondent has saved the time and regulatory resources involved in a contested hearing. These are mitigating factors.

¶ 57 The parties submitted that the contraventions entailed no financial benefit to the Respondent. We asked whether this was being asserted as a mitigating factor in the absence of agreed facts on the issue and understood the parties' response to be that we should consider financial benefit to be a neutral factor in this case. General Principle 4 of the Sanction Guidelines states that: "Sanctions should ensure that a respondent does not financially benefit as a result of the misconduct." Financial benefit is described to include "any profits, commissions, fees, or any other compensation or other benefit received by the respondent, directly or indirectly, as result of the misconduct." We find an assumption that financial benefit is not a relevant factor to be troubling in view of the large number of transgressing transactions that contributed to the Respondent's business model. On the information available to us in the Settlement Agreement, we consider the reasonable likelihood of some financial benefit to the Respondent from the contraventions to be an aggravating factor, albeit one that was not quantified in the Settlement Agreement.

¶ 58 General Principle 9 of the Sanction Guidelines contemplates tailored remedial sanctions to prevent the recurrence of misconduct and deter others from similar misconduct. Remedial sanctions may include the retention of an independent consultant to develop or implement procedures for improved regulatory compliance. The Respondent has agreed to retain an independent expert to review its compliance with UMIR policies and procedures, to implement remedial measures recommended by the expert, and to report to Enforcement Staff in that regard. These are meaningful remedial sanctions to address the Respondent's future compliance.

¶ 59 Enforcement Counsel referred us 10 prior settlement decisions. *Re Jitney Trading* (2013) and *Re Jitney Trading* (2017) are among them. The periods of contravention in the cases cited were between 2005 and 2020 and they ranged in duration from 11 months to 8 years. The fines imposed ranged from $90,000 to $500,000. The facts and contraventions are not identical. They involved inadequate supervision of specific Registered Representatives as well as deficient design of supervisory systems for preventing and detecting manipulation and deceptive trading practices, supervising the trading activities of DEA clients, and ensuring the qualifications of clients to purchase exempt securities. Not all the cases involved UMIR-related contraventions.

¶ 60 The parties submitted that this is a moderate case of episodic lapses that is being settled with a high proposed fine. The lapses flowed from inadequate as opposed absent supervisory systems and the unidentified wash trades were a small fraction of the Respondent's total DEA trades during the relevant periods. Our perspective is somewhat different. There are some mitigating factors, and we recognize that a reasonable settlement entails compromise and the balancing of factors and interests. However, the nature, extent and duration of the contraventions are significant, and there is a notable prior disciplinary record relating to similar contraventions. The collective circumstances of the case are serious and warrant a high sanction.

¶ 61 The proposed fine of $475,000 is at the high end of the settlement decisions cited to us and is higher than the fines imposed in the *Re Jitney Trading* (2013) and *Re Jitney Trading* (2017) settlements. The remedial terms are significant measures to ensure future compliance. We concluded that the proposed settlement is within a reasonable range of sanctions reflecting the severity of the contraventions, general and specific deterrence, and future compliance.

CONCLUSION

¶ 62 We approved the Settlement Agreement on December 20, 2023, the date of the settlement hearing.

¶ 63 In accordance with the terms of the Settlement Agreement, the agreed sanctions and costs were payable within 30 days of our acceptance of the Settlement Agreement unless otherwise agreed to by Enforcement Staff and the Respondent.

DATED at Vancouver, British Columbia, this 24 day of January 2024.

"Susan E. Ross"

Susan E. Ross, Chair

"David Duquette"

David Duquette

"Brian Worth"

Brian Worth

SETTLEMENT AGREEMENT

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

the Universal Market Integrity Rules

and

Canaccord Genuity Corp.

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization ("CIRO")[1] will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the "Investment Dealer Rules") to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Canaccord Genuity Corp. ("CG" or the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

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

PART III – AGREED FACTS

¶ 3 The Respondent is registered as a Dealer Member and is a Participant under the Universal Market

[1] On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation.

The Canadian Investment Regulatory Organization ("CIRO") has adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Section 1105 (Transitional provision) of the Investment Dealer and Partially Consolidated Rules sets out CIRO's continuing jurisdiction, including that CIRO shall continue the regulation of any person subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.

Integrity Rules (“UMIR”).

¶ 4 On or about June 5, 2018, the Respondent’s parent company became the sole owner of 100% of the shares of another CIRO Dealer Member and Participant under UMIR, Jitney Trade Inc. (“Jitney”), thus assuming any regulatory liability arising from Jitney’s failure to comply with its regulatory obligations.

¶ 5 As of December 2019, the Respondent began providing direct electronic access (‘’DEA’’) to Jitney’s former clients.

Regulatory Requirements

¶ 6 In providing DEA to CIRO-regulated marketplaces, a Participant is not relieved from its obligations under UMIR pertaining to the supervision of trading activities by its DEA clients.

¶ 7 Under UMIR, such Participant retains full responsibility for any order entered by a DEA client and must adequately address the additional risks posed by orders entered by DEA clients to the marketplaces.

¶ 8 Pursuant to UMIR 7.1 and UMIR Policy 7.1, a Participant must develop, implement and maintain policies and procedures which are reasonably designed to ensure compliance with applicable rules.

¶ 9 UMIR 7.13 provides the requirements under which a Participant may grant DEA to its clients, including that such clients shall immediately notify the Participant in writing of the names of its personnel authorized to enter an order using DEA, as well as details of any changes thereof.

DEA Provided by Jitney

¶ 10 Clients A and B respectively opened their accounts with Jitney in December 2012 and January 2014.

¶ 11 From January 2017 to December 2019 (the “Jitney Period”), both A and B were DEA clients and as such, accessed marketplaces through Jitney’s trading system.

¶ 12 During this period Jitney did not receive from, nor request to its clients A and B (collectively, the “Clients”), the list of their authorized personnel pursuant to UMIR 7.13.

¶ 13 Furthermore, during the Jitney Period, clients A and B have executed respectively 14,484 and 1,364 trades which involved no change in the beneficial or economic ownership (“wash trades”).

¶ 14 While Jitney had certain tools in place to monitor wash trades executed by its DEA clients, those tools included a gap which resulted in the failure to detect and prevent such activity on one marketplace.

¶ 15 As a result of this gap, during the Jitney Period, over 10,000 trades which apparently involved no change in the beneficial or economic ownership (“wash trades”) were not prevented as intended and were executed without being detected. This in turn impeded Jitney’s ability to initiate client trade interventions and to file gatekeeper reports with CIRO.

¶ 16 Due to lapses in supervisory controls, policies and procedures, a smaller number of uncancelled wash trades executed primarily on another marketplace were also not reported in a timely manner via gatekeeper reports with CIRO and this, in turn, impeded Jitney’s ability to initiate client trade interventions.

DEA Provided by Respondent

¶ 17 In November 2019, the Respondent entered into an agreement whereby it assumed the provision of DEA access to Jitney’s DEA clients.

¶ 18 For the relevant period pertaining to this matter, most of Jitney’s staff responsible for monitoring and supervising this activity were subsequently employed by the Respondent.

¶ 19 From December 2019 to March 2021 (the “CG Period”), A was a DEA client and as such, accessed marketplaces through the Respondent’s trading system.

¶ 20 During this period the Respondent did not receive from, nor request to its client A, the list of its authorized personnel pursuant to UMIR 7.13.

¶ 21 During the CG Period, client A has executed 5,546 wash trades.

¶ 22 While the Respondent had certain tools in place to monitor wash trades executed by its DEA clients, those tools included a gap which resulted in the failure to detect and prevent such activity on one marketplace.

¶ 23 As a result of this gap, during the CG Period, several thousand wash trades were not prevented as intended and were executed without being detected. This in turn impeded the Respondent's ability to initiate client trade interventions and to file gatekeeper reports with CIRO.

¶ 24 From December 2019 to March 2021, the Respondent used a tool to monitor possible instances of "Algo Manipulation (opposite side trade near cancel)", by generating an alert "where a trader enters a relatively large buy or sell order to create short term apparent liquidity...whilst it executes a trade on the opposite side of the market", which primarily generated false positives.

¶ 25 During this period, 1,667 alerts were reviewed with respect to client A, including the alert described in paragraph 24.

¶ 26 While the Respondent made some efforts to monitor and query the alerts, the Respondent's post-trade monitoring reports and review records in respect of the alert described at paragraph 24 did not provide adequate written explanation of the reviews actually performed in connection with these alerts and the factors considered in dismissing the alerts.

¶ 27 The Respondent has since taken additional steps to regularly monitor, prevent or cancel wash trades.

¶ 28 Wash trades that were not identified by the Respondent represented a small fraction of the total DEA trades executed during the relevant periods.

¶ 29 Since acquiring Jitney in 2018, the Respondent has undertaken and continues to be in the process of improving UMIR compliance policies and procedures, with the help of an independent expert.

¶ 30 The breaches that form the subject matter of this settlement agreement were unintentional and historical in nature.

¶ 31 Jitney has a prior and relevant disciplinary history.

¶ 32 The Respondent undertakes to:

(a) retain an independent expert whose mandate will be to review the Respondent's ongoing UMIR compliance policies and procedures to expressly include the specific contraventions herein, and to issue a report setting out recommendations; and

(b) implement the expert's recommendations accordingly.

PART IV – CONTRAVENTIONS

¶ 33 By engaging in the conduct described above, the Respondent committed the following contraventions of CIRO requirements:

From January 2017 to March 2021, the Respondent failed to comply with its trading supervision obligations to maintain a system of risk management and supervisory controls, policies and procedures that are reasonably designed to ensure compliance with the applicable Rules and Policies, more specifically as they relate to market access by some of its direct electronic access clients, thus contravening UMIR Rules and Policies 7.1 and 7.13.

PART V – TERMS OF SETTLEMENT

¶ 34 The Respondent agrees to the following sanctions and costs:

(a) a fine of $ 475,000 payable by the Respondent to CIRO; and

(b) costs of $ 25,000 payable by the Respondent to CIRO.

¶ 35 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 Enforcement Staff and the Respondent.

¶ 36 The Respondent agrees to implement the remedial measures described in paragraph 32 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.

PART VI – STAFF COMMITMENT

¶ 37 If the hearing panel accepts this Settlement Agreement, Enforcement Staff will not initiate any further action against the 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.

¶ 38 If the hearing panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

¶ 39 This Settlement Agreement is conditional on acceptance by the hearing panel.

¶ 40 This Settlement Agreement shall be presented to a hearing panel at a settlement hearing in accordance with sections 8215 and 8428 of the Investment Dealer Rules, in addition to any other procedures that may be agreed upon between the parties.

¶ 41 Enforcement Staff and the Respondent agree that this Settlement Agreement will form all 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.

¶ 42 If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of CIRO and any applicable legislation to any further hearing, appeal and review.

¶ 43 If the hearing panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.

¶ 44 The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.

¶ 45 This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the hearing panel's written reasons for its decision to accept this Settlement Agreement.

¶ 46 If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

¶ 47 This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the hearing panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

¶ 48 This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

¶ 49 An electronic copy of any signature will be treated as an original signature.

DATED this 1st day of November, 2023.

_____	"Stuart Raftus" _____
Witness	Respondent

"Francis Larin"
Mr. Francis Larin
Enforcement Counsel on behalf of Enforcement Staff of the Canadian Investment Regulatory Organization

The Settlement Agreement is hereby accepted this 20th day of December, 2023 by the following Hearing panel:

Per: "Susan E. Ross"
Chair

Per: "Brian Worth"
Industry Member

Per: "David Duquette"
Industry Member