Challenges for Retail Trading Firms to Meet Gatekeeping Obligations

Research Project for Emerging Issues / Advance Topics Course

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June 7, 2024

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Table of Contents

Glossary

Advisor: includes any individual who is approved to accept trades from clients and/or is approved to execute trades within the exchanges. This includes Advisors, Associates, Portfolio Managers , Assistants (if properly licensed) or institutional Fund managers.

Alternate Trading System: is an exchange or marketplace, where buy and sell orders are matched.

Anti-Money Laundering Training Requirements: on a yearly basis, firms are required to provide Advisors anti-money laundering training, which includes instructions on how you can detect anti-money laundering activities and what to do in an event an Advisor becomes suspicious that a transaction maybe related to anti-money laundering.

Artificial price: a price that differs from the price that would result from the market operating freely and fairly on the basis of information concerning true market supply and demand.[1]

Bid Price: the price a buyer is prepared to pay for a stock.

[1] "In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", Alberta Securities Commission, February 2, 2021. Accessed on May 7, 2024 from https://www.asc.ca/-/media/ASC-Documents-part-1/Notices-Decisions-Orders-Rulings/Enforcement/2021/02/Kilimanjaro-Capital-Ltd-DECISION-20210202-5945782.ashx , paragraph 162, as cited in Podorieszach on paragraph 85

Canadian Securities Institute: is a credential body that is endorsed by regulators to provide education to financial professionals.[2]

Ceased Trade Orders: are issued by provincial securities commissions and is where trading in issuers is prohibited. Cease trade orders can be issued if required filings to the provincial securities commissions by the issuer is not made within the specified time or there is an enforcement action against the issuer with claims of potential wrongdoing.[3]

Change Former Order: A trader may change the terms of an order already entered in the marketplace for the following reasons:

- If the security, symbol, market or the order type (buy or sell) needs to be changed, the order must be cancelled and re-entered.
- If any of the following changes are entered, a new effective time stamp will be given to the order:
    - change in price;
    - increase in disclosed volume;
    - a change in the underlying client.

[2] Canadian Securities Institute, webpage, "About CSI". Accessed on May 11, 2024, from https://www.csi.ca/en/about

[3] Canadian Securities Administrators, webpage, "Cease Trade Orders". Accessed on May 11, 2024, from https://www.securities-administrators.ca/enforcement/cease-trade-orders-overview/#:~:text=A%20cease%20trade%20order%20(CTO,a%20company%20or%20an%20individual

- If any of the following changes are entered, the order will keep its original effective time stamp:
    - decrease in disclosed volume.
    - changes in undisclosed volume.[4]

Retail trading firms or Investment Dealers: are members of Canadian Investment Regulatory Organization who can sell any securities to investors listed on the exchange.

Know Your Client: sets out the requirement that Advisors must know the essential facts of the client, including the client's personal and financial circumstances. This information is required in order to ensure that proper investment recommendations are provided to the client. Advisors as part of the know your client process are required to verify the client's identity to meet anti-money laundering regulations.

Layering: refers to placing a bona fide order on one side of the market, while simultaneously trading on other side of the market, without intention to trade. The purpose is to bait other investors to think there is more supply or demand in the market and trade with the bona fide order on the other side.[5]

[4] Central Bank of Bahrain, webpage, "Alteration of Orders (Change Former Order-CFO)". Accessed on May 30, 2024 from https://cbben.thomsonreuters.com/rulebook/alteration-orders-change-former-order-cfo

[5] "Market Integrity Notice Guidance – Entering Orders on Both Sides of The Market No 2005-029", Market Regulation Services Inc., September 15, 2005. Accessed on April 22, 2004, from https://www.ciro.ca/media/3547/download?inline

Marketplace or Exchange: where buyers and sellers meet to bid on listed securities. Exchanges provide listing function for securities.

Microcap Liquidation Scheme: involves coordinated effort of insiders over share transactions, where they pump the security via promotional efforts, while simultaneously liquidating the issuer's shares into the market.[6]

Order Book: electronic list that records buy and sell orders placed on the exchanges within the retail trading firm by all Advisors.

Private Placement: usually sold via offering memorandum and is exempt form prospectus requirement. Private Placement is sold by the issuer to selected investors who qualify to purchase the investment. These investments are not traded on the public exchange.

Spoofing: placing fake orders to create false impression of supply or demand, influencing other investors and manipulating the price.

SRO: Self-Regulatory Organization

[6] "In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", paragraph 167

System of Electronic Disclosure by Insiders ("**SEDI**"): is an electronic system for filing and publicly disseminating insider trading reports.[7]

Toute Campaign: form of marketing campaign that promotes an issuer through online resources.

Trade Ticket: document that includes details of the trade order, including the following: (1) Type of order – buy or sell; (2) Price limit of the order; (3) Security; (4) Amount of the order; (5) Any time limits placed on the order, such as a day order, good till cancelled order etc. (6) Amount of shares; (7) Audit of the order including the fills received, outstanding shares remaining from the order, time stamp of when the order was entered and details related to change of former order; and (8) Fill information, including fill date, and time the order was filled.

Uptick trading: When there is an increase in the price of the security compared to the previous trade resulting from trading activity.

[7] Ontario Securities Commission, webpage, "SEDI". Accessed on May 30, 2024, from https://www.osc.ca/en/sedi#:~:text=The%20System%20for%20Electronic%20Disclosure,publicly%20disseminating%20insider%20trading%20reports

Introduction

Research shows that Canadians rely on investment strategies or stock trading as the means to accumulate wealth. Key statistical information outlines that:

- By end of 2021, the estimated value of global share trading was approximately $56.6 trillion[8];
- Canada's share of the world equity market as of January 2022, represented 2.5%[9];
- Canadians ranked 4th out of 16 countries to use stock trading as their wealth strategy[10];
- 39% of Canadians invest in stocks, placing Canada 6th place among 16 countries, ahead of Australia, UK, Germany, France, South Africa and Mexico[11]. *See Chart 1 – World stock markets: Who holds equities?* which provides an overview of the world stock markets; and
- In 2021 retail investors accounted for 52% of global assets under management, this number is expected to increase to 61% by 2030".[12] Specifically,

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[8] Romana King, "Statistics and facts about the stock market", Finder, May 10, 2023. Accessed on May 27, 2024 from https://www.finder.com/ca/stock-trading/stock-trading-statistics

[9] IBID

[10] IBID

[11] "Global Data Canada Wealth Management – Market Sizing and Opportunities to 2025", GlobalData, July 30, 2021. Accessed on May 20, 2024, from https://www.globaldata.com/store/report/canada-wealth-management-market-analysis/#:~:text=The%20Canadian%20resident%20retail%20savings,the%20forecast%20period%202021%2D2025

[12] Hamlin, Jessica, "The Institutional Share of Global Capital is Shrinking. What Does This Mean for Managers?", Institutional Investor, March 10, 2022. Accessed on May 20, 2024 from

> *The Canadian resident retail savings and investments market was $3,145.81 billion in 2020. The market is expected to grow at a CAGR of more than 5% during the forecast period 2021-2025…. The most preferred investment channel for Canadian investors across all three affluent classes is that of an investment advisory through a bank, with which they have an investment account. The preference for this type of investment channel is particularly driven by the trust that clients place in the bank's advisory business as well as the personal relationship they share with the advisor, who is expected to have a proper understanding of the client's goals.*[13]

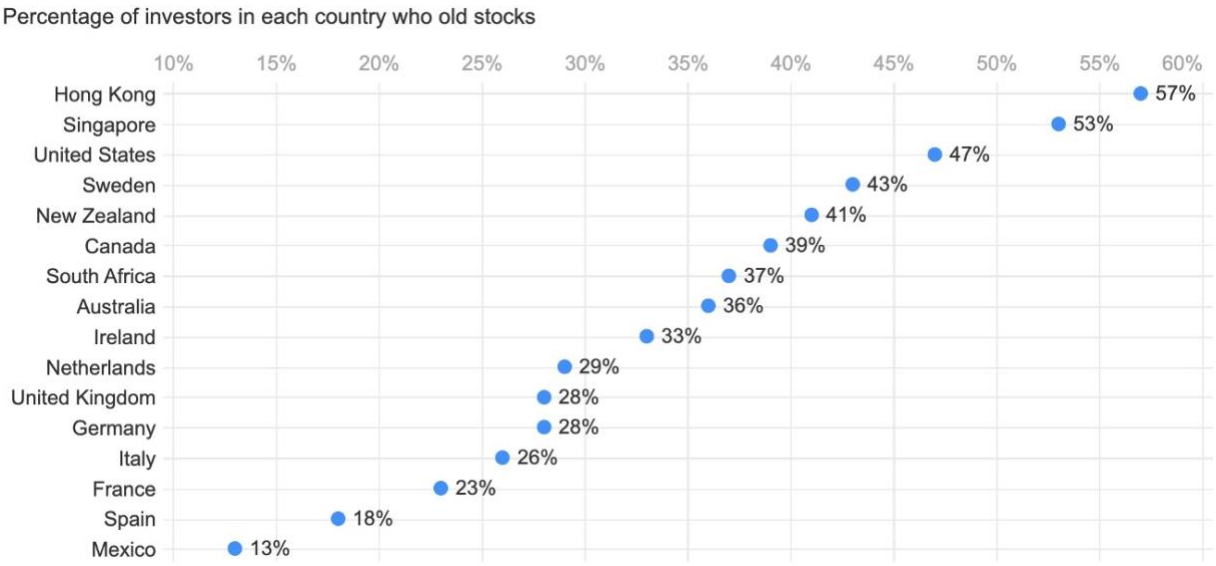
Large number of Canadians use Advisors through retail trading firms to achieve their investment goals. Therefore, it's very important that investors have equal access to the marketplace and that there is transparency and integrity within the Canadian financial system. Proper governance of the Canadian marketplace is imperative to ensure an existence of a transparent, equitable, and well-regulated financial system that will support the continued growth and trust within the financial services industry.

Chart 1 – World Stock Markets: Who holds equities?[14]

https://www.institutionalinvestor.com/article/2bstmxkxtc18sjq0b0zr4/portfolio/the-institutional-share-of-global-capital-is-shrinking-what-does-this-mean-for-managers

[13] "Global Data Canada Wealth Management – Market Sizing and Opportunities to 2025"

[14] Romana King



The paper will discuss how retail trading firms meet their obligation towards maintaining investor's trust within the financial markets and how equitable transparent access to the stock market is achieved. To understand the magnitude of the responsibility of maintaining an open and efficient market free from market manipulators we need to understand the complex structure of the financial markets. This paper will first review the various exchanges available through which investors can access specific issuers. Investors are able to participate in the equity financial markets through various channels or exchanges which list publicly traded companies. Companies are added to a specific exchange depending on the size of the issuer, revenue generation, cash flow, assets, management of the board and other relevant factors. We will also explore trading volume and activity that occurs within equity markets.

To ensure that investors have fair access to the marketplace and exchanges, the Canadian financial markets are governed by various regulatory institutions. This includes the Canadian Investment Regulatory Organization, the Canadian Securities Administrators, the Provincial Securities Commissions, and the individual exchanges, each

of which has their own set of rules governing the trading activity within the Canadian financial markets. This paper will explore each organization and its purpose within the Canadian financial markets.

This paper will also discuss the various ways investors can gain access to the stock markets. Investors can access the public markets through various channels and firms, including online brokerage firms and the wealth management firms, where you will see the traditional Advisor and client relationships. This paper will review the various entities through which trades can be executed and what the trade execution process looks like from getting client approval for execution of the trades (relevant for the retail trading firms); to execution of the trade on the various exchanges and settlement of the trade. While there exist different options through which investors can gain access to markets, the availability of these options adds a level of complexity for regulators to ensure that the markets remain free from market manipulators.

The paper will next review the oversight measures that all retail trading firms must adhere to in order to maintain integrity within the financial system. The Canadian regulatory institutions have established rules and regulations for retail trading firms to create internal controls required to prevent and identify instances of market manipulation by approved individuals who execute trades on the exchanges, hereinafter referred to as "**Advisors**" and clients. In addition to internal controls that deal with operational aspects of trading activity, regulations also include ethical expectations from regulators for Advisors and firms. Retail trading firms as part of their requirements to prevent and detect market manipulation commonly referred to as their gatekeeping responsibilities, must incorporate ethical considerations within their organization in order to safeguard the market

from market manipulators. This paper will explore the various internal controls in place that assist firms to meet their gatekeeper responsibility, related to market manipulation activities.

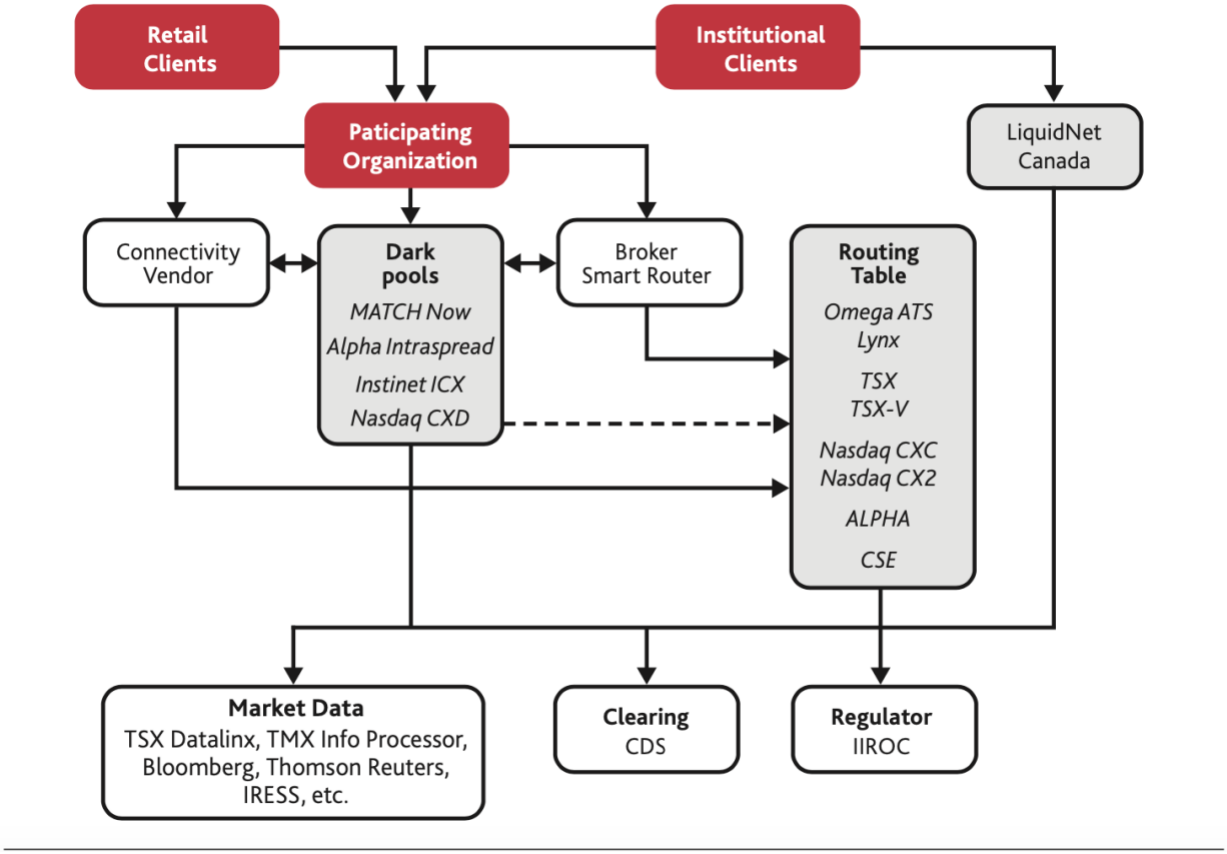
As clients place heavy reliance on the equity marketplace to meet their financial objectives, including generation of income and wealth, it is crucial to ensure that trading platforms are operating with integrity. When Advisors and clients engage in market manipulation, they influence access to a transparent and fair marketplace for all investors, affecting market stability and financial integrity. Regulators have given investment dealers the responsibility to act as gatekeepers to Canada's financial system. However, given the complexities of financial markets, including the role of technology, market structure and behavioral factors of investors and Advisors, this makes it difficult for retail trading firms to meet these obligations. Therefore, challenges exist for retail trading firms to monitor client trading activity in order to prevent and detect market manipulation, because of internal control failures, thereby effecting the integrity of the marketplace. Through exploration 4 regulatory cases related to instances of market manipulation, we will review the various internal control failures that retail trading firms face.

Section 1: The Canadian Landscape

To provide an overview of Canada's financial markets, it's essential to discuss the various exchanges where trades can be executed. Canada's financial markets play a crucial role in facilitating investment and capital allocation. Through statistical data, we will see the sheer volume and dollars that are exchanged through Canada's stock markets, thus outlining the complexity of Canada's financial markets. In *Figure 1 – Order Routing and*

the Canadian Equity Market Structure we can see the Canadian equity market structure and its participants.

Figure 1 – Order Routing and Canadian Equity Market Structure[15]



Marketplace

In Canada, there are several primary stock exchanges where securities are traded. To ensure free flow of capital, exchanges must be perceived as fair and equitable, where information is public and visible to everyone.[16]

[15] "Trader Training Course", Textbook, 2021. CSI Global Education Inc., pg. 2.14

[16] IBID., pg. 1.4

The various exchanges in Canada identified by the Canadian Securities Institute are:

- **Toronto Stock Exchange (TSX)** where senior Canadian equities are traded.
- **Montreal Exchange (MX)** where trades in small-cap companies located in Quebec are traded.
- **TSX Venture Exchange (TSXV)** facilities trades of all junior equities.
- **NEX** is operated by TSXV, listing companies that have fallen below the TSXV's standards.
- **Canadian Securities Exchange (CSE)** lists small and medium size issuers**.**
- **Aequitas NEO Exchange (Aequitas)** provides listing facilities for securities on the NEO exchange, CSE, TSX and TSXV.
- **Alpha Exchange (Alpha)** is an Alternative Trading System, which trades securities listed on the TSX and TSXV.
- **Nasdaq Canada** operates trading books for TSX, TSXV and CSE listed securities.
- **Bourse de Montréal** facilitates trading in non-agricultural options and futures.[17]

The statistical information offers valuable insight into the scale and significance of trading activity within Canada's stock markets. The total dollar value of trades as of March 2024 was $392 billion and over 20.865 billion trades were executed across all marketplaces[18]. Statistical information affirms the burden on marketplace participants, including retail trading firms in ensuring that marketplaces remain fair and efficient. Given the trading volume, the responsibility placed on market participants to ensure market

[17] IBID., pg. 4-6

[18] Investment Industry Organization of Canada webpage, "Reports of Market Share by Marketplace". Accessed on April 17, 2024, from https://www.iiroc.ca/markets/reports-statistics-and-other-information/reports-market-share-marketplace

integrity can be a dauting task. *Chart 2 – Value and Volume of Trading in Canada across various exchanges* provides total dollar and volume of trading that took place as of March 2024 across all exchanges. *Appendix 1 – All Trade and All Listing Total* provides a detailed breakdown by exchange of the trading information in dollars and number of trades.

Chart 2– Value and Volume of Trading in Canada across various exchanges as of March 2024[19]

Total dollar value traded within all Canadian marketplaces	$392,913,195,274.98
Total share volume traded within all marketplaces	20,865,474,954
Total number of trades executed in all marketplaces	41,150,771

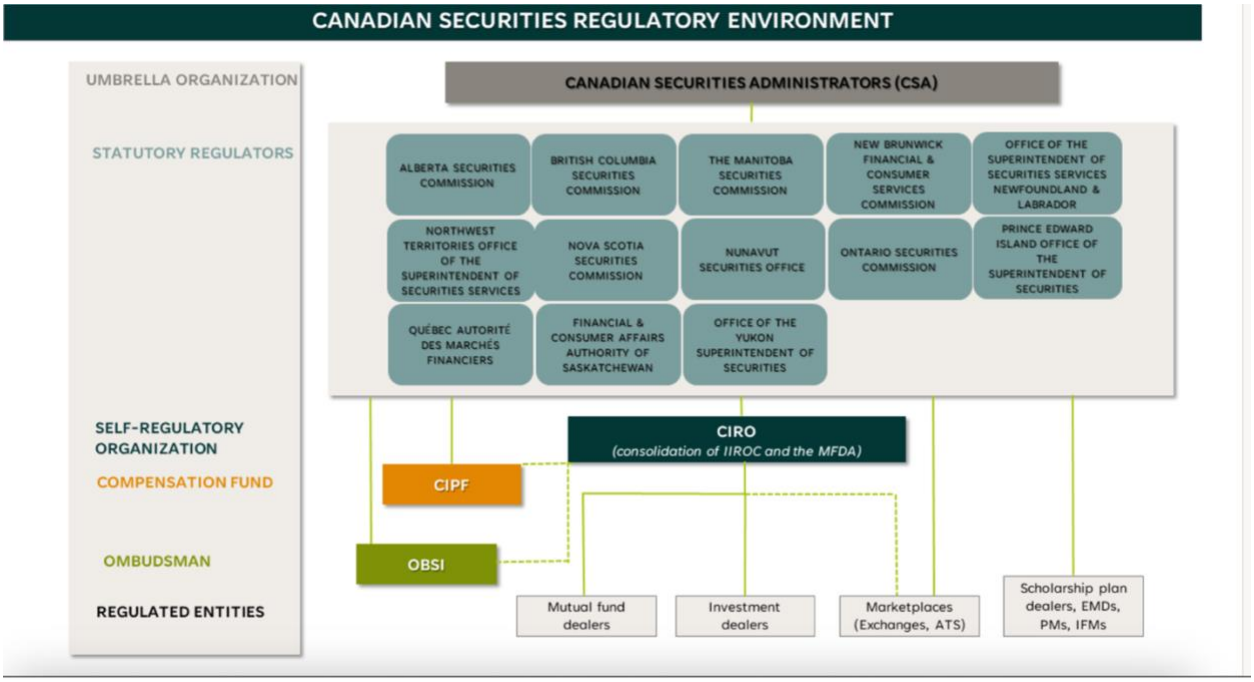
Section 2: The Regulatory Landscape

It's important to understand the various regulators, their purpose and functions within the Canadian financial markets, as these regulators play a critical role in establishing the relevant securities law, creating regulations for the efficient operation of the markets and ensuring that the client's best interests are met. The regulatory bodies that govern Canada's markets are (1) Canadian Securities Administrators ("**CSA**"); (2) The Canadian Investment Regulatory Organization ("**CIRO**"); (3) Provincial Securities Commissions; and (4) Marketplaces. *Figure 2 - Canadian Securities Regulatory Environment*, outlines

[19] IBID

the connection between each regulatory organizations within the Canadian regulatory landscape.

Figure 2 - Canadian Securities Regulatory Environment[20]



CSA

CSA's mission is: "*[t]o give Canada a securities regulatory system that protects investors from unfair, improper or fraudulent practices and fosters fair, efficient and vibrant capital markets, by developing a national system of harmonized securities regulation, policy and practice.*"[21] CSA maintains that they protect investors from fraudulent, misleading practices by:

[20] Canadian Investment Regulatory Organization, webpage, "Where We Fit in the Canadian Securities Regulatory Framework". Accessed on April 20, 2024, from https://www.ciro.ca/office-investor/how-ciro-protects-investors/where-we-fit-canadian-securities-regulatory-framework

[21] Canadian Securities Administrators, webpage, "Our Mission – Canadian Securities Administrators". Accessed on April 14, 2024, from https://www.securities-administrators.ca/about/who-we-are/our-mission/

- Requiring that Advisors provide full disclosure of information to clients so that clients can make knowledgeable investment decisions.
- Educating investors of the risks associated with investing.
- Approving registration of individuals who provide investment advice to the public and supervising market intermediaries.
- Investors have fair access to market facilities through regulations that can detect, deter, and penalize market manipulation and unfair trading practices.
- Reduce risk of failure of market intermediaries and seek to reduce the impact of the failures on investors.[22]

CSA includes members from provincial regulators, and CSA's mandate is to improve, coordinate and harmonize regulation of the capital markets[23], as in Canada there is no national regulator.

CIRO

CIRO is a national self-regulatory organization that oversees investment dealers, mutual fund dealers and the Canada's trading activity within debt and equity marketplaces.[24] The purpose of CIRO is to ensure protection of investors, by regulating

[22] IBID

[23] "Where We Fit in the Canadian Securities Regulatory Framework"

[24] Canadian Investment Regulatory Organization, webpage, "About Canadian Investment Regulatory Organization of Canada". Accessed on April 14, 2024, from https://www.ciro.ca/about-ciro

how investment dealers trade on the marketplace[25] and CIRO monitors trading activity of all Canadian marketplaces.[26]. Specifically,

> *CIRO monitors the trading activity of all Canadian equity marketplaces…Surveillance teams monitor these equity markets in real time and respond to trends. Surveillance also monitors debt trading and crypto asset trading platform activity of CIRO Members*[27]*… Advisors… registered with a CIRO regulated firm must pass background checks and specific education requirements before they become registered. They must also meet continuing education requirements to keep their knowledge up to date*.[28]

The regulations imposed by CIRO protects investors, maintains integrity of the capital markets and builds investor trust with the financial markets and with Advisors.[29]

In addition, to protecting financial markets, CIRO audits their members supervision practices to ensure the internal processes implemented by investment dealers adhere to rules and regulations.

CIRO administers, surveils and enforces Universal Market Integrity Rules ("**UMIR**"). CIRO's mandates is (1) to monitor real-time trading operations; (2) monitor market related activities; (3) investigate rule violations; and (4) conduct enforcement hearings on any alleged rule violations.[30]

Provincial Securities Commission

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[25] IBID

[26] Canadian Investment Regulatory Organization, webpage, "How CIRO Protects Investors". Accessed on April 14, 2024, from https://www.ciro.ca/media/1111/download?inline

[27] Canadian Investment Regulatory Organization, webpage, "Benefits of Working with a CIRO Member". Accessed on April 20, 2024, from https://www.ciro.ca/office-investor/how-ciro-protects-investors/benefits-working-ciro-member

[28] "How CIRO Protects Investors"

[29] IBID

[30] "Trader Training Course", pg. 1.3

The mandate of provincial securities commissions is to foster fair and efficient capital markets within the 10 provinces and 3 territories. For example, the mandate of the Ontario Securities Commission is:

> *To provide protection to investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital markets and confidence in the capital markets, to foster capital formation, and to contribute to the stability of the financial system and the reduction of systemic risk*".[31]

The various provincial securities commissions regulate the securities market, enforce securities law and provide education to investors so that they can make informed decisions.

Marketplaces or Exchanges

The function of an exchange is where securities, commodities, derivatives and other financial products are traded. According to the Canadian Securities Institute, exchanges provide the following functions:

- Listing function;
- Through the bidding process, prices of securities on the exchange are set competitively; and
- Volume of trading is publicly visible.[32]

[31] Ontario Securities Commission, webpage, "Role of OSC". Accessed on April 14, 2024, from https://www.osc.ca/en/about-us/role-osc

[32] "Trader Training Course", pg. 1.4 - 1.5

Rules of the exchange exist to ensure fair and orderly trading and efficient dissemination of price information for securities.[33] Market participants can be disciplined and fines can be levied against violators of rules and regulations.[34]

Section 3: Trade Process

This section highlights the multitude of investment dealers through which investors gain access to the stock market. Understanding the order entry process and how trades flow from order entry to settlement is important because it outlines the complexities of trading, can help to identify instances of market abuse, analyze market trends and to ensure that market stability and integrity is maintained.

Investment Dealers

There are many different types of investment dealers or firms through which trades can be executed, which are included in *Chart 3 – Types of Investment Dealers*.

Chart 3 – Types of Investment Dealers

Investment Dealers	Description
Discount Brokerage Firms	Through which individual investors can trade securities directly.

[33] Will Kenton, "Exchanges: Explanation, Types and Examples", Investopedia, July 31, 2020. Accessed on May 4, 2024, from https://www.investopedia.com/terms/e/exchange.asp#:~:text=An%20exchange%20is%20a%20marketplace,securities%20trading%20on%20that%20exchange

[34] "Trader Training Course", pg. 1.12

Institutional Firms	Includes pension funds, mutual funds and hedge funds who tend to execute large orders based on a specific strategy.
Proprietary Trading Firms	Use their own capital to trade for their own accounts.
Investment Boutiques	Firms that specialize in certain segment of the market.
Introducing Brokers **Focus of this paper	Execute trades on behalf of clients. This includes firms who have an Advisor client relationship. Trades are executed through clearing firms or carrying brokers.

Trades within retail trading firms are executed by Advisors for clients, as such Advisors are responsible to act as gatekeepers to the markets and have the responsibility to ensure that trades are executed within regulations. Advisors first duty:

> *… must be to the client and the client's order in hand. The client pays a fee for service and it is up to the trader to ensure that each and every order is handled fairly and equitably, while not unduly affecting the marketplace… A trader's duty extends beyond the rules and regulations imposed by [CIRO] and the exchanges or other regulatory authorities. A trader must go beyond doing what is permitted, while avoiding what is prohibited. All market participants are required to follow not only the letter, but also the spirit of the law. This duty extends to the interpretation of all rules and regulations and allows the trader to make judgement calls. Such interpretations must be in the best interest of the client, rather than that of the dealer or the trader. A trader must be a trustworthy individual of the highest morals to ensure that clients are treated judiciously.*[35]

[35] IBID., pg. 1.12 – 1.13

Therefore, Advisors primary duty is towards the client best interest, while ensuring market integrity by executing trades in a fair, transparent, ethical matter and without negatively effecting the marketplace.

Trade Flow Process

To get an improved understanding of the trade cycle, noted below is the trade flow process per BNY Mellon, which consists of the following stages: (1) Pre-Trade; (2) Trade Execution; (3) Trade Clearing; (4) Trade Settlement; and (5) On going Position and Risk Management. We will review each stage.

Stage 1: Pre-Trade

Involves ensuring that systems and protocols are in place and meets all regulatory requirements and securities laws. This stage also involves onboarding the client, getting all the relevant client information and adding them to the retail trading firm's system.

Stage 2: Trade Execution

In a trade there are two parties; buyers and sellers. Advisors must have client authority to trade in client accounts. At this stage:

> *[t]he nature of a trade order can also vary. Some orders require that trading takes place at a specific price while other orders do not. Some orders placed in the market may be executed immediately while others may be executed upon a specified price level being met. Some orders may require that trading takes place within a certain amount of time while others do not.*[36]

[36] "Middle and Back Office – Trade Lifecycle", BNY Mellon, February 2023. Accessed on May 5, 2024, from https://www.bnymellon.com/content/dam/bnymellon/global-assets/documents/content/trade-lifecycle-transcript.pdf, pg. 2

At this stage, Advisors must ascertain the client's motivative for the trade. Motivation may include: (1) need for monies; (2) diversification of a portfolio; (3) to meet a specific investment strategy; (4) hedge a position; (5) sell a security to crystalize gain/loss for tax purposes; and (6) take a position outlining a particular view of the security, issuer or industry. For example, if the client feels that particular issuer will increase in value, they will likely purchase the shares, but if they feel that future price of the security will fall, they will short the issuer. In both scenarios the motivation for the client is to make monies.

According to the Canadian Securities Institute, upon order entry, an order receives a priority time stamp, which is the time the order is received by the exchange's trading engine and is used to determine the sequence at which the order will be filled. A change former order maintains the priority time stamp of the original order if account type or the disclosed volume of the order is being reduced. If the change former order is to increase the disclosed volume or change the price of the order, the order loses the original priority and receives a new priority time stamp.[37]

Stage 3: Trade Clearing

Agents to the counterparties of the trade confer and verify details of the transaction for settlement, including quantity and the amount related to the trade in question.

Stage 4: Trade Settlement

At this stage the trade execution between the buyer and seller is completed, where there is an actual exchange of shares and cash.[38]

[37] "Trader Training Course", pg. 4.3

[38] "Middle and Back Office – Trade Lifecycle"

Stage 5: Ongoing Position and Risk Management

At this stage the company manages all the positions, manages corporate actions, manages counter party credit risk, reconciles trades, measures profit and loss, measures risk/sensitivity and prepares internal and external reports.[39]

Section 4: Rules and Regulations

It's important for retail trading firms and Advisors to understand the rules that govern the financial markets. The rules governing trading activity of securities listed on a recognized exchange are: (1) National Instrument 21-101 - Marketplace Operation; (2) National Instrument 23-101 – Trading Rules; (4) Universal Market Integrity Rules ("**UMIR**"); and (5) the applicable rules and policies of the various exchanges.

[39] Ruairi O'Donnellan, "The Trade Life Cycle: 5 Key Stages", Intuition, May 10, 2024. Accessed on May 10, 2024, from https://www.intuition.com/the-lifecycle-of-a-trade-5-key-stages/

National Instrument 21-101 – Marketplace Operation

National Instrument 21-101 – Marketplace Operation provides a framework for the operation of marketplaces[40]. This regulation sets out the requirements to maintain fair and orderly markets.[41] The national instrument also sets out the requirements that all relevant information should be available to all investors, including order details and trade information.

National Instrument 23-101 – Trading Rules

National Instrument 23-101 Trading Rules establishes rules governing trading activity including order execution, trading hours, price transparency and sets out the requirement that trading must be done in accordance with just and equitable principles of trade.[42]

UMIR

CIRO administers, surveils and enforces UMIR rules. UMIR includes rules governing the trading activity within Canada's exchanges. UMIR rules were established to ensure a fair and orderly market.[43] UMIR rules that were established to ensure the efficient operation of the markets while maintaining the integrity of the exchanges. UMIR outlines

[40] "Companion Policy 21-101CP, Marketplace Operation", Ontario Securities Commission, September 14, 2020. Accessed on May 5, 2024, from https://www.osc.ca/sites/default/files/2020-10/ni_20200914_21-101cp_unofficial-consolidation.pdf, pg. 1

[41] IBID, pg. 14

[42] "Companion Policy 23-101 CP – Trading Rules", Ontario Securities Commission, April 10, 2017. Accessed on May 5, 2024, from https://www.osc.ca/sites/default/files/2020-10/ni_20200914_21-101cp_unofficial-consolidation.pdf, pg. 3

[43] "Trader Training Course", pg. 1.3

the gatekeeper obligations of Advisors and/or retail trading firms, which entails that they must act as guardians to the financial marketplace, to prevent unethical practices that could harm investors or the integrity of the marketplace, to detect instances of potential harm to the integrity of the market and to just principles of trade. UMIR includes the following provisions: (1) Trading Practices; (2) Market Integrity; (3) Surveillance and Compliance; and (4) Reporting Requirements.

Trading Practices

UMIR sets out standards for execution of trades, for general acceptable trading practices, related to orders for short selling, order entry, best execution, client priority, best price obligation and exposure. UMIR provides guidance on order handling and execution, including what is considered improper orders and trades.

Market Integrity

UMIR outlines rules related to market integrity, including unacceptable activities considered to be (1) Abusive trading or (2) Manipulative and deceptive trading practices. Specifically, Advisors shall not engage in any activities or facilitate market manipulation, including front running, artificial price and false or misleading appearance of trading activity.

Surveillance and Compliance

UMIR sets out the requirement that retail trading firms must develop and implement a supervision system to monitor trading based on the size and type of business and to ensure compliance with applicable rules and regulations. UMIR dictates that the retail trading firms develop systems that must be designed to prevent and detect violations.

Reporting Requirements

UMIR sets out the gatekeeper obligations for retail trading firms and Advisors, which states that any suspicious trading activity must be reported to regulators.

As gatekeepers, Advisors and retail trading firms must investigate and report any suspicious trading activity to the regulators.

Internal Controls Within Retail Trading Firms

In order to meet all regulatory requirements, set out in regulations, specifically *National Instrument 21-101 – Marketplace Operation*, *National Instrument 23-101 - Trading Rules* and *UMIR,* retail trading firms must implement internal controls in order to satisfy all trading and gatekeeper obligations. These rules are important because "*... imposing duties on trading personnel and creating extensive rules and policies can introduce the concepts of fairness, it is also important for the participants to be monitored to ensure that the rules and policies are actually applied*."[44] *UMIR policy 7.1 – Trading Supervision Obligations,* sets out the minimum internal control obligations that addresses the requirement to monitor and supervise trade execution by retail trading firms. Areas where there is risk of non-compliance in many firms occurs: (1) at the point at which the order is taken by the Advisor from the client; (2) the point at which the order is managed either through the Advisor or the trade desk; and (3) during the post trade review, specifically if the firm's supervision process does not identify instances of suspicious

[44] IBID, pg. 9.3

trading.[45] According to UMIR rules, the following are internal controls that retail trading firms must establish:

- Develop and implement policies and procedures to prevent and detect violations of rules and regulations. Per UMIR:

  > *An effective supervision system requires a strong overall commitment on the part of the [retail trading firms], through its board of directors, to develop and implement a clearly defined set of policies and procedures that are reasonably designed to prevent and detect violations of [securities laws]*". [46]

  In the development of written policies and procedures, the retail trading firms must identify the relevant securities laws and regulatory requirements that are applicable to the business of the firm.

  Written policies and procedures effectively provide Advisors with an understanding of what constitutes market manipulation, so that such activities are properly identified and prevented from entering the market. The policies and procedures also outline, that in the event that Advisors violate any provision of any legislation or law, the firms are required to notify the regulator and conduct internal investigations. If the findings warrant it, the firms maybe required to issue disciplinary action against the Advisor or the client. The policies and procedures should be accessible to all Advisors within the firms.

[45] "Universal Market Integrity Rules for Canadian Marketplaces - APPENDIX "C"", CDN Venture – TSE Regulation Services, November 30, 2011. Accessed on April 21, 2024 from https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicyBCN/BCN200211_AppendixC.pdf, pg. 9

[46] IBID, pg. 12

- Establishment of a supervision system to detect and monitor trading activity for market manipulation instances. The supervision system should be documented within the firm's written policies and procedures. The supervision system should include a process whereby the firm's staff supervises Advisor's trading activities and monitors all trading activity post trade looking for instances of potential market manipulation. Therefore *"…, the board and management must ensure that the compliance department is adequately funded, staffed, and empowered to meets its responsibilities"*[47]. For an effective trade surveillance system, retail trading firms must rely on exception reports and trading data.
- The firm's supervision system should be reviewed once per year to ensure its design meet's the firm's line of business and is effective in preventing and detecting breaches of violations and trading rules.
- CIRO and provincial securities commissions conduct audits of all investment dealer firms, including retail trading firms under their purview to ensure that the firms have an effective supervision system, designed to prevent and detect violations of rules. As part of the audit process, regulators will review the retail trading firm's policies and procedures as it relates to their adequacy to detect and prevent violations of securities laws and regulations, considering the type and volume of business undertaken by the firm[48].

[47] "Trader Training Course", pg. 8.3

[48] "Guidance on Certain Manipulative and Deceptive Trading Practices", Canadian Investment Regulatory Organization, February 14, 2023. Access on April 22, 2024, from https://www.ciro.ca/news-room/publications/guidance-certain-manipulative-and-deceptive-trading-practices

- Retail trading firms must ensure that Advisors entering trades are properly registered and receive ongoing education to keep up to date on relevant changes to the regulatory requirements.
- Compliance reviews must be reported to the board of directors annually.[49] This sets the tone from the top. The firm's board of directors have the responsibility to ensure that risks of non-compliance have been identified and risk management policies and procedures have been implemented.[50]
- Processes for the retail trading firms to follow when there are violations of regulations or securities laws. This can include trade cancellation, increase supervision of the Advisor and their business activity, internal disciplinary measures and reporting violation(s) to the regulators, including the provincial securities commissions or CIRO.[51]
- Each year firms require each Advisor and corporate employee to attest that they have read the current policies and procedures.
- Most firms require Advisors to sign a code of ethics.
- Retail trading firms also require a background criminal check at time of hire. As well, regulations, require Advisors disclose to the firm and the regulators any time they are subject of a civil claim or have been charged for a criminal offence during their employment with the firm.

[49] "Trader Training Course", pg. 8.3 – 8.4

[50] IBID., pg. 8.3

[51] "Guidance on Certain Manipulative and Deceptive Trading Practice"

- Many Advisors are part of professional industry associations, from which they obtain designations that require adherence to the code of ethics applicable for maintaining their designation. Common designations prevalent in the securities industry includes but is not limited to Certified Financial Planner (CFP) issued by FP Canada, Chartered Financial Analyst (CFA), issued by CFA Institute and/or Chartered Investment Manager (CIM), issued by Canadian Securities Institute.

5: Ethical Culture

Ethics can play a critical role in the risk management of a retail trading firm. Therefore, all firms should have an effective ethics program to manage their operational, reputational, regulatory and civil risks. Ethics can be defined as "…*value-based behaviours and actions that empower human relationships."*[52] According to the Canadian Securities Institute, values on which ethical decisions should be based on are:

- Integrity
- Fiduciary responsibility
- Honesty
- Full Disclosure
- Professionalism

[52] Canadian Securities Institute, "Ethical Practice in Financial industry", 2021,Online course material for Ethical Practice in Financial industry course

- Courage[53]

In order to ensure that retail trading firms are able to satisfy their gatekeeper obligations, they must establish an ethical culture within the organization.

Ethics Incorporated Into Regulations

The ethical culture within the securities industries is set by regulations. *UMIR 2.1- Specific Unacceptable Activities*, which sets out the requirement that firms should transact business openly and fairly in accordance with just and equitable principle of trade.[54] The rule stipulates that firms owe:

> *...fiduciary duty to its clients. This duty and investors' trust ... are fundamental to investor confidence in the integrity of the market. ... this relationship of trust arises where there is reliance by the client on the [Advisors] expertise in securities matters. From the point of view of both the client and the [Advisors], the fiduciary responsibility exists regardless of the legal form of the transaction. In other words, an investor who relies on the expertise of a [Advisors] expects the [Advisors] to act in the investor's best interests ....*[55]

In addition, CIRO Partially Consolidated rules, rule *1400 - Standard of Care*, sets out the ethical requirements for Advisors. Specifically rule 1402(1), notes that Advisors

> *(i) in the transaction of business must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade, and*
> (ii) *must not engage in any business conduct that is unbecoming or detrimental to the public interest*.[56]

[53] Ethical Practice in Financial industry", pg. 26

[54] "Universal Market Integrity Rules for Canadian Marketplaces - APPENDIX "C"", pg. 1

[55] IBID, pg. 21

[56] "Corporation Investment Dealer and Partially Consolidated Rules", Canadian Investment Regulatory Organization, February 22, 2024. Accessed on May 12, 2024 from, https://www.ciro.ca/media/16/download?inline, pg. 18

Rule 1402(2*)* also sets out that Advisors will not be negligent, will not fail to comply with legal or regulatory rules and will not diminish investor confidence in integrity of securities.[57]

Guiding Values

The Canadian Securities Institute has set out 4 guiding values that Advisors should follow within the financial industry, which will be discussed below.

Fiduciary Responsibility

- Outlines that the client's interest is paramount and must drive all actions.
- A fiduciary responsibility exists when the client has an expectation that Advisors will act in their best interest.
- Acting in fiduciary capacity, Advisors must always act in good faith, consciously exercising due care and honesty.
- Canadian law recognizes that Advisors are in a position of trust given that they have a client's personal information, therefore, Advisors have *"... a fiduciary duty to the person whose affairs are being looked after. In law, this duty is known as a fiduciary duty*". [58]
- In law the fiduciary responsibility imposed on Advisors stipulates that the highest duty of care is towards the client.

Honesty, Integrity and Justice

[57] IBID, pg. 18

[58] "Appendix A – The Guiding Values of the Finance Industry", November 2007, Online course material for Ethical Practice in Financial industry. CSI Global Education Inc., pg. 1

- To create trust with the client, full disclosure and fair treatment of all available information is critical.
- To ensure a long and lasting relationship with a client "*...values of honesty, integrity and justice must be at the heart of the relationship*".[59] Advisors must provide all relevant information to clients, including any information related to conflict of interest so that they can make informed investment decisions. Advisors must follow principles of fairness and equity in their dealings with clients.
- All trades must be authorized by the client unless there is an agreement between the Advisors and the client to have a discretionary relationship.

Technical Proficiency

- Advisors must have technical knowledge.
- Only approved Advisors by proper regulatory bodies may enter trades.
- Advisors shall not:

> *...knowingly participate or assist in any activity which is in violation of any law or regulation of any government, government agency, or SRO that regulates the professional's business actions. This includes any violation of an industry or individual firm's Code of Conduct or Code of Ethics".* [60]

[59] IBID, pg. 3

[60] IBID, pg. 6

In adhering to this value, Advisors affirm that they will abide by securities laws and regulations, that their conduct will promote activities that is in the best interest of their clients, that they will ensure client trust is maintained and that the integrity of the market is preserved.

- Through continuous professional education requirements, Advisors obtain awareness of new products, keep abreast of new regulations or changes to regulations.

Confidentiality

- Advisors are trusted with client's most sensitive information and must ensure that all times client information remains confidential.

Regulators expect retail trading firms to set an ethical tone from the top, by promoting ethical conduct and by establishing, maintaining and enforcing regulations within policies and procedures as described under *Section 4: Rules and Regulations* of this paper. The retail trading firms are also required to include a section on ethics within their written policies and procedure manual. This section sets out the expectation that all Advisors are required to follow standards of ethical conduct, which includes, but is not limited to the following:

- Ensuring duty of care;
- Treating others with empathy and compassion;
- Maintain firm and client confidentiality of information;
- Acting in good faith;
- Respect others by treating others fairly and honestly; and

- Ensure they are compliant with laws and regulations.[61]

By having written policies and procedures, retail trading firms set out the values each Advisor is to adopt. *Chart 4 – Values*, outlines the values to be achieved through well-established written policies and procedures, per the Canadian Securities Institute.

Chart 4 – Values[62]

Values	Description
Shared Ideals	The policies and procedure manual establishes a common understanding of values and goals, provides a sense of direction and purpose for Advisors during their decision-making process.
Consistency	Through policies and procedures, the systems and ideas within the retail trading firms are integrated.
Unity	Policies and procedures provide a shared set of ideas or a philosophy of life.
Community	Through policies and procedures, everyone within retail trading firms, including Advisors and corporate staff work from the same assumptions, ideals and make consistent decisions.
Agreement	Policies and procedure assist Advisors to have mutual understanding of what's right or wrong and provide a sense of shared beliefs.

[61] "Policy and Procedures Manual" (Policies and Procedure Manual), Wellington-Altus Private Wealth Inc. June 30, 2023, Pg. 10

[62] "Ethical Practice in Financial Industry", pg. 32

Homogeneity	Policies and procedures provide uniformity of opinion regarding the firm's ideology.
Commitment	By affirming adherence to the policies and procedures Advisors pledge support for retail trading firm's ideas.
Service	Policies and procedures provide guidance to Advisors when making decisions that benefit the group.
Fidelity	By agreeing to comply with policies and procedures Advisors affirm their obedience and loyalty to the shared ideas of the retail trading firm.

Written policies and procedures provide Advisors with uniform ethical guidelines to which they can conform to ensure that they meet their gatekeeper obligations.

The ability to take enforcement measures when rules and regulations have been violated sets a firm culture that retail trading firms will not tolerate non-compliance, that non-compliance can lead to disciplinary measures, which will also have the benefit of deterring non-compliance. The ability of enforcement measures should be clearly identified within the policies and procedures and should be available to all Advisors.

Section 6: Effectiveness of the Internal Control Process

Since investors access the financial markets through Advisors and retail trading firms, it is the Advisor's and the firm's responsibility to act as gatekeepers to the financial markets, to ensure that integrity of the marketplace is maintained and to ensure that the operation of the financial markets are efficient, fair and equitable.

Noted below are 4 cases involving instances of clients who engaged in market manipulation and insider trading through Advisors at retail trading firms. We will review the cases and consider the internal control failures that led to instances of market manipulation.

Case #1 – In the Matter of the Investment Dealer and Partially Consolidated Rules and the Universal Market Integrity rules and Martin Danielak

Per the settlement agreement, CIRO found that, in October and November 2019, Martin Danielak ("**Danielak**") inadvertently assisted a client who was engaged in creating an artificial price related to Citation Growth Corp ("**Citation Growth**"). The client personally had financial interest in Citation Growth and held significant number of shares of the security in question. CIRO findings noted that the client directed Danielak to enter 47 buy orders of Citation Growth through a corporate account, which he had control over.

At the same time, through another Advisor at the same firm, the client directed the sell of shares of Citation Growth, within his personal accounts[63] thereby engaging in layering and spoofing. Layering and spoofing occur when fake orders are entered in order to create an impression that there is an unjustified demand or supply of a particular security, for the purpose of manipulating the price of the security.

The settlement agreement outlined that only 1 order from the 47 directed to Danielak by the client was filled between October and November 2019. Danielak would at many times enter 2 buy orders for the same quantity but with prices slightly different. Danielak would subsequently submit a change former order request thereby moving the priority of the order further from being filled. Based on the trading pattern CIRO concluded that the client never intended for the orders executed through Danielak to be filled[64], rather the orders were meant to signal to the market that there was a demand for the security, thereby increasing the price, so that the client could take advantage of the unjustified price and sell the security within his other accounts.

CIRO noted that when questioned by the firm's branch management as to the purpose of the trades, Danielak confirmed that the purpose was to "support the stock", which effectively means that the client was processing trades in order to maintain the price and interest level of the stock. Danielak admitted that he failed in his gatekeeper responsibility by not ascertaining the legitimacy of the order and did not alert the firm of

[63] "In The Matter Of The Investment Dealer And Partially Consolidated Rules And The Universal Market Integrity Rules And Martin Danielak Settlement Agreement", Canadian Investment Regulatory Organization, May 10, 2023. Accessed on May 4, 2024, from https://www.ciro.ca/media/3853/download?inline=1, paragraph 8, paragraph 9 and paragraph 11

[64] IBID, paragraph 11 and paragraph 15

the suspicious trading activity[65]. Refer to Appendix 2 for the settlement agreement between Danielak and CIRO for additional details.

Case #2 – Re Moore, 2018 ABASC 154

Alberta Securities Commission found that in June 2013, the client; John Charles Zang ("**Zang**") purchased 300,000 shares of Kilimanjaro Capital Ltd ("**Kilimanjaro Capital**") through the issuer, which was deposited within accounts managed by his Advisor Richard Moore ("**Moore**"). In March 2014 the Kilimanjaro Capital underwent a 100 for 1 split, thereby increasing the number of shares held by Zang to 30 million. Also in March 2014, the client deposited 200 million shares of Kilimanjaro Capital into a corporate account, where Zang was the beneficial owner. Zang gave Ashmit Patel ("**Patel**"); who purported to be the Chief Operating Officer and Legal Counsel of Kilimanjaro Capital trading authority over the corporate account[66]. Between March and April 2014, Zang and Patel directed trading in Kilimanjaro Capital for 2,005,680 shares for total value of $47,000.[67] On April 3, 2014, the Alberta Securities Commission issued a ceased trade order in Kilimanjaro Capital because they failed to file annual information for year ended December 2013[68].

[65] IBID, paragraph 21

[66] "Settlement Agreement and Undertaking – John Charles Zang, 2019 ABASC 171", Alberta Securities Commission, November 12, 2019. Accessed on May 12, 2024, from https://www.asc.ca/-/media/ASC-Documents-part-1/Notices-Decisions-Orders-Rulings/Enforcement/2019/11/ZANG-John-Charles-SAU-20191112-5476802.ashx, paragraph 13, 15, 16 and 17

[67] "In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", paragraph 132

[68] IBID, paragraph 112

From personal knowledge, the retail trading firm relied on an outside service provider to update the internal systems so that trades could not be executed for any issuers where a provincial securities regulator had issued a ceased trading order. However, due to technical and logistical issues the system was not updated on April 3, 2014 and Patel was able to direct a sell of additional 15,000 shares of Kilimanjaro Capital, after the issuance of the cease trade order.[69] From personal knowledge, the technical issue was that the third-party service provider updated the firm's internal environment overnight of all cease trade orders issued on any given day. As such the firm's internal systems regarding the cease trade order for Kilimanjaro Capital was updated on April 4, 2014. Alberta Securities Commission concluded that Moore was not aware of the cease trade order at the time of order entry on April 3, 2014.[70]

The Alberta Securities Commission found that the directors of Kilimanjaro Capital contributed to the artificial price of the security, through a pump and dump scheme and by violating the cease trade order issued by the Alberta Securities Commission[71]. The pump and dump scheme was to create an artificial demand for the shares of Kilimanjaro Capital and thereby inflate the price of the shares. The Alberta Securities Commission settlement agreement with Moore outlined that:

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[69] "Settlement Agreement And Undertaking - Richard Kenneth Moore, 2018 ABASC 154", Alberta Securities Commission, September 27, 2018. Accessed on May 1, 2024, from https://www.asc.ca/-/media/ASC-Documents-part-1/Notices-Decisions-Orders-Rulings/Enforcement/2019/01/MOORE-Richard-SAU-2018-09-27-5423805v2.ashx, paragraph 15

[70] IBID, paragraph 15

[71] "ASC Sanctions Ashmit Patel, Zulfikar Rashid And Kilimanjaro Capital Ltd. For Market Manipulation", News Release, Alberta Securities Commission, August 21, 2018. Accessed on May 12, 2024, from https://www.asc.ca/news-and-publications/news-releases/2021/08/aug-18-asc-sanctions-ashmit-patel-zulfikar-rashid-kilimanjaro-capital-ltd-for-market-manipulation

> *Moore admits that he breached section 93.1 of the Act by failing to take the steps necessary to make himself aware of, and comply with, the [cease trade order]… Moore further admits that he acted contrary to the public interest by failing in his role as gatekeeper in the capital markets to make inquiries into suspicious and unusual circumstances surrounding the trading of Kilimanjaro shares …*"[72]

While the Alberta Securities Commission concluded that Moore was not aware of the true intention behind the purpose of the trading activity with Kilimanjaro Capital by Zang and Patel, and was not aware that insiders of Kilimanjaro Capital were directing some of the trading activity in the accounts of Zang, by not asking proper due diligence questions as to the purpose of the trading activity, Moore failed in his gatekeeper obligations. The Alberta Securities Commission noted that trades that lead to a false price for the security or lead to an unjustified interest in a security, is not consistent with a fair and efficient capital market.[73] Please refer to Appendix 3 for the settlement agreement between the Alberta Securities Commission and Moore.

Case #3 – Rowlatt 2020 IIROC 32

CIRO investigation found that between January and December 2017, Aaron Jay Rowlatt ("**Rowlatt**") entered suspicious sell orders for an individual who was an insider of two issuers and for accounts in the name of the insider's spouse, and children.[74] The shares

[72] "Settlement Agreement And Undertaking - Richard Kenneth Moore", paragraph 17 and 18

[73] In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", paragraph 152

[74] "The Rules of the Investment Industry Regulatory Organization of Canada and Aaron Jay Rowlatt, 2020 IIROC 32", Canadian Investment Regulatory Organization, September 15, 2020. Accessed on May 3, 2024, from https://www.iiroc.ca/sites/default/files/2021-05/724bfe05-77ea-4db3-8d57-9e5aca4f0eb8_en.pdf, paragraph 3

of the issuers were illiquid, and the trades represented significant percentage of the daily trading volume, averaging 22% for issuer 1 and 18.4% for issuer 2's trading activity for the period in question[75]. There was no financial benefit to the clients for executing the trades, however, the share price of issuers increased because of the volume of trading.[76] During CIRO's investigation "*Rowlatt acknowledged that he did not understand the … trading strategy and did not ask any questions in that regard. He received the unsolicited orders and executed them without making any inquiry into the nature of the trading*."[77] The CIRO settlement agreement noted that the client's assets represented a significant amount of Rowlatt's business; commissions from the client's account represented 50% of his commission income.[78] Rowlatt failed to understand the legitimacy of the trades. It appears that the purpose of the trading by the clients in question was to create an artificial price, the purpose of which is to encourage other investors to invest in the issuers. Please refer to Appendix 4 for the settlement agreement between CIRO and Rowlatt.

Case #4 – Bealer 2022 IIROC 30

CIRO's investigation determined that in February 2018, Gregory Paul Bealer ("**Bealer**"), was referred a client from an insider of an issuer who was the client's step son. Bealer opened the account for this individual, who proceeded to deposit share certificates of the issuer into his account. The shares of the issuer were subsequently sold between

[75] IBID, paragraph 6

[76] IBID, paragraph 5 and paragraph 6

[77] IBID, paragraph 6

[78] IBID, paragraph 6

March 2018 and March 2019[79] and proceeds from the liquidation were sent via wires to third parties. CIRO's investigation noted that:

> *[d]uring the relevant period there were 22 transfers of the [issuer's] securities, totaling 1,331,667 shares. During this same period, there were 25 wire transfers of proceeds from the securities liquidation, totaling approximately $1,650,000. On at least two occasions, proceeds from these liquidations were transferred to accounts belonging to the CEO, totaling $151,000.*[80]

The wire instructions were provided by the CEO's assistant, who did not have power of attorney or authority to direct activity within the client's accounts. Bealer received $2,036[81] in commissions costs to facilitate the trade of the securities. CIRO noted that there were red flags associated with these transactions which Bealer failed to act on, specifically:

> *a) The CEO's relationship with the Client;*
> *b) The unusual nature of the trading going through the Clients account, particularly, considering the client's profile, and his relationship to the CEO. This includes the type and volume of transactions, and that they primarily involved only the Company's securities; and*
> *c) The CEO's assistant was providing instructions on the Client's account, despite no documented authority to do so filed with the firm.*[82]

CIRO concluded that Bealer failed in his role as the gatekeeper by facilitating suspicious trading activity in the client's account.[83] Bealer facilitated trading of an issuer within the

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[79] "Enforcement Notice - Decision 22-0167 - IIROC Sanctions Gregory Paul Bealer", CISION, October 28, 2022. Accessed on May 13, 2024, from https://www.newswire.ca/news-releases/enforcement-notice-decision-22-0167-iiroc-sanctions-gregory-paul-bealer-893965886.html

[80] "In The Matter Of The Rules Of The Investment Industry Regulatory Organization Of Canada And Gregory Paul Bealer, 2022 IIROC 30", Canadian Investment Regulatory Organization, October 20, 2022. Accessed on May 13, 2024, from https://www.ciro.ca/media/3741/download?inline, paragraph 13 and 14

[81] IBID, paragraph 19

[82] IBID, paragraph 15

[83] IBID paragraph 10

client's accounts that was likely based on material non-public information, thereby facilitating insider trading. Refer to Appendix 5 for the settlement agreement between CIRO and Bealer.

Gatekeeper Challenges

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There are challenges for the retail trading firms to prevent and detect market manipulation in order to meet their gatekeeper obligation to the Canadian financial markets. The challenges can be derived from failures with various internal controls, associated with the Advisors, the retail trading firm's code of ethics, written policies and procedures, the firm's culture, with the general operational challenges within the firm to prevent and detect market manipulation and failures resulting from supervision and trade data analysis, which we will further explore in detail.

Internal Control Failures: Advisors

Understanding the motivation behind Advisors who facilitate market manipulation, despite clear ethical guidelines, policies, and regulations, is complex but crucial. This knowledge allows retail trading firms to effectively address this lack of diligence among advisors.

Lack of due diligence in learning the essential facts and purpose of trades by Advisors makes it challenging for retail trading firms to meet gatekeeping obligations. Retail trading firms rely on Advisors to be the first line of defense in monitoring client activity, to not only prevent market manipulation from entering the market but to detect all market manipulation activity as well. In order to meet their gatekeeper obligations retail trading firms, place undue reliance on Advisors to prevent the entry of any suspicious trades that could harm investors or investor confidence. The Advisors have direct contact with clients and are in a better position to ascertain suspicious motives behind questionable trades**.** UMIR stipulates that, the "*…exercise of due diligence to learn essential facts "relative to every customer and to every order" is a central component of the "Gatekeeper Obligation" embodied within the trading supervision obligation under Rule 7.1 and 10.16*"[84]. Furthermore, per UMIR rules the responsibility in determining if the order is bona fide or is to create an artificial price lies with the retail trading firm, specifically with the person handling the order.[85] These rules are in place as internal controls necessary to prevent entry of trades meant to manipulate the market. A review of *Re Danielak, Re Rowlatt, Re Moore* and *Re Bealer* cases outline that Danielak, Moore, Rowlatt and Bealer, collectively the ("**Subjects**") failed to know the essential facts they were required to ascertain in order to fulfill their gatekeeping obligations, before suspicious orders were entered on the market. Essential facts that were not ascertain by the Subjects were as follows:

[84] "Annotated Universal Market Integrity Rules", Canadian Investment Regulatory Organization, July 27, 2023. Accessed on April 24, 2024, from https://www.ciro.ca/media/7526/download?inline, Pg. 1.2-5

[85] "Trader Training Course", pg. 9.6

- In the case of Danielak, he should have questioned the purpose of the trades, given that when the bid price approached the client's entered order, the client would alter the bid price and the order would go unfilled. The sheer number of trades (47) entered within a short period of time (2 months) which were not filled should have been a red flag requiring clarity from the client about the client's intention towards the trades for Citation Growth. Specifically, Danielak failed to recognize that the trading instructions from the client would likely result in the creation of an artificial price for Citation Growth, by signalling to the market that there is demand for the stock, thus driving interest and the price of the stock up. The client then took advantage of the unjustified inflated price and sold shares of Citation Growth through his other Advisor.
- As for Bealer, Moore and Rowlatt, they exercised poor judgement when they failed to understand the purpose of the trades and simply just acted on the client's instructions.

In order to meet their gatekeeper obligations, Advisors have to conduct due diligence in any situation, especially where the trade instructions are outside the client's normal trading strategy. Kate Keir outlines the following questions that Advisors should ask in such situations:

> - *What do you know about the company?*
> - *What research have you done/did you do before investing?*
> - *Have you ever received any information about this particular stock?*
> - *Do you have access to any non-public information? This could include details of a merger before it happens, for instance, or information about a product before it's released*.[86]

[86] Kate Keir, "What to do when Clients break market rules", advisor.ca, November 6, 2015. Accessed on May 18, 2024 from https://www.advisor.ca/industry-news/industry/what-to-do-when-clients-break-market-rules/

In addition to the above the following questions should be also be asked:

- How did you hear about the company?
- What led you to invest in this company?
- Do you know anyone at this company, such as an executive?
- In case of shares that are deposited or transferred in, how were the shares obtained? Were the shares received as a private placement, or purchased on the secondary market? This is especially an important question if the market value of shares exceeds the client's financial circumstance as in the case of *Re Bealer*.
- If the initial investment was through a private placement, then please provide the subscription agreement(s) related to the purchase(s), which outlines the details of the initial purchase, including trading restrictions, price, total amount of purchase, and the category under which you qualified for the purchase.
- What is your investment strategy for the issuer, are you expecting the shares to appreciate and benefit from capital growth or is your interest in the company for income generating purposes?
- How long do you intend to hold the shares, for the short-term or long-term?
- When do you expect to divest the shares of this company? i.e., what is your exit strategy.
- Are you aware of the risks associated with the company?
- Are you aware of any selling restrictions? Is there a holding period/term for the investment, where you have to hold the investment for certain period of time.

- For insiders transacting in the corporation of which they have control, confirm if the insider is in a black out period, during which they are restricted from trading the shares in question.

These questions will assist Advisors to understand the circumstances of how the client received the securities and the client's intention with the securities, thereby understanding the relevant facts of the transactions. Behaviour skills each Advisor needs in order to be effective gatekeepers are: (1) identifying irregular trading requests which are not consistent with client's personal circumstances, past trading or investment strategy; (2) escalate concerns related to actual or potential market manipulations concenrns to compliance; and (3) obtain and record the rationale and actions taken for suspicious activities. As well document the recommendations provided for irregular trade orders.[87] Please refer to *Appendix 6 - Retail Registered Representative (RR) and Investment Representative (IR) Competencies* for a full list of competencies required by Advisors for the execution of trades to maintain market integrity and to satisfy their gatekeeper responsibilities. Despite having rigorous internal controls including regulations, written policies and procedures defining market manipulation, and proper training for staff on order entry; the subjects failed to recognize the client's intent to manipulate the market. UMIR *2.2(1) – Manipulative and Deceptive Activities* prohibits Advisors from entering an order if the Advisors ought to reasonably know that the resulting trade will be fictitious, will create a false or misleading appearance of trading activity or will create artificial price[88]. The clients

[87] "Reference Document for Registered Retail Representative (RR) and Investment Representative (IR) Competencies – Appendix 11", Canadian Investment Regulatory Organization. Accessed on April 19, 2024 from https://www.ciro.ca/media/931/download?inline, pg. 29

[88] "Market Integrity Notice Guidance – Entering Orders on Both Sides of The Market No 2005-029", pg. 2

through the Subjects were able to execute trades that resulted in the creation of an artificial price and executed trades based on material non pubic information so that they could benefit personally from the inflated prices. In addition, Bealer and Moore, also assisted the insiders from hiding the market manipulation strategy, because the trades related to insiders were executed within the non-insider client accounts. Therefore, the orders in question were not market insider trades and were therefore not subject to regulatory scrutiny. As well, the insider trades were not subject to public disclosure via press release or disclosure through SEDI, nor were the trades subject to any tax liabilities for the insider. When making the decision to enter suspicious trades they failed to consider duty of ethics defined as "*moral rightness of an action…determined by existing laws and standards*". [89] That is the rightness or wrongness of an action is judged by the outcomes it produces, rather than by adherence to rules or standards. In this case, the Subjects only considered the outcome of their action – satisfying the client's request, rather than abiding by the gatekeeping rules or regulations.

Advisor's perception of their clients can be one reason why retail trading firms may find it difficult to meet their gatekeeping obligations. If the information or red flags challenges an Advisor's perception of their client's character then Advisors may disregard the red flags because the information is inconsistent with their assessment of the clients. Advisors may feel that their concerns may be invalid, that they are seeing red flags that don't exist or they may feel disloyal towards the client by questioning the client's trading strategy. In *Re Danielak, Re Moore, Re Rowlett and Re Bealer,* the Subjects were in denial of fact, wherein they refused to identify clear red flags and minimized the importance of

[89] "Ethical Practice in Financial industry", pg. 29

the red flags because the information may have contradicted their perception of the client and their understanding of the client's behaviours. We will review the red flags related to each of the cases.

Re Rowlatt

In *Re Rowlatt*, he missed or chose to ignore the following red flags:

- Rowlatt identified that the trading activity led to upticks. CIRO settlement agreement noted that from January to December 2017, in total there were 5,375 orders filled of issuer 1, of which 981 orders (18.25%) belonged to the insider. In total 764 trades led to uptick of the trade, of which 320 orders (41.89%) belonged to the clients, hence the clients trading resulted in 41.89% of the upticks.[90] As for Issuer 2, per CIRO findings, from January to December 2017, 552 orders of issuer 2 was filled, of which 86 (15.58%) were executed within the client's accounts. 86 of the trades led to an uptick; 39 (45.35%) of which were related to the client's accounts.[91]
- CIRO concluded that while Rowlatt noted the upticks he admitted that he took no action to prevent any further impact on the price due to the trading strategy solicited by the client.[92] Rather Rowlatt expected the compliance department to identify any issues with the trades and notify him accordingly.
- The clients deposited shares of the companies of which they were insiders of and subsequently sold the shares, this should have been a red flag for Rowlatt. Although

[90] "The Rules of the Investment Industry Regulatory Organization of Canada and Aaron Jay Rowlatt, 2020 IIROC 32", paragraph 33

[91] IBID, paragraph 38

[92] IBID, paragraph 12

not clear within the CIRO findings, whether Rowlatt confirmed with the clients that they were otherwise not trading the shares based on material non-public information. This is relevant because if the material non-public information would affect the issuer's performance or revenue generating abilities, the price of the shares may drop once the news becomes public. In order for markets to be fair, investors should have all necessary information in order to make proper investment decisions. Without this transparency, integrity of the financial market is compromised.

- CIRO concluded that many of the trades were uneconomic and had no benefit to the insiders. The trades executed within the client's account for company 1's shares resulted in net return of $6,026.50, per CIRO *"[t]he net return is insignificant compared to over $1 million in trade turnover that was generated*"[93]. As for the trades in company 2, the trades in question resulted in losses of approximately $6,187.50, including commission charges.[94] This should have alerted Rowlatt to gain a better understanding as to the purpose of the trades.
- Rowlatt had been entering trades late in the day, which the compliance department had flagged and raised as a concern to Rowlatt. This should have alerted Rowlatt to question the intention of the client's trading strategy, but Rowlatt, simply advised the clients that they could not execute the trades at the end of the day and continued to enter other suspicious trades.[95]

Re Danielak

[93] IBID, paragraph 46

[94] IBID, paragraph 50

[95] IBID, paragraph 21

The following are red flags that should have raised concerns by Danielak:

- In the span of two months; October and November 2019, the client instructed Danielak to enter 47 buy orders; mostly all of which were not filled. Per CIRO "*[t]he pattern and method of the order entry demonstrates that the client had no intention to execute the buy orders*."[96] In most cases the client instructed Danielak to enter 2 buy orders on each day and would instruct Danielak to change the bid price, when it neared the client's entered bid price, thus putting the order further away from priority for the fill.
- Danielak understood that the client was trading to "support the stock", which is considered a manipulative trade practice, but did not understand the implication of the trading strategy.
- CIRO found that, based on the trading pattern and Danielak's awareness that the client was trading to support the stock, Danielak should have been alerted to the client's intent to manipulate the market and therefore should have questioned the legitimacy of the orders. He should have confirmed that the orders were bona fide, given the indications that the client had no intention of executing them.[97]

Re Moore

As for Moore, the following red flags should have alerted him of the concerns related to the trading within the Zang's personal and corporate accounts in Kilimanjaro Capital.

- Shares of Kilimanjaro Capital were deposited into Zang's personal accounts, subsequently Zang sold the shares.

[96] "In The Matter Of The Investment Dealer And Partially Consolidated Rules And The Universal Market Integrity Rules And Martin Danielak Settlement Agreement", paragraph 4

[97] IBID, paragraph 18

- Patel misrepresented to Moore that he was not a senior or director of Kilimanjaro Capital, but purported to be Chief Operating Officer and legal counsel for Kilimanjaro Capital. Patel played a significant role in facilitating the sell of the shares for Zang by having Kilimanjaro Capital quoted for trading on the US over the counter exchange. Moore from his interactions with Zang and Patel was in a better position to ascertain the suspicious nature of their relationship, given the level of involvement from Patel to assist Zang in divesting the shares of Kilimanjaro Capital.
- Zang deposited shares of Kilimanjaro Capital into a corporate account. Moore facilitated Zang's request to appoint Patel as having trade authorization over a corporate account of which Zang was beneficial owner contrary to operational best practice. Trading for a corporate account can only be authorized by the directors of the corporation per the corporate resolution. Therefore, in this case, Patel should have been added as a corporate officer, rather than relying on the authority given via the trade authorization process. This rapport between Zang and Patel should have alerted Moore of the suspicious nature of their relationship, should have alerted Moore to ask questions about Zang and Patel's relationship and the trading requests.

Re Bealer

The following red flags should have alerted Bealer of the suspicious nature of the trading instructions from the clients:

- There was a familial relationship between the client and insider of an issuer for which the client was transacting in.
- The client's personal and financial circumstances should have raised concerns, specifically the following factors: (1) his age which was 68; (2) he was retired; (3) had

a net worth of $300K; and (4) annual income of $35K. Bealer should have questioned the deposit of significant number of shares for which his step son was an insider. Specifically, how the client was able to obtain/purchase 1,331,667 shares of the issuer. After the deposit, the client proceeded to sell the shares and transferred $1.650 million from the liquidation of the sells to third parties. The market value of the securities was greater than the client's financial circumstances would dictate. Selling shares worth $1.65 million is disproportionate to his net income and net worth. Given Bealer's know your client obligation, this discrepancy between the transactional activities being processed through the client accounts and his financial circumstances should have been evident.

- The client in question was related to the insider of the issuer. Therefore, the above transactional activity should have alerted Bealer to the possibility that the client may have been trading the shares based on material non-public information or the client was divesting shares on behalf of his step son, that is he was part of an insider trading strategy.
- The client transferred the proceeds from the trades to third parties, which should have alerted Bealer to query as to who the third parties were and why was the client not retaining any portion of the liquidation proceeds.

The subjects failed to recognize the red flags because the information and actions contracted their assumptions or understanding of the client's character. The Subjects have a preconceived understanding of how clients typically behave and when new information is presented that conflicts with that understanding, they fail to consider the client's actions as potential red flags for market manipulation. The value that Advisors lack in this instance

is courage, wherein actions were not taken by Advisors because they were uncertain of the client's reaction if questions were asked of them about their trading strategy. Advisors may not want to offend the clients by asking too many questions or implying that the clients are involved in any wrong doing because this may impact or sour the relationship with the client(s). Advisors may also not want to ask questions because they don't want to give the impression that they don't have sufficient technical proficiency in understanding the client's trading strategy. In *Re Danielak, Re Rowlatt* and *Re Moore,* Danielak, Rowlatt and Moore, would have perceived their clients to have a deep understanding of the markets. In *Re Rowlatt,* the client in question was part of the executive team of two issuers. In the case of *Re Danielak and Re Moore,* the clients were long time clients of the Advisors, as such they assumed that the clients had a high level of expertise, i.e., they knew what they were doing because the clients had considerable investing experience and had a deep understanding of the markets. Danielak, Rowlatt and Moore would have viewed the client's instructions as final, assuming that the clients provided the instructions in an authoritative and decisive manner, as such Danielak, Rowlatt and Moore would have hesitated in asking any further questions for fear that clients would interpret the question as if they were undermining the client's authority. Danielak, Moore and Rowlatt may have assumed that the clients had access to information and analysis tools otherwise not available to them, as such they may have felt that the trading instructions was provided on analysis that they otherwise didn't have access to via the client's networks. In *Re Rowlatt,* the clients in question represented a significant source of his income and as such he had a short-term financial incentive to ignore the red flags which would have impacted long term ethical considerations. The Subjects compensation is tied to the performance of the client's

accounts; therefore, they have a monetary incentive to deny fact and ignore relevant red flags. That is, the Subjects may lose the client's relationship and therefore their source of income if the clients feel that they were under scrutiny for the trading instructions provided. Hence the client relationship with the Subjects inherently includes a conflict-of-interest concerns, especially when interest of the client conflict with interest of society. As for Bealer, given the relationship between the client and the insider of the issuer the client was trading in, Bealer may have believed that the client was getting investment advice from his step son directly, given the insider's expertise with the issuer and industry. Therefore, the Subjects prioritized their relationship with the clients over ethical obligations towards their gatekeeping responsibilities.

Challenges to retail trading firms to meet their obligation as a gatekeeper is due to Advisors lack of sense of what is right or wrong. The value that Advisors lack is integrity. According to OSFI:

> *Integrity is demonstrated in actions, behaviours, and decisions that are consistent with the letter and intent of regulatory expectations, laws, and codes of conduct. It is people within organizations that take or fail to take actions and make decisions. Increasing the likelihood their behaviour demonstrates integrity can be achieved in several different ways, including by:*
>
> 1. *Ensuring people are of good **character***
> 2. *Promoting a **culture** that values compliance, honesty, and responsibility*
> 3. *Subjecting actions, behaviours, and decisions to sound **governance***
> 4. *Verifying **compliance** of actions, behaviours, and decisions with regulatory expectations, laws, and codes of conduct.*
>
> *Integrity is an important value in and of itself. A lack of it can damage reputation, result in fraud, cause legal issues, and increase*

> *vulnerabilities to undue influence, foreign interference, and malicious activity.* [98]

The Subjects did not examine the trading strategy by asking the clients about the purpose of the trades or seek guidance from their firm's compliance department because they didn't find anything wrong with the client's trading instructions despite the red flags. The Subjects lacked moral awareness, in that the Subjects didn't understand the ethical implications of accepting questionable orders from the clients. Existential ethics notes that, "*moral rightness is .. an action .. determined by the individual's developed conscience*".[99] The Subjects failed as gatekeepers because of poor decision-making skills for following reasons:

- The Subjects did not understand their roles as gatekeepers to the market or their obligation to safeguard the markets from unethical, manipulative trading practices by the clients.
- The Subjects ignored their gatekeeping responsibilities in favour of maintaining client relationships; and
- The Subjects failed to ask relevant questions, to gain understanding of the legitimacy and the purpose of the trades.

From personal knowledge when asked as to what the purpose of the trades, Danielak noted that he didn't' have any concerns with the trading strategy because his understanding was

[98] "Integrity And Security – Guideline", Office of the Superintendent of Financial Institutions, January 31, 2024. Accessed on May 20, 2024, from https://www.osfi-bsif.gc.ca/en/guidance/guidance-library/integrity-security-guideline, pg. 6

[99] "Ethical Practice in Financial industry", pg. 29

that the client was "supporting the stock". Danielak exercised poor judgement in not recognizing that this trading practice is a form of market manipulation.

Advisors' inability to interpret the trade instructions as being contrary to public interest is a failure that challenges retail trading firms with their gatekeeping responsibilities. Although not addressed in the CIRO findings, the, factors that may have affected the Subjects ability to interpret the red flags against the clients were: (1) the familiarity between clients (in the case of Bealer a family member of a known client); (2) the length of time the Subjects have been working with clients; and (3) the Subjects may have had daily contact with the clients, therefore there may have been an unreasonable trust by the Advisors towards the clients. That is, the relationship may not have been an arm's length one between the Subjects and the clients. In many cases, because of the factors noted above, a personal relationship may develop between the Advisors and the clients. Advisors become so close in relationship with the executive members of issuers that they are unable to perceive potential conflicts between the executive's motive in authorizing suspicious trades for the purpose of market manipulation to their responsibility to act as a gatekeeper to the markets. A factor that effected Advisors independence of mind was familiarity threat which notes that because of the long standing or close relationship between the Advisors and the clients, the Advisors became sympathetic to the client's interests or accepting of the client's information with wilful blindness.[100] In the case of *Re Danielak, Re Moore, Re Bealer* and *Re Rowlatt*, the Subjects failed in their fiduciary responsibility towards the clients. That is, the Subjects had an obligation to act in the client's best interest, however

[100] Professor Lenard Brooks, IFA Ethics, Lecture Notes, May 10, 2023, IFA1901H Forensic Accounting Professional & Practice Issues, University of Toronto Mississauga

they failed because they assisted the clients with market manipulative strategies. Promoting violations of laws and regulations would not be in the best interest of the clients, and in this case the clients needed protection from their own self destructive unlawful actions.

Advisors' tendency to overlook red flags because of client's personality indicates an internal control failure, which complicates retail trading firms' ability to fulfill their gatekeeper obligations. Research indicates that people in senior executive positions have dominate and autocratic personalities. Clients involved in market manipulation noted in *Re Moore* and *Re Rowlatt* were CEO's or part of the issuer's executive management. In *Re Danielak,* from personal knowledge although the client was not directly part of Citation Growth's executive team, he was however closely associated with the company's executives. As for *Re Bealer,* the Advisor's based his decision to overlook red flags based on the client's step son's personality. When the Subjects succumbed to the client's personalities, they were subject to intimidation threat[101], wherein the Subjects deferred their judgement to their clients because of their aggressive personality, expertise or reputation. The Subjects relied on the client's status within their corporate organizations. The Subjects presumed that the clients would adhere to a moral and corporate governance codes. This misplaced trust in the clients resulted in the Subjects failure to perform their duty as gatekeeper to the markets. While the Subjects acting in good faith entered the orders for the clients, they violated the technical proficiency value, wherein the integrity of the market was sacrificed in order to meet the value of acting in good faith. However, as noted in *Re Danielak, Re Bealer, Re Moore* and *Re Rowlatt*, the client's financial incentives overrode their individual moral compass.

[101] IBID

The difficulty in meeting gatekeeper obligations by retail trading firms derives from the asymmetrical flow of information from the clients to Advisors. Clients may not always share in total the full purpose/information behind their trading strategy with the Advisors, thus making it difficult for the Advisors to determine or conclude that the trading patterns to be manipulative. As Advisors do not utilize an investigative mindset or exercise scepticism, they tend to take the information provided by the clients at face value. In many cases Advisors do not have the full facts to identify any concerns with the trading instructions provided. In *Re Moore*, the Advisor was not aware of the true control that Patel had over the operations of Kilimanjaro Capital. Had Moore known that Patel was engaged in a coordinated effort to pump the security via promotional efforts and conceal the true ownership of shares while liquidating the shares, called microcap liquidation scheme[102], he may have been more alert with the trade requests and taken appropriate action. In addition, both Patel and Zang confirmed to Moore that neither were senior officers or directors of the issuer in question. Had Moore been aware that the individual who was directing the trading within the Zang's corporate account had material control over the company, this could have alerted Moore to conduct additional due diligence with the trading instructions. Similarly, had the client provided Bealer detailed information of how he obtained the shares belonging to his step son's corporation, Bealer could have denied executing the trades or taken appropriate action to safeguard the markets as required by his gatekeeper responsibilities. Correspondingly, in *Re Rowlatt*, if the client had informed Rowlatt that they wanted to reflect the stock price at a particular level, because the company would be in a better position to negotiate contracts, executives would be financially rewarded or any

[102] "In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", paragraph 167

other reason why the price of the stock had to be at a certain range, then Rowlatt, would have had full disclosure of information in order to ensure the markets remained free from market manipulators. As well, in *Re Danielak*, had the client informed Danielak, that he was trading on the other side of the orders he had executed through Danielak, then Danielak would have been in a better position to protect markets from any actions that would have led to artificial price of Citation Growth.

Advisors may choose to ignore red flags indicating market manipulation strategy because of concerns over general market volatility thus making it difficult for retail trading firms to meet their gatekeeper obligation. If the client's portfolio is experiencing general market volatility during down cycles, where the performance maybe negative, sometimes significantly, Advisors may not want to highlight the negative performance of the client's portfolio as a result of trades executed to meet an investment strategy recommended by the Advisor. As well, Advisors may not want to cause any friction with the clients by denying to execute questionable trades for fear that the client may bring up concerns of potential losses within their portfolio, file a complaint or civil claim as a result of the negative performance of their portfolio. Alternatively, Advisors may even execute questionable trades to address negative performance of the client's portfolio. Therefore, Advisors fail to adhere to the value of honesty, integrity and justice, wherein the Advisors failed to provide clients with full disclosure and fair treatment of all relevant information.

Advisor's trust in their clients is the cause of an internal failure for firms as such they are not able to meet their gatekeeper obligations. To have an effective client and Advisor relationship, there must exist trust between the client and Advisor, where the clients must trust that the Advisor will always act in their best interest. Correspondingly, there must be

trust by the Advisor that clients will provide them with all relevant and necessary information required to ensure that Advisors meet their know your client obligations as well as their gatekeeper responsibilities. CIRO notes that in order to satisfy gatekeeper responsibilities, the Advisors must know the following information:

- *The client's typical financial activity and patterns to identify suspicious transactions*
- *How to identify and escalate suspicious transactions*
- *Possible insider trading activity and violations*[103]

Appendix 6 - Retail Registered Representative (RR) and Investment Representative (IR) Competencies includes a list of responsibilities each Advisor must follow in the execution of trades, to maintain market integrity and to satisfy their gatekeeper responsibilities. By nature of an existing trusting relationship, whenever clients engage in trading practices, in most cases Advisors will not consider the possibility that clients maybe manipulating the market, given the level of perceived trust that may exist between the Advisor and the client. The Subjects placed unwarranted trust within the clients, assuming that wealthy clients and executives would act ethically and in the best interest of the shareholders. The trust between the Advisor and the client leads to advocacy threat, where the Subjects interests intertwine with the clients, as such Advisors become an advocate for the client's position.[104]

Advisors ethical conduct or lack thereof is a challenge retail trading firms face as gatekeepers to the market. Advisors ethical conduct contributes towards their failure with their gatekeeper obligation. Utilitarian ethics stipulates "…*moral rightness of an action is*

[103] "Reference Document for: Retail Registered Representative (RR) and Investment Representative (IR) Competencies, Appendix 11", pg 39

[104] Professor Lenard Brooks, IFA Ethics

determined by considering what the consequences of that action will be."[105] When the Subjects received instructions from their clients to execute suspicious trades, they were in a moral and ethical dilemma. The Subjects had a duty of care under their fiduciary duty obligation to act in their client's best interest and to prioritize the client's financial well-being. However, the Subjects failed to recognize that by entering suspicious orders resulting in the manipulation of stock price or by taking advantage of insider information, this violates ethical principles. These actions undermine the integrity of the financial industry, contravened regulations and is against the interest of society. The duty of ethics mandates that Advisors must always act with integrity.[106] Acting with integrity involves Advisors be responsible persons of good character and apply principles of integrity through their actions, behaviours and decisions.[107] Ethical decision-making often involves weighing multiple factors, including consequences, duties, virtues, and rights, to arrive at a well-rounded moral judgment[108]. It appears that the Subjects only considered the clients best interest in their moral judgement but did not consider the consequences of their action on the integrity of the market, society or to the decline of the public trust of the financial industry.

Internal control failure effecting the retail trading firm's ability to meet gatekeeper obligations resulted from the firm's hiring process, in that they did not identify the Subjects had weak moral compass and despite this they were allowed to trade within client accounts.

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[105] "Ethical Practice in Financial industry", pg. 29

[106] IBID, pg. 37

[107] "Integrity And Security – Guideline", pg. 6

[108] Professor Lenard Brooks, IFA Ethics

Firms place high reliance on the requirements that Advisors must pass background criminal checks, that Advisors have taken the necessary courses needed to qualify to trade, must undergo 30/90-day training and must be approved by the securities commission before they are allowed to trade within clients' accounts. Lack of integrity and little understanding of ethical decision making or of virtues expected are ethical red flags.[109] The Subjects justified executing suspicious trades on the basis that their action was just based on the norms and expectations of their clients who belong to an elite executive community, where for some individual's self-interest practices maybe the norm. The Subjects rationalized their behaviour by considering their action as being aligned with prevailing practices or accepted standards within their industry. Advisors are to always act in the best interest of their clients, and in this case the best interest of their clients conflicted with maintaining the integrity of the markets, and society. While group ethics which outlines that the "*rightness of an action is determined by the traditions and norms of a particular community*[110] may have influenced the Subject's ethical judgement, it should not have overridden societal ethical principles or legal standards. Actions that violate legal or regulatory requirements cannot be justified solely on the principal that this practice is acceptable amongst a particular social group. Had the retail trading firm had better hiring screening process, such as personality tests this would have identified that the Subjects ethical decision capability was compromised. Through psychological tests firms can better ensure that the "right" people are in a place that will help not hinder the retail trading firm's ability to meet their

[109] IBID

[110] "Ethical Practice in Financial industry", pg. 29

gatekeeping responsibilities. At the very least psychological tests will help identify if the firm should provide additional training for Advisors to address ethical dilemmas.

Internal Control Failures: Written Policies and Procedures

Retail trading firms face challenges in meeting their gatekeeping responsibilities due to internal control failure whereby firm's policies and procedures does not provide guidance on situations involving ethical dilemmas. The prevalent ethical dilemma noted in *Re Danielak, Re Moore, Re Bealer* and *Re Rowlatt* was a conflict between integrity versus client trust. The Subjects had to choose between processing the trade orders in accordance with the client's instructions (which they are required to do based on regulations), thereby ensuring that they maintain their client trust or honor their responsibilities in ensuring that the integrity of the marketplace is maintained. Another dilemma is self vs. community, which illustrates a clash between rights and values of individuals against values of a group or society. By executing suspicious trades, the Subjects failed to use a moral code of group ethics which outlines that the "*rightness of an action is determined by the traditions and norms of a particular community*.[111] The Subjects using their intellect, interpreted and evaluated the situation based on their sense of inner morality, which promoted client interest over the interest of society. As noted within *Re Danielak, Re Moore, Re Rowlatt and Re Bealer,* the Subjects chose to promote client interests or position by entering suspicious trades despite the red flags, which confirms that their objectivity and independence was compromised.

[111] IBID, pg. 29

Despite the existence of internal controls involving requirement for continuous education and getting ongoing commitment to abide by the firm's written policies and procedure and securities law, Advisors still failed in their gatekeeper responsibilities. Advisors attest each year that they have read and understood the firm's compliance policies and procedures, which includes their responsibility to act as gatekeepers to the market. As well, every two years they must meet education requirements as set out by CIRO, which includes getting product development and compliance education credits. However, requiring Advisors to take mandatory courses in ethics as part of their continuing education requirements is lacking.[112] There is no mandatory re-training for Advisors on a yearly basis on preventing, and identifying market manipulation practices. On a yearly basis, like Anti-Money Laundering training requirement, Advisors should have to go through manipulative trading exercises/courses or courses on ethical practices within the financial industry. Trading for the purpose of manipulating the market is rarely a topic that is openly addressed by retail trading firms, which adds to the firms challenge in ensuring staff/Advisors understand and can identify when market manipulation is occurring. Providing practical examples is a good way to discuss this matter with the Advisors. If such training had been in place, perhaps the Subjects would have recognized the client's intent on manipulating the market.

[112] Rod Burylo, "Hold leadership accountable for failures in ethics - Industry leaders create the culture that influences advisor behaviour", Investment Executive, January 11, 2023. Accessed on May 14, from https://www.investmentexecutive.com/insight/columns/hold-leadership-accountable-for-failures-in-ethics/

Internal Control Failures: Retail Trading Firm Culture

Retail trading firms have in place as an internal control the requirement that all Advisors abide by a code of ethics, however failure by Advisors to abide by the code makes it difficult for retail trading firms to meet their gatekeeping responsibilities. While Advisors are required to sign and confirm adherence to the code of ethics, retail trading firms can fail to effectively apply the code. That is, "…*code has meaning and value only if it is discussed, reinforced and applied within the organization. Rather than being a message that sets expectations and standards of behaviour, a code of ethics left undiscussed and unreinforced messages that such a code is not important*".[113] If the retail trading firm does not reinforce to their members the requirement to be ethical in their dealings with clients and the society or market as whole, then this internal control will fail. Retail trading firms must establish the following:

> *[c]ulture that demonstrates integrity is deliberately shaped, evaluated and maintained. Culture influences behavioural norms, which send signals throughout an organization about what is, and is not, valued, important, and acceptable. This impacts actions, behaviours, and decisions relating to management, compliance, risk taking, issue response, and learning and growth… Culture reflects a commitment to norms that encourage ethical behaviour*".[114]

Setting an ethical requirement is beneficial for firms because creating an ethical environment will lead to a reputation for the firm as being creditable, reliable, trustworthy and responsible.[115] Continuous promotion of ethics and good governance, while also

[113] IBID

[114] "Integrity And Security – Guideline", pg. 7

[115] Professor Len Brooks, IFA Ethics

reinforcing ethical values will assist Advisors with their decision-making skills when in an ethical dilemma.

Failure to establish an ethical firm culture can lead to challenges for retail trading firms to meet their gatekeeping responsibilities. Burlyo Roy notes that rules, standards and practices set out for Advisors and retail trading firms, lack the recognition that Advisors are influenced by the firm's leadership. When there is transgression of rules, regulatory investigations identify Advisors as culprit's when there is a failure of gatekeeper responsibilities, however, "…*responsibility of the people who create and nurture environment that produces advisor behaviour are rarely, if ever, acknowledged*".[116] Burylo notes that corporate culture influences the behaviour of its members, by membership selection, recruitment strategies and policies. Retail trading firms who attract Advisors only focused on personal wealth may only retain Advisors who place their needs above the clients and the firm's. Retail trading firms should penalize Advisor's choices that are unethical (even if technically not in breach of rules), should acknowledge ethical contributions of Advisors, influence behaviour through reward and recognition program that celebrate ethical and compliance behaviours.[117]

A challenge for retail trading firms to meet their gatekeeper obligation results from the need for firms to balance their obligation to act as gatekeeper to the market, while managing operation risks and costs. Sometimes firms balance the need for revenue generation and their regulatory requirements. As a result of this dilemma, firms may meet

[116] "Hold leadership accountable for failures in ethics - Industry leaders create the culture that influences advisor behaviour"

[117] IBID

their regulatory requirements by investigating suspicious trades for market manipulation and may take disciplinary measures against Advisors, however, the extent of the measure sometimes is curbed if the situation involves a high performing or high revenue generating Advisor. That is, disciplinary measures implemented by the retail trading firms maybe based on business decisions. In addition, firms have to balance their regulatory requirements against civil liability risks, as Advisors may use the firm's obligation for investigating and disclosing all suspicious trading activity to the regulator as a reason to terminate their relationship with the firm and file a civil claim. This can be especially problematic if the firm's findings were inconclusive, in that there was insufficient information to conclude that the actions of the Advisor or client resulted in market manipulation. Notwithstanding, CIRO and the provincial securities commissions have their own enforcement process and are able to implement disciplinary measures based on established precedents for sanctions, along with the sanction guidelines, which is a separate process from the firm's disciplinary process.

Internal Control Failures: Supervision and Trade Data

An internal control failure can be attributed to retail trading firm's requirement for ongoing monitoring of trades to find suspicious trading practices which makes it difficult for firms to meet gatekeeping regulations. Insufficient technical resources available to the firm's compliance team make it difficult to detect and prevent manipulative trading activities. Trade data and client information in many cases is available across multiple software programs, as such, extracting relevant data (in different formats) and normalizing the information for purpose of data analytics can be challenging and time-consuming process (which typically is done manually as access to data specialist is limited at the firm).

As well, total reliance on data extracted from the system may not be appropriate entirely. For example, when auditing trades, the compliance team, cannot always rely on the time codes noted in the reports extracted from the order book, as the timestamps are updated whenever there is a change of order form submitted for each trade. As such for each trade a manual review of the order ticket is necessary, which includes the electronic audit trail of the trade. This is a manual process making it time consuming. In addition, some firm's record retention policy stipulates that order tickets are kept on file for a short period of time only, sometimes for days or couple of weeks, as such in this case, access to accurate relevant information may not be available for trades under review which have passed a certain period. This audit trail of trades can be very important if the compliance department is trying to detect a pattern of market manipulation. Many firms lack human capital with the right specialized skills within their compliance teams, to detect manipulative and deceptive trading instances. Therefore, in order to address this internal control failure, it would be essential for firms to have Investigative Forensic Accountants on staff. We will discuss this further under the *Importance of Having Investigative Forensic Accountants Within Retail Trading Firms* section of this paper.

Available technical resources within the retail trading firms as an internal control may not be sufficient to meet gatekeeping requirements. Many firms rely on third party or internal processes to identify suspicious trades, however, these filters can be broad, thus many suspicious trades are not flagged. In *re Moore* at the time of the issuance of the cease trade order, the Alberta Securities Commission identified significant trading within Zang's personal and corporate accounts managed by Moore.[118] From personal knowledge, it

[118] In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", paragraph 111

should be noted that none of the suspicious trading activity was caught by the firms compliance team, which relies on a system that flags certain transactions for review based on programed filters. From personal knowledge, in the case of Danielak, the trading within the corporate account was flagged by the firm's trade surveillance system, only because one of the orders executed in November 2019 was 4th in place for fill, however, the client instructed Danielak to change the bid price which moved the priority of the fill further down. This created an alert from the trade surveillance system the firm was using to monitor trading activity. Only manually reviewing that particular trade, did the trade surveillance team note the that there were 45 previous trades executed in the months of October and November 2019, which had not been filled and had not been flagged by the system. As a result of this egregious trading practice the retail trading firm's investigation team initiated an internal investigation into the circumstances of the trades. During the review it was noted that the client was trading in Citation Growth on the other side of the market with his other Advisor. It should be noted that the firm was only able to ascertain the issue of layering because the client executed the trades on the other side of the market with the same firm, but with a different Advisor. Had the client utilized a different firm altogether to execute the trades on the other side of the market, the firm would not have been able to identify the motive behind the trades executed by Danielak or identify the issue as being one of layering. In *Re Rowlatt*, the firm identified that there were concerns over late day trading within the client's accounts. However, CIRO findings did not address if the firm's trade surveillance team had been alerted to the fact that the suspicious trading activity executed on their books, resulted in the increase in volume of the securities in question and that the trades led to an uptick in the price of the security. The CIRO findings

also did not address if the firm took any action to closely monitor the insiders accounts or place any restrictions on the clients' accounts, specific to the trading activity of that issuer, thereby mitigating any further instances of market manipulation. This was especially important because the firm was already aware that the client's late day trading was affecting the market. CIRO's findings did not address if the retail trading firm had an opportunity to prevent further market manipulation in this instance. Lastly in *Re Rowlatt* the insider deposited shares of an issuer which the client materially controlled then subsequently proceeded to liquidate a significant number of shares subsequent to the deposit. The CIRO findings does not address whether this red flag was identified by the firm's supervision team (in addition to the trade surveillance team), whose responsibility is to review transactional activity post trade/transaction. The supervision team monitors client transactions for any potential market manipulation activities as well as other regulatory requirements. In *Re Moore,* Moore had updated the corporate account and added a trading authorization on the account allowing for the third party to provide trading instructions. This red flag should have also been caught by the firm's operational team, as giving authority to an individual otherwise not on the corporate resolution is not standard practice and should not have been allowed. In *Re Bealer,* CIRO does not address if the compliance department failed to note that a 68 year old retired individual with no apparent affiliation to the issuer (as the familial relationship between the client and the insider of the issuer would likely not have been captured on account documents, noting the client's know your client information that supervision staff would have relied on for their review), with an income of $35K and net worth of $300K was able to get access to shares of a company worth at a minimum $1.65 million, which was considerably greater than the client's

financial circumstances would dictate. Another red flag that may have been missed by the compliance team, which the CIRO findings does not address was the number of deposits (22) of the issuer's shares. Given no apparent affiliation, the number of deposits should have warranted further queries. Internal controls within some retail trading firm's require approval from the compliance team for wires to third party. Although not addressed within *Re Bealer,* if this internal control was in place at the firm, then the compliance team should have flagged the suspicious nature of the transfers, especially given the volume of the wire transfers (25) that were process and that some of the wires were to an insider of a security that was recently transacted within the client accounts. If approval from the compliance team was not required, then the failure occurred by not implementing this internal control. In instances where retail trading firm's detect market manipulation practices, the regulator will still likely consider that the firm failed in its gatekeeper responsibility as they were not able to prevent the market manipulation from entering the market. In *Re Danielak,* the trade surveillance team detected execution of suspicious trades, however, the firm failed to prevent these trades from entering the market. Detection of market manipulation only assists in ensuring that further negative effects do not enter the markets and proper punishment is given to clients or Advisors involved. However, the damage to the integrity of the market has already occurred and effects cannot be reversed entirely.

An internal control in place to detect market manipulation involves reviewing trade data post trade, however, this internal control can be challenging for a retail trading firms to meet their gatekeeping obligation. The challenge for retail trading firm in detecting market manipulation is derived from the interpretation of trading information. In British Columbia Securities Commission versus Fatir Hussain Siddiqi (2005 BCSECCOM 416),

the panel outlined that manipulators use many methods to manipulate the market, some practices are not illegitimate trading practices, they only become questionable when the intention of the trading practice is to further their intent to manipulate the market. As well, in *Re Siddiqi* it was noted that some trading and order activity may not appear manipulative when viewed in isolation, but can be if we consider the manipulator's other conduct.[119] When it comes to layering, clients will execute the trades on one side of the market and execute the trades on other side of the market, in most cases through a different firm. This is an issue because firms never know the details of the client who is on the other side of the trade. As well, firms do not have access to relevant trade data, generally available to regulators such as trade order flow[120], thus making it difficult to catch instances of layering. CIRO with the assistance of order markers are able to recreate the trading history of the stock, trade by trade and look for effects of the trade on price[121] across numerous retail trading firms, which the firms do not have access to. The volume of trading data that the firms have to review poses a challenge to detect manipulative trading. Retail trading firms must monitor trading activity executed by all Advisors and across numerous client accounts. Identifying suspicious patterns and behaviours amongst large number of trade

[119] "Fatir Hussain Siddiqi, 2005 BCSECCOM 416", British Columbia Securities Commission, July 15, 2005. Accessed on May 16, 2024, from https://www.bcsc.bc.ca/hearings/decisions/2005/fatir-hussain-siddiqi-findings, paragraph 118

[120] Katie Stephen and Catherine Pluck, "Manipulative trading practices: A guide for banks' legal and compliance departments", Norton Rose Fulbright, November 23, 2021. Accessed on May 13, 2024, from https://www.nortonrosefulbright.com/en/knowledge/publications/4a15661f/manipulative-trading-practices-a-guide-for-banks-legal-and-compliance-departments

[121] "Trader Training Course", pg. 9.4

data is difficult, especially if the manipulative trading pattern is subtle and across numerous client and client related accounts.[122] In *Re Kilimanjaro* it was noted that:

> *…an artificial price more typically results from a distorted impression of the quality of the issuer's business prospects, financial results and similar attributes pertaining to the value underlying the issuer's securities. The question of motive can be more relevant in discerning the intent of the impugned trading activity in the case of allegations involving a misleading appearance of trading activity, than in other cases involving artificial price where the intent of the alleged conduct is objectively more obvious.*[123]

Reliance on systems is not sufficient to catch market manipulation as a much more nuance and investigative process is required. Much of the evidence of market manipulation is qualitive and can only be ascertained by reviewing information available within the issuer's records in conjunction with the client's trading accounts.

A challenge that retail trading firms face when detecting and investigating market manipulation is ascertaining that the clients trading in a security actually has led to artificial price. This is because of the limited data available to firms. *UMIR 2.2 – Manipulative and Deceptive Activities* outlines that a price is artificial if the there is no real demand or supply, and whether the price is considered artificial depends on what happens to the price following the trade, specifically the price may be considered artificial if it is higher or lower than the previous price and the market returns to the previous price following the trade.[124]

[122] Katie Stephen and Catherine Pluck, "Manipulative trading practices: A guide for banks' legal and compliance departments"

[122] "In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", paragraph 191

[123] IBID, paragraph 160

[124] "Annotated Universal Market Integrity Rules", pg. 2.2-3

However, in concluding that suspicious trades led to misleading appearance of trading activity or artificial price is difficult because:

> *... proving that would require a determination of the "real" supply and demand for the stock, and a finding that this "real" market activity was distorted by the investor in question…. It is also unclear what type of evidence would be required to demonstrate an attempt to create an "artificial" stock price, as opposed to actions that are the result of a free and fair market.*[125]

It's difficult to ascertain if the market price of an issuer is artificial based on the client's questionable trades or because the price was derived from normal market conditions. In *Re Danielak*, given that the orders placed by the client were not filled, was the increase in price of the security, the result from the free exchange of shares between buyers and sellers, or what, if any impact did the unfilled orders have on the price. This would be difficult for firms to ascertain, because of limited access to market data, staff that review the trade data do not have specialized analytic skills and because firms have limited time constraints to review such incidents. Under UMIR rules *10.16 - Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons,* retail trading firms are required to file a report in instances where there is a violation of UMIR rules or may have been a violation of UMIR rules immediately, which can be challenging. Proving client's intent to create an artificial price or execute trades based on insider knowledge is difficult to ascertain through the firm's internal records, which includes a review of:

- The client documents;

[125] Lara Jackson, John M. Picone and Stephanie Voudouris, "Regulating market manipulation: Challenges and change. Cassels", Lexpert Business Law, February 25, 2021. Accessed on May 11, 2024, from https://www.lexpert.ca/legal-insights/regulating-market-manipulation-challenges-and-change/353522

- Internal trade data through the order book, i.e., information related to trades executed within the firm's books;
- Email correspondences between clients and Advisors;
- Publicly available trade data related to the security, such as volume, or price information;
- Information from the public domain, such as insider trade information available on SEDI, or documents available on SEDAR +, such as press releases, cease trade orders, early warning report, management information circulars, prospectus, material change report, MD&A, audited financial statements or report of exempt distribution.

Retail trading firms understanding of the trades post trade can be hindered because: (1) firms cannot compel clients to an interview; (2) during the investigation process firms must weigh the consequences of questioning clients as to their intent for the trades against the possibility of civil law suits filed against the firm by clients; and (3) it may alert clients that their trading activity has come under scrutiny. The clients may then destroy evidence or take measures to further hide their illegal activities from regulators or police investigations if the matter escalates to that level of scrutiny. Therefore, if at the time of order entry Advisors do not ascertain the purpose of the trades, this makes it difficult for retail trading firms to determine the true intent behind the client's trading instructions and if it was meant to manipulate the market.

Retail trading firms face challenges in detecting market manipulation, because such activities tend to be complex and difficult to investigate. Market manipulation is "*…orchestrated by a group of individuals in a sophisticated way, carrying out what may*

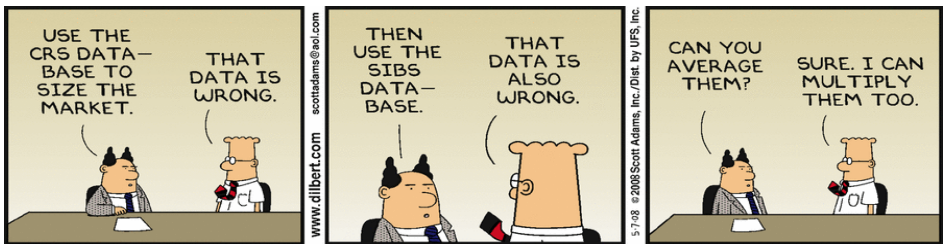
seem like standard transactions. These practices can occur over long periods of time and usually do not involve "opportunistic trading".[126] The compliance team reviews trades on a daily basis; however, market manipulation trends are only visible over time, detecting the activity can be sometimes difficult. This can be clearly observed in *Re Moore,* as in addition to Patel, there were 3 other insiders of Kilimanjaro Capital involved in market manipulation. As noted in *Re Kilimanjaro Capital Ltd., 2021 ABASC 14*, Patel's market manipulative scheme was based on the following factors working in concert: (1) Patel was part of promotional campaign wherein he timed news releases related to Kilimanjaro Capital to the tout campaign done on online by promotors who received compensation from Kilimanjaro Capital; and (2) Patel controlled Kilimanjaro operations. Patel was able to profit from these acts by selling Kilimanjaro Shares through brokerage accounts Patel controlled.[127] None of the above information would have been available to the retail trading firm, as such relying on just trading data available to the firm to detect market manipulation would be have been difficult for the firm. In fact, Kilimanjaro Capital came to the attention of the Alberta Securities Commission, not because of the trading activity, but because in late 2013, inquires related to the promotional activity and disclosure regarding Kilimanjaro Capital private placement initiative were not satisfactorily answered by the company.[128]

[126] Katie Stephen and Catherine Pluck, "Manipulative trading practices: A guide for banks' legal and compliance departments"

[127] "In the matter of Kilimanjaro Capital Ltd., 2021 ABASC 14", paragraph 191

[128] IBID, paragraph 146

Importance of Having Investigative Forensic Accountants Within Retail Trading Firm



Given *UMIR rule 10 – Compliance* and *UMIR rule 7 -Trading in a Marketplace*, there is an onus put forth on retail trading firms by regulations to have internal controls in place to prevent and detect instances of market manipulation. Therefore, it would be beneficial for firms to have Investigative Forensic Accountants ("**IFA**") on staff within their trade surveillance, supervision and investigative teams (collectively, the "**Teams**") to meet their gatekeeping requirements. The trade surveillance team monitors the trading activity post trade across the firm, the next day to ensure that all trades were executed in accordance with rules and regulations and have all the proper trade identifiers. The trade surveillance team will also monitor trading activity to detect for instances of market manipulation. The supervision team generally reviews client transactions the next day to ensure that: (1) the trades were executed in accordance with gatekeeper requirements: (2) there are no concerns with deposits and withdrawals within client accounts from an anti-money laundering perspective; and (3) trades are suitable for the client and in accordance with the know your client obligation. Lastly, many firms have an investigation team who will investigate all client complaints submitted against the Advisor or the firm. As well the investigation team will conduct internal investigations in situations where concerns have been raised against the Advisor of possible breach of rules, including UMIR rules, by clients, regulators, the trade surveillance team or the supervision team.

IFA's have certain skills that can be an important asset to the retail trading firm in order to assist in detecting instances of market manipulation. IFAs can be objective, which allows them to draw conclusions based on evidence. IFAs through the use of an investigative mindset, allows them to analyze records and conduct interviews to determine the following:

- If other than the suspicious trading activity identified by the trade surveillance or supervision teams, where there are other instances of suspicious trading activity, previously not identified; and

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- Were the suspicious trades executed as a result of the intentional efforts by the client to manipulate the market or because the clients were executing a legitimate trading strategy, wherein they were (1) executing trades to beat the market; (2) they were divesting shares because they are diversifying their portfolio in order to address concentration concerns; or (3) were in need of funds to meet personal unforeseen expenses. That is, were the suspicious trades actually instances of market manipulation.

According to the Standard Practices for Investigative and Forensic Accounting Engagements ("**SPA**") prepared by the IFA Standards Committee, which all IFA's must adhere to, sections 400.01 to 400.05, of the SPA notes that the use of an investigative mindset and use of skepticism involves:

- Considering information with a view that it maybe "…*biased, false, unreliable and/or incomplete*".[129] As such all information should be viewed with uncertainty as to the validity, authenticity, and accuracy.
- Assessing the timing, nature and extent of approach, procedures and techniques[130] to be used by the Teams in the course of detecting and investigating suspicious trading activities.
- Through the use of an investigative mindset IFA's: (1) have ability to analyze and review data from different sources; and (2) review information that would assist in understanding motivation, intent and bias.[131] This is relevant as Teams would have to determine if the suspicious trading activities leading to market manipulation was instigated by the Advisors, the clients through the Advisors unknowingly and/or if the market manipulation activity was executed by the clients and Advisors in collusion.
- Identify, analyze, compare and "…*assess substance over form, … develop and test, as needed hypothesis for the purpose of evaluating the issues…*"[132] Analyze the information in the context of the situation, understand the essence of the information being reviewed, postulate as to what happened and test the information/evidence against the information/analysis.

[129] "Standard Practices for Investigative and Forensic Accounting Engagements", Chartered Accountants of Canada, November 2006, pg. 9

[130] IBID, pg. 9 "Standard Practices for Investigative And Forensic Accounting Engagements"

[131] Neufeld, Victor, "Master of Forensic Accounting – IFA 1901 – Forensic Accounting Professional & Practice Issues", IFA1901H Forensic Accounting Professional & Practice Issues, Lecture Notes, May 29, 2023. University of Toronto Mississauga

[132] "Standard Practices for Investigative and Forensic Accounting Engagements", pg. 9

- When reviewing all the information and documents, consider the relevance of the information.

Per SPA 100.11 an investigative mindset requires:

> *….sceptical attitude in the identification, pursuit, analysis and evaluation of information relevant to each engagement, contemplating that it may be biased, false and/or incomplete. This is applicable in identifying and assessing relevant issues, assessing the plausibility of the underlying assumptions, assessing substance over form, and developing hypotheses for the purpose of addressing the issues under investigation.* [133]

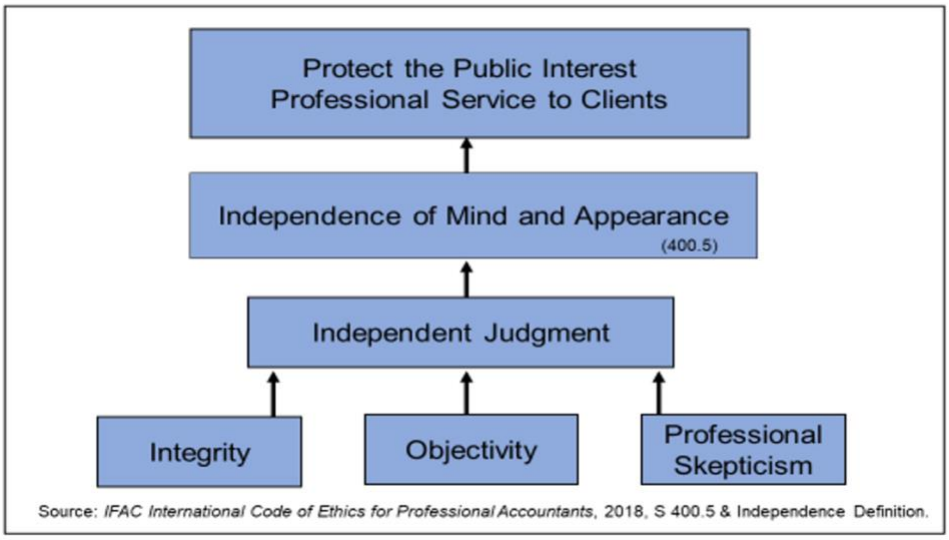
IFA's have investigative mindset, utilize professional skepticism and exercise critical thinking, these skills would be beneficial for the Teams when they review trade data to find instances of manipulative trading patterns. *Figure 3 – IFAC Code's Framework for Independent Judgement*, outlines that in order to protect the public interest, IFA's must exercise an independence of mind and appearance, which is achieved from exercising independent judgement. Independent judgement is derived from skills involving the exercise of professional skepticism, use of objectivity and involves integrity.

Figure 3 - IFAC Code's Framework for Independent Judgement [134]

[133] "Standard Practices for IFA Engagement", pg. 9

[134] Professor Len Brooks, "Ethical Conduct by IFAs" (Class notes), May 10, 2023, IFA1901H Forensic Accounting Professional & Practice Issues. University of Toronto Mississauga.

IFAC CODE'S FRAMEWORK FOR INDEPENDENT JUDGMENT



Source: *IFAC International Code of Ethics for Professional Accountants*, 2018, S 400.5 & Independence Definition.

IFA's can be an important asset to the retail trading firms as they have specialized skills that will assist firms in detecting market manipulation and therefore firms can meet their gatekeeping obligation. IFA's when reviewing any information to detect manipulative trading, exercise independence of mind. Independence of mind ensures that IFA's review all information free from any influence that would affect professional judgement, thus "*…allowing an individual to act with integrity, and exercise objectivity and professional skepticism*". [135] Independence of mind is a state of mind that permits the IFA to provide an opinion without being affected by influences that compromise professional judgement.

IFA's can be effective tools within retail trading firms, because they abide by SPA rules that would be beneficial for firm in meeting their gatekeeping responsibilities. Per SPA rules 400.12 and 400.13 which stipulates that IFA's should assess the information considering the relevance, reliability, reasonableness, completeness and consistency with other known information. As well, IFAs are required to consider reasonable alternative

[135] Professor Len Brooks, IFA Ethics, Lecture Notes

theories, approaches and methodologies that maybe relevant.[136] Therefore, by having IFAs within the retail trading firms, Teams will have the proper skills to understand all possible ways fraudster(s) are able to manipulate the market, as well provide theories as to the possible intent behind suspicious trading activity. Using these skills, the Teams can compare alleged misconduct against regulatory and evidentiary standards. IFAs are able to conduct such reviews through the use of data analytics, wherein they will analyze the trade data for the following: (1) to look for anomalies; (2) to detect red flags; and (3) check for trends. For any anomalies, red flags or trends identified investigate the cause of discrepancies, impact of the red flag on the market, the firm or the client by reviewing market price and volume information at the time of anomaly.

IFA's have the necessary skills to assist retail trading firms to meet their gatekeeping responsibilities. IFA's can handle complex investigations into a wide range of subject matters, including front running, layering, insider trading or other activities to further manipulate the price of a security, thus compromising the integrity of the market. IFA's can interpret provincial legislation, CIRO rules, regulations, and policies to determine, if any, have been violated, with the assistance of investigative mindset and comparing alleged misconduct against regulatory and evidentiary standards. IFA's conduct analysis, including the amount by which the fraudster benefitted from the market manipulation.

IFA's can play a significant role in ensuring that retail trading firms are able to meet their gatekeeping obligation because they have certain skills. IFA's can review internal controls, including compliance and supervision procedures to ensure effectiveness in

[136] "Standard Practices for Investigative and Forensic Accounting Engagements", pg. 10

preventing and identifying risks to the firm and the integrity to capital markets. That is, IFA's can assist firms to manage and mitigate regulatory and civil risks.

Through IFA's, retail trading firms are better able to meet their gatekeeper responsibilities because they have specialized skills. In situations where firms believe there may have been a breach of UMIR rules, firms have to file gatekeeper reports or internal investigation reports to the regulators (CIRO and provincial securities commissions). Having IFAs as part of the Teams can be beneficial as IFA's can provide information in a clear, concise and balanced manner, which can be used by the regulators to determine if further enforcement or investigation action is warranted. IFAs are also able to set out evidentiary information in a logical manner which supports the conclusions reached in the investigation. Within the reports, IFAs are able to include the assessment of the matter, include what remedial actions the firms have taken, which could include the following:

- Termination of their relationship with the Advisor.
- Termination of their relationship with the client.
- Issue of disciplinary measures against the Advisor, including issuance of a disciplinary letter, which reminds Advisors of their obligations towards the integrity of the markets. Other disciplinary measure includes (1) issuance of fines; (2) requirement that all trades executed by the Advisor is reviewed the next day looking for any instances of manipulative trading; (3) Advisors maybe required to seek approval for all trades prior to order entry or (4) Advisors maybe required to seek approval from the compliance team for any transactional activities prior to execution.

Conclusion

Retail trading firms face challenges to prevent and detect market manipulation strategies, because of internal control failures, thus preventing firms from being effective gatekeepers. In order to maintain investor confidence within the financial marketplace, presence of integrity is essential. Investors must trust that the financial marketplace is transparent and operates in a fair efficient manner. Advisors play a crucial role in ensuring that integrity is maintained within the marketplace by not only adhering to regulations, but ethical standards as well. Dean Holley, former Superintendent of Brokers at the B..C Securities Commission noted that

> *[e]ven if a Advisor is not directly involved in an unfair or inequitable activity the Advisor is expected to be inquisitive and proactive in dealing with such activities that are carried on by others and of which the Advisor is or should be aware. Advisors should refuse to accept instructions from clients who, in the Advisor's judgment, are engaged in illegal, unfair or abusive trading activities. All such instructions or orders should be reported immediately to the Advisor's senior management. Senior management is expected to bring matters concerning serious misconduct in the markets to the attention of the stock exchange or the compliance and enforcement division of the Commission*."[137]

Advisors can be an effective internal control measure to prevent market manipulation, however, Advisors must conduct due diligence into all trading instructions received from the client in order to understand the purpose of the trade, confirm that the orders are legitimate and must review the effects of the trades on the marketplace to ensure the trades have not led to artificial pricing. Advisors must, have an awareness of the client's intention for executing the trades, to ensure that their purpose for trading is not meant to create an

[137] Paul Borque, "Gatekeeper key to investor protection", Investment Executive, June 2, 2005. Accessed on May 18, 2024, from https://www.investmentexecutive.com/newspaper_/comment-insight/news-29059/

artificial price of the security, or create an artificial demand or supply. Advisors must view all actions and information provided by their clients objectively and seek guidance from their compliance department when situations warrant it. Advisors must not let their personal judgement about the client, the client's behaviours or personalities effect their judgement in entering suspicious orders and must always ensure that their actions do not affect the integrity of the marketplace. For any trades that affect the transparency of the marketplace, Advisors should not enter those trades. As well, all trades entered should be fair and equitable and that Advisors must always act in the best interest of the client and the society as a whole.

Another challenge for retail trading firms to meet their gatekeeping responsibilities is to ensure that the firm's written policies and procedures includes regulatory requirements that need to be met by all Advisors, but also should include guidance for Advisors to deal with ethical dilemmas, such as self vs. community and integrity vs. client trust. To supplement this internal control, on an annual basis, Advisors should be required to (1) take courses that address market manipulation, including the various strategies that clients use to perpetuate market manipulation schemes; (2) how to recognize red flags; (3) what to do in situations where there is a dilemma in meeting their obligations to the client and society as a whole; and (4) how to detect and prevent market manipulation practices.

Promoting an ethical culture, is an internal control that retail trading firms can use to reinforce that Advisors should make decisions that promote the integrity of the market, as "*[p]urposefully misleading the public is unethical, immoral and unfair*".[138]As well, ensuring proper systems are in place to detect market manipulation is an internal control

[138] "Trader Training Course", pg. 9.4

failure firms must be addressed in order to be effective gatekeepers. Retail trading firms can invest in systems that provide analytics meant to prevent entry of orders flagged as suspicious. In addition, firms should invest in systems that act as predicators of situations noted as market manipulation. The systems should be able to track trading over several days to detect unusual or abnormal trading behaviours.[139]

[139] IBID., pg. 9.4

Appendix 1 - All Trade and All Listing Total[140]

as of March 2024

VALUE TRADED BY MARKETPLACE, INTENTIONAL CROSS STATUS, AND LISTING MARKET

All Traded Marketplaces	Toronto Stock Exchange	TSX Venture Exchange	CSE	Liquidnet	MATCH Now	Omega	Nasdaq CXC	Alpha	Instinet	Nasdaq CX2	Lynx	NEO-N	NEO-L	Nasdaq CXD	NEO-D	CSE2	Alpha-X	Alpha DRK
$ 392,913,195,275	$ 240,467,454,639	$ 1,050,230,161	$ 3,587,322,442	$ 613,233,901	$ 16,872,165,329	$ 10,792,851,950	$ 45,603,694,896	$ 14,023,592,163	$ 290,674,380	$ 10,156,191,429	$ 485,258,571	$ 8,392,813,424	$ 30,721,927,191	$ 8,685,111,510	$ 597,845,967	$ 466,347,363	$ 104,150,954	$ 2,329,006

PERCENTAGE OF VALUE TRADED BY MARKETPLACE, INTENTIONAL CROSS STATUS, AND LISTING MARKET

All Traded Marketplaces	Toronto Stock Exchange	TSX Venture Exchange	CSE	Liquidnet	MATCH Now	Omega	Nasdaq CXC	Alpha	Instinet	Nasdaq CX2	Lynx	NEO-N	NEO-L	Nasdaq CXD	NEO-D	CSE2	Alpha-X	Alpha DRK
$ 392,913,195,275	61.201 %	0.267 %	0.913 %	0.156 %	4.294 %	2.747 %	11.607 %	3.569 %	0.074 %	2.585 %	0.124 %	2.136 %	7.819 %	2.210 %	0.152 %	0.119 %	0.027 %	0.001 %

VOLUME TRADED BY MARKETPLACE, INTENTIONAL CROSS STATUS, AND LISTING MARKET

All Traded Marketplaces	Toronto Stock Exchange	TSX Venture Exchange	CSE	Liquidnet	MATCH Now	Omega	Nasdaq CXC	Alpha	Instinet	Nasdaq CX2	Lynx	NEO-N	NEO-L	Nasdaq CXD	NEO-D	CSE2	Alpha-X	Alpha DRK
20,865,474,954	7,593,399,163	2,667,421,173	1,331,304,133	18,686,900	709,852,060	1,161,533,009	2,014,541,443	1,056,260,883	10,802,700	1,298,776,234	36,169,720	596,236,000	1,842,140,555	382,086,967	25,334,426	117,433,726	3,391,862	104,000

PERCENTAGE OF VOLUME TRADED BY MARKETPLACE, INTENTIONAL CROSS STATUS, AND LISTING MARKET

All Traded Marketplaces	Toronto Stock Exchange	TSX Venture Exchange	CSE	Liquidnet	MATCH Now	Omega	Nasdaq CXC	Alpha	Instinet	Nasdaq CX2	Lynx	NEO-N	NEO-L	Nasdaq CXD	NEO-D	CSE2	Alpha-X	Alpha DRK
20,865,474,954	36.392 %	12.784 %	6.380 %	0.090 %	3.402 %	5.567 %	9.655 %	5.062 %	0.052 %	6.225 %	0.173 %	2.858 %	8.829 %	1.831 %	0.121 %	0.563 %	0.016 %	0.000 %

NUMBER OF TRADES BY MARKETPLACE, INTENTIONAL CROSS STATUS, AND LISTING MARKET

All Traded Marketplaces	Toronto Stock Exchange	TSX Venture Exchange	CSE	Liquidnet	MATCH Now	Omega	Nasdaq CXC	Alpha	Instinet	Nasdaq CX2	Lynx	NEO-N	NEO-L	Nasdaq CXD	NEO-D	CSE2	Alpha-X	Alpha DRK
41,150,771	17,617,401	631,875	1,290,843	565	4,131,142	1,934,525	4,945,507	1,668,538	30,990	1,902,744	81,417	1,424,095	2,982,210	2,355,401	76,914	59,027	17,327	250

PERCENTAGE OF NUMBER OF TRADES BY MARKETPLACE, INTENTIONAL CROSS STATUS, AND LISTING MARKET

All Traded Marketplaces	Toronto Stock Exchange	TSX Venture Exchange	CSE	Liquidnet	MATCH Now	Omega	Nasdaq CXC	Alpha	Instinet	Nasdaq CX2	Lynx	NEO-N	NEO-L	Nasdaq CXD	NEO-D	CSE2	Alpha-X	Alpha DRK
41,150,771	42.812 %	1.536 %	3.137 %	0.001 %	10.039 %	4.701 %	12.018 %	4.055 %	0.075 %	4.624 %	0.198 %	3.461 %	7.247 %	5.724 %	0.187 %	0.143 %	0.042 %	0.001 %

[140] "Reports of Market Share by Marketplace"

Appendix 2 – Re Danielak

Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

IN THE MATTER OF THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE UNIVERSAL MARKET INTEGRITY RULES AND MARTIN DANIELAK

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Corporation[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 Martin Danielak (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Enforcement 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. In October and November 2019, the Respondent entered 47 unsolicited buy orders on behalf of a client 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 of a security. The pattern and method of the order entry demonstrates that the client had no intention to execute the buy orders.

5. The Respondent had an obligation to be aware of, and alert to, manipulative and deceptive activity when entering orders on Canada's equity marketplaces. UMIR 2.2 prohibits manipulative and deceptive trading activities, which harm market integrity and undermine confidence in the marketplaces.

6. In addition, the Respondent communicated with and received client instructions by way of text messages, using an unapproved third-party communication application.

Background

7. The Respondent has been a Registered Representative since May 2012 and is presently working as a Portfolio Strategist at Raymond James. He was registered with Richardson Wealth from May 2012 to December 2019 as an Investment Advisor and Portfolio Manager. Between January 2020 and July 2020, he was a Registered Representative at Raymond James. Between July 2020 and March 2022, he was a Registered Representative at Canaccord Genuity Corp.

8. The Respondent's client engaged in manipulative and deceptive trading activity in shares of Citation Growth Corp. ("CGRO"), a CSE-listed security, through a corporate account for which an individual ("LT") had trading authority. The Respondent handled all the orders in question for the corporate account.

9. LT had a significant financial interest in CGRO. He was an initial investor and together with his spouse and personal holding company held a 1.14 million CRGO shares, valued at approximately $422,000 on October 31, 2019. LT had a personal account with another Registered Representative at Richardson Wealth in which account LT was selling CRGO

shares during the same period. There is no evidence that the Respondent was aware of this fact at the time of entering the buy orders in CRGO.

10. On November 29, 2019, Branch Management questioned the Respondent about the orders. The Respondent advised that in hindsight he understood that the purpose of the trades was to "support the stock".

The Manipulative and Deceptive Activity

11. In October 2019 and November 2019 (the "Relevant Period"), the Respondent entered 47 buy orders for CGRO on behalf of the client. The buy orders expired at the end of the day unfilled. Only 1 of the 47 buy orders was filled.

12. In October 2019, 28 buy orders were entered, none of which were filled. Each of the 28 buy orders were entered as day orders and expired at the end of the trading day.

13. In November 2019, 19 buy orders were entered, one of which was filled.

14. All the buy orders were for 20,000 common shares. Generally, two orders were entered within minutes at prices that were marginally different.

15. The Respondent would cancel an order or enter a Change Formal Order ("CFO") to amend the limit price of the order lower if the best bid price dropped.

16. The Respondent received trading instructions from LT by text message. The Respondent deleted the text messages and did not provide them to his Dealer Member or Enforcement Staff.

17. The following four examples illustrate the pattern and method of order entry:

(i) On October 18, 2019, at 10:27:01, the Respondent entered two buy orders for 20,000 shares of CGRO, one with a limit price of $0.35 and one with a limit price of $0.34. At the time of order entry, the bid price was $0.38 and there was 47,661 available volume ahead in line of the $0.35 buy order. The bid price dropped to $0.35 at 13:25:35. Approximately twenty-two minutes later at 13:47:20, there was only 300 available volume ahead of the $0.35 buy order. The Respondent cancelled the original $0.35 buy order and entered a buy order for 20,000 shares of CGRO at a limit price of $0.33. There was 58,000 available volume ahead in line of the $0.33 buy order. The buy orders expired at the end of the trading day.

(ii) On October 21, 2019, at 9:36:32, the Respondent entered two buy orders for 20,000 shares of CGRO; one with a limit price of $0.30 and one with a limit price of $0.295. At the time of order entry, the bid price was $0.31. The bid price dropped to $0.305 at 09:37:21. Approximately two hours later, at 11:36:46, the Respondent cancelled the original $0.30 buy order and re-entered a buy order for 20,000 shares of CGRO at a lower limit price of $0.29. Both buy orders expired at the end of the trading day.

(iii) On November 12, 2019, at 10:37:20, the Respondent entered two buy orders for 20,000 shares of CGRO; one with a limit price of $0.37 and one with a limit price of $0.36. At the time of order entry, the bid price was $0.385 and there was 90,500 available volume ahead in line of the $0.37 buy order. The bid price dropped to $0.38 at 11:57:24. Approximately nine minutes later, at 12:06:11, there was only 500 available volume ahead of the $0.35 buy order. The Respondent cancelled the original buy order with the limit price of $0.37 and reentered a buy order for 20,000 shares of CGRO to a lower limit price of $0.35. There was 73,000 available volume ahead in line of the $0.35 buy order. The bid price dropped to $0.37 at 13:52:29. Approximately 34 minutes later, at 14:26:32,

the Respondent cancelled the second order at a limit price of $0.36 and re-entered a buy order for 20,000 shares of CGRO at a lower limit price of $0.34. The buy orders expired at the end of the day.

(iv) On November 14, 2019, at 10:09:17 the Respondent entered two buy orders for 20,000 shares of CGRO, one with a limit price of $0.345 and one with a limit price of $0.34. At the time of order entry, the bid price was $0.365 and there was 77,000 available volume ahead in line of the $0.345 buy order. The bid price dropped to $0.35 at 10:55:46. At 14:35:52, there was only 1,000 available volume ahead of the $0.345 buy order. The Respondent cancelled the first order at a limit price of $0.345 and re-entered a buy order for 20,000 shares of CGRO at a lower limit price of $0.335. The buy orders expired at the end of the day.

18. This pattern and method of order entry, along with the Respondent's understanding that the client intended to "support" the stock should have caused the Respondent to question the entry of the orders on the basis that the orders were non-*bona fide* and that the client had no intention to execute the orders.

19. The Respondent has admitted that he acted as an order taker. The Respondent followed the client's trading instructions by entering the unsolicited orders. The Respondent failed to ask questions about the orders. He never questioned or raised any issues or concerns with the fact that the orders were repeatedly entered despite never being filled, nor why buy orders were repeatedly amended when the price declined to levels that the client had previously entered orders to buy.

20. On November 28, 2019 GMP Securities Compliance staff reviewed an alert related to a trade entered on November 14, 2019 for CGRO within the Corporate Account whereby the client changed a limit price of an order which placed the trade further away from the

bid. This resulted in an internal investigation and the filing of a Gatekeeper Report with IIROC.

The Internal Investigation

21. Richardson GMP conducted an internal investigation which determined, among other things, that the Respondent "failed to discharge his duties as a gatekeeper to the financial markets, by placing orders without ensuring their legitimacy". The review found that the Respondent ought to have raised concerns about LT's trading pattern to his supervisor but did not.

22. At the time that the investigation was concluded, the Respondent had left Richardson GMP and therefore did not face disciplinary action from the firm.

Financial Benefit

23. The financial benefit to the Respondent from the trading activity was minimal. The total gross commissions for the Corporate Account during the Relevant Period were $700. Between July to December 2019, the Respondent received 15% of gross revenue or $105.

Mitigating Factors and Early Resolution Offer

24. The Respondent has admitted the misconduct described above reducing the length of time required to investigate this matter and agreed to resolve this matter in a timely manner. The Respondent accepted Enforcement Staff's Early Resolution Offer which granted a 30% reduction on the fine Enforcement Staff otherwise would have sought.

PART IV – CONTRAVENTIONS

25. By engaging in the conduct described above, the Respondent committed the following contraventions of Corporation requirements:

(i) Between October 2019 and November 2019, the Respondent entered orders for the shares of Citation Growth Corp., that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity or interest in the purchase or sale of the security, contrary to UMIR 2.2(2).

(ii) Between October 2019 and November 2019, the Respondent failed to comply with his Dealer Member's policies and procedures by communicating with his client by way of text messages using unapproved third-party communication applications, contrary to Investment Dealer Rule 1400.

PART V – TERMS OF SETTLEMENT

26. The Respondent agrees to the following sanctions and costs:

(i) Fine of $21,000 fine;

(ii) $105 disgorgement for commissions;

(iii) Two months suspension from access to a marketplace regulated by the Corporation;

(iv) re-write Conduct Practices Handbook; and

(v) $2,500 in costs.

27. 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.

PART VI – STAFF COMMITMENT

28. 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.

29. 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

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

31. 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.

32. 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.

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

34. 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.

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

36. This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and the Corporation will post a copy of this Settlement Agreement on the Corporation website. The Corporation 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.

37. 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.

38. 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

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

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

DATED this 10 day of April, 2023.

"Witness"
Witness

"Martin Danielak"
Martin Danielak

"April Engelberg"
April Engelberg
Senior Enforcement Counsel
on behalf of Enforcement
Staff of the Corporation

The Settlement Agreement is hereby accepted this "10" day of "May", 2023 by the following Hearing panel:

Per: "Eric Spink"
Chair

Per: "Jonathan Lund"
Industry Member

Per: "Martin Davies"
Industry Member

[1]On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation. The New Self-Regulatory Organization of Canada (the "Corporation") has adopted interim rules that incorporate the preamalgamation regulatory requirements contained in the rules and policies of IIROC and the bylaw, 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.

Appendix 3 – Re Moore

ALBERTA SECURITIES COMMISSION

Docket: ENF-009991

Citation: Re Moore, 2018 ABASC 154 Date: 20180927

SETTLEMENT AGREEMENT AND UNDERTAKING

Richard Kenneth Moore

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into the activities of Richard Kenneth Moore (**Moore**) with respect to the securities of Kilimanjaro Capital Ltd. (**Kilimanjaro**), to determine if Alberta securities laws had been breached.

2. The investigation confirmed and Moore admits that he breached those sections of the Alberta *Securities Act*, RSA 2000, c S-4, as amended, (***Act***), referred to in this Settlement Agreement and Undertaking (**Agreement**), and that he acted contrary to the public interest.

3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 24, Moore agrees to the facts and consequences set out in this Agreement.

4. Unless otherwise noted, terms used in this Agreement have the same meaning as provided in the *Act*.

Parties

5. Kilimanjaro is a Belizean company. At times material to this matter, it maintained an office address and management presence in Calgary, Alberta.

6. Moore is a resident of Calgary, Alberta. He has worked as a registered representative in the securities industry since 1982. At times material to this matter, Moore was engaged with Macquarie Private Wealth Inc. until its acquisition by Richardson GMP Limited (**RGMP**) in September 2013. Moore was engaged with

RGMP until, for reasons unrelated to this matter, he retired effective November 30, 2015, to pursue other business endeavours. He is no longer a registrant and states he has no intention of returning to the industry.

7. One of Moore's longstanding clients was John Charles Zang (**Zang**), who maintained a significant portfolio with Moore. Zang, a Calgary lawyer, is a respondent along with Moore in a Notice of Hearing issued by Staff.

Circumstances

8. In the spring of 2013, Zang arranged for the deposit of 300,000 shares of Kilimanjaro with Moore's firm with the stated intention of trading them. Challenges were encountered in facilitating the clearing of Zang's shares for trading, as Kilimanjaro was then not listed on any North American exchange. Moore consulted representatives of his firm, including RGMP's head of trading, to investigate alternatives to trade the shares of Kilimanjaro.

9. Zang put Moore into contact with another respondent to the above Notice of Hearing, Ashmit S. Patel (**Patel**), a representative of Kilimanjaro. Patel consulted extensively with Moore and RGMP via telephone and email in an effort to have Kilimanjaro shares quoted for trading on the US over-the-counter markets.

10. Due to a 100 for 1 forward stock split that occurred on or around March 3, 2014, Zang's personal shareholdings in his account with Moore increased to 30,000,000. The 100 for 1 share split increased the number of outstanding Kilimanjaro shares to 500,000,000.

11. On March 25, 2014, at Zang's direction, Moore traded 300,000 of Zang's Kilimanjaro shares at a price of $0.02 per share. A further 140,000 of Zang's Kilimanjaro shares were traded by Moore on March 26, 2014, at $0.023 per share. The net dollar value from the sale of these Kilimanjaro shares was approximately $9,713.

12. On approximately March 26, 2014, Zang advised Moore that additional Kilimanjaro shares would be placed with RGMP to be deposited into the account of Zang's wholly-owned company, 1649568 Alberta Ltd. (**164**). Zang requested of Moore that Patel be given trading authority over the 164 account. Both Zang and Patel represented to Moore or to RGMP that each was not a senior officer, director or insider of Kilimanjaro, and that each did not own a controlling interest in the corporation.

13. On approximately March 27, 2014, an additional 202,183,700 shares of Kilimanjaro in Zang's name or in 164's name, were deposited with Moore at RGMP.

14. Between approximately March 27 and April 4, 2014, a member of Moore's team at RGMP, on Patel's direction, traded 1,565,680 Kilimanjaro shares in 164's account at prices ranging from $0.015–$0.028 per share. The net dollar value from the sale of these Kilimanjaro shares was $27,861.52.

15. On April 3, 2014, the Commission cease traded Kilimanjaro's shares (**Order**). RGMP utilized an outside service provider at the time to notify it with respect to items such as cease trades. In this instance, no notice of the Order came to the attention of Moore at the time, and approximately 15,000 of the shares referenced above were traded after the Order was issued.

16. On April 17, 2014, Zang requested the balance of the shares in his name and those in the name of 164 be sent to Patel in the US. Zang subsequently changed that request and made arrangements through Moore and his assistant to personally pick up the shares at the RGMP offices.

Admitted Breaches of Alberta securities laws (Admitted Breaches)

17. Based on the Agreed Facts, Moore admits that he breached section 93.1 of the *Act* by failing to take the steps necessary to make himself aware of, and comply with, the Order.

18. Moore further admits that he acted contrary to the public interest by failing in his role as gatekeeper in the capital markets to make inquiries into suspicious and unusual circumstances surrounding the trading of Kilimanjaro shares in the Zang and 164 accounts by Zang and Patel.

Circumstances Relevant to Settlement

19. Moore has not been previously sanctioned by the Commission.

20. Moore cooperated in the investigation of these allegations.

21. In making the above admissions, Moore has saved the Commission the time and expense associated with a contested hearing against him under the *Act*.

22. Moore was not a knowing participant in any scheme designed to manipulate the public markets, and he did not obtain a material monetary benefit as a result of his actions.

23. It was not until the issuance of the Notice of Hearing on October 11, 2017, and the receipt of Staff's disclosure, that Moore became aware of the full extent of the alleged market manipulation scheme. The volume of Kilimanjaro shares traded through Moore and his team represented a small portion of the total share activity undertaken by Zang, 164 and Patel.

Settlement and Undertakings

24. Based on the Agreed Facts and Admitted Breaches, Moore agrees and undertakes to the Executive Director of the Commission to:

24.1 pay to the Commission a monetary settlement of $15,000, inclusive of costs; and

24.2 be prohibited from becoming or acting as a registrant for a period of 5 years.

Administration

25. Moore acknowledges that he has had the opportunity to seek, and has obtained, independent legal advice, that his admissions are taken voluntarily and that he has freely made the admissions set forth in this Agreement. Moore acknowledges he has neither received nor relied on any legal advice from Staff in regards to these admissions.

26. Moore further acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.

27. Moore waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

28. Moore acknowledges that this Agreement may be referred to in any other proceedings under the *Act*, and in securities regulatory proceedings in other jurisdictions.

29. Execution and fulfillment of the terms of this Agreement by Moore resolves all issues involving Moore relating to the conduct described above, and Staff will take no further steps against him arising from these facts.

30. This Agreement may be executed in counterpart.

Signed by RICHARD KENNETH MOORE at Calgary, Alberta this 26 day of September 2018, in the presence of:	)
WITNESS NAME	)
WITNESS NAME	)
"original signed by"	)
SIGNATURE	) *"original signed by"*
	) RICHARD KENNETH MOORE
	) ALBERTA SECURITIES COMMISSION
	)

Calgary, Alberta, 27 September 2018)

) *"original signed by"*

)
) David C. Linder, Q.C.
) Executive Director

Appendix 4 –Re Rowlatt

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Aaron Jay Rowlatt

2020 IIROC 32

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

Heard: September 9, 2020 in Toronto, Ontario by teleconference
Decision: September 9, 2020
Reasons for Decision: September 15, 2020

Hearing Panel:
Barry H. Bresner, Chair, Zahra Bhutani and Steven Garmaise
Appearance:
Andrew Werbowski, Senior Enforcement Counsel
Jeff Larry, for Aaron Jay Rowlatt
Aaron Jay Rowlatt, present
Alex Oustinov, IIROC Staff, present

DECISION ON ACCEPTANCE OF SETTLEMENT

A. INTRODUCTION

¶ 1 This proceeding was commenced by Notice of Application issued by the Investment Industry Regulatory Organization of Canada ("IIROC") on August 24, 2020, scheduling a hearing , by videoconference call, to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC ("the Rules"), to accept a Settlement Agreement entered between Enforcement Staff of IIROC ("Staff") and Aaron Jay Rowlatt ("Rowlatt" or "the Respondent"), pursuant to Section 8428 of the Rules.

¶ 2 The Settlement Agreement attached as Schedule "A" to these Reasons includes an agreed statement of facts in Part III. In accordance with Section 8428 of the Rules, the Hearing Panel was restricted to and relied upon the facts recited in the Settlement Agreement.

¶ 3 By way of overview, between January and December 2017 ("the Relevant Period"), the Respondent facilitated suspicious trading by a group of related clients and insiders of two TSXV-listed issuers, Company X and Company Y. The trading was carried out at Industrial Alliance Securities Inc. ("Industrial Alliance") through five accounts ("the Client Accounts") held by the related clients (the "Clients"). In so doing, the Respondent failed to fulfill his gatekeeper responsibilities to IIROC-regulated marketplaces, contrary to IIROC Rule 1402, which requires participants to transact business openly and fairly and in accordance with just and equitable principles of trade.

¶ 4 The sanctions provided for in the Settlement Agreement consisted of

(i) payment of a fine to IIROC of $50,000, inclusive of full disgorgement of commissions earned,

(ii) successful completion of the Trader Training Course within 6 months of the approval of the Settlement Agreement, and

(iii) payment to IIROC of $7,500 in costs.

¶ 5 For the reasons stated below, the Hearing Panel accepted the Settlement Agreement.

B. BACKGROUND FACTS

¶ 6 The detailed facts contained in the Settlement Agreement are briefly summarized as follows:

a) Rowlatt has been employed as an investment advisor with Industrial Alliance since April 1, 2014. He has been employed in registered capacities with other firms since December 2006. He has not previously been the subject of IIROC disciplinary proceedings.

b) Rowlatt's total annual compensation (base salary plus commissions) in 2007 and subsequent years has been in the range of $100,000 to $125,000. The Client Accounts collectively represented a large portion of the Respondent's book of business and generated approximately 50% of his commission income.

c) Rowlatt had the gatekeeper responsibility for all orders entered on behalf of the Clients during the Relevant Period.

d) In the Relevant Period, the trading in the securities of Company X and Company Y for the Client Accounts raised a number of red flags, summarized in subparagraphs (e) – (i).

e) The securities of Company X and Company Y were illiquid and, in the Relevant Period, the trading in those securities by the Client Accounts represented a significant percentage of the daily trading volume, averaging 22% for Company X and 18.4% for Company Y of all trading activity.

f) The orders for all transactions in Company X and Company Y for the Client Accounts were unsolicited and represented virtually all of the transactional activity in the Client Accounts.

g) There was a frequent depositing of a large quantity of securities certificates of Company X and Company Y followed by the subsequent sale of those securities.

h) The trading in the Client Accounts resulted in a significant number of upticks in both Company X and Company Y.

i) The trades were frequently uneconomic, particularly when commissions were factored in. At the time of each trade, Rowlatt was unaware that the trade was uneconomic.

j) On three occasions, the Respondent's compliance department questioned late day trading in the Client Accounts. In response, Rowlatt advised the Clients that they could not place orders at the end of the day.

The Respondent was concerned about the upticks, but did not raise that concern with his compliance department and continued to accept the unsolicited orders on subsequent trading days without seeking or receiving any explanation from the Clients. Rowlatt assumed that his compliance department would alert him to any potential trading improprieties.

k) Rowlatt acknowledged that he did not understand the Client Accounts trading strategy and did not ask any questions in that regard. He received the unsolicited orders and executed them without making any inquiry into the nature of the trading.

l) Once Enforcement Staff commenced its investigation, the Respondent terminated his relationship with the Clients and the firm closed the Client Accounts.

m)

C. ROLE OF THE SETTLEMENT HEARING PANEL

¶ 7 Pursuant to IIROC Rule 8215(5), a hearing panel must decide whether to accept or reject the proposed settlement. In making that determination, a hearing panel will consider whether the proposed

sanction falls within a reasonable range of appropriateness, consistent with the IIROC Sanction Guidelines ("the Guidelines") and prior IIROC decisions.

¶ 8 As stated in *Bereskin (Re)*, 2010 LNIIROC 37, the role of the settlement hearing panel is to assess whether the sanctions "strike a reasonable balance between fairness to the Respondent in the circumstances, and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense."

¶ 9 It is well established in the IIROC jurisprudence that a settlement hearing panel is not tasked with deciding whether it would have imposed the same sanctions as those agreed through negotiation by the parties. Rather, the question is whether the proposed sanctions fall within a reasonable range. In that regard, settlement hearing panels have consistently relied on *Milewski (Re)*, [1999] I.D.A.C.D. No.17, for the principle that negotiated settlements should not be interfered with lightly and that it is in the public interest to encourage and support the settlement process.

¶ 10 In *Carrigan (Re)*, 2019 LNIIROC 31, a recent decision on facts very similar to those in the present matter, the panel applied the test in *Milewski (Re)* and noted that "*the appearance of fairness requires that similar proceedings be disposed of in a similar manner"*. That principle is reflected in the Guidelines and is undoubtedly correct. Consistency of the results in similar cases reduces the uncertainty that would prevail for all industry participants in the absence of that consistency. In light of the parallels between this matter and the facts of *Carrigan (Re)*, this Panel necessarily relied on that recent decision as a compelling precedent.

D. APPLICATION OF THE GUIDELINES

¶ 11 In assessing the fairness and reasonableness of the proposed sanctions for the admitted misconduct by the Respondent, particular attention was paid to the period of time over which the conduct occurred, the nature and number of the impugned transactions, whether the conduct was intentional, wilfully blind or reckless, the harm to the integrity of the markets, the need for specific and general deterrence, the mitigating factors and prior decisions on sanction in like circumstances.

¶ 12 The conduct extended over a significant period of time from January to December 2017 and involved a substantial amount of trading activity in otherwise illiquid securities through accounts which comprised a significant portion of Rowlatt's book of business. Most significantly, the conduct raised many red flags that should have caused Rowlatt to alert his compliance department or, at minimum, to have sought a reasonable explanation for the transactions from the Clients. He admits to being concerned by the disproportionate upticks resulting from the transactions in the Client Accounts, but did nothing to address those concerns. Rather, he relied on his compliance department to detect any irregularities in the trading activity. Rowlatt admits that in failing to take any action to question the transactions, he failed to fulfill his gatekeeper responsibilities.

¶ 13 While Rowlatt did not knowingly participate with his Clients in a scheme to manipulate the market, he turned a blind eye to their dealings to the detriment of the integrity of the market. In the circumstances, his conduct warrants a substantial penalty.

¶ 14 The fact that the Respondent has not been the subject of prior disciplinary proceedings is a mitigating factor. It is also noted, by way of mitigation, that he ceased doing business with the Clients once the investigation commenced and has admitted his contravention.

¶ 15 As indicated above, the recent decision in *Carrigan (Re)* bears a striking factual similarity to the current matter. All of the red flags present in this matter were present in that case, which also involved suspicious trading in illiquid securities by a related group of clients. In *Carrigan (Re)*, there

was an additional significant red flag of same day trading by the clients on both the buy and sell side of the market, such that the conduct in that case can be viewed as somewhat more egregious than that of Rowlatt.

¶ 16 The sanctions against Mr. Carrigan in *Carrigan (Re)* were a fine of $50,000, successful completion of the Traders Training Course and costs of $7,500. The agreed sanctions negotiated by the parties in this matter are identical to those against Mr. Carrigan. Given Rowlatt's annual compensation of $100,000 to $125,000, the payment of a fine and costs totalling $57,500 is clearly sufficient to deter him from any like conduct in the future.

¶ 17 As to general deterrence, it is noted that the Relevant Period of Rowlatt's conduct preceded the release of the decision in *Carrigan (Re).* Had it been otherwise, general deterrence would likely have been a more serious concern, as market participants would have been on notice of the likely consequences of a similar contravention.

¶ 18 The Panel was presented with a number of other decisions, which addressed failures to perform the gatekeeper function. While those prior decisions are helpful in arriving at a reasonable range of penalty, they each turn on their own facts and none is more directly on point than that in Carrigan (Re).

¶ 19 In the circumstances, the agreed sanctions are fair and fall within the reasonable range of sanctions for such conduct. The sanctions satisfy the need for specific and general deterrence.

E. CONCLUSION

¶ 20 Taking into account the public interest, the agreed facts and the relevant factors described in the Guidelines and the jurisprudence, for the reasons stated above, the Panel accepts the Settlement Agreement agreed by the parties and the sanctions provided for in that Agreement.

Dated at Toronto, Ontario this 15 day of September, 2020.
Barry H. Bresner
Zahra Bhutani
Steven Garmaise

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 (the "IIROC Rules"), a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff"), and Aaron Jay Rowlatt ("Rowlatt" or "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 2017 and December 2017 (the "Relevant Period"), the Respondent facilitated suspicious trading by a group of related clients and insiders of two TSXV-listed issuers, Company

X and Company Y. The trading was carried out at Industrial Alliance Securities Inc. ("Industrial Alliance") through five accounts (the "Client Accounts") held by the related clients (the "Clients").

5. During the Relevant Period, the suspicious activity consisted of the following:

   a) Company X and Company Y were illiquid securities, trading between $0.06 and $0.235 (Company X) and $0.015 and $0.045 (Company Y);

   b) the trading in the securities by the Client Accounts represented a significant proportion of the daily trading volume, averaging 22.0% (Company X) and 18.4% (Company Y) of all trading activity;

   c) the trading in the securities by the Client Accounts represented virtually all of the transactional activity in the accounts;

   d) the orders for all transactions in Company X and Company Y for the Client Accounts were received on an unsolicited basis;

   e) the unsolicited orders for the Client Accounts were received from an insider of the issuers, the spouse of the insider, or a son or daughter of the insider;

   f) the frequent depositing of a large quantity of securities certificates of Company X and Company Y followed by the subsequent sale of those securities;

   g) the trading resulted in a significant number of upticks in both Company X and Company Y;

   h) the trading in Company X and Company Y was frequently uneconomic because it involved purchases by individual accounts of securities at similar or higher prices than sales of the same securities in close time proximity, particularly when trading commissions were factored in; and

   i) on three occasions, the Respondent's compliance department raised questions about late day trading.

6. The red flags generated by the trading should have caused the Respondents to question the trading, which at a minimum would have required him to receive an explanation from the Clients as to whether there was a legitimate purpose for the trading.

7. When IIROC initiated its investigation, the Respondent terminated his relationship with the Clients and the firm closed the Client Accounts.

8. In all of the circumstances, the Respondent did not fulfil his gatekeeper responsibilities.

Background

9. The Respondent has been employed as an investment advisor with Industrial Alliance since April 1, 2014.

   Prior to that, Rowlatt was employed in registered capacities since December 2006 with BMO Investorline Inc. (December 2006 to February 2009) and MGI Securities Inc., the predecessor to Industrial Alliance (February 2009 to April 2014).

10. Rowlatt was the investment advisor at Industrial Alliance for the Clients and had overall responsibility for the entry of orders in the Client Accounts.

11. The Respondent has not previously been the subject of an IIROC disciplinary proceeding.

12. During the Relevant Period, the Respondent's total annual compensation was approximately $100,000 -

$125,000.

The Clients and Client Accounts

13. During the Relevant Period, one of the Clients ("Client A") was a director and the Chairman of Company X. Client A was also a director and the President & Chief Executive Officer of Company Y.

14. Client A's common law spouse ("Client B") also had an account with Rowlatt.

15. Client A established a family trust (the "Family Trust") pursuant to which he and Client B were designated as trustees. Numerous family members were beneficiaries pursuant to the Family Trust, including a daughter of Client A who also had accounts with Rowlatt ("Client C") and a son of Client A.

16. Client A was a director and the president of a holding company which held the corporate account for the Family Trust (the "Holding Company"). Client A had trading authorization for the Holding Company.

17. The son of client A is employed by Company X and Company Y and is also the President of a private company ("Client D"), who also had accounts with Rowlatt.

18. The suspicious activity occurred primarily in the accounts of Holding Company and Client B, with limited activity also occurring in the accounts of Client A, Client C, and Client D.

19. The Respondent was compensated by way of base salary together with commission income. Collectively, the Client Accounts were a large portion of the Respondent's book of business and represented approximately 50% of his commission income.

20. The Respondent acknowledges that he did not understand the Client Account trading strategy and did not ask any questions in this regard. Rowlatt received orders on an unsolicited basis and executed them without making inquiries into the nature of the trading.

21. The Respondent did recognize and was concerned about upticks, particularly trades in the latter part of the day. On three occasions, the Respondent's firm's compliance department contacted him about late day trading activity in the Client Accounts. After speaking with his firm's compliance department, the Respondent told the Client Accounts that they could not place orders at the end of the day.

22. Despite these concerns, the Respondent accepted the unsolicited orders on subsequent trading days without any explanation from the client.

23. The Respondent at no time notified his firm's compliance department as to his concerns, or to any suspicious trading activity and assumed that if any potential trading improprieties existed, his firm's compliance department would alert him.

Company X

24. During the Relevant Period, Company X traded at a low of $0.060 and a high of $0.235. Monthly trading volumes ranged from 953,980 to 4,580,319 shares. The Client Accounts volume traded ranged from 283,500 to 882,500. Shares in Company X traded on 248 of 251 trading days in the Relevant Period with trades occurring in the Client Accounts on 209 of those trading days.

25. Trades in the Client Accounts accounted for 22.00% of the transactional activity in Company X during the Relevant Period.

26. Company X represented a significant proportion of the trading in the Client Accounts.

Company Y

27. During the Relevant Period, Company Y traded at a low of $0.015 and a high of $0.045. Monthly trading volumes ranged from 259,800 to 2,554,947 shares. The Client Accounts volume traded ranged from 10,000 to 375,000. Shares in Company Y traded on 130 of 251 trading days in the Relevant Period with trades occurring in Client Accounts on 45 of those trading days.

28. Trades in the Client Accounts accounted for 18.40% of the transactional activity in Company Y.

29. Company Y represented a significant proportion of the trading in the Client Accounts.

Upticking Activity – Company X

30. In the Relevant Period, the Client Accounts received 981 order fills for shares of Company X. Of those fills, 320 (32.59%) resulted in an uptick. 694 of the 981 total fills were on the buy side and 310 of these
(44.67%), resulted in upticks.

31. By contrast, only 49 (4.99%) of total fills for shares of Company X in the Client Accounts resulted in a downtick. 37 of 287 fills on the sell side (12.94%) resulted in a downtick.

32. The upticking by the Client Accounts is more evident when compared to all market participants. Trading
activity in shares of Company X by all market participants had an even ratio of 1:1 comparing upticks to downticks. The Client Accounts had a ratio of approximately 6.5:1 comparing upticks to downticks.

33. The Client Accounts were responsible for 320 of 764 upticks (41.89%) in the shares of Company X, but accounted for only 981 of 5375 (18.25%) fills.

34. Schedule "A" sets out further details of trading activity in shares of Company X.

Upticking Activity – Company Y

35. In the Relevant Period, the Client Accounts received 86 order fills for shares of Company Y. Of those fills, 39 (45.45%) resulted in an uptick. 73 of the 86 total fills were on the buy side and 40 of these (54.79%), resulted in upticks.

36. By contrast, only 1 (1.44%) of the total fills for shares of Company Y in the Client Accounts resulted in a downtick. 1 of 13 fills on the sell side (6.67%) resulted in a downtick.

37. The upticking by the Client Accounts is more evident when compared to all market participants. Trading activity in shares of Company Y by all market participants observed a ratio of approximately 1.6:1 comparing upticks to downticks. The Client Accounts had a ratio of approximately 39:1 comparing upticks to downticks.

38. The Client Accounts were responsible for 39 of 86 upticks (45.35%) in the shares of Company Y, but accounted for only 86 of 552 (15.58%) fills.

39. Schedule "B" sets out further details of trading activity in shares of Company Y.

Uneconomic Trading – Generally

40. During the Relevant Period, the Client Accounts generated approximately 22.00%[141] of all trading volume in Company X and 18.42%[142] in Company Y.

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[141] (Volume of Company X shares traded by Client Accounts) ÷ (Total trading volume in Company X by all market participants) = 6,721,500 ÷ 30,554,337 = 0.2200.

[142] (Volume of Company Y shares traded by Client Accounts) ÷ (Total trading volume in Company Y by all market participants) = 1,459,500 ÷ 7,921,395 = 0.1842.

41. Schedule "C" sets out the details of the trading activity by Client Accounts and all market participants.

42. Schedules "D" and "E" show the breakdown of trading activity by individual Clients within the Client Accounts for Company X and Company Y respectively.

43. At the time of each trade, Rowlatt was not aware whether the trade was uneconomic.

Uneconomic Trading - Company X

44. As set out in Schedule "F", during the Relevant Period, the Client Accounts traded 6,721,500 shares of Company X through 279 trades (981 order fills).

45. The weighted average sale price per share for Company X was $0.1551 and the weighted average purchase price per share was $0.1458 (before commissions), resulting in gains before commissions of
$33,801.50.

46. The Respondent (other than a few isolated incidents) charged a commission of $100 per trade in Company X. The Respondent charged $27,775 in commissions for the transactions in Company X, resulting in a net return of $6,026.50. The net return is insignificant compared to over $1 million in trade turnover that was generated by the Client Accounts in Company X during the Relevant Period. 47. The calculation methodology for gains and losses is set out in Schedule "G".

Uneconomic Trading - Company Y

48. Similarly, as set out in Schedule "F", the Client Accounts traded 1,459,500 Company Y shares through 45 trades (86 order fills).

49. The weighted average sale price per share for Company Y was $0.0275 and the weighted average purchase price per share was $0.0305 (before commissions) resulting in losses before commissions $1,687.50.

50. The Respondent's $100 per trade commission charge resulted in $4,500 commissions being paid for the transactions in Company Y, resulting in a net loss of $6,187.50.

51. In addition, the average value of a trade in Company Y shares was $958.17 and accordingly commission costs were more than 10% of the average trade value.

Conclusion

52. The Respondent had a gatekeeper responsibility for all orders entered on behalf of his clients.

53. In light of all the foregoing circumstances, further review and investigation was warranted by the Respondent in respect of the Clients' trading activity. In failing to make any such inquiries, he failed to fulfill his gatekeeper responsibilities.

Additional Factors

54. Since July 2019, the Respondent has been under enhanced supervision imposed by the compliance department of his Dealer Member and remains so at present.

55. The Respondent has cooperated with IIROC in its investigation.

PART IV – CONTRAVENTIONS

56. By engaging in the conduct described above, the Respondent committed the following contravention of IIROC's Rules:

During the Relevant Period, the Respondent failed to fulfill his gatekeeper responsibilities to regulated marketplaces, contrary to IIROC Consolidated Rule 1402.

PART V – TERMS OF SETTLEMENT

57. The Respondent agrees to the following sanctions and costs:

a) Payment of a fine to IIROC in the sum of $50,000 (which includes full disgorgement of commissions earned);

b) To successfully complete the Trader Training Course within 6 months of the approval of this settlement agreement; and

c) Payment of costs to IIROC in the sum of $7,500.

58. 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 VI – STAFF COMMITMENT

59. If the Hearing Panel accepts this Settlement Agreement, 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.

60. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 of the IIROC Rules 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 VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

61. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

62. 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 of the IIROC Rules, in addition to any other procedures that may be agreed upon between the parties.

63. 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.

64. 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.

65. 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.

66. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

67. 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.

68. If this Settlement Agreement is accepted, the Respondent agrees that neither he, nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

69. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

71. A fax or electronic copy of any signature will be treated as an original signature.

DATED this "26" day of "August", 2020.

"Witness"
Witness

"Aaron Rowlatt"
Aaron Rowlatt

"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 "9" day of "September", 2020 by the following Hearing
Panel:

Per: "Barry Bresner"
Panel Chair

Per: "Zahra Bhutani"
Panel Member

Per: "Steve Garmaise"
Panel Member

Schedule "A"

Company X				
Entire Market			Client Accounts	
# of fills	% of fills	Tick Change	# of fills	% of fills
3841	71.46%	No Tick Change	612	62.39%
764	14.21%	Uptick (+)	320	32.62%
770	14.33%	Downtick (-)	49	4.99%
5375	100.00%	Count Total Fills	981	100.00%

Schedule "B"

Company Y				
Entire Market			Client Accounts	
# of fills	% of fills	Tick Change	# of fills	% of fills
425	76.99%	No Tick Change	46	53.49%
86	15.58%	Uptick (+)	39	45.35%
41	7.43%	Downtick (-)	1	1.16%
552	100.00%	Count Total Fills	86	100.00%

Schedule "C"

	Company X	Company Y
# of shares traded by all market participants	30,554,337	7,921,395
# of shares traded by Client Accounts (at Industrial Alliance)	6,721,500	1,459,500
% of volume traded by Client Accounts compared to entire market	22.00%	18.42%
# of trades by Client Accounts	279	45
# of order fills by Client Accounts	981	86

Schedule "D"

	Company X							
	BOUGHT				SOLD			
Client Accounts	# of shares	%	# of fills	# of trades	# of shares	%	# of fills	# of trades
Holding Company	3,407,200	97.73%	674	188	671,500	20.76%	81	19

Re Rowlatt 2020 IIROC 32

Client B	55,000	1.58%	15	6	2,538,800	78.47%	204	60
Client D	24,000	0.69%	6	4	15,000	0.46%	1	1
Client C	0	0.00%	0	0	10,000	0.31%	1	1
Total from Client Accounts	**3,486,200**	**100.00%**	695	198	**3,235,300**	**100.00%**	287	81

Schedule "E"

	Company Y							
	BOUGHT				**SOLD**			
Client Accounts	**# of shares**	**%**	**# of fills**	**# of trades**	**# of shares**	**%**	**# of fills**	**# of trades**
Holding Company	994,000	100.00%	71	40	390,000	83.78%	11	4
Client A	0	0.00%	0	0	75,500	16.22%	4	1
Total from Client Accounts	**994,000**	**100.00%**	**71**	**40**	**465,500**	**100.00%**	**15**	**5**

Schedule "F"

Description	**Company X**	**Company Y**
# of shares traded by Client Accounts (at Industrial Alliance)	6,721,500	1,459,500
% of volume traded by Client Accounts compared to entire market	22.00%	18.42%
# of trades by Client Accounts	279	45
# of order fills by Client Accounts	981	86
Total value of shares traded by Client Accounts	$1,010,497	$44,168
Weighted average cost per share to Client Accounts	$0.1458	$0.0305
Weighted average proceeds per share to Client Accounts	$0.1551	$0.0275
Weighted average trade value of Client Account trades	$3,621.85	$939.73
Lowest trade value for which Commission was charged to Client Accounts	$185.00	$250.00
Commission charged by Rowlatt per trade to Client Accounts	$100	$100
Total Commission charged to Client Accounts	$27,775	$4,500
Total Gain/Loss before Commission to Client Accounts	$33,801.50	-$1,687.50

Total Gain/Loss after Commission to Client Accounts	$6,026.50	-$6,187.50

Schedule "G"

Total Gain (Loss) before Commissions = Realized Gain (Loss) + Unrealized Gain (Loss)

Total Gain (Loss) after Commissions = Realized Gain (Loss) + Unrealized Gain (Loss) – (Commissions Paid)

Realized Gain (Loss) = (base number of shares transacted[143][144]) × ((weighted average sale price) – (weighted average purchase price))

Unrealized Gain (Loss) = (residual number of shares[145]) × (closing stock price on the last trading day)

	Company X	Company Y
base number of shares	3,235,300	465,500
weighted average sale price	$0.1552	$0.0275
weighted average purchase price	$0.1458	$0.0305
Realized Gain(Loss)	**$30,248.19**	**-$1,416.34**
residual number of shares	250,900	528,500
closing stock price on the last trading day (Dec 29, 2017)	$0.16	$0.03
Unrealized Gain (Loss)	**$3,553.31**	**-$271.16**
Commission Paid	$27,775.00	$4,500.00
Total Gain(Loss) before Commissions	**$33,801.50**	**-$1,687.50**
Total Gain(Loss) after Commissions	**$6,026.50**	**-$6,187.50**

[143] Shares that were had a full trading cycle; i.e. number of shares that were transacted (bought and sold) without residual. SPP =

[144] ,235,000. CVR = 465,500.

[145] Difference between the number of shares that were bought and those that were sold; i.e. shares that are being held by clients in their accounts. SPP = 3,486,200 – 3,235,000 = 250,900. CVR = 994,000 – 465,500 = 528,500.

Appendix 5 - Re Bealer

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Gregory Paul Bealer

2022 IIROC 30

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

Heard: October 20, 2022 in Calgary, Alberta
Decision: October 20, 2022
Reasons for Decision: November 21, 2022

Hearing Panel:
Omolara Oladipo, Chair, Kathleen Jost and Donald Milligan **Appearances:**
Tayen Godfrey, Senior Enforcement Counsel Andrew Wilson, KC for Gregory Paul Bealer

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DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION The Settlement Agreement

¶ 1 On September 12, 2022, Gregory Paul Bealer (the "Respondent) entered into a settlement agreement with the Investment Industry Regulatory Organization of Canada ("IIROC") (the "Settlement Agreement"). The Settlement Agreement is attached as an Appendix to this decision.

¶ 2 An electronic hearing was conducted before the Hearing Panel on October 20, 2022 to consider whether, pursuant to Rule 8215 of IIROC's Consolidated Enforcement,

Examination and Approval Rules ("IIROC Rules"), the Hearing Panel should accept the Settlement Agreement in respect of the Respondent's alleged misconduct.

¶ 3 Prior to the hearing, the Hearing Panel had the opportunity to review the terms and bases of the Settlement Agreement.

¶ 4 At the onset of the hearing, the Chair confirmed that although the Respondent was not in attendance, he was ably represented by his counsel, Andrew Wilson, KC.

¶ 5 The Hearing Panel subsequently received the submissions and representations of Senior Enforcement Counsel for IIROC, Tayen Godfrey and from Mr. Wilson.

¶ 6 The Hearing Panel adjourned to deliberate and the main question it considered was the appropriateness of the penalties provided under the Settlement Agreement.

¶ 7 After a brief deliberation and at the conclusion of the hearing, the Hearing Panel found that the Settlement Agreement was within a reasonable range of appropriateness, having considered the IIROC Sanction Guidelines and previous IIROC decisions. Accordingly, the Hearing Panel accepted the Settlement Agreement with written reasons to follow. Below are the Panel's reasons.

BACKGROUND

¶ 8 The Respondent was a Registered Representative since 2008 and at the time of the contraventions, was a registrant with CIBC World Markets Inc. ("CIBC") as a Registered Representative and Portfolio Manager for five years from January 2014 to April 2019.

¶ 9 The Respondent is not currently working in an IIROC registered capacity.

¶ 10 The Respondent committed three contraventions of IIROC Rule 1400 and IIROC Dealer Member Rule 43.2(5). At various times between April 2016 and March 2019, he:

- failed in his role as a gatekeeper by facilitating suspicious trading activity in a client account,
- personally made off-book investments without the proper approval by his firm; and
- failed to designate several client accounts as pro-accounts. He then invested the client accounts in ineligible new issues without receiving appropriate approvals from his firm.

¶ 11 The investments were in a cannabis sector company (the "Company") and among other things, the Respondent opened accounts for a 68-year-old client from Quebec (now deceased) who had also been the Company CEO's stepfather and had been referred to the Respondent by the said CEO.

¶ 12 According to the retired client's account documents, he had a yearly income of $35,000 and a net worth of $300,000. The investment objectives of the accounts were

50% medium-term, 50% long-term growth and a high-risk tolerance of 100%. The client had three dependents.

¶ 13 The subject transactions almost exclusively involved the Company's securities. Share certificates were deposited into the account, they were liquidated, and the proceeds transferred back out to third parties, by way of wire transfer. While the Respondent failed to receive the appropriate approvals for the investments, the wire transfers to pay for the investments were approved by his employer.

¶ 14 All the foregoing activities were conducted on an unsolicited basis upon receipt of wire transfer instructions from the CEO's assistant although there were no power of attorney forms on file with CIBC as a basis for those instructions. There were 22 transfers of the Company's securities, totaling 1,331,667 shares. There were also 25 wire transfers of proceeds from the securities liquidation, totaling approximately $1,650,000. Proceeds from these liquidations were transferred to accounts belonging to the CEO, totaling $151,000.

¶ 15 Regarding the off-book transaction contraventions, the Respondent made eight off-book investments in private placements outside CIBC between April and September 2018 without receiving the appropriate approvals. The investments were all made via transfers from the Respondent's CIBC trading account. Many of the investments were in cannabis related companies. The investments totaled approximately $1,442,660.

¶ 16 The Respondent failed to designate 18 different accounts over which he had power of attorney as pro accounts, as required by his firm's policy and procedures. On at least five occasions, the Respondent facilitated clients investing in the same off-book private placements. The accounts in question belonged to four people closely connected to the Respondent or numbered companies controlled by them.

¶ 17 Between April 2016 and October 2018, the subject accounts participated in 32 new issue purchases worth approximately $1,966,575. By October 2017, $1,247,175 of the purchases were sold, and in December 2018, an additional $39,100 were sold. In total, the sales represented a realized gain of $111,087 (8.6%). As of September 2020, the remaining $668,500 of purchases was still held in the various accounts, before they were transferred away from CIBC. The foregoing purchases were not eligible for pro-accounts pursuant to CIBC's policies on new issues, and the Respondent did not obtain the appropriate approvals from CIBC.

¶ 18 Also, notwithstanding that CIBC had an Anti-Money Laundering and Anti-Terrorist Financing policy, which restricted employees from entering client relationships with persons or entities in the cannabis sector without first receiving approval from the firm, the Respondent had several unapproved interactions with principals of the Company including his attendance at a cannabis conference in Vancouver in January 2018 and attending the TSX listing ceremony for the Company in May 2018.

¶ 19 Overall, the Respondent received $2,036 by way of commissions for transactions related to the Company and $15,233 for ineligible investments.

Settlement Agreement

¶ 20 In accordance with Section 8428 (6) of the Rules, neither Enforcement Staff nor the Respondent's counsel adduced additional facts at the settlement hearing. The Hearing Panel was restricted to and relied upon the facts recited in the Settlement Agreement. The Panel has no reason to reject those facts which are necessary for the Hearing Panel's decision.

¶ 21 In the Settlement Agreement, the Respondent admitted to the alleged contraventions of IIROC Rule 1400 and IIROC Dealer Member Rule 43.2 (5) and consequently agreed to the following sanctions:

i. a fine of $50,000 plus disgorgement in the amount of $17,269,

ii. five-month prohibition of approval from IIROC registration, twelve-month period of close supervision, and iv. payment of costs of $5,000.

ANALYSIS Test for Acceptance of a Settlement Agreement

¶ 22 A hearing panel at a settlement hearing is not to decide whether it would have imposed the same sanctions as those negotiated by the parties, nor is it to modify or alter the sanctions. It is well accepted that in considering a settlement agreement, a hearing panel's task is to decide whether the agreed sanctions fall within a "reasonable range of appropriateness".

¶ 23 Accordingly, in considering the acceptance of a settlement agreement, a hearing panel must be satisfied that the agreed sanctions are within an acceptable range, are fair and reasonable, and serve as a deterrent to the respondent and to the industry. A hearing panel should also accept the settlement agreement where it is in the public interest to do so.

¶ 24 In applying the "reasonable range of appropriateness" test, hearing panels are expected to consider IIROC Sanction Guidelines, previous regulatory decisions, and any other relevant matters.

IIROC Sanction Guidelines

¶ 25 The IIROC Sanction Guidelines (the "Guidelines") provides a framework that should be considered in connection with the imposition of sanctions in all cases and an inexhaustive list of sample factors commonly taken into consideration when making a determination as to appropriate sanctions.

¶ 26 The Guidelines make it clear that the purpose of sanctions in a regulatory proceeding is to protect the public interest by preventing future conduct that may harm the market. Sanctions should be significant enough to prevent and discourage the respondent from engaging in future misconduct and to deter others from engaging in similar misconduct.

Previous Regulatory Decisions

¶ 27 In addition to considering the Guidelines, previous hearing panel decisions have considered sanctions approved by hearing panels for similar types of misconduct.

¶ 28 Written and oral submissions were of assistance to this Hearing Panel in considering whether the agreed sanctions fall within a reasonable range of appropriateness. IIROC Enforcement Counsel referred us to the following panel decisions:

- *Lee (Re)*, 2013 IIROC 10
- *Blackmore (Re)*, 2014 IIROC 43
- *Chen (Re)*, 2018 IIROC 35
- *Smith* (Re), 2019 IIROC 13
- *Carrigan & Gold (Re)*, 2019 IIROC 31
- *Rowlatt (Re)*, 2020 IIROC 32
- *Nyquvest (Re)*, 2021 IIROC 36
- *Small (Re)*, 2021 IIROC 28.

¶ 29 In *Lee (Re)*, the respondent admitted that between March 2011 and September 2012, and contrary to IIROC Dealer Member Rules 18.3(b) and 38(1), he engaged in outside business activities by facilitating offbook equity and debt investments in private placements by six clients totalling $7,200,000 in two separate companies, and that he did so without his firm's knowledge. The respondent also failed to question whether the investments in one of the companies was in accordance with the *Securities Act.* In addition, he borrowed $100,000 from two elderly clients to one of the companies, without his firm's knowledge.

¶ 30 The hearing panel in *Lee (Re)* considered many mitigating circumstances, including the fact that the respondent had been in the industry since 1989, had no disciplinary record, was no longer in the industry, had suffered very significant financial difficulties, facilitated the investments as opposed to recommending them, admitted everything that occurred and cooperated with the investigation. Also, the clients were very substantial net worth individuals who did not complain. In the settlement agreement, the respondent agreed to a fine of $75,000 and costs of $5,000. He was also prohibited from registration in any capacity for a period of six months.

¶ 31 In *Blackmore (Re)*, the respondent admitted to engaging in outside business activities without his firm's approval regarding his facilitation of off-book investments by five clients totaling $780,000 contrary to IIROC Dealer Member Rule 29.1. He also held a personal financial interest in relation to the outside investments. In a settlement, Blackmore agreed to a fine of $30,000, costs of $2,500, as well as a 45-day suspension of his registration with IIROC in any capacity.

¶ 32 In *Chen (Re)*, the respondent admitted to breaching IIROC Dealer Member Rule 29.1 by failing to advise her Dealer Member firm of the six investment accounts which

she and her husband maintained individually and jointly at two other firms, and by failing to advise the other two firms that she was an IIROC registrant and thereby preventing the firms from properly supervising the six investment accounts.

¶ 33 The hearing panel considered factors such as the facts that the respondent's conduct was not willfully blind, reckless or meant to deceive her employer or the other firms; that there was no evidence of harm to any clients or of improper trading activities in the accounts by the respondent or her husband; and that there was no evidence that the respondent or her husband received a financial benefit as a result of the conduct at issue in this case. The hearing panel also took the respondent's experience into consideration. The respondent accepted responsibility for her actions and acknowledged the nature and gravity of her misconduct. The respondent admitted that she was aware of the requirements but failed to comply with those obligations, resulting in each of the Dealer Member firms being unable to properly supervise the trading activities in the six investment accounts. In a settlement, the respondent agreed to a fine of $15,000 and costs of $2,500. The respondent also agreed to pass the Conduct and Practices Handbook Course prior to any re-registration with IIROC.

¶ 34 In *Carrigan & Gold (Re)*, two Respondents Darren Carrigan ("Carrigan") and Jason Andrew Gold
("Gold") admitted that from September 2013 to March 2014 and while they both worked together at
Hampton Securities Ltd., they facilitated suspicious trading by a group of related clients and insiders of two TSXV-listed issuers and that they failed to fulfill their gatekeeper responsibilities to IIROC-regulated marketplaces, contrary to the predecessor Universal Market Integrity Rule 2.1(1).

¶ 35 The hearing panel considered aggravating factors such as the facts that there were at least ten red flags affecting numerous trades over a lengthy period of seven months and while the respondents were experienced registrants, no explanation was given as to why the gatekeeper responsibilities did not prevent these trades affected as they were by so many red flags.

¶ 36 In mitigation, the hearing panel considered the facts that neither Carrigan nor Gold had any disciplinary history, and they had both cooperated fully with IIROC Enforcement Staff during the investigation, had acknowledged the contraventions in the Settlement Agreement, and had therefore accepted their responsibility. Also, Gold who continued to act as Carrigan's assistant, had been under strict supervision while the matters at issue were being investigated by IIROC and his supervisors were then required to file monthly supervision reports with IIROC. Orders received by Carrigan's clients were processed by Gold and Carrigan was therefore effectively subject to indirect strict supervision. Neither Carrigan nor Gold had any communications with, placed any orders for or executed any trades on behalf of the Clients during that period.

¶ 37 In a settlement, Carrigan agreed to pay a fine of $50,000 and Gold agreed to pay a fine of $20,000. Further, Carrigan and Gold each agreed to sanctions consisting of

successfully completing the Trader Training Course within six months of the approval of the settlement and costs to IIROC in the sum of $7,500 each.

¶ 38 In *Rowlatt (Re)*, the respondent facilitated suspicious trading by a group of related clients and insiders of two TSXV-listed issuers between January 2017 and December 2017. The respondent failed to live up to his gatekeeper responsibilities to IIROC-regulated marketplaces, contrary to IIROC Rule 1402, which requires participants to transact business openly and fairly and in accordance with just and equitable principles of trade.

¶ 39 In the settlement tabled for acceptance by the hearing panel, Rowlatt agreed to pay a fine of $50,000, inclusive of full disgorgement of commissions earned, successful completion of the Trader Training Course within six months of the approval of the settlement, and payment of $7,500 in costs to IIROC.

¶ 40 In *Nyquvest (Re)*, the respondent engaged in personal financial dealings and outside business activities, as well as facilitated off-book investments - all without the knowledge or consent of his firm and contrary to Dealer Member Rules 18.14 and 43 as well as Consolidated Rule 1400.

¶ 41 The hearing panel considered mitigating circumstances, including the fact that the respondent had no prior disciplinary record with IIROC, had accepted that his conduct was in breach of the Rules and had entered into the settlement agreement with IIROC Enforcement Staff. Additionally, there were no client claims or losses, and the funds were loaned to related parties and not borrowed. The respondent provided reimbursement of the attendant finder's fees. The respondent’s counsel added the submissions that mitigating factors should include the fact that the conduct of the respondent involved transactions with either a good friend or his sons and that the purpose of this conduct was to assist his son in understanding the capital markets. Also, the off-book dealings only occurred after the respondent was advised that the firm was not interested in being involved.

¶ 42 Aggravating circumstances included the seniority of the respondent as a member of the investment industry as well as a number of violations of the Rules effected by him over a period of time. The settlement agreement confirmed that the respondent agreed to sanctions which include a fine in the amount of $34,000, suspension from registration in any capacity with IIROC for six months, close supervision upon any registration with IIROC for 12 months, a successful rewrite of the Conduct and Practices Handbook examination upon return, and costs of $5,000.

¶ 43 In *Small (Re)*, the respondent had personal financial dealings with a client from May 2015 to December 2019 and acted as power of attorney for the client who was also a Related Person as defined in the *Income Tax Act*, when he borrowed money from the client without his employer's knowledge contrary to IIROC Dealer Member Rules 43.2(3) and 43.2(5).

¶ 44 Although Small expressed to the hearing panel that the penalties might be too severe, he nevertheless agreed to them to close the matter. He agreed to a payment of a fine of $20,000, the obligation to pass the Conduct and Practices Handbook Course, and payment to IIROC of $2,500 in costs. The hearing panel emphasized the complete collaboration of Small with IIROC.

¶ 45 In reviewing the foregoing precedents, the facts of which are similar to the ones before this Hearing Panel, this Panel understood, and was mindful of the fact that each case must be considered on its own facts and circumstances. In addition to comparing the sanctions imposed by the Settlement Agreement to that imposed by hearing panels in past cases, the Panel considered the particular facts of this case including the situation and circumstances of the client as well as that of the Respondent. The Hearing Panel considered IIROC's Sanction Guidelines as indicative of industry expectations and as relevant to determining an appropriate penalty, although it is recognized that they are neither exhaustive nor determinative.

¶ 46 Specifically, the Hearing Panel took the following factors regarding the Respondent's actions into consideration:

- The Respondent had no discipline history;
- The Respondent is not currently working in a registered capacity;
- No actual harm was done to the client;
- There was no real benefit to the Respondent; and
- The Respondent has accepted responsibility for his misconduct.

¶ 47 The Hearing Panel also viewed the following as aggravating circumstances:

- There was a substantial amount of money involved;
- The violations undermined the framework of supervision by the firm;
- The Respondent had care and control of the accounts; and
- The Respondent was an experienced advisor and showed a pattern of disregard for IIROC
  and his firm's rules. The Respondent ignored obvious red flags and facilitated suspicious trading activity in a client account. He also personally made off-book investments without the proper approval by his firm and failed to designate several client accounts as proaccounts. He then invested the client accounts in ineligible new issues without appropriate approvals from his firm.

¶ 48 In light of the foregoing, the Hearing Panel finds that the penalties agreed upon by IIROC and the Respondent in the Settlement Agreement are consistent with the principles and the framework established by the Guidelines as well as with the range accepted in similar decisions.

CONCLUSION

¶ 49 It is well established in the IIROC jurisprudence that a settlement hearing panel is not tasked with deciding whether it would have imposed the same sanctions as those agreed through negotiation by the parties.

¶ 50 Pursuant to IIROC Rule 8215(5), a hearing panel must decide whether to accept or reject the proposed settlement. In making that determination, it will consider whether the proposed sanction falls within a reasonable range of appropriateness and whether it is consistent with the Guidelines and prior IIROC decisions.

¶ 51 The Hearing Panel considered whether the proposed penalties in this case adequately reflect the seriousness of the multiple contraventions. However, the Hearing Panel also recognized that the proposed sanctions are the product of a process of negotiation and agreement between parties and fell within a reasonable range.

¶ 52 After serious reflection of the submissions at the hearing, the precedents cited and the factors invoked regarding the conduct of the Respondent, the Hearing Panel was persuaded by the stated mitigation factors and more importantly, concluded that the appropriate test for settlement agreement approval has been met.

¶ 53 The Hearing Panel therefore accepts the Settlement Agreement.

Dated at the City of Calgary, Alberta this 21 day of November 2022.
Omolara Oladipo
Kathleen Jost
Donald Milligan

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 IIROC Rules, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Gregory Paul Bealer ("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. The Respondent:

a) Failed in his gatekeeper obligations. He failed to inquire into suspicious circumstances, and facilitated questionable transactions in a client account, that raised potential manipulative trading issues;

b) Made several personal off-book transaction ; and

c) Failed to designate accounts over which he had trading authority, as pro-accounts. He then invested these accounts in new issuer private placements investments. The Respondent did so without receiving appropriate approvals from his firm.

Registration History

5. The Respondent is not currently working in an IIROC registered capacity. The conduct in question took place while he was a registrant with CIBC World Markets Inc. ("CIBC"), where he was a Registered Representative and Portfolio Manager from January 2014 to April 2019. Before that, he had worked at TD Waterhouse Canada, since 2008.

Failed Gatekeeper Obligations

6. The Respondent facilitated suspicious trading activities pertaining to a cannabis sector company (the "Company"). He failed to make appropriate inquiries into the numerous red flags presented by these activities. The Respondent also failed to report these activities to his firm.

7. The suspicious trading involved third parties depositing share certificates of the Company into the account of the Respondent's client. Shortly thereafter, the securities were liquidated, and the proceeds
were distributed out of the account to third parties. The client in question was referred to the Respondent by the Company's CEO, and the Respondent was taking instructions from the CEO's assistant. CIBC's management did not raise any concerns with the Respondent about these transactions.

Respondent's Relationship to the Company

8. CIBC had an Anti-Money Laundering and Anti-Terrorist Financing policy which restricted employees from entering client relationships with persons or entities in the cannabis sector without first receiving approval from the firm. Despite this, the Respondent had several unapproved interactions with principals of the Company. This includes:

a) Attending a cannabis conference in Vancouver in January 2018;

b) Attending the TSX listing ceremony for the Company in May 2018.

Suspicious Circumstances and Trading Activity

9. In February 2018, the Respondent opened accounts for a 68-year-old client from Quebec (the "Client"). The Client, who is now deceased, was the CEO's stepfather, and was referred to the Respondent by the CEO.

10. According to the Client's account documents, at the relevant time he:

a) was 68 years old, retired, and had three dependents;

b) had a net worth of $300,000;

c) had a yearly income of $35,000;

d) had investment objectives of 50% medium-term, and 50% long-term growth; and

e) had a Risk tolerance of 100% high risk.

11. Once the account was opened, the transactions almost exclusively involved the Company's securities. Share certificates were deposited into the account, they were liquidated, and the proceeds transferred back out to third parties, by way of wire transfer.

12. These activities were conducted on an unsolicited basis, with the Respondent receiving wire transfer instructions from someone he knew to be the CEO's assistant. There were no power of attorney forms on file with CIBC giving the assistant authority over the account.

13. During the relevant period there were 22 transfers of the Company's securities, totaling 1,331,667 shares. During this same period, there were 25 wire transfers of proceeds from the securities liquidation, totaling approximately $1,650,000.

14. On at least two occasions, proceeds from these liquidations were transferred to accounts belonging to the CEO, totaling $151,000.

Red Flags

15. The above circumstances presented several red flags that the Respondent failed to act on, including: a) The CEO's relationship with the Client;

b) The unusual nature of the trading going through the Clients account, particularly, considering
the client's profile, and his relationship to the CEO. This includes the type and volume of transactions, and that they primarily involved only the Company's securities; and

c) The CEO's assistant was providing instructions on the Client's account, despite no documented authority to do so filed with the firm.

Off-Book Transactions

16. Between April and September 2018, the Respondent made eight off-book investments in private placements, outside CIBC, without receiving the appropriate approvals. The investments were all made via transfers from the Respondent's CIBC trading account. Many of the investments were in cannabis related companies. The investments totaled approximately $1,442,660.

17. While the Respondent failed to receive the appropriate approvals for the investments, the wire transfers to pay for the investments were approved by his employer.

18. On at least five occasions the Respondent facilitated clients investing in the same off-book private placements. The Respondent would make clients aware he was personally investing in the companies, and they would also invest.

Failure to Designate Pro-Accounts and Ineligible Investments

19. The Respondent failed to designate 18 different accounts over which he had power of attorney as proaccounts, as required by his firm's policy and procedures. The accounts in question belonged to four people closely connected to the Respondent, or numbered companies controlled by them. By doing so, the Respondent undermined his firm's supervisory structure as it pertained to accounts over which the Respondent had control or authority.

20. Between April 2016 and October 2018 these accounts participated in 32 new issue purchases, worth approximately $1,966,575. By October 2017, $1,247,175 of the purchases were sold, with an additional $39,100 sold in December 2018. In total, the sales represented a realized gain of $111,087 (8.6%). As of September 2020, the remaining $668,500 of purchases was still held in the various accounts, before they were transferred away from CIBC.

21. Under CIBC's policies on new issues, these purchases were not eligible for pro-accounts, and were made without the Respondent obtaining the appropriate approvals from his firm. A stated intention of the policies is to ensure the fair treatment to CIBC's clients in the allocation of new issues. By not following CIBC's policies regarding pro-accounts and new issues, the Respondent could potentially have given these particular clients preferential treatment at the expense of other CIBC clients. With the exception of the 32 new issue purchases, there is no evidence the account holders profited directly as a result of the failure to have the accounts designated pro-accounts.

Commissions Earned by the Respondent

22. The Respondent personally received by way of commissions:
    a) For transactions related to the Company: $2,036; and
    b) For ineligible Investments: $15,233.

PART IV – CONTRAVENTIONS

23. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

Contravention 1

Between March 2018 and March 2019, the Respondent failed in his role as a gatekeeper by facilitating suspicious trading activity in a client account, contrary to IIROC Rule 1400;

Contravention 2

Between January and December 2017, the Respondent personally made off-book investments, without the proper approval by his firm, contrary to IIROC Rule 1400; and

Contravention 3

Between April 2016 and October 2018, the Respondent failed to designate several client accounts as pro-accounts. He then invested the client accounts in ineligible new issues, without receiving appropriate approvals from his firm, contrary to IIROC Dealer Member Rule 43.2(5) and IIROC Rule 1400.

PART V – TERMS OF SETTLEMENT

24. The Respondent agrees to the following sanctions and costs:

    a) A fine in the amount of $50,000 plus disgorgement in the amount of $17,269;

    b) Five-month prohibition of approval from IIROC registration;

    c) Twelve-month period of close supervision; and

    d) Costs in the amount of $5,000.

25. 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 VI – STAFF COMMITMENT

26. If the Hearing Panel accepts this Settlement Agreement, 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.

27. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under IIROC 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 VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

28. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

29. 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.

30. 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.

31. 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.

32. 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.

33. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

34. 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.

35. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

36. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

38. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 12 day of September, 2022.

"Witness"
Witness

"Gregory Paul Bealer"
Gregory Paul Bealer

DATED this 13 day of September, 2022.

"Witness"
Witness

"Tayen Godfrey"
Tayen Godfrey

Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this 20th day of October, 2022 by the following Hearing Panel:

Per: "Omolara Oladipo"

Panel Chair

Per: "Don Milligan"

Panel Member

Per: "Kathleen Jost"

Panel Member

Appendix 6 - Retail Registered Representative (RR) and Investment Representative (IR) Competencies[146]

5. Execution and Market Integrity		
SUB-COMPETENCY	**KNOWLEDGE** **For RRs and IRs to understand as applicable**	**BEHAVIOURS AND SKILLS** **For RRs to apply and IRs to apply or provide support as applicable**

I. Market integrity, trade execution and settlement	• Market rules, including Universal Market Integrity Rules (UMIR) where applicable, in particular:
	  ○ Best execution
	  ○ Manipulative and deceptive practices
	  ○ Disruptive trading practices
	  ○ Fair and equitable trading practices
	• The securities industry code of ethics, standards and dealer guidelines for acceptable behaviour and governance
	• Placing orders, and the settlement and delivery process
	• Awareness of the various marketplaces
	• Processes for handling order errors and changes
	• The purpose and application of the cash account rule
	• Trading settlement procedures for all transactions
	• The restriction process on overdue cash accounts
	• Requirements to confirm orders with clients, including fees and commissions
	• Dealer requirements, guidelines and best practices for trade confirmations sent to clients
	• Types of buy, sell and short sell orders
	• Long and short margin accounts and special margin situations
	• The need for specialized trading authorizations at the dealer
		• Comply with market integrity, trade execution and settlement requirements by identifying and applying the applicable regulatory requirements, dealer policies and procedures
		• Verify that all relevant details of a trade are accurately reflected in all orders placed
		• Place all orders in a timely manner and consistent with the client's request
		• For non-discretionary/non-managed accounts, ensure trading is executed without discretion as to either the security traded, its quantity, price and/or the time of the trade
		• Record trading details, including the client's agreement
		• Remain available to client during trading hours or follow dealer policies and procedures to ensure that a colleague is otherwise available

[146] "Retail Registered Representative (RR) and Investment Representative (IR) Competencies"

5. Execution and Market Integrity		
SUB-COMPETENCY	**KNOWLEDGE** **For RRs and IRs to understand as applicable**	**BEHAVIOURS AND SKILLS** **For RRs to apply and IRs to apply or provide support as applicable**

II. Gatekeeping responsibilities	• UMIR gatekeeping obligations
	• Applicable regulatory requirements including:
	  ○ The client's typical financial activity and patterns to identify suspicious transactions
	  ○ how to identify and escalate suspicious transactions
	  ○ Possible insider trading activity and violations
	  ○ Applicable regulatory frameworks on whistleblowers
	  ○ Applicable reporting obligations to firms and regulators
		• Comply with market integrity, trade execution and settlement requirements by identifying and applying gatekeeping responsibilities
		• Identify irregular trading requests that are inconsistent with a client's portfolio, past trading and investment objectives
		• Escalate concerns to Supervisor and relevant compliance personnel about suspicious, manipulative or deceptive practices, including possible insider trading
		• Alert the trade desk to investigate with the exchanges, if required
		• Record suspicious activities and recommendations that reflect irregular requests, including rationale and actions taken

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