

Unofficial English Translation

IN THE MATTER OF:

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

AND

REMO COSTA

STATEMENT OF ALLEGATIONS AMENDED

Further to a Notice of Hearing dated December 5, 2017, Staff of the Investment Industry Regulatory Organization of Canada make the following allegations.

PART I - CONTRAVENTION ALLEGED

During five (5) days between July 28, 2015 and September 28, 2015, the Respondent, a client and director of Jitney Trade Inc., entered orders or executed transactions on the Toronto Stock Exchange (TSX) when he knew, or ought reasonably to have known, that the entry of such orders or the execution of the transactions would create or could reasonably be expected to create a false or misleading appearance of trading activity with respect to these securities, contrary to UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under Rule 10.4 (1) of the Universal Market Integrity Rules (UMIR).

PART II - PARTICULARS

A. Summary

1. During five (5) days between July 28, 2015 and September 28, 2015, the Respondent, a client and director of JitneyTrade Inc. (Jitney), entered orders that he intended to execute (*bona fide* orders) on one side of the market and,

simultaneously, entered orders that he did not intend to execute (non-*bona fide* orders) on the other side of the market, in an attempt to induce other participants to react to the non-*bona fide* orders and to trade one of his *bona fide* orders at an artificial price. This practice is commonly referred to as “layering”;

2. The “layering” practiced by the Respondent resulted in twenty (20) attempts at manipulation involving five (5) stocks listed on the Toronto Stock Exchange (TSX), an exchange regulated pursuant to UMIR;
3. The Respondent entered the orders via certain of his client accounts at Jitney, for which he had a systems interconnect arrangement that granted him direct electronic access (DEA) on Canadian marketplaces;
4. The Respondent’s trading activity triggered a surveillance alert at IIROC. IIROC’s Trading Review & Analysis Department identified several instances of potentially manipulative trading as a result of the Respondent’s activities;
5. The Respondent’s trading activity constitutes a violation of UMIR 2.2 (2) and UMIR Policy 2.2, which notably prohibit the entry of non-*bona fide* orders. **Schedule A** sets out the text of the relevant UMIR Requirements.

B. Respondent’s employment background and approval history

6. The Respondent was an independent trader working on his own account at the Montréal Exchange from February 1981 to November 2001;
7. At the end of 2001, the Respondent left the Montréal Exchange and continued his activities as a client of the dealer member Jitney;
8. The Respondent was registered with IIROC as a board member of the dealer member, Jitney, from August 29, 2008 to May 24, 2016;
9. The dealer member, Jitney, is registered as an investment dealer and a Participant under UMIR;

C. Alleged contravention: Manipulative or deceptive trading activity

The practice of "*Layering*"

10. During five (5) days between July 28, 2015 and September 28, 2015 (material period), the Respondent entered orders that he intended to execute (*bona fide* orders) on one side of the market and, simultaneously, entered orders that he did not intend to execute (*non-bona fide* orders) on the other side of the market, in order to induce other participants to react to the *non-bona fide* orders and to trade one of his *bona fide* orders at an artificial price. This practice is commonly referred to as "layering";
11. During the material period, the Respondent entered *non-bona fide* orders on one side of the market relative to his positions on the other side of the market (the trading activity). He then canceled these orders immediately after liquidating his long position or covering his short position;
12. More precisely, the Respondent created a false impression of interest in the security by entering a buy order that would improve the best bid or a sell order that would improve the best asked price. When another market participant equaled or surpassed his order, the Respondent would go to the other side of the order book to sell or buy in response to the order that had equaled or surpassed his own order. After going to the other side to trade, the Respondent would cancel his open order, which he had had no real intention of executing;
13. The Respondent's *non-bona fide* orders created a false or misleading appearance of trading activity;
14. This manipulative trading strategy resulted in a series of orders and trades that ignited a price move in the securities being traded;
15. This price move induced the other market participants to react and to trade with these orders. As a result of his misconduct, the Respondent secured an advantage with respect to the bid/ask price of the securities;
16. The trading activity involved the following five (5) securities listed on the TSX during the five (5) days stated below:

| Dates | Securities |
|--------------------|---|
| July 28, 2015 | <i>Atlantic Power Corp (ATP.DB.A)</i> |
| August 5, 2015 | <i>Artis Real Estate Investment Trust Preferred Units Series C (AX.PR.U)</i> |
| August 12, 2015 | <i>TransAlta Corporation cumulative redeemable rate reset first preferred shares series A (TA.PR.D)</i> |
| September 4, 2015 | <i>Enbridge Inc. cumulative redeemable preference shares series L (ENB.PF.U)</i> |
| September 28, 2015 | <i>Enbridge Inc. cumulative redeemable preference shares Series 1 (ENB.PR.V)</i> |

Trades on “TransAlta Corporation cumulative redeemable rate reset first preferred shares series A (TA.PR.D)”, August 12, 2015

17. As detailed in the table below, the Respondent’s trades in the security TA.PR.D executed on August 12, 2015 are representative of the trading activity that occurred repeatedly during the material period:

| Line | Time | Orders | Volume | Price (\$) |
|---------------------|---|--|---------------|-------------------|
| Before manipulation | 10:31 : 51.9 | <i>“National Best Offer” (NBO)</i> | n/a | 9.76 |
| 1 | 10:31 : 53.925 | 1 st SELL order by Respondent | 100 | 9.70 |
| <i>Analysis</i> | <i>One market participant reacts to the non-bona fide sell order.</i> | | | |
| 2 | 10:31 : 54.921 | Client A amends his sell order | 1000 | 9.70 |
| 3 | 10:31 : 58.283 | 2 nd SELL order by Respondent | 100 | 9.66 |
| <i>Analysis</i> | <i>One market participant reacts to the non-bona fide sell order.</i> | | | |
| 4 | 10:31 :58.285 | Client A amends his sell order | 800 | 9.66 |
| 5 | 10:31 : 58.301 | Client B initiates a Dark Sell order | 100 | 9.66 |

| Line | Time | Orders | Volume | Price (\$) |
|----------|---|--|--------|------------|
| | | | | |
| Analysis | <i>The Respondent goes to the other side of the order book to buy in response to the sell order which now equals his own order.</i> | | | |
| 6 | 10:32 : 11.364 | 1 st BUY order by the Respondent | 800 | 9.66 |
| 7 | 10:32 : 11.364 | BUY order by the Respondent – EXECUTED | 800 | 9.66 |
| Analysis | <i>After changing side in order to trade, the Respondent immediately cancels his open orders which he had no real intention of executing.</i> | | | |
| 8 | 10:32 : 24.501 | 2 ND SELL order by Respondent – CANCELLED | 100 | 9.66 |
| 9 | 10:32 : 57.306 | 1 ST SELL order by Respondent – CANCELLED | 100 | 9.70 |

Trades on “TransAlta Artis Real Estate Investment Trust Preferred Units Series C (AX.PR.U)”, August 5, 2015

18. As detailed in the table below, the Respondent’s trades on the security AX.PR.U, effected on August 5, 2015, are representative of the trading activity that occurred repeatedly during the material period:

| Line | Time | Orders | Volume | Price (\$) |
|---------------------|--|---|--------|------------|
| Before manipulation | 09:32 : 30.3 | “National Best Bid”(NBB) | n/a | 18.40 |
| 1 | 09:33 : 01.113 | 1 st BUY order by the Respondent | 100 | 18.50 |
| Analysis | <i>One market participant reacts to the non-bona fide buy order.</i> | | | |
| 2 | 09:33 : 01.505 | Client A amends his buy order | 1000 | 18.50 |
| 3 | 09:33 : 10.742 | 2 nd BUY order by the Respondent | 100 | 18.60 |
| Analysis | <i>One market participant reacts to the non-bona fide buy order.</i> | | | |
| 4 | 09:33 : 11.522 | Client A amends his buy order | 1000 | 18.60 |

| Line | Time | Orders | Volume | Price (\$) |
|-----------------|--|--|--------|------------|
| 5 | 09:41 : 27.325 | 3 ^e BUY order by the Respondent | 100 | 18.70 |
| <i>Analysis</i> | <i>No new orders initiated by clients in reaction to the 3rd BUY order by the Respondent.</i> | | | |
| 6 | 09:41 : 48.104 | 3 rd BUY order by the Respondent – CANCELLED | 100 | 18.70 |
| 7 | 09:46 : 40.074 | 1 st SELL order by Respondent | 600 | 18.60 |
| <i>Analysis</i> | <i>The Respondent goes to the other side of the order book to sell in response to the buy order which now equals his own order.</i> | | | |
| 8 | 09:46 : 40.074 | 1 st SELL order by Respondent – EXECUTED | 600 | 18.60 |
| <i>Analysis</i> | <i>After changing side in order to trade, the Respondent <u>immediately</u> cancels his open orders which he had no real intention of executing.</i> | | | |
| 9 | 09:46 : 48.029 | 2 nd BUY order by the Respondent – CANCELLED | 100 | 18.60 |
| 10 | 09:50 : 08.164 | 1 st BUY order by the Respondent – CANCELLED | 100 | 18.50 |

19. A table detailing the manipulative trading strategy and the orders placed by the Respondent during the five (5) days of the material period can be found in **Schedule B**;
20. The table in **Schedule B** notably details the very short time between the moment of execution of the orders that the Respondent had truly intended to execute (*bona fide* orders) and the cancellation of the other orders that he did not intend to execute (*non-bona fide* orders). The Respondent cancels these orders immediately after having liquidated his long position or covered his short position;
21. The Respondent's trading activity brought him \$470, 20 in profit.

The Respondent was trying to "identify a trend"

22. The Respondent confirmed to staff of IROC that he was purposefully positioning himself on one side of an order in order to "identify a trend";
23. According to the Respondent's explanations, once the trend was identified, he would position himself on the other side of the order to execute it, while canceling the orders on the other side of the bid or ask;
24. The Respondent has confirmed to Staff of IROC that he had placed and then cancelled these orders deliberately, in order to identify market trends, respond to them by positioning himself accordingly, and thus obtain the best price.

D. Conclusion

25. The Respondent therefore actively participated in a trading strategy known as *layering*, with respect to five (5) stocks, while knowing that entering the orders or executing the trades would create a false and misleading appearance, contrary to UMIR 2.2 (2) a) and Policy 2.2, and to UMIR 10.4.

SIGNED at Montréal, Québec, this December 5, 2017.

SCHEDULE A

EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES (UMIR)

2.2 Manipulative and Deceptive Activities

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

POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES

Part 1 – Manipulative or Deceptive Method, Act or Practice

There are a number of activities which, by their very nature, will be considered to be a manipulative or deceptive method, act or practice. For the purpose of subsection (1) of Rule 2.2 and without limiting the generality that subsection, the following activities, when undertaken on a marketplace, constitute a manipulative or deceptive method, act or practice:

- a) making a fictitious trade;
- b) effecting a trade in a security which involves no change in the beneficial or economic ownership;
- c) effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group; and

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (1) of Rule 2.2 irrespective of whether such method, act or practice results in a false or

misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.

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

For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:

- a) entering an order or orders for the purchase of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of that security, has been or will be entered by or for the same or different persons;
- b) entering an order or orders for the sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the purchase of that security, has been or will be entered;
- c) making sales of or offers to sell a security at successively lower prices or in a pattern generally of successively lower prices;
- d) making sales of or offers to sell a security at successively lower prices or in a pattern generally of successively lower prices;
- e) entering an order or orders for the purchase or sale of a security to:
 - (i) establish a predetermined sale price, ask price or bid price,
 - (ii) effect a high or low closing sale price, ask price or bid price,
or
 - (iii) maintain the sale price, ask price or bid price within a predetermined range;
- f) entering an order or a series of orders for a security that are not intended to be executed;

- g) entering an order for the purchase of a security without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;
- h) entering an order for the sale of a security without, at the time of entering the order, having the reasonable expectation of settling any trade that would result from the execution of the order; and
- i) effecting a trade in a security, other than an internal cross, between accounts under the direction or control of the same person,

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities, those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such method, act or practice results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.

Part 3 – Artificial Pricing

For the purposes of subsection (2) of Rule 2.2, an ask price, bid price or sale price will be considered artificial if it is not justified by real demand or supply in a security. Whether or not a particular price is "artificial" depends on the particular circumstances.

Some of the relevant considerations in determining whether a price is artificial are:

- a) the prices of the preceding trades and succeeding trades;
- b) the change in the last sale price, best ask price or best bid price that results from the entry of the order on a marketplace;
- c) the recent liquidity of the security;
- d) the time the order is entered and any instructions relevant to the time of entry of the order; and;
- e) whether any Participant, Access Person or account involved in the order:
 - (i) has any motivation to establish an artificial price, or

- (ii) represents substantially all of the orders entered or executed for the purchase or sale of the security.

The absence of any one or more of these considerations is not determinative that a price is or is not artificial.

SCHEDULE B AMENDED

Summary of manipulative activities between July 28, 2015 and September 28, 2015

| # | Security | Date | Time of transaction | Delay before cancellation | Buy / Sell | Quantity | Value of security before manipulation (\$) | Value of security at time of transaction (\$) | Appreciation in value (\$) | Profit (\$) | Number of orders affected by manipulation |
|----|----------|------------|---------------------|---------------------------|------------|----------|--|---|----------------------------|---------------|---|
| 1 | ATP.DB.A | 28-juil-15 | 12:26:44,750 | 00:00:03,245 | v | 95,27 | 95,51 | 1000 | 0,24 | <u>2,40</u> | 13 |
| 2 | ATP.DB.A | 28-juil-15 | 12:26:57,226 | 00:00:02,208 | v | 95,27 | 95,51 | 1000 | 0,24 | <u>2,40</u> | 49 |
| 3 | ATB.DB.A | 28-juil-15 | 12:27:15,658 | 00:00:07,402 | v | 95,27 | 95,52 | 1000 | 0,25 | <u>2,50</u> | 27 |
| 4 | ATB.DB.A | 28-juil-15 | 12:27:57,085 | 00:00:05,519 | v | 95,27 | 95,51 | 1000 | 0,24 | <u>2,40</u> | 13 |
| 5 | ATB.DB.A | 28-juil-15 | 12:28:18,638 | 00:00:03,562 | v | 95,27 | 95,52 | 1000 | 0,25 | <u>2,50</u> | 26 |
| 6 | ATB.DB.A | 28-juil-15 | 12:29:00,370 | 00:00:04,922 | v | 95,51 | 95,56 | 1000 | 0,05 | <u>0,50</u> | 13 |
| 7 | ATB.DB.A | 28-juil-15 | 12:29:59,433 | 00:00:02,017 | v | 95,27 | 95,56 | 1000 | 0,29 | <u>2,90</u> | 13 |
| 8 | ATB.DB.A | 28-juil-15 | 12:30:29,567 | 00:00:03,225 | v | 95,27 | 95,61 | 1000 | 0,34 | <u>3,40</u> | 13 |
| 9 | ATB.DB.A | 28-juil-15 | 12:31:00,771 | 00:00:02,021 | v | 95,27 | 95,62 | 1000 | 0,35 | <u>3,50</u> | 26 |
| 10 | ATB.DB.A | 28-juil-15 | 12:31:47,916 | 00:00:07,891 | v | 95,27 | 95,61 | 1000 | 0,34 | <u>3,40</u> | 13 |
| 11 | ATB.DB.A | 28-juil-15 | 12:32:30,184 | 00:00:33,909 | v | 95,27 | 95,63 | 1000 | 0,36 | <u>3,60</u> | 28 |
| 12 | ATB.DB.A | 28-juil-15 | 12:32:37,131 | 00:00:09,445 | v | 95,27 | 95,60 | 1000 | 0,33 | <u>3,30</u> | 30 |
| 13 | ATB.DB.A | 28-juil-15 | 12:33:10,086 | 00:00:04,642 | v | 95,27 | 95,51 | 1000 | 0,24 | <u>2,40</u> | 13 |
| 14 | AX.PR.U | 05-août-15 | 9:46:40,074 | 00:14:09,783 | v | 18,40 | 18,60 | 600 | 0,20 | <u>120,00</u> | 27 |

| | | | | | | | | | | | |
|----|----------|------------|---------------------|--------------|---|-------|-------|------|------|---------------|----|
| 15 | TA.PR.D | 12-août-15 | 10:32:11,364 | 00:00:19,418 | v | 9,76 | 9,66 | 800 | 0,10 | <u>80,00</u> | 7 |
| 16 | ENB.PR.V | 28-sept-15 | 14:27:45,939 | 00:01:42,861 | v | 18,35 | 18,40 | 600 | 0,05 | <u>30,00</u> | 10 |
| 17 | ENB.PR.V | 28-sept-15 | 14:27:57,831 | 00:01:54,753 | v | 18,35 | 18,40 | 300 | 0,05 | <u>15,00</u> | 10 |
| 18 | ENB.PR.V | 28-sept-15 | 14:28:15,585 | 00:02:12,507 | v | 18,35 | 18,40 | 800 | 0,05 | <u>40,00</u> | 10 |
| 19 | ENB.PR.V | 28-sept-15 | 14:28:46,115 | 00:02:43,037 | v | 18,35 | 18,40 | 200 | 0,05 | <u>10,00</u> | 10 |
| 20 | ENB.PF.U | 04-sept-15 | 10:56:06,649 | 00:00:45,475 | v | 17,67 | 17,74 | 2000 | 0,07 | <u>140,00</u> | 11 |

470,20 \$