



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22nd Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue Queen Ouest  
Toronto ON M5H 3S8

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Citation: International Capital Markets Pty. Ltd. (Re), 2019 ONSEC 28

Date: 2019-07-25

File No.: 2019-19

**IN THE MATTER OF  
INTERNATIONAL CAPITAL MARKETS PTY. LTD.**

**REASONS AND DECISION FOR APPROVAL OF A SETTLEMENT  
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

**Hearing:** July 24, 2019

**Decision:** July 25, 2019

**Panel:** Timothy Moseley Vice-Chair and Chair of the Panel  
Garnet W. Fenn Commissioner  
Raymond Kindiak Commissioner

**Appearances:** Vivian Lee For Staff of the Commission  
Adam Chisholm For International Capital Markets  
Pty. Ltd.

## REASONS AND DECISION

- [1] International Capital Markets Pty. Ltd. (**ICM**) is an Australian over-the-counter issuer of derivatives and securities. It provides an online trading platform to its clients.
- [2] Staff of the Commission has alleged that ICM, in carrying on its business, contravened Ontario securities law. Staff and ICM have entered into a settlement agreement, in which ICM neither admits nor denies the truth of Staff's allegations. Staff and ICM submit jointly that it would be in the public interest for us to approve this settlement. We agree. We reach that conclusion for the following reasons.
- [3] Staff alleges that over a five-year period, ICM opened and operated accounts for Ontario investors, through which those investors traded contracts for differences (**CFDs**), allowing the investors to gain exposure to various underlying assets. Staff alleges that the CFDs were securities, and that ICM was the counterparty on every CFD trade. ICM is not registered in Ontario and has not filed a prospectus.
- [4] Staff alleges that ICM received approximately US\$4 million attributable to revenue generated from the Ontario accounts, which amount includes fees, bid-ask spreads and interest charges.
- [5] Had Staff's allegations been proven at a contested hearing, ICM's activities would constitute a breach of subsection 25(1) of the *Securities Act*,<sup>1</sup> which provides that in order to be engaged in the business of trading in securities, one must be registered to do so. ICM's activities would also constitute a breach of subsection 53(1) of the *Securities Act*, which prohibits the distribution of securities without a prospectus.
- [6] The registration and prospectus requirements are cornerstones of Ontario securities law and they serve an important investor protection purpose. It must be clear to all who participate in Ontario's capital markets, including offshore entities, that great care must be taken to comply with our regulatory requirements.
- [7] When Staff of the Commission informed ICM of its concerns, ICM immediately advised that it was prepared to cease doing business in Ontario, and it began taking steps to do so. ICM has closed all the Ontario accounts, is returning the funds in the accounts to the investors, and has implemented measures to block Canadian residents from using its platform.
- [8] ICM has agreed to make three payments to the Commission:
- a. US\$4 million, reflecting the approximate amount that Staff alleges was received by ICM as a result of the activities that are the subject of this settlement;
  - b. C\$650,000 to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets; and
  - c. C\$25,000 to reimburse the Commission for costs related to this matter.

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<sup>1</sup> RSO 1990, c S.5

- [9] In addition, ICM has undertaken to take a number of steps with respect to any remaining funds in the Ontario accounts, and to give annual confirmations to Staff for the next three years that ICM has no Ontario accounts and that it is maintaining its policies and procedures that are designed to prevent accounts being opened by Ontario residents.
- [10] The Commission's role at a settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to make the order requested. We have reviewed this settlement in detail, and we conducted a confidential settlement conference with counsel for both parties. We asked questions of counsel and heard their submissions.
- [11] We recognize that the agreement is the product of negotiation between Staff and ICM. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties. However, when the negotiated result does not have the respondent admitting the truth of Staff's allegations (a "no-contest settlement"), it is more difficult to secure the Commission's approval.
- [12] In this case, we have taken into account the fact that the misconduct alleged by Staff was inadvertent, and that ICM has, since being advised of Staff's concerns, been exemplary in its co-operation with Staff, and in the way that it has addressed those concerns. We have considered these actions with reference to the factors identified in section 17 of OSC Staff Notice 15-702, the *Revised Credit for Co-operation Program*. In our view, it is in the public interest to approve this no-contest settlement.
- [13] The parties have submitted that the important principle of deterrence can be adequately served by a no-contest settlement, and that that applies to this settlement. We agree.
- [14] We will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 25<sup>th</sup> day of July, 2019.

"Timothy Moseley"

Timothy Moseley

"Garnet W. Fenn"

Garnet W. Fenn

"Raymond Kindiak"

Raymond Kindiak