



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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IN THE MATTER OF INTERNATIONAL CAPITAL MARKETS PTY. LTD.

STATEMENT OF ALLEGATIONS (Subsection 127(1) and Section 127.1 of the Securities Act, RSO 1990, c S.5)

A. ORDER SOUGHT

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) request that the Commission make an order pursuant to subsections 127(1) and (2) and section 127.1 of the Securities Act, RSO 1990, c S.5 (the **Act**) to approve the settlement agreement dated July 19, 2019 , on a no-contest basis, between Staff and International Capital Markets Pty. Ltd. (**IC Markets**).

B. FACTS

2. Under Ontario securities law, contracts for differences (CFDs) are derivative products that constitute securities when offered to Ontario investors, and involve a distribution of a security when issued to Ontario investors. A CFD issuer offering and distributing such securities must therefore comply with the registration and prospectus

requirements of the Securities Act, RSO 1990, c S5, as amended (the Act) and the trade reporting requirements under OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting. These provisions of the Act serve to protect the investing public and preserve the integrity of the capital markets in Ontario.

3. These requirements apply to foreign companies that offer online trading of securities or derivatives, including CFDs, for Ontario residents.
4. Foreign market participants must investigate, understand and comply with regulatory obligations in jurisdictions in which they operate. They must implement a robust compliance system in recognition of the compliance risks associated with operating in multiple jurisdictions. Where there is a failure to implement a robust compliance system in recognition of the compliance risks associated with operating in multiple jurisdictions, Staff will not hesitate to initiate proceedings in response to violations of Ontario securities law.
5. Staff make the following allegations of fact:

(a) Overview

6. IC Markets provides online trading of securities and derivatives, including CFDs, through a proprietary platform accessible to investors globally, formerly including investors in Ontario. IC Markets was the counterparty on every CFD trade, meaning it took positions as principal to its clients. IC Markets entered into hedging transactions with third parties to offset its market risk which resulted from being the counterparty on every CFD trade.

7. While IC Markets' conduct was inadvertent in that it did not intend to conduct business in Ontario, nor did it solicit investors in Ontario directly, IC Markets has breached cornerstone provisions of the Act. These provisions relate directly to protecting the investing public and preserving the integrity of capital markets by engaging in the business of trading without registration, and issuing CFDs, which constitutes a distribution, without filing and obtaining a receipt for a prospectus with the Commission.

(b) IC Markets

8. IC Markets is an over-the-counter issuer of derivatives and securities operating from Sydney, Australia and provides an online trading platform to its clients.

9. IC Markets is regulated by the Australian Securities and Investments Commission (ASIC). IC Markets is not a reporting issuer in Ontario and has not filed a preliminary prospectus or a prospectus with the Commission. IC Markets is not registered to trade in securities in Ontario pursuant to the requirements of the Act.

(c) Ontario clients

10. Between March 12, 2013 and June 25, 2018 (the **Material Time**), Ontario investors traded CFDs using IC Markets' online platform. During the Material Time, IC Markets opened and operated approximately 1665 accounts for Ontario investors (the **Ontario Accounts**), which accounts for approximately 0.5% of IC Markets' global client base.
11. The Ontario Accounts were opened using an online account application process accessed through IC Markets' online platform. Ontario investors could access the IC Markets online platform directly, or through a referral program called the Introducing Broker (**IB**) program. IBs receive fees from IC Markets when someone uses their referral link to open an IC Markets account. There are currently no active IBs in Canada.

12. During the Material Time, IC Markets received approximately USD \$4,000,000 from the Ontario Accounts, which includes IC Markets' fees, bid-ask spreads, and interest charges. These fees and charges were disclosed to investors.
13. Presently, no Canadian can open an account with IC Markets as a result of the controls and procedures implemented by IC Markets in July 2018.

(d) IC MARKETS' TRADING IN CFDs

14. IC Markets engaged in the business of issuing and trading CFDs through its online platform.
15. Through these CFDs, IC Markets' clients, including Ontario investors, could participate in the price movements of assets which included equities, currencies, cryptocurrencies (offered from 2018), market indices and commodities without owning the underlying assets. For example, an Ontario investor could purchase a position in a CFD that tracked the price of a cryptocurrency. Then, depending on whether the relative price of the cryptocurrency went up or down, the value of the CFD would also go up or down.

16. IC Markets was the counterparty on every CFD, meaning it acted as principal to its clients. IC Markets entered into hedging transactions with third parties to offset its market risk, which resulted from being the counterparty on CFDs issued. Profit or loss from these hedging transactions was offset by IC Markets' corresponding profit or loss as counterparty to the CFDs. As a result, IC Markets had no market exposure and its revenues were attributable to fees, bid-ask spreads and interest charges.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST:

17. Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest by IC Markets during the Material Time:
 - (a) engaging in the business of trading in securities without registration in accordance with Ontario securities law or an applicable exemption from registration, contrary to section 25 of the Act; and

- (b) engaging in trading in securities which constitute distributions without complying with the prospectus requirements or without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act.
18. Staff reserves the right to amend these allegations and to make such further and other allegations as Staff deems fit and the Commission may permit.

DATED this 22nd day of July, 2019.

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