



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: International Capital Management Inc.**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Central Regional Council of the MFDA (the “Hearing Panel”) should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and the Respondent, International Capital Management Inc. (the “Respondent” or “ICM” or the “Member”) (the “Settlement Agreement”).

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent is registered as a mutual fund dealer in Alberta and Ontario, and has been a Member of the MFDA since February 8, 2002.

7. John Paul Sanchez (“Sanchez”) is the President and the Ultimate Designated Person of the Respondent. Sanchez and his brother, JS, jointly own ICM.

8. Since June 1, 1996, Sanchez has been registered in Alberta and Ontario as a dealing representative (formerly known as a mutual fund salesperson) with the Respondent.

9. The Respondent's bookkeeper, WV, is not registered in the mutual fund industry. WV reported directly to Sanchez.

## **Background**

10. WV was responsible for completing the MFDA Form 1 and was the Respondent's contact person for any financial and compliance related queries from MFDA Staff. Sanchez and WV met regularly to discuss budgetary concerns and other matters, and to review the Form 1 before submitting it to Staff. Sanchez's review of the Form 1s consisted of a limited review of Schedule 5, the Early Warning tests, and the Respondent's risk adjusted capital ("**RAC**"). As well, Sanchez signed the Certificate of Partners and Directors.

11. In addition to their ownership of ICM, Sanchez and JS also jointly own HoldCo and owned I-Boss.

12. HoldCo owns the office building in which the Respondent carries on business. According to the lease between the Respondent and HoldCo, the Respondent is required to pay HoldCo \$4,675 monthly to lease its office space.

13. I-Boss carried on business at the same office space as the Respondent and provided marketing services to the Respondent. I-Boss ceased its operations in 2012.

14. The Respondent is designated as a Level 3 Member of the MFDA for the purposes of determining its minimum capital. In accordance with MFDA Rule 3.1.1, a Level 3 Member of the MFDA must maintain minimum capital of \$75,000 and RAC greater than zero at all times.

## **Early Warning – May 2012 to September 2013**

15. In March 2012, Staff conducted an onsite examination of the Respondent and identified deficiencies in the Respondent's Form 1. Staff found that accounting adjustments were incorrectly reported, including an understated tax liability of \$28,000 and an overstated

commission receivable of \$15,000. The Profitability Test was triggered in the Respondent's April 2012 Form 1 after the accounting adjustments were corrected.

16. By letter dated May 30, 2012 (sent same day via email), Staff advised ICM that it had been placed in Early Warning as a result of accounting adjustments that would cause the Respondent to be capital deficient as at January 31, 2012. The letter stated that while designated in Early Warning and in accordance with MFDA Rule 3.4.2(b)(iv), the Respondent could not make any payments by way of loan, advance, dividend or bonus to Officers or related companies of the Respondent without the prior approval of Staff. The Respondent was required to submit a plan on how it would resolve the deficiencies and a letter confirming that the circumstances of MFDA Rule 3.4.2 are applicable.

17. By email on June 6, 2012, ICM submitted a letter to Staff. The Respondent's external accountant was copied on the email. The letter stated that the Respondent was aware that it had been placed in Early Warning as a result of the MFDA examination and had sold \$52,654 in investments to remedy the issue.

18. The Respondent triggered the Profitability Test again in its April, May, and June 2012 Form 1s. Since the Respondent triggered the Profitability Test more than two times within 12 months, the Respondent was subject to the Frequency Penalty and was aware or ought to have been aware that it remained subject to the Early Warning restrictions.

19. The Frequency Penalty expired with the submission of the Respondent's June 2013 Form 1. As a result of fluctuations in the Respondent's RAC, the Respondent remained designated in Early Warning at the discretion of Staff. On September 26, 2013, Staff removed the Respondent from Early Warning after a satisfactory review of the Respondent's August 31, 2013 Form 1.

20. During periods when the Respondent was designated in early warning, ICM was subject to the early warning requirements set out in MFDA Rule 3.4.2(b) including, in particular, the requirements that the Respondent:

- (1) refrain from:
  - (a) reducing its capital in any manner including by redemption, repurchase or cancellation of any of its shares;
  - (b) reducing or repaying any indebtedness which has been subordinated;
  - (c) directly or indirectly making any payments by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, affiliate or associate,
  - (d) increasing its non-allowable assets (as specified by the MFDA) unless a prior binding commitment to do so exists or entering into any new commitments which would have the effect of materially increasing the non-allowable assets of the Member;

without the prior written consent of the MFDA; and

- (2) provide to the MFDA such reports or information, on a daily or a less frequent basis, as may be necessary or desirable in the opinion of the MFDA to assess and monitor the financial condition or operations of the Member.

### **Unauthorized Payments – Overview**

21. While designated in Early Warning and without the prior written consent of the MFDA, the Respondent made payments to various entities as follows:

- (a) salary and override payments to Officers of the Respondent from June 2012 to August 2013;
- (b) payments to I-Boss from June 2012 to December 2012; and
- (c) a payment to HoldCo in March 2013.

### **Unauthorized Payments of Salaries and Overrides to Officers of the Respondent**

22. From June 2012 to August 2013, while the Respondent was designated in Early Warning, the Respondent made monthly payments of salaries and overrides to Sanchez and JS totaling \$302,418 without prior written approval from the MFDA. The payments were processed by WV.

23. ICM was responsible for ensuring its adherence to the Early Warning rules and requirements, including responsibility for supervising WV. ICM ought to have confirmed that WV had obtained prior approval from Staff to make the payments of salaries and overrides from June 2012 to August 2013, in order to ensure its adherence to the Early Warning rules and requirements.

#### **Unauthorized Payments to I-Boss**

24. From June 2012 to December 2012, while the Respondent was designated in Early Warning, the Respondent made five payments totaling \$14,035 to I-Boss without obtaining prior written approval from the MFDA. The payments were processed by WV.

25. ICM was responsible for making appropriate queries and informing itself as to its adherence to the Early Warning rules and requirements, including responsibility for supervising WV. ICM ought to have confirmed that WV had obtained prior approval from Staff to make the five payments to I-Boss from June 2012 to December 2012, in order to ensure the Respondent's adherence to the Early Warning rules and requirements.

#### **Unauthorized Payment to HoldCo**

26. During Staff's review of the Respondent's March 31, 2013 Form 1, Staff noted an increase of \$50,780 in prepaid expenses. By email dated April 22, 2013, Staff requested the Respondent provide a breakdown of the expenses.

27. By email dated April 23, 2013, WV provided Staff with a copy of the Respondent's prepaid expenses balance as at March 31, 2013 which indicated that in March 2013, the Respondent had paid \$32,000 in "advanced" rent to HoldCo. Staff noted that the lease agreement between the Respondent and HoldCo provided that lease payments were to be made in equal

monthly instalments in advance on the first day of each month. Of the \$32,000 paid to HoldCo, \$5,000 represented the current rent payment due, and the remaining \$27,000 was over and above any payment due to HoldCo by the Respondent.

28. In or about June 2013, Staff contacted ICM to review the Early Warning requirements. ICM acknowledged that the prepayment of rent was a breach of the Early Warning restrictions and indicated that it would obtain approval prior to making such payments in the future. By letter dated September 20, 2013, Staff requested that ICM explain why the Respondent prepaid 6 months in rent and did not seek prior written approval from Staff.

29. In a letter from ICM to Staff, delivered via email on October 11, 2013, ICM indicated that it had reviewed its RAC for the month to ensure it was positive prior to making the prepayment and the Respondent's shareholders decided to prepay the rent because HoldCo needed a capital injection.

30. WV stated to Staff that he was instructed by ICM to make the payment of \$27,000 to HoldCo and to record the payment as prepaid rent. WV stated that he made the payment as instructed and did not make any inquiries about the payment. The \$27,000 described by WV as "advanced rent" was used to make an RRSP contribution for the benefit of JS.

31. The Respondent was responsible for making appropriate queries and informing itself as to the Respondent's adherence to the Early Warning rules and requirements, including responsibility for supervising WV. The Respondent ought to have confirmed that WV had obtained prior approval from Staff to make any such payments, including the payment to HoldCo and the RRSP contribution for the benefit JS in March 2013.

## **V. THE RESPONDENT'S POSITION**

32. The Respondent and Sanchez were diligent in preventing any threat of harm to clients by verifying, in the ordinary course, that all impugned payments (as set out above) would not create an illiquid position for the Member.

33. At all material times, the Respondent was diligent in ensuring that it maintained a positive RAC and profit/loss ratio.

34. There were no client losses and no client complaints as a result of the misconduct admitted to herein.

35. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

## **VI. CONTRAVENTIONS**

36. Between June 2012 and September 2013, while the Respondent was designated in Early Warning, the Respondent contravened the early warning requirements set out in MFDA Rule 3.4.2 by making payments without prior written approval from the MFDA for:

- (a) salary and override payments to Officers of the Respondent from June 2012 to August 2013;
- (b) payments to I-Boss from June 2012 to December 2012; and
- (c) a payment to HoldCo in March 2013.

all of which is contrary to MFDA Rule 3.4.2(b)(iv)(C).

## **VII. TERMS OF SETTLEMENT**

37. The Respondent agrees to the following terms of settlement:

- (a) ICM shall pay a fine in the amount of \$30,000, pursuant to section 24.1.2(b) of MFDA By-law No. 1;
- (b) ICM shall pay costs in the amount of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1;
- (c) ICM shall in the future comply with MFDA Rule 3.4.2; and

- (d) a senior officer of the Respondent will attend in person on the date set for the Settlement Hearing.

## **VIII. STAFF COMMITMENT**

38. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent or any of its officers or directors in respect of the facts set out in Part IV and the contraventions described in Part VI of this Settlement Agreement, subject to the provisions of Part XI below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

## **IX. PROCEDURE FOR APPROVAL OF SETTLEMENT**

39. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and counsel for the Respondent.

40. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

41. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing

Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

42. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against it.

#### **X. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

43. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent or any of its officers or directors based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

#### **XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

44. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

45. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

## **XII. DISCLOSURE OF AGREEMENT**

46. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

47. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

## **XIII. EXECUTION OF SETTLEMENT AGREEMENT**

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

49. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 14<sup>th</sup> day of December, 2016.

“John Sanchez”

International Capital Management Inc.

Per: John Sanchez

“DM”

Witness – Signature

DM

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

**Schedule “A”**

**Order**

**File No. 201565**



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: International Capital Management Inc.**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of International Capital Management Inc. (“Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date], in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1 (“Settlement Agreement”);

**AND WHEREAS** the Hearing Panel is of the opinion that the Respondent, between June 2012 and September 2013, while the Respondent was designated in Early Warning, contravened the early warning requirements set out in MFDA Rule 3.4.2 by making payments without prior written approval from the MFDA for:

- i. salary and override payments to Officers of the Respondent from June 2012 to

August 2013;

- ii. payments to I-Boss from June 2012 to December 2012; and
- iii. a payment to HoldCo in March 2013.

contrary to MFDA Rule 3.4.2(b)(iv)(C);

**IT IS HEREBY ORDERED THAT** the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall pay a fine in the amount of \$30,000, pursuant to pursuant to section 24.1.2(b) of MFDA By-law No. 1;
2. the Respondent shall pay costs in the amount of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1;
3. the payment by the Respondent of the fine and costs as set out in paragraphs (1) and (2) above shall be made to and received by MFDA Staff in certified funds or lawyers cheques as follows:
  - i) payment in the amount of \$10,000 (attributable to the fine) on the date the hearing panel accepts the Settlement Agreement;
  - ii) payment in the amount of \$5,000 (attributable to the costs) on the date the hearing panel accepts the Settlement Agreement;
  - iii) payment in the amount of \$10,000 (attributable to the fine) 30 days after the date the hearing panel accepts the Settlement Agreement; and
  - iv) payment in the amount of \$10,000 (attributable to the fine) 60 days after the date the hearing panel accepts the Settlement Agreement;
4. the Respondent shall in the future comply with MFDA Rule 3.4.2; and
5. if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the

non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

**DATED** this [day] day of [month], 20[ ].

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

DM 516357 v1