



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

**SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE COMMISSION
AND INTERNATIONAL CAPITAL MARKETS PTY. LTD.**

PART I- INTRODUCTION AND REGULATORY MESSAGE

1. 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.
2. These requirements apply to foreign companies that offer online trading of securities or derivatives, including CFDs, for Ontario residents.
3. 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.
4. The parties shall jointly file a request that the Commission issue a Notice of Hearing (the **Notice of Hearing**) to announce that it will hold a public hearing to consider whether, pursuant to

section 127 and 127.1 of the Act, it is in the public interest for the Commission to make certain orders in respect of International Capital Markets Pty. Ltd. (**IC Markets** or the **Respondent**).

PART II- JOINT SETTLEMENT RECOMMENDATION

5. Staff of the Commission (**Staff**) and IC Markets recommend settlement of the proceeding (the **Proceeding**) against IC Markets to be commenced by the Notice of Hearing, based on the terms and conditions set out in this settlement agreement (the **Settlement Agreement**).
6. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, IC Markets neither admits nor denies the accuracy of the facts or the conclusions of Staff as set out in Part III of this Settlement Agreement.
7. IC Markets agrees to this Settlement Agreement and consents to the making of an order substantially in the form attached as Schedule “A”.

PART III- STAFF’S STATEMENT OF FACTS AND CONCLUSIONS

A. OVERVIEW

8. 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.
9. 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 as they 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

10. 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.
11. 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

12. 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.
13. 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.
14. 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.

15. 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, as discussed in paragraph 25 below.

D. IC MARKETS' TRADING IN CFDs

16. IC Markets engaged in the business of issuing and trading CFDs through its online platform.

17. 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.

18. 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.

E. BREACHES OF ONTARIO SECURITIES LAW

19. By issuing and trading CFDs with Ontario investors during the Material Time, IC Markets breached Ontario securities law by:

- a. Engaging in the business of trading in securities without registration in accordance with Ontario securities law, contrary to subsection 25(1) of the Act; and

- b. Engaging in trading in securities which constitute distributions without filing a preliminary prospectus and a prospectus with the Commission, contrary to subsection 53(1) of the Act.

PART IV- MITIGATING FACTORS

20. The Respondent requests that the Settlement Hearing panel consider the following mitigating circumstances. Staff agrees with the mitigating circumstances set out by the Respondent below.
21. Staff does not allege, and has found no evidence of, dishonest conduct by IC Markets. Additionally, IC Markets has no prior regulatory history before the Commission.
22. IC Markets did not directly solicit any Ontario residents.
23. Upon being informed by Staff that it may be conducting registrable activity in Ontario, IC Markets immediately advised that it was prepared to cease doing business in Ontario, and proactively began taking steps to do so. IC Markets also agreed to voluntarily provide documents to Staff within a self-imposed two-week timeline.
24. As part of its response to Staff's request for information, IC Markets proactively suggested it would add both a notice on its website and a pop-up notice to its online account application form, indicating it would not accept Ontario residents. This was accepted by Staff, and IC Markets advised external legal counsel would be retained to develop a comprehensive remediation plan in the interim. IC Markets confirmed that these steps were taken.
25. The Respondent also confirmed it has taken the following additional measures to remediate its conduct:
 - a. Terminated all accounts opened by residents of Ontario;
 - b. Attempted, and continues to attempt, to return all funds remaining in the Ontario Accounts to the account holders;

- c. Implemented technical controls on its website to block new account applications from residents of Canada;
 - d. Established policies and procedures designed to identify residents of Canada who may attempt to open accounts by means of Internet Protocol (IP) address, email domain, residential address and bank account information;
 - e. Elevating any ambiguous cases where residency cannot be definitively determined to the Chief Compliance Officer for further investigation and resolution; and
 - f. Communicating these updated policies and procedures to all relevant Staff at IC Markets.
26. The Respondent confirmed that, following these remedial measures, no additional Ontario Accounts have been opened with IC Markets since July 22, 2018. Furthermore, of the 1665 Ontario Accounts opened on IC Markets' online trading platform, IC Markets has closed and returned funds from 854 Ontario Accounts. Of the remaining Ontario Accounts, which are now dormant, 600 accounts have a balance of AUD \$50 (~CAD \$47.66) or less. These figures are current as of January 31, 2019.
27. Over the course of developing and implementing its remedial measures, IC Markets maintained an open dialogue with Staff and concerns were addressed personally by senior officers at IC Markets. IC Markets responded to all additional requests for information in a timely manner, and promptly provided clarification to Staff where necessary.
28. In one instance, Staff sought to understand a component of IC Markets' revenue, and IC Markets took the initiative of engaging an accounting firm which issued a report to provide Staff with a clear and fulsome response. This information was beyond the scope of what Staff had requested and provided Staff with comfort regarding IC Markets' representations.

29. In addition to the above remedial actions, IC Markets agrees to undertake to do the following:

- a. Provide email reminders to all remaining Ontario Account holders on each of August 1, 2019, October 1, 2019 and January 1, 2020 in relation to the unreturned funds or until all funds are returned (whichever occurs first) and return all funds remaining in the dormant accounts held in the names of Ontario residents, totalling approximately USD \$73,000, without charging any fees;
- b. If IC Markets has not obtained instructions regarding the return of remaining funds in the Ontario Accounts by March 1, 2020, IC Markets will undertake to donate the remaining funds to the charitable organization “The Junior Achievement of Canada Foundation” or similar Canadian registered charity as may exist as at that date and provide confirmation to Staff within 30 days of making the donation;
- c. Confirm the IB program has been fully terminated in Canada; and
- d. IC Markets will deliver to Staff annually, for a period of three years from the date of this Settlement Agreement, affidavits sworn or affirmed by a senior officer of IC Markets confirming that:
 - i. IC Markets did not have any accounts opened for clients resident in Ontario, nor any Ontario IBs onboarded during the prior twelve-month period; and
 - ii. Enhanced policies and procedures remain in place at IC Markets designed to prevent accounts from being opened by residents of Ontario.

30. IC Markets has agreed to make the following voluntary payments (**Voluntary Payments**):

- a. USD \$4,000,000, reflecting approximate amounts received by IC Markets, designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act;

- b. CAD \$650,000 to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets, designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act; and
 - c. CAD \$25,000 to reimburse the Commission for costs incurred or to be incurred.
31. Staff is of the view that the Voluntary Payments signal to foreign market participants the importance of establishing a robust compliance system and identifying all compliance risks when they choose to conduct business on a global scale.
32. IC Markets shall make the Voluntary Payments by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, conditional upon the approval of the Settlement Agreement by the Commission.
33. The terms of settlement are appropriate, having regard to the nature of Staff's allegations, mitigating factors, and the principles of general and specific deterrence.

PART V- TERMS OF SETTLEMENT

34. IC Markets agrees to the terms of settlement listed below and consents to the Order attached **hereto**, pursuant to subsection 127(1) and section 127.1 of the Act that:
- a. The Settlement Agreement is approved;
 - b. Pursuant to an undertaking (the **Undertaking**) IC Markets has provided to the Commission in the form of Schedule "B" of the Settlement Agreement, IC Markets undertakes to do the following:
 - i. provide email reminders to all remaining Ontario account holders on each of August 1, 2019, October 1, 2019 and January 1, 2020 in relation to the unreturned funds or until all funds are returned (whichever occurs first) and return all funds remaining in the dormant accounts held in the names of

Ontario residents, totalling approximately USD \$73,000, without charging any fees;

- ii. donate, if IC Markets has not obtained instructions regarding the return of any remaining funds in the Ontario Accounts by March 1, 2020, the remaining funds to the charitable organization “The Junior Achievement of Canada Foundation” or similar Canadian registered charity as may exist as at that date, and provide confirmation to Staff within 30 days of making the donation;
- iii. Confirm the IB program has been fully terminated in Canada; and
- iv. IC Markets will deliver to Staff annually, for a period of three years from the date of this Settlement Agreement, affidavits sworn or affirmed by a senior officer of IC Markets confirming that:
 1. IC Markets did not have any accounts opened for clients resident in Ontario, nor any Ontario IBs onboarded during the prior twelve-month period; and
 2. Enhanced policies and procedures remain in place at IC Markets designed to prevent accounts from being opened by residents of Ontario.

35. IC Markets agrees to make the Voluntary Payments specified in paragraph 30 by wire transfer prior to the issuance of any Commission order approving this Settlement Agreement.

36. IC Markets agrees to attend at the hearing before the Commission to consider the proposed settlement by video conference.

PART VI- STAFF COMMITMENT

37. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to Staff's Statement of Facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 38 below.
38. If the Commission approves this Settlement Agreement and IC Markets fails to comply with any of the terms of the Settlement Agreement, Staff or the Commission may bring proceedings under Ontario securities law against IC Markets. These proceedings may be based on, but are not limited to, Staff's Statement of Facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

PART VII- PROCEDURE FOR APPROVAL OF SETTLEMENT

39. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission (the **Settlement Hearing**) to be conducted according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure. This Settlement Agreement will form all of the evidence that will be submitted at the Settlement Hearing on IC Markets' conduct, unless the parties agree that additional evidence should be submitted at the Settlement Hearing.
40. If the Commission approves this Settlement Agreement, IC Markets irrevocably waives all rights to a full hearing, judicial review, or appeal of this matter under the Act.
41. If the Commission approves this Settlement Agreement, neither Staff nor IC Markets will make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the Settlement Hearing. In addition, IC Markets agrees that it will not make any public statement that there is no factual basis for the Settlement Agreement. Nothing in this paragraph affects IC Markets' testimonial obligations or the right to take legal or factual

positions in other investigations or legal proceedings in which the Commission and/or Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada and/or its staff is not a party (**Other Proceedings**) or to make public statements in connection with Other Proceedings.

42. Whether or not the Commission approves this Settlement Agreement, IC Markets will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII- DISCLOSURE OF SETTLEMENT AGREEMENT

43. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- a. This Settlement Agreement and all discussions and negotiations between Staff and IC Markets before the Settlement Hearing takes place will be without prejudice to Staff and IC Markets; and
- b. Staff and IC Markets will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

44. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement, subject to the parties' need to make submissions at the public hearing.

PART IX- EXECUTION OF SETTLEMENT AGREEMENT

45. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 19th day of July, 2019.

**INTERNATIONAL CAPITAL
MARKETS PTY. LTD.**

By: "Andrew Budzinski"

Andrew Budzinski
CEO, International Capital Markets
PTY. LTD.

COMMISSION STAFF

By: "Johanna Superina per"

Jeff Kehoe
Director, Enforcement Branch

SCHEDULE "A"



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22nd Floor
20 Queen Street West
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22e étage
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FILE NO.:

IN THE MATTER OF INTERNATIONAL CAPITAL MARKETS PTY LTD.

[Name(s) of Commissioner(s) comprising the Panel]

[Day and date Order made]

ORDER

(Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on [date], the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Joint Request for a Settlement Hearing filed by International Capital Markets Pty Ltd (**IC Markets**), and Staff of the Commission (**Staff**) for approval of a settlement agreement dated [date] (the **Settlement Agreement**);

ON READING the Statement of Allegations dated [date] and the Settlement Agreement, and on hearing the submissions of the representatives for IC Markets, and Staff, and on considering the undertaking of IC Markets dated [date] attached as Annex "I" to this Order;

THE COMMISSION ACKNOWLEDGES the following voluntary payments received from IC Markets:

- i. USD \$4,000,000, reflecting approximate amounts received by IC Markets, designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act;
- ii. CAD \$650,000 to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets, designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act; and
- iii. CAD \$25,000 to reimburse the Commission for costs incurred or to be incurred.

AND IT IS ORDERED THAT the Settlement Agreement is approved.

[Commissioner]

ANNEX "I"

UNDERTAKING OF INTERNATIONAL CAPITAL MARKETS PTY LTD

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

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated **[date]** (the **Settlement Agreement**) between International Capital Markets Pty Ltd (**IC Markets**) and Staff of the Commission (**Staff**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. IC Markets undertakes to the Commission to:
 - a. provide email reminders to all remaining Ontario account holders on each of August 1, 2019, October 1, 2019 and January 1, 2020 in relation to the unreturned funds or until all funds are returned (whichever occurs first) and return all funds remaining in the dormant accounts held in the names of Ontario residents, totalling approximately **USD \$73,000**, without charging any fees;
 - b. donate, if IC Markets has not obtained instructions regarding the return of any remaining funds in the Ontario Accounts by March 1, 2020, the remaining funds to the charitable organization "The Junior Achievement of Canada Foundation" or similar Canadian registered charity as may exist as at that date, and provide confirmation to Staff within 30 days of making the donation;
 - c. confirm the IB program has been fully terminated in Canada; and
 - d. deliver to Staff annually, for a period of three years from the date of this Settlement Agreement, affidavits sworn or affirmed by a senior officer of IC Markets confirming that:

1. IC Markets did not have any accounts opened for clients resident in Ontario, nor any Ontario IBs onboarded during the prior twelve-month period; and
2. Enhanced policies and procedures remain in place at IC Markets designed to prevent accounts from being opened by residents of Ontario.

DATED at **[city]**, **[province]** this **[date]** day of **[date]**.

Witness:

ANDREW BUDZINSKI

SCHEDULE “B”

UNDERTAKING OF INTERNATIONAL CAPITAL MARKETS PTY LTD

IN THE MATTER OF INTERNATIONAL CAPITAL MARKETS PTY LTD

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated **[date]** (the **Settlement Agreement**) between International Capital Markets Pty Ltd (**IC Markets**) and Staff of the Commission (**Staff**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.
2. IC Markets undertakes to the Commission to:
 - a. provide email reminders to all remaining Ontario account holders on each of August 1, 2019, October 1, 2019 and January 1, 2020 in relation to the unreturned funds or until all funds are returned (whichever occurs first) and return all funds remaining in the dormant accounts held in the names of Ontario residents, totalling approximately **USD \$73,000**, without charging any fees;
 - b. donate, if IC Markets has not obtained instructions regarding the return of any remaining funds in the Ontario Accounts by March 1, 2020, the remaining funds to the charitable organization “The Junior Achievement of Canada Foundation” or similar Canadian registered charity as may exist as at that date, and provide confirmation to Staff within 30 days of making the donation;
 - c. confirm the IB program has been fully terminated in Canada; and.
 - d. deliver to Staff annually, for a period of three years from the date of this Settlement Agreement, affidavits sworn or affirmed by a senior officer of IC Markets confirming that:

1. IC Markets did not have any accounts opened for clients resident in Ontario, nor any Ontario IBs onboarded during the prior twelve-month period; and
2. Enhanced policies and procedures remain in place at IC Markets designed to prevent accounts from being opened by residents of Ontario.

DATED at _____, this _____ day of **July, 2019**.

Witness:

ANDREW BUDZINSKI