



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

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: International Capital Management Inc.
and John Paul Sanchez**

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") in the hearing room at the offices of the MFDA, located at 121 King Street West, Suite 1000, Toronto, Ontario on February 2, 2016 at 12:00 p.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against International Capital Management Inc. and John Paul Sanchez (the "Respondents").

DATED this 17th day of December, 2015.

"Sarah Rickard"

Sarah Rickard
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5143
Facsimile: 416-361-9781
Email: corporatesecretary@mfda.ca

NOTICE is further given that staff of the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between June 2012 and September 2013, while International Capital Management Inc. (“ICM”) was designated in Early Warning, ICM 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 ICM 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 Rules 3.4.2(b)(iv)(C).

Allegation #2: Between June 2012 and September 2013, John Paul Sanchez (“Sanchez”) failed to make appropriate queries or inform himself as to ICM’s adherence to the Early Warning rules and requirements, contrary to MFDA Rule 2.5.2(b).

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. ICM is registered as a mutual fund dealer in Alberta and Ontario, and has been a Member of the MFDA since February 8, 2002.
2. Sanchez and his brother, JS, jointly own ICM.

3. In addition to being co-owner of ICM, Sanchez is also the President, and the Ultimate Designated Person of ICM.

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

5. ICM's bookkeeper, WV, is not registered in the mutual fund industry. WV reported directly to Sanchez.

Background

6. WV was responsible for completing the MFDA Form 1 and was ICM's contact person for any financial and compliance related queries from MFDA Staff ("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 ICM's risk adjusted capital ("RAC"). As well, Sanchez signed the *Certificate of Partners and Directors*.

7. In addition to ICM, Sanchez and JS also jointly own HoldCo and owned I-Boss.

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

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

10. ICM 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 – October 2008 to November 2009

11. In September 2008, Staff conducted a review of ICM's August 2008 Form 1 and found that ICM had triggered the Profitability Test. By letter dated October 7, 2008, Staff informed ICM that it had been placed in Early Warning and that all of MFDA Rule 3.4.2 applied.

12. In July 2009, Staff conducted a review of ICM's June 2009 Form 1 and found that ICM had made a payment of \$60,000 to HoldCo. As a result, ICM's non-allowable assets increased while ICM was still in Early Warning. Staff had not received a request from ICM for approval of the transaction as required by MFDA Rule 3.4.2.

13. Following Staff's review of ICM's October 2009 Form 1, Staff advised ICM by letter dated November 30, 2009 that ICM was no longer in Early Warning and that the Early Warning restrictions had been removed.

Early Warning – May 2012 to September 2013

14. In March 2012, Staff conducted an onsite examination of ICM and identified deficiencies in ICM'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 ICM's April 2012 Form 1 after the accounting adjustments were corrected.

15. By letter dated May 30, 2012 (sent same day via email), Staff advised Sanchez that ICM had been placed in Early Warning as a result of accounting adjustments that would cause the Member 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), ICM cannot make any payments by way of loan, advance, dividend or bonus to Officers or related companies of ICM without the prior approval of Staff. ICM 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.

16. By email on June 6, 2012, WV submitted an undated letter to Staff. Sanchez and ICM's external accountant were copied on the email. The letter stated that ICM 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.

17. ICM triggered the Profitability Test again in its April, May, and June 2012 Form 1s. Since ICM triggered the Profitability Test more than two times within 12 months, ICM was subject to the Frequency Penalty and remained subject to the Early Warning restrictions.

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

Early Warning Requirements

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

(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; or
- (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

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

- i. salary and override payments to Officers of ICM 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.

Unauthorized Payments of Salaries and Overrides to Officers of ICM

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

22. Sanchez was responsible for making appropriate queries and informing himself as to ICM's adherence to the Early Warning rules and requirements, including responsibility for supervising WV. By failing to confirm that WV had obtained prior approval from Staff to make the payments of salaries and overrides from June 2012 to September 2013, Sanchez failed to make appropriate inquiries or inform himself as to ICM's adherence to the Early Warning rules and requirements and thereby engaged in conduct contrary to MFDA Rule 2.5.2(b).

Unauthorized Payments to I-Boss

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

24. Sanchez was responsible for making appropriate queries and informing himself as to ICM's adherence to the Early Warning rules and requirements, including responsibility for supervising WV. By failing to confirm that WV had obtained prior approval from Staff to make the five payments to I-Boss from June 2012 to December 2012, Sanchez failed to make appropriate inquiries or inform himself as to ICM's adherence to the Early Warning rules and requirements and thereby engaged in conduct contrary to MFDA Rule 2.5.2(b).

Unauthorized Payment to HoldCo

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

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

27. In or about June 2013, Staff contacted Sanchez to review the Early Warning requirements with him. Sanchez acknowledged that the prepayment of rent was a breach of the Early Warning restrictions and stated that he would obtain approval prior to making such payments in the future.

By letter dated September 20, 2013, Staff requested Sanchez explain why ICM prepaid 6 months in rent and did not seek prior written approval from Staff.

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

29. WV stated to Staff that he was instructed by Sanchez 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.

30. Sanchez was responsible for making appropriate queries and informing himself as to ICM's adherence to the Early Warning rules and requirements, including responsibility for supervising WV. By failing to confirm that WV had obtained prior approval from Staff to make the payment to HoldCo in March 2013, Sanchez failed to make appropriate inquiries or inform himself as to ICM's adherence to the Early Warning rules and requirements and thereby engaged in conduct contrary to MFDA Rule 2.5.2(b).

NOTICE is further given that the Respondents shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondents:

- have failed to carry out any agreement with the MFDA;
- have failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;

- have failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- have engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- are otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondents pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondents must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Lyla Simon
Fax: 416-361-9073
Email: lsimon@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing four (4) copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- (b) transmitting one (1) copy of the **Reply** to the Office of the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed sixteen (16) pages, inclusive of the covering page, unless the Office of the Corporate Secretary permits otherwise; or
- (c) transmitting one (1) electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondents, and the conclusions drawn by the Respondents based on the alleged

facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondents fail:

- (a) to **serve** and **file** a **Reply**; or

- (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondents, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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