



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

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24.3 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

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

Heard: January 27, 2017 in Toronto, Ontario
Reasons for Decision: April 10, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Linda J. Anderson	Industry Representative
Lorraine Bate-Boerop	Industry Representative

Appearances:

Shelly Feld)	Counsel for the Mutual Fund Dealers
David R. Babin)	Association of Canada
)	
)	
Janice Wright)	Counsel for the Respondent
)	
)	

1. On December 13, 2016, the Mutual Fund Dealers Association of Canada (the “MFDA”) gave notice that it was applying for an order placing restrictions on the business activities of International Capital Management Inc. (“ICM”), John Paul Sanchez and Javier Andreas Sanchez (the “Respondents”) and for related relief pursuant to section 24.3 of By-law No. 1 of the MFDA.

2. This hearing panel heard that application on December 16, 2016. After consultation with the parties, we made some refinements to the proposed consent order, but ultimately we effectively adopted the order proposed by the parties. We need not reproduce our December 16, 2016 order or our earlier reasons dated February 2, 2017 for making that order.

3. In the December 16, 2016 order, at paragraphs 9 and 10, we outlined what notification had to be given to clients of ICM. The notification included a letter that had to be sent to all such clients within five business days of the making of our order, informing clients of certain things. Our order also provided that the Respondents were required to obtain the written approval of Staff respecting the content of that letter before it was sent to clients.

4. On January 27, 2017, the parties re-attended before the hearing panel to address one outstanding issue: namely the content of the letter that had been sent to clients, and whether another letter was required.

5. We heard evidence that a letter was indeed sent on December 23, 2016 to the clients of ICM. However, dialogue followed between Staff and the Respondents about the lack of prior written approval by Staff of the letter which had been sent. That dialogue included discussion about what Staff perceived to be deficiencies in the letter, and how the situation should be rectified.

6. In fairness, the letter did apparently set out the matters that were particularized in subparagraphs 9(a) and 9(b) of the order that we made.

7. Staff's concern about the contents of the letter and whether the situation needed to be rectified was undoubtedly prompted, in whole or in part, by something that we said at the December 16 hearing. What we said (subsequently captured in paragraph 32 of our February 2, 2017 reasons) was as follows:

We also express concern about the absence of any meaningful notice to the noteholders in IPS and Energentium other than related entities or financially related entities about the current situation and how their questions or concerns should be addressed. We were advised that the OSC would be looking at this issue in conjunction with the MFDA. We regard this to be a critical concern to be addressed as soon as possible. After all, protection of these noteholders is of paramount importance now and going forward.

8. At the hearing on January 27, 2017, it was unnecessary for us to weigh in on some of the facts that remain in dispute as between the parties: for example, how it was that the matters progressed in the way they did, whether the Respondents acted entirely in a bona fide way or otherwise as might be alleged by Staff.

9. The sole question for determination was what, if anything, should be sent out at this stage to the clients of ICM to address the concerns that had been identified. Everyone agreed that the clients of ICM should be protected and that this should be a paramount consideration.

10. As well, the concern was expressed by counsel for Invoice Payment System Corporation (IPS), that our order not effectively contribute to the problem rather than alleviate any concerns arising out of the current situation. We granted leave for counsel for IPS to address us on this narrow point. We found his submissions very helpful in giving us that added perspective.

11. We were reminded by him that no adverse findings have been made against IPS and that we ought not to presume that any such adverse findings will be made or that an improper relationship between the Respondents and IPS exists. At the same time, we were reminded by Staff (and recognized through our own review of the record to date) that there are concerns about non-arm's length transactions that arise in this case and that Staff are not prepared, certainly at this stage, to vouch for the independence of IPS from the Respondents.

12. Staff proposed that a second letter be sent to all clients as captured in Tab M (Document Brief 1) of the materials provided to us. This document is appended to our reasons here. The submissions before us by the parties and counsel for IPS focused not on whether another letter should be sent, but on its precise contents.

13. We agreed that a letter substantially in accord with that document should be sent to all clients, with only three modifications.

14. First, we directed that the paragraphs that deal with IPS and Energentium were to be broken out as separate paragraphs even though the information provided may be the same or similar. We so ordered in recognition of the fact that, as counsel for IPS pointed out, IPS and Energentium may be differently situated. We did not want the letter to create, even inadvertently, the impression that the entities are necessarily linked or similarly situated in terms of their current financial status.

15. Second, we ordered that one sentence (italicized below) be added to one of the paragraphs in the draft letter:

If you have previously invested in promissory notes issued by Invoice Payment System Corporation (IPS) and require advice with respect to these investments, we recommend that you obtain independent advice from a legal or accounting professional or from another securities industry registrant concerning these investments. *In addition, your independent advisor may choose to contact IPS directly. (Emphasis added.)*

The Energentium paragraph would contain similar language.

16. This language did not perfectly match what was proposed by the parties or counsel for IPS. Nonetheless, in our view, it appropriately recognized, and attempted to accommodate, all of the competing concerns. In particular, it articulates an option for clients to be contacting IPS directly, as favoured by IPS. At the same time, it balances IPS's concern that clients not be left

with the impression that they are prevented from contacting IPS, with Staff's concern by placing emphasis on that contact taking place through an independent advisor.

17. Third, in accordance with Ms. Wright's unopposed proposal, we ordered that the last paragraph read as follows:

We are also planning to seek approval from the MFDA to enter into an agreement to transfer ICM client accounts to another investment dealer registered with the Investment Industry Regulatory Organization of Canada (IIROC). We will continue to keep you informed about developments with respect to that process.

18. The parties agreed that the letter should be sent no later than February 2, 2017, and that the proceedings should otherwise be adjourned *sine die*. We so ordered.

19. We are grateful to the parties for their assistance in addressing the issues in this matter.

DATED this 10th day of April, 2017.

"Mark J. Sandler"

Mark J. Sandler
Chair

"Linda J. Anderson"

Linda J. Anderson
Industry Representative

"Lorraine Bate-Boerop"

Lorraine Bate-Boerop
Industry Representative

DRAFT

[Date], 2017

ICM Client

SUBJECT: International Capital Management Inc.

This letter is to follow on from the letter sent out on December 23, 2016.

As we advised on December 23, 2016, for future deposits and redemptions, all cheques must be made payable to and from the issuer of the funds and not to and from ICM. We will direct you accordingly for each purchase and look forward to meeting you to direct you in respect of your RRSP and other contributions this year. We also take this opportunity to advise that ICM will be restricted solely to our Mutual fund and GIC business and will no longer be conducting our alternative investment business and therefore, we will not be providing further advice or accepting further deposits for these alternative investments. These terms and conditions have been ordered by the Mutual Fund Dealers Association of Canada (the "MFDA"). For further details, please access the MFDA website at <http://mfda.ca/case-order/order2016107/>

If you have previously invested in promissory notes issued by Invoice Payment System Corporation ("IPS") or Energentium Inc. and require advice with respect to these investments, we recommend that you obtain independent advice from a legal or accounting professional or from another securities industry registrant concerning these investments.

We are also planning to seek approval from the MFDA, to enter into an agreement to transfer ICM client accounts to Gravitas Securities Inc. (GSI), an investment dealer registered with the Investment Industry Regulatory Organization of Canada (IIROC) with head offices in downtown Toronto. We will continue to keep you informed about developments with respect to that process.

Sincerely

John Sanchez