



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: eToro (Europe) Limited, 2018 ONSEC 49

Date: 2018-10-11

File No. 2018-44

**IN THE MATTER OF
ETORO (EUROPE) LIMITED**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: October 10, 2018

Decision: October 11, 2018

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel
William J. Furlong Commissioner
M. Cecilia Williams Commissioner

Appearances: Derek J. Ferris For Staff of the Commission
Kai Olson

Adam Chisholm For eToro (Europe) Limited
Paola Ramirez (student-at-law)

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

I. OVERVIEW

- [1] The parties have jointly submitted that it would be in the public interest for the Panel to issue an order approving a settlement agreement between the parties (the **Settlement Agreement**) and imposing sanctions on the respondent, eToro (Europe) Limited (**eToro**). After considering the submissions of the parties, and for the following reasons, the Panel agrees that the requested order is in the public interest.
- [2] A detailed description of the facts is provided in the Settlement Agreement, which will be publicly available, so we will be brief in describing the background and the conduct at issue.

II. BACKGROUND

A. eToro

- [3] eToro is a brokerage firm resident in Cyprus. eToro is regulated by the Cyprus Securities and Exchange Commission and operates under and is subject to the Markets in Financial Instruments Directive.
- [4] eToro is not registered as a dealer in Ontario. eToro is not a reporting issuer in Ontario and has not filed a prospectus or a preliminary prospectus with the Ontario Securities Commission (the **Commission**).

B. The Ontario Accounts

- [5] From eToro's inception in 2008 until approximately October 2, 2017 (the **Material Time**), eToro opened and operated nearly 2,500 accounts for Ontario residents (the **Ontario Accounts**).
- [6] eToro's online trading platform (the **eToro Platform**) allowed Ontario investors to trade contracts for differences (**CFDs**). A CFD typically involves a contract between two parties, a seller and a buyer, that creates payment rights and obligations based on the price movements of an underlying asset. CFDs allow participants to take long or short positions in relation to the price movements of underlying assets, but without acquiring ownership of the underlying asset.
- [7] Ontario investors used the eToro Platform to trade CFDs that were based on exposure to underlying assets which included cryptocurrencies and stocks. eToro was the counterparty to the CFD trades, and the holders of the Ontario Accounts were therefore exposed to the conduct and credit of this offshore entity that lacked Ontario regulatory oversight.
- [8] OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* states that, when offered to investors in Ontario, CFDs constitute "investment contracts" and "securities" for the purpose of Ontario securities law.

[9] During the Material Time, eToro earned revenues totalling USD \$1,791,163 from the Ontario Accounts.

C. eToro's Misleading Communications with Staff

[10] In November 2010, staff of the Commission (**Staff**) raised concerns with eToro that eToro was in breach of Ontario securities law because Ontario residents were participating in the eToro Platform. In response to Staff's concerns, eToro agreed to ensure that eToro's sales and support team understood that eToro is not registered in Ontario and does not accept trades from Ontario residents.

[11] In response to further inquiries by Staff in September 2011 and May 2015, eToro confirmed that its sales and support team was familiar with the policy of not accepting trades from Ontario residents.

[12] In fact, during the Material Time, and contrary to eToro's representations to Staff, eToro's sales and support team played no role in screening prospective new clients to confirm whether they were Ontario residents. Further, eToro had no written policies regarding Ontario residents and no meaningful controls in place to prevent Ontario residents from opening accounts with eToro.

[13] As a result, even after three inquiries from Staff, eToro continued to open accounts and accept trades from Ontario residents, which included opening 2,172 new Ontario Accounts in 2017 alone.

D. Current Status of the Ontario Accounts and eToro's Procedures and Controls

[14] eToro advised Staff that it has now closed all of the Ontario Accounts and has been attempting to return any funds remaining in the Ontario Accounts to the account holders. Currently, 417 of the closed Ontario Accounts have funds remaining in them (the **Funded Ontario Accounts**). The remaining funds total approximately USD \$56,000 (the **Remaining Funds**). eToro advised that it has been unsuccessful in its attempts to contact the holders of these accounts to obtain instructions for returning the Remaining Funds.

[15] As part of its settlement with the Commission, eToro has provided an undertaking (the **Undertaking**) to periodically contact these account holders to obtain instructions regarding the Remaining Funds. If by July 1, 2021 eToro has not obtained such instructions, eToro undertakes to donate the Remaining Funds to a Canadian registered charity and provide confirmation of the donation to Staff.

[16] eToro has also advised Staff that, as of the date of the Settlement Agreement, eToro has developed enhanced procedures and controls designed to prevent Ontario residents from opening accounts with eToro. These consist of the following:

- a. automatically blocking access to eToro's website by users with a Canadian IP address,
- b. revising eToro's online account application process to automatically reject applicants who indicate they reside in Canada,
- c. informing eToro's "KYC Verification Department" that Canadian residents are not permitted to open accounts, and

- d. adopting a written policy that eToro does not accept clients from Canada.
- [17] eToro has also agreed to put the following measures in effect no later than October 31, 2018:
- a. automatically rejecting applicants with Canadian phone numbers or who use “.ca” email domains, and
 - b. making further inquiries where a deposit is made using a Canadian-based credit card or wire transfer from a Canadian financial institution to ensure that the account holder is resident outside of Canada

(all of these enhanced procedures and controls, collectively, the **Enhanced Procedures and Controls**).

III. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

- [18] eToro admits that it has breached Ontario securities law and acted contrary to the public interest by
- a. engaging in the business of trading in securities without registration, or an exemption from registration, contrary to s. 25 of the Act¹, and
 - b. engaging in a distribution of securities without complying with the prospectus requirements, or without an exemption from the prospectus requirements, contrary to s. 53 of the Act.

IV. THE TERMS OF THE SETTLEMENT AGREEMENT

- [19] The Settlement Agreement executed by eToro and Staff proposes sanctions and costs against eToro that include:
- a. an administrative penalty in the amount of CDN \$550,000,
 - b. disgorgement in the amount of USD \$1,791,163,
 - c. costs in the amount of CDN \$25,000, and
 - d. a reprimand.
- [20] As part of the Undertaking provided to the Commission, eToro has also committed to providing Staff with an affidavit sworn by a senior officer of eToro, each year until June 30, 2021, confirming:
- a. that eToro did not have any accounts open for Ontario residents during the prior twelve-month period,
 - b. that the Enhanced Procedures and Controls remain in place at eToro,
 - c. the number of Funded Ontario Accounts with funds remaining in them, and
 - d. the steps eToro has taken to return the Remaining Funds.
- [21] We have been advised that all amounts payable to the Commission have now been paid by eToro.
- [22] We acknowledge eToro’s cooperation in attaining the settlement, including not putting Staff to the task of bringing a matter involving a foreign respondent to a

¹ *Securities Act*, RSO 1990, c S.5 (the **Act**).

hearing. The settlement also includes Enhanced Procedures and Controls designed to prevent a recurrence of the events described in the Settlement Agreement.

V. ANALYSIS

[23] The role of the Panel is to decide whether the proposed Settlement Agreement, as presented and agreed to, falls within an acceptable range and should be approved as being in the public interest. It is important to note, however, that the agreed sanctions need not be the sanctions that the Panel might have imposed after a hearing on the merits. A settlement is based on the facts admitted by the respondent and agreed to by Staff, which may or may not be the facts that a panel would have found after a contested hearing.

A. Administrative Penalty

[24] We find that the administrative penalty in the amount of CDN \$550,000 is within a reasonable range in light of the history of penalties for non-registration cases, including those involving foreign market participants that overlooked or ignored the fact that their activities involving Ontario residents triggered the regulatory obligations that arise in this case. We are concerned that this case involves repeated, unwarranted assurances to Staff concerning the verification measures that were being taken. We are also aware that this case involves a brokerage firm operating in multiple jurisdictions that should be expected to have robust compliance systems to ensure that it is authorized to deal with its customer base. Notwithstanding the result in this settlement and prior similar cases, firms that are found to have ignored these obligations in the future should be considered to be on notice and can reasonably expect to face more stringent consequences. Both specific and general deterrence will likely require stronger measures if such conduct arises in the future.

B. Disgorgement

[25] We have ordered disgorgement of USD \$1,791,163, an amount agreed to constitute all fees received as a result of the operation of the Ontario Accounts, denying eToro any benefit from these violations.

[26] The Settlement Agreement reflects that eToro has closed the Ontario Accounts in an orderly way and has returned or is seeking to return the Remaining Funds in the Ontario Accounts to Ontario investors.

C. Costs

[27] Costs in the amount of CDN \$25,000 have been agreed and we will order this payment.

D. Market Participation

[28] Should eToro seek to register in Ontario in the future, the conduct detailed in the Settlement Agreement will, of course, have to be considered by the Commission's Compliance and Registrant Regulation Branch in evaluating whether eToro should then be registered, and the conditions that should be imposed.

[29] In light of that required review, we were satisfied that market participation restrictions were not required to bring this settlement into a reasonable range of consequences to obtain our approval.

VI. CONCLUSION

- [30] In our view, the sanctions proposed by the parties take into consideration the seriousness of the misconduct. The settlement is reasonable and its approval is in the public interest. An order will be issued following this hearing in substantially the form proposed by the parties.
- [31] The terms of eToro’s settlement with the Commission and the order that will be issued contemplate a reprimand of eToro. Avi Sela, eToro’s Managing Director, is participating in this Hearing by videoconference and, through him, eToro is hereby reprimanded.
- [32] We are grateful to all counsel for their assistance in this matter.

Dated at Toronto on this 11th day of October, 2018.

“D. Grant Vingoe”

D. Grant Vingoe

“William J. Furlong”

William J. Furlong

“M. Cecilia Williams”

M. Cecilia Williams