



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Ava Trade Ltd. (Re), 2019 ONSEC 27

Date: 2019-07-24

File No.: 2019-18

**IN THE MATTER OF
AVA TRADE LTD.**

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

Hearing: July 24, 2019

Decision: July 24, 2019

Panel: Timothy Moseley Vice-Chair and Chair of the Panel
Poonam Puri Commissioner
Heather Zordel Commissioner

Appearances: Vivian Lee For Staff of the Commission
Gavin Smyth

Lia Bruschetta For Ava Trade Ltd.
Lawrence E. Ritchie

ORAL REASONS FOR APPROVAL OF A 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.

- [1] Ava Trade Ltd. is a British Virgin Islands-based entity that is licensed by the British Virgin Islands Financial Services Commission to deal in securities. Ava Trade is not registered with the Ontario Securities Commission. Despite that fact, from 2015 to 2018 Ava Trade opened and operated approximately 1400 accounts for Ontario investors. In those accounts, the investors traded contracts for differences (**CFDs**), through which the investors gained exposure to various underlying assets.
- [2] Staff of the Commission and Ava Trade have agreed that this conduct contravened Ontario securities law, and they have jointly submitted a settlement agreement for our approval. We conclude that it would be in the public interest to approve that settlement agreement.
- [3] The relevant facts and admissions, which are set out in detail in the settlement agreement, include the following:
 - a. the CFDs were securities;
 - b. Ava Trade issued the CFDs without filing a prospectus;
 - c. Ava Trade received approximately \$3.7 million attributable to revenue generated from the Ontario accounts, which amount includes bid-ask spreads, interest charges and account fees;
 - d. Ava Trade engaged in the business of trading in securities without being registered, contrary to subsection 25(1) of the *Securities Act*;¹
 - e. Ava Trade conducted distributions of securities without filing a prospectus, contrary to subsection 53(1) of the *Securities Act*;
 - f. by the time Staff of the Commission successfully established contact with Ava Trade in early 2018, Ava Trade had already established, on its own, a process to transfer any Canadian clients to a registered investment dealer in Canada, which process is now complete;
 - g. there is no evidence of dishonest conduct; and
 - h. Staff is satisfied that Ava Trade has taken appropriate steps to avoid a similar breach in the future.
- [4] The breaches here are serious. The registration and prospectus requirements are cornerstones of Ontario securities law and they serve an important investor protection purpose. It must be clear to all who participate in Ontario's capital markets, including offshore entities, that great care must be taken to comply with our regulatory requirements.
- [5] Staff and Ava Trade have agreed to the following three payments, all of which have been made pending approval of this settlement:

¹ RSO 1990, c S.5

- a. an administrative penalty of \$550,000;
 - b. disgorgement to the Commission in the amount of \$3.7 million; and
 - c. costs of \$25,000.
- [6] The Commission's role at a settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to make the order requested.
- [7] We have reviewed this settlement in detail, and we conducted two confidential settlement conferences with counsel for both parties. We asked questions of counsel and heard their submissions.
- [8] We recognize that the agreement is the product of negotiation between Staff and Ava Trade. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.
- [9] We have also taken account of the fact that approval of this settlement would resolve the matter promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a contested hearing.
- [10] The payment of costs helps to reduce the burden on market participants to pay for investigations and enforcement proceedings.
- [11] In our view, the terms of the settlement fall within a range of reasonable outcomes in the circumstances. The settlement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.
- [12] For these reasons, we conclude that it is in the public interest to approve the settlement. We will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 24th day of July, 2019.

"Timothy Moseley"

Timothy Moseley

"Poonam Puri"

Poonam Puri

"Heather Zordel"

Heather Zordel