



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

**SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE COMMISSION AND
AVA TRADE 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 not ignore or overlook their 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 Ava Trade Ltd. (**Ava Trade** or the **Respondent**).

PART II- JOINT SETTLEMENT RECOMMENDATION

5. Staff of the Commission (**Staff**) and the Respondent recommend settlement of the proceeding (the **Proceeding**) against the Respondent to be commenced by the Notice of Hearing, based on the terms and conditions set out in this settlement agreement (the **Settlement Agreement**).
6. The Respondent agrees to the making of an order substantially in the form attached as Schedule “A” (the **Order**) based on the facts set out below.
7. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts set out in Parts III and the conclusions in Part IV of this Settlement Agreement.

PART III- AGREED FACTS

A. OVERVIEW

8. While it did not specifically market to or target Ontario residents, between January 22, 2015 to August 17, 2018 (the **Material Time**), Ava Trade engaged in unregistered trading and illegal distributions by opening and operating trading accounts for Ontario residents through its online trading platform (the **Ava Trade Platform**).
9. In these accounts, CFDs based on underlying assets including forex, cryptocurrencies, and commodities were issued by Ava Trade to Ontario investors without filing a prospectus or preliminary prospectus with the Commission, and traded without registration or proper reliance on available exemptions from the requirement to register.
10. The registration requirements serve important gate-keeping and investor protection functions by ensuring that only properly qualified and suitable persons are permitted to engage in the business

of trading and advising in securities. Similarly, the prospectus requirements ensure that investors have appropriate information to enable them to properly assess risks and make fully informed investment decisions. Through its course of conduct, the Respondent failed to comply with the registration and prospectus requirements of Ontario securities law, and in doing so, breached cornerstone provisions of the Act that serve to protect the investing public and preserve the integrity of the capital markets.

B. AVA TRADE

11. Ava Trade is registered with the British Virgin Islands Financial Services Commission (**BVI-FSC**) as an Investment Business and is licensed by the BVI-FSC to deal in securities.
12. Ava Trade is not a reporting issuer in Ontario, nor has it filed a prospectus or a preliminary prospectus with the Commission. Ava Trade is not registered with the Commission in any capacity.

C. ONTARIO CLIENTS

13. During the Material Time, Ava Trade opened and operated approximately 1,400 accounts for Ontario investors (the **Ontario Accounts**).
14. The Ontario Accounts were opened using an online account application process accessed through the Ava Trade Platform.
15. In the Ontario Accounts, Ontario investors traded CFDs through the Ava Trade Platform based on exposure to underlying assets, which included forex, cryptocurrencies, and commodities. The CFDs were issued by Ava Trade and each issuance of a CFD to an Ontario investor involves a distribution of a security to that investor for the purposes of Ontario securities law. Ava Trade was the counterparty to the CFD trades. As the counterparty, Ava Trade took the opposite position to its clients on every CFD issued. Ava Trade also entered into hedging transactions with third parties to offset its risk exposure on the CFDs issued to investors.

16. The Ava Trade Platform allowed retail investors to engage in leveraged trading of up to 200:1 leverage on various CFDs.
17. During the Material Time, Ava Trade received approximately CAD \$3.7 million attributable to revenue generated from the Ontario Accounts. This amount includes bid-ask spreads, overnight interest charges, and inactive account fees, to the Ontario Accounts.

D. AVA TRADE's TRADING IN CFDs

18. Ava Trade marketed the trading in CFDs on its Ava Trade Platform.
19. Through these CFDs, Ava Trade investors could participate in the price movements of forex, cryptocurrencies, commodities and other assets without owning the underlying asset. For example, an investor could purchase a position in a CFD that tracks the price of a currency, publicly-traded stock, or cryptocurrency. Then, depending on whether the price of the underlying asset went up or down, the value of the CFD would also go up or down.
20. Ava Trade was remunerated for its services by charging its clients spreads, overnight financing interest, and inactive account fees. The detailed fee schedule for each financial product Ava Trade offered was publicly disclosed on its website during the Material Time.

E. AVA TRADE's PRIOR DEALINGS WITH THE COMMISSION AND OTHER CANADIAN REGULATORS

21. Staff sent a letter addressed to Ava Trade's office in the British Virgin Islands which inquired about Ava Trade's potential breaches of the Act in May 2014. Staff did not receive a response to this inquiry and subsequently placed Ava Trade on the OSC Investor Warning List on June 4, 2014 (the **OSC Investor Alert**). Details of the OSC Investor Alert were posted on the Commission's website and also on the Investor Alerts Portal of the International Organization of

Securities Commissions website. Other Canadian securities regulators also placed Ava Trade on their Investor Warning List, or equivalent, during the Material Time.

22. Staff reinitiated contact with Ava Trade in January 2018 to discuss Ava Trade's continued trading with Ontario clients. Ava Trade responded in a letter to Staff, dated February 22, 2018, that prior to receiving Staff's inquiry in January 2018, Ava Trade had independently and proactively initiated a process to transfer any Canadian clients to Friedberg Mercantile Group Ltd, (**Friedberg**), an Investment Dealer and Dealer Member of the Investment Industry Regulatory Organization of Canada. The agreement with Friedberg was completed through Ava Trade's subsidiary, Ava Trade (EU) Ltd.
23. On August 13, 2018, Ava Trade advised Staff that it has no record of receiving correspondence from Staff inquiring about its activities in Ontario in 2014 and was unaware of the OSC Investor Alert because it did not monitor the Commission website or the Commission's email alerts.

F. MITIGATING FACTORS

24. The Respondent confirmed it has taken the following actions, which Staff believes to be adequate, to remediate its conduct:
 - a. Implemented significant internal controls and procedures to prevent Canadian residents from opening an account with Ava Trade:
 - i. Deleting Canada as a jurisdiction of choice for prospective clients;
 - ii. Ensuring customer representative will no longer accept accounts or monies from Canadian resident clients;
 - iii. Declining clients who present identification documents that indicate a Canadian residency during the account verification process; and

- iv. Identifying Canadian Internet Protocol addresses and redirecting prospective Canadian clients to its partner website with Friedberg.
- b. Agreed to a voluntary undertaking with Staff, which was signed in August 2018 and revised in September 2018 (the **Undertaking**) with the following terms:
 - i. Effective October 16, 2018, Ava Trade would only permit trades liquidating Canadian client accounts;
 - ii. Effective November 14, 2018, Ava Trade would cease all trades with Canadian client accounts; and
 - iii. By November 30, 2018, Ava Trade would terminate all Canadian client accounts.

- 25. The Respondent confirms that Ava Trade has liquidated and/or closed all of its Canadian client accounts and completed the transition of any clients who elected to do so to Friedberg.
- 26. Staff does not allege, and has found no evidence of, dishonest conduct by the Respondent.
- 27. During Staff's investigation, the Respondent cooperated with Staff, responded to all requests for information from Staff and produced documents to assist Staff in its inquiries.
- 28. 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 IV- BREACHES OF ONTARIO SECURITIES LAW

- 29. By issuing and trading CFDs with Ontario investors during the Material Time, the Respondent acted contrary to 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 V- TERMS OF SETTLEMENT

30. The Respondent agrees to the terms of settlement listed below and consents to the Order, attached as Schedule “A”, pursuant to subsection 127(1) and section 127.1 of the Act that:

- a. The Settlement Agreement is approved;
- b. The Respondent shall;
 - i. pay an administrative penalty in the amount of \$550,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;
 - ii. disgorge to the Commission \$3.7 million, pursuant to paragraph 10 of subsection 127(1) of the Act, which shall be designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act; and
 - iii. pay costs in the amount of \$25,000 for the investigation, pursuant to section 127.1 of the Act.

31. The Respondent agrees to make the payments specified in subparagraph 30(b)(i)(ii) and (iii) by wire transfer prior to the issuance of any Commission order approving this Settlement Agreement.

32. The Respondent agrees to attend at the hearing before the Commission to consider the proposed settlement by video conference.

PART VI- STAFF COMMITMENT

33. 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 34 below.
34. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff or the Commission may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the Agreed 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

35. 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 the Respondent's conduct, unless the parties agree that additional evidence should be submitted at the Settlement Hearing.
36. If the Commission approves this Settlement Agreement, the Respondent irrevocably waives all rights to a full hearing, judicial review, or appeal of this matter under the Act.
37. If the Commission approves this Settlement Agreement, neither Staff nor the Respondent will make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the Settlement Hearing. In addition, the Respondent agrees that it will not make any public statement that there is no factual basis for the Settlement Agreement. Nothing in this paragraph affects the Respondent's 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.

38. Whether or not the Commission approves this Settlement Agreement, the Respondent 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

39. 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 the Respondent before the Settlement Hearing takes place will be without prejudice to Staff and the Respondent; and
- b. Staff and the Respondent 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.

40. 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

41. 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.

AVA TRADE LTD

By: *"Daire Ferguson"*

Daire Ferguson
CEO, Ava Trade Ltd.

COMMISSION STAFF

By: *"Johanna Superina per"*

Jeff Kehoe
Director, Enforcement Branch

SCHEDULE “A”



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l’Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

FILE NO.:

**IN THE MATTER OF
AVA TRADE 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 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 Ava Trade Ltd 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 Ava Trade Ltd and Staff;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. Ava Trade Ltd shall:
 - a. pay an administrative penalty in the amount of \$550,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;
 - b. disgorge to the Commission \$3.7 million, pursuant to paragraph 10 of subsection 127(1) of the Act, which shall be designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act; and
 - c. pay costs in the amount of \$25,000 for the investigation, pursuant to section 127.1 of the Act.

[Commissioner]