



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

**STATEMENT OF ALLEGATIONS  
(Subsection 127(1) and Section 127.1 of the Securities Act, RSO 1990,  
c S.5)**

**A. ORDER SOUGHT**

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) request that the Commission make an order pursuant to subsections 127(1) and (2) and section 127.1 of the Securities Act, RSO 1990, c S.5 (the **Act**) to approve the settlement agreement dated July 19, 2019, between Staff and Ava Trade Ltd. (**Ava Trade**).

**B. FACTS**

2. 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.

3. These requirements apply to foreign companies that offer online trading of securities or derivatives, including CFDs, for Ontario residents.
4. 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. Where there is a failure to implement a robust compliance system in recognition of the compliance risks associated with operating in multiple jurisdictions, Staff will not hesitate to initiate proceedings in response to violations of Ontario securities law.
5. Enforcement Staff make the following allegations of fact:

**(a) Overview**

6. 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**).
7. 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.
8. 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.

**(a) Ava Trade**

9. 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.
10. 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.

**(a) Ontario Clients**

11. During the Material Time, Ava Trade opened and operated approximately 1,400 accounts for Ontario investors (the **Ontario Accounts**).
12. The Ontario Accounts were opened using an online account application process accessed through the Ava Trade Platform.
13. 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.

14. The Ava Trade Platform allowed retail investors to engage in leveraged trading of up to 200:1 leverage on various CFDs.
15. 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**

16. Ava Trade marketed the trading in CFDs on its Ava Trade Platform.
17. 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.

18. 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**

19. 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.

20. 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.
  
21. 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.

**C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST:**

22. Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest by Ava Trade during the Material Time:

- (a) engaging in, or holding itself out as 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.
23. Staff reserves the right to amend these allegations and to make such further and other allegations as Staff deems fit and the Commission may permit.

**DATED** this 22<sup>nd</sup> day of July, 2019.

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