

# ALBERTA SECURITIES COMMISSION

**Docket:** ENF-011973

**Citation:** Re Ava Trade Ltd., 2020 ABASC 7

**Date:** 20200116

## SETTLEMENT AGREEMENT

**Ava Trade Ltd.**

### Regulatory Message

1. Under Alberta securities laws, contracts for differences (**CFDs**) can constitute securities or derivatives. A CFD issuer offering and distributing securities must comply with the prospectus requirement of the *Securities Act*, R.S.A. 2000, c S-4, as amended (the *Act*) and an issuer in the business of trading CFDs must comply with the registration requirements of the *Act*. These provisions of the *Act* serve to protect the investing public and preserve the integrity of the Alberta capital markets.
2. These requirements apply to foreign companies that offer online trading of CFDs for Alberta residents.
3. ASC Policy 15-601, *Credit for Exemplary Cooperation in Enforcement Matters* (the **Policy**), explains the benefits of cooperating with ASC Staff and outlines the factors considered when determining whether cooperation earns credit in enforcement matters.
4. To be eligible for credit, the cooperation must go beyond what is already required under Alberta securities laws. Self-reporting of possible securities misconduct and taking corrective action to prevent further breaches of securities laws are strongly encouraged by the ASC and are among the factors that will earn credit.

### Introduction

5. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into Ava Trade Ltd. (**Ava Trade**) to determine if Alberta securities laws had been breached.
6. The investigation confirmed and Ava Trade admits that it breached subsection 75(1)(a) of the *Act* and acted contrary to the public interest.
7. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement referred to in paragraph 27 and for no other use or purpose, Ava Trade agrees to the facts and consequences set out below in this Settlement Agreement (**Agreement**).

8. Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act*.

## **Agreed Facts**

### *Ava Trade*

9. Ava Trade is a business corporation 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 Alberta and is not registered with the Commission.

### *Alberta Clients*

11. While Ava Trade did not specifically market to or target Alberta residents, between May 2015 and August 2018 (the **Material Time**), Ava Trade opened and operated approximately 372 accounts for Alberta investors (the **Alberta Accounts**).
12. The Alberta Accounts were opened using an online account application process accessed through Ava Trade's online trading platform (the **Ava Trade Platform**). Ava Trade marketed the trading in CFDs on its Ava Trade Platform.
13. In the Alberta Accounts, Alberta investors traded CFDs through the Ava Trade Platform based on exposure to underlying assets, which included forex (foreign exchange market), cryptocurrencies and commodities. Ava Trade issued the CFDs and was the counterparty to the CFD trades. As the counterparty, it took the opposite position to Alberta investors on every CFD issued. Ava Trade also entered into hedging transactions with third parties to offset its risk exposure on the CFDs.
14. Through these CFDs, Alberta 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 correspondingly go up or down. The Ava Trade Platform allowed Alberta investors to engage in leveraged trading of up to 200:1 on various CFDs.
15. Ava Trade was remunerated for its services by charging Alberta investors overnight financing interest, inactive account fees and its profits from the bid-ask spreads. The detailed fee schedule for each financial product Ava Trade offered was publicly disclosed on its website during the Material Time.
16. During the Material Time, Ava Trade received approximately USD \$201,500 attributable to revenue generated from the Alberta Accounts (**Net Revenue**). This amount includes overnight interest charges, inactive account fees and bid-ask spreads.

17. During the Material Time, Ava Trade did not properly rely on any available exemptions in Part 8 of National Instrument 31-103, *Registrant Requirements, Exemptions and Ongoing Registrant Obligation*.

*Mitigating Factors*

18. Ava Trade confirms it has taken the following actions to remediate its conduct:
  - 18.1 Ava Trade independently and proactively initiated a process to transfer any Canadian resident clients to a registrant;
  - 18.2 Ava Trade implemented meaningful and significant internal controls and procedures to prevent Canadian residents from opening an account with Ava Trade:
    - 18.2.1 Deleting Canada (and therefore Alberta) as a jurisdiction of choice for prospective clients;
    - 18.2.2 Ensuring the customer representative will no longer accept accounts or monies from Canadian resident clients;
    - 18.2.3 Declining clients who present identification documents that indicate a Canadian residency during the account verification process; and
    - 18.2.4 Identifying Canadian Internet Protocol addresses and redirecting prospective Canadian resident clients to its partner website with the registrant.
  - 18.3 Ava Trade also voluntarily undertook the following:
    - 18.3.1 Effective October 16, 2018, Ava Trade only permitted trades liquidating Canadian client accounts;
    - 18.3.2 Effective November 14, 2018, Ava Trade ceased all trades with Canadian client accounts; and
    - 18.3.3 By November 30, 2018, Ava Trade terminated all Canadian client accounts.
19. Ava Trade confirms that it has liquidated and/or closed all of its Canadian client accounts and completed the transition of any clients who elected to do so to the registrant.
20. The Commission has not previously sanctioned Ava Trade.
21. Staff do not allege, and have found no evidence of, dishonest conduct by Ava Trade.
22. Ava Trade provided exemplary cooperation to Staff in its investigation and with respect to the completion of the Agreement.
23. The Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

24. Ava Trade was proactive and collaborative throughout the resolution of this matter.
25. Ava Trade is receiving credit for exemplary cooperation under the Policy in the terms of this Agreement.

### **Admitted Breach of Alberta Securities Law**

26. Based on the Agreed Facts, Ava Trade acted contrary to Alberta securities laws by acting as a dealer without registration in accordance with Alberta securities laws, contrary to subsection 75(1)(a) of the *Act*.

### **Settlement**

27. Based on the Agreed Facts and Admitted Breach, Ava Trade agrees to pay to the Commission:
  - 27.1 A monetary settlement of \$30,000; and
  - 27.2 As disgorgement the sum of \$213,428.00, representing the Net Revenue less 20 percent as credit for exemplary cooperation.

### **Administration**

28. All amounts in this Agreement are in Canadian dollars unless indicated otherwise.
29. Ava Trade acknowledges that it received independent legal advice and has voluntarily made the admissions in this Agreement.
30. Ava Trade waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
31. Ava Trade acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
32. Ava Trade understands and acknowledges that this Agreement may form the basis for securities-related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to them. Ava Trade understands and acknowledges that they should contact the securities regulator of any other jurisdiction in which they may intend to engage in any securities related activities.
33. Execution and fulfillment of the terms of this Agreement by Ava Trade resolves all issues involving Ava Trade relating to the conduct described above, and Staff will take no further steps against Ava Trade arising from these facts.

34. This Agreement may be executed in 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.

Signed by the duly authorized signatory of )  
Ava Trade Ltd. at Dublin, Ireland this 10 )  
day of January 2020, in the presence of: )

Redacted )  
WITNESS NAME )

“Original signed by” )  
SIGNATURE )

Per: “Original signed by” )  
Daire Ferguson )  
CEO, Ava Trade Ltd. )

) ALBERTA SECURITIES COMMISSION  
)

Calgary, Alberta, January 16, 2020 )

) “Original signed by” )  
) David C. Linder, Q.C. )  
) Executive Director )