



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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20, rue queen ouest
Toronto ON M5H 3S8

FILE NO.:

IN THE MATTER OF ETORO (EUROPE) LIMITED

- and -

**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN STAFF
OF THE ONTARIO SECURITIES COMMISSION AND
ETORO (EUROPE) LIMITED**

SETTLEMENT AGREEMENT

PART I - INTRODUCTION AND REGULATORY MESSAGE

1. The Ontario Securities Commission (the “**Commission**”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S5, as amended (the “**Act**”), it is in the public interest for the Commission to make certain orders in respect of eToro (Europe) Limited (“**eToro**”) described herein.
2. Foreign companies in the business of online trading of securities or derivatives for Ontario residents, including contracts for difference (“**CFDs**”) based on exposure to underlying assets which include cryptocurrencies and stocks are subject to Ontario securities law. The

registration and distribution requirements of the Act foster integrity, fairness and enhance protection for Ontario investors.

3. Between 2008 and 2017, eToro contravened sections 25 and 53 of the Act by opening and operating trading accounts for Ontario residents in which CFDs based on exposure to underlying assets which include cryptocurrencies and stocks, were traded without registration or proper reliance on available exemptions from the requirement to register. The majority of these accounts were opened by eToro in 2017, after Staff of the Commission (“**Staff**”) had already raised concerns with eToro about access by Ontario residents to its trading platform.

PART II - JOINT SETTLEMENT RECOMMENDATION

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

PART III - AGREED FACTS**A. eToro**

6. eToro is a brokerage firm resident in Cyprus which operates an online trading platform (the “**eToro Platform**”).
7. eToro is regulated by the Cyprus Securities and Exchange Commission. As a registered Cypriot Investment Firm, eToro is regulated by the Cyprus Securities and Exchange Commission. As a registered Cypriot Investment Firm, eToro operates under and is subject to the Markets in Financial Instruments Directive.
8. eToro is not a reporting issuer in Ontario and has not filed a prospectus or a preliminary prospectus with the Commission. eToro is not registered to engage in the business of trading in accordance with Ontario securities law.

B. Ontario clients

9. From eToro’s inception in 2008 until approximately October 2, 2017 (the “**Material Time**”), eToro opened and operated nearly 2,500 accounts for clients resident in Ontario (the “**Ontario Accounts**”).
10. The Ontario Accounts were opened using an online account application process accessed through eToro’s website.
11. During the Material Time, eToro earned revenues from the Ontario Accounts totalling USD \$1,791,163. This amount includes all revenues of eToro in relation to the Ontario

Accounts, including amounts attributable to rollover (margin) fees and bid-ask spreads with respect to the underlying assets.

12. Ontario investors traded CFDs based on exposure to underlying assets which included cryptocurrencies and stocks through the eToro Platform. eToro was the counterparty to the CFD trades.
13. As stated in OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario*:

Staff's view is that CFDs, when offered to investors in Ontario, engage the purposes of the Act and constitute "investment contracts" and "securities" for the purpose of Ontario securities law. In our view, CFDs are also "derivatives" for the purpose of Ontario securities law. ...

Since we consider CFDs to be securities under the Act, we are of the view that CFD providers that wish to offer CFDs to investors in Ontario, absent statutory exemptions or exemptive relief, are required to comply with the registration and prospectus requirements of Ontario securities law. ...

In view of our conclusion that the issuance of a CFD to an investor in Ontario involves a distribution of a security to that investor for the purposes of Ontario securities law, we take the view that the issuer of such product must absent exemptive relief, comply with the prospectus requirement of Ontario securities law.

C. eToro communications with Staff

14. In November 2010, Staff raised concerns with eToro that it was breaching Ontario securities law by offering Ontario residents to participate in the eToro Platform. Staff indicated that it was contemplating adding eToro to its Investor Warning List published on the Commission's website.

15. In December 2010, in order to alleviate Staff's concerns, eToro offered and agreed to, among other things, ensure that all of eToro's sales and support team members were made aware that eToro does not accept trades from Ontario customers and that eToro is not registered in Ontario.
16. In September 2011 and May 2015, in response to further inquiries by Staff, eToro informed Staff that:
 - "all our Sales and Support team members are familiar and have been refreshed as to our customer acceptance policy"; and
 - eToro had "not changed any of [its] policies towards residents from Ontario".
17. In fact, during the Material Time, unknown to Staff, eToro's sales and support team members did not play any role in reviewing or screening prospective new clients to ensure that they were not from Ontario. Further, eToro had no written policies regarding Ontario residents.
18. Accordingly, during the Material Time, eToro had no meaningful controls in place to prevent Ontario residents from opening accounts and accessing the eToro Platform. As a result, eToro continued to open accounts and accept trades from Ontario residents.
19. Indeed, in 2017, eToro opened 2,172 new Ontario Accounts and earned USD \$1,400,369 in revenues from those accounts. These revenues accounted for a small percentage of eToro's total revenues in 2017.

D. Respondent's Position and Mitigating Factors

20. eToro has advised Staff of the following facts:

- (a) eToro provided a grace period to account holders to close their accounts and 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 aggregate amount of funds in these accounts is USD \$56,389.08. eToro has attempted, unsuccessfully, to contact account holders of the Funded Ontario Accounts in order to obtain instructions regarding returning the funds to them.
- (b) Since 2010, except during short periods of time, eToro's terms and conditions contained on its website have stated that it does not accept users from Canada.
- (c) As of the date of this Settlement Agreement, eToro has developed the following enhanced procedures and controls designed to prevent Ontario residents from opening accounts with eToro and accessing the eToro Platform:
 - (i) automatically blocking access to eToro's website by users with a Canadian IP address;
 - (ii) revising eToro's online account application process to automatically reject applicants who indicate they reside in Canada;
 - (iii) informing eToro's “KYC Verification Department”, which reviews proof of residence required to be uploaded by prospective eToro clients for anti-money laundering purposes as required by the laws of Cyprus, that Canadian residents are not permitted to open accounts; and
 - (iv) adopting a written policy that eToro does not accept clients from Canada.

21. eToro shall put additional measures in place with respect to Ontario residents in connection with this Settlement Agreement no later than October 31, 2018. Specifically, eToro shall automatically reject applicants with Canadian phone numbers or who use “.ca” email domains. It shall also inform eToro’s KYC Verification Department that where a deposit has been made using a Canadian-based credit card or wire transfer from a Canadian financial institution, further inquiries shall be made to ensure that the account holder is resident outside of Canada. (together, the procedures in paragraph 20(c) and this paragraph 21 are the “**Enhanced Procedures and Controls**”)
22. eToro voluntarily attended an interview with Staff and has since cooperated with Staff.

PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

23. eToro admits and acknowledges 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 in accordance with Ontario securities law or an applicable exemption from registration, contrary to section 25 of the Act; and
 - (b) engaging in trading in securities which constitute distributions without complying with the prospectus requirements or without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act.

PART V - TERMS OF SETTLEMENT

24. eToro agrees to the terms of settlement listed below and consents to the Order in substantially the form attached hereto as Schedule “A”, which provides that:
- (a) the Settlement Agreement is approved;

- (b) eToro is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
 - (c) eToro shall:
 - (i) pay an administrative penalty in the amount of CDN \$550,000 by wire transfer to the Commission before the commencement of the Settlement Hearing (defined below), pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
 - (ii) disgorge USD \$1,791,163 by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 10 of subsection 127(1) of the Act, which amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and
 - (iii) pay costs of the Commission's investigation in the amount of CDN \$25,000, by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.
25. eToro has given an undertaking (the "**Undertaking**") to the Commission in the form attached as Schedule "B" to this Settlement Agreement, pursuant to which eToro undertakes to:
- (i) with respect to each of the Funded Ontario Accounts with funds remaining in them:
 - (1) send an email to the account holder(s) each quarter, until the funds are returned or June 30, 2021, whichever occurs first, requesting that they contact eToro to provide instructions regarding the return of funds in their Funded Ontario Account;

- (2) attempt to contact the account holder(s) by telephone if eToro does not receive a response to the quarterly email referred to in subparagraph 23(i)(1) above within 30 days;
- (3) on instruction from the account holder(s), return the funds in the Funded Ontario Account without charging fees; and
- (4) if by July 1, 2021 eToro has not obtained instructions regarding the return of funds, eToro shall donate the funds to the charity “The Junior Achievement Of Canada Foundation” or similar Canadian registered charity as may exist as at that date and provide confirmation to Staff within 30 days of the donation that it was made; and

(ii) deliver to Staff of the Commission, on each of June 30, 2019, June 30, 2020 and June 30, 2021, an affidavit sworn or affirmed by a senior officer of eToro:

- (1) confirming that (a) eToro did not have any accounts open for clients resident in Ontario during the prior twelve month period, and (b) the Enhanced Procedures and Controls remain in place at eToro (unless by that time eToro is authorized to trade in securities or derivatives in Ontario or is properly relying on available exemptions from the requirement to register, in which case the two confirmations described in this subparagraph will not be required); and
- (2) listing the Funded Ontario Accounts with funds remaining in them, and confirming that eToro has taken the steps to attempt to obtain instructions from each account holder in accordance with the steps set out in subparagraphs 25(i)(1) and (2) above.

26. eToro agrees to attend at the hearing before the Commission to consider the proposed settlement by video conference.

PART VI - FURTHER PROCEEDINGS

27. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against eToro or any of its officers, directors or employees in relation to the facts set out in Part III of this Settlement Agreement, subject to paragraph 28 below.
28. If the Commission approves this Settlement Agreement and eToro fails to comply with any of the terms of the Settlement Agreement or the Undertaking, Staff may bring proceedings under Ontario securities law against eToro or any of its officers, directors or employees. These proceedings may be based on, but need not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement or the Undertaking.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

29. The parties will seek approval of this Settlement Agreement at a public hearing (the “**Settlement Hearing**”) before the Commission, according to the procedures set out in this Settlement Agreement and the Commission’s Rules of Procedure.
30. Staff and eToro agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the Settlement Hearing on eToro’s conduct, unless the parties agree that additional facts should be submitted at the Settlement Hearing.
31. If the Commission approves this Settlement Agreement:
- (a) eToro irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.
32. If the Commission does not approve this Settlement Agreement at the Settlement Hearing, Staff shall return to eToro all funds paid by eToro to the Commission prior to the Settlement Hearing within seven (7) days of the Settlement Hearing.
33. Whether or not the Commission approves this Settlement Agreement, eToro will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement 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

34. If the Commission does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:
- (a) this Settlement Agreement and all discussions and negotiations between Staff and eToro before the Settlement Hearing takes place will be without prejudice to Staff and eToro; and
- (b) Staff and eToro will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

35. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless Staff and eToro otherwise agree in writing or if required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

36. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

37. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this 26th day of September, 2018.

ETORO (EUROPE) LIMITED

By: *“Avi Sela”*

We have authority to bind the
corporation

Name: *“Avi Sela”*

COMMISSION STAFF

By:

“Jeff Kehoe”

Jeff Kehoe
Director, Enforcement Branch

SCHEDULE “A” – DRAFT ORDER

Ontario Securities Commission	Commission des valeurs mobilières de l'Ontario	22 nd Floor 20 Queen Street West Toronto ON M5H 3S8	22e étage 20, rue queen ouest Toronto ON M5H 3S8
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FILE NO.:**IN THE MATTER OF ETORO (EUROPE) LIMITED**

ORDER
(Subsections 127(1) and 127.1)

WHEREAS on September , 2018, the Ontario Securities Commission (the “**Commission**”) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider the Application made jointly by respect of the eToro (Europe) Limited. (“**eToro**”) and Staff of the Commission for approval of a settlement agreement dated September , 2018 (the “**Settlement Agreement**”);

ON READING the Joint Application Record for a Settlement Hearing, including the Statement of Allegations dated September , 2018, the Settlement Agreement and the Consent of the parties to an Order in substantially this form, and on hearing the submissions of counsel for both parties;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S 5 (the “**Act**”);
2. eToro is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and
3. eToro shall:
 - i. pay an administrative penalty in the amount of CDN \$550,000 by wire transfer to the Commission, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
 - ii. disgorge USD \$1,791,163, pursuant to paragraph 10 of subsection 127(1) of the Act, which amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and

- iii. pay costs of the Commission's investigation in the amount of CDN \$25,000, pursuant to section 127.1 of the Act.

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

1. This Undertaking is given in connection with the settlement agreement dated September 17, 2018 between eToro (Europe) Limited and Staff of the Commission (the “Settlement Agreement”). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. eToro undertakes to:
 - (i) with respect to each of the Funded Ontario Accounts with funds remaining in them:
 - (1) send an email to the account holder(s) each quarter, until the funds are returned or June 30, 2021, whichever occurs first, requesting that they contact eToro to provide instructions regarding the return of funds in their Funded Ontario Account;
 - (2) attempt to contact the account holder(s) by telephone if eToro does not receive a response to the email referred to in subparagraph 2(i)(1) above within 30 days;
 - (3) on instruction from the account holder(s), return the funds in the Funded Ontario Account without charging fees; and
 - (4) if by July 1, 2021 eToro has not obtained instructions regarding the return of funds, eToro shall donate the funds to the charity “The Junior Achievement Of Canada Foundation” or similar Canadian registered charity as may exist as at that date and provide confirmation to Staff within 30 days of the donation that it was made; and

- (ii) deliver to Staff of the Commission, on each of June 30, 2019, June 30, 2020 and June 30, 2021, an affidavit sworn or affirmed by a senior officer of eToro:
- (1) confirming that (a) eToro does not have any accounts open for clients resident in Ontario during the prior twelve month period, and (b) the Enhanced Procedures and Controls remain in place at eToro (unless by that time eToro is authorized to trade in securities or derivatives in Ontario or is properly relying on available exemptions from the requirement to register, in which case the two confirmations described in this subparagraph will not be required); and
 - (2) listing the Funded Ontario Accounts with funds remaining in them, and confirming that eToro has taken the steps to attempt to obtain instructions from each account holder in accordance with the steps set out in subparagraphs 2(i)(1) and (2) above.

ETORO (EUROPE) LIMITED

“Avi Sela”

We have authority to bind the corporation

Name: *“Avi Sela”*