

Re Friedberg Mercantile Group

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Friedberg Mercantile Group Ltd.

2022 IIROC 09

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District)

Heard: March 29, 2022 in Toronto, Ontario via videoconference

Decision: March 29, 2022

Reasons for Decision: April 13, 2022

Hearing Panel:

Martin Scisizzi, Chair, Jane Waechter and William Donegan

Appearances:

Sylvia Samuel, Senior Enforcement Counsel

Kathryn Andrews, Senior Enforcement Counsel

Gary Litwack, for Friedberg Mercantile Group Ltd.

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 This is a settlement hearing pursuant to Section 8215 of the Rules of the Investment Industry Regulatory Organization of Canada (“IIROC”) to determine whether to accept or reject the terms of a Settlement Agreement entered into between Enforcement Staff of IIROC and Friedberg Mercantile Group Ltd. (“FMGL” or the “Respondent”). The Settlement Agreement concerns conduct involving failure by the Respondent to review and approve client accounts migrated from AVA Trade Ltd. adequately or on a timely basis prior to account opening and trading; failure to establish and maintain an adequate compliance system, including written policies and procedures to ensure proper supervision of AVA Trade client accounts and trading on the AVA Trade Platform; and failure to establish and maintain a system to supervise the activities of AVA Trade agents, all taking place between October 2018 and December 2020. The Respondent admits these omissions and to having engaged in this conduct in contravention of IIROC Dealer Member Rules 38.1 and 38.2 and IIROC Rule 3200. The Settlement Agreement is attached hereto as Schedule “A” to this decision.

¶ 2 The Settlement Agreement provides the following sanctions:

- a) payment of a fine in the amount of \$223,000; and
- b) payment of costs in the amount of \$25,000.

¶ 3 After considering the material filed, the submissions of counsel, previous IIROC decisions and the IIROC Sanction Guidelines, at the conclusion of the hearing the Panel found that the Settlement Agreement and the

sanctions provided for in that Agreement are within a reasonable range of appropriateness and advised counsel that the Settlement Agreement was accepted by the Panel with reasons to follow. These are our reasons.

BACKGROUND

¶ 4 The agreed upon facts are contained in the Settlement Agreement attached, and therefore we do not propose to repeat the facts in detail. However, to put our decision in context, we will summarize the material facts and the key elements of the contraventions of IIROC Dealer Member Rules 38.1, 38.2 and IIROC Rule 3200 admitted by the Respondent.

¶ 5 FMGL is a Dealer Member of IIROC with its head office in Toronto. Friedberg Direct is a division of FMGL which operates as Order Execution Only firm through its online trading platforms.

¶ 6 AVA Trade Ltd. (“AVA Trade”) operates an online trading platform for trading Contracts for Difference (“CFDs”) based on commodities, foreign exchange, cryptocurrencies and other assets. Until in or about August 2018, AVA Trade opened and operated trading accounts for Ontario residents through its online trading platform (the “AVA Trade Platform”). In January 2018, the Ontario Securities Commission (the “OSC”) contacted AVA Trade with its concerns about its trading with Ontario clients. AVA Trade agreed with the OSC to cease dealing with Canadian clients.

¶ 7 By a Services Agreement dated February 26, 2018 between AVA Trade (EU) Ltd. (“Ava EU”), a subsidiary of AVA Trade and FMGL (the “Services Agreement”), it was agreed that AVA Trade’s Canadian client accounts would be transferred to FMGL. Pursuant to the Services Agreement, FMGL was to provide clients with access to the AVA Trade Platform via its Friedberg Direct Platform, through which clients can enter into CFDs and foreign exchange contracts with FMGL as counterparty. For its services, FMGL would be compensated based on an agreed upon split of the profits from trading on the AVA Trade Platform.

¶ 8 Pursuant to the Services Agreement, Ava EU was responsible for giving clients access to the AVA Trade Platform, providing execution facilities for CFDs and foreign exchange contracts, with FMGL as counterparty, back-office support for account setup and customer validation, customer telephone live chat and internet support for account set up and activation and other customer related administration services, all with guidelines provided by FMGL.

¶ 9 Pursuant to the Services Agreement, FMGL was responsible for the following:

- a) all client onboarding/transfer processes;
- b) new account documentation and processes and final account opening approval;
- c) KYC/AML documentation and processes;
- d) loss limit reviews;
- e) management of customer complaints;
- f) all regulatory and reporting requirements; and
- g) guidance and assistance in the development of a policy and procedure manual integrating AVA Trade’s and FMGL’s existing procedures.

¶ 10 FMGL was given approval to proceed with the offering of the AVA Trade Platform to clients in October 2018, at about the same time as AVA Trade had agreed with the OSC to cease dealing with Canadian clients.

¶ 11 As stated, pursuant to the Services Agreement, client onboarding/account opening, KYC/AML documentation and processes, loss limit reviews, complaint handling procedures and all other registerable activities were the sole responsibility of FMGL. However, FMGL’s compliance and supervision systems failed in a number of respects described below.

¶ 12 Following the October 2018 approval for FMGL to offer the AVA Trade Platform to Canadian clients, FMGL failed to put in place an adequate supervisory framework to deal with the onboarding of the AVA Trade accounts and the ongoing supervision of AVA Trade agents who provide assistance to FMGL clients in using the AVA Trade Platform. Further, FMGL failed to keep adequate books and records related to AVA Trade accounts. In particular, from October 2018 to December 2020, deficiencies existed in FMGL’s supervision framework related to: a) account opening approval; b) incomplete or inaccurate books and records related to account lists, loss limits at the time of account opening and account opening information and documentation; and c) inadequate supervision and oversight of the activities of AVA Trade’s agents, particularly related to loss limit reviews and client complaint handling.

Account Opening Approval

¶ 13 There were very serious deficiencies in FMGL’s account opening process, including significant delays in account opening approval, trading in accounts prior to account opening approval, and in some instances accounts that were not appropriate were opened. FMGL did not review or approve many client accounts transferred by AVA Trade to FMGL to determine the appropriateness of the client accounts before opening the accounts.

¶ 14 As a result of the failures in the account opening process and resulting delays in account review and approval, trading occurred in numerous accounts prior to proper account review and approval.

¶ 15 As a result of the failures in the account opening process, FMGL did not identify concerns related to the appropriateness of some onboarded accounts, and it did not flag KYC information missing from account documentation for some clients. Once the accounts were reviewed, FMGL determined that 28 accounts were not appropriate. Some of these clients had already traded in the accounts prior to the review for account opening. Enforcement Counsel advised that fortunately there is no evidence of any harm to these clients as a result. In those cases where there were client complaints, FMGL addressed the complaints promptly and compensated the clients fully.

¶ 16 It should be noted that a number of these deficiencies resulted from technological issues with the reporting and alerts generated by AVA Trade’s systems. FMGL identified the technological issues over time after onboarding the AVA Trade clients. Compounding the delays in account opening approval was the fact that AVA Trade did not at the outset give FMGL a comprehensive list of client accounts that would be onboarded.

Incomplete and Inaccurate Records

¶ 17 Between October 2018 and February 2020, FMGL’s books and records with respect to AVA Trade Platform accounts were incomplete and inaccurate in several respects. As a result of tagging and filtering issues with AVA Trade’s client relationship management (“CRM”) software system, discrepancies existed in the number of accounts opened on the AVA Trade Platform. FMGL did not become sufficiently familiar with AVA Trade’s CRM system to determine the issues. The existence of the inconsistencies in FMGL’s client account lists first became apparent during the 2019 IROC Business Conduct Compliance Review.

¶ 18 In those cases where the loss limit had been increased after the date of account approval, FMGL was unable to provide the loss limit as at the date of account approval, and therefore, was unable to provide a full audit trail. Additionally, in six instances, the “registration loss limit” amounts included on account lists dated January 7, 2020 were inaccurate.

Inadequate Supervision

¶ 19 FMGL personnel carried out some observation of AVA Trade agents’ interactions with clients. However, such oversight of AVA Trade agents’ activities was minimal and inadequate. Until July 2020, FMGL lacked policies and procedures or an adequate framework to guide its supervision of AVA Trade agents and until

February 2020 lacked the appropriate controls to accurately record the accounts being onboarded or the loss limits being breached in order to undertake account documentation reviews, account suitability assessments and loss limit reviews. Until November 2020, account documentation reviews and suitability assessments for onboarded accounts were not conducted as required.

Remedial Measures

¶ 20 FMGL took corrective actions to remediate the deficiencies and promote future compliance promptly after the deficiencies were brought to its attention. In July 2020, FMGL introduced new policies and procedures to enhance its supervision of AVA Trade agents and their activities. FMGL has also implemented training programs for AVA Trade representatives to delineate the roles and responsibilities of AVA Trade agents as distinct from the registrable activities performed by FMGL.

¶ 21 In addition, FMGL has made a number of corrections to address the identified CRM technical issues and FMGL's supervisors have gained proficiency in the AVA Trade Platform and AVA Trade's CRM software.

Co-operation and Early Resolution

¶ 22 As stated, FMGL has taken corrective measures to address the deficiencies and to remediate in a number of areas to promote future compliance with the IIROC Rules. Moreover, FMGL has admitted the misconduct described above, which reduced the length of time required to investigate this matter and agreed to resolve this matter in a timely manner. FMGL demonstrated proactive and timely co-operation and was forthcoming with Enforcement Staff in respect of the issues raised in the Settlement Agreement.

¶ 23 Enforcement Staff have agreed to a 30% reduction of the fine it would otherwise have sought based on FMGL's co-operation and the remedial measures the Respondent has taken. These factors led to an early resolution of this matter.

ANALYSIS

Role of the Hearing Panel

¶ 24 A panel considering whether to accept a settlement agreement and the agreed sanctions is in a different position than a panel determining an appropriate sanction in a contested hearing. Pursuant to IIROC Rule 8215(5), a hearing panel must decide whether to accept or reject the proposed settlement. It is well established that a settlement hearing panel is not tasked with deciding whether it would have imposed the same sanctions as those agreed through negotiations by the parties, nor is it to modify or alter the sanctions. Rather the settlement hearing panel's task is to decide whether the proposed sanctions fall within a reasonable range of appropriateness.¹

¶ 25 In assessing the "reasonable range of appropriateness" criteria, a hearing panel must consider the IIROC Sanction Guidelines, previous regulatory decisions and the unique facts and circumstances of the case.

¶ 26 In considering a settlement agreement, a hearing panel must be satisfied that the agreed sanctions are within a reasonable range of appropriateness taking into account similar cases, are fair and reasonable, and serve as a deterrent to the respondent and to the industry. It is in the public interest to encourage and support the settlement process. Accordingly, where this criterion is met, negotiated settlements should not be interfered with lightly and the hearing panel should accept the settlement agreement.²

IIROC Sanction Guidelines

¶ 27 A hearing panel is to consider the IIROC Sanction Guidelines (the "Guidelines") in determining whether the agreed sanctions in a settlement agreement fall within a reasonable range of appropriateness. The

¹ *Milewski (Re)*, [1999] I.D.A.C.D.No. 17

² *Donnelly (Re)*, 2016 IIROC 23, paras 5-13

Guidelines contain general principles that provide a framework that should be considered in connection with the imposition of sanctions and key factors that should be considered by a hearing panel in determining whether the proposed sanctions are appropriate.

¶ 28 The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the particular respondent (specific deterrence) and to deter others in the industry from engaging in similar misconduct (general deterrence). The Guidelines reflect the principle that general deterrence can be achieved if a sanction strikes an appropriate balance by addressing the respondent's specific misconduct but is also in line with industry expectations. The panel is required to consider the proportionality of the proposed sanctions to the admitted misconduct. Based on the proposition that fairness and the appearance of fairness requires that similar contraventions be treated in a similar manner, the panel is also required to consider whether the proposed sanctions are similar to sanctions imposed on respondents for similar misconduct in similar circumstances. As well, in determining whether the agreed sanctions fall with a reasonable range of appropriateness the panel should also consider both relevant mitigating factors and aggravating factors.

FMGL's Failure to Perform Gatekeeper Duties

¶ 29 In their role of gatekeepers to the capital markets and for the broader public interest, Dealer Members are required to establish and maintain a system of controls and supervision that is adequate to, among other things, protect the public and the best interests of their clients including to ensure that certain clients are qualified to trade. Not only must Dealer Members establish and maintain policies and procedures, but they must also ensure compliance with the policies and procedures by establishing and maintaining an adequate system to supervise the activities of their partners, directors, officers, registered representatives, agents and employees.

¶ 30 FMGL clearly failed to properly exercise its gatekeeper duties. FMGL failed to put in place an adequate supervisory system to deal with the onboarding of client accounts on the AVA Trade Platform and the ongoing supervision of AVA Trade agents who assisted FMGL clients using the AVA Trade Platform. As a result of such failure, FMGL did not review or approve many client accounts transferred from AVA Trade to FMGL in a timely manner. FMGL did not take steps to determine the appropriateness of client accounts before opening the accounts. There was no mechanism in place by which FMGL could prevent trading in onboarded accounts pending receipt of full and complete account opening documentation and approval. Some of the onboarded accounts traded without FMGL being aware of their existence as new accounts. Some client trading went unidentified by FMGL supervisors until it was discovered during IIROC's 2019 Business Conduct Compliance onsite examination.

¶ 31 In the Panel's view, the contraventions were extremely serious. Although Enforcement Counsel advised that there is no evidence that the misconduct was reckless or that FMGL was wilfully blind, FMGL embarked upon implementing the Service Agreement, proceeded with the new line of business and onboarding the accounts without ensuring that it had the necessary systems of internal controls in place to ensure compliance with IIROC requirements. This was a serious failure by FMGL to properly exercise its gatekeeper role and responsibilities.

Previous Regulatory Decision

¶ 32 The Panel was presented with a number of prior decisions which addressed Member Dealers' failures to properly perform gatekeeper duties: Peak Securities Inc. (Re)³, Laurentian Bank Securities Inc. (Re)⁴, Scotia

³ 2020 IIROC 36

⁴ 2020 IIROC 24

Capital Inc. (Re)⁵, and Re Canaccord Genuity⁶. All of these cases involve, among other contraventions, failures of Dealers to perform gatekeeper and supervision obligations. While these decisions are helpful in arriving at a reasonable range of sanctions, they each turn on their own specific facts and none are on all fours with this case. The Panel is mindful that each case must be considered on its own facts and circumstances.

¶ 33 These prior decisions referred to the Panel, involving the approval of settlements for breaches of Dealer Member Rule 38.1 by failing to establish and maintain adequate supervision systems, demonstrate a wide range of sanctions, which vary with the scope and gravity of the conduct, and the aggravating and the mitigating factors in each case. Although none of the cases mirror the facts of this case and the sanctions varied, these cases are of assistance in assessing whether the proposed settlement falls within a range of reasonable appropriateness.

Other Factors Considered

¶ 34 We also considered that FMGL has no prior disciplinary history that would warrant a harsher sanction. FMGL acknowledged its misconduct and took remedial actions after it was brought to its attention. FMGL has demonstrated proactive and timely co-operation. Enforcement Counsel advised that there is no evidence of any harm to clients. In those cases where there were client complaints, FMGL promptly addressed the complaints and compensated the clients fully. Enforcement Counsel also advised that there is no evidence that FMGL's misconduct was aimed at increasing profit that would otherwise be unavailable to it. These are mitigating factors.

¶ 35 The Panel also took into account that FMGL earned revenue in excess of \$220,000 from the AVA Trade accounts during the relevant period and that the fine of \$223,000 is a significant portion of the revenue. The amount of the fine is 30% less than Enforcement Staff would have sought had FMGL not fully co-operated with Enforcement Staff and had FMGL not pro-actively taken remedial measures in a timely manner.

CONCLUSION

¶ 36 Given the seriousness of the contraventions, while the Panel may not have imposed the agreed sanctions in this case had the matter come before us in a contested hearing, as stated above, the test we are obliged to apply is whether the agreed sanctions fall within a reasonable range of appropriateness. Therefore, taking into account the aforesaid criteria, the range of sanctions for similar contraventions in more or less similar circumstances and the public interest, we have determined that the agreed sanctions fall in the acceptable range. Accordingly, the Panel has accepted the Settlement Agreement.

Dated at Toronto, Ontario this 13 day of April 2022.

Martin Scisizzi

Jane Waechter

William Donegan

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the IIROC

⁵ 2015 IIROC 27

⁶ 2021 IIROC 35

Rules, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Friedberg Mercantile Group Ltd. (“Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

4. Following the October 2018 approval for Friedberg Mercantile Group Ltd. (“FMGL”) to offer a trading platform (the “AVA Trade Platform”) provided by AVA Trade Ltd. (“AVA Trade”), FMGL failed to put in place an adequate supervisory framework to deal with the onboarding of the AVA Trade accounts and the ongoing supervision of AVA Trade agents who provide assistance to FMGL clients in using the AVA Trade Platform. Further, FMGL failed to keep adequate books and records related to AVA Trade accounts. In particular, from October 2018 to December 2020, deficiencies existed in FMGL’s supervision framework related to:
 - a. account opening approval;
 - b. incomplete or inaccurate books and records related to account lists, loss limits at the time of account opening, and account opening information and documentation; and
 - c. inadequate supervision and oversight of the activities of AVA Trade's agents, particularly related to loss limit reviews and client complaint handling.

As described below, a number of the deficiencies resulted from technological issues with the reporting and alerts generated by AVA Trade’s systems, which were identified by FMGL over time after the onboarding of AVA Trade clients by FMGL.

Background

(i) FMGL

5. FMGL is a Dealer Member with its head office in Toronto, Ontario.
6. Friedberg Direct is the division of FMGL which operates as an OEO firm through its online trading platforms.

(ii) AVA Trade

7. AVA Trade operates an online trading platform for trading Contracts for Difference (“CFDs”) based on commodities, foreign exchange, cryptocurrencies, and other assets.
8. In January 2018, the Ontario Securities Commission (“OSC”) contacted AVA Trade regarding its trading with Ontario clients.
9. In July 2019, AVA Trade acknowledged, in a settlement agreement with the OSC, that, in August 2018, it had agreed to a voluntary undertaking with OSC Staff with the following terms:
 - i. Effective October 16, 2018, AVA Trade would only permit liquidating trades in 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.

(iii) The Services Agreement

10. Pursuant to a Services Agreement dated February 26, 2018 between FMGL and AVA Trade (EU) Ltd. (“Ava EU”), a subsidiary of AVA Trade (the “Services Agreement”), it was agreed that AVA Trade’s Canadian client accounts would be transitioned to FMGL.
11. Pursuant to the Services Agreement, FMGL was to provide clients with access to the AVA Trade Platform via its Friedberg Direct platform, through which clients can enter into CFDs and foreign exchange contracts with FMGL as counterparty. For each CFD entered into by FMGL with an AVA Trade Platform client, an offsetting CFD position with same terms would be entered into between FMGL and AVA EU.
12. For its service, FMGL would be compensated based on an agreed upon split of the profits from trading on the AVA Trade Platform.
13. Pursuant to the Services Agreement, Ava EU was responsible for:
 - a. giving clients access to the AVA Trade Platform and providing execution facilities for CFDs and foreign exchange contracts, with FMGL as counterparty; and
 - b. back-office support for account setup and customer validation, customer telephone live chat and internet support for account set up and activation, and “other customer related administration services,” all with guidelines provided by FMGL.
14. In turn, FMGL was responsible for the following:
 - a. all client onboarding/transfer processes;
 - b. new account documentation and processes and final account opening approval;
 - c. KYC/AML documentation and processes;
 - d. loss limit reviews;
 - e. management of customer complaints;
 - f. all regulatory and reporting requirements; and
 - g. guidance and assistance in the development of a policy and procedure manual integrating AVA Trade’s and FMGL’s existing procedures.
15. FMGL was given approval to proceed with the offering of the AVA Trade Platform to clients in October 2018, at around the same date that AVA Trade had agreed with the OSC to cease dealing with Canadian clients. FMGL has advised Staff that AVA Trade did not provide any client information prior to FMGL having received such approval.

Compliance and Supervision Failures

16. Pursuant to the Services Agreement, client onboarding/account opening, KYC/AML documentation and processes, loss limit reviews, complaint handling procedures, and all other registerable activities were the sole responsibility of FMGL. However, FMGL’s compliance and supervision systems failed in a number of respects.

I Account Opening Approval

17. There were deficiencies in FMGL’s account opening process, including significant delays in account opening approval, trading in accounts prior to account opening approval, and some instances of accounts opened where not appropriate. Many of the circumstances of such delays, trading or premature account openings were the result of FMGL personnel not having been aware of AVA Trade clients that had been onboarded due to AVA TRADE system issues.

(i) Delays in Account Opening Approval

18. Pursuant to the Services Agreement, FMGL was required to review applications for AVA Trade Platform accounts.
19. Further, as a condition of IIROC's approval of its change of business application, FMGL was to review and approve all client accounts, which would not be unlocked for trading until each account application and all required documents were received, reviewed, and final approval granted by FMGL.
20. However, FMGL did not review or approve many Canadian client accounts transferred from AVA Trade to FMGL on a timely basis.
21. FMGL's Chief Compliance Officer (the "CCO"), and its Senior Manager, Regulatory Compliance (the "SM"), were responsible for the review and approval of all AVA Trade client accounts onboarded to FMGL and all new AVA Trade Platform client accounts subsequently opened.
22. The first step in the onboarding process was that AVA Trade would send out a templated email prompting clients to log onto their client portal to review and complete the client information and acknowledge and agree to FMGL's terms of business and other disclosures. This was done utilizing AVA Trade technology and existing client portals, and FMGL was to be able to view those accounts on AVA Trade's client relationship management ("CRM") software system.
23. Next, the SM would review the initial account documentation, add notes, and approve the account, setting a tag on the account profile enabling the CCO to view the account on his list of accounts pending review and approval. Once both approvals were given, the CCO would set a tag to the account as open for trading, which would essentially convert the account from a limited state where trading cannot occur to a full state allowing trades to be placed.
24. The CRM system lacked the tagging functionality or the specific filters that would have allowed FMGL to easily locate and identify the migrated accounts. FMGL did not become sufficiently familiar with AVA Trade's CRM system to be able to know of these issues.
25. Compounding this issue was the fact that AVA Trade did not give FMGL a comprehensive list identifying client accounts that would be onboarded at the outset.
26. At FMGL's request, AVA Trade ultimately provided client account lists on a periodic basis throughout 2019-2020. In early 2019, 55 accounts were tagged as "review ready" and were then reviewed and approved by FMGL. On June 23, 2019, 93 accounts were reviewed and followed up on by FMGL. Then, on January 31, 2020, the final batch of migrated accounts (totaling 72) were supplied by AVA Trade and then reviewed and approved by FMGL on February 2, 2020. Accordingly, by February 2020, the 220 migrated client accounts were finally onboarded from AVA Trade to FMGL.

(ii) Trading Prior to Account Review and Approval

27. As a result of the failures in the account opening process and resulting delays in account review and approval, trading occurred in numerous accounts prior to proper account review and approval.
28. An FMGL client list dated May 27, 2020 disclosed 912 client accounts of which 280 were new accounts opened between October 18, 2018 and February 27, 2020 and 220 were onboarded client accounts. 125 of the 220 onboarded client accounts traded at FGML prior to supervisory approval. In 99 of these 125 accounts, the first order was filled between November 1, 2018 and December 31, 2018. In 28 of these 125 onboarded accounts, the account was later closed due to incomplete information or, in some cases, the account being inappropriate.
29. Some of the onboarded accounts traded (though on a limited scale) without FMGL being aware of their existence as new accounts due to the filtering issues noted below.
30. As acknowledged by FMGL, some client trading went unidentified by FMGL supervisors until it was

discovered during IIROC's Business Conduct Compliance ("BCC") 2019 onsite examination.

31. FMGL acknowledged that, until February 2020, there was no mechanism by which it could prevent trading in onboarded accounts pending receipt of full and complete documentation and approval.

(iii) Onboarded Accounts Opened Where Not Appropriate

32. As a result of the failures in the account opening process, FMGL did not identify concerns related to the appropriateness of some onboarded accounts, and FMGL did not flag KYC information missing from the account documentation for certain clients.

II Books and Records

33. FMGL's books and records were incomplete and inaccurate in certain respects, leading to FMGL's inability to identify and demonstrate the extent of oversight, if any, in several key areas.

(i) AVA Trade Accounts Onboarded by FMGL in October 2018

34. As a result of the tagging and filtering issues with AVA Trade's CRM system, discrepancies existed with information provided by FMGL during the 2019 BCC examination regarding the number of client accounts opened on the AVA Trade Platform during the period October 2018 to July 2019, as follows:

- the list provided to BCC on January 7, 2020 included 149 new accounts;
- the list provided to BCC on February 28, 2020 included 214 accounts;
- the list provided to BCC on May 27, 2020 included 556 accounts.

35. The list of accounts dated May 27, 2020 included 69 accounts tagged as migrated that were missing from the January 7, 2020 list of accounts.

36. The existence of inconsistencies in the client account lists first became apparent during the BCC review.

37. The existence of inconsistencies in the various AVA Trade Platform client account lists was acknowledged by FMGL.

(ii) Loss Limit Increases

38. In those cases where the loss limit had been increased after the date of account approval, FMGL was unable to provide the loss limit as at the date of account approval, and, therefore, was unable to provide a full audit trail.

39. Additionally, in six instances, the "registration loss limit" amount that was included on the lists dated January 7, 2020 were not current (but were corrected through subsequent detailed review by FMGL).

40. Between October 2018 and February 2020, the books and records of FMGL in respect of AVA Trade Platform accounts were inaccurate and, therefore, ineffective.

III Supervision

41. Significant concerns were identified relating to the supervisory framework at FMGL.

(i) Oversight of AVA Trade Activity

42. Although FMGL personnel did carry out some observation of AVA Trade agent interactions with clients, FMGL had insufficient oversight of the activities of AVA Trade agents and could not, therefore, ensure that AVA Trade agents were not performing activities for which FMGL was responsible under the Services Agreement or for which registration was required.

43. Until July 2020, FMGL did not request access to call records or call transcripts, and was, therefore, unable to monitor or review calls between AVA Trade agents and clients.

44. Additionally, other than the restrictions in the Services Agreement, there were no written policies and procedures or other controls in place to ensure that AVA Trade agents were not acting in a registerable capacity or in respect of matters such as complaint handling. Until July 2020, FMGL had no supervisory framework in respect of the activities of AVA Trade agents.

45. Until July 2020, the oversight exercised by FMGL over AVA Trade agents was minimal. FMGL provided no evidence of review or investigation or referral to FMGL for follow-up of AVA Trade agents' call activities.

(ii) New Policies and Procedures

46. In July 2020, FMGL introduced new policies and procedures to enhance its supervision of AVA Trade agents' activities.

47. Specifically, in July 2020, FMGL implemented procedures whereby it provided regular training sessions via Zoom with all AVA Trade personnel. Training sessions occurred in May, June, August, September, October, and November 2020 and January and March 2021. The training sessions included client facing agents, team leaders, executives, and compliance personnel located variously in Ireland, Israel, and Bulgaria.

48. In addition, starting July 2020, FMGL implemented new procedures governing call activities, which require that FMGL staff review a random sample of call recordings and email correspondence between AVA Trade agents and FMGL clients on a monthly basis. FMGL supervisors (the COO and the SM) are required to document their reviews with applicable details and notes, on which both sign off.

49. However, even with the improved procedures governing call activities it was AVA Trade, not FMGL, who selected the sample of calls for review by FMGL. Further, FMGL only commenced evidencing email supervision and review in June 2020.

(iii) Account Review and Approval

50. As a set out above, FMGL failed to adequately supervise the account review and approval process.

(iv) Loss Limit Reviews

51. Pursuant to the Services Agreement, loss limit reviews were the responsibility of FMGL, however, until February 2020 FMGL was relying on AVA Trade personnel to review clients' end-of-day equity versus stated loss limit amounts and inform FMGL of potential loss limit breaches. Then FMGL compliance would review and determine the appropriateness and amount of any loss limit increases requested by clients. If a loss limit increase was needed or requested, FMGL personnel (the SM) would communicate directly with the client to determine whether to allow a loss limit increase.

52. As a result of FMGL's supervision or other failures, certain client accounts became active with no loss limit review done by FMGL. In sixty-one instances, loss limit reviews were conducted in client accounts after the account had been opened as a result of FMGL processes not capturing the account as a newly onboarded account.

53. Additionally, until November 2020, loss limits were not assessed on a cumulative basis across multiple accounts as was required.

54. FMGL took steps to partially automate the loss limit review process in February 2020. As a result, clients who breach their loss limits are notified via e-mail and through a pop-up notification in the *myAva* client portal. They are required to complete and submit a loss limit review questionnaire, which is automatically entered into the AVA Trade CRM system. Once the questionnaire is submitted, the associated account will appear on a list of accounts pending review, and FMGL compliance will then review each account. Any queries that are not responded to within five business days result in the

automatic restriction of the account.

Conclusion

55. Until July 2020, FMGL lacked policies and procedures or an adequate framework to guide its supervision of AVA Trade agents and, until February 2020, lacked appropriate controls so that it would become aware of accounts being onboarded or loss limits being breached in order to undertake account documentation reviews, account suitability assessments and loss limit reviews. As a result, until November 2020, account documentation reviews and suitability assessment for onboarded accounts were not done as required.

Remedial Measures

56. FMGL has taken the following corrective action to remediate deficiencies and promote future compliance. In particular,
- a) FMGL introduced new Policies and Procedures in July 2020 to enhance its supervision of AVA Trade agents.
 - b) FMGL has implemented training programs for AVA Trade representatives to delineate the roles and responsibilities of AVA Trade agents as distinct from the registrable activities performed by FMGL.
 - c) A number of corrections have been made to address the identified CRM technical issues, and FMGL supervisors have also gained proficiency in the AVA Trade Platform and AVA Trade CRM software.

FMGL Cooperation and Early Resolution

57. FMGL demonstrated proactive and timely cooperation and has been forthcoming with Enforcement Staff in respect of the issues raised in this settlement agreement.
58. FMGL has taken action to remediate in a number of areas to promote future compliance with IROC requirements.
59. Enforcement Staff have agreed to a 30% reduction of the fine it would otherwise have sought based on the cooperation provided by the Respondent and the remedial measures taken. These factors led to an early resolution of this matter.

PART IV – CONTRAVENTIONS

60. By engaging in the conduct described above, the Respondent committed the following contraventions of IROC's Rules:

Between October 2018 and December 2020, the Respondent:

- i. failed to review and approve client accounts migrated from AVA Trade to FMGL adequately or on a timely basis prior to account opening and trading;
- ii. failed to establish and maintain an adequate compliance system including written policies and procedures to ensure proper supervision of AVA Trade client accounts and trading on the AVA Trade Platform; and
- iii. failed to establish and maintain a system to supervise the activities of AVA Trade agents, contrary to IROC Dealer Member Rules 38.1, 38.2 and IROC Rule 3200.

PART V – TERMS OF SETTLEMENT

61. The Respondent agrees to the following sanctions and costs:

- a) a fine of \$223,000; and

b) costs of \$25,000.

62. The above fine takes into account that, from November 2018 to December 2020, prior to being fully compliant with its regulatory obligations, FMGL earned revenue (as distinct from profits) from AVA Trade in excess of \$220,000.
63. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

64. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
65. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

66. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
67. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
68. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
69. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IROC Rules and any applicable legislation to any further hearing, appeal and review.
70. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
71. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
72. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IROC will post a full of copy of this Settlement Agreement on the IROC website. IROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
73. If this Settlement Agreement is accepted, the Respondent agrees that neither it nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.
74. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

75. This Settlement Agreement may be signed in one or more counterparts which together will constitute a

binding agreement.

76. A fax or electronic copy of any signature will be treated as an original signature.

DATED this "24" day of March, 2022.

"Witness"

Witness

"Witness"

Witness

Friedberg Mercantile Group Ltd.

Per: "Friedberg Mercantile Group Ltd"

I have authority to bind the corporation

"Sylvia Samuel"

Sylvia Samuel

Enforcement Counsel on behalf of Enforcement
Staff of the Investment Industry Regulatory
Organization of Canada

The Settlement Agreement is hereby accepted this "29" day of "March", 2022 by the following Hearing Panel:

Per: "Marty Sclisizzi"

Panel Chair

Per: "Jane Waechter"

Panel Member

Per: "William Donegan"

Panel Member

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