

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97878 / July 12, 2023

ADMINISTRATIVE PROCEEDING

File No. 3-21526

In the Matter of

RSE MARKETS, INC.,

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against RSE Markets, Inc. (“RSE” or “Respondent”).

II.

In anticipation of the institution of the proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. This matter concerns RSE operating as an unregistered exchange by maintaining and providing a market place and facilities for bringing together purchasers and sellers of securities, specifically equity interests in "collectible assets." Specifically, between July 1, 2018 and November 20, 2021 (the "Relevant Period"), RSE maintained and provided the Rally Platform, which consisted of the RallyRd.com website, the Rally App, and trading functionality (together, the "Rally Platform"), for U.S.-based retail investors to purchase and sell equity interests issued by RSE affiliates (the "RSE Securities") in collectible assets such as valuable cars and watches. Through its maintenance and provision of the Rally Platform, RSE met the definition of an exchange and was not registered in violation of Section 5 of the Securities Exchange Act of 1934 ("Exchange Act").

2. During the Relevant Period, secondary market trading of RSE Securities occurred exclusively on the Rally Platform within a "trading window" functionality provided by RSE. Within trading windows, the auction mechanism used by RSE (the "Algo") aggregated orders of multiple participating buyers and sellers of RSE Securities. The Algo matched orders based on price and time priority and calculated the price at which all matched orders would execute (the "final clearing price"). At the close of a trading window, RSE notified all matched buyers and sellers via the Rally Platform and asked them to "confirm" their willingness to transact at the final clearing price. Buyers and sellers confirmed the vast majority of matched orders (e.g., during one representative period, over 99% of matched orders were confirmed).

3. RSE did not charge any fees in connection with secondary market trading on the Rally Platform. During the Relevant Period, over 55,000 secondary market transactions with a total dollar value of approximately \$5.8 million took place on the Rally Platform. These transactions concerned over 20,000 unique investors.

4. Notwithstanding its operation of the Rally Platform, including marketing it as a "stock exchange" and "stock market," RSE neither registered the Rally Platform as a national securities exchange nor operated it pursuant to an exemption from such registration. Accordingly, RSE violated Section 5 of the Exchange Act.

Respondent

5. RSE, an unregistered entity, is a Delaware corporation with its principal place of business in New York, New York. RSE was founded in 2016 and has facilitated secondary market trading of RSE Securities on the Rally Platform since July 1, 2018.

Facts

A. Background

6. RSE is a retail investor-focused alternative asset company with the stated goal of “democratizing” alternative asset investing. RSE is the asset manager for RSE Collection, LLC (“Collection”), RSE Archive, LLC (“Archive”), and RSE Innovation, LLC (“Innovation” and, together with Collection and Archive, the “RSE Affiliates”).

7. The RSE Affiliates issue RSE Securities under Tier II of Regulation A, and the securities represent equity interests in various collectible assets. Each asset is issued as a “Series” under the RSE Affiliates’ Offering Circulars, which are continuously updated to add assets. During the Relevant Period, the securities issued through Collection were backed by automobile assets such as Lamborghinis and Porsches; the securities issued through Archive were backed predominantly by sports memorabilia, rare books, and watches; and the securities issued by Innovation were backed by “intangible” assets such as domain names. The RSE Affiliates have no employees and are completely managed by RSE.

8. RSE maintained and provided the Rally Platform, which RSE marketed to retail investors in the United States. In order to access the Rally Platform, view certain information about investment opportunities, and engage in trading, RSE required users to establish user-specific accounts. RSE permitted retail investors with access to the Rally Platform through the Rally App or RallyRd.com website to purchase RSE Securities in initial offerings and/or engage in secondary market trading of RSE Securities on the Rally Platform. During the Relevant Period, RSE required investors that sought to purchase or sell RSE Securities to establish a Rally Rd “user account” by providing confidential personal information. Users provided banking information to a third-party payment intermediary.

9. During the Relevant Period, RSE conducted initial offerings of RSE Securities on the Rally Platform and, after a 90-day lock-up period, investors could engage in secondary market trading of their RSE Securities on the Rally Platform during periodic, RSE-determined trading windows.

10. During the Relevant Period, there were at least 276,776 Rally Platform users (i.e., individuals or entities who created a Rally Rd login). Of those, at least 29,014 purchased and/or sold securities on the Rally Platform.

11. During the Relevant Period, RSE conducted approximately 1,000 trading windows which resulted in over 56,000 secondary market transactions with a total dollar value of

approximately \$5.8 million. These transactions involved over 15,300 unique individuals or entities who engaged in secondary market trading of RSE Securities on the Rally Platform.

12. RSE did not charge fees in connection with secondary market trading on the Rally Platform.

13. RSE has not earned a profit, including on secondary market trading, since its inception in 2016.

B. Secondary Market Trading of RSE Securities on the Rally Platform

14. Secondary market trading on the Rally Platform occurred during designated trading windows determined and operated by RSE. Trading windows typically operated from 9:30 a.m. EST to 4:00 p.m. EST and occurred approximately every 60-90 days for each Series. On average, the securities of two to four Series would be available for trading on a particular day, with each Series having its own separate trading window.

15. Throughout the Relevant Period, RSE provided detailed information to investors regarding how secondary market trading on the Rally Platform worked. For example, FAQs on the Rally Platform explained how orders are matched: “When two orders have the same price, whichever order was placed first (time priority) will be matched first. We recommend monitoring the activity close to the end of the day, and making sure that your ASK is always placed for the lowest price you are willing to sell it for (or your BID at the highest price you are willing to pay).” These representations (and others, including representations to Commission staff), consistently used the term “order” versus “indication of interest” (“IOI”).

16. For example, during the Relevant Period, RSE explained on its Rally Rd website that investors could sell their RSE Securities during trading windows by “submitting sell orders (‘ASKs’)” and that if they missed out on an initial offering they could still “place buy orders (‘BIDs’)” during trading windows. The website also stated that, “...existing investors can put some or all of their shares up for sale by placing an ASK order, or they can place a BID order to increase their ownership position. New investors can place BID orders to purchase shares from existing investors. These orders can be placed using the BUY and SELL buttons for the appropriate asset in the Rally app.” In addition, an explanation of market clearing price on the website explained, “...the clearing price is an algorithm that finds the price at which the largest number of transactions between buyer and seller will occur. People willing to pay more get priority, and people willing to sell for less get priority. When two orders have the same price, whichever order was placed first (time priority) will be matched first.”

17. RSE also marketed the Rally Platform as a “stock exchange” and “stock market” during the Relevant Period.

18. For example, in a May 24, 2019 YouTube video entitled “The Startup Rally Rd Allows You to Own a Ferrari... Well, Shares of It,” RSE’s Co-Founder and Chief Financial Officer, in describing the Platform stated, in relevant part: “...[W]e have built a secondary market for [RSE Securities] so that investors can get in and out of their investments without

having to wait for the car or painting to get sold so basically it does exactly what a stock exchange does but for shares of alternative assets like these.” Similarly, a July 2019 presentation to prospective investors in RSE described the Rally Platform as the “Stock Market for the 21st Century.”

19. During the Relevant Period, investors placed buy and sell limit orders for RSE Securities on the Rally Platform during specified trading windows. Throughout the trading windows, the Algo aggregated all buy and sell orders, prioritized them based on price and time, and continuously calculated a market clearing price.

20. During trading windows, RSE maintained the limit order book and published all bids and asks, together with the current market clearing price, on the Rally Platform in real time. Investors were free to change or cancel their orders during the trading windows up to the time of a match.

21. At the close of the trading window, the Algo calculated the final clearing price, which was the price at which the maximum number of buy and sell transactions matched. Next, RSE notified all matched buyers and sellers via the Rally Platform and asked them to confirm their desire to transact at the final clearing price. RSE sent follow up reminders via the Rally Platform as well as via email and text message to investors who did not confirm after the first notification of the match.

22. Once confirmed, RSE sent a CSV file containing the confirmed matched trades to Broker-Dealer A for custody and clearing.

23. Almost all (i.e., over 99%) matched orders were confirmed. Specifically, representative data for the period April 1, 2021 through November 20, 2021 indicated that there were a total of 117 unconfirmed matches. During this same time period, there were a total of 26,386 secondary market transactions. Thus, during the representative time period, unconfirmed matches comprised .44% of total transactions. In addition, during this period, there were also 40,777 cancelled trades; as such, unconfirmed matches comprised .29% of total cancelled trades during the time period.

Violations

24. Section 5 of the Exchange Act makes it unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States, to effect any transaction in a security, or to report any such transaction, unless the exchange is registered as a national securities exchange under Section 6 of the Exchange Act, or is exempted from such registration. Section 3(a)(1) of the Exchange Act defines an “exchange” as: “any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is

generally understood, and includes the market place and the market facilities maintained by such exchange.”

25. Exchange Act Rule 3b-16(a) provides a functional test to assess whether a trading system meets the definition of “exchange” under Section 3(a)(1) of the Exchange Act. Exchange Act Rule 3b-16(a) states that an organization, association, or group of persons meets the definition of “exchange” under Section 3(a)(1) if it (1) brings together the orders for securities of multiple buyers and sellers; and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of the trade. A system that meets these criteria and is not excluded under Exchange Act Rule 3b-16(b),¹ must register, pursuant to Section 5 of the Exchange Act, as a national securities exchange under Section 6 of the Exchange Act or operate pursuant to an appropriate exemption.²

26. RSE satisfied the criteria of Exchange Act Rule 3b-16(a) and is not excluded under Rule 3b-16(b). During the Relevant Period, RSE maintained and provided the Rally Platform as a market place and facilities for bringing together orders of multiple buyers and sellers of RSE Securities. RSE provided an App and website for buyers and sellers to enter orders into the Rally Platform. RSE brought together buyers and sellers by displaying bid and ask orders together with a real-time clearing price as calculated by RSE. During the Relevant Period, RSE publicly compared itself to a “stock exchange” and “stock market” and represented to Rally Platform users that trading interests entered into the system were orders. These orders, however, were not subject to negotiation and were, in fact, firm in nature (as evidenced by data indicating that 99% of matched orders confirmed).

27. During the Relevant Period, RSE used established, non-discretionary methods for orders to interact and for buyers and sellers entering such orders to agree upon the terms of a trade. Through the Rally Platform, RSE provided a trading facility that consisted of a trading window and Algo. Buyers and sellers entered orders during the trading window within specified time periods. RSE aggregated, prioritized, and matched these orders based on rules programmed

¹ The Commission adopted Exchange Act Rule 3b-16(b) to exclude certain systems that the Commission believed did not meet the “exchange” definition. These systems include systems that merely route orders to other execution facilities and systems that allow persons to enter orders for execution against the bids and offers of a single dealer system. *See* Securities Exchange Act Rel. No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) (Regulation of Exchanges and Alternative Trading Systems, hereinafter “Regulation ATS Adopting Release”) at 70852.

² One of the available exemptions is for ATSs. Rule 300(a) of Regulation ATS provides that an ATS is “any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers’ trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading.” Exchange Act Rule 3a1-1(a)(2) exempts from the definition of “exchange” under Section 3(a)(1) an organization, association, or group of persons that complies with Regulation ATS. *See* 17 CFR 240.3a1-1(a)(2). Rule 3a1-1 also provides exemptions from the definition of “exchange” for any ATS operated by a national securities association, and any ATS not required to comply with Regulation ATS pursuant to Rule 301(a) of Regulation ATS. *See* 17 CFR 240.3a1-1(a)(1) and (3). Neither of these exemptions are applicable in the present matter.

into the Algo. For example, the Algo matched orders based on price-time priority and used such orders to calculate the price at which matched orders would execute.

28. Despite maintaining and providing the Rally Platform, which met the criteria of Exchange Act Rule 3b-16(a), RSE did not register as a national securities exchange or operate pursuant to an exemption from such registration. Accordingly, RSE violated Section 5 of the Exchange Act.

RSE's Cooperation

In determining to accept the Offer, the Commission considered the cooperation afforded the Commission staff during the investigation.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 5 of the Exchange Act.

B. Respondent shall pay a civil monetary penalty in the amount of \$350,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (1) \$87,500 within seven days of the entry of the Order; (2) \$87,500 within 180 days of the Order; (3) \$87,500 within 270 days of the Order; and (4) \$87,500 within 365 days of the Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including, post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying RSE as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Tejal Shah, Associate Regional Director, Enforcement Division, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, RSE agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For the purposes of this paragraph, a "related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary