

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10878 / October 23, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 90261 / October 23, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20137

In the Matter of

**TRADENET CAPITAL
MARKETS LTD. d/b/a
TRADENET**

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Tradenet Capital Markets Ltd. (“Tradenet” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent 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 8A of the Securities Act of 1933 and 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

From November 2017 until June 2020, Tradenet offered and sold security-based swaps to U.S. retail investors without an effective registration statement with the Commission and without effecting those transactions on a registered national securities exchange.

Tradenet is a private company headquartered in Israel that offered and sold a variety of "Day Trading Education Packages" to people throughout the world, including in the United States. Packages included a book, videos, and access to on-demand and live-streaming sessions with Tradenet representatives. Each package also included access to a "funded trading account" on an affiliated web-based trading platform. The funded trading accounts allowed people to create a portfolio of securities and to receive possible payouts tied to the performance of the portfolio. People paid Tradenet a fee for the education package that included the funded trading account, and the people selected securities, options, and other investments – many of which traded in the United States – to build a portfolio of assets in their funded trading account that they could change over time.

No securities were bought or sold in the funded trading accounts. Instead, the funded trading accounts were simulated, and the price movements of the securities were tracked in order to calculate the portfolio's performance. Payments were made to people whose portfolios increased in value, based on the price movements of the underlying securities. Specifically, people whose portfolios increased in value received a percentage of the simulated profits as a payout. If, at any point, the value of the portfolio decreased by a certain amount, the funded trading account was closed.

The agreements through which Tradenet provided the funded trading accounts were security-based swaps because they provided for the exchange of contingent payments based on the value of U.S. securities without conveying ownership in the underlying securities. Tradenet violated Section 5(e) of the Securities Act by offering and selling those security-based swaps to U.S. persons who were not eligible contract participants without an effective registration statement. In addition, Tradenet violated Section 6(l) of the Exchange Act by effecting transactions with U.S. retail investors in security-based swaps that were not effected on a registered national securities exchange.

Respondent

Tradenet Capital Markets Ltd. is a private company based in Israel. In addition to its primary operations in Israel, Tradenet has two independent contractors who serve as its representatives in the United States, and has entered contracts with several thousand people domiciled throughout the United States.

A. Tradenet Offered Funded Trading Accounts to People in the U.S. That Let Investors Profit From Portfolio Performance

1. Since at least January 2016, Tradenet operated a website, Tradenet.com, that offered education programs to customers through which they could learn how to day trade securities, specifically U.S. securities. On its website, Tradenet offered customers “Day Trading Education Packages,” which, from November 2017 until June 2020, included access to a funded trading account on a web-based trading platform.

2. Buyers paid a fee for an education package that included the funded trading account along with, among other things, a book and access to videos and live training sessions with Tradenet representatives. Each buyer received a funded trading account with an initial value. The buyers then picked securities, options, and other investments and created a portfolio of assets. Buyers had the discretionary authority to change the composition of the portfolio over time. The contract that buyers entered into described the purchase and sale of securities, options, and contracts for difference. However, Tradenet did not purchase any securities or enter into any contracts for difference in response to changes in a buyer’s portfolio.

3. As described below, people could receive payments each month if the value of their portfolio increased, and the funded trading accounts would be closed if the portfolio value decreased by a specific amount (with the people continuing to have access to their respective education package). Tradenet representatives implemented the terms of the funded trading accounts.

4. Tradenet advertised the education packages, which included the funded trading accounts, on its website and through social media, including videos posted on YouTube. These advertisements were available to potential buyers in the United States. Tradenet had two representatives in the United States, and it addressed advertisements to potential buyers in the United States. Tradenet representatives in Israel and in the United States communicated with U.S. persons to encourage them to purchase the education packages, which included the funded trading accounts. In some instances, people whose funded trading accounts were closed after the portfolio value decreased went on to purchase an additional Tradenet package. Tradenet had a marketing department that would contact people with closed accounts and offer them an opportunity to try again through a discounted education package(s).

5. By paying larger fees, people received educational packages with more courses and services and better terms for their funded trading account. Tradenet offered four different packages that included access to a funded trading account.

a. Tradenet’s “Intro Day Trading Education Package” cost \$500 and included access to a \$14,000 funded trading account, in which the buyer would receive 70% of the net profits generated in the funded trading account; if the account decreased by \$700 from the initial account value, the funded trading account would be closed.

b. Tradenet’s “Student Day Trading Education Package” cost \$3,000 and included access to an \$80,000 funded trading account, in which the buyer would

receive 75% of the net profits generated in the funded trading account; if the account decreased by \$4,000 from the initial account value, the funded trading account would be closed.

c. Tradenet's "Expert Day Trading Education Package" cost \$6,000 and included access to a \$160,000 funded trading account, in which the buyer would receive 80% of the net profits generated in the funded account; if the account decreased by \$8,000 from the initial account value, the funded trading account would be closed.

d. Tradenet's "Pro Day Trading Education Package" cost \$9,000 and included access to a \$240,000 funded trading account, in which the Tradenet buyer would receive 85% of the net profits generated in the funded trading account; if the account decreased by \$12,000 from the initial account value, the funded trading account would be closed.

6. Other than purchasing the package from Tradenet, people did not pay or deposit any additional fees for setting up or maintaining the funded trading account.

7. From November 2017 through June 2020, more than 5,000 people in the United States purchased and operated funded trading accounts administered by Tradenet or its affiliates. Some U.S. people purchased multiple packages, re-purchasing after their funded trading account was closed due to a decrease in portfolio value. During that time period, U.S. people received more than \$1.7 million in payouts.

8. U.S. buyers paid Tradenet for the education packages (including access to the funded trading accounts) by transferring money to Tradenet's accounts in the United States and other countries.

9. Profits and losses in the simulated funded trading accounts were calculated each month, based on the difference between the month-end balance in the account and the account's initial value (i.e., \$14,000 for the Basic program, \$80,000 for the Student program, \$160,000 for the Expert program, and \$240,000 for the Pro program). The account balances were reduced by fees that simulated trading fees, which were \$.006 per share with a minimum of \$1.50 per ticket.

10. If the portfolio value decreased, the buyer could lose access to the funded trading account. Once the trading account reached its maximum allowed loss (i.e., \$700 for the Basic program, \$4,000 for the Student program, \$8,000 for the Expert program, or \$12,000 for the Pro program), any open positions in the trading account could be zeroed and the funded trading account permanently closed.

11. If the "portfolio" value increased, the buyer could request a payment. People were eligible to receive a percentage of the simulated profits generated in the funded trading account – ranging from 70% to 85% depending on the package that the person had purchased (the "payouts"). U.S. people received payouts, including wire transfers to U.S. bank accounts.

12. The portfolios were maintained and the securities prices tracked through a software system licensed by a U.S.-based company to a company affiliated with Tradenet. The

system was hosted on servers in the United States, and those servers were used by people – including U.S. people – to make their security selections and by both those people and Tradenet representatives to monitor the value of the securities in the portfolios.

13. Tradenet took no steps to determine whether people who contracted to open funded trading accounts were “eligible contract participants” as defined by the securities laws.¹ Tradenet representatives understood that many buyers were novice investors paying Tradenet to learn about how to trade securities.

14. No registration statements were in effect for the agreements to provide funding trading accounts. None of the agreements were effected on a national securities exchange.

B. Tradenet Ceased the Offer and Sale of Funded Trading Accounts to U.S. People in June 2020

15. In June 2020, Tradenet ceased offering and selling funded trading accounts as part of its education packages and removed information about the funded trading accounts from its website.

16. Tradenet offered no funded trading accounts after June 2020, and Tradenet arranged for all existing funded trading accounts with people in the United States to be canceled as of July 2020.

Legal Analysis

17. Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) was enacted to, among other things, enhance transparency and regulation in the over-the-counter derivatives market, including through several investor protection measures. Dodd-Frank added Section 5(e) of the Securities Act, which makes it unlawful for any person to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant without an effective registration statement. 15 U.S.C. § 77e(e). This requirement is intended to ensure that persons who are not eligible contract participants receive financial and other significant information to allow them to properly evaluate a transaction involving security-based swaps. Dodd-Frank also added Section 6(l) of the Exchange Act, which makes it unlawful for any person to effect transactions in security-based swaps to any person who is not an eligible contract participant unless the transaction is effected on a registered national securities exchange. 5 U.S.C. § 78f(l). This requirement was enacted in order to help ensure that these types of transactions occur only on exchanges subject to the highest level of regulation in order to benefit those investors, particularly providing price discovery mechanisms, access to relevant trading information, and the ability to ensure that the trading activity is appropriately surveilled.

¹ The definition of “eligible contract participant” includes categories of entities and individuals and, in certain cases, contains monetary thresholds. See 7 U.S.C. § 1a(18). For example, individuals need to have at least \$5 million and often \$10 million invested on a discretionary basis to qualify as eligible contract participants. See 7 U.S.C. § 1a(18)(xi).

A. The Contracts Offered and Sold by Tradenet Were Security-Based Swaps

18. The Commodity Exchange Act defines the term “swap” to include “any agreement, contract, or transaction”:

...

(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred.

7 U.S.C. § 1a(47) (Commodity Exchange Act section incorporated by reference into the securities laws).

19. The Exchange Act defines “security-based swap” as any agreement, contract, or transaction that is a swap as defined in the Commodity Exchange Act and is based on either: (1) an index that is a narrow-based security index, including any interest therein or on any value thereof, (2) a single security or loan, including any interest therein or on the value thereof, or (3) the occurrence, nonoccurrence, or extent of an occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer. See 15 U.S.C. § 78c(a)(68) (Exchange Act Section 3(a)(68)). A swap that is based on a portfolio of securities in which one party has the discretionary authority to change the composition of that portfolio is a swap on a “narrow-based security index,” and therefore a security-based swap. See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, Release No. 33-9338, 34-67453, 77 FR 48208 at 48285 (Aug. 13, 2012). The definition of “security-based swap” under the Securities Act is the same as the definition under the Exchange Act. See Rule 194 under the Securities Act.

20. Each contract for a funded trading account was a swap because it provided on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more securities and transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in

the underlying securities. Under the parties' agreement, the buyer paid a fee, which was a fixed amount, and then received a payment based on the value of one or more securities. The parties' agreement did not convey to the buyer any rights, title or interests in the reference assets that they picked for their portfolio. Instead, the payment due to the buyer merely tracked the value of the underlying reference assets.

21. In addition, the contracts were security-based swaps because they were based on the value of a security portfolio that was a "narrow-based security index," due to the fact that the buyer had the discretion to change the composition of the portfolio, including, for example, by adding or removing securities in the portfolio on an "at-will" basis.

B. Tradenet Offered and Sold Security-Based Swaps in Violation of Section 5(e) of the Securities Act

22. Tradenet offered to sell security-based swaps to U.S. people from at least November 2017 to June 2020 when its representatives marketed the funded trading accounts including through the company's website, YouTube, and elsewhere. Tradenet representatives in Israel and the United States communicated with potential U.S. buyers and encouraged them to buy the education packages that included the funded trading accounts, including encouraging people to purchase additional packages after their funded traded account had been closed. Tradenet sold security-based swaps to more than 5,000 U.S. buyers during that period. People in the U.S. agreed to the contract terms by executing an agreement on Tradenet's website and paid Tradenet through wire transfers, e-payments, or credit card payments.

23. No registration statements were in effect for the security-based swaps that Tradenet offered and sold.

24. Tradenet violated Section 5(e) of the Securities Act when it offered to enter into security-based swaps with U.S. investors who were not eligible contract participants and when it sold swaps to more than 5,000 U.S. persons who were not eligible contract participants because no registration statements were in effect for the offer and sale of the security-based swaps.²

² The Commission recognizes that there may be value in the development of investing and trading games designed to help investors acquire investing and trading skills. Importantly, investing and trading games do not, in and of themselves, trigger the registration requirements of the federal securities laws such as Section 5(e) of the Securities Act. Entering into an agreement that provides investors with a percentage of trading profits based on their securities selection could require registration, compliance with an exemption from registration, effecting the transaction on a national securities exchange, or exemptive relief by the Commission from registration or trading on an exchange. The facts of this matter demonstrate circumstances in which the Commission has an interest in ensuring that certain product offerings are properly registered with the Commission or deemed by the Commission to be exempt.

C. Tradenet Effected Transactions in Security-Based Swaps in Violation of Section 6(l) of the Exchange Act

25. Tradenet effected transactions in security-based swaps from at least November 2017 until June 2020. Tradenet entered into the contracts, and its representatives ran the business, including but not limited to (1) implementing the terms of the funded trading accounts, (2) finding U.S. investors and encouraging them to purchase, (3) marketing the contracts to U.S. investors on the company's website, YouTube, in direct communications, and elsewhere, (4) approving U.S. people who would be allowed to open funded trading accounts, (5) contracting for the software system and U.S. servers that allowed people to pick securities for their portfolio and allowing buyers and Tradenet representatives to track the price movement of securities, (6) receiving payments through Tradenet's bank account, and (7) paying U.S. people by wiring money to U.S. bank accounts.

26. Tradenet violated Section 6(l) of the Securities Act when it effected transactions in security-based swaps with U.S. persons who were not eligible contract participants that were not effected on a registered national securities exchange.

Tradenet's Remedial Efforts

27. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Tradenet and cooperation afforded to the Commission staff.

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 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Tradenet cease and desist from committing or causing any violations and any future violations of Section 5(e) of the Securities Act and Section 6(l) of the Exchange Act.

B. Respondent Tradenet shall, within five days of the entry of this Order, pay a civil money penalty in the amount of \$130,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21(F)(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

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 Tradenet Capital Markets Ltd. d/b/a Tradenet as 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 Daniel Michael, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

(4) 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, Respondent agrees that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they 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, Respondent agrees that they shall, within 30 days after entry of a final order granting the 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 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