

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

_____))
In the Matter of:))
))
TRADE EXCHANGE NETWORK,))
))
 Respondent.))
_____))

CFTC Docket No. 05-14

**ORDER INSTITUTING
PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE
COMMODITY EXCHANGE ACT
MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS.**

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I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that the Trade Exchange Network (“TEN” or “Respondent”) has violated Section 4c(b) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 6c(b) (2002), and Regulation 32.11 of the Commission’s Regulations, 17 C.F.R. § 32.11 (2004). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether TEN engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding and prior to any adjudication of any issues of fact or law by the Commission, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Respondent acknowledges service and consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”). Respondent consents to the use by the Commission of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondent does not consent to the use of its Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought in bankruptcy, or to enforce the terms of this Order. Respondent does not consent to the use of the Offer or the findings in this Order by any other person or entity in this or any other proceeding. The findings made in this Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From at least January 2003 through May 2005 (“the relevant period”), TEN, through the trading platform it operates for its Internet websites, offered for trading to U.S. residents contracts that constituted commodity options not excepted or exempted from the Commission’s ban on commodity options. Thus, TEN solicited and accepted orders for the purchase and sale of commodity options in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11, 17 C.F.R. § 32.11 (2004).

B. RESPONDENT

TEN is a private, limited liability company formed under the laws of Ireland and based in Dublin. TEN owns and operates an Internet-based trading platform that facilitates trading on its websites known as www.Tradesports.com, www.Intrade.com, and www.TradebetX.com, as well as the now-deactivated website, www.Wallstreetsports.com (the “affiliated websites”).² TEN is not regulated by any authority.

C. FACTS

TEN, through its websites, offers for trading to U.S. residents, as well as residents of all other nations, commodity option contracts. The contracts have a specific strike price and trade at values between 0 and 100. Traders buy and sell the contracts based on their belief as to whether the contract will settle closer to 0 or 100. For example, TEN offered a Gold Futures Year End 2005 contract that had a strike price of \$300. Traders bought the contract in anticipation that the year end closing price of gold futures would reach \$300, or they sold the contract in anticipation that the strike price would not be achieved. TEN’s websites offered other commodity option contracts including Daily Crude Oil, Light Sweet Crude Oil Futures Year End, Intraday Euro versus U.S. Dollar Rate, U.S. Dollar versus Yen Cash Rate, and Scheduled Federal Open Market Committee Rate Announcements.

During the relevant period, TEN actively solicited U.S. residents to trade its contracts. As part of its recruitment efforts, TEN retained an American resident based in the U.S. to market TEN’s products throughout the U.S. TEN ultimately developed a U.S. customer base that was approximately 33 – 40% of its total customer base.

² Wallstreetsports differed from the other websites in that it was a fantasy trading website that did not involve the exchange of money between traders. By March 2005, TEN had deactivated this website and now uses it solely to advertise its other three sites.

D. LEGAL DISCUSSION

TEN Offered for Trade to U.S. Customers Commodity Options in Violation of Section 4c(b) of the Act and Commission Regulation 32.11

TEN violated Section 4c(b) and Regulation 32.11 by soliciting and accepting orders from U.S. residents for commodity options not otherwise excepted or exempted from the Commission's ban on options. Commodity options were banned by the Commission in 1978, when it was determined that the offer and sale of options was rife with fraud. See Precious Metals Associates, Inc. v. CFTC, 620 F.2d 900, 906 (1st Cir. 1980); CFTC v. American Board of Trade, 803 F.2d 1242, 1247 (2d Cir. 1986); Rosenthal v. Bagley, 45 F. Supp. 1120, 1123 (N.D.Ill. 1978). Regulation 32.11 incorporates this ban by prohibiting the offer and sale of commodity options. TEN does not qualify for any exception or exemption to Regulation 32.11. Therefore, TEN's conduct in offering and selling commodity option contracts on the trading platform it operates through its websites violates Regulation 32.11.³

Section 4c(b) of the Act states that "[n]o person shall offer to enter into, enter into or confirm the execution of any transaction involving any commodity regulated under this Act which is the character of, or is commonly known to the trade as, an 'option' ... contrary to any rule, regulation, or order of the Commission prohibiting any such transaction." 7 U.S.C. § 6c(b). As TEN solicited and accepted orders for the purchase and sale of commodity options in violation of Regulation 32.11, 17 C.F.R. § 32.11, it also violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b).

IV.

FINDING OF VIOLATIONS

Based on the foregoing, the Commission finds that from January 2003 through May 2005, TEN violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.11, 17 C.F.R. § 32.11.

V.

OFFER OF SETTLEMENT

Respondent TEN has submitted an Offer in which, without admitting or denying the findings herein, it acknowledges service of the Order and admits jurisdiction of the Commission with respect to the matters set forth in the Order. In the Offer, Respondent waives (1) service and filing of a complaint and notice of hearing; (2) a hearing; (3) all post-hearing procedures; (4) judicial review by any court; (5) any objection to the staff's participation in the Commission's consideration of the Offer; (6) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (7) all claims which it may possess under the Equal Access to Justice Act, 5

³ Various exemptions from the commodity options ban relating to producer, trade and agricultural options are not relevant to the options offered by TEN through its trading platform because they do not fall within those exempt categories.

U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, et seq. (2004), relating to, or arising from, this action.

Respondent stipulates that the record basis on which this Order is entered consists solely of the findings in this Order, the entry of which it has consented to in the Offer. Pursuant to the Offer, Respondent consents to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that TEN shall: (1) cease and desist from violating the provisions of the Act and Commission Regulations that it has been found to have violated; (2); pay a civil monetary penalty of One Hundred Fifty Thousand dollars (\$150,000); and (3) comply with the conditions and undertakings as set forth in the Offer and incorporated in this Order herein. Upon consideration, the Commission has determined to accept the Offer.

VI.

COOPERATION

Based on the recommendation of the Division of Enforcement (the "Division"), the Commission, in the decision to accept the Offer, afforded substantial weight to the high level of cooperation Respondent displayed during the Division's investigation. At every stage of the Division's investigation, TEN responded fully and voluntarily. Thus, as part of its decision to impose reduced sanctions against Respondent, the Commission considered, among other factors, the following:

1. TEN took immediate steps to address the violations and implement an effective response to them, including measures to ameliorate the violations.
2. TEN, on its own, voluntarily removed numerous commodity option contracts from its websites.
3. TEN developed a computer program to assist it in achieving in the undertakings contained in this Order.
4. TEN responded to each Division inquiry for documents in a timely and complete fashion.
5. TEN hired and/or designated adequate staff and resources to enable it to respond quickly to the Division's requests.
6. TEN provided the Division with a financial analysis of its gain from the commodity option contracts.
7. TEN produced its corporate officer to meet with the Division to review and explain the known facts about the violations.
8. TEN made an additional witness available to the Division in a timely manner.

9. TEN implemented additional reasonable steps to reduce the likelihood of any recurrence of the violations.

10. TEN, in September 2004, began the process of submitting to the Commission an application seeking to have its newly incorporated U.S. business, an internet company known as Trade4Real, designated as a contract market. TEN took this measure in recognition of the need to be regulated by the Commission to offer certain products.

11. TEN has provided sufficient, credible assurances to the Division that the conduct is unlikely to recur.

VII.

Accordingly, IT IS HEREBY ORDERED THAT:

1. TEN cease and desist from violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.11, 17 C.F.R. § 32.11.

2. TEN pay a civil monetary penalty in the amount of One Hundred Fifty Thousand Dollars (\$150,000) within ten (10) business days of the date of the entry of this Order, and make such payment by electronic funds transfer to the account of the Commission at the United States Treasury, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581, under cover of letter that identifies TEN and the name and docket number of this proceeding. TEN shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory George Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. If payment is not made in accordance with the requirements of this paragraph, TEN shall be subject to further proceedings pursuant to Sections 6(c) and 6(e)(2) of the Act, 7 U.S.C. §§ 9 and 9a(e)(2) (2002), for violating a Commission Order.

3. TEN comply with the following conditions and undertakings as specified:

A. TEN shall inform residents of the United States and/or its territories of what contracts are unavailable to them for trade by utilizing a pop-up notice that will appear when such residents attempt to enter orders on those contracts.

B. TEN shall ensure that there will be no online connection in the form of an active URL web link between TEN's affiliated websites and its U.S.-incorporated business, Trade4Real and the Trade4Real website.

C. TEN shall continue to cooperate fully and expeditiously with the Commission, including the Division, in any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding or any current or future Commission investigation related thereto. As part of such cooperation, TEN agrees to:

(1) preserve in its possession, custody, or control as of the date of this Order, all documents regarding the trading by U.S. residents of its commodity option contracts as listed on its affiliated websites including but not limited to audio files, e-mails, and account information for a period of three (3) years from the date of this order; and

(2) comply fully, promptly, and truthfully to any inquiries or requests for information from the Commission, including but not limited to:

(i) requests for authentication of documents;

(ii) requests for any documents within TEN's possession, custody, or control, including inspection and copying of documents;

(iii) requests to produce any current (as of the time of the request) officer, director, employee, or agent of TEN, regardless of the employee's location and at such location that conserves Commission travel resources, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and

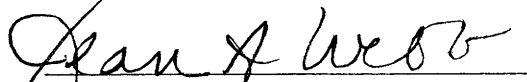
(iv) requests for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of TEN.

(3) not undertake any act that would limit its ability to fully cooperate with the Commission. TEN designates Michael Philipp, Esq., Winston & Strawn, LLP, 35 West Wacker Drive, Chicago, Illinois 60601-9703, to receive all requests for information pursuant to this undertaking. Should Respondent seek to change the designated person to receive such requests, notice shall be given in writing to the Division of such intention fourteen (14) days before it occurs. Any person designated to receive such request shall be located in the United States.

D. Neither TEN nor any of its agents shall take any action or make any public statement denying, directly or indirectly, any finding or conclusion in the Order, or creating or tending to create, the impression that the Order is without factual basis; provided, however, that nothing in this undertaking affects TEN's: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. TEN will take all steps necessary to assure that all of its agents under its authority or control understand and comply with this agreement.

The provisions of this Order shall be effective on its date.

By the Commission.



Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission

Dated:

September 29, 2005