

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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10:18 am, Jan 17, 2017

In the Matter of:

CNCGC HONG KONG LTD.,

Respondent.

CFTC Docket No. 17-05

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

I.

The Commodity Futures Trading Commission (“CFTC” or “Commission”) has reason to believe that CNCGC Hong Kong Ltd. (“CNCGC HK” or “Respondent”) violated Commission Regulation (“Regulation”) 19.02, 17 C.F.R. § 19.02 (2016), periodically, from March 2014 through August 2015 and on October 27, 2015 and January 26, 2016 (the “Relevant Period”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent 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, Respondent has submitted an Offer of Settlement of Respondent CNCGC Hong Kong Ltd. (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, Respondent 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”), and acknowledges service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

During the relevant period, CNCGC HK violated Regulation 19.02(a), 17 C.F.R. § 19.02(a) (2016), when the firm failed to file required Form 304 “Cotton On-Call Reports” showing the quantity of call cotton bought or sold on which the price has not been fixed, together with the respective futures on which the purchase or sale is based. Similarly, CNCGC HK violated Regulation 19.02(b), 17 C.F.R. § 19.02(b) (2016), by filing late Form 304 reports.

B. Respondent

CNCGC Hong Kong Limited, based in Wanchai, Hong Kong, is wholly owned by China National Cotton Group Corporation (“CNCGC”). CNCGC HK was formed in 2013 as the investment and trading platform for CNCGC, which specializes in the ginning, importing, warehousing and marketing of cotton. CNCGC HK has never been registered with the Commission.

C. Facts

CNCGC HK is a cotton merchant or dealer. Whenever cotton merchants or dealers hold or control at least 100 cotton futures positions, they are required by Regulations to file weekly CFTC Form 304 reports with the Commission setting forth their call cotton purchases and sales as of the close of business Friday, and are required to submit their CFTC Form 304 reports within two business days. On 53 occasions during the relevant period, CNCGC HK held or controlled at least 100 cotton futures positions, but failed to file CFTC Form 304 reports. Market Surveillance staff in the Commission’s Division of Market Oversight (“DMO”) advised CNCGC of its obligations on July 28, 2015 and, with two exceptions in which it was late filing reports – in October 2015 and January 2016 – CNCGC HK has timely filed the required Form 304 since mid-August 2015.

CNCGC HK fully cooperated during the Division of Enforcement’s investigation. Additionally, CNCGC has implemented a compliance program for timely reporting cotton transactions to the Commission in order to ensure that the firm files the required Form 304 each time it carries a position of 100 or more in any one cotton futures contracts.

IV.

LEGAL DISCUSSION

Pursuant to Regulation 19.00(a)(2), 17 C.F.R. § 19.00(a)(2) (2016), cotton merchants and dealers that hold or control reportable cotton futures positions under Regulation 15.00(p)(1)(i), 17 C.F.R. § 15.00(p)(1)(i) (2016), are required to file series ’04 reports. Regulation 15.00(p)(1)(i), in relevant part, defines a reportable position as any open contract position that meets or exceeds the level set forth in Regulation 15.03, 17 C.F.R. § 15.03 (2016), in any one

futures contract on any reporting market at the close of the market on any business day. For cotton futures positions, Regulation 15.03, 17 C.F.R. § 15.03 (2016), establishes 100 contracts as the reporting level.

For cotton merchants and dealers with reportable positions, “CFTC Form 304 reports showing the quantity of call cotton bought or sold on which the price has not been fixed, together with the respective futures on which the purchase or sale is based” must be filed. 17 C.F.R. § 19.02(a) (2016). Call cotton refers to “spot cotton bought or sold, or contracted for purchase or sale at a price to be fixed later based upon a specified future.” 17 C.F.R. § 19.02(a) (2016). Each CFTC Form 304 report must be “made weekly as of the close of business on Friday and filed . . . not later than the second business day following the date of the report.” 17 C.F.R. § 19.02(b) (2016). *See also* CFTC Staff Advisory No. 13-14 (“*Obligation of Reportable Market Participants to File CFTC Form 304 Reports for Call Cotton in a Timely Manner as Required by Commission Regulation 19.02*”) (DMO May 8, 2013).

By failing to file CFTC Form 304 reports as set forth above, CNCGC HK violated Regulation 19.02 (a) and (b). *See* 17 C.F.R. § 19.02(a), (b) (2016).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the relevant period, Respondent violated Regulation 19.02(a) and (b), 17 C.F.R. § 19.02(a), (b) (2016).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post- hearing procedures;
 - 4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2016), relating to, or arising from, this proceeding;
 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121 §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims 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;
 9. any claims of sovereign immunity based on its status as a "foreign state," under the Foreign Sovereign Immunity Act ("FSIA"), 28 U.S.C. § 1604.
- D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Regulation 19.02, 17 C.F.R. § 19.02 (2016);
 2. Orders Respondent to cease and desist from violating Regulation 19.02, 17 C.F.R. § 19.02 (2016);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000), plus post-judgment interest; and
 4. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and set forth below in Section VII of this Order.

Upon consideration, the Commission has determined to accept Respondent's Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulation 19.02, 17 C.F.R. § 19.02 (2016).

- B. Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) (“CMP Obligation”) within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid within ten (10) days of the date of the entry of this Order, then post-judgment interest shall accrue commencing on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation by making electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC/AMZ 341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
(405) 954-5644 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously submit copies of the cover letter and the form of payment to: (1) Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, New York 10005.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings as set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors or assigns, nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any finding or conclusion in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent’s: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this undertaking.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone numbers or mailing addresses within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 17, 2017