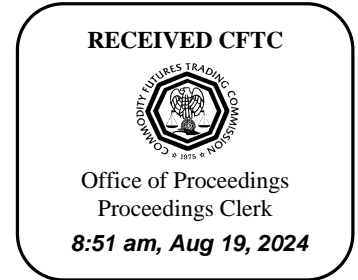


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



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**In the Matter of:** )  
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 )  
**RAIZEN ENERGIA SA,** )  
**RAIZEN TRADING SA,** ) **CFTC Docket No. 24-15**  
 )  
**Respondents.** )  
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING  
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

**I. INTRODUCTION**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from March 2022 to September 2022 (“Relevant Period”), Raizen Energia SA (“Raizen Energia”) and Raizen Trading SA (“Raizen Trading”) (collectively, “Respondents” or “Raizen”) violated Section 4c(a)(1) and (2)(A) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(a)(1), (2)(A), and Commission Regulation (“Regulation”) 1.38(a) (2023). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondents admit the facts set forth in Section II below, acknowledge that their conduct violated the Act and Regulations, consent to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledge service of this Order.<sup>1</sup>

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<sup>1</sup> Respondents agree that the findings of fact and conclusions of law in this Order shall be taken as true and correct and be given preclusive effect without further proof in this proceeding and any other proceeding brought by the Commission or to which the Commission is a party or claimant, including but not limited to, a proceeding in bankruptcy or receivership. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

On forty-four occasions during the Relevant Period, Raizen Energia and Raizen Trading executed exchange of futures for physical transactions (“EFPs”)<sup>2</sup> in which Raizen Energia was the buyer and Raizen Trading was the seller, even though their accounts were not independently controlled. All of these EFPs were executed on ICE Futures U.S., Inc. (“IFUS”). By this conduct, Respondents executed wash sales in violation of Section 4c(a)(1) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(1), (2)(A). In addition, because the EFPs were executed in a manner that avoided the market risk and price competition that open, competitive trading entails, and because the EFPs were not executed in accordance with the rules of IFUS, Raizen executed illegal noncompetitive trades in violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023).

### B. RESPONDENTS

Respondent **Raizen Energia** is a Brazilian energy company and sugar producer and exporter. It produces, buys, and sells physical sugar, and engages in derivatives transactions both speculatively and to manage risk. Raizen Energia owns Respondent Raizen Trading.

Respondent **Raizen Trading** is a Swiss company that buys and sells physical sugar, and engages in derivatives transactions both speculatively and to manage risk.

Neither Respondent has ever been registered with the Commission in any capacity.

### C. FACTS

Raizen Energia and Raizen Trading engage in sugar trading activities as part of Raizen’s global sugar business. During the Relevant Period, both Raizen Energia and Raizen Trading engaged in physical sugar transactions and sugar derivatives transactions. Although Raizen Energia and Raizen Trading are different entities and engage in business separately, their sugar derivatives trading accounts were operated and controlled by the same trading desk and the same traders.

From March 2022 to September 2022, Raizen Energia and Raizen Trading executed forty-four sugar EFPs in which Raizen Energia was the buyer and Raizen Trading was the seller. In the aggregate, these EFPs accounted for more than 50,000 sugar futures contracts and were worth more than \$1 billion. The EFPs involved the intercompany transfer of physical sugar from one Raizen entity to another. In addition, the EFPs were executed to offset futures positions that

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<sup>2</sup> An EFP is a transaction involving a simultaneous exchange of a futures position for a corresponding cash position at a price difference mutually agreed upon—*i.e.*, one party buys the physical commodity and simultaneously sells (or gives up) a long futures contract, while the other party sells the physical commodity and simultaneously buys (or receives) a long futures contract.

Raizen had taken to hedge the price risk associated with the physical sugar contracts related to the intercompany transfers.

The Act and Regulations permit noncompetitive trading, such as EFPs, only if such transactions are conducted in accordance with the rules of an exchange that are approved by the Commission. At all times relevant to this Order, IFUS rules only permitted the transaction of EFPs between accounts that are independently controlled.

### **III. LEGAL DISCUSSION**

#### **A. Respondents Entered into Wash Sales in Violation of Section 4c(a)(1) and (2)(A) of the Act**

Section 4c(a)(1) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(1), (2)(A), in part, makes it “unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction” involving commodity futures that “is of the character of, or is commonly known to the trade as, a ‘wash sale.’” A wash sale is a form of fictitious sale. *In re Gimbel*, CFTC No. 84-40, 1988 WL 232267, at \*1 (Apr. 14, 1988), *aff’d as to liability sub nom. Gimbel v. CFTC*, 872 F.2d 196 (7th Cir. 1989). “The Commission also remains of the view that transactions initiated with an intent to avoid bona fide trading transactions that result in a ‘wash’ of the constituent positions are wash sales under Section 4c(a)(A) without regard to the motivation for the particular transaction.” *Id.* at \*4 n.6. “EFPs that are equal and offsetting in quantity and price, where the same entity, or beneficial owner or controller is on both sides of the transactions, constitute ‘wash sales’ within the meaning of Section 4c(a) of the Act.” *In re SG Americas Securities*, CFTC No. 16-33, 2016 WL 5682204, at \*3 (Sep. 28, 2016) (consent order) (citing *In re Noble Americas Corp.*, CFTC No. 10-12, 2010 WL 1803817 (May 3, 2010) (consent order)).

To establish that a wash sale has occurred, the Commission must initially demonstrate that the transaction at issue achieved a wash result. The Commission may demonstrate that the trades resulted in a wash by showing: “(1) the purchase and sale (2) of the same delivery month of the same futures contract (3) at the same (or a similar) price.” *Wilson v. CFTC*, 322 F.3d 555, 559 (8th Cir. 2003) (citing *In re Gilchrist*, CFTC No. 83-58, 1991 WL 83518, at \*9 (Jan. 25, 1991)).

In addition to the factors enumerated in *Gilchrist*, intent must be proven to establish a violation of Section 4c of the Act. *See, e.g., Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999). On its own, the fact that the same entity, beneficial owner, or controller was on both sides of an EFP suggests there was an intent to avoid price competition and market risk. *See In re RBC Cap. Mkts., LLC*, CFTC No. 19-47, 2019 WL 4915920, at \*6 (Sept. 30, 2019) (consent order) (citing *In re Three Eight Corp.*, CFTC No. 88-33, 1993 WL 212489, at \*10 (June 16, 1993)). “Likewise, an EFP for the same contract, quantity and same or similar price—i.e., a wash result—reflects an intent to avoid market risk and price competition.” *RBC Cap. Mkts.*, 2019 WL 4915920, at \*6.

Respondents knowingly executed forty-four EFPs between accounts that were not independently controlled and that achieved a wash result. Accordingly, Respondents violated

Section 4c(a)(1) and (2)(A) of the Act by entering into transactions of the character of, and commonly known as, wash sales.

**B. Respondents Executed Noncompetitive Trades in Violation of Commission Regulation 1.38(a)**

Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023), generally requires that all purchases and sales of commodity futures be executed “openly and competitively.” The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts. *In re Summerhaven Inv. Mgmt. LLC*, CFTC No. 21-07, 2021 WL 3195869, at \*4 (May 18, 2021) (consent order).

Noncompetitive trades are also a type of fictitious sale because they negate the risk incidental to an open and competitive market. *In re Fisher*, CFTC No. 93-2, 2004 WL 584216, at \*3 n.11 (Mar. 24, 2004); *see also In re Copersucar Trading A.V.V.*, CFTC No. 17-22, 2017 WL 3588915, at \*3-4 (Aug. 15, 2017) (consent order) (structuring and transferring positions between proprietary accounts constituted violations of Regulation 1.38(a)).

The requirement that transactions be executed “openly and competitively” does not apply to transactions executed “in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions.” Regulation 1.38(a). If a noncompetitive trade does not qualify for an exchange rule exception, it violates Regulation 1.38(a). *See RBC Cap. Mkts.*, 2019 WL 4915920, at \*7. During the Relevant Period, IFUS Rule 4.06(b) permitted EFP transactions under certain conditions. *See Exchange for Related Positions*, ICE Futures U.S., Inc. Trading Rules, Rule 4.06(b). As relevant here, IFUS Rule 4.06(b)(iv) only permitted EFPs between “independently controlled accounts.” *Id.* at Rule 4.06(b)(iv).<sup>3</sup> At no time relevant to this Order did IFUS rules approved by the Commission permit EFPs between accounts operating under common control.

Because Raizen Energia’s and Raizen Trading’s futures accounts were controlled by the same trading desk and the same traders, those accounts were not “independently controlled accounts,” and thus transactions between those accounts could not be executed in accordance with IFUS Rule 4.06. By executing forty-four sugar EFPs between March 2022 and September 2022 in which Raizen Energia was the buyer and Raizen Trading was the seller, Respondents violated Regulation 1.38(a).

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<sup>3</sup> Rule 4.06(b)(iv) provides that “[t]he accounts involved in the execution of an EFRP Transaction must be (A) independently controlled with different beneficial ownership; or (B) independently controlled accounts of separate legal entities with the same beneficial ownership; or (C) independently controlled accounts within the same legal entity, provided that the account controllers operate in separate business units.” *Id.* In each of the exceptions provided for in Rule 4.06(b)(iv), independent control of the accounts is required.

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Section 4c(a)(1) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(1), (2)(A), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023).

#### **V. OFFER OF SETTLEMENT**

Respondents have submitted the Offer in which they knowingly and voluntarily:

- A. Consent to the resolution of this matter in an administrative proceeding;
- B. Acknowledge service of this Order;
- C. Admit the facts described in Section II above and acknowledge that their conduct violated the Act and Regulations;
- D. Admit 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;
- E. Waive:
  1. The filing and service of a complaint and notice of hearing;
  2. A hearing;
  3. All post-hearing procedures;
  4. Any and all rights or defenses that they have or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;
  5. Judicial review by any court;
  6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  7. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this proceeding;
  8. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

9. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- F. Acknowledge that the Commission is the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in subpart 7 of paragraph E above;
  - G. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
  - H. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
    1. Makes findings by the Commission that Respondents violated Section 4c(a)(1) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(1), (2)(A), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023);
    2. Orders Respondents to cease and desist from violating Section 4c(a)(1) and (2)(A) of the Act and Regulation 1.38(a);
    3. Orders Respondents to pay a civil monetary penalty in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00), plus post-judgment interest, according to the terms set forth below; and
    4. Orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order; and
  - I. Represent that they have already implemented remedial measures to ensure that further violations do not occur, including, but not limited to, the following:
    1. Ceasing the execution of EFPs between Raizen entities;
    2. Formulating a written compliance manual;
    3. Conducting training sessions on compliance with U.S. law;
    4. Developing annual training programs;
    5. Retaining additional compliance personnel, including retaining in-house counsel located in the U.S. responsible for all aspects related to market and futures exchanges regulation; and
    6. Creating an email compliance "hotline," through which Raizen employees can report compliance concerns.

Upon consideration, the Commission has determined to accept the Offer.

## **VI. ORDER**

### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondents and their successors and assigns shall cease and desist from violating Section 4c(a)(1) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(1), (2)(A), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023).
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of seven hundred fifty thousand dollars (\$750,000.00) (“CMP Obligation”), within ten (10) days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning 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.
- C. Respondents shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
6500 S. MacArthur Blvd.  
HQ Room 266  
Oklahoma City, OK 73169  
9-amz-ar-cftc@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact the Federal Aviation Administration at the email address above to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

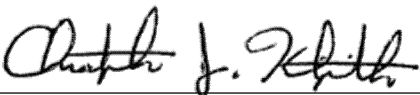
- D. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
  - 1. Cooperation, in General: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission’s Division of Enforcement, in this action. Respondents shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

2. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their 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 Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.
4. Notice to Creditors: Until such time as Respondents satisfy in full their CMP Obligation, upon the commencement by or against Respondents of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondents' debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission  
Office of the General Counsel  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street N.W.  
Washington, DC 20581

**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: August 19, 2024