

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

CHS, Inc.,

Respondent.

CFTC Docket No. 19-52

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Office of Proceedings
Proceedings Clerk

8:32 pm, Sep 30, 2019

**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 CHS, Inc. (“CHS” or “Respondent”) violated a prior Commission Order and Commission Regulation (“Regulation”) 19.01, 17 C.F.R. § 19.01 (2018). 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.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents 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 acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does 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

CHS filed with the Commission incorrect Form 204 reports on a monthly basis from at least January 2016 to January 2019 (the “Relevant Period”). These Form 204 reports related to corn and soybean meal futures contracts and constituted thirty-seven individual monthly Form 204 reports. By filing these incorrect Form 204 reports, CHS violated Regulation 19.01, 17 C.F.R. § 19.01 (2018), as well as the cease-and-desist provision of a prior Commission Order, filed in March 2016,² which involved a thirteen-year failure to file correct Form 204 reports with the Commission.

In accepting the Offer, the Commission recognizes CHS’s self-reporting, cooperation, and remediation in the form of a substantially reduced civil monetary penalty.

B. RESPONDENT

CHS, Inc. (“CHS”) is a Minnesota cooperative corporation with its headquarters in Inver Grove Heights, Minnesota. CHS is a global agribusiness owned by farmers, ranchers, and cooperatives across the United States. CHS is listed with the National Futures Association as a principal of CHS Hedging LLC, a registered futures commission merchant since 1986.

C. FACTS

1. The CFTC Order

In March 2016, the CFTC entered an Order against CHS (“March 2016 Order”) which found that CHS had violated Regulation 19.01 by failing to submit correct Form 204 reports for a thirteen-year period. The Commission ordered CHS to pay a \$1 million civil monetary penalty, and required CHS to cease and desist from violating Regulation 19.01.

2. The Current Violations

Subsequent to the entry of the CFTC Order, CHS continued to experience difficulty submitting correct Form 204 reports.³ These difficulties stemmed in part from a number of steps

² *CFTC v. CHS, Inc.*, CFTC No. 16-07, 2016 WL 929428 (Mar. 9, 2016) (“CFTC Order”).

³ Entities are required to file Form 204 reports if they: (1) hold or control reportable futures and options positions in certain agricultural commodities—including wheat, corn, oats, soybeans, soybean oil, and soybean meal; and (2) any part of those positions constitute bona fide hedging positions. In the Form 204 reports, entities are required to show the composition of their fixed price cash position of each such commodity hedged. Form 204 reports are filed monthly, as of the close of business on the last Friday of the month, and show the composition of the reporting entity’s fixed price cash position of each commodity hedged, including the quantity of open fixed price purchase and fixed price sale commitments in such cash commodities. As the instructions for the Form 204 reports state, the filer is to “[r]eport in thousands of bushels the entire quantity of cash stocks owned and open fixed price cash purchases and cash sales of the commodity and its products and byproducts.” One purpose of the Form 204 report is to check compliance with speculative position limits by ensuring that filers that classify their futures positions as hedging actually own or control offsetting cash positions.

CHS took to replace its enterprise software, which among other things, would automate the Form 204 report process.

Following the March 2016 Order, CHS began auditing the various inputs into the reports for compliance. These inputs came from, among other things, certain of CHS's divisions and subsidiaries. During this process, CHS discovered four categories of errors:

- In January 2018, CHS discovered an incorrect conversion formula in the Country Operations Division's Form 204 aggregation spreadsheet resulting in an overstatement of "corn other" inventory positions;
- In February 2018, CHS discovered a defective code in the new enterprise software CHS had begun migrating and automating all its data, including soybeans, soybean meal, soybean oil, and soybean "other" inputs to the Form 204 report. This defective code was creating errors in the Processing & Food Ingredients Division's position;
- In June 2018, CHS discovered that when the Renewable Fuels Division had biodiesel inventory, it was inadvertently included in the ethanol inventory number. That error created an overstatement of "corn other" inventory on certain Form 204 report submissions; and
- Also in June 2018, CHS discovered a conversion formula error resulting in an overstatement of soybean meal positions on the Form 204 reports.

In May 2018, CHS self-reported the Form 204 report errors it was aware of to the Commission. Subsequently, CHS continued auditing its Form 204 reports and apprised the Commission when it discovered new information, which included briefings on the reporting errors and proposed remediation plans. During these meetings, CHS accepted responsibility for its failures, was forthcoming and responsive in connection with questions regarding the violations and remediation, and performed an analysis to determine if any position limits violations had occurred as a result of the erroneous Form 204 reports.

After a complete evaluation, CHS was able to determine that it had filed thirty-seven inaccurate Form 204 reports over a three-year period before it was able to correct the errors. CHS submitted all corrected Form 204 reports on February 21, 2019. These corrected reports spanned January 29, 2016, to January 25, 2019.

These inaccurate Form 204 reports brought CHS into violation of the March 2016 Order before the March 2016 Order was issued by the Commission, as CHS began to remediate violations through automation. Accordingly, this matter might normally have resulted in a civil monetary penalty in excess of the one ordered in the March 2016 Order. However, the Division recognizes that CHS itself discovered the Form 204 reporting errors and promptly self-reported the issue to the Commission, even as CHS continued to investigate the scope of the potential violations. These types of Form 204 report errors were likely not of the type that the Commission would have detected otherwise. Moreover, CHS cooperated with the Division in its investigation by, among other things, identifying and providing the complete facts about the nature and scope of the reporting violations in a timely manner and proactively remediating. Accordingly, the civil monetary penalty here is substantially reduced to reflect CHS's self-reporting of its violations, full cooperation, and substantial remediation.

III. LEGAL DISCUSSION

A. VIOLATION OF PRIOR COMMISSION ORDER

Section 6c of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13a-1 (2012), authorizes the Commission to bring an enforcement action for violations of its orders in the same manner as for violations of the Act or Regulations.⁴ On March 9, 2016, the Commission issued the CFTC Order filing and settling charges against CHS for filing incorrect Form 204 reports on a monthly basis with the Commission that did not comply with statutory requirements.

Section VII.A of the CFTC Order ordered CHS to cease and desist from further violations of Regulation 19.01, 17 C.F.R. § 19.01 (2016). During the Relevant Period, CHS submitted incorrect Form 204 reports on thirty-seven occasions, all in violation of the CFTC Order.

B. VIOLATION OF REGULATION 19.01

1. Statutory Background

Regulation 19.00(a)(1), 17 C.F.R. § 19.00(a)(1) (2018), requires that persons holding or controlling futures and options positions in certain agricultural commodities that are reportable pursuant to Regulation 15.00(p)(2), 17 C.F.R. § 15.00(p)(2) (2018), and any part of which constitute *bona fide* hedging positions as defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018), must file Form 204 reports showing the composition of the fixed price cash position of each such commodity hedged (the “Form 204 commodities,” which include wheat, corn, oats, soybeans, soybean oil and soybean meal). Reportable positions under Regulation 15.00(p)(2) are any combined futures and futures-equivalent option open contract position as defined in Part 150 of the Regulations, 17 C.F.R. pt. 150 (2018), in any one month or in all months combined, either net long or net short in any commodity on any one reporting market, which positions at the close of the market on the last business day of the week exceed the net quantity limit in spot, single or in all-months fixed in Regulation 150.2, 17 C.F.R. § 150.2 (2018), for the Form 204 commodities.

2. Violations

During the Relevant Period, CHS held reportable positions in Form 204 commodities and was required by Regulation 19.00(a)(1) to file Form 204 reports. Regulation 19.01 requires Form 204 reports to show the quantities of the fixed price purchase and sale open cash positions for each of the Form 204 commodities hedged.

⁴ Section 6c of the Act authorizes the Commission to bring an action for injunctive relief in federal district court for violations of “any provision of this chapter, or any rule, regulation, or order thereunder.”

During the Relevant Period, CHS, submitted Form 204 reports which did not accurately state the quantities of CHS's fixed price open cash positions as required by Regulation 19.01. Therefore, CHS violated Regulation 19.01 on numerous occasions.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the relevant period, Respondent violated Section VII.A of the CFTC Order and Regulation 19.01, 17 C.F.R. § 19.01 (2018).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges 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. pt. 148 (2018), 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, 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
 - 8. 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;

- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which 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 the CFTC Order;
 - 2. Makes findings by the Commission that Respondent violated Regulation 19.01, 17 C.F.R. § 19.01 (2018);
 - 3. Orders Respondent to cease and desist from violating the CFTC Order and Regulation 19.01;
 - 4. Orders Respondent to pay a civil monetary penalty in the amount of five-hundred thousand dollars (\$500,000), plus post-judgment interest; and
 - 5. Orders Respondent and its 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.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent cease and desist from violating the CFTC Order and Regulation 19.01, 17 C.F.R. § 19.01 (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of five-hundred thousand dollars (\$500,000) (CMP Obligation), within ten days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this 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 (2012).

Respondent 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
Division of Enforcement
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office

(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

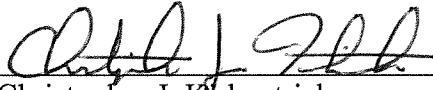
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies 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.

- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions 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 shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
 2. Periodic Reporting: Respondent represents that while it is continuing to perfect its enterprise software conversion, CHS has employed a separate automated system on which it will rely for its Form 204 reporting. Until such time as the Respondent perfects its enterprise software conversion in full, Respondent will report to the Commission every six months on its efforts and the effects, if any, such conversion has on its reporting obligations.
 3. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.
 4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Monitor of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his 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.
 5. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Consent Order, Respondent shall provide

written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten 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: September 30, 2019