

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Sukarne SA de CV,

Respondent.

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) **CFTC Docket No. 20-60**
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Office of Proceedings
Proceedings Clerk

7:54 am, Sep 18, 2020

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

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Sukarne SA de CV (“Respondent”) violated Section 4a(e) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6a(e) (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 violation 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 (“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.

III.

The Commission finds the following:

A. Summary

On June 23, 2020, Respondent held a net short position in the Chicago Mercantile Exchange's ("CME") June 2020 live cattle ("cattle") futures contract in excess of the spot month speculative position limit established by CME, in violation of Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2018).

B. Respondent

Sukarne SA de CV is a Mexico based meat processor. It has never been registered with the Commission.

C. Facts

CME Rules 559 (Position Limits and Exemptions) and 10102.E (Live Cattle Position Limits, Exemptions, Position Accountability and Reportable Levels), in effect for the June 2020 live cattle futures contract, imposed a spot-month position limit of 300 contracts long or short, effective at the close of trading on the business day prior to the last 5 trading days of the contract month, which in this case was the close of trading on June 23, 2020.²

At the close of trading on June 23, 2020, the business day prior to the last 5 trading days of the contract month, Respondent held an open position of 500 contracts short. Respondent's position thus exceeded the 300-contact spot limit set forth in CME Rules 559 and 10102.E by 200 contracts.

On June 24, 2020, Respondent came into compliance with the spot month position limits. Respondent then continued abide by the spot month position limits for the remainder of the expiration, including a step down from a 300 to 200 contract limit in effect on June 26, 2020. Respondent ultimately traded out of its position on June 29, 2020, the day before the last trading day.

IV.

A. Legal Discussion

Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2018), in relevant part, makes it unlawful for any person to "violate any bylaw, rule, regulation, or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission . . . fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities if such bylaw, rule, regulation, or

² CME Rule 10102.E. incorporates the Position Limits, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5 of CME Rules.

resolution has been approved by the Commission or certified by a registered entity.” CME is a registered entity defined by 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018), and a designated contract market for the Live Cattle futures contract pursuant to Section 5 of the Act, 7 U.S.C. § 7 (2018).

By holding positions exceeding the spot-month position limit of 300 contracts long or short fixed by CME Rules 559 and 10102.E, effective at the close of trading on the business day prior to the last 5 trading days of the contract month, Respondent violated Section 4a(e) of the Act. The Commission does not need to establish scienter—i.e., proof of intent to exceed the applicable speculative position limit—in order to prove a violation of the Section 4a(e) of the Act. *Saberi v. CFTC*, 488 F.3d 1207, 1212 n. 4 (9th Cir. 2007). The Act “unambiguously imposes liability” for violations of speculative position limits. *Id.* at 1212 (rejecting trader’s contention that the Division was required to prove that he intended to violate the speculative position limits in frozen pork bellies futures set forth in Chicago Mercantile Exchange Rule 8032.E) (citing *Hunt*, 591 F.2d at 1218).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2018).

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 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), 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, §§ 201-53, tit. II, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2812 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;
- 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 Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2018);
 2. Orders Respondent to cease and desist from violating Section 4a(e) of the Act;
 3. Orders Respondent to pay a civil monetary penalty in the amount of thirty five thousand dollars (\$35,000), plus post-judgment interest;³ and
 4. 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 VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2018).

³ Consistent with the Division's Civil Monetary Penalty Guidance issued on May 20, 2020, in determining whether to accept the Respondent's Offer of Settlement, the Commission considered the sanctions imposed by Chicago Mercantile Exchange in its related disciplinary action against Respondent, captioned CME 20-1344-BC, effective September 18, 2020.

- B. Respondent shall pay a civil monetary penalty in the amount of thirty five thousand dollars (\$35,000) (“CMP Obligation”), plus post-judgment interest, within ten days of the date of the 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 (2018).

Respondent shall pay the CMP Obligation 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.
HQ Room 181
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 and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

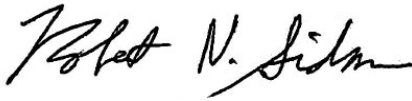
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control, shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, 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 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 agreement.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's 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 Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its 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.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 18, 2020