

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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12:17 pm, Jun 15, 2021

In the Matter of:)

Amaggi Exportação e Importação)
Ltda.,)

Respondent.)
_____)

CFTC Docket No. 21-10

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 in or about January 2018 to at least January 2021 (“Relevant Period”), Amaggi Exportação e Importação Ltda. (“Respondent” or “Amaggi”) violated Regulation 19.01, 17 C.F.R. § 19.01 (2020). 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

During the Relevant Period, Respondent failed on at least thirteen occasions to file CFTC Form 204 reports setting forth the composition of their fixed price soybean positions, as required by Regulations 19.00(a)(1) and 19.01, 17 C.F.R. §§ 19.00(a)(1), 19.01 (2020), until being prompted by Commission staff to file them. Moreover, on at least eight of those occasions, the Form 204s filed by Respondent contained inaccurate information that Respondent did not correct until February 2021.

B. RESPONDENT

Amaggi Exportação e Importação Ltda. is a private company formed in Brazil and part of the Grupo Amaggi, one of the largest soybean producers in the world. Amaggi has never been registered with the Commission.

C. FACTS

During at least thirteen months during the Relevant Period, Respondent held or controlled soybean futures positions that were reportable pursuant to Regulation 15.00(p)(2), 17 C.F.R. § 15.00(p)(2) (2020), and, based on records provided by Respondent, constituted *bona fide* hedging positions as defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020). Therefore, Respondent was required to file Form 204 reports within three business days of the last Friday of each such month pursuant to Regulations 19.00(a)(1) and 19.01, 17 C.F.R. §§ 19.00(a)(1), 19.01 (2020). On all thirteen of these occasions, however, Respondent failed to timely file the Form 204 reports and did not file the reports until prompted by Commission staff.² In addition, eight of the Form 204s submitted by Respondent incorrectly stated its soybean positions. After Commission staff identified likely errors in the reports Respondent filed, Respondent submitted corrected Form 204s in February 2021.

III. LEGAL DISCUSSION

Regulation 19.00(a)(1), 17 C.F.R. § 19.00(a)(1) (2020), 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) (2020), and any part of which constitute *bona fide* hedging positions as defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020), 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).³ Reportable positions under Regulation 15.00(p)(2) are any

² Respondent failed to file timely Form 204 reports for the following months: January–May 2018, October 2019, April–June 2020, and October 2020–January 2021.

³ On October 15, 2020, the Commission adopted a new rule that, *inter alia*, prospectively will relieve hedgers of the obligation to file Form 204s because the Commission will collect the relevant data from

combined futures and futures-equivalent option open contract positions as defined in Part 150 of the Regulations, 17 C.F.R. pt. 150 (2020), 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 all-months fixed in Regulation 150.2, 17 C.F.R. § 150.2 (2020), for the Form 204 commodities.

The filing requirement is longstanding. In fact, in 2013, the CFTC's Division of Market Oversight issued an advisory regarding the obligation of market participants to submit accurate Form 204 Reports. See CFTC Staff Advisory No. 13-42, *Obligation of Reportable Market Participants to File CFTC Form 204 Reports* (July 8, 2013). As noted, a purpose of the Form 204 report has been 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.

By failing to timely file Form 204 reports on thirteen occasions, including eight reports that failed to accurately report Respondent's fixed price cash positions of each commodity hedged, as set forth above, Respondent violated Regulation 19.01, 17 C.F.R. § 19.01 (2020).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Regulation 19.01, 17 C.F.R. § 19.01 (2020).

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;

exchanges. *Position Limits; Final Rule*, 86 Fed. Reg. 3236, 3246 (Oct. 15, 2020). The rule became effective after the Relevant Period, on March 15, 2021, and market participants must continue filing Form 204s until exchanges implement the new reporting regime required under the rule, no later than January 1, 2022. *Id.* at 3248–49.

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 (2020), 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.
- 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 19.01, 17 C.F.R. § 19.01 (2020);
 2. Orders Respondent to cease and desist from violating Regulation 19.01;
 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred seventy-five thousand dollars (\$175,000), plus post-judgment interest within ten days of the date of entry of this Order; 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 VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent, and its successors and assigns, shall cease and desist from violating Regulation 19.01, 17 C.F.R. § 19.01 (2020).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred seventy-five thousand dollars (\$175,000) ("CMP Obligation"), 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 unpaid portion of 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 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.
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 comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents 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 or the Monitor of any partial payment of Respondent's

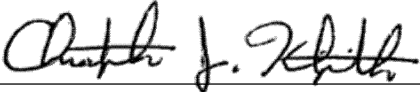
Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

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 number and mailing address within ten calendar days of the change.
4. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's 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
Legal Division
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: June 15, 2021