

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

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11:45 am, Mar 27, 2017

IN THE MATTER OF:

**DAVISCO FOODS
INTERNATIONAL, INC.**

CFTC DOCKET NO. 17-11

RESPONDENT.

**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 (“Commission”) has reason to believe that Davisco Foods International, Inc. (“Respondent”) violated Section 4d(a)(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6d(a)(1) (2012). 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 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 or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in 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 or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

For a number of years, from at least May 2011 and continuing through at least October 2014 (“the relevant period”), Davisco accepted orders from its milk suppliers for the purchase and sale of domestic, exchange-traded, commodity futures contracts in connection with a hedging program it offered to its suppliers. Davisco executed these orders on behalf of these suppliers in Davisco’s own trading accounts. In connection with these orders, suppliers received debits and credits to the suppliers’ accounts with Davisco. As such, Davisco acted as a futures commission merchant (“FCM”) without being registered as an FCM. By virtue of this conduct and the further conduct described herein, Davisco violated Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1).

B. RESPONDENT

Davisco Foods International, Inc. (“Davisco”) was a cheese and food ingredient company based in Le Sueur, Minnesota during the relevant period. Davisco has never been registered with the Commission in any capacity.

C. FACTS

Beginning in at least May 2011, Davisco acted as a futures commission merchant (“FCM”) without being registered. Davisco routinely accepted and placed orders on behalf of its milk suppliers for CME Class III Milk futures contracts. The milk suppliers received credits and debits to their Davisco accounts based upon the settlement price of those contracts.

Davisco suppliers signed a “Milk Patron Agreement,” which contained an option to enter into a “Futures Milk Contracting Program.” Suppliers who signed up for this program placed orders with Davisco for CME Class III Milk futures contracts. Davisco then submitted these orders to its broker. Davisco adjusted its payments to the milk suppliers based upon the settlement price of the Class III Milk futures contract positions that Davisco had entered into on their behalf. While it solicited and accepted funds, Davisco did so only as a pass-through, and any profit or loss was reflected in the Milk Patrons’ accounting. Davisco did not charge any fees in connection with these transactions. Although Davisco did not profit from these activities, its business received a benefit from offering the FCM services to its clients.

IV.

LEGAL DISCUSSION

Section 4d of the Act makes it unlawful for any person to act as a futures commission merchant (“FCM”) unless the person is registered with the Commission. 7 U.S.C. § 6d(a)(1) (2012). The Act defines an FCM as an entity that is “engaged in soliciting or accepting orders for – (AA) the purchase or sale of a commodity for future delivery” and “in connection with such acceptance of such orders, accepts money, securities, or property (or extends credit in lieu

thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.” 7 U.S.C. § 1a(28)(A)(i)(I)(aa)(AA) and (II) (2012).

Davisco acted as an FCM by accepting milk suppliers’ orders for CME Class III Milk futures contracts; accepting money from, or extending credit to, the milk suppliers in the form of debits and credits to supplier accounts in connection with those transactions; and, after receiving milk suppliers’ trading instructions, placing those orders with its broker under Davisco’s name. Because Davisco engaged in such transactions, it was “required to have registered with the CFTC as [a] futures commission merchant[] to engage in the transactions.” *CFTC v. Hunter Wise Commodities*, 1 F.Supp.3d 1311, 1325 (S.D. Fla. 2014) (entering summary judgment against purported precious metals wholesaler for failing to register as an FCM). *See also Taffel*, CFTC No. 11-21, 2011 WL 3813127, at *2 (August 25, 2011) (finding that a registered floor broker should have registered as an FCM before he allowed four individuals to place trading orders in the broker’s personal account with an FCM, and accepted money or extended credit to those same individuals) (consent order).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).

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 Commission's 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 on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- 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 have 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 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012);
 2. Orders Respondent to cease and desist from violating Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012);
 3. Orders Respondent to pay one hundred fifty thousand dollars (\$150,000), plus post-judgment interest;
 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 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) ("CMP Obligation"), plus post-judgment interest. 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 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds 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 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.

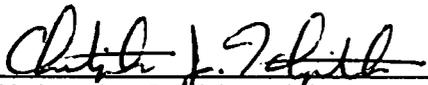
- C. Respondent and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control, shall take any action 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. **Cooperation with the Commission:** Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

3. **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.

4. **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 (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: March 27, 2017