

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

12:48 pm, Jan 28, 2021

In the Matter of:

**AG PROCESSING INC A
COOPERATIVE,**

Respondent.

)
)
)
) **CFTC Docket No. 21-02**
)
)
)
)
)
)

**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 December 2017 to at least July 2019 (“Relevant Period”), Ag Processing Inc a cooperative (“AGP”) violated Section 4a(b)(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6a(b)(2) (2018), and Regulation 150.2, 17 C.F.R. § 150.2 (2019), of the Commission Regulations (“Regulations”) promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether AGP 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, AGP 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, AGP 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 AGP 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. AGP 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. AGP 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

On multiple occasions during the Relevant Period, AGP held a position in Chicago Board of Trade (“CBOT”) Soybean Meal futures contracts that exceeded the all-months speculative position limit for that contract set forth in Regulation 150.2, 17 C.F.R. § 150.2 (2019). In exceeding the position limits for these futures contracts during the Relevant Period, AGP violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2018), and Regulation 150.2.

B. RESPONDENT

Ag Processing Inc a cooperative is a cooperatively owned agribusiness primarily engaged in the soybean processing business. AGP’s corporate office is located in Omaha, Nebraska, and it is not registered with the Commission.

C. FACTS

Regulation 150.2, 17 C.F.R. § 150.2 (2019), sets forth the speculative position limit levels for soybean meal futures contracts, including the position limit for the spot month and all-months. Regulation 150.1(a), 17 C.F.R. § 150.1(a) (2019), defines “spot month” as “the futures contract next to expire during that period of time beginning at the close of trading on the trading day preceding the first day on which delivery notices can be issued to the clearing organization of a contract market.” Regulation 150.1(c) defines “all-months” as “the sum of all futures trading months including the spot month future.” Regulation 150.2 provides that the all-months limit for the soybean meal futures contract is 6500.

“Bona fide hedging transactions,” as defined in Regulation 1.3, 17 C.F.R. § 1.3 (2010), are exempt from the Commission’s position limits. *See* Regulation 150.3, 17 C.F.R. § 150.3 (2019). Persons holding or controlling futures positions that are “reportable[,] . . . any part of which constitute bona fide hedging positions[,]” must file a Form 204 with the Commission. *See* Regulation 19.00(a)(1), 17 C.F.R. § 19.00(a)(1) (2019). A “reportable position” includes any combined futures contract position in any one month or in all months combined, either net long or net short in any commodity on any one reporting market, which at the close of the market on the last business day of the week exceeds the position limit for that commodity as set forth in Regulation 150.2. *See* Regulation 15.00(p)(2), 17 C.F.R. § 15.00(p)(2) (2019). The Form 204 must show “the composition of the fixed price cash position of each commodity hedged.” *See* Regulation 19.01(a), 17 C.F.R. § 19.01(a) (2019).

During the Relevant Period, AGP purchased large volumes of local soybeans, which it processed into soybean meal and crude soybean oil through a process known as crushing. In order to hedge its risk as a soybean crusher, AGP, among other things, took positions in the CBOT Soybean Meal futures contract that exceeded the Commission’s speculative position limit and its fixed price cash positions for such contracts, as reflected in its Form 204s filed with the Commission. AGP applied for and received exemptions from the CME Group, Inc. (“CME”)

that permitted AGP to exceed CME's position limits as set forth in Rule 559 of the CBOT Rulebook. AGP filed timely Forms 204 with the Commission and traded within its CME-granted exemptions, but at no point during the Relevant Period did AGP either seek or receive authorization from the Commission to exceed its position limits set forth in Regulation 150.2.² As a result, on multiple occasions during the Relevant Period, AGP violated the Commission's all-months position limit for the soybean meal futures contract because its cash positions, as reflected in its Form 204s, were insufficient to offset its futures positions. During these numerous violations, AGP was over the all-months position limit by between 63 and 1357 futures positions. These futures positions represented overages of anywhere between 1% and 20.9%. AGP has since filed its submission with the Commission and received approval for its anticipated unfilled hedge exemption. AGP also cooperated with the Commission during its investigation.

III. LEGAL DISCUSSION

Section 4a(b) of the Act, 7 U.S.C. § 6a(b) (2018), makes it “unlawful for any person directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery . . . in excess of any position limit fixed by the Commission for or with respect to such commodity.” Regulation 150.2, 17 C.F.R. § 150.2 (2019), states:

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery . . . in excess of [the limits contained in the Regulation].

Regulation 150.2 establishes the all-months speculative position limit for the soybean meal futures contract at 6500 contracts.

The Commission is not required to establish scienter to prove a violation of the Commission's speculative position limit provisions. That is, the Commission does not need to prove that AGP intended to exceed a position limit. *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007); *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979). The Act “unambiguously imposes liability” for violations of position limits. *Saberi*, 488 F.3d at 1212 n.4 (rejecting a trader's contention that the Division was required to prove that he intended to violate the speculative position limits) (citing *Hunt*, 591 F.2d at 1218).

Because AGP held positions in the CBOT Soybean Meal futures contract that exceeded the all-months speculative position limit for that contract on multiple occasions during the Relevant Period, it violated Section 4a(b) of the Act and Regulation 150.2.

² The CME's exemption approval letters to AGP specifically state that “the Commodity Futures Trading Commission has separate rules regarding position limits in agricultural futures and options contracts with which the holder of this exemption must also comply.” Moreover, CBOT Rule 559 states that an applicant for a CME exemption must “[a]ffirm that the requested exemption complies with any applicable CFTC requirements and, for those contracts with Federal limits, that the exemption request has been approved by the CFTC.” Nevertheless, AGP mistakenly believed that its exchange-granted exemptions also applied to federal position limits.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, AGP violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2018), and Regulation 150.2, 17 C.F.R. § 150.2 (2019).

V. OFFER OF SETTLEMENT

AGP 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 (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, 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 AGP 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 AGP violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2018), and Regulation 150.2, 17 C.F.R. § 150.2 (2019);
 2. Orders AGP to cease and desist from violating Section 4a(b)(2) of the Act and Regulation 150.2;
 3. Orders AGP to pay a civil monetary penalty in the amount of Four Hundred Thousand Dollars (\$400,000.00), plus post-judgment interest within ten days of the date of entry of this Order;
 4. Orders AGP 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:

1. AGP and its successors and assigns shall cease and desist from violating Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2018), and Regulation 150.2, 17 C.F.R. § 150.2 (2019).
2. AGP shall pay a civil monetary penalty in the amount of Four Hundred Thousand Dollars (\$400,000.00) ("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 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).

AGP 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:

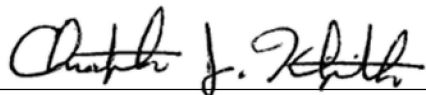
MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, AGP shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. AGP 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, N.W., Washington, D.C. 20581.

3. AGP and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 1. **Public Statements:** AGP 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 AGP's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. AGP and its successors and assigns shall comply with this agreement, and 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:** AGP understands and agrees that any acceptance by the Commission of any partial payment of AGP'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 AGP satisfies in full its CMP Obligation as set forth in this Order, AGP 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.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 28, 2021