

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



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In the Matter of:))
))
TYSON FOODS, INC.,))
)) **CFTC Docket No. 21-12**
Respondent.))
))
_____))

**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 at least January 2016 through the end of January 2021 (“Relevant Period”), Tyson Foods, Inc. (“Tyson” or “Respondent”) violated Sections 4a(b) and 4i of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6a(b), 6i (2018), Commission Regulation (“Regulation”) 1.31(b)(3) and (c), 17 C.F.R. § 1.31(b)(3), (c) (2020), and the then-effective versions of Regulations 19.01(a), 17 C.F.R. § 19.01(a) (2020) (“Former Regulation 19.01(a)”), *removed* by Position Limits for Derivatives, 86 Fed. Reg. 3236 (Jan. 14, 2021) (effective Mar. 15, 2021), and 150.2, 17 C.F.R. § 150.2 (2020) (“Former Regulation 150.2”), *amended* by Position Limits for Derivatives, 86 Fed. Reg. 3236. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Tyson 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, Tyson 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, Tyson consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Tyson 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. Tyson 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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

On more than 590 dates during the Relevant Period, Tyson held positions in Chicago Board of Trade (“CBOT”) soybean meal futures contracts that exceeded the all-months position limit in Former Regulation 150.2, 17 C.F.R § 150.2 (2020). Tyson thereby violated Section 4a(b) of the Act, 7 U.S.C. § 6a(b) (2018), and Former Regulation 150.2.

In all but two months from at least January 2016 through August 2020, Tyson filed with the Commission incorrect Form 204 Statements of Cash Positions in Grain by reporting the approximate number of open futures contracts it was using to hedge anticipated unfilled requirements in soybean meal and corn. In so doing, it reported non-existent fixed-price cash sales of soybean meal, and substantially overstated its fixed-price cash sales of corn. In addition, for the entire Relevant Period, Tyson incorporated an incorrect pounds-to-bushels conversion factor and that resulted in understated cash purchases of soybean oil. By filing these incorrect Form 204s, Tyson violated the Former Regulation 19.01(a), 17 C.F.R § 19.01(a) (2020).

Tyson failed to maintain certain records of cash transactions relating to futures positions in excess of position limits during the Relevant Period. Such records are required by Regulation 1.31(b)(3) and (c), 17 C.F.R. § 1.31(b)(3), (c) (2020), to be maintained for a period of five years and in a form and manner that ensures the authenticity and reliability of such records.

In accepting Respondent’s Offer, the Commission recognizes the substantial cooperation of Tyson with the Division of Enforcement’s investigation of this matter. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter and Respondent’s self-reporting of certain relevant issues. The Commission’s recognition of Respondent’s substantial cooperation and appropriate remediation is further reflected in the form of a reduced penalty.

B. RESPONDENT

Tyson Foods, Inc. is a global food company specializing in protein production and processing. Tyson’s headquarters are located in Springdale, AR. Tyson is not registered with the Commission.

C. FACTS

During the Relevant Period, federal position limits in Former Regulation 150.2 prohibited persons from holding an all-months position in soybean futures in excess of 6,500 contracts net

proceeding to enforce the terms of this Order. Tyson 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.

long or short.² Nonetheless, during the Relevant Period, a person could obtain an exemption from the 6,500-contract limit under Regulation 150.3, 17.C.F.R. § 150.3 (2020) (“Former Regulation 150.3”), *amended* by Position Limits for Derivatives, 86 Fed. Reg. 3236, if such person had “bona fide hedging transactions as defined in § 1.3,” 17 C.F.R. § 1.3 (2020), *amended* by Position Limits for Derivatives, 86 Fed. Reg. 3236. In other words, Former Regulation 150.3 provided an exemption for, in relevant part: (a) fixed-price cash purchase or sale contracts; or (b) unfilled anticipated requirements, in soybean meal sufficient to offset the amount by which the person’s futures position exceeded the limit.

In order for a person to have obtained an exemption during the Relevant Period for fixed-price purchases or sales, Former Regulation 19.01(a) required a person to file a Form 204 with the Commission setting forth the person’s cash exposure to the relevant commodity. In order for a person to have obtained an exemption during the Relevant Period for unfilled anticipated requirements, a person was required under then-effective Regulation 1.48, 17 C.F.R. § 1.48 (2020), *removed* by Position Limits for Derivatives, 86 Fed. Reg. 3236, to file a request with the Commission for an anticipatory hedge exemption setting forth, *inter alia*, the person’s historical usage of such commodity.

Tyson held positions in soybean meal futures in excess of the position limit on more than 590 separate dates from January 2016 through the end of January 2021. Tyson did so without the benefit of an anticipatory hedge exemption for soybean meal. On those dates, Tyson’s positions were, on average, 2,473 contracts—or 38%—over the then-applicable 6,500-contract limit, and its net long futures positions exceeded the limit by as much as 7,057 contracts.

Each month from at least January 2016 through August 2020, with two exceptions³, Tyson filed Form 204s with the Commission reflecting fixed-price cash sales sufficient to offset the amount by which Tyson’s futures position exceeded the limit. In reality, depending on the particular month, Tyson had either no fixed-price cash sales of soybean meal or substantially lower fixed-price cash sales of soybean meal than the Form 204s indicated.⁴ Tyson’s method for filling out the Form 204s was to take the approximate number of open futures contracts it was using to hedge anticipated unfilled soybean meal requirements, convert that number to bushels, and then incorrectly report that number on the Form 204 as fixed-price sales contracts.⁵ Tyson

² Former Regulation 150.1(c), 17 C.F.R. § 150.1(c) (2020), *amended* by Position Limits for Derivatives, 86 Fed. Reg. 3236 (Jan. 14, 2021) (effective Mar. 15, 2021), defined “all months” as “the sum of all futures trading months including the spot future.”

³ Tyson’s December 2019 and February 2020 Form 204s reflected fixed-price cash sales in soybean meal slightly below the quantity necessary to offset Tyson’s excess futures position.

⁴ Beginning in April 2018, in all but one month, Tyson had some fixed-price cash sales of soybean meal from its grain elevators.

⁵ On some occasions, Tyson simply copied the number from the prior month’s Form 204, even though its unfilled anticipated requirements had changed.

misreported its fixed-price corn sales in the same way, i.e., by converting the futures it used to hedge corn requirements to bushels and reporting that number as fixed-price sales.⁶

Once apprised of the foregoing by the Commission’s Division of Enforcement (“Division”), Tyson voluntarily undertook to restate its Form 204s for the entire Relevant Period. In the process of doing so, Tyson discovered, and self-reported to the Division, that it had been understating its cash purchases of soybean oil on the Form 204s because of its use of an erroneous pounds-to-bushels conversion factor. Tyson also self-reported that it had been double-counting portions of its long cash positions in soybean meal and corn on the Form 204s, and that it had not been reporting cash purchases and sales from its grain elevators beginning in April 2018. Tyson also self-reported that it had failed to retain certain daily and monthly cash transaction records in soybean meal and corn during the Relevant Period.

Tyson applied for and received from the Commission an anticipatory hedge exemption for soybean meal futures, effective February 2021.

III. LEGAL DISCUSSION

A. POSITION LIMIT VIOLATIONS

Section 4a(b) of the Act, 7 U.S.C. § 6a(b) (2018), makes it unlawful “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” During the Relevant Period, the Commission’s all-months position limit for soybean meal futures, set forth in Former Regulation 150.2, 17 C.F.R. § 150.2 (2020), was 6,500 contracts net long or short.

The Commission is not required to establish scienter—i.e., proof of intent to exceed the applicable position limit—to prove a violation of position limits. *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007); *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979). Moreover, the Act “unambiguously imposes liability” for position limit violations. *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 Tyson held positions in the CBOT soybean meal futures contract in excess of the all-months position limit for that contract on more than 590 dates during the Relevant Period, Tyson violated Section 4a(b) of the Act and Former Regulation 150.2.

B. INACCURATE FORM 204s

Section 4i of the Act, 7 U.S.C. § 6i (2018), makes it unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market in excess of position limits established by the Commission, “unless such

⁶ Prior to the Relevant Period, Tyson had applied for and received an anticipatory hedge exemption for corn. Tyson was nonetheless required under Former Regulation 19.01 to file an accurate Form 204 because its corn futures position was in excess of the federal limit set forth in Former Regulation 150.2.

person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions [in excess of position limits] as the Commission may by rule or regulation require.” During the Relevant Period, Former Regulation 19.01(a), 17 C.F.R. § 19.01(a) (2020), required all persons holding futures positions in excess of position limits for certain commodities including soybean meal, any part of which constituted a bona fide hedging position, to file a Form 204 with the Commission.

Under Former Regulation 19.01(a), Form 204 filers were required to include data showing the composition of their fixed-price cash positions in each commodity hedged, including, among other things, the quantities of: (a) the stocks owned; (b) open fixed-price purchase commitments; and (c) open fixed-price sale commitments. Form 204s were required to be filed on a monthly basis. Former Regulation 19.10(b), 17 C.F.R. § 19.01(b) (2020), *removed* by Position Limits for Derivatives, 86 Fed. Reg. 3236 (Jan. 14, 2021) (effective Mar. 15, 2021).

During the Relevant Period, Tyson held positions in soybean meal and corn in excess of position limits, and was, therefore, required to file monthly Form 204s. Because Tyson filed Form 204 reports which did not accurately state the quantities of Tyson’s fixed-price cash soybean meal or corn exposure, and which included but misstated Tyson’s cash soybean oil position, Tyson violated Former Regulation 19.01(a).

C. RECORDKEEPING

Section 4i of the Act, 7 U.S.C. § 6i (2018), makes it unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market in excess of position limits established by the Commission, unless, “in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade or electronic trading facility, and of cash or spot transactions in, and inventories and purchase and sale commitments of such commodity.” Section 4i specifies that “[s]uch books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein”

Regulation 1.31(b)(3), 17 C.F.R. § 1.31(b)(3) (2020), specifies that such records shall be maintained for a period of five years.⁷ Regulation 1.31(c), 17 C.F.R. § 1.31(c) (2020), specifies that such records shall be created and retained in a form and manner that ensures the authenticity and reliability of such records. There is no scienter requirement for recordkeeping violations. *CFTC v. eFloorTrade, LLC*, No. 16 CIV. 7544 (PGG), 2018 WL 10625588, at *7 (S.D.N.Y. Sept. 21, 2018) (granting CFTC’s motion for summary judgment on recordkeeping violations).

Because Tyson exceeded position limits in soybean meal and corn during the Relevant Period, it was required for a period of five years to maintain records showing complete details of cash transactions in those commodities. Tyson failed to do so with respect to records of certain

⁷ Regulation 1.31(a), 17 C.F.R. § 1.31(a) (2020), defines “records entity” to mean any entity required to keep records under the Act or Regulations, and defines “regulatory records” to be any records required to be kept under the Act or Regulations.

cash soybean meal and corn transactions during the Relevant Period and, therefore, violated Section 4i of the Act and Regulation 1.31(b)(3) and (c).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Tyson violated Sections 4a(b) and 4i of the Act, 7 U.S.C. §§ 6a(b), 6i (2018), Regulation 1.31(b)(3) and (c), 17 C.F.R. § 1.31(b)(3), (c) (2020); and Former Regulations 19.01(a) and 150.2, 17 C.F.R. §§ 19.01(a), 150.2 (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;
 - 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 Respondent 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 Respondent 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 Sections 4a(b) and 4i of the Act, 7 U.S.C. §§ 6a(b), 6i (2018), Regulation 1.31(b)(3) and (c), 17 C.F.R. § 1.31(b)(3), (c) (2020), and Former Regulations 19.01(a) and 150.2, 17 C.F.R. §§ 19.01(a) (2020), 150.2 (2020);
 2. Orders Respondent to cease and desist from violating Sections 4a(b) and 4i of the Act and Regulation 1.31(b)(3) and (c) (2020);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000), plus post-judgment interest within thirty days of the date of entry of this Order;

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent shall cease and desist from violating Sections 4a(b) and 4i of the Act, 7 U.S.C. §§ 6a(b), 6i (2018), and Regulation 1.31(b)(3) and (c), 17 C.F.R. § 1.31(b)(3), (c) (2020);
2. Respondent shall pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000) ("CMP Obligation"), within thirty days of the date of the entry of this Order. If the CMP Obligation is not paid in full within thirty 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 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:

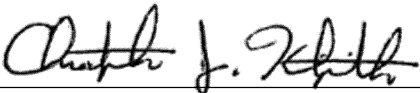
CFTC
C/O ESC/AMK-326; RM 265
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

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.

3. 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 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 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.



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

Dated: August 13, 2021