

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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12:04 pm, Apr 30, 2018

In the Matter of:)

Glencore Agriculture B.V.,)
f/k/a Glencore Grain B.V.,)
and Glencore Ltd.,)

Respondents.)

CFTC Docket No. 18-12

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 on multiple occasions between January 2013 and November 2015 (the “Relevant Period”), Glencore Agriculture B.V., f/k/a Glencore Grain B.V. (“Glencore Grain B.V.”),¹ and Glencore Ltd. (together, “Respondents”) violated Sections 4a(b) and 4c(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6a(b), 6c(a) (2012), and Regulations 150.2 and 1.38(a) of the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 150.2, 1.38(a) (2017); and Glencore Grain B.V. violated Regulation 19.01, 17 C.F.R. §19.01 (2017). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations 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, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent 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 acknowledge service of this Order.²

¹ Since the Relevant Period, Glencore Grain B.V. changed its name to Glencore Agriculture B.V. Because the entity was known as Glencore Grain B.V. during the Relevant Period, this Order will refer to Glencore Grain B.V.

² Respondents consent 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 agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole

III.

The Commission finds the following:

A. SUMMARY

Glencore Grain B.V. and Glencore Ltd. engaged in cotton trading activities under common control within the larger Glencore plc organization (“Glencore”). Nevertheless, on multiple trading days during May 2013, June 2013, May 2014, and June 2014, Glencore Grain B.V. and Glencore Ltd. held net positions in the ICE Futures Cotton No. 2 contracts (“cotton futures”) that, on an aggregated basis, exceeded the speculative position limits established by the Commission. In addition, on twenty-four occasions between January 2013 and November 2015, Glencore Grain B.V. and Glencore Ltd. executed exchange of futures for physical transactions (“EFPs”) opposite each other’s cotton futures trading accounts, even though their accounts were not independently controlled as required for such transactions not to constitute illegal wash trades. And on at least two occasions in 2013 and 2014, Glencore Grain B.V. submitted to the Commission a Form 304 that failed to represent accurately all required information, including its short cash sales commitments.

B. RESPONDENTS

Glencore Grain B.V. is a global operation that originates agricultural commodities, including cotton, grains, and oilseeds, and markets and distributes them to customers around the world. Glencore Grain B.V. is headquartered in Rotterdam, Netherlands, and works with field offices and Glencore affiliates to operate its global business. Since the Relevant Period, Glencore Grain B.V. has changed its name to Glencore Agriculture B.V. Glencore Grain B.V. is not and was not registered with the Commission.

Glencore Ltd. is a commodities supplier and trader headquartered in Stamford, Connecticut. During the Relevant Period, Glencore Ltd. was an affiliate of Glencore Grain B.V., which served as its supplier of cotton in the United States. Since the Relevant Period, Glencore Ltd. was restructured, and its former cotton trading business is now conducted through a different corporate entity, Glencore Agriculture USA LLC. Glencore Ltd. is not and was not registered with the Commission.

C. FACTS

Glencore Grain B.V. and Glencore Ltd. are affiliated companies that, during the Relevant Period, both engaged in cotton trading activities as part of Glencore’s overall global cotton business. Glencore Grain B.V. engaged in the global marketing and distribution of cotton, working with local field offices and Glencore affiliates to source cotton on a local level. Glencore Ltd. operated as Glencore’s primary trader of U.S. origin cotton, sourcing cotton from

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. Respondents do 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.

U.S.-based producers, and selling the majority of its product to Glencore Grain B.V. Both Glencore Grain B.V. and Glencore Ltd. were reportable cotton dealers/merchants to the Commission.

At all times relevant to this Order, Glencore centralized the management of its global cotton business under the direction of a single trading manager (“Head of Cotton”), who oversaw cotton operations across all Glencore entities. The Head of Cotton directly supervised cotton traders at Glencore Grain B.V. and was also the direct supervisor of Glencore Ltd.’s head cotton trader. In his role, the Head of Cotton oversaw and communicated overarching cotton strategies and policies across Glencore entities. One such policy required Glencore Ltd. to hedge any physical cotton transaction in the futures market. The Head of Cotton remained generally apprised of trader activities and positions across Glencore entities and participated in discussions regarding certain trade-level decisions at both Glencore Grain B.V. and Glencore Ltd.

The Act and Regulations set limits on the net long or net short position that any person may hold or control for certain commodities, including a limit of 5,000 cotton futures for a single month, other than the spot month, exclusive of bona fide hedging transactions. Because Glencore Grain B.V. and Glencore Ltd. operated their cotton trading under the common control of Glencore’s Head of Cotton, their cotton futures positions should have been aggregated for purposes of complying with the Commission’s position limits. When aggregated, the cotton futures positions of Glencore Grain B.V. and Glencore Ltd. exceeded 5,000 net contracts, exclusive of bona fide hedging transactions, on multiple days during May 2013, June 2013, May 2014, and June 2014.

The Act and Regulations permit noncompetitive trading, such as EFPs, only if such transactions are conducted in accordance with rules of an exchange, such as the Intercontinental Exchange (“ICE”), that are approved by the Commission. At all times relevant to this Order, ICE rules permitted the transaction of EFPs between independently controlled accounts. However, Glencore Grain B.V.’s and Glencore Ltd.’s cotton futures trading accounts were both ultimately controlled by Glencore’s Head of Cotton. As a result they were not independently controlled. Nevertheless, between January 2013 and November 2015, Glencore Grain B.V. and Glencore Ltd. executed twenty-four EFPs opposite one another’s accounts.

The Regulations require cotton merchants and dealers holding or controlling reportable futures positions to file a monthly Statement of Cash Positions in Cotton (“Form 304”), as of the close of business on the last Friday of the month. On the Form 304, entities report the composition of their fixed price cash position in cotton and cotton products, including the quantity of open fixed price purchase and fixed price sale commitments. One purpose of the Form 304 report is 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. Glencore Grain B.V. filed two erroneous Form 304 reports with the Commission—one on May 31, 2013 and a second on May 30, 2014—that overstated the quantities of its fixed price cotton cash positions.

In January 2016, Glencore Ltd. was restructured, and its former cotton trading business began to be conducted through a different corporate entity, Glencore Agriculture USA LLC. Thereafter, Glencore Grain B.V. and Glencore Agriculture USA LLC began aggregating their

cotton futures positions and ceased transacting EFPs between their accounts. Glencore Grain B.V. also took corrective action with respect to its erroneous Form 304 reports.

IV. LEGAL DISCUSSION

A. Respondents' Aggregated Cotton Positions Exceeded the Regulatory Position Limits in Violation of Section 4a(b) and Regulation 150.2.

Section 4a(b) of the Act, 7 U.S.C. § 6a(b) (2012), makes it “unlawful for any person directly or indirectly to hold or control a net long or 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 (2017), sets the single month speculative position limit for the Cotton No. 2 futures contract at 5,000 contracts. Pursuant to Regulation 150.3, 17 C.F.R. § 150.3 (2017), that position limit is exclusive of any bona fide hedging transactions. During the Relevant Period, Regulation 150.4, 17 C.F.R. § 150.4 (2014), which addresses the aggregation of positions, provided that “[t]he position limits set forth in § [15]0.2 of this part shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading.”³

The Commission does not need to establish *scienter*—*i.e.*, proof of intent to exceed the applicable position limit—in order to prove a violation of speculative position limits. *See CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979) (discounting a scienter requirement because “there is nothing in either the statutory language or legislative history which suggests that intent either to affect market prices or specific intent to exceed the speculative limits is a necessary element of a violation” of the Act); *cf. Saberi v. CFTC*, 488 F.3d 1207, 1212 n.4 (9th Cir. 2007) (noting that a dispute over whether a contract market position limit violation was intentional is “not relevant to liability” because there is “no *mens rea* requirement”).

Because Glencore’s Head of Cotton directly or indirectly controlled the cotton trading at both Glencore Grain B.V. and Glencore Ltd., Respondents’ Cotton No. 2 positions should have been aggregated for position limit purposes during the Relevant Period. By exceeding, on an aggregated basis, the 5,000 single month limit, exclusive of any bona fide hedging transactions, on multiple days during four months of the Relevant Period, Respondents violated Section 4a(b) of the Act and Regulation 150.2.

B. Respondents Entered into EFPs in Violation of Section 4c(a) of the Act and Regulation 1.38(a).

Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012), makes it unlawful to engage in any transaction that is of the character of, or commonly known to the trade, as a “wash sale” or that is a fictitious sale. Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2017), requires futures contracts to be executed “openly and competitively” and permits noncompetitive trading only if executed “in accordance with written rules of the contract market which have been submitted to and approved

³ The Commission amended the text and structure of Regulation 150.4 since the conclusion of the Relevant Period. The current version Regulation 150.4 likewise requires aggregation of “all positions in accounts for which any person, by power of attorney or otherwise, directly or indirectly controls trading or holds a 10 percent or greater ownership or equity interest.” 17 C.F.R. § 150.4 (2017).

by the Commission, specifically providing for the noncompetitive execution of such transactions.” During the Relevant Period, ICE Rule 4.06 permitted EFP transactions under certain circumstances between “independently controlled accounts.” At no time relevant to this Order did ICE rules approved by the Commission permit EFPs, noncompetitive trades, between accounts operating under common control.

Because Glencore’s Head of Cotton directly or indirectly controlled the cotton trading at both Glencore Grain B.V. and Glencore Ltd., Respondents’ cotton trading accounts were not “independently controlled accounts.” By executing twenty-four EFPs opposite each other’s cotton futures trading accounts between January 2013 and November 2015, Respondents violated Section 4c(a) of the Act and Regulation 1.38(a).

C. Glencore Grain B.V. Filed Erroneous Form 304 Reports in Violation of Regulation 19.01.

Regulation 19.00(a)(1) requires that persons holding or controlling futures and options positions in cotton that are reportable pursuant to Regulation 15.00(p)(2), 17 C.P.R. §15.00(p)(2) (2017), and any part of which constitute *bona fide* hedging positions as defined in Regulation 1.3(z), 17 C.P.R. § 1.3(z) (2017), must file a Form 304 report showing the composition of its fixed price cotton cash position. Reportable positions under Regulation 15.00(p)(2) are any combined futures and futures equivalent option open contract position as defined in Part 150 of the Regulations 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. Regulation 19.01(a), 17 C.F.R. § 19.01(a) (2017), requires Form 304 reports to show the quantities of the fixed price cotton purchase and sale open cash positions.

During the Relevant Period, Glencore Grain B.V. held reportable cotton futures positions and was required by Regulation 19.00(a)(1) to file Form 304 reports. On two occasions during the Relevant Period, Glencore Grain B.V. submitted Form 304 reports that overstated the quantities of its fixed price cotton cash positions. By submitting these erroneous Form 304 reports, Glencore Grain B.V. violated Regulation 19.01.

V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Glencore Grain B.V. and Glencore Ltd. violated Sections 4a(b) and 4c(a) of the Commodity Exchange Act, 7 U.S.C. §§ 6a(b), 6c(a) (2012), and Regulations 150.2 and 1.38(a), 17 C.F.R. §§ 150.2, 1.38(a) (2017); and Glencore Grain B.V. violated Regulation 19.01, 17 C.F.R. §19.01 (2017).

VI. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge service of this Order;

- B. Admit 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. Waive:
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 they 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 Regulations, 17 C.F.R. pt. 148 (2017), relating to, or arising from, this proceeding;
 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondents violated Sections 4a(b) and 4c(a) of the Act, 7 U.S.C. §§ 6a(b), 6c(a) (2012), and Regulations 150.2 and 1.38(a), 17 C.F.R. §§ 150.2, 1.38(a) (2017); and Glencore Grain B.V. violated Regulation 19.01, 17 C.F.R. §19.01 (2017);
 2. Orders Respondents to cease and desist from violating Sections 4a(b) and 4c(a) of the Act, 7 U.S.C. §§ 6a(b), 6c(a) (2012), and Regulations 150.2 and 1.38(a), 17 C.F.R. §§ 150.2, 1.38(a) (2017); and Glencore Grain B.V. from violating Regulation 19.01, 17 C.F.R. §19.01 (2017);
 3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of two million dollars (\$2,000,000.00), plus post-judgment interest;

4. Orders Respondents and their 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.

VII. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Sections 4a(b) and 4c(a) of the Act, 7 U.S.C. §§ 6a(b), 6c(a) (2012), and Regulations 150.2 and 1.38(a), 17 C.F.R. §§ 150.2, 1.38(a) (2017); and Glencore Grain B.V. from violating Regulation 19.01, 17 C.F.R. §19.01 (2017).
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of two million dollars (\$2,000,000) (“CMP Obligation”), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) 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 (2012).

Respondents 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

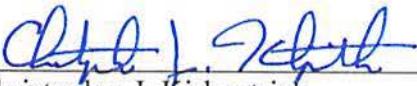
If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies 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. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
2. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their 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.

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: April 30, 2018