

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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3:10 pm, Sep 14, 2018

In the Matter of:)

Honouround (HK) International Trade)
Co. Ltd.,)

Respondent.)
)
)
)
_____)

CFTC Docket No. 18-29

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 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, on multiple occasions between March 2017 and August 2017 (“Relevant Period”), Honouround (HK) International Trade Co. Ltd. (“Respondent” or “Honouround”) violated Section 4a(b)(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6a(b)(2) (2012), and Commission Regulations (“Regulations”) 19.01 and 150.2, 17 C.F.R. §§ 19.01 (2018), 150.2 (2018). 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 shall 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 Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of the Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law 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

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Honouround engaged in soybean futures trading on the Chicago Board of Trade (“CBOT”) in accounts it controlled at multiple futures commission merchants (“FCMs”). On multiple trading days during the Relevant Period, Honouround held net long positions in soybean futures contracts that, on an aggregated basis, exceeded the single month and all-months speculative position limits established by the Commission.

Additionally, when Honouround’s futures and option positions exceeded the limits fixed in Regulation 150.2, and any part of those positions constituted *bona fide* hedging positions as defined in Regulation 1.3, Honouround was required to file a Commission Statement Of Cash Positions In Grains, Soybeans, Soybean Oil And Soybean Meal, CFTC Form 204 (“Form 204”), reporting its fixed price cash positions in soybeans, soybean oil, soybean meal, and related products. Form 204 is required to be filed monthly, as of the close of business on the last Friday of the month, no later than the third business day following the date of the report. However, Honouround failed to file Form 204s as required. After these failures, the Commission emailed Honouround twice to request the required Form 204s. Honouround did not respond or submit the Form 204s to the Commission until July 2018, after it had been informed that the Division of Enforcement (“DOE”) would recommend this enforcement action against it.

B. RESPONDENT

Honouround (HK) International Trade Co. Ltd., based in Hong Kong, China, is a company organized under the laws of Hong Kong. Honouround trades soybean futures and exports soybeans to mainland China. Honouround has never been registered with the Commission.

C. FACTS

During the Relevant Period Respondent, which exported soybeans to mainland China, controlled trading for and held soybean futures positions in accounts at multiple FCMs which, in the aggregate, exceeded the single month and all-months soybeans speculative position limit. Regulation 150.2, 17 C.F.R. § 150.2 (2018), sets the speculative position limits for CBOT soybean futures contracts, among other agricultural contracts, for single month and all-months at 15,000 contracts. On multiple occasions during the Relevant Period, Honouround held, on an aggregated basis, net long positions in excess of both the single month and all-months speculative position limits. In addition, part of Respondent’s soybean futures position during that period constituted *bona fide* hedging positions as defined in Regulation 1.3.

use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

When the number of combined soybean futures held exceeds the reportable positions pursuant to Regulation 15.00(p)(2), and any part of the positions constitutes *bona fide* hedging positions, a person is required to file a Form 204 with the Commission. *See* Regulations 19.00(a)(1) and 19.01, 17 C.F.R. §§ 19.00(a)(1), 19.01(2017). A reportable position is defined as the combined futures or futures-equivalent option open contract positions held by any person at the close of the market on the last business day of the week that exceeds the net quantity limit in spot, single or all-months fixed in Regulation 150.2. *See* Regulation 15.00(p)(2).

The Form 204 must show “the composition of the fixed price cash position of each commodity hedged.” *See* Regulation 15.00(p)(2). Form 204 is required to be filed monthly, as of the close of business on the last Friday of the month, and filed with the Commission’s Chicago office no later than the third business day following the date of the report. Timely filing of Form 204 by market participants is critical to the Commission’s ability to assess *bona fide* hedging positions. *See* CFTC Staff Advisory No. 13-42.

During the Relevant Period, Honouround held reportable positions, some of which constituted *bona fide* hedging positions, but failed to file Form 204s with the Commission as required. After these failures, the Commission emailed Honouround twice to request the required Form 204s. Honouround did not respond or submit the Form 204s to the Commission until July 2018, after it had been informed that DOE would recommend this enforcement action against it. Even excluding any *bona fide* hedging positions, Honouround’s net long positions in soybean futures contracts, for a portion of the Relevant Period, exceeded the single and all-months speculative position limits established by the Commission.

IV.

LEGAL DISCUSSION

A. Respondent’s Aggregated Soybean Positions Exceeded the Regulatory Position Limits in Violation of Section 4a(b)(2) of the Act and Regulation 150.2

Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (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 (2018), sets the single month and all-months speculative position limit for soybean futures contracts at 15,000.

During the Relevant Period, Regulation 150.4, 17 C.F.R. § 150.4 (2018), which addresses the aggregation of positions, provided that “[t]he position limits set forth in 150.2 of this part shall apply to all positions in accounts for which any person by power or attorney or otherwise directly or indirectly holds positions or controls trading.” 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 Respondent’s soybean futures contract positions exceeded, on an aggregated basis, the 15,000 single month and all-months position limit on multiple occasions during the Relevant Period, exclusive of any *bona fide* hedging transactions, Respondents violated Section 4a(b)(2) of the Act and Regulation 150.2.

B. Respondent Failed to File Form 204 Reports as Required, in Violation of Regulation 19.01

Regulation 19.01, 17 C.F.R. § 19.01(2018), requires that persons holding or controlling futures and options positions in certain agricultural commodities that are reportable pursuant to Regulation 15.00(p)(2) and any part of which constitute *bona fide* hedging positions as defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018), must file a Form 204 showing the composition of the fixed price cash position of each such commodity hedged (including soybeans) as of the close of business on the last Friday of each month. Reportable position is defined under Regulation 15.00(p)(2), 17 C.F.R. § 15.00(p)(2) (2018), as any combined futures and futures-equivalent option open contract position in any one month or in all-months combined, which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single month or in all-months fixed in Regulation 150.2.

During the Relevant Period, Respondent was required on multiple occasions to file a Form 204 because it held reportable futures positions in soybeans and any part of which constituted *bona fide* hedging positions. By failing to file such Form 204s as required, Respondent violated Regulation 19.01.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2)(2012), and Regulations 19.01 and 150.2, 17 C.F.R. §§ 19.01, 150.2 (2018).

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 Regulations, 17 C.F.R. pt. 148 (2018), 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, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended in 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;
- 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 Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012), Regulations 19.01 and 150.2, 17 C.F.R. §§ 19.01, 150.2 (2018);
 2. orders Respondent to cease and desist from violating Section 4a(b)(2) of the Act and Regulations 19.01 and 150.2;

3. orders Respondent to pay a civil monetary penalty in the amount of three-hundred thousand dollars (\$300,000), plus post-judgment interest; 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 VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent 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) (2012), Regulations § 150.2 and 19.01, 17 C.F.R. §§ 150.2, 19.01(2018).
- B. Respondent shall pay a civil monetary penalty of three-hundred thousand dollars (\$300,000), (the “CMP Obligation”). 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).

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:

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

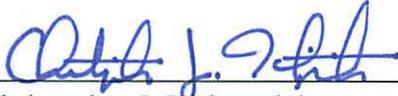
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorn or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. The 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 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 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.

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: September 14, 2018