

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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Proceedings Clerk

11:16 am, Mar 09, 2016

In the Matter of:

CHS, Inc. and  
CHS Hedging, LLC,  
(formerly CHS Hedging, Inc.),

Respondents.

CFTC Docket No. 16-07

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 (“CFTC” or “Commission”) has reason to believe CHS, Inc. (“CHS”) violated Commission Regulation 19.01, 17 C.F.R. § 19.01 (2014) and that CHS Hedging, LLC (formerly CHS Hedging, Inc.) (“CHS Hedging,” collectively “Respondents”) willfully aided and abetted CHS’s violations and, pursuant to Section 13(a) of the Commodity Exchange Act (“the Act”), 7 U.S.C. § 13c(a) (2014), is liable for such violations. 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 this 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 Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.<sup>1</sup>

<sup>1</sup> CHS and CHS Hedging consent 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 CHS and CHS Hedging do 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 do CHS and CHS Hedging 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

Entities are required to file Form 204 reports if they 1) hold or control reportable futures and options positions in certain agricultural commodities – including wheat, corn, oats, soybeans, soybean oil, and soybean meal;<sup>2</sup> and 2) any part of those positions constitute *bona fide* hedging positions.<sup>3</sup> In the Form 204 reports, entities are required to show the composition of their fixed price cash position of each such commodity hedged. From at least January 2000 until May 2013 (the “Relevant Period”), CHS held reportable positions in the corn and soybean futures markets in an effort to hedge cash positions in corn and soybeans thus triggering their Form 204 report obligations. CHS delegated to CHS Hedging the responsibility to prepare and submit the Form 204 reports. During the Relevant Period, CHS Hedging filed consistently incorrect Form 204 reports on a monthly basis with the Commission that did not comply with the statutory requirements.

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In accepting Respondents’ Offer, the Commission recognizes that Respondents have already instituted remedial action to strengthen the internal controls and policies relating to the preparation of Form 204 reports.

#### B. Respondents

**CHS, Inc.** is a Minnesota cooperative corporation with its headquarters in Inver Grove Heights, Minnesota. CHS is a global agribusiness owned by farmers, ranchers, and cooperatives across the United States. CHS has never been registered with the Commission in any capacity.

**CHS Hedging, LLC** is a Delaware limited liability company with its headquarters in Inver Grove Heights, Minnesota.<sup>4</sup> CHS Hedging maintains offices in Kansas City, Missouri and Indianapolis, Indiana, along with branch locations in 12 states, most of them in partnership with local cooperatives. CHS Hedging is a wholly owned subsidiary of CHS and provides hedging services to its member owners as well as customers in the farm industry. During the Relevant Period, CHS Hedging had the responsibility to prepare and submit Form 204 reports for CHS. CHS Hedging has been registered with the Commission as a Futures Commission Merchant (“FCM”) since 1986.

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<sup>2</sup> Regulations 19.00(a)(1) and 19.01, 17 C.F.R. §§19.00(a)(1) and 19.01 (2014), set out which commodities may trigger an entity’s requirement to file Form 204 reports and the timing and content of such reports. Regulation 15.00(p)(2), 17 C.F.R. §15.00(p)(2) (2014) sets out what constitutes a “reportable position” for the purpose of the Form 204 reports.

<sup>3</sup> Regulation 1.3(z), 17 C.F.R. §1.3(z) (2011) defines what constitutes a “*bone fide* hedging transaction” and therefore exempt from spot month position limits in particular commodities.

<sup>4</sup> During the Relevant Period, CHS Hedging, Inc. was a Delaware Corporation. It became a Delaware limited liability company on February 10, 2014.

### C. Facts

Form 204 reports are filed monthly, as of the close of business on the last Friday of the month, and show the composition of the reporting entity's fixed price cash position of each commodity hedged, including the quantity of open fixed price purchase and fixed price sale commitments in such cash commodities. As the instructions for the Form 204 report state, the filer is to "[r]eport in thousands of bushels the entire quantity of cash stocks owned and open fixed price cash purchases and cash sales of the commodity and its products and byproducts." One purpose of the Form 204 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.

CHS is an agricultural cooperative that owns and operates various grain and oilseed processing and wholesale, farm supply, fuel, financial services and retail businesses. Within its various businesses, CHS has three individual business units that hold sizable cash positions in corn and soybeans. In an effort to hedge the risk exposure posed by these cash positions, CHS entered into sizable futures and options positions in the related corn and soybean spot markets triggering the reportable position threshold and an obligation to file a Form 204 report. A *bona fide* hedger is allowed to exceed the spot month futures position limits if it is able to document the composition of its fixed price cash position in the related commodities on the Form 204 report. In this instance, CHS regularly filed the monthly Form 204 reports with the Commission demonstrating that it had fixed price cash positions in corn and soybeans, which qualified it as a *bona fide* hedger. Accordingly, CHS was allowed to take positions in the corn and soybean futures market in excess of the spot month position limits.

CHS's Form 204 reports included the aggregate position data from the three individual agricultural business units wholly owned by CHS that held sizable cash positions in corn and soybeans. CHS Hedging, a wholly owned subsidiary of CHS and FCM, was tasked by CHS with obtaining trade and position information from the three business units, compiling the Form 204 reports, and forwarding them to the Commission. When the Division of Market Oversight ("DMO") began looking into CHS's spot month positions for corn and soybeans, CHS simultaneously began reviewing its Form 204 reporting process. In so doing, CHS discovered that the CHS Hedging employee tasked with obtaining trade data did not obtain updated numbers reflecting fixed-price cash positions for one of the three business units, and instead used a static fixed-price cash position number each month in preparing the Form 204 reports. According to CHS, the CHS Hedging employee used the same static fixed-price cash position number dating back to at least January 2000, thirteen years prior to the date of discovery. Consequently, during the Relevant Period, CHS filed Form 204 reports that incorrectly stated its fixed price cash positions.

During the Relevant Period, CHS, through CHS Hedging, filed with the Commission consistently incorrect Form 204 reports on a monthly basis which did not accurately state the quantities of CHS's fixed price cash positions of each commodity hedged. Specifically, the positions CHS included in its Form 204 reports failed to include the accurate positions for one of its subsidiaries. After it discovered the error, CHS submitted corrected Form 204 reports for January 2013 - May 2013 that included accurate position reports for its relevant subsidiaries.

After the discovery of the improper filings, CHS updated its compliance procedures and hired a permanent Trade Risk Compliance officer and Director of Enterprise Risk Management.

#### IV.

### LEGAL DISCUSSION

#### A. Statutory Background

Regulation 19.00(a)(1) 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(z), must file Form 204 reports showing the composition of the fixed price cash position of each such commodity hedged (the “Form 204 commodities,” which include wheat, corn, oats, soybeans, soybean oil and soybean meal). 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 exceed the net quantity limit in spot, single or in all-months fixed in Regulation 150.2 for the Form 204 commodities.

Pursuant to Section 13(a) of the Act, liability as an aider and abettor requires proof that: (1) the Act was violated, (2) the aider and abettor had knowledge of the wrongdoing underlying the violations, and (3) the aider and abettor intentionally assisted the primary wrongdoer. *See* 7 U.S.C. § 13c(a) (2012); *In re Nikkhah*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129 at 49,888 n. 28 (CFTC May 12, 2000) (citing *In re R & W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,746 (CFTC Mar. 16, 1999)); *In re DiPlacido*, CFTC Docket No. 01-23, 2008 WL 4831204 (CFTC Nov. 5, 2008).

#### B. Respondents’ Violations of Regulation 19.01

During the Relevant Period, CHS held reportable positions in the Form 204 commodities and was required by Regulation 19.00(a)(1) to file Form 204 reports. Regulation 19.01 requires Form 204 reports to show the quantities of the fixed price purchase and sale open cash positions for each of the Form 204 commodities hedged.

During the Relevant Period, CHS, through CHS Hedging, submitted Form 204 reports on behalf of CHS which did not accurately state the quantities of CHS’s fixed price open cash positions as required by Regulation 19.01. Therefore, CHS violated Regulation 19.01.

Additionally, during the relevant period, CHS Hedging knowingly failed to obtain updated fixed-price cash positions from at least one of CHS’s business units and created incorrect monthly Form 204 reports. By submitting these incorrect Form 204 reports to the Commission on behalf of CHS, CHS Hedging willfully aided and abetted CHS’s violations and, pursuant to Section 13(a) is liable for such violations of Regulation 19.01 as a principal.

**V.**

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Respondents violated Regulation 19.01.

**VI.**

**OFFER OF SETTLEMENT**

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

- A. Acknowledge receipt of 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 violations 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 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. §§ 148.1-30 (2014), 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. 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; and

- 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 Regulation 19.01;
  2. orders Respondents to cease and desist from violating Regulation 19.01;
  3. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of \$1,000,000 (one million dollars) within ten (10) days of the date of entry of this Order; and,
  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 VII 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 Regulation 19.01.
- B. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of one million dollars (\$1,000,000) within ten (10) days of the date of entry of this Order (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). 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 --- AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-7262  
[nikkigibson@faa.gov](mailto:nikkigibson@faa.gov)

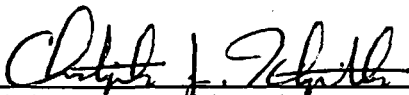
If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall

fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies Respondents and the name and docket number of this proceeding. Respondents 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, and to Alison Wilson, Chief Trial Attorney, Division of Enforcement, via email at [awilson@cftc.gov](mailto:awilson@cftc.gov).

- 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 undertake all steps necessary to ensure that all of their agents and employees under their authority or control understand and comply with this agreement.
  2. **Cooperation with the Commission:** Respondents 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, including any matter in which the Respondents have previously provided information.
  3. **Partial Satisfaction:** Respondents understands that any acceptance by the Commission of 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.

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

Dated: March 9, 2016