

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Intergrain S.A.,

Respondent.

CFTC Docket No. 19-37

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Office of Proceedings
Proceedings Clerk

7:08 pm, Sep 30, 2019

**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 (“CFTC” or “Commission”) has reason to believe Intergrain S.A. (“Intergrain” or “Respondent”) violated Commission Regulation 19.01, 17 C.F.R. § 19.01 (2019), from December 2017 through July 2019 (the “Relevant Period”). 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 should be issued imposing remedial sanctions.

In anticipation of the institution of this 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 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 Intergrain 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. Intergrain does not consent, however, to the use of the 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. Intergrain 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

All persons 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;² and (2) any part of those positions constitute *bona fide* hedging positions.³ In the Form 204 Reports, required filers are required to show the composition of their fixed price cash position of each such commodity hedged. During the Relevant Period, Intergrain held reportable positions in the soybean oil and soybean meal futures markets in an effort to hedge cash positions in soybean oil and soybean meal, thus triggering their Form 204 Report obligations. On thirteen occasions Intergrain failed to timely file a CFTC Form 204 Report as required by Regulation 19.01.

B. Respondent

Intergrain S.A. is a Luxembourg entity with its principal office in Luxembourg. Intergrain is a member of the Sodrugestvo group of companies, a global agribusiness primarily involved in processing, trading, and shipping soybeans, soybean oil, soybean meal, and rapeseed. Intergrain has never been registered with the Commission in any capacity.

C. Facts

Intergrain is an entity that operates primarily as a trader of soybeans, soybean oil, soybean meal, and rapeseed. During the Relevant Period, Intergrain failed on thirteen occasions to timely file CFTC Form 204 Reports as required under CFTC Regulations.

Intergrain was responsible for making and filing CFTC Form 204 Reports with the Commission. The CFTC Form 204 Report is to be made monthly, as of the close of business on the last Friday of the month, and filed with the Commission not later than the third business day following the date of the Form 204 Report showing the composition of the reporting entity's fixed price cash position of each commodity hedged. A purpose of the Form 204 Report is to check compliance with speculative position limits by ensuring that filers classify their futures positions as hedging cash positions that are actually owned or controlled.

² Regulations 19.00(a)(1) and 19.01, 17 C.F.R. §§ 19.00(a)(1), 19.01 (2019), 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) (2019), sets out what constitutes a "reportable position" for the purpose of the Form 204 reports.

³ Regulation 1.3, 17 C.F.R. § 1.3 (2019) defines what constitutes a "*bona fide* hedging transaction" and is therefore exempt from spot month position limits in particular commodities.

Intergrain held or controlled soybean meal and soybean oil positions that were reportable pursuant to Regulation 15.00(p)(2) and, based on records provided by Intergrain, constituted *bona fide* hedging positions as defined in Regulation 1.3(z). Therefore, Intergrain was required to file Form 204 Reports within three business days from the last Friday of the month. Commencing in December 2017, Intergrain, however, failed to timely file thirteen CFTC Form 204 Reports as required by the CFTC Regulations. Rather than filing, in 12 of the 13 instances, it waited until contacted by Commission staff regarding its failure to file such Reports. Only after receiving such notice from Commission staff did Intergrain file the required Form 204 Report.

III.

LEGAL DISCUSSION

A. Statutory Background

Regulation 150.3, 17 C.F.R. § 150.3 (2019), exempts positions that qualify as *bona fide* hedging transactions (as defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019) from the speculative position limits for various agricultural commodities set forth in Regulation 150.2, 17 C.F.R. § 150.2 (2019). However, such *bona fide* hedging transactions are subject to the Commission's reporting requirements pursuant to Regulations 19.00(a)(1) and 19.01, 17 C.F.R. §§ 19.00(a)(1), 19.01 (2019).

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), 17 C.F.R. § 15.00(p)(2) (2019), and any part of which constitute *bona fide* hedging positions as defined in Regulation 1.3, must file Form 204 Reports showing the composition of the fixed price cash position of each such commodity hedged ("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.

B. Respondent's Violations of Regulation 19.01

During the Relevant Period, Respondent 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.

On thirteen occasions during the Relevant Period, Respondent did not comply with Regulation 19.01, when it was required to file CFTC Form 204 Reports but failed to timely submit such reports no later than three business days after the last Friday of the relevant month.

Therefore, Respondent violated Regulation 19.01.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Regulation 19.01, 17 C.F.R. §19.01 (2019).

V.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

Acknowledges service of this Order;

- A. 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;
- B. 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 (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;

- C. 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
- D. 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 Regulation 19.01, 17 C.F.R. § 19.01 (2019);
 - 2. orders Respondent to cease and desist from violating Regulation 19.01;
 - 3. orders Respondent to pay a civil monetary penalty in the amount of one hundred and seventy-five thousand dollars (\$175,000) within ten days of the date of entry of this Order; 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 VI of this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulation 19.01, 17 C.F.R. §19.01 (2019).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred and seventy-five thousand dollars (\$175,000) within ten days of the date of entry of this Order ("CMP Obligation"). 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 (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.
HQ Room 181
Oklahoma City, OK 73169
Telephone: (405) 954-6569
Facsimile: (405) 954-1620

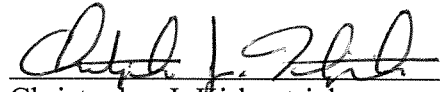
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. 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, and to Michael Solinsky, Chief Trial Attorney, Division of Enforcement, via email at msolinsky@cftc.gov.

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 their agents and employees under its authority or control understand and comply with this agreement.
2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
3. Partial Satisfaction: Respondent understands 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.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in the 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.

A handwritten signature in black ink, appearing to read "Chris J. Kirkpatrick", is written over a horizontal line.

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

Dated: September 30, 2019