

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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3:08 pm, Mar 23, 2015

In the Matter of:

Marubeni America Corporation
Respondent.

CFTC Docket No. 15-18

**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 that Marubeni America Corporation ("Respondent") violated Commission Regulation ("Regulation") 19.01, 17 C.F.R. § 19.01 (2014) from July 2010 through August 2013 (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.

II.

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 Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.¹

¹ Respondent consents 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 Respondent does 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 does Respondent 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

Under Regulations 19.00(a)(1) and 19.01, 17 C.F.R. §§19.00(a)(1) and 19.01 (2014), all persons holding or controlling reportable futures and options positions in certain agricultural commodities – including wheat, corn, oats, soybeans, soybean oil, and soybean meal – pursuant to Regulation 15.00(p)(2), 17 C.F.R. §15.00(p)(2) (2014) and any part of which constitute *bona fide* hedging positions as defined in Regulation 1.3(z), 17 C.F.R. §1.3(z) (2011), are required to file CFTC Form 204 reports showing the composition of the fixed price cash position of each such commodity hedged. During the Relevant Period, Respondent filed 38 Form 204 reports with the Commission that did not comply with this requirement.

B. Respondent

Marubeni America Corporation (“MAC”) is a New York corporation with its headquarters in New York City. MAC is the largest overseas subsidiary of Marubeni Corporation, a Japanese general trading company based in Tokyo, Japan. MAC is a general trading company that acts as an intermediary, importer/exporter, facilitator or broker in various types of trade between business enterprises and countries. MAC trades agricultural commodities, including corn, wheat, soybeans, and soybean meal. MAC has never been registered with the Commission in any capacity.

C. Facts

Respondent is a dealer/merchant in agricultural commodities, including ones covered by CFTC Form 204, which Respondent hedges with futures contracts. During the Relevant Period, Respondent filed Form 204 reports that incorrectly stated its fixed price cash positions.

The CFTC Form 204 report is to be filed monthly, as of the close of business on the last Friday of the month, and is to 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.” A 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.

During the Relevant Period, Respondent filed 38 erroneous Form 204 reports with the Commission, which did not accurately state the quantities of Respondent’s fixed price cash positions of each commodity hedged. Specifically, the positions the Respondent included in its Form 204 reports included both basis priced and fixed priced cash positions. After the Relevant Period, Respondent submitted corrected Form 204 reports that included only its fixed price cash contracts. Respondent has cooperated in the Division’s investigation.

IV.

LEGAL DISCUSSION

a. Statutory Background

Regulation 150.3 exempts positions that qualify as *bona fide* hedging transactions (as defined in Regulation 1.3(z), 17 C.F.R. §1.3(z)) from the speculative position limits for various agricultural commodities set forth in Regulation 150.2. 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) and 19.01 (2014).

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) and any part of which constitute *bona fide* hedging positions as defined in Regulation 1.3(z), 17 C.F.R. §1.3(z), must file CFTC 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.

b. Respondent's Violations of Regulation 19.01, 17 C.F.R. §19.01 (2014)

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 of each of the Form 204 commodities hedged.

On 38 occasions during the Relevant Period, Respondent did not comply with Regulation 19.01, 17 C.F.R. §19.01, when it submitted Form 204 reports which did not accurately state the quantities of Respondent's fixed price open cash positions as required by Regulation 19.01.

Therefore, Respondent violated Regulation 19.01, 17 C.F.R. § 19.01(2014).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that Respondent violated Regulation 19.01, 17 C.F.R. § 19.01(2014).

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. §§ 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. 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 Regulation 19.01, 17 C.F.R. § 19.01 (2014);
 - 2. orders Respondent to cease and desist from violating Regulation 19.01, 17 C.F.R. § 19.01 (2014);
 - 3. orders Respondent to pay a civil monetary penalty in the amount of \$800,000 within ten (10) days of the date of entry of this Order, 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 shall cease and desist from violating Regulation 19.01, 17 C.F.R. § 19.01 (2014).
- B. Respondent shall pay a civil monetary penalty in the amount of eight hundred thousand dollars (\$800,000) 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). 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:

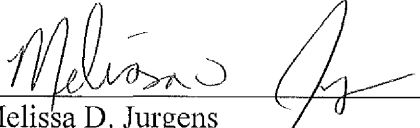
Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson 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 the Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

- 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 employees under its authority or control understand and comply with this agreement.
 2. Cooperation with the Commission: Respondent 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 Respondent has previously provided information.
 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.

The provisions of this Order shall be effective as of this date.

By the Commission.



Melissa D. Jurgens
Chief, Executive Secretariat Branch
Office of the Executive Director
Commodity Futures Trading Commission

Dated: March 23, 2015