

INSIGHTS

## Compliance Take Heed: CFTC Fines Tyson Foods \$1.5 Million for Position Limits, Reporting, and Record Keeping Violations

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On August 13, 2021, the Commodity Futures Trading Commission (“CFTC” or “Commission”) approved a settlement to resolve allegations that Tyson Foods, Inc. (“Tyson”) exceeded the CFTC’s position limits for soybean meal futures contracts and failed to comply with related reporting and recordkeeping obligations with respect to its soybean meal and corn positions. Without admitting or denying the allegations, Tyson agreed to pay a \$1,500,000 civil penalty to resolve the matter. The CFTC noted the cooperation Tyson provided during the course of the investigation, including self-reporting and proactively correcting certain recordkeeping and reporting failures. Although this case was decided after the CFTC conducted a significant overhaul of its position limits rule, it serves as an important reminder to all market participants that the CFTC is continuing to monitor position limits, past and present, and any violation of the limits or the CFTC’s recordkeeping obligations, even if unintentional, can be costly. The following highlights key facts and compliance lessons that can be gleaned from the settlement.

### Key Facts:

- According to the CFTC settlement, Tyson exceeded position limits for soybean meal futures on 590 days over a five year period but did not file an anticipatory hedge exemption for such positions.
- Over the same timeframe, Tyson filed Form 204s that purported to reflect fixed-price cash sales to offset its soybean meal and corn futures positions, but Tyson incorrectly determined its cash positions by converting the number of its open futures contracts into bushels for reporting purposes.
- Tyson voluntarily corrected its Form 204s once the CFTC Enforcement Division informed the company of its reporting errors. Tyson took the further step of investigating its recordkeeping and reporting procedures and self-reported to the CFTC additional issues, including the underreporting of soybean oil cash purchases, double-counting long cash positions reported, failure to capture grain elevator purchases and sales, and failure to retain soybean meal and corn transaction records.

### Key Compliance Lessons:

- Regulatory violations that could be de minimis can result in increased penalties if they go undetected, particularly if the failures by a company's internal systems and controls allowed for additional days and violations to occur.
- Misstatements in reporting to regulatory agencies can lead to substantial penalties, especially where the misstatement results from a lack of diligence or perceived dishonesty.
- Although it is impossible to assess precisely the impact Tyson's cooperation and self-reporting had on the penalty assessed here, the CFTC has committed to considering a reduction in penalties when companies cooperate in investigations and self-identify and report violations.

### **Conclusion**

The significant penalty imposed against Tyson demonstrates that the CFTC continues to take position limit obligations seriously, regardless of when the violations occur. Compliance officers should ensure that appropriate systems and controls are in place to meet the recordkeeping and reporting obligations of the CFTC position limits rule both past and present. Bracewell's attorneys bring extensive commodities and derivatives experience to every matter and are available to assist clients in reviewing and updating policies and procedures, advise clients regarding potential violations, and represent clients in matters before the CFTC.