

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9557 / March 11, 2014**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 71688 / March 11, 2014**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3542 / March 11, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15783**

**In the Matter of**

**Clayton T. Marshall,**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT OF  
1933, SECTIONS 4C AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
AND RULE 102(e) OF THE COMMISSION'S  
RULES OF PRACTICE, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Clayton T. Marshall (“Marshall” or “Respondent”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 4C and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.<sup>1</sup>

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<sup>1</sup> Section 4C provides, in relevant part, that:

The Commission may . . . deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

## II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>2</sup> that

### Respondent

1. **Clayton T. Marshall**, age 37, is a resident of Grand Junction, CO. He joined AgFeed Industries, Inc. in September 2010 as a divisional chief financial officer (“CFO”). He then served as AgFeed’s CFO from July 15, 2011 until August 2012, when he left the company. Marshall has a bachelor’s degree in accounting and is not a certified public accountant.

### Other Relevant Entity

2. **AgFeed Industries, Inc.** (“AgFeed” or “the Company”), is a Nevada corporation with its principal place of business in Hendersonville, TN. At all relevant times, AgFeed was an animal nutrition and hog production company with operations in China and the United States. On July 15, 2013, AgFeed filed a Chapter 11 bankruptcy petition and is currently in liquidation. Until February 2012, AgFeed’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act. At all relevant times, AgFeed’s stock was quoted on The NASDAQ Stock Market LLC, until the company was delisted on March 24, 2012. AgFeed’s stock is currently quoted on OTC Link operated by OTC Markets Group Inc.

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<sup>2</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Facts

3. From approximately mid-2008 through June 30, 2011, AgFeed's publicly-reported revenues were inflated falsely by approximately \$239 million due to actions by former members of AgFeed's Chinese management including, among other things, inflating revenues by booking sales of non-existent hogs and manipulating hog weights, and later covering it up by, among other things, reporting that the fake hogs had died.

4. In September 2010, AgFeed began a plan of expansion by merging with a privately-held U.S. company. Respondent, who had no prior experience with Commission-reporting companies, joined AgFeed as part of the merger. By approximately early June 2011, Respondent was generally aware that allegations of fraud had been reported regarding operations in the Jiangxi region, one of the five Chinese regions where AgFeed maintained hog farms, and that the Company was investigating the fraud allegations.

5. In or about mid-June 2011, Respondent, and others, learned of a new report of fraud allegations regarding operations in another AgFeed Chinese region (the Fujian region). Among other things, the report alleged that the Company had recorded false revenues and inflated fixed assets. Thereafter, Respondent knew or should have known that AgFeed failed to undertake a meaningful investigation regarding the Fujian region fraud allegations. Further, Respondent knew or should have known that the Company, following a limited review of its fixed assets, was unable to substantiate its fixed asset values. Further, Respondent learned that information had been discovered relating to the maintenance of two sets of accounting books in the Company's China operations. Respondent, even after he was promoted on July 15, 2011 to CFO of the Company, did not ensure that appropriate action was taken to determine whether AgFeed's current or prior financial statements were accurate.

6. On August 2, 2011, AgFeed published its earnings release for the period ended June 30, 2011. Respondent knew or should have known that AgFeed's financial statements included therein were false and misleading.

7. On August 9, 2011, Respondent signed the Company's management representation letter to AgFeed's independent auditor. The management representation letter was materially false or misleading as it, among other things, failed to disclose the fraud allegations relating to the Fujian region.

8. On August 9, 2011, AgFeed filed with the Commission the Company's Form 10-Q for the period ended June 30, 2011 (the "Form 10-Q"), which Respondent signed and certified as CFO. The Form 10-Q was incorporated into the Company's active June 2009 Form S-3 registration statement. The Form 10-Q also incorporated by reference the Company's Form 10-K for the period ended December 31, 2010. Respondent knew or should have known that the Company's Form 10-Q for the period ended June 30, 2011 was false and misleading.

9. On December 19, 2011, AgFeed finally disclosed that “financial accounting staff and management based in China engaged in accounting improprieties” and that “the Company’s previously issued unaudited financial statements for the quarters ended March 31 and June 30, 2011, as well as its audited financial statements for the years ended December 31, 2010 and 2009, should be restated. As a result, the Company’s consolidated balance sheets as of March 31 and June 30, 2011 and December 31, 2010 and 2009, the Company’s consolidated statements of operations and other comprehensive income (loss) for the quarters ended March 31 and June 30, 2011 and the years ended December 31, 2010 and 2009, the Company’s consolidated statements of cash flows for the quarters ended March 31 and June 30, 2011 and the years ended December 31, 2010 and 2009 and the footnotes thereto should no longer be relied upon.” On January 31, 2012, AgFeed further disclosed that due to the “accounting irregularities” in China, “the Company’s audited financial statements for the year ended December 31, 2008 should no longer be relied upon.”

### **Violations**

10. Section 17(a)(2) of the Securities Act prohibits any person from obtaining money or property by means of untrue statement of material facts or omissions, in the offer or sale of securities. Section 17(a)(3) of the Securities Act proscribes “any transaction, practice or course of business which operates or would operate as a fraud or deceit...” in the offer or sale of securities. A violation of these provisions may be established by a showing of negligence. Aaron v. SEC, 446 U.S. 680, 697 (1980).

11. Section 13(a) of the Exchange Act and Rule 13a-13 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act, such as AgFeed, to file with the Commission accurate quarterly reports. Rule 12b-20 of the Exchange Act requires that these reports contain such further material information as may be necessary to make the required statements in the reports not misleading. Section 13(b)(2)(A) of the Exchange Act requires issuers to “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.” Exchange Act Rule 13b2-1 prohibits any person from directly or indirectly falsifying, or causing to be falsified, any book or record subject to Section 13(b)(2)(A). Section 13(b)(2)(B) of the Exchange Act requires reporting companies to devise and maintain an adequate system of internal accounting controls. Rule 13b2-2 of the Exchange Act prohibits officers and directors from, directly or indirectly, making or causing to be made materially false or misleading statements or omissions to accountants in connection with an audit or preparation of reports to be filed with the Commission. Rule 13a-14 of the Exchange Act requires that the principal executive and financial officers certify each periodic report containing financial statements filed by an issuer pursuant to Section 13(a) of the Exchange Act.<sup>3</sup>

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<sup>3</sup> Under Section 302 of the Sarbanes-Oxley Act of 2002, the principal executive and financial officers are required to certify, among other things, that: (1) they reviewed annual and quarterly reports; (2) based upon their knowledge, the report does not omit or misstate a material fact; and (3) they had disclosed any fraud, whether or not material, involving management to the audit committee and the auditors.

12. As a result of the conduct described above, Marshall willfully<sup>4</sup> violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Rules 13a-14, 13b2-1 and 13b2-2 under the Exchange Act, and was a cause of AgFeed's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

#### IV.

13. Pursuant to this Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, civil penalties pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act against Respondent are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the allegations of the Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

#### V.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Marshall's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 4C and 21C of the Exchange Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice it is hereby ORDERED that:

A. Respondent Marshall shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 13a-13, 13a-14, 13b2-1, 13b2-2 and 12b-20 promulgated thereunder.

B. Respondent Marshall is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After five years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as an accountant.

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<sup>4</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

D. IT IS FURTHER ORDERED pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party, that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110, following the entry of a final judgment against the last remaining defendant(s) in Securities and Exchange Commission v. AgFeed Industries, Inc., et al. (M.D. TN) (the "Related Actions").

If Marshall fails to appear at a hearing after being duly notified, Marshall may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Marshall personally or by certified mail.

E. IT IS FURTHER ORDERED pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party, that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of the entry of a final judgment in the Related Actions.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson  
Assistant Secretary