

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95663 / September 2, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4330 / September 2, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21022

<p>In the Matter of</p> <p style="text-align:center">CHS Inc.,</p> <p>Respondent.</p>
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ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against CHS Inc. (“CHS,” “the company,” or “Respondent”).

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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ 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.

Summary

1. This matter concerns violations of the reporting, books and records, and internal accounting controls provisions of the Exchange Act by CHS. As part of its business, the company enters into contracts with railroads to transport commodities throughout North America. From at least 2014 through 2018, a CHS employee manipulated the quantities and values of these rail freight contracts. He was able to do this because of CHS's insufficient internal accounting controls. For example, CHS allowed the employee to both execute trades and determine their valuations. As a result of the employee's misconduct, CHS filed materially false financial statements with the Commission on Forms 10-K, 10-Q, and 8-K. CHS later restated its net income for its fiscal years 2014 through 2018.

Respondent

2. **CHS Inc.**, a Minnesota corporation headquartered in Inver Grove Heights, Minnesota, is an agricultural cooperative that provides grain, food, agronomy, and energy resources to businesses and consumers on a global scale. Its classes of preferred stock are registered pursuant to Section 12(b) of the Exchange Act and trade on the NASDAQ Global Select Market as CHSCP, CHSCO, CHSCN, CHSCM, and CHSCL.

Other Relevant Individual

3. **Rail Freight Trader** was a CHS senior freight merchandiser during the relevant time period.

FACTS

CHS's Structure and Background Information

4. CHS has issued preferred stock, but not common stock. The company is a cooperative whose equity is 70% owned by approximately 950 local cooperatives that are, in turn, owned by half a million farmers and ranchers. The balance of CHS's equity is owned by roughly 75,000 individual agricultural producers.

5. CHS operates in three reportable segments—Energy, Nitrogen Production, and Ag. Within the Ag segment resides the company's North American grain marketing operations, which is the business unit most relevant to this matter. Rail Freight Trader's trading desk was charged with buying and selling rail freight capacity to support North American grain operations. CHS's rail freight capacity requirements were often met by entering into shuttle loader train contracts with railroads. These contracts typically provided for the right and obligation of CHS to continuously operate a 110-car train, from one origin to one destination, for one year. Rail Freight Trader obtained shuttle contracts primarily by participating in auctions conducted by railroads.

6. Prior to its December 2018 restatement, CHS accounted for its auction and secondary market shuttle transactions as derivatives. Accordingly, the company carried the net value of the derivatives as an asset on its balance sheet and valued its shuttle capacity on a mark-to-market basis. Rail Freight Trader was solely responsible for providing the shuttle contract

quantities and values the company used for derivative accounting purposes. No CHS employees were tasked with confirming the accuracy of the information provided by Rail Freight Trader.

Rail Freight Trader's Fraud

7. During August 2018, a CHS vice president reviewed Rail Freight Trader's most recent bid sheet. When he and another CHS employee, who was knowledgeable about shuttle values as a consumer of rail freight, examined the document, both immediately recognized that the values provided by Rail Freight Trader were grossly overstated. The divergence was so extreme that the vice president initially thought that perhaps he misunderstood what the bid sheet reflected.

8. In early September, CHS management held a series of meetings in an attempt to understand the reasons behind the discrepancy. It quickly became apparent that Rail Freight Trader did not have a legitimate basis for his inflated values. Instead of providing objective, market-based prices to CHS's accounting group, Rail Freight Trader had reported values that he claimed were supported by his personal view of what the shuttle contracts would eventually be worth.

9. On September 7, 2018, CHS commenced an internal investigation. In addition to confirming widespread valuation problems, the investigation discovered numerous fictitious rail freight contracts that Rail Freight Trader had added to the company's books and records.

The Fraud's Impact

10. Because of Rail Freight Trader's fraud, CHS's fiscal year 2014 through 2018 Forms 10-K and 10-Q contained materially false financial statements. For the same reason, the company's Forms 8-K filed with the Commission on June 14, 2017, December 8, 2017, and May 17, 2018, were also inaccurate. On December 3, 2018, CHS filed a Form 10-K in which it restated its audited financial statements for fiscal years 2016 and 2017, as well as select financial information for fiscal years 2014 and 2015. The company also restated its unaudited financial statements for the first three quarters of fiscal years 2017 and 2018. While there were also unrelated issues included in the restatement, the bulk of the restatement was attributable to Rail Freight Trader's fraud.

Violations

Reporting Violations

11. As a result of the conduct described above, CHS violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual, quarterly, and current reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

Books and Records Violations

12. Also as a result of the conduct described above, CHS violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

Internal Accounting Controls Violations

13. Lastly, as a result of the conduct described above, CHS violated Section 13(b)(2)(B) of the Exchange Act, which requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

CHS's Cooperation and Remedial Efforts

14. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

15. Among other things, CHS identified the improper conduct, initiated an internal investigation, and promptly notified the Commission staff. CHS provided relevant documents, made employees available for interviews, provided assistance in obtaining relevant information from third parties, and presented findings from its internal investigation.

16. CHS also engaged in remediation efforts, including the creation of an internal controls remediation steering committee and retention of outside experts to analyze and correct its control failures; the hiring of additional personnel to bolster its internal controls processes; and adopting policies, procedures, controls, and training to prevent the recurrence of similar events.

17. CHS promptly terminated Rail Freight Trader and later terminated, demoted, or placed on performance improvement plans additional employees for their insufficient oversight of the rail freight desk. In addition, without the staff's prompting or involvement, CHS pursued and clawed back incentive compensation from 26 current or former CHS officers and directors due to CHS's false financial statements.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent CHS cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

By the Commission.

Vanessa A. Countryman
Secretary