

# SEC Charges Animal Feed Company and Top Executives in China and U.S. With Accounting Fraud

## U.S.-Based Audit Committee Chair Charged for Complicity in Scheme

FOR IMMEDIATE RELEASE

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*Washington D.C., March 11, 2014* — The Securities and Exchange Commission today charged an animal feed company and top executives with conducting a massive accounting fraud in which they repeatedly reported fake revenues from their China operations in order to meet financial targets and prop up the stock price.

The SEC alleges that four executives in China orchestrated the scheme at AgFeed Industries Inc., which was based in China and publicly traded in the U.S. before merging with a U.S. company in September 2010 and spreading its operations between the two countries. With the bulk of its hog production operations in China, the executives used a variety of methods to inflate revenue from 2008 to mid-2011, including fake invoices for the sale of feed and purported sales of hogs that didn't really exist. They later tried to cover up their actions by saying the fake hogs died. Because fatter hogs bring higher market prices, they also inflated the weights of actual hogs sold and correspondingly inflated the sales revenues for those hogs.

The SEC also charged a company executive and a company director in the U.S. with scheming to avoid or delay disclosure of the accounting fraud once they learned about it in 2011 while engaged in efforts to raise capital for expansion and acquisitions. The director, K. Ivan (Van) Gothner, was chair of AgFeed's audit committee. He sought advice from a former director and company advisor who responded in e-mail communications that there was "not just smoke but fire" and recommended that AgFeed hire professional investigators guided by outside legal counsel. However, Gothner ignored the recommendation and internalized the situation while false financial reporting continued.

The SEC also reached a settlement with another U.S.-based company executive and a cooperation agreement with a different executive in the U.S. The eight executives involved in the SEC's case are no longer at AgFeed, which is headquartered in Hendersonville, Tenn., and has filed for bankruptcy.

"AgFeed's accounting misdeeds started in China, and U.S. executives failed to properly investigate and disclose them to investors," said Andrew J. Ceresney, director of the SEC's Division of Enforcement. "This is a cautionary tale of what happens when an audit committee chair fails to perform his gatekeeper function in the face of massive red flags."

The SEC's complaint filed in U.S. District Court for the Middle District of Tennessee charges executive chairman Songyan Li, CEO Junhong Xiong, CFO Selina Jin, and controller Shaobo Ouyang as the management in China behind the scheme, which began in 2008 after AgFeed acquired 29 Chinese farms for its new hog production division. The inflated numbers that included sales of fake hogs and bloated weights of actual hogs were recorded in a fake "outside" set of books that the company provided to its outside auditors. The "inside" real set of books contained accurate, lower revenue numbers that were hidden from auditors. Li, Xiong, Jin, and Ouyang caused AgFeed to report false revenues of approximately \$239 million.

According to the SEC's complaint, U.S. management learned of the accounting fraud by early June 2011, but failed to take adequate steps to investigate and disclose it to investors. Gothner and the CFO who replaced Jin after the merger, Edward J. Pazdro, specifically learned that AgFeed's China operations kept two sets of accounting books and that Ouyang had admitted to the fraud. Gothner and Pazdro even obtained a partial copy of the two sets of books as well as a memo from AgFeed's in-house counsel from China that concluded – based on witness accounts and documentary evidence – that the company was involved in a widespread accounting fraud. The memo noted that two sets of accounting books were maintained "in order to make AgFeed's revenue and net income look better." The memo concluded that Xiong and Jin had directed the accounting fraud, and Xiong had ordered the destruction of the second set of books.

The SEC alleges that instead of fulfilling their responsibilities as the company's stewards of financial reporting, Gothner and Pazdro failed to conduct or prompt the company to conduct any further meaningful investigation into the misconduct. Not only did they fail to disclose the fraud to investors or law enforcement, but Gothner and Pazdro instead engaged in efforts

to spin off the company's feed division and raise capital for expansion and acquisitions that would enable profits for AgFeed and them personally. Even as additional red flags arose in June and July 2011, they failed to take appropriate actions. They misled AgFeed's outside auditor and caused the company to issue false and misleading press releases and SEC filings.

"Officers and directors have an obligation to exercise diligence and ensure that their financial reporting is accurate," said Julie Lutz, director of the SEC's Denver Regional Office. "Despite learning about false and misleading financial information, AgFeed executives failed to come clean with investors or law enforcement."

The SEC's complaint charges AgFeed, Xiong, Li, Jin, Ouyang, Gothner, and Pazdro with violating or aiding and abetting violations of the anti-fraud, reporting, books and records, and internal controls provisions of the federal securities laws. Xiong, Li, Jin, Ouyang, Gothner, and Pazdro also are charged with making false statements to AgFeed's outside auditors. The SEC's complaint seeks disgorgement of ill-gotten gains plus prejudgment interest as well as financial penalties and officer-and-director bars. The SEC also seeks to suspend Jin, Ouyang, and Pazdro from practicing as accountants on behalf of any publicly-traded company or other entity regulated by the SEC.

AgFeed's former chairman and interim CEO John A. Stadler separately consented to an SEC order barring him from acting as an officer or director and requiring him to pay a \$100,000 penalty and cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-11, 13a-13, 13a-14, 13b2-1, and 13b2-2 thereunder. He neither admitted nor denied the findings in the order.

AgFeed's former CFO Clayton T. Marshall, who replaced Pazdro, entered into a cooperation agreement with the SEC. The terms of his settlement reflect his assistance in the SEC's investigation and anticipated cooperation in the pending court action. Marshall agreed to be suspended from practicing as an accountant on behalf of any publicly-traded company or other entity regulated by the SEC for a period of at least five years. Without admitting or denying the findings, he consented to an SEC order requiring him to cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-13, 13a-14, 13b2-1, and 13b2-2 thereunder. Whether a financial penalty should be imposed against Marshall will be determined at a later date.

AgFeed consented to an SEC order pursuant to Section 12(j) of the Exchange Act that revokes the registration of each class of its securities. The SEC's case against AgFeed in federal court is continuing.

The SEC's investigation was conducted by Michael Cates, Rachael Clarke, Donna Walker, and Ian Karpel of the Denver Regional Office. The SEC's litigation will be led by Nancy Gegenheimer and Gregory Kasper.

## Related Materials

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- [SEC complaint](#)
- [SEC order - Stadler](#)
- [SEC order - Marshall](#)

**IN THE UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF TENNESSEE**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Civil Action No. \_\_\_\_\_

AGFEED INDUSTRIES, INC.,  
JUNHONG XIONG,  
SELINA JIN,  
SONGYAN LI,  
SHAOBO OUYANG,  
EDWARD J. PAZDRO, and  
K. IVAN GOTHNER

Defendants.

**COMPLAINT**

The United States Securities and Exchange Commission alleges as follows:

**SUMMARY**

1. This case involves a massive accounting fraud at AgFeed Industries, Inc. (“AgFeed” or the “company”), an animal nutrition and hog production company with operations in the United States and China. AgFeed reported fictitious revenues from its China operations from 2008 through June 30, 2011. The fraud caused AgFeed’s publicly-reported revenues to be inflated by approximately \$239 million over this period. On an annual basis, the fraud caused overstated revenue ranging from approximately 71% to 103%.

2. The fraud was orchestrated by four former members of AgFeed’s Chinese management named as defendants in this Complaint: Songyan Li, former executive chairman, Junhong Xiong, former chief executive officer (“CEO”), Selina Jin, former chief financial officer (“CFO”), and Shaobo Ouyang, former controller of the company’s Chinese hog operation (the

“Chinese Defendants”). As described more fully below, Xiong, Jin, Li, and Ouyang inflated revenues by, among other things, booking sales of non-existent hogs and by manipulating hog weights, and later covered it up by, among other things, reporting that the fake hogs had died.

3. By early 2011, Xiong, Jin, and Li had left their management positions at company. As of February 2011, AgFeed’s senior management and most of the board were Americans. As detailed below, K. Ivan (“Van”) Gothner joined the board as chair of the audit committee, Edward Pazdro replaced Jin as CFO, Li resigned as chairman, and Xiong was replaced by an interim CEO.

4. In May 2011, Gothner and Pazdro learned from the hog production division’s chief operating officer (the “Hog Division COO”) that the company appeared to have engaged in fraud and maintained two sets of books. Pazdro and others, at Gothner’s direction, made inquiries based on this report which resulted in Ouyang admitting to them his involvement in the fraud. Also in May 2011, Pazdro obtained a USB drive from the Hog Division COO containing two sets of books – a real set and a fake set – which confirmed Ouyang’s admission and the Hog Division COO’s report.

5. In June 2011, Gothner and Pazdro received a memorandum from Chinese counsel at AgFeed which concluded, based on witness accounts and documentary evidence, that AgFeed maintained two sets of books for the purpose of inflating revenue and profits, that the accounting fraud was widespread, that Xiong and Jin had directed the accounting fraud, and that Xiong had ordered the destruction of the second set of books.

6. Thereafter, from June through September 2011, Gothner and Pazdro, who during this period were engaged in efforts to raise capital for expansion and acquisitions from which AgFeed stood to profit, engaged in a scheme to avoid or delay disclosure of the fraud, including:

(1) failure to disclose to the company's auditors key evidence of the fraud, including the internal memo describing the fraud and the USB drive which contained two sets of books; (2) failure to disclose the internal memo or USB drive to key personnel in management, such as the company's new CFO; (3) with respect to Pazdro, misrepresenting his knowledge of the fraud in the August 9, 2011 management representation letter to the outside auditors; (4) with respect to Gothner, misrepresenting to counsel that a third-party expert had been engaged to analyze the USB drive when no such expert had been hired; and (5) failure to conduct further meaningful inquiries into the fraud even as additional red flags arose. Gothner's and Pazdro's actions and failures to act on the fraud caused AgFeed to make false and misleading public statements, including a Form 10-Q on August 9, 2011 that reported the falsely inflated earnings.

7. As a result of the conduct described herein, AgFeed, the Chinese Defendants, Gothner, and Pazdro violated the federal securities laws and, unless restrained and enjoined, will continue to do so.

### **JURISDICTION AND VENUE**

8. The Court has jurisdiction pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)-(e) and 78aa]. The Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, the means and instrumentalities of interstate commerce, or of the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

9. Venue lies in this judicial district pursuant to 15 U.S.C. §§ 77u(a) and 78aa and 18 U.S.C. § 1391(b)(2). Certain defendants reside in this district, the company does business here, violations occurred in this district, and defrauded investors reside in this district.

## DEFENDANTS

10. **AgFeed Industries, Inc.** is a Nevada corporation with its principal place of business in Hendersonville, Tennessee. AgFeed was a publicly-traded hog and feed production company with operations in the United States and China. During the relevant period, AgFeed's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and quoted on The NASDAQ Stock Market LLC under the symbol FEED.

11. **Junhong Xiong** ("Xiong") is a resident of Nanchang, China. Xiong was AgFeed's CEO and a director from about October 2006 until February 2011. As CEO, Xiong prepared and signed AgFeed filings with the Commission, including all of AgFeed's annual and quarterly reports filed with the Commission from 2008 through 2010, along with accompanying certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 ("SOX"). Xiong exercised control over the management, general operations, and policies of AgFeed, as well as certain of the activities upon which AgFeed's violations are based.

12. **Selina Jin** ("Jin") is a resident of Nanchang, China. Jin, an accountant, was AgFeed's assistant CFO from June 2008 to April 2009 and CFO from April 2009 to November 2010. As AgFeed's CFO, Jin prepared and signed AgFeed filings with the Commission, including AgFeed's Form 10-K for the year ended 2009, the Forms 10-Q filed during 2009 and for the first and second quarters of 2010, along with accompanying certifications pursuant to Section 302 of SOX. Jin exercised control over the management, general operations, and policies of AgFeed, as well as certain of the activities upon which AgFeed's violations are based.

13. **Songyan Li** ("Li") is a resident of Shanghai, China. From about October 2006 through February 2011, Li was AgFeed's executive chairman. As executive chairman, Li prepared and signed filings with the Commission, including the company's Forms 10-K for the

years ended 2008, 2009, and 2010. Li exercised control over the management, general operations, and policies of AgFeed, as well as certain of the activities upon which AgFeed's violations are based.

14. **Shaobo Ouyang** ("Ouyang") is a resident of Shanghai, China. Ouyang, an accountant, was financial controller for AgFeed's Chinese hog production operation from about November 2009 until July 2013. As described below, in furtherance of the fraud, Ouyang booked, and directed others to book, fake accounting entries that flowed into AgFeed's publicly reported financials.

15. **Edward J. Pazdro** ("Pazdro") is a resident of Hendersonville, Tennessee. Pazdro, an accountant formerly licensed as a CPA, was AgFeed's CFO from November 2010 until July 15, 2011, and AgFeed's director of internal and external reporting from July 15, 2011 until August 2011. From July 2009 until November 2010, Pazdro was CFO of various AgFeed business units. As AgFeed's CFO and director of internal and external reporting, Pazdro was responsible for AgFeed's financial reporting and served as the principal contact with AgFeed's outside auditor. Pazdro signed and certified AgFeed filings with the Commission identified on Appendix A and signed management representation letters, including a false management letter to AgFeed's outside auditors dated August 9, 2011. During the period Pazdro served as AgFeed's CFO and director of internal and external reporting, he drafted, reviewed, and approved public statements made on behalf of the company and exercised control over the management, general operations, and policies of AgFeed, as well as certain of the activities upon which AgFeed's violations are based. Pazdro also obtained, during the statutory time periods established by SOX, bonuses, incentive and/or equity-based compensation or profits from his sale of AgFeed stock.

16. **K. Ivan Gothner** (“Gothner”) is a resident of Wilbraham, Massachusetts. From December 2009 until December 2011, Gothner was an AgFeed director, chair of the board’s audit and compensation committees, and a member of its nominating and corporate governance committees. In addition, from July 2011 through December 2011, Gothner was AgFeed’s vice-chairman and responsible for the company’s investor relations and fundraising. During July and August 2011, Gothner participated in investor conferences and drafted, reviewed, and approved public statements made on behalf of the company. For the period December 2009 until December 2011, Gothner exercised control over the management, general operations, and policies of AgFeed, as well as certain of the activities upon which AgFeed’s violations are based.

## **FACTS**

### ***AgFeed’s Massive Multi-year Accounting Fraud***

17. From January to April 2008, AgFeed raised over \$57 million in three separate registered offerings. AgFeed used the proceeds of the offerings to acquire hog farms in China. By the end of 2008, AgFeed had acquired 29 Chinese farms for its new hog production division. Starting in 2008, in conjunction with the acquisition of the new hog farms, AgFeed began falsifying the results of its Chinese operations in order to improve its publicly-reported performance and enhance its share price.

18. From approximately June 2008 until April 2010, Xiong, Jin, Li, and Ouyang used a variety of methods to inflate revenue from the Chinese operations, including the use of fake invoices for the sale of feed, the sale of fake hogs, inflating the weights of hogs sold, and correspondingly inflating the sales revenues for those hogs, since fatter hogs bring higher market prices.

19. When AgFeed inflated hog sales and weights, Xiong, Jin, Li, and Ouyang also



made fake cost of goods sold (COGS) entries to account for the expenses of the fake or fatter hogs they recorded. Moreover, to offset the increased revenues the company made false construction in progress (CIP) and fixed asset entries.

20. After the fraud was revealed, the company prepared a draft restatement but never completed it because on July 15, 2013, the company filed for protection under the United States Bankruptcy Code. Based on the company's draft restatement work, the fraud caused AgFeed's publicly-reported revenues to be overstated by approximately \$239 million over a three-and-a-half year period. On an annual basis, for 2008, 2009, and 2010, the fraud caused revenue inflation ranging from approximately 71% to approximately 103% and gross profit inflation ranging from approximately 98% to approximately 153%.

21. During the period of the fraud, the inflated numbers were recorded by Jin and Ouyang and other lower level Chinese finance personnel in an "outside" set of books that the company provided to its auditors and U.S. management. An "inside" set of books containing accurate, lower numbers was initially kept from the auditors and from U.S. management.

22. In approximately April 2010, Xiong, Jin, Li, and Ouyang covered up the second set of books by "digesting" or unwinding the inflated numbers. Different regions used different methods of "digestion." The Jiangxi region, for example, got rid of the fake hogs on its books by claiming they had died in floods or through illness, which was not true.

23. As detailed below, when AgFeed began to close underperforming farms, Pazdro recognized aberrational results in the hog farm operations. The farm closures accelerated the necessary digestion and employees recorded the extraordinarily large hog deaths, which affected inventory, COGS, and other expense numbers.

24. As a result of the fraud, all periodic filings issued by AgFeed from May 2008

through August 2011, as well as the company's July 18, 2011 and August 2, 2011 Forms 8-K and its August 2, 2011 earnings release,<sup>1</sup> are materially false because they disclose revenues and gross profits that are grossly overstated. Moreover, all of the company's public statements identified during the relevant period are materially false because they do not disclose the accounting fraud conducted by senior Chinese management.

25. The company's registration statements during the period May 2008 through August 2011 are also false because they incorporate by reference the false financial statements contained in the company's periodic filings.

***Xiong, Jin, Li, and Ouyang Orchestrated the Fraud***

26. During their tenure at the company, Xiong, Jin, Li, and Ouyang inflated AgFeed's revenue, systematically falsifying the company's accounting books and records in the process, in order to meet financial targets and prop up AgFeed's share price. Jin, with the assistance of Ouyang, managed the false accounting on a day-to-day basis with the full knowledge and complicity of Xiong and Li. Based on the company's draft restatement work, the revenue inflation began in approximately June 2008.

27. As CFO, Jin directed several China-based finance employees to make fictitious accounting entries, including fake entries for sales of pigs and the purchase of fixed assets. For example, beginning in the fall 2008, Jin directed one Shanghai regional employee to inflate the sales of hogs and offset the increased revenue by booking the purchase of fake fixed assets.

28. In July 2009, Jin directed another finance employee based in the Fujian region to book fake CIP entries which were later transferred to fixed assets. Contemporaneous minutes created in July 2009 reflect Jin's participation in meetings to discuss the two sets of books and

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<sup>1</sup> The false filings, along with the signatories of those filings, are listed in Appendix A, which is incorporated herein by reference.

how to reconcile differences between the two.

29. Beginning in April 2010, Jin directed Ouyang, controller for the hog production operations, to cover up the fraud, which Ouyang did by coordinating the “digestion” process. At Jin’s direction, Ouyang began to merge the two sets of books into a single set by altering the company’s accounting records to make the real and fake profits match.

30. Ouyang engaged other finance personnel in his efforts to unwind the inflated numbers, and sent e-mails and spreadsheets to employees instructing them on how to accomplish the digestion. The instructions included directions to record inaccurate entries for CIP and fixed assets and requests to enter the data into spreadsheets for tracking. The inaccurate accounting entries made and directed by Ouyang flowed into AgFeed’s publicly-reported financials.

31. Xiong and Li, AgFeed’s CEO and executive chairman respectively, were aware of and participated in the accounting fraud. In fact, after professional investigators hired by the company in September 2011 questioned Xiong about the fraud, he openly admitted that AgFeed inflated its profits in order to meet financial targets and falsified accounting records to cover it up. He also admitted that he discussed the fraud with Li. Xiong’s admission of his and Li’s involvement is reflected in contemporaneous documents as well, for example:

32. In July 2009, two AgFeed employees wrote separate emails to Xiong stating that the company was creating “non-existing businesses” to give the appearance of greater profits and that the 2008 profits were “basically fabricated.”

33. In January 2010, an AgFeed employee wrote to Li and Xiong that the “actual profits” of the company were small compared to the inflated profits, which was causing a problem with payment of taxes on the higher, fake profits. The e-mail also noted a concern with the use of “fake invoices” to cover up the fake profits. Xiong responded to the employee,

writing “there is too much falsification” and expressing concern as to how the company would cover up the fraud.

34. In May 2010, in a reference to the “digestion” process, Xiong wrote Li in an email that they needed to find ways to cover up the “fictitiously inflated profits.”

35. In December 2010, Xiong received a memo from Ouyang detailing AgFeed’s plans to minimize the inconsistencies between the real and fake set of accounts detailing the steps needed to reconcile fake and real numbers.

36. Jin, Xiong, and Li prepared, signed, and/or certified Forms 10-Q and 10-K that they knew or were reckless in not knowing, included material misrepresentations of AgFeed’s revenues and gross profits as a result of the fraud described above. AgFeed’s periodic filings were incorporated into the company’s March 12, 2008, May 1, 2009, and June 25, 2009 Form S-3 registration statements, also signed by Jin, Li, and Xiong, that AgFeed used to raise money through securities offerings. The false filings signed by Jin, Xiong, and Li are listed in Appendix A.

#### ***Gothner and Pazdro Learn of the Fraud in Early 2011***

37. In September 2010, AgFeed merged with a private American hog producer (“M2P2”) and touted in public statements that the merger was the beginning of AgFeed’s “transformation” into a modern, international hog producer. To this end, AgFeed embarked on an aggressive plan to acquire other U.S. companies, spinoff its animal feed division, and integrate M2P2’s expertise into its Chinese hog production operations.

38. Gothner and Pazdro, along with others at AgFeed, were directly involved in these plans and had strong financial incentives to ensure that the company’s transformation succeeded. Gothner and Pazdro stood to receive increased compensation if the transformation succeeded,

including stock grants and executive positions as a result of the company's planned spin-off of the feed division in an initial public offering.

39. In early November 2010, however, Jin reported extremely poor third-quarter results to U.S. management, including Pazdro and Gothner, after having previously informed U.S. managers and directors that quarterly losses would be relatively slight. At the time, Jin's oversight of financial reporting was described in e-mails to Gothner from AgFeed's then COO of U.S. and China operations (the "Global COO") as a "mess," a "total disaster," and "completely out of control." Over Xiong and Li's objections, AgFeed's board terminated Jin as CFO and replaced her with Pazdro.

40. In February 2011, AgFeed's board terminated Xiong and Li for their failures to adequately communicate with the board of directors and explain the hog division's mounting losses. M2P2's chairman who had recently joined the company assumed the roles of chairman and interim CEO.

41. In early 2011, AgFeed began to close underperforming Chinese farms in the hog division, and these closures revealed suspicious numbers. In April 2011, Pazdro received preliminary first quarter financial reports from the hog division's Jiangxi region farms, which showed the farms were generating large losses as a result of high cost of goods sold and other expenses. Pazdro described the losses as "absurd" in an April 21, 2011 email to Ouyang querying whether the farms were even "physically large enough" to produce the losses shown in the reports, as the COGS numbers were far too high in relation to the number of hogs he understood each farm owned.

42. Pazdro looked more closely at the data and found that the farms had suddenly recorded a large number of hog deaths, which Pazdro believed was inaccurate. Shortly

thereafter, on or around May 4, 2011, Pazdro informed Gothner and others of his concerns with the Jiangxi farm numbers.

43. On May 4, 2011, the Global COO sent an e-mail to the Hog Division COO asking whether fraud caused the unusual Jiangxi numbers. The Hog Division COO wrote on May 6, 2011, that since at least 2009, “there were a lot of frauds” in Jiangxi and that the region “kept at least two account [books], one for inside and one for outside (for you and USA).”

44. The Hog Division COO also informed the Global COO on or around May 6, 2011, that Jin and Xiong had been involved with the fraud, that he suspected finance department employees had been paid off to keep quiet, that the company had devised a method to “digest” the second set of books, and that Ouyang knew the details of the fraud. On or before May 9, 2011, the Global COO reported all of this information directly to Gothner and Pazdro.

45. In response to receiving this information, Gothner contacted a former AgFeed director and then-current company advisor, who recommended in an e-mail dated May 9, 2011, that AgFeed hire professional investigators, guided by outside legal counsel, to conduct an investigation. In this email, the advisor told Gothner that the “Jiangxi issues” were “not just smoke but fire.” Rather than hire professional investigators, however, Gothner directed certain members of management, including Pazdro, to travel to China and investigate.

***Gothner and Pazdro Obtain Evidence from China Substantiating the Fraud***

46. On May 17, 2011, Pazdro, the Global COO, and Chinese in-house counsel (“China Counsel”) interviewed Ouyang. During the interview, Ouyang admitted to the fraud, confirming that it had been directed by Jin and covered up with two sets of books. He admitted that the fraud had been conducted by faking hog counts and manipulating COGS. He also described a specific instance in which Chinese employees had “cooked the books” to turn a loss

to a profit. Ouyang also admitted that the fraud had been covered up by reversing or “digesting” the inflated amounts. Ouyang’s account of “digestion” was consistent with the poor results the hog division began reporting in 2010 and which Pazdro found suspicious.

47. The Hog Division COO also obtained, and delivered to Pazdro on or about May 17, 2011, physical evidence of the fraud: a USB drive containing a portion of the two sets of accounting books for the Jiangxi region.

48. The data on the USB drive indicated that AgFeed’s financial statements were materially overstated. The USB drive obtained by Pazdro contained two sets of books, by month, for each farm in the Jiangxi region for the period January 1, 2009 through June 30, 2010. One set of books – the “outside” books described by the Hog Division COO – ties directly to the consolidated numbers reported in AgFeed’s Commission filings. The second set – the “inside” books – shows materially lower revenue, gross profit, and net profit amounts when compared to the “outside books” for the period January 1, 2009 through March 31, 2010, for the Jiangxi region farms contained on the USB drive.

49. For the three months ended June 30, 2010, a period during which the “digestion” or cover up was taking place, the second set of books on the USB drive shows that while revenue was overstated, gross profit and net profit were understated (or gross loss and net loss were overstated).

50. After Pazdro left China, China Counsel conducted more interviews and gathered documentary evidence, including a significant e-mail from a Jiangxi finance employee, dated May 9, 2011, explaining the “reasons for the loss in the Jiangxi Region for the first quarter.” The e-mail stated the Jiangxi region had been faking data that flowed into the company’s publicly-reported numbers, including hog counts, and had been maintaining the fake data in a

second set of books. The e-mail also stated that because the Jiangxi farms were being closed, the “digestion” process had to be accelerated. This acceleration caused the false reporting of a high number of dead hogs. The e-mail further explained the aberrational first quarter 2011 Jiangxi numbers, and corroborated the Hog Division COO’s and Ouyang’s accounts of the fraud and cover up.

51. In late May 2011, China Counsel, working with the Hog Division COO, contacted finance employees in the other four regions of the hog division who confirmed that they had maintained two sets of books, but the second set of books had been destroyed at Xiong’s direction.

52. On June 4, 2011, China Counsel memorialized his findings in a memo (the “Fraud Memo”) that China Counsel sent directly to Gothner and Pazdro among others. The memo described the evidence gathered – including witness interviews, emails, and the USB drive – and detailed employees’ admissions that the company’s revenues were falsified and later covered up, that the company maintained two sets of books throughout the hog division, and that Xiong and Jin had directed the fraud. The Fraud Memo concluded that the company had been maintaining “two sets of accounting books from 2009 including actual books and adjusted books in order to make AgFeed’s revenue and net income look better.”

53. Despite having the Fraud Memo and the USB drive, Gothner and Pazdro failed to provide them to AgFeed’s outside auditor, failed to hire a professional firm to conduct a review, and otherwise did not further investigate the Jiangxi fraud reports.

#### ***Gothner and Pazdro Obtain Independent Information Corroborating the Fraud Reports***

54. Just days after the Fraud Memo was sent to Gothner and Pazdro, AgFeed received a separate, independent report of fraud that corroborated the Fraud Memo and the USB drive.



55. On or around June 13, 2011, the finance manager for the hog division's Fujian region reported that she had been directed by Jin to book fake revenue to inflate the region's profitability. To cover up the fake revenue, the finance manager explained, Jin had instructed her to book phony construction in progress entries that were later capitalized into an environmental project. As a result, the Fujian region had been reporting inflated fixed assets. In addition, the finance manager reported that the company had recorded fixed assets that did not exist.

56. Pazdro was provided with a written summary of this Fujian fraud report on or shortly after June 13, 2011. Pazdro and another AgFeed employee told Gothner the substance of the Fujian fraud reports shortly thereafter.

***An Outside Consulting Firm Further Corroborates the Fraud***

57. In June 2011, as a partial response to the report of fake fixed assets in Fujian, a consulting and internal audit firm (the "Consulting Firm") reviewed some of the fixed assets located in three of the company's five regions: Fujian, Guangxi, and Shanghai. The review consisted of attempting to obtain documentation supporting the original purchase costs of certain fixed assets and taking photographs of those assets.

58. The Consulting Firm was unable to locate documentation, such as agreements, invoices, or cancelled checks, to verify the original purchase costs. On or about July 12, 2011, the Consulting Firm reported to Gothner and Pazdro that the absence of documentation for the original fixed asset purchases was unusual, suspicious, and irregular and had the indicia of fraud. The Consulting Firm also stated that the lack of documentation prevented it from substantiating the company's fixed asset values and that a full appraisal of the assets was necessary to establish their value.

59. On July 15, 2011, the Consulting Firm identified specific examples of overvalued assets. The Consulting Firm reported to Gothner and Pazdro that it had identified disinfectant pools in Guangxi recorded at values significantly above the cost reported by farm management, and a biogas system in Fujian for which there appeared to be a double-counting of raw material costs.

60. On July 22, 2011, the Consulting Firm further informed Gothner and Pazdro that it had located a company manual relating to the maintenance of two sets of books in the company's China operations; further corroborating earlier fraud reports.

61. Gothner and Pazdro failed to disclose this information to its auditors, to the new CFO appointed July 15, 2011, and otherwise failed to follow up.

***Gothner and Pazdro Engage in a Scheme to Conceal Material Information about the Fraud***

62. Gothner and Pazdro had strong financial incentives to conceal the China fraud. Investigation and disclosure of the fraud would have interfered with AgFeed's "transformation," including efforts to raise capital for expansion and acquisitions and a planned spin-off of the company's feed division, from which AgFeed, Gothner, and Pazdro each stood to profit.

63. Gothner and Pazdro did not reveal to AgFeed's outside auditors, outside disclosure counsel, or new CFO the most significant evidence of the fraud. Instead, from June through September 2011, Gothner and Pazdro gave the false impression that the investigation had not revealed anything to show that the fraud was material.

64. In May 2011, Pazdro informed AgFeed's outside auditors that a "whistleblower" reported allegations of fraud in the Jiangxi region and that management, including Pazdro, was going to China to investigate. After being informed of this, the outside auditor specifically requested that the company keep it informed of the progress of management's investigation.

65. Despite the outside auditors request to be kept informed, Gothner and Pazdro failed to convey significant evidence of the fraud to the auditors and others. Gothner and Pazdro never informed the outside auditors of the Fraud Memo, the USB drive, the details of the separate report made by the Fujian finance director, or the fact that the Consulting Firm had independently located a manual with respect to the second set of books.

66. Pazdro misled the outside auditor when he signed an August 9, 2011, management representation letter that disclosed only that the company had received allegations of fraud in the Jiangxi region, and falsely stated that the company was continuing to investigate. The representation letter did not include key information from the Fraud Memo, the USB drive, the details of the separate report made by the Fujian finance director, or the fact that the Consulting Firm had independently located a manual with respect to the second set of books.

67. Gothner and Pazdro did not inform outside disclosure counsel about the Fraud Memo or the Fujian fraud reports. Moreover, Gothner misled disclosure counsel when he falsely told him that a third-party professional firm had been engaged to examine the USB drive. No third-party professional had been hired.

68. Gothner and Pazdro never informed the Consulting Firm of the Fraud Memo or the USB drive, even after the Consulting Firm was engaged to perform a limited review of fixed assets.

69. On July 15, 2011, AgFeed announced that it had promoted M2P2's CFO to the company's CFO. Even though Gothner and Pazdro knew that the new CFO would need to sign and certify the company's August 9, 2011, Form 10-Q for the period-ending June 30, 2011, Gothner and Pazdro never informed the new CFO of the Fraud Memo or the USB drive.

***Gothner and Pazdro Issue AgFeed Public Statements without Any Reference to the Fraud***

70. As described below, between July 15, 2011 and August 9, 2011, Gothner and Pazdro made and prepared on behalf of AgFeed, public statements that they knew or were reckless in not knowing, were materially misstated because of the serious fraud in AgFeed's China operations.

71. On July 15, 2011, Gothner, along with the company's Interim CEO drafted and approved a press release announcing the company's "ongoing transformation, development, and growth," and letters of intent to purchase Pine Ridge Farms and Kansas City Sausage, in transactions described as "necessary precursor[s] to the [c]ompany's global market strategy." The press release provided false pro forma numbers, stating that "the combined businesses will add over \$180 million of annualized revenue and over \$14 million of EBITDA to the Company's results." AgFeed's stock price increased approximately 10% on the news.

72. Based on the information described above, Gothner knew or was reckless in not knowing that the July 15, 2011, press release was materially misleading because of the China fraud.

73. On July 18, 2011, the company filed a Form 8-K attaching an investor presentation, which Gothner and the Interim CEO prepared, for an investor conference organized by the investment bank that would be underwriting the financing for the Pine Ridge Farms and Kansas City Sausage acquisitions. The presentation, which Gothner helped deliver, contained a chart showing false revenue numbers, including 2008 revenues from the China operations of approximately \$150 million, 2009 revenues of approximately \$175 million, 2010 revenues of approximately \$180 million, projected 2011 revenues of \$150 million, and projected 2012 revenues of approximately \$300 million.

74. Based on the information described above, Gothner knew or was reckless in not

knowing that the July 18, 2011, 8-K and investor presentation were materially misleading because of the China fraud.

75. On August 2, 2011, AgFeed issued an earnings release announcing its second quarter financial results (the “August 2 earnings release”) that contained false revenue numbers. Gothner drafted, reviewed, and approved the August 2 earnings release. Pazdro reviewed and approved the earnings release, and he and the company’s new CFO were responsible for the financial statements reflected in the earnings release.

76. Based on the information described above, Gothner and Pazdro knew or were reckless in not knowing that the August 2 earnings release was materially misleading because of the China fraud.

77. On August 2, 2011, AgFeed filed a Form 8-K attaching the company’s presentation to shareholders on that same day. The shareholder presentation, which Gothner drafted and delivered along with the Interim CEO, included the company’s false second quarter revenue projection of \$84 million.

78. Based on the information described above, Gothner knew or was reckless in not knowing that the August 2 8-K and shareholder presentation were materially misleading because of the fraud.

79. On August 9, 2011, the company filed its Form 10-Q for the period ended June 30, 2011 (the “August 9 10-Q”). Gothner and Pazdro participated in drafting, reviewing, and approving the August 9 10-Q, with Pazdro having responsibility for the preparation of the financial statements. The revenue numbers in the Form 10-Q was materially misleading because of the fraud.

80. Pazdro also signed a management representation letter dated August 9, 2011, to

the company's auditor in connection with the August 9 10-Q. The management representation letter falsely disclosed that the company had only received allegations of fraud in the Jiangxi region. In fact, Pazdro knew, or was reckless in not knowing, that the fraud had been confirmed.

81. Based on the information described above, Gothner and Pazdro knew or were reckless in not knowing that the August 9 10-Q was materially misleading because of the fraud.

82. AgFeed's materially false financial statements included in the August 9 10-Q was incorporated into the company's active June 2009 Form S-3 registration statement and, on August 15, 2011, AgFeed issued over 6 million shares of common stock pursuant to the June 2009 registration statement. The false August 9 10-Q was incorporated into the company's active registration statement.

### ***The Fraud is Belatedly Revealed***

83. It was not until September 29, 2011, at the instigation of a new COO at the company, that AgFeed announced it had formed a special board committee to "conduct an investigation into the accounting practices of its Chinese operations." AgFeed's stock dropped 38% in two consecutive trading sessions on the news, to close at \$0.40 on October 3, 2011.

84. On December 19, 2011, consistent with the Fraud Memo, Ouyang's admissions, and the USB Drive, which Gothner and Pazdro knew or were reckless in not knowing about no later than June 2011, the company finally disclosed that "financial accounting staff and management based in China engaged in accounting improprieties during 2009 and 2010 and the first two quarters of 2011."

85. The company also disclosed on December 19, 2011, that its 2009 and 2010 audited financials, and its first- and second quarter 2011 unaudited financials, should not be relied on and should be restated. The company's December 19, 2011, disclosures caused the

company's stock price to decrease significantly.

86. On January 31, 2012, the company reported – again consistent with the much earlier fraud reports – that a special committee investigation had “identified accounting irregularities in the Company’s ... hog operations in China, including the misstatement of revenues, inventory, property and equipment, and cost of goods sold.” The company further reported that its “audited financial statements for the year ended December 31, 2008, should not be relied on, and the Company will be restating its financial statements for this period.”

87. On February 26, 2013, Pazdro wrote to the Commission describing AgFeed’s ongoing restatement work to that date stating: “The China [] hog production business reported fictitious purchases and sales resulting in overstated gross profit in various periods primarily from 2008 to 2010. Fictitious or improperly overstated assets, primarily fixed assets, were also recorded, some of which were subsequently written off through later disposals or asset impairments.” As of May 2013, the company’s draft restatement work prepared by Pazdro and reviewed by Gothner showed that AgFeed’s publicly-reported revenues were inflated by approximately \$239 million over the period of the fraud.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

**Fraud: Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]  
(All Defendants)**

88. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

89. By engaging in the conduct described above Defendants directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of

material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

90. By reason of the foregoing, Defendants each violated, and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**SECOND CLAIM FOR RELIEF**

**Fraud: Control Person Liability Under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for AgFeed's Violations of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5]  
(Jin, Xiong, Li, Gothner, and Pazdro, Alternatively)**

91. Paragraphs 1 through 87 are hereby realleged and incorporated by reference. AgFeed, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

92. Jin, as CFO, Xiong, as CEO and a director of AgFeed, Li as executive chairman and a director of AgFeed, Gothner as audit committee chairman, vice-chairman, and a director of AgFeed, and Pazdro as CFO and director of internal and external reporting, exercised control over the management, general operations, and policies of AgFeed, as well as the specific activities upon which AgFeed's violations are based.

93. By reason of the foregoing, Jin, Xiong, Li, Gothner, and Pazdro are each liable as



control persons under Section 20(a) of the Exchange Act for AgFeed's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**THIRD CLAIM FOR RELIEF**

**Fraud: Aiding and Abetting AgFeed's Violations of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]  
(All Individual Defendants, Alternatively)**

94. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

95. AgFeed, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

96. By engaging in the conduct described above, Jin, Xiong, Li, Ouyang, Gothner, and Pazdro (the "Individual Defendants") each aided and abetted the fraud violations of AgFeed, in that they knowingly or recklessly provided substantial assistance to AgFeed in committing these violations.

97. By reason of the foregoing, the Individual Defendants, and each of them, have aided and abetted and, unless restrained and enjoined, will continue to aid and abet, AgFeed's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**FOURTH CLAIM FOR RELIEF**

**Fraud in the Offer or Sale of Securities in Violation of Section 17(a) of the Securities Act  
[15 U.S.C. § 77q(a)]  
(AgFeed, Jin, Xiong, Li, Gothner, and Pazdro)**

98. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

99. By engaging in the conduct described above, AgFeed, Jin, Xiong, Li, Gothner, and Pazdro have, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme or artifice to defraud with scienter; obtained money or property by means of an untrue statement of material fact or omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

100. By reason of the foregoing, AgFeed, Jin, Xiong, Li, Gothner, and Pazdro violated and, unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act.

**FIFTH CLAIM FOR RELIEF**

**Fraud: Aiding and Abetting AgFeed's Violations of Section 17(a) of the Securities Act [15 U.S.C. sec. 77q(a)]  
(Jin, Xiong, Li, Gothner, and Pazdro, Alternatively)**

101. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

102. AgFeed, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme or artifice to defraud with scienter; obtained money or property by means of an untrue statement of material fact or omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

103. By engaging in the conduct described above, Jin, Xiong, Li, Gothner, and Pazdro each aided and abetted the offering fraud violations of AgFeed, in that they knowingly or recklessly provided substantial assistance to AgFeed in committing these violations.

104. By reason of the foregoing, Jin, Xiong, Li, Gothner, and Pazdro, and each of them, have aided and abetted and, unless restrained and enjoined, will continue to aid and abet, AgFeed's violations of Section 17(a) of the Securities Act.

**SIXTH CLAIM FOR RELIEF**

**Falsified Books, Records, or Accounts – Section 13(b)(5) of the Exchange Act and Rule 13b2-1 [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1  
(All Individual Defendants)**

105. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

106. By engaging in the conduct described above, the Individual Defendants knowingly circumvented or knowingly failed to implement a system of internal accounting controls to assure that AgFeed's financial statements were prepared in conformity with GAAP or knowingly falsified or caused to be falsified books, records or accounts of AgFeed.

107. By reason of the foregoing, the Individual Defendants violated and unless restrained and enjoined will in the future violate Section 13(b)(5) of the Exchange Act and Rule 13b2-1.

**SEVENTH CLAIM FOR RELIEF**

**False Certifications – Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14]  
(Jin and Xiong)**

108. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

109. Jin and Xiong each falsely certified in connection with AgFeed periodic filings that as signing officers they reviewed the report, and: (1) based on the officer's knowledge, the report does not contain any untrue statement of material fact; (2) based on the officer's knowledge, the financial statements fairly present, in all material respects, the financial results of operations; and (3) the signing officers are responsible for establishing and maintaining adequate internal controls over financial reporting, have designed and evaluated such controls, and have disclosed any changes or weaknesses to the registrant's auditor and audit committee.

110. By reason of the foregoing, Jin and Xiong violated and unless restrained and enjoined will in the future violate Rule 13a-14 of the Exchange Act.

**EIGHTH CLAIM FOR RELIEF**

**Deceit of Auditors – Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2]  
(All Individual Defendants)**

111. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

112. By engaging in the conduct described above, the Individual Defendants each made or caused to be made materially false or misleading statements to an accountant in connection with audits, reviews or examinations of AgFeed’s financial statements or in the preparation or filing of AgFeed’s documents or reports required to be filed with the Commission; or omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with audits, reviews or examinations of financial statements or in the preparation or filing of AgFeed’s documents or reports required to be filed with the Commission.

113. By reason of the foregoing, the Individual Defendants each violated and unless restrained and enjoined will in the future violate Rule 13b2-2 of the Exchange Act.

**NINTH CLAIM FOR RELIEF**

**False SEC Filings: Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 204.13a-11, and 240.13a-13]  
(AgFeed)**

114. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

115. AgFeed, which was an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially false and misleading reports with the SEC that made untrue statements of material fact or omitted to state material facts necessary in order to make the

statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

116. By reason of the foregoing, AgFeed violated and unless restrained and enjoined will in the future violate Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

**TENTH CLAIM FOR RELIEF**

**False SEC Filings – Aiding and Abetting AgFeed’s Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 204.13a-11, and 240.13a-13]**

**(All Chinese Defendants)**

**(Gothner with respect to Section 13(a) and Rules 12b-20, 13a-11 and 13a-13)**

**(Pazdro with respect to Section 13(a) and Rules 12b-20 and 13a-13)**

117. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

118. AgFeed, which was an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially false and misleading reports with the SEC that made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

119. By engaging in the conduct described above, the Individuals Defendants each aided and abetted the reporting violations of AgFeed, in that they knowingly or recklessly provided substantial assistance to AgFeed in committing reporting violations.

120. By reason of the foregoing, the Individuals Defendants each aided and abetted, and unless restrained and enjoined will in the future aid and abet, AgFeed’s violations of Section 13(a) of the Exchange Act and the rules thereunder.

**ELEVENTH CLAIM FOR RELIEF**

**False SEC Filings – Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for AgFeed’s Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20,**

**240.13a-1, 204.13a-11, and 240.13a-13]**

**(Jin, Xiong, and Li, Alternatively)**

**(Gothner with respect to Section 13(a) and Rules 12b-20, 13a-11 and 13a-13, Alternatively)**

**(Pazdro with respect to Section 13(a) and Rules 12b-20 and 13a-13, Alternatively)**

121. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

122. AgFeed, which was an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially false and misleading reports with the SEC that made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

123. Jin, as CFO, Xiong, as CEO and a director of AgFeed, Li as executive chairman and a director of AgFeed, Gothner as audit committee chairman, vice-chairman, and a director of AgFeed, and Pazdro as CFO and director of external and internal reporting, exercised control over the management, general operations, and policies of AgFeed, as well as the specific activities upon which AgFeed's violations are based.

124. By reason of the foregoing, Jin, Xiong, Li, Gothner, and Pazdro are liable as control persons under Section 20(a) of the Exchange Act for AgFeed's violations of Section 13(a) of the Exchange Act and the rules thereunder.

**TWELFTH CLAIM FOR RELIEF**

**False Books and Records: Violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]  
(AgFeed)**

125. 136. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

126. By engaging in the conduct described above, AgFeed, in violation of Section 13(b)(2) of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of

its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements.

127. By reason of the foregoing, AgFeed violated and unless restrained and enjoined will in the future of Section 13(b)(2) of the Exchange Act.

**THIRTEENTH CLAIM FOR RELIEF**

**False Books and Records – Aiding and Abetting AgFeed’s Violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]  
(All Individual Defendants)**

128. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

129. By engaging in the conduct described above, AgFeed, in violation of Section 13(b)(2) of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company’s transactions and dispositions of its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements.

130. By engaging in the conduct described above, the Individual Defendants aided and abetted AgFeed, in that they knowingly or recklessly provided substantial assistance to AgFeed, in committing these violations.

131. By reason of the foregoing, the Individual Defendants aided and abetted, and unless restrained and enjoined will in the future aid and abet, AgFeed’s violations of Section 13(b)(2).

**FOURTEENTH CLAIM FOR RELIEF**

**False Books and Records -- Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for AgFeed's Violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]**

**(Jin, Xiong, Li, Gothner, and Pazdro, Alternatively)**

132. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

133. By engaging in the conduct described above, AgFeed, in violation of Section 13(b)(2) of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements.

134. Jin, as CFO, Xiong, as CEO and a director of AgFeed, Li as executive chairman and a director of AgFeed, Gothner as audit committee chairman, vice-chairman, and a director of AgFeed, and Pazdro as CFO and director of internal and reporting, exercised control over the management, general operations, and policies of AgFeed, as well as the specific activities upon which AgFeed's violations are based.

135. By reason of the foregoing, Jin, Xiong, Li, Gothner, and Pazdro are liable as control persons under Section 20(a) of the Exchange Act for AgFeed's violations of Section 13(b)(2) of the Exchange Act.

**FIFTHTEENTH CLAIM FOR RELIEF**

**Failure to Reimburse – Violation of Section 304(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243(a)]**

**(Jin, Xiong, and Pazdro)**

136. Paragraphs 1 through 87 are hereby realleged and incorporated by reference.

137. As a result of the misconduct described above, AgFeed filed reports that were in



material non-compliance with its financial reporting requirements under the federal securities laws. AgFeed's material non-compliance with its financial reporting requirements resulting from the misconduct required the company to prepare accounting restatements.

138. Jin, Xiong, and Pazdro received or obtained, during the statutory time periods established by the Sarbanes-Oxley Act of 2002, bonuses, incentive and/or equity-based compensation or profits from his sale of AgFeed stock, that they have failed to reimburse AgFeed.

139. The Commission has not exempted Jin, Xiong, and Pazdro, pursuant to Section 304(b) of the Sarbanes-Oxley Act of 2002, from its application under Section 304(a).

140. By engaging in the conduct described above, Jin, Xiong, and Pazdro violated, and unless ordered to comply will continue to violate, Section 304(a) of the Sarbanes-Oxley Act of 2002.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff Securities and Exchange Commission respectfully requests that the Court:

#### **I.**

Find that each of the Defendants committed the violations alleged in this Complaint;

#### **II.**

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining each of the Defendants from violating, directly or indirectly, the laws and rules alleged in this Complaint;

#### **III.**

Order that each of the Defendants be permanently prohibited from acting as an officer or director of any public company;

**IV.**

Order that each of the Defendants disgorge any and all ill-gotten gains, together with pre- and post-judgment interest, derived from the improper conduct set forth in this Complaint;

**V.**

Order that each of the Defendants pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] in an amount to be determined by the Court, plus post-judgment interest;

**VI.**

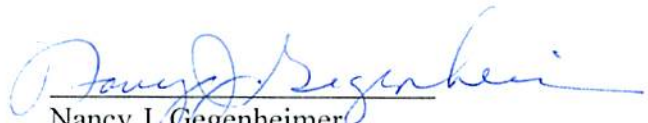
Order that Jin, Xiong, and Pazdro reimburse AgFeed for all bonuses, incentive-based and equity-based compensation, and/or profits realized from their sale of AgFeed stock pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243(a)]

**VII.**

Grant such other relief as this Court may deem just or appropriate.

Plaintiff requests trial to a jury.

Respectfully submitted March 11, 2014.



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**APPENDIX A -- MATERIALLY FALSE AND MISLEADING FILINGS & PUBLIC STATEMENTS ISSUED BY AGFEED AND THEIR SIGNATORIES**

<b>Filing</b>	<b>Xiong</b>	<b>Jin</b>	<b>Li</b>	<b>Pazdro</b>
<b>10-Q</b>				
5/15/2008	x			
8/11/2008	x			
11/13/2008	x			
5/11/2009	x	x		
8/10/2009	x	x		
11/9/2009	x	x		
5/10/2010	x	x		
8/9/2010	x	x		
11/9/2010	x			
5/10/2011				x
8/9/2011				
<b>10-K</b>				
3/13/2008	x		x	
3/16/2009	x		x	
3/8/2010	x	x	x	
3/16/2011				x
<b>S-3</b>				
12/28/2007	x		x	
3/12/2008	x		x	
5/1/2009	x	x	x	
6/26/2009	x	x	x	
<b>S-8</b>				
12/30/2008	x		x	
<b>8-K</b>				
3/12/2008	x			
5/15/2008	x			
8/11/2008	x			
10/7/2008	x			
11/13/2008	x			
11/10/2009	x			
5/11/2010				
3/17/2011				x
5/10/2011				
7/18/2011				
8/2/2011				
<b>Press Releases</b>				
7/15/2011				
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**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9556 / March 11, 2014**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 71687 / March 11, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15782**

**In the Matter of**

**John A. Stadler**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND 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 against John A. Stadler (“Stadler” or “Respondent”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”).

**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 Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Respondent

1. **John A. Stadler**, age 70, is a resident of Cape Coral, Florida. He joined AgFeed Industries, Inc. in September 2010 as a director. He then served as AgFeed's chairman and interim chief executive officer ("interim CEO") from February 2011 until December 2011, when he left the company.

#### 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.

#### 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 joined AgFeed as part of the merger. By approximately early June 2011, Respondent was aware that fraud had been reported regarding operations in the Jiangxi region, one of the five Chinese regions where AgFeed maintained hog farms. Company management preliminarily investigated the fraud reports and, as a result, Respondent, and others, learned that former and current Chinese management, including the former CEO and former chief financial officer, had recorded false revenues in Jiangxi and maintained a second set of accounting books for the purpose of inflating revenue and profits. Respondent also learned that the Company obtained a physical copy of a portion of the two sets of books on a USB drive (the "USB Drive").

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<sup>1</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.

Information obtained during the preliminary investigation was provided to Respondent in a memorandum (the “Jiangxi Memo”).

5. Respondent knew or was reckless in not knowing that AgFeed failed to undertake certain investigative steps regarding the Jiangxi region fraud report, such as hiring a professional firm to analyze the USB Drive. Respondent also failed to ensure that the Jiangxi Memo and the USB Drive were provided to the Company’s independent auditor.

6. 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) that corroborated the Jiangxi region fraud report. Among other things, the report alleged that the Company had recorded false revenues and inflated fixed assets. Respondent knew or was reckless in not knowing that AgFeed failed to undertake a sufficient investigation regarding the Fujian region fraud allegations. Further, Respondent knew or was reckless in not knowing that the Company, following a limited review of its fixed assets, was unable to substantiate its fixed asset values. Further, Respondent learned that additional information had been discovered by a consultant to the Company relating to the maintenance of two sets of accounting books in the Company’s China operations that further corroborated, among other things, the previous reports of a second set of books. Respondent, however, did not ensure that appropriate action was taken to determine whether AgFeed’s current or prior financial statements were accurate. Respondent also failed to ensure that the Fujian report and the consultant’s discovery relating to the two sets of books were provided to the Company’s independent auditor.

7. On July 15, 2011, AgFeed published a press release, reviewed and approved by Respondent, touting the Company’s “transformation, development, and growth” and expected revenues following certain expansion efforts. On July 18, 2011 and August 2, 2011, AgFeed published investor and shareholder presentations on Forms 8-K signed by Respondent, containing historical and projected revenues for the Company. On August 2, 2011, AgFeed published its earnings release for the period ended June 30, 2011. Respondent knew or was reckless in not knowing that these releases were false and misleading.

8. 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 provide the auditor with sufficient information about the reports of fraud in the Jiangxi and Fujian regions.

9. 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 interim CEO. 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 was reckless in not knowing that the Company’s Form 10-Q for the period ended June 30, 2011 was false and misleading.

10. 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**

11. Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

12. Section 13(a) of the Exchange Act and Rules 13a-11 and 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 current and 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)(5) of the Exchange Act prohibits any person from knowingly circumventing or falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act. 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>2</sup>

13. As a result of the conduct described above, Stadler violated Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder, and was a cause of AgFeed's violations of Sections 13(a),

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<sup>2</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.

13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-11, and 13a-13 thereunder.

#### IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and 21C of the Exchange Act, Respondent Stadler cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-11, and 13a-13, 13a-14, 13b2-1, and 13b2-2 thereunder.

B. Pursuant to Section 21C(f) of the Exchange Act and Section 8A(f) of the Securities Act, Respondent is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways: (1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to: Enterprise Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169. Payments by check or money order must be accompanied by a cover letter identifying John A. Stadler as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Ian S. Karpel, Assistant Regional Director, Division of Enforcement, Denver Regional Office, U.S. Securities and Exchange Commission, 1801 California St., Denver, CO 80238.

D. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the



Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Jill M. Peterson  
Assistant Secretary

**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