

Commodity Futures Trading Commission
CEA CASES

NAME: HENRY H. CATE, JOHN J. BUTERIN, AND E. F. HUTTON & COMPANY

CITATION: 18 Agric. Dec. 884

DOCKET NUMBER: 90

DATE: AUGUST 4, 1959

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(No. 6069)

In re HENRY H. CATE, JOHN J. BUTERIN, AND E. F. HUTTON & COMPANY. CEA Docket No. 90. Decided August 4, 1959.

Stipulation -- Consent Order

Respondent E. F. Hutton & Company consented to the issuance of an order providing that if this respondent should be found to have violated the act within one year from the date of this order, a supplemental order may be issued suspending its registration as a futures commission merchant for a 30-day period.

Mr. Benj. M. Holstein, for Commodity Exchange Authority. Respondent E. F. Hutton & Company *pro se*.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. 1958 ed., Chapter 1), instituted by a complaint and notice of hearing under section 6(b) of the Commodity Exchange Act (7 U.S.C. 1958 ed., § 9), issued by the Assistant Secretary of Agriculture on July 30, 1959.

Respondent E. F. Hutton & Company, a partnership with offices in New York and Kansas City, Missouri, is one of three respondents in this proceeding. The individual respondents, Henry H. Cate and John J. Buterin, are employed in the Kansas City office of E. F. Hutton & Company.

The complaint charges that respondents Cate and Buterin attempted to manipulate and did manipulate prices of the March and May 1959 wheat futures on the Chicago Board of Trade, and attempted to deceive and did deceive customers in regard to orders for or transactions in such futures. These charges are based upon allegations that the individual respondents initiated, managed, and carried out transactions in March and May 1959 wheat futures on behalf of customers of respondent E. F. Hutton & Company, for the purpose and with the intent of raising the prices of such futures by means of a squeeze; that this was sought to be accomplished by concentrating, in the hands of such customers, a quantity of the current wheat future sufficient to constitute the major portion of the open interest in such future and to exceed available deliverable supplies of wheat; that pursuant to such purpose and intent respondents Cate and Buterin encouraged, recommended, solicited, and accepted orders

for transactions in futures which they caused to be executed through the facilities of respondent E. F. Hutton & Company; that respondents Cate and Buterin urged such customers to retain their long positions and accept delivery of wheat upon the assurance that the futures in question were controlled by the

concentrated long position of such customers on respondent Hutton's books, and that the cash wheat supply in Chicago was also under such control.

The complaint alleges further that respondents Cate and Buterin ignored customers' instructions to liquidate positions and sell cash wheat; failed to execute orders to sell futures and re-tender wheat received on delivery; and caused the execution of transactions not ordered by such customers. It is alleged that the transactions described were carried out under the direction and supervision of respondents Cate and Buterin, and that these transactions brought about a squeeze and caused the prices of March and May 1959 wheat futures to be at artificial and manipulated levels during March 1959.

The complaint also charges respondent E. F. Hutton & Company with attempted and actual manipulation of the prices of such futures. The charge against Hutton is based upon allegations that it was the employer of the individual respondents, executed the transactions in question and carried the resulting positions on its books, financed the wheat taken on delivery, and was able at all times to control, change, and direct the acts of the individual respondents insofar as they pertained to the transactions in question.

The complaint does not charge respondent Hutton with actual or attempted deceit of customers.

No hearing has been held with respect to any of the respondents. On August 3, 1959, respondent E. F. Hutton & Company submitted a stipulation under section 0.4 (b) of the rules of practice (17 FR 0.4(b)). This stipulation admits jurisdictional facts, waives hearing, and consents to the entry of an order which would provide that if, after complaint, notice and hearing, in accordance with established procedure, respondent E. F. Hutton & Company should be found to have violated the Commodity Exchange Act within one year from the date of entry of the order, the Secretary could, without further notice, issue a supplemental order in this proceeding suspending the said respondent's registration as a futures commission merchant for a period of thirty days.

FINDINGS OF FACT

1. Respondent E. F. Hutton & Company is a partnership with offices at 61 Broadway, New York 6, New York, and 111 West 10th Street, Kansas City, Missouri. The said respondent is now and has been at all times material herein a clearing member of the Chicago Board of Trade and a registered futures commission merchant under the Commodity Exchange Act.

2. The Chicago Board of Trade is now and has been at all times material herein a duly designated contract market under the Commodity Exchange Act.

3. During the period from December 1958 through April 1959, respondent E. F. Hutton & Company, in its capacity as a registered futures commission merchant, traded in wheat futures on the Chicago Board of Trade for the accounts of customers and carried the resulting positions on its books and records.

CONCLUSIONS

Section 0.4(b) of the rules of practice under the Commodity Exchange Act (17 CFR 0.4(b)) provides as follows:

(b) Consent order. At any time after the issuance of the complaint and prior to the hearing in any proceeding, the Secretary, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Secretary may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearings.

The facts admitted by the said respondent and set forth in the Findings of Fact are sufficient to subject it to the jurisdiction of the Secretary of Agriculture.

The complainant has filed a recommendation which recites that it has carefully considered the stipulation and the terms of the order to which the said respondent proposes to consent. The complainant refers to respondent Hutton's representations in the stipulation that the firm did no trading for its own account in connection with the transactions in question, that it cooperated

fully with the Commodity Exchange Authority in the investigation of the matters alleged in the complaint, and that it has attempted and is attempting to make appropriate settlement of all legitimate claims of loss by customers based upon the matters alleged in the complaint. The complainant states that these representations have been found to be correct, and that they constitute mitigating circumstances which, in the complainant's opinion, warrant acceptance of the stipulation.

The complainant feels that the proposed sanction would be adequate, and that the prompt entry of the proposed order without further proceedings would constitute a satisfactory disposition of this case as against the said respondent, serve the public interest, and effectuate the purpose of the Commodity Exchange Act. The complainant therefore recommends that the stipulation and waiver be accepted and that the proposed order be issued. It is so concluded.

ORDER

It is hereby ordered that if, after complaint, notice and hearing, in accordance with established procedure, respondent E. F. Hutton & Company should be found to have violated the Commodity Exchange Act within one year from the date of entry of this order, the Secretary of Agriculture may, without further notice to respondent E. F. Hutton & Company, issue a supplemental order to this proceeding suspending the said respondent's registration as a future commission merchant for a period of thirty (30) days.

A copy of this decision and order shall be served upon the said respondent and upon each contract market.

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