

Commodity Futures Trading Commission  
CEA CASES

**NAME:** PACIFIC TRADING COMPANY, STEPHEN J. KLEMEN JR., AND RAYMOND S. BUCK

**DOCKET NUMBER:** 75-1; 226

**DATE:** SEPTEMBER 30, 1975

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**NOTE:** FORMERLY CEA DOCKET # 226. SUMMARY AND EXCERPT OF DOCUMENT IS AVAILABLE IN THE CCH COMMODITY FUTURES LAW REPORTER, P20,285 [1975-1977 TRANSFER BINDER].

COMMODITY FUTURES TRADING COMMISSION

BEFORE THE COMMISSION

In re: Pacific Trading Company, Stephen J. Klemen, Jr., and Raymond S. Buck,  
Respondents

CFTC Docket No. 75-1 formerly CEA Docket No. 226

Decision and Order

This is an administrative proceeding brought under the Commodity Exchange Act (7 U.S.C. § 1 et seq., "Act"). Since institution of this proceeding the Commodity Futures Trading Commission (CFTC) came into being and has taken jurisdiction of this matter under authority of sections 411 and 412 of Public Law 93-463, 93rd Congress, H. R. 13113, October 23 1974, which provides in pertinent part that "all pending administrative proceedings, shall be transferred to the Commodity Futures Trading Commission as of the effective date of this Act and continue to completion . . ." n1 without abatement under prior statutory provisions or regulations if consistent and unchanged.

n1 § 418(a) of P.L. 93-463 provides "the effective date of this Act shall be the 180th day after enactment" except for certain specified provisions, i.e. establishment of the Commission, and "[activities] necessary to implement the changes effected by this Act may be carried out after the date of enactment and before . . . the 180th day . . ." The bill was signed into law October 23 1974 and 180 days thereafter was April 21 1975. A Joint Resolution of Congress (Public Law 94-16, 94th Congress, H.J. Res. 335, April 16, 1975) further extended the effective date of some provisions not relevant here.

The Complaint filed April 15 1974 alleges that Respondents filed incomplete and materially inaccurate reports, which were required to be filed by Futures Commission Merchants, Floor Brokers and Traders, under sections 17.00 and 18.00 of the regulations (17 CFR 17.00 and 18.00). Such actions were said to be in violation of sections 4(g) and 4(i) of the Act (7 U.S.C. 6(g) and 6(i)), as well as violations of cited regulations.

Respondents answered denying any wilful violations of the Act, and denied "that every erroneous filing is a willful act", and alleged they "used reasonable diligence in filing reports which are the subject of the Complaint." Respondents' Motions to strike, Motion for a Bill of Particulars, and Motion for Complainant to comply with Section 558 of the Administrative Procedure Act concerning formal notice and an opportunity to demonstrate or achieve compliance before disciplinary action was instituted, were denied. Respondents' Motion for Prehearing Discovery Depositions and Subpoena Deuces Tecum was denied.

The matter was scheduled for oral hearing to begin in Chicago, Illinois on September 17 1974, but adjourned without date on request of Respondents'

attorney, based in part on Respondents' attorneys request made that day for information from the Commodity Exchange Authority (CEA) for certain materials under the Freedom of

Information Act (5 U.S.C. 552 et seq.). Respondents also suggested that the oral hearing not be scheduled again until two cases n2 with similar discovery issues then pending were decided.

n2 George F. Frey and Edward A. Cox, Jr. v. The Commodity Exchange Authority, et al, N.D. Ill., Eastern Div., Civil Action No. 74 C 1251, appeal pending.

Motion to again schedule the oral hearing was filed November 22 1974. Respondents renewed the suggestion of awaiting a decision in the "discovery issue" cases, and pleaded other commitments of Respondents' attorney barred an oral hearing before February 1975. The matter was scheduled to begin March 4 1975 in Chicago, Illinois.

Respondents then filed an action in United States District Court for the Northern District of Illinois (75 C-740, U.S.D.C., N.D., Ill.) on February 12 1975 seeking to enjoin the hearing from proceeding as scheduled March 4 1975. A Motion for Preliminary Injunction filed February 13 1975 was scheduled for hearing on March 3 1975. Respondents then moved to adjourn this administrative hearing from starting as scheduled March 4th, until the Court ruled upon the Motion for Preliminary Injunction. Complainant opposed the continuance. The District Court denied the Motion for Preliminary Injunction and dismissed the Complaint.

The oral hearing herein was held on March 4, 5 and 6, 1975 in Chicago, Illinois. Complainant was represented by Michael D. Weiner, of the Office of General Counsel, United States Department of Agriculture, Washington, D. C. Respondent was represented by Joel J. Bellows, Attorney at Law, Chicago, Illinois.

I

Respondent Pacific Trading Co., a partnership at all times material herein with its principal place of business in Chicago, Illinois, is now and was at all times material herein, a registered futures commission merchant under the Commodity Exchange Act. At all such times, respondent Pacific Trading Co. held membership privileges on the Chicago Board of Trade and the Chicago Mercantile Exchange. Respondent Pacific Trading Co., subsequent to the dates in question, has incorporated under the laws of the State of Illinois with respondents Stephen J. Klemen, Jr. and Raymond S. Buck each holding 50 percent of the capital stock, and no longer holds membership privileges on the Chicago Mercantile Exchange.

Respondents Stephen J. Klemen, Jr. and Raymond S. Buck were at all times material herein registered floor brokers under the Act and general partners of respondent Pacific Trading Co.

During the period from June 25 1973 through June 27 1978 respondent Pacific Trading Co. was required by section 17.00 of the regulations issued pursuant to the Act (17 CFR 17.00) to submit to the Commodity Exchange Authority series '01 reports for all accounts

in reportable positions. During the period from June 25 1973 through June 27 1973, respondents Klemen and Buck were required by section 18.00 of the regulations issued pursuant to the Act (17 CFR 18.00) to submit series '03 reports for their accounts if in a reportable position.

In June 1973, the reportable open positions as fixed by section 15.03 of the regulations issued pursuant to the Act (17 CFR 15.03) in soybeans was 200,000 bushels; the reportable position in wheat was 200,000 bushels; the reportable position in soybean oil was 25 contracts; the reportable position in soybean meal was 25 contracts. n3

n3 On page 26 of the transcript, the reportable position in soybean oil and meal was reported as 29 contracts.

In July 1971, and July and October of 1972, the respondents' books and records were audited by the Commodity Exchange Authority. The findings of those audits resulted in a "follow-up" audit on March 6 1973, which revealed several differences between the firm's records and positions shown on the '01 and '03' reports.

As a result of the above audits, letters were written to the respondents on November 11 1971, August 31 1972 and January 4 1973 noting failures to prepare or prepare accurately and file '01 and '03 reports. All letters noted that they were either being sent to afford

an opportunity to achieve compliance or warning that a further failure to comply could lead to formal action. Enclosed with the November 1971 letter was a booklet containing the Commodity Exchange Act and the regulations. Respondents acknowledged receipt with letters to the Commodity Exchange Authority dated November 24 1971, September 14 1972 and January 10 1973, all of which averred that appropriate corrective action had been or would promptly be taken.

The correct positions, after adjustment for any keypunch error, and positions reported to the Commodity Exchange Authority on Form '01 for those accounts in reportable status which were incorrectly reported to the Commodity Exchange Authority by the respondents are as follows:

Date	Account Number or Name	Commodity	Future	Correct Open Position	Position '01 Report n4 Per CEA
June 25, 1973	18	soybean meal	July	88-Long	122-L
			Sept.	67-Short	72-S
			October	230-L	258-L
	350	soybeans	Dec.	171-S	285-S
Sept.			255-S	240-S	
Nov.			255-L	510-L	
	48120 & 48500	corn	Dec.	128-S	365-S
	Raymond Buck	soybean oil	Jan.	197-L	200-L
			March	273-S	267-S
			May	150-L	15-L
	Stephen Klemen	soybean meal	Jan.	62-L	63-L
			May	70-S	56-S
			Sept.	94-S	80-S
			Oct.	42-L	31-L

n4 Complainant's Exhibit No. 1

See original document--page 6

Date	Account Number or Name	Commodity	Future	Correct Open Position	Position '01 Report n4 Per CEA
June 27, 1973	18	soybean meal	July	88-L	122-L
			Sept.	66-S	75-S
			Oct.	255-L	284-L
			Dec.	73-S	187-S

Date	Account Number or Name	Commodity	Future	Correct Open Position	Position Per CEA '01 Report n4
	350	soybeans	Sept.	255-S	240-S
			Nov.	255-L	455-L
	Raymond Buck	soybean oil	Jan.	150-L	166-L
			March	290-S	284-S
			Dec.	88-L	85-L
	Stephen Klemen	soybean meal	Jan.	59-L n5	60-L
			May	57-S	43-S
			Sept.	93-S	79-S
			Oct.	53-L	52-L

n5 Identified on page 151 of the transcript as 55 long. A comparison of Complainant's Exhibit # 28, and I, reveals the accuracy of the above figures.

The correct positions, after adjustment for any keypunch error, for those accounts in reportable status which were not reported by respondents on the proper '01 report are as follows:

Date	Account Number or Name	Commodity	Future	Correct Open Position
June 25, 1973	18	corn	Dec.	200-L
	248	soybean oil	July	85-L
			Aug.	85-S
	780	corn	July	223-L
			Dec.	375-S
	30200	eggs	Sept.	100-L
		pork bellies	Aug.	54-L
	3601	soybean oil	March	25-L
			May	25-S
	48120 & 48500	oats	July	200-S
		soybean meal	May	36-L
		" "	May	27-L
	Raymond Buck	wheat	July	255-S
		oats	July	305-S
		soybeans	May	200-S
		soybean meal	May	48-L
	Stephen Klemen	wheat	July	255-S
		soybean oil	Oct.	50-S
			Dec.	25-L

See original document-page 7

Date	Account Number or Name	Commodity	Future	Correct Open Position
June 26, 1973	18	corn	Dec.	200-L
	350	corn	Dec.	200-S
	780	corn	July	235-L
		corn	Dec.	626-S
	30200	eggs	Sept.	100-L
		pork bellies	Aug.	54-L
	3601	soybean oil	March	25-L
		" "	May	25-S
	48120 & 48500	oats oil	July	200-S
		soybean meal	May	36-L

Date	Account Number or Name	Commodity	Future	Correct Open Position
		" oil	May	27-L
	Raymond Buck	wheat	July	255-S
		oats	July	305-S
		soybeans	May	200-S
		soybean meal	May	48-L
		" oil	May	134-L
	Stephen Klemen	wheat	July	255-S
		soybean oil	Oct.	50-S
		" "	Dec.	25-L n6
June 27, 1973	18	corn	Dec.	200-L
	780	"	Sept.	275-S
		"	Dec.	30-L
	30200	eggs	Sept.	90-L
		pork bellies	Aug.	54-L
	3601	soybean oil	March	25-L
		" "	May	25-S
	48120 & 48500	oats	July	200-S
		soybeans	May	200-S
		soybean meal	May	48-L
		" oil	May	36-L
	Raymond Buck	wheat	July	255-S
		oats	July	305-S
		soybeans	May	200-S
		soybean meal	May	48-L
		" oil	May	134-L
	Stephen Klemen	wheat	July	255-S
		soybean oil	Oct.	50-S
		" "	Dec.	25-L

n6 The transcript fails to note direct testimony regarding these three figures; however, a comparison of Complainant's Exhibits H, I, and 30 reveals the accuracy of these positions.

The correct positions, for respondent Klemen, after adjustment for any keypunch error, and the positions reported to the Commodity Exchange Authority on Form '03 for his reportable positions which were incorrectly reported by respondent Klemen are as follows:

Date	Commodity	Future	Correct Open Position	'03 Report n7 Position Per Cea
June 25, 1973	soybean meal	Jan.	62-L	63-L
		May	70-S	56-S
		Aug.	5-S	17-L
		Sept.	94-S	80-S
		Oct.	42-L	41-L
		Dec.	16-L	17-L
	soybean oil	July	20-L	15-S
		Sept.	2-L, 11-S	24-S
		Oct.	50-S	12-S
June 26, 1973	soybean meal	Jan.	56-L	57-L
		May	77-S	63-S
		Aug.	5-S	17-L
		Sept.	94-S	80-S
		Oct.	42-L	42-L
		Dec.	14-L	15-L
	soybean oil	July	20-L	15-S
		Sept.	2-L, 11-S	24-S

Date	Commodity	Future	Correct Open Position	Position Per Cea '03 Report n7
June 27, 1973	soybean meal	Oct.	50-S	12-S
		Jan.	59-L	60-L
		May	57-S	43-S
		Aug.	5-S	17-L
		Sept.	93-S	70-S
	soybean oil	Oct.	53-L	52-L
		Dec.	17-L	15-L
		July	20-L	15-S
		Sept.	2-L, 11-S	24-S
		Oct.	50-S n8	12-S

n7 Complainant's Exhibits No. 32 and 33

n8 Identified as "meal" at page 177 of the transcript

he correct positions for respondent Klemen, after adjustment for any keypunch error, for his reportable positions which were not reported to the Commodity Exchange Authority by respondent Klemen on the proper '03 form are as follows:

Date	Commodity	Future	Correct Open Position
June 25, 1973	wheat	July	255-S
	oats	July	305-S
	soybean oil	Dec.	25-L
June 26, 1973	wheat	July	255-S
	oats	July	305-S
	Soybean oil	Dec.	25-L
June 27, 1973	wheat	July	255-S
	oats	July	305-S
	soybean oil	Dec.	25-L

The correct positions, for respondent Buck, after adjustment for any keypunch error, and the positions reported to the Commodity Exchange Authority on Form '03 for his reportable positions which were incorrectly reported by respondent Buck are as follows:

Date	Commodity	Future	Correct Open Position	Position Per CEA '03 Report
June 25, 1973	soybean oil	Jan.	197-L	196-L
		March	273-S	267-S
		May	150-L	15-L
		Sept.	3-L, 11-S	74-S
		Oct.	3-S	21-S
June 26, 1973	soybean oil	Jan.	189-L	188-L
		March	273-S	267-S
		May	131-L	4-S
		Sept.	11-S	77-S
		Oct.	3-S	21-S

Date	Commodity	Future	Correct Open Position	Position Per CEA '03 Report
June 27, 1973	soybean oil	Jan.	159-L	158-L
		March	290-S	284-S
		May	134-L	1-S
		Sept.	11-S	77-S
		Oct.	22-S	40-S
		Dec.	88-L	85-L

The correct positions for respondent Buck, after adjustment for any keypunch error, for his reportable positions which were not reported to the Commodity Exchange Authority by respondent Buck on the proper '03 form are as follows:

		Correct	
		Open	
Date	Commodity	Future	Position
June 25, 1973	wheat	July	255-S
	oats	July	305-S
	soybeans	May	200-S
	soybean meal	Jan.	4-S
		May	48-L
June 26, 1973	wheat	July	255-S
		July	305-S
		May	600-S
	soybean meal	Jan.	4-S
June 27, 1973	wheat	May	48-L
		Dec.	4-L
		July	255-S
	oats	July	305-S
June 27, 1973	soybeans	May	200-S
	soybean meal	Jan.	4-S
		May	48-L
		Dec.	4-L

It may be noted that these inaccurate and misleading reports as filed and found herein include overreporting, underreporting and non-reporting of the various respondents' actual positions in the market at the time of the report concerned. Those inaccuracies are the result of careless disregard for duties imposed by the Act and related regulations. Further, however, it should be emphasized that these reports were not filed as an attempt to conceal respondents true or accurate positions in the market, but were merely the end result of loose administrative practices and inept and improperly supervised performance of the reporting obligation imposed by the Act and related regulations.

The inaccurate and misleading reports, and the failures to report, were the result of loose internal administrative systems, and inept personnel with inadequate supervision. These failures to properly report '01 and '03 series were items of note called to the attention of respondents in audit reports of November 11 1971, August 31 1972, and January 4 1973.

In response to those audit reports, respondent on November 24 1971 said that adjustments had been made and no recurrence was expected. In September 1972 respondent reported that the "gravity of the situation" had been discussed with the personnel concerned, and that additional supervision would be given. In January 1973 the CEA was told that due to inability of getting "consistent appropriate action" personnel changes would be made immediately and "compliance should be obtained."

The special "follow-up" audit made March 6 1973 indicated that the corrective personnel and administrative actions repeatedly promised by respondent were inadequate and ineffective. The in-depth investigation of the June 25-26-27 1973 '01 and '03 reports followed and revealed the erroneous and misleading information contained therein.

It is also noted that respondents waited until after the Complaint herein had been served on April 18 1974, asking for revocation or suspension of their registrations as Futures Commission Merchant and Floor Broker, before acquiring the professional services of a Certified Public Accountant (CPA) knowledgeable and experienced in the commodities markets. That CPA recommended certain personnel and administrative changes for the purpose of simplifying respondents

unnecessarily complex and awkward record-keeping systems. After the recommended changes were made it was opined by the CPA in testimony that the '01 and '03 reports were being produced with acceptable accuracy. n9 The corrective actions taken so tardily by respondents are commendable, though irrelevant to the erroneous and misleading June 1973 reports which are the subject of this proceeding, except to the extent that the sanction sought by the CEA (now CFTC) might appropriately be affected.

n9 Post reporting adjustments due to "holdouts", i.e. trades not timely cleared through the Board of Trade Clearing House and related adjustments, and occasional clerical, mechanical, or mental errors are apparently inevitable, tolerable and informally cross checked and corrected by CEA(now CFTC) clerical personnel concerned.

## II

Section 4g(1) of the Act n10 requires in part that "[every] person registered hereunder as a futures commission merchant or floor broker shall make such reports as are required by the [Secretary of Agriculture] Commission regarding the transactions and positions of such person, and the transactions and positions of the customers thereof, in commodities for future delivery on any board of trade in the United States or elsewhere; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the [Secretary] Commission . . ." 7 U.S.C. 6(g).

n10 Changes made by Public Law 93-463, 93rd Congress, H.R. 13113, October 23, 1974, are indicated by brackets showing material deleted and added material italicized or underlined, in this and the two following paragraphs.

Section 4i in part states "It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the [Secretary of Agriculture] Commission (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the [Secretary of Agriculture] Commission; and (2) whenever such person shall directly or indirectly

have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the [Secretary of Agriculture] Commission. Such person shall keep books and records of all futures transactions and positions coming within the provisions of (1) and (2) hereof, . . . as the [Secretary of Agriculture] Commission may require. . . ." 7 U.S.C. 6(i)

Section 6(b) in part states "(b) If the [Secretary of Agriculture] Commission has reason to believe that any person . . . in interstate commerce, . . . has willfully made any false or misleading statement of a material fact in any . . . report filed with the [Secretary of Agriculture] Commission under this Act, or willfully omitted to . . . report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of [the Secretary of Agriculture or] the Commission thereunder, [he] it may serve upon such person a complaint stating [his] its charges in that respect, . . . requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any contract market, and directing that all contract



markets refuse all trading privileges to such person, until further notice of the [Secretary of Agriculture] Commission, and to show cause why the registration of such person, if registered as futures commission merchant, or as floor broker hereunder, should not be suspended or revoked." . . . 7 U.S.C. 9

Section 17.00 of the regulations (17 CFR 17.00 et seq.) requires in part that "[each] futures commission merchant . . . shall submit a report to the Commodity Exchange Authority for each business day . . . on the appropriate series '01 form and shall show each reportable position . . . as of the close of the market on the day covered by the report."

Section 18.00 of the regulations (18 CFR 18.00 et seq.) requires in part that "[every] trader who holds or controls a reportable position shall submit reports to the Commodity Exchange Authority. A report shall be filed for the first day on which such trader acquires a reportable position, for each day thereafter on which he has transactions on any future of such commodity on any contract market or delivers or receives delivery of such commodity, and for the first day on which he no longer holds or controls a reportable position. Each such report shall be prepared in the appropriate series '03 form . . . and shall show for the day covered by the report . . . (a) . . . [the] quantity of all open contracts . . . (b) . . . [the] quantity of each future of such commodity bought and the quantity sold on all contract markets . . ." Section 18.01 in part states that "[if] any trader holds or has a financial interest in or controls more than one account . . . all such accounts shall be considered as a single account for the purpose of determining whether such trader has a reportable position and for the purpose of reporting."

### III

Respondents admitted the obligation to completely and accurately report n11 on reportable positions held. Respondents also noted the skill and integrity of the CEA auditor Henry J. Matacki n12 in reconstructing the positions held on the reports involved. Respondents admitted the reports were inaccurate, n13 but claimed that about half ". . . the more important half," they said, were totally accurate. They argued in part that the "limitations of time and availability of documentary material make the filing of accurate reports impossible."

n11 Respondents' Answer II, III and IV.

n12 Transcript pages 194 and 241-2.

n13 Respondents' Brief pp. i and ii.

The errors in the subject reports were not isolated, rare, inadvertent, minimal or merely clerical in nature, as argued, but were the result of indifferent and inept performance of the duty. This subject had been called to the respondents' attention on three occasions in three years in the audit reports. Corrective action was promised each time, but was ineffective.

A special audit was then made of the three '(3) days reports concerned here. It is not surprising that it took extensive time, effort and skill to perform. To equate this audit with the initial reporting effort is like equating the effort to climb up a mountain with that required to climb down that mountain.

Respondents' contentions were nullified by their own testimony which shows that when the administrative and personnel changes were finally made, after the Complaint herein was served, reports were made with significantly improved accuracy, "at or [exceeding] the industry standards." n14

n14 Transcript page 315.

Detailed discussion of respondents' arguments that it is impossible to timely file accurate '01 and '03 reports, that respondents made a good faith effort to comply with the impossible requirements, and that respondents had no evil motive tainting the erroneous reports, seems unnecessary in the light of the evidence that compliance has been achieved and accurate reports are being filed now that respondents' administrative and personnel changes have been made.

While it may be true respondents did not intend to file erroneous reports, it is clear that they tolerated the internal system and inept personnel producing such errors for several years. This, in spite of CEA audit reports revealing such deficiencies, and respondents' promises to take corrective action.

Respondents characterize the overriding issue as being wilfulness n15. In essence they argue that the erroneous reports were not calculated to deceive nor conceal and were without an evil motive. They say they made a good faith effort to file them correctly.

Good intentions and effort are irrelevant under the facts established here, where such malperformance is established so clearly. Nor can such factors bear on a finding of wilfulness.

n15 Respondents' Brief page i.

Respondents argue that the Administrative Procedure Act (APA), 5 U.S.C. 558(c)(1) and (2), requires a notice "of the facts or conduct which may warrant disciplinary action, and "opportunity to demonstrate or achieve compliance with all lawful requirements" has not been fulfilled by Complainant's audit letters of November 11 1971, August 31 1972 and January 4 1973, Complainant's Exhibits No. 1, No. 3 and No. 5. These letters instructed respondents that '01 and '03 reports were not properly being filed. Respondents did not deny such errors, and promised each time that corrective action had been or would be taken. See Complainant's Exhibits No. 2, No. 4, and No. 6. Respondents were specifically instructed that the purpose of the letters was to give an opportunity to correct the deficiencies and failure to do so could trigger disciplinary action.

Respondents' conduct here is shown to be reporting errors founded on a tolerated condition by respondents in spite of several warnings and opportunity to comply. The APA 558 notices were fully complied with here by the several audit letters.

Further, in addition, a factual finding of wilfulness is made here, for respondents' actions were within the administrative law definition of wilfulness, i.e., intentionally doing an act which is prohibited, irrespective of evil motive or reliance on erroneous

advice, or acting with careless disregard of the statutory requirements. In re David G. Henner, 30 Agric.Dec. 1151, 1261 (30 A.D. 1151, 1261) (1971). See also Goodman v. Benson 286 F.2d 896 (7th Cir., 1961), Butz v. Glover Livestock, 411 U.S. 182, 187 (1973), Eastern Produce v. Benson, 278 F.2d 606 (3rd Cir., 1960).

#### IV

Respondents' were acting in careless disregard of statutory and regulatory requirements. However, the record fails to show that CEA surveillance activities were significantly frustrated by respondents' errors. No citizen, colleague or market was demonstrably hurt. No measurable loss has resulted.

Respondents filed inaccurate reports. If others did so on a broad enough scale, the system could be materially weakened or damaged. Harm could come to market surveillance functions. Prognostications or judgement of market activity

could be affected. Accuracy in such reports must be maintained. Confidence in the integrity of such reports is mandatory.

A sanction for respondents is appropriate and necessary. It must merit respect in terms of justice, attention from others similarly placed, and be an effective deterrent.

Complainant asks suspension of the registrations and trading privileges for 60 days. Complainant cites no cases in point, nor any of a comparable nature as a benchmark to measure effectiveness of sanctions in cases of inaccurate reporting. An independent review of cases fails to show any pattern from which a lesson might be drawn. One simply doesn't know what sanction is necessary to achieve accurate reporting. The consent orders or defaults are not informative. Few contested cases involving inaccurate reports were found.

Small scale inaccuracies occasionally occurring probably will not seriously erode the market surveillance function. But if such careless disregard is tolerated, and becomes more widespread, the market surveillance function could and probably would soon be seriously undermined.

Here no harm or loss to any individual is shown. No concealment or evil motive existed. The published cases fail to show this as a significant problem in the trade, and fail to show recurring offenses resulting from too lenient sanctions imposed. No significant benefit or profit accrues from such inaccurate reporting, which might encourage such conduct, if sanctions are too lenient.

A 60-day suspension of the registration would, it is suggested, constitute a fatal blow to the Futures Commission Merchant firm. n16

The impact on employees and customer relations appears more severe and far reaching than the gravity of the violation would require. Corrective measures have been taken, albeit tardily.

n16 Transcript pages 265-6

It is inconceivable that any FCM or FB would be encouraged to emulate Respondents' conduct herein because only a 7-day suspension was given instead of a 60 day suspension as requested. The benefit/detriment ratio appears heavily weighted on the detriment side of the scale here. If any effort to deceive, conceal or manipulate were involved, the scales would be readjusted accordingly. There is little or no real benefit to a FCM or FB to inaccurately report, and there is much detriment by way of a 7-day suspension, and all of the concomitant residual effects that flow necessarily from it. However, if experience shows repetitious or spreading violations a more severe sanction will then appropriately be warranted.

V

Respondents have wilfully violated the Commodity Exchange Act and related regulations as charged in the Complaint, and shall be suspended and cease and desist as hereinafter ordered.

Order

1. The respondents, Pacific Trading Co., Stephen J. Klemen, Jr., and Raymond S. Buck, shall cease and desist from filing incomplete or inaccurate series '01 or '03 reports with the Commodity Futures Trading Commission.

2. The registration of respondent Pacific Trading Co., as futures commission merchant, is hereby suspended for a period of 7 days.

3. Respondent Pacific Trading Co. is prohibited from trading on or subject to the rules of any contract market for a period of 7 days, and all contract markets shall refuse all trading privileges to the respondent during this period, such prohibition and refusal to apply to all trading done and all positions held by respondent Pacific Trading Co., directly or indirectly.

4. The registration of respondent Stephen J. Klemen, Jr., as floor broker, is hereby suspended for a period of 7 days.

5. Respondent Stephen J. Klemen, Jr., is prohibited from trading on or subject to the rules of any contract market for a period of 7 days and all contract markets shall refuse all trading privileges to the respondent during this period, such prohibition and refusal to apply to all trading done and all positions held by the respondent, directly or indirectly.

6. The registration of respondent Raymond S. Buck, as floor broker, is hereby suspended for a period of 7 days.

7. Respondent Raymond S. Buck is prohibited from trading on or subject to the rules of any contract market for a period of 7 days and all contract markets shall refuse all trading privileges to the respondent during this period, such prohibition and refusal to apply to all trading done and all positions held by the respondent, directly or indirectly.

8. The cease and desist provisions of this order set forth in subparagraph 1, above, shall be effective on the date this Decision and Order becomes final. The period of suspension of registration of the respondents set forth above, and the period of the prohibition of trading, denial of trading privileges to the respondents, as set forth above, shall become effective on the 30th day after the date this Decision and Order becomes final.

9. A copy of this Decision and Order shall be served on each of the parties and on each contract market.

Done at Washington, D. C.

this 30th day of SEP 1975

[SEE SIGNATURE IN ORIGINAL]

William J. Weber

Administrative Law Judge

**LOAD-DATE:** August 6, 2008

