Commodity Futures Trading Commission
CEA CASES

NAME: CARGILL, INCORPORATED, ERWIN E. KELM, H. ROBERT DIERCKS, WALTER B. SAUNDERS, AND BENJAMIN S. JAFFRAY

CITATION: 29 Agric. Dec. 880

DOCKET NUMBER: 120

DATE: AUGUST 13, 1970

DOCUMENT TYPE: DECISION AND ORDER

(No. 13,338)

In re CARGILL, INCORPORATED, ERWIN E. KELM, H. ROBERT DIERCKS, WALTER B. SAUNDERS, and BENJAMIN S. JAFFRAY. CEA Docket No. 120. Decided August 13, 1970.

Manipulation -- Suspension of registration of corporate respondent -- Denial of trading privileges -- Sanctions suspended

The activities of the corporate respondent and four of its officers in manipulating the price of May 1963 wheat futures on the Chicago Board of Trade in 1963 and the price of cash wheat in Chicago in 1963 are violations of the act for which the registration of the corporate respondent as a commission merchant is suspended for a period of 90 days and all the contract markets are directed to refuse all trading privileges to all respondents for a like period. However, the sanctions as to all respondents are suspended. If any of the respondents is again found to have violated the act within two years the suspended sanctions will be taken into account in determining the sanctions to be ordered in connection with any such violation.

Earl L. Saunders for Commodity Exchange Authority.

Dorsey, Owen, Marquart, Windhorst and West, Minneapolis, Minn., and

Calvin J. Anderson, general counsel, for Cargill, Incorporated.

Neville, Johnson and Thompson, Minneapolis, Minn., for individual respondents.

Benj. M. Holstein, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) against Cargill, Incorporated, a Delaware corporation engaged in the grain merchandising and export business, and four of its officers. The complaint, issued under section 6 (b) of the act (7 U.S.C. 9) by the Assistant Secretary of Agriculture, charges that respondents attempted to manipulate and did in fact manipulate the price of May 1963 wheat futures on the Chicago Board of Trade on May 21, 1963, and the price of cash wheat in Chicago on May 20 and 21, 1963, in willful violation of sections 6 (b) and 9 of the Commodity Exchange Act (7 U.S.C. 9, 13).

The respondents filed separate answers in which each respondent admits the jurisdictional allegations of the complaint and some of the transactions and positions described therein. Respondents Kelm and Diercks each admit that, as president and executive vice-president, respectively, of Cargill, Incorporated, they were generally familiar with the corporation's cash transactions and

futures positions, but they deny that they authorized and approved the transactions compained of (Kelm answer, paragraph VII, Diercks answer, paragraph VII). Respondent Saunders admits that, as a vice-president of the corporation, all of the transactions were carried out under his general direction and supervision (Saunders answer, paragraph VII). Respondent Jaffray admits that, as assistant vice-president, he directed and supervised the cash transactions (Jaffray answer, paragraph VII).

All the respondents deny any attempted or actual manipulation or any purpose or intent to manipulate. Each respondent sets forth additional affirmative defenses, described below.

Earl L. Saunders, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for complainant. The corporate respondent was represented by John G. Dorsey, n1 Peter Dorsey, and James H. O'Hagan, of Dorsey, Owen, Marquart, Windhorst and West, a Minneapolis law firm, and by Calvin J. Anderson, general counsel of the corporation, and Donald C. Levin, its vice-president and secretary. The individual respondents were represented by Philip Neville, of Neville, Johnson and Thompson, a Minneapolis law firm. Benj. M. Holstein, Office of Hearing Examiners, United States Department of Agriculture, was assigned as referee and presided at the hearing.

n1. John G. Dorsey died in February 1966, while the hearing was in progress.

Prior to the hearing, petitions to intervene for the limited purpose of submitting briefs after hearing and participating in other post-hearing procedure were filed on behalf of the Board of Trade of the City of Chicago, the Association of Commodity Exchange Firms, Inc., and the Great Plains Wheat Market Development Association, Inc. These petitions were granted (Ruling on Petitions for Intervention, June 7, 1965).

A prehearing conference was held prior to the hearing and another such conference took place in the interval between conclusion of the government's case in chief and the presentation of evidence by respondents. At these conferences, the parties stated what they considered to be the issues, outlined their positions with respect thereto, exchanged information concerning witnesses and exhibits, and reached agreement on minor procedural matters (Summary of Prehearing Conference, March 26, 1965, February 1, 1966).

The hearing took place at intervals in Minneapolis, Chicago and Washington, and was concluded in November 1966, after 32 days of hearing. The record contains 4715 pages of oral testimony by some 50 witnesses and over 200 exhibits, many of which consist of multiple documents. Respondents' motions to dismiss the proceeding at the conclusion of the government's case in chief were denied by the referee after briefs and oral argument, and a request for certification of this ruling to the Judicial Officer was denied. (Ruling on Motions to Dismiss, December 22, 1965; Ruling on Request for Certification, January 17, 1966). Respondents' request for oral argument before the referee in support of their suggested findings, conclusions and order, made on the record after the close of the hearing and later renewed, was denied in a ruling filed June 25, 1968. Motions made orally at the close of the hearing to dismiss the proceeding as against all the respondents are pending (Tr. pp. 4706-4707).

Suggested findings of fact, conclusions and orders, and supporting briefs were filed on behalf of the parties. Briefs supporting, in general, the position taken by respondents were also filed on behalf of each of the three intervenors.

The referee issued a recommended decision (112 pages) to the general effect that respondents had violated the act as charged in the complaint and proposed an order suspending the registration of respondent Cargill, Incorporated, as a futures commission merchant under the act for a period of 90 days and an order to the

contract markets to refuse all trading privileges to all respondents for a period of 90 days.

Respondents filed exceptions to the recommended decision and order as did also the intervenor, Board of Trade of the City of Chicago. Respondents requested oral argument upon their exceptions but the Board of Trade of the City of Chicago did not. Oral argument was held before the Judicial Officer, Thomas J. Flavin, in Washington, D. C. December 9, 1969.

Respondents filed a motion on September 16, 1968, for disqualification of Thomas J. Flavin, Judicial Officer, as deciding officer in the proceeding alleging that he had prejudged the proceeding and had a personal bias against the respondents. The motion was supported by an affivadit dated October 14, 1966, some years earlier, in which Mr. John Tripp, a retired employee of the United States Department of Agriculture, then working for Cargill in Washington, D. C., states he met Mr. Flavin on the bus and that Mr. Flavin upon sitting down with Mr. Tripp made a remark which Mr. Tripp remembered as being substantially "Your company (or you fellows) have rigged the market again".

Mr. Flavin refused to disqualify himself because he stated that whatever remark he may have made to Mr. Tripp was purely in jest and before he had seen the complaint and before the hearing was held. He denied any prejudgment or personal bias against respondents. On August 27, 1969, Assistant Secretary Lyng denied the motion.

The Findings of Fact below are substantially those recommended by the referee. Many deal with the background of trading in wheat futures and are not controverted. Others concern the physical facts of Cargill's trading in cash wheat and in May 1963 wheat futures on the Chicago Board of Trade. These facts too cannot be denied by respondents. The evidentiary facts in dispute and the inferences and conclusions from the facts found are discussed under the heading "Conclusions" below.

FINDINGS OF FACT

1. Respondent Cargill, Incorporated, (hereinafter Cargill), is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business in the Cargill Building, Minneapolis, Minnesota, and administrative offices in Wayzata, Minnesota, a suburb of Minneapolis. n2 Said corporation

is now and was at all times material herein a clearing member of the Board of Trade of the City of Chicago, and registered with the Secretary of Agriculture as a futures commission merchant under the Commodity Exchange Act. Cargill is a closely held family corporation engaged in various diversified business activities, including the marketing of agricultural commodities domestically and in the export trade. The firm is over 100 years old, well established, has approximately 5500 employees, and is organized into divisions each of which is concerned with a specific activity. The grain division has the responsibility for marketing and warehousing wheat and other grains, and has offices in several cities including Chicago, Kansas City, St. Louis, Minneapolis and Buffalo. Cargill owns and operates a grain elevator in Chicago. (Cargill answer, paragraph I; Tr. pp. 1468-1488, 1492-1493, 1503).

n2. This office is frequently referred to in the testimony as the Lake office.

2. Respondent Erwin E. Kelm, an individual whose business address is the same as that of respondent Cargill, is now and was at all times material herein the president of respondent corporation, its chief executive officer, a member of its Board of Directors, and a member of the Board of Trade of the City of Chicago. At all such times respondent Kelm was in charge of all operations of

the corporate respondent, took an active part in its management, and was generally familiar with its cash transactions and futures positions (Kelm answer, paragraphs II, VII; Tr. pp. 2445, 3135-3138).

3. Respondent H. Robert Diercks, an individual whose business address is the same as that of the respondent Cargill, is now and was at all times material herein an executive vice-president of respondent corporation, a member of its Board of Directors, and a member of the Board of Trade of the City of Chicago. At all such times respondent Diercks supervised and was responsible for the operations of Cargill's grain division, was generally familiar with Cargill's cash transactions and futures positions, and such transactions were made and positions taken with his knowledge and consent (Diercks answer, paragraphs III, VII; Tr. pp. 2416-2417, 2424).

4. Respondent Walter B. Saunders, an individual whose business address is the same as that of respondent Cargill, is now and was at all times material herein vice-president of respondent corporation, manager of its grain division, and a member of the

Board of Trade of the City of Chicago. At all such times respondent Saunders was in charge of Cargill's grain division and made the decisions with respect to trading in grain futures for Cargill's account, and the cash and futures transactions hereinafter described were carried out under his direction, supervision and control (Saunders answer, paragraphs IV, VII; Tr. pp. 1488, 1491, 1497-1498, 1629).

5. Respondent Benjamin S. Jaffray, an individual whose business address is 1660 Field Building, Chicago, Illinois, is now and was at all times material herein an assistant vice-president of respondent Cargill, and a member of the Board of Trade of the City of Chicago. At all such times, respondent Jaffray was the manager in charge of the Chicago (Central Region) office of Cargill's grain division at the above address, and said respondent directed and supervised the cash grain transactions of Cargill in that region and was consulted concerning export sales which were then consummated through the Wayzata office (Jaffray answer, paragraphs V, VII; Tr. pp. 1492, 1632-1634, 1777-1781, 1857).

6. Cargill Grain Company, Ltd., a Canadian subsidiary of Cargill's grain division, owns and operates a grain elevator and loading facility at Baie Comeau, Quebec, Canada, on the St. Lawrence River, which is used by Cargill as an export transfer point. Cargill ships grain in lake vessels or "lakers" from Chicago and other ports on the Great Lakes to Baie Comeau via the St. Lawrence seaway where the grain is transferred from the lake vessel into an ocean-going vessel for export (Tr. pp. 1493-1495).

7. Tradax Internacional S. A., a Panama corporation with headquarters in Panama City, Panama, and Tradax Geneve, S. A., a Swiss corporation with headquarters in Geneva, Switzerland, were at all times material herein closely related to respondent Cargill, the three corporations having many shareholders and officers in common. Tradax Geneve is the management company for Tradax Internacional and the two corporations (hereinafter Tradax) are engaged in the business of merchandising grain of all origins to all parts of the world (Tr. pp. 1530-1531, 2099-2103).

8. The Board of Trade of the City of Chicago (Chicago Board of Trade) is now and was at all times material herein a commodity exchange duly designated as a contract market under the Commodity Exchange Act. It is an organization which provides facilities where traders meet and engage in trading in various commodities

under rules promulgated by the Board of Trade, but the Board of Trade does not engage in any trading activity (Answers, paragraph VI; Tr. p. 27).

9. A wheat futures contract on the Chicago Board of Trade is a contract made on or subject to the rules of the Board of Trade, in which one party agrees to sell and deliver and the other party agrees to buy and receive a specified quantity of wheat at a specified price in a designated month in the future. The normal trading unit is one contract consisting of 5,000 bushels. The parties determine the price, the number of contracts or quantity of wheat, and the month of delivery. All other terms and conditions of the contract are fixed by the rules of the Board of Trade and are incorporated into every contract. When the proper deposits are made, the clearing organization of the Board of Trade is substituted as buyer from the seller and seller to the buyer and thereafter each of the contracting parties is obligated only to the clearing organization. A wheat futures contract must be satisfied or liquidated by (1) an off-setting transaction in the same future prior to the expiration of trading in that future, or by (2) delivery of the specified quantity of wheat by the seller and its receipt and payment by the buyer during the specified delivery month and in conformity with the rules of the Board of Trade. A trader who fails to satisfy one or the other of these conditions is in default on his contract. A trader who has bought futures and is therefore obligated to take delivery or make an off-setting sale has an open long position and is referred to as a "long", and a trader who has sold futures and is obligated to deliver or make an off-setting purchase is a "short" and has an open short position (Tr. pp. 26-36, 44-45). The maximum net long or net short speculative position in any wheat future which any one person may hold or control on any one contract is 2,000,000 bushels (17 CFR 150.1).

10. The crop year for wheat in the United States is from approximately June 1 to May 31 of the following year. At all times material herein the delivery months in which wheat futures could be traded on the Chicago Board of Trade were July, September, December, March and May (Comp. Ex. 1). The May 1963 wheat future was the last future for the 1962-1963 crop year (old crop), and the July 1963 wheat future was the first future for the 1963-1964 crop year (new crop). June 1, 1962, was the first day for trading in the May 1963 future and May 21, 1963 (Tuesday) was the last day for trading in such future. During the remaining seven business days in May, deliveries of wheat in satisfaction of May 1963 futures contracts could be made. May 31, 1963 (Friday) was the last day for delivery of wheat in satisfaction of a May 1963 futures contract. Any May 1963 futures contract open thereafter was in default (17 CFR 100.1; Tr. pp. 38-43, 1508).

11. Most futures contracts on the Chicago Board of Trade are offset by an opposite transaction or transactions. When a futures contract is satisfied by delivery, the delivery is effectuated by tender on the part of the seller and acceptance on the part of the buyer of a warehouse receipt or receipts covering a specified quantity of deliverable grade wheat stored in a designated warehouse in the Chicago area approved by the Chicago Board of Trade as regular for delivery. There are no delivery points outside of the Chicago area. Under the rules of the Board of Trade, during the last three business days of a delivery month delivery may also be made by tendering deliverable grade wheat loaded in railroad cars on track in the Chicago switching district, which cars are consigned to an approved Chicago warehouse elevator (Tr. pp. 28, 33-35). Delivery must be preceded by a notice of intention to deliver, issued by the seller or on his behalf on the day prior to delivery. Such notices could be issued during the period beginning with the last business day of the calendar month immediately prior to the delivery month and extending through the day prior to the last delivery day of such month.

12. Under the rules of the Chicago Board of Trade in effect during May 1963, a trader who had an open short position in wheat futures was required (1) to make an off-setting purchase of futures in the trading pit or ring prior to the expiration of trading in the future, which purchase would cover his short position, or (2) issue a notice of intention to deliver within the period permitted for such issuance and deliver wheat in accordance with the notice on

the next business day. A trader who had an open long position in wheat futures was required (1) to make an off-setting sale of futures in the trading pit or ring prior to expiration of trading in the future which sale would liquidate his long position, or (2) take delivery of wheat on the business day after receipt of a notice of intention to deliver. Under the rules of the Board of Trade, a trader who had an open short position could, in addition to the options described above, enter into an ex-pit transaction in which he would exchange actual wheat for long futures with which to cover his short position, and a trader who had an open long position could, in addition to the options described above, enter into an ex-pit transaction in which he would exchange

his long futures for actual wheat, thus liquidating his long position. After expiration of trading in the May 1963 future, such ex-pit transactions were permitted only between traders closing out positions in the future.

13. Soft red winter wheat is one of various classes of wheat produced in the United States, and Chicago is one of the principal markets for such wheat. Soft red winter wheat is grown chiefly in Illinois, Indiana and Ohio, and comprises about 15 percent of the total United States wheat crop (Tr. p. 1505; Resp. Ex. 76). Soft red winter wheat is used by mills in the Chicago area (Tr. pp. 1087, 1098, 1794), and from 10 to 16 million bushels of such wheat are usually accumulated and warehoused in Chicago after harvest and thereafter sold to mills in Illinois and other states and for export (Tr. pp. 1506, 1780). Major consumers of soft red winter wheat in the Chicago area are the Eckhart Milling Company, Chicago, General Mills, Incorporated, Chicago, and the Pillsbury Company, Springfield, Illinois (Tr. p. 1794). The Chicago wheat futures contract is essentially a soft red winter wheat contract because No. 2 soft red winter wheat is the cheapest class and grade deliverable at par in satisfaction of the contract, and therefore the price of the Chicago wheat future tends generally to reflect the value of No. 2 soft red winter wheat (Tr. pp. 1285, 3290-91).

14. In early 1963, Cargill was of the opinion that there would be an ample supply of old crop (1962) soft red winter wheat available at the end of the crop year in May 1963. Based upon this opinion, Cargill hedged its inventory of soft red winter wheat by selling May 1963 futures on the Chicago Board of Trade, and in early March 1963 reached a maximum short position in such future in excess of eight million bushels (Resp. Ex. 32; Tr. pp. 1511-1513). During February 1963, Cargill sold substantial quantities of cash soft red winter wheat to mills in the southwestern part of the United States and this demand continued into March (Comp. Ex. 34). Cargill thereupon revised its evaluation of the supply-demand situation, concluded that stocks of old crop wheat would be in tight supply at the end of the crop year, and began to cover its short hedges by the purchase of May 1963 wheat futures (Tr. pp. 169-170, 1524-1525, 1787-1789, 3150-3152; Comp. Ex. 34, Resp. Ex. 32). In March 1963, the Spanish Government indicated a definite interest in the purchase of substantial quantities of wheat and Cargill responded that it was prepared to offer soft red winter wheat to Spain (Comp. Ex. 34). Cargill

thereupon continued to purchase May 1963 wheat futures during March and into April and by April 11, 1963, Cargill had reduced its short position to 570,000 bushels. On April 15, the next business day, Cargill bought 820,000 bushels of May 1963 wheat futures closing out its short hedge position and establishing a long speculative position of 250,000 bushels. (Comp. Ex. 3, Resp. Ex. 32). n3 As of Friday, April 12, 1963, there was a total of 2,804,000 bushels of deliverable grade wheat stored in Chicago warehouses, of which 200,000 bushels were owned by Eckhart and stored in its warehouse which was not regular for delivery. Of the remaining 2,604,000 bushels held by others, Cargill held 2,471,000 bushels (Comp. Ex. 19).

n3. All references to positions or open interest are as of the close of business on the date indicated unless otherwise stated. The figures on Complainant's Exhibit 3 are as of the close of business on each day, which is the same as the opening of business on the next day. The figures on Respondent's Exhibit 32 refer to the opening of business on each day.

15. After April 15, 1963, Cargill continued to increase its long position in May 1963 wheat futures. On April 16, it purchased 875,000 bushels of such futures and on April 18 it purchased 100,000. On April 19, 1963, Cargill held a long position of 1,225,000 bushels of May 1963 wheat futures on the Chicago Board of Trade. On that date there was a total of 2,238,000 bushels of deliverable grade wheat in Chicago warehouses of which Cargill held 1,915,000 bushels and Eckhart held 214,000 bushels (Comp. Ex. 3, 19; Resp. Ex. 32).

16. On or about April 21, 1963, at a meeting attended by respondents Kelm, Diercks and Saunders, Cargill's operations in the May 1963 future were reviewed and respondent Saunders outlined the supply-demand situation and expressed the view that "the supply of wheat in Chicago would be very, very tight" due to the movement of such supplies into commercial channels. Respondent Kelm thereupon determined that Cargill's long speculative position was a good business venture and approved the same. On April 22, 1963, Cargill bought an additional 225,000 bushels of May 1963 wheat futures, increasing its long position to 1,450,000 bushels (Tr. pp. 3140-3141, 3150-3152, 3157-3158; Comp. Ex. 3, Resp. Ex. 32).

17. During the latter part of April 1963, agents of the Spanish Government appeared in the United States and stated that their country was desperately in need of wheat (Tr. p. 1745). By April 30, 1963, Cargill had increased its long position in May 1963 wheat futures to *1,510,000* bushels (Comp. Ex. 3, Resp. Ex. 32).

On May 2, 1963, the Geneva office of Tradax informed Cargill that representatives of the Spanish Government felt "pretty confident" that Spain would hold a tender in mid-May for the purchase of 100 to 150,000 tons n4 of wheat and that red winter wheat would be "perfectly satisfactory" on such tender, but that shipment from the United States could probably not be made by Cargill before the government subsidy cut-off date (Resp. Ex. 7). At the time Cargill was so informed, the United States Department of Agriculture wheat export subsidy program required that old crop soft red winter wheat be loaded for export not later than May 31 in order to be eligible for the government subsidy applicable to such wheat. On May 6 and again on May 10, 1963, representatives of Cargill talked with representatives of the United States Department of Agriculture and discussed extension of the subsidy termination date (Comp. Ex. 58). During that week, Cargill increased its long position in the May 1963 future by *220,000* bushels, and held a long position of *1,745,000* bushels on Friday, May 10. On May 11, Cargill was informed by Tradax that the Spanish tender would be held and that it would require shipment by June 10, and Cargill so informed the United States Department of Agriculture. On the same day (May 11) the Spanish Government announced tender (Tr. pp. 1538-1540). On Monday, May 13, at 3:30 p.m., the United States Department of Agriculture announced that the final shipment date for eligibility under the subsidy program was extended to June 10, 1963 (Tr. pp. 1548-1550).

n4. From 4 to 6 million bushels (Tr. p. 1537). One ton equals approximately 40 bushels.

18. On Tuesday, May 14, 1963, Cargill offered to Tradax for re-offer to Spain on its tender of May 11 up to one million bushels of wheat, and on that day Tradax bought from Cargill one cargo of 12,500 tons or about 467,000 bushels of No. 2 red winter wheat at the current world price of $ 1.61 per bushel f.o.b. Baie Comeau for shipment between May 20 and June 10 (Tr. pp. 1571-1574; Comp. Ex. 35, Resp. Ex. 14). This price, plus the current subsidy of 62 cents, minus lake freight Chicago to Baie Comeau (9 1/2 cents) equaled $ 2.13 1/2 cents per bushel, or 10 1/2 cents over the Chicago May 1963 futures price of $ 2.03 on

that day (Resp. Ex. 14). This sale was registered for subsidy prior to 3:29 p.m. on that day (Tr. pp. 1867-1868). On the same day, May 11, Cargill acquired 135,000 bushels of May 1963 wheat futures on the Chicago Board of Trade which increased its long position to *1,880,000* bushels (Comp. Ex. 3).

19. At 9:40 a.m. on Wednesday, May 15, 1963, respondent Jaffray sent the following wire from his Chicago office to the Cargill office at Wayzata (Comp. Ex. 15, p. 10):

"Boys are going hammer wht smorn. Sugg [suggest] we watch CNS [Commodity News Service] and Dow-Jones and if no subsidy report next couple hours prob shud sow few seeds".

A subsidy registration or report carried by the Commodity News Service or Dow-Jones News Service would inform the trade that Cargill had sold wheat for export (Tr. pp. 1866-1868). On the same day, respondent Saunders negotiated with Tradax over the telephone concerning the purchase by Tradax of a second cargo of wheat from Cargill for offer to Spain, and Cargill indicated the price at which it was willing to sell (Tr. pp. 1574-1577). During the trading session on that day Cargill bought an additional 50,000 bushels of May 1963 wheat futures on the Chicago Board of Trade and reached a long speculative position of *1,930,000* bushels (Comp. Ex. 3). At 7:35 p.m. on that day Cargill sent a wire to Tradax in Geneva "for reply Sat May 18" offering a second cargo of up to 15,000 tons of No. 2 red winter wheat at the then world price of $ 1.64 1/2 per bushel f.o.b. Baie Comeau for shipment between May 23 and June 10 (Comp. Ex. 36A, 36B). This price, plus the current subsidy which had declined to 54 cents on May 15, minus lake freight, equaled $ 2.09 per bushel or 5 1/2 cents over the May 1963 Chicago futures price of $ 2.03 1/2 on that day (Resp. Ex. 14).

20. On Thursday, May 16, Tradax, on the basis of its negotiations with Cargill, offered two cargoes of approximately 27,500 tons of No. 2 red winter wheat to Spain and so informed Cargill by wire (Comp. Ex. 36C). Later that day Tradax informed Cargill that the Tradax offer on the Spanish tender was "pretty attractive and we expect will hv some luck this time" (Resp. Ex. 11).

21. On Friday, May 17 and Saturday, May 18, Cargill loaded out of its Chicago elevator and shipped to Baie Comeau for transshipment overseas, 770,000 bushels of No. 2 soft red winter wheat, which left Cargill with a total of approximately 370,000 bushels of such wheat remaining in its Chicago elevator. Cargill personnel were instructed to keep the loading confidential (Tr. pp. 1560-1570; Comp. Ex. 34, p. 2, Comp. Ex. 45). On May 18, the Spanish Government accepted the Tradax offer of May 16 described in

Finding 20, and Tradax so informed Cargill and accepted Cargill's offer of the second cargo as described in Finding 19 (Comp. Ex. 36D, 36E, Resp. Ex. 26, 27; Tr. pp. 2062-2066).

22. Just before consumation of the sales to Tradax, in accordance with Cargill's regular practice, respondent Saunders and other Cargill representatives consulted Mr. Donald Levin, who was general counsel of respondent Cargill at that time, concerning Cargill's long position in the May 1963 future, its cash holdings, and the prospective Spanish sales. Mr. Levin approved the proposed sales, expressed the opinion that Cargill's operations were legal and proper, and stated that the legal problem "would be that if Cargill would sell wheat out of Chicago at an uneconomic price, that it would not be legal and proper" (Tr. pp. 1645, 1649-1652, 1657-1658, 3143-3144).

23. During the first half of May 1963, prices of the May 1963 wheat future on the Chicago Board of Trade showed a downward trend, declining from $ 2.11 3/4 at the close on May 1 to $ 2.03 3/4 at the close on May 15. On Thursday, May 16 and Friday, May 17, prices increased and closed at $ 2.05 1/4 and $ 2.09 1/8, respectively (Comp. Ex. 8). Chicago cash price quotations for No. 2 red winter

wheat showed a parallel trend, declining from about $ 2.18 on May 1 to $ 2.09 1/2 on May 15, and then rising to $ 2.11 and $ 2.15 1/4 on May 16 and 17 (Comp. Ex. 17). William G. Catron, vice-president of Eckhart Milling Company at the time, testified that on Thursday, May 16 and Friday, May 17, the market started to react to rumors that wheat would be shipped out of Chicago over the coming weekend. (Tr. pp. 1094-1095, 1105).

24. On May 20, 1963, Eckhart purchased 25,000 bushels of No. 2 red winter wheat from the Central Soya Company at $ 2.27 and 25,000 bushels from Cargill at $ 2.28, delivered Chicago, and at the same time liquidated 45,000 bushels of long May futures which it held (Comp. Ex. 46, 55, 56, 61; Tr. pp. 1100-1102). On May 21, Eckhart bought an additional 50,000 bushels of No. 2 red winter wheat from General Grain Company, Indianapolis, Indiana, at $ 2.26 1/2, delivered Chicago for which it exchanged 50,000 bushels of long May futures. This transaction involved an abnormal movement of wheat from Indianapolis to Chicago (Comp. Ex. 57; Tr. pp. 1103-1104). These cash purchases by Eckhart transferred its long futures position into cash wheat and were motivated by the shipments of wheat out of Chicago by Cargill over the previous weekend, by Eckhart's need for wheat to supply the operational

requirements of its mill until new crop wheat became available, and because it wanted wheat in satisfaction of its long futures contracts and did not wish to risk receiving settlement on its contracts rather than wheat, in the event of defaults in the May future (Tr. pp. 1098, 1102-1103, 1107). On May 20, 1963, General Mills, which had a short position in the May future, changed its evaluation of the futures market and covered its short position by the purchase of futures when it was informed that substantially all the wheat in Chicago was being loaded for shipment. All of the wheat owned by General Mills and stored in its Rialto elevator in Chicago was needed in its milling operations and was not for sale (Tr. pp. 1085-1088).

25. At the opening of the trading session on Monday, May 20, Cargill held a long open contract position of *1,930,000* bushels in the May 1963 wheat future on the Chicago Board of Trade (Comp. Ex. 3, Resp. Ex. 32). The future had closed at *$ 2.02* 1/8-*$ 2.09 1/2* the previous day, May 17, and opened at *$ 2.11-$ 2.14* on May 20 (Comp. Ex. 8). At a meeting of Cargill representatives on that day it was determined that Cargill should begin the liquidation of its futures position and respondent Saunders placed an order during the trading session to sell 100,000 bushels of May 1963 futures at *$ 2.19* for Cargill's account (Comp. Ex. 4; Tr. pp. 78-85, 1591-1593). However, the floor broker was able to sell only 40,000 bushels at $ 2.19, and after such execution returned the order to Cargill with a notation upon its face that there was no market for the balance at that price (Comp. Ex. 4; Tr. pp. 2346-2347). The high price reached during that day was $ 2.19. Under the rules of the Chicago Board of Trade, the maximum permissible high price for that day was $ 2.19 3/8. n5 The market closed at $ 2.18 3/8-$ 2.18 1/2, an increase of 9 3/4 cents from the previous day's closing price (Comp. Ex. 8).

n5. The maximum permissible price fluctuation is 10 cents above or below the previous day's closing price (Tr. p. 181).

26. Between May 1 and May 20, 1963, the total open interest in the May 1963 wheat future on the Chicago Board of Trade declined from about 27 million bushels to about eight million bushels. *During the same period, Cargill increased its long position in the future by 405,000 bushels* (Comp. Ex. 3). May 21, 1963, was the last day for trading in the May 1963 wheat future on the Chicago Board of Trade, and at the opening of business on that day respondent Cargill held a long open contract position of 1,890,000

bushels in such future or about *24 percent of the open interest* (Comp. Ex. 3, Resp. Ex. 32). The next largest long position in the future held by any trader was 350,000 bushels. The largest short position held by any trader at that time was 700,000 bushels (Comp. Ex. 6). At the same time, the quantity of deliverable wheat in Chicago warehouses owned by persons other than Cargill and available for purchase was approximately 20,000 bushels (Comp. Ex. 19; Tr. pp. 1247-1248).

27. When the Chicago Board of Trade opened at 9:30 a.m. on May 21, the last day of trading in the May 1963 future, the May 1963 wheat future traded at $ 2.22-$ 2.20 3/4 and then gradually declined. Between 10:30 and 10:57 prices ranged between $ 2.18 1/2 and $ 2.17 1/2 (Comp. Ex. 7). Sometime during this interval Cargill placed an order to buy *100,000* bushels of May 1963 futures and the order was executed by the purchase of 50,000 bushels at $ 2.18 and 50,000 bushels at $ 2.17 1/2 (Tr. pp. 1593-1594, 2334). These purchases gave Cargill a long speculative position in the future of *1,990,000* bushels. Thereafter prices again declined and at 11:02 a.m. the future was sold at $ 2.15 1/4 which was the low price for the day (Comp. Ex. 7). At or about 11:00 a.m., respondent Jaffray sold 50,000 bushels of cash wheat for Cargill's account to the Continental Grain Company at 11 cents over the May 1963 future and agreed with a representative of Continental to sell 50,000 bushels of the future for Continental's account before the expiration of trading on that day in order to price the transaction. In a letter to the Commodity Exchange Authority describing this transaction, Mr. Donald C. Levin of Cargill stated that ". . . the price received for the futures would make a difference to Cargill because Cargill would receive a flat price of 11 over what the futures were sold for. Thus Cargill wanted control of this futures transaction . . ." (Comp. Ex. 13, pp. 3-4).

28. Beginning shortly after 11:00 o'clock on May 21, the May 1963 futures price rose gradually and between 11:28 and 11:30 ranged between $ 2.22 and $ 2.21. At or about this time Cargill ordered the sale for Continental's account of 50,000 bushels of May futures at $ 2.26 or at the close of the market (Comp. Ex. 14, p. 2; Tr. p. 681). After 11:30, prices again declined and at 11:39 a.m. the price was $ 2.16 1/2 (Comp. Ex. 7). Thereafter, prices advanced and by 11:45 the future was trading at $ 2.20. At this point Cargill transmitted six orders to the floor of the Chicago Board of Trade directing the sale for its account of 1,990,000

bushels of May 1963 wheat futures, as follows (Comp. Ex. 5; Tr. pp. 681-682, 2335):

200,000	bushels	at	$ 2.27
200,000	"	"	2.27 1/4
300,000	"	"	2.27 1/2
400,000	"	"	2.27 3/4
500,000	"	"	2.28
390,000	"	"	2.281/4

These orders, as well as the order to sell for Continental's account at $ 2.26, were limit orders, which meant that the sales could not be made below the prices specified (Tr. pp. 54-55). The maximum price at which the May 1963 future could be bought or sold on May 21 was $ 2.285/8 (Comp. Ex. 8, p. 2; see footnote 5 and Tr. p. 132).

29. At 11:52 a.m., on May 21, the May 1963 future was trading at $ 2.21-2.21 1/4. Thereafter it rose rapidly and shortly after 11:53 reached $ 2.26 and $ 2.27, the prices specified in Cargill's order for Continental and in the first of Cargill's liquidating orders. Thereafter and until the termination of trading at about 12:00.5 p.m., the May future traded intermittently at prices between $ 2.26 and 2.28 5/8 and closed at the latter price, which was the high price limit for the day (Comp. Ex. 7). At 11:53 a.m., Cargill held 1,990,000 bushels of long May futures for its own account and the 50,000 bushels which it was authorized to sell for Continental, or about 62 percent of the remaining open interest (Comp. Ex. 18A). Between 11:53 and 12:00.5 p.m., Cargill's

broker, acting pursuant to the orders received from Cargill, sold 50,000 bushels at $ 2.26 for Continental's account and 1,625,000 bushels for Cargill's account at prices ranging from $ 2.27 to $ 2.28 5/8, but due to confusion in the pit during the closing period the broker was unable to execute the remainder of the Cargill order, which left Cargill with a long position of 365,000 bushels in the May 1963 future after the termination of trading, out of a total of 420,000 bushels which remained open after trading ended (Tr. pp. 2338-2342; Comp. Exs. 3, 29).

30. When trading in the May 1963 future ended on May 21, Cargill was the only source of warehouse receipts for deliverable wheat in Chicago (Tr. pp. 663-664, 670, 1251). Shortly after the termination of trading, Mr. Carl Bostrom, Acting Chairman of the Business Conduct Committee of the Chicago Board of Trade, called at Cargill's office and inquired as to Cargill's intentions with

respect to its remaining long position of 365,000 bushels in the May future. Mr. Bostrom requested Cargill's cooperation in the orderly liquidation of its position, pointed out the apparent short supply of soft red winter wheat in the Chicago area, and suggested that Cargill offer to sell cash soft red winter wheat to the unresolved shorts. Thereafter, Cargill was approached by various commission firms holding short May futures positions and these firms offered to purchase warehouse receipts for a total of 320,000 bushels. On May 23, 1963, in response to Mr. Bostrom's inquiry, respondent Jaffray informed Mr. John G. McCarthy, President of the Chicago Board of Trade, that Cargill was willing to settle its position at $ 2.28 1/4 but could not sell warehouse receipts for 320,000 bushels because it had no more than 35,000 bushels of deliverable wheat for disposition. Respondent Jaffray stated further that, in view of this situation, Cargill would sell warehouse receipts to the shorts at $ 2.28 1/4 only upon assurance that Cargill would receive the receipts on delivery, a condition which was a prerequisite to the sale of the receipts. Respondent Jaffray also stated that Cargill had made commitments to various commission firms to sell 295,000 bushels "subject to our receiving this wheat against our long position", but that if this procedure was not satisfactory to the Chicago Board of Trade, Cargill would liquidate its position at $ 2.28 1/4 in any manner consistent with Board of Trade or Clearing House regulations. The Chicago Board of Trade approved the suggested liquidation procedure and assured Cargill that at least some of the receipts which Cargill sold to the shorts would be redelivered to it early in the delivery process, and McCarthy replied to respondent Jaffray's letter as follows: "I have received your letter as of May 23, 1963, and appreciate your kind offer to help us liquidate the positions in May wheat. On behalf of the Board of Trade Governors of the Board of Trade Clearing Corporation, I want to thank you" (Tr. pp. 1932-1935, 1939-1940, 2146-2161; Comp. Ex. 13, pp. 2-3, Comp. Ex. 29).

31. On May 23 and 24, 1963, in accordance with the arrangement described in Finding 30, Cargill entered into written contracts with nine commission firms holding open short positions in the May future for the sale to such firms of 315,000 bushels of No. 2 red winter wheat at $ 2.28 1/4 (Comp. Exs. 30A-30J). Cargill then turned over to one or more of the said commission firms about 20 warehouse receipts issued by Cargill, each of which covered 5,000 bushels of No. 2 red winter wheat, for a total of 100,000 bushels of such wheat held by Cargill and stored in its Chicago

elevator. Approximately 75,000 bushels of such wheat were committed under prior sales (Tr. p. 1933; Cargill Findings, p. 120). These receipts were then tendered for delivery by these commission firms, received by Cargill, returned or resold by Cargill to other shorts, redelivered and received by Cargill or by other longs, again returned or resold by Cargill or by such other longs and again delivered, and this process was repeated between May 24 and May 28 until 315,000 bushels of long futures contracts held by Cargill plus 55,000 bushels

held by other long interests were liquidated (Comp. Ex. 31; Tr. pp. 2162-2167). In the course of such circulation, the warehouse receipts for these 55,000 bushels which were received by longs other than Cargill were sold by such longs to holders of short contracts, redelivered by the shorts and received by Cargill, with the result that Cargill was the ultimate receiver of the 100,000 bushels which it had initially sold to the shorts and which had been used in the delivery process.

The only other wheat used in deliveries on the May 1963 future consisted of 10,000 bushels brought into Chicago by the Continental Grain Company, which it delivered against its short position on May 31. These 10,000 bushels were also received by Cargill, with the result that 325,000 bushels of its long position were liquidated by delivery. The remaining 40,000 bushels of long contracts which Cargill held were liquidated on May 24 by an exchange of long futures for 40,000 bushels of cash wheat owned by Archer, Daniels, Midland Company which was in transit to Chicago on May 23 for delivery against its short position. This exchange was made by Archer-Daniels because it believed that the cars might not reach Chicago by May 31 in time for delivery against the future (Comp. Ex. 13, p. 2). Thus, liquidation of the long interest of 420,000 bushels which remained open after the close of trading on May 21 was accomplished as follows:

Cargill exchange long futures for cash	40,000
Cargill warehouse receipts received by Cargill	315,000
Continental warehouse receipts received by Cargill	10,000
Total Cargill long position	365,000
Cargill warehouse receipts received by other longs	55,000
Total long contracts liquidated	420,000

32. Goodbody and Company was one of the nine commission firms which had customers with outstanding short contracts in the May future after the termination of trading and which purchased warehouse receipts from Cargill at $ 2.28 1/4, as described in Finding 31. Goodbody delivered these receipts on May 24

against short positions of its customers. After such delivery, Goodbody discovered that through error one of its customers was long 10,000 bushels, and Goodbody instructed Leonard T. Young, an employee, to sell the receipts in question. Mr. Young offered the receipts to Cargill first and was told to return after Goodbody had received delivery of the wheat. Cargill also suggested to Young that "Goodbody try to locate some of the unresolved shorts from the May contract [because] an outstanding short would pay more to close out his position than Cargill could economically afford to pay" (Comp. Ex. 13, pp. 4-5). Following the offer to Cargill, Young offered the receipts to General Mills and Continental Grain Company, and received bids of approximately $ 2.05 per bushel. On May 27, Young sold the receipts to Hayden Stone and Company, another commission firm, for $ 2.18 per bushel, and Hayden Stone delivered them on May 28 against short positions held by its customers (Comp. Ex. 31; Tr. pp. 550-551, 670-673).

33. On Friday, May 3, 1963, there was a total of 1,509,000 bushels of wheat in Chicago warehouses. Of this total, Cargill held 1,248,000 bushels in its Chicago elevator and Eckhart held 250,000 bushels, leaving 11,000 bushels held by others (Comp. Ex. 19). On Friday, May 24, after the loadout by Cargill on the previous weekend, there were 221,000 bushels of wheat in Chicago elevators. Of this total Cargill held 100,000 bushels n6 and Eckhart owned 100,000 bushels which it held for milling (Tr. p. 1098), leaving 21,000 bushels owned by others (Comp. Ex. 19). During the month of May 1963, approximately 346,000 bushels of wheat of classes deliverable in satisfaction of May futures were received in Chicago. Of this total, 153,000 bushels were received or purchased by Cargill prior to arrival in Chicago, 144,000 bushels were received or purchased by Eckhart, 33,000 bushels were transshipped to other destinations, 4,000 bushels were received or purchased by General Mills and 4,000 bushels were delivered on May futures by Continental Grain Company, leaving about 8,000 bushels of Chicago

receipts in May which were available for purchase by the holders of short May futures contracts (Comp. Exs. 22-28; Tr. pp. 424-428, 433-491).

n6 This 100,000 bushels was used in the sales to the shorts described in Finding 31.

34. The Commodity Exchange Authority issues an official statistical summary each week showing stocks of grain in deliverable position in the Chicago area, as represented by outstanding warehouse receipts of licensed warehouses. Such statistics are based

upon information furnished to the Commodity Exchange Authority by such warehouses, are released on Tuesday of each week, and reflect the situation as of the close of business on the preceding Friday (Comp. Ex. 21; Tr. pp. 399-412).

35. On May 20 and 21, 1963, Cargill made the following sales of old crop No. 2 soft red winter wheat:

Date	Buyer	Quantity	Chicago Price	Complainant's Exhibits
5-20	Eckhart Milling Co.	25,000	$ 2.28 n7	46, 56, 61
5-20	Pillsbury Company	50,000	2.29	47, 62, 63
5-21	Continental Grain Co.	50,000	2.37 n8	14

n7. Described in Finding 24.

n8. Described in Findings 27 and 28.

After settlement of the outstanding May futures contracts as described in Finding 31, Cargill had approximately 88,000 bushels of old crop wheat remaining in its Chicago elevator. On June 5, it sold 34,000 bushels of such wheat to Pillsbury at $ 2.12 1/4 per bushel f.o.b. Chicago (Resp. Ex. 104). Between June 4 and June 13, it disposed of the remaining 54,000 bushels at Chicago prices ranging from $ 2.10 to $ 2.13 per bushel (Comp. Ex. 34, p. 3, Comp. Ex. 83-88, inc., Comp. Ex. 90).

36. Between May 20 and May 31, 1963, sales of old crop red winter wheat were made by sellers other than Cargill as follows:

Date	Buyer	Seller	Quantity	Chicago Price	Reference
5-20	Eckhart	Central Soya	25,000	$ 2.27	Comp. Ex. 55
5-23	General Mills	Archer-Daniels, etc.	5,000	2.11	Comp. Ex. 53; Tr. pp. 1082-1085
5-24	Pillsbury	Pillsbury	15,000	2.26 1/2 n9	Resp. Ex. 103; Tr. pp. 3868-3869, 4236-4243
5-27	Hayden Stone	Goodbody	10,000	2.18 n10	Tr. pp. 550-551
5-27	F. W. Stock	Central Soya	15,000	2.22 n11	Resp. Ex. 49; Tr. pp. 2692-2693
5-28	Eckhart	Archer-Daniels, etc.	1,500	2.10	Comp. Ex. 26
5-31	Internat'l. Milling	Anderson Grain	80,000	2.22 n12	Tr. pp. 3115-3118

n9. This was a transaction between Pillsbury's Minneapolis and Springfield, Illinois, offices. The transaction was for No. 1 grade f.o.b. Minneapolis @ $ 2.11, which equates to $ 2.26 1/2 for No. 2 grade at Chicago.

n10. This was the 10,000 bushels received in error by Goodbody as described in Finding 32.

n11. Sold f.o.b. Decatur, Indiana, @ $ 2.12. Truck rate to Chicago 10 cents.

n12. Sold f.o.b. Toledo @ $ 2.15. Water rate to Chicago 7 cents.

37 During the last two trading days (May 20 and 21), the May 1963 wheat future on the Chicago Board of Trade advanced 18 5/8 cents *while the July future remained stable,* resulting in an increase of 18 5/8 cents in the May-July futures price spread. There was no comparable movement on the Chicago Board of Trade in the May futures price or in the May-July futures price spread during the last two trading days in the nine years prior to 1963. The greatest May futures price advance during the last two days in these nine prior years was an increase of about 8 1/4 cents in 1958. In two of the prior years the increase in the May futures price was less than two cents and in six prior years the May futures price declined. With respect to the May-July price spread, the greatest increase during the last two days of trading in the May future in these nine prior years was an increase of about 8 1/2 cents in 1958. In 1955 the spread increased less than one cent and in the seven other years the spread decreased or remained the same (Comp. Exs. 8, 9, 38). The Commodity Exchange Authority investigated the May futures price movement toward the end of trading in 1958 and found that the price on the last trading day was artificial, but the investigation did not indicate that the price had been brought about intentionally (Tr. p. 1394).

38. Contemporaneously with the increase of 18 5/8 cents during the last two days in the price of the May 1963 future on the Chicago Board of Trade and the increase by the same amount in the Chicago May-July futures price spread, described in Finding 38, the price of the May 1963 future on the Kansas City Board of Trade increased 3 1/2 cents and the May-July price spread increase was about the same (Comp. Exs. 10, 11, 39). As a result of the May futures price movements on the two exchanges during these two days the Chicago May future, which had ranged from six to ten cents below the Kansas City May future continuously from May 1 through May 19 and which was six cents below Kansas City at the opening of business on May 20, closed out approximately 9 1/2 cents above Kansas City when trading in the future ended on May 21. There was no comparable movement of the Chicago futures price relative to the Kansas City May futures price in any of the nine years prior to 1963 (Comp. Exs. 8, 10, 40).

39. The highest prices quoted by the United States Department of Agriculture Grain Market News for No. 2 soft red winter

wheat at Chicago, Kansas City, St. Louis, and Toledo n13 from Friday, May 17 through Thursday, May 23, 1963, were as follows (Comp. Ex. 17):

Market	May 17	May 20	May 21	May 22	May 23
Chicago	$ 2.15 1/2	$ 2.18 3/4	$ 2.28	$ 2.15	$ 2.11 1/4
Kansas City	2.22 1/4	2.24	2.21 1/2	2.20	2.20 1/2
St. Louis	2.26 1/4	2.26 1/2	2.22	2.22	2.23 1/4
Toledo	2.06 1/2	2.06	2.05	2.03	2.04 1/2

n13. Toledo prices are the only prices appearing in the quotations. Chicago, Kansas City, and St. Louis prices are the high prices of a range in each case.

The increase or decrease in the highest cash prices for No. 2 soft red winter wheat on these four markets during the last two days of trading in the May 1963 wheat future (May 20 and 21) and during the two days immediately thereafter (May 22 and May 23), as reported by the Grain Market News, were as follows (Comp. Ex. 17):

Market	Last Two Trading Days	Two Following Days
Chicago	+12 1/2 cents	-16 3/4 cents

Market	Last Two Trading Days	Two Following Days
Kansas City	-3/4 cents	-1 cent
St. Louis	-4 1/4 cents	+ 1 1/2 cents
Toledo	-1 1/2 cents	-1/2 cent

40. On May 20, 1963, the United States Department of Agriculture Grain Market News price quotations for No. 2 red winter wheat at Chicago were $ 2.18 1/2-$ 2.18 3/4. On May 21, such quotations were $ 2.18-$ 2.28. During the remaining seven business days of that month, Chicago quotations were in a range from $ 2.10-$ 2.15 down to $ 2.03 1/4 (Comp. Ex. 17). The Sosland Publishing Company, publisher of a daily card with price quotations, showed quotations for No. 2 red winter wheat in Chicago on May 20 at $ 2.27 1/2-$ 2.28 1/2, and on May 21 at $ 2.40-$ 2.42. During the remaining seven business days of the month, such quotations ranged from $ 2.11 1/8 on May 23 down to $ 2.03 3/8 bid on May 31. Between May 22 and May 24, the Sosland price quotations for wheat on track in Chicago were between $ 2.09 and $ 2.12 1/4. During the same period such quotations for Chicago warehouse receipts were between $ 2.28 and $ 2.38 (Comp. Ex. 70, 73; Tr. pp. 3834, 3845-3846, 4330-4331).

41. Anthony S. Rojko, head of the Price Research and Methods Section in the Economic and Statistical Analysis Division of the Economic Research Service of the United States Department of Agriculture, made a study of cash prices for soft red winter wheat covering a 14-year period from 1950 to and including 1963, and

found that historically certain economic relationships existed among the supply and demand factors which determined prices. Applying these relationships to the 1962-1963 marketing season, Mr. Rojko found that the average economic value (*i.e.,* the value which reflected basic supply and demand factors) of No. 2 soft red winter wheat at Chicago during the 1962-1963 season, calculated in accordance with a formula derived from and based upon such relationships, was within the range $ 2.03-$ 2.10 and that the average economic value of No. 2 soft red winter wheat at Chicago during May 1963, similarly calculated, was within the range $ 2.10-$ 2.17. The actual average price of No. 2 soft red winter wheat at Chicago during the 1962-1963 marketing season, as determined from quotations in the United States Department of Agriculture Grain Market News, was $ 2.10 and the actual average price of such wheat at Chicago during May 1963, similarly determined, was $ 2.13 (Comp. Exs. 48, 48A, 49, 49A, 50, 50A; Tr. pp. 711-722, 725-752, 771-779, 781-870, 887-970).

42. By use of the formula described in Finding 41, Mr. Rojko calculated the average economic value of No. 2 soft red winter wheat at Chicago during several marketing seasons in addition to the 1962-1963 season and the average economic value of such wheat at Chicago during May of such marketing seasons. The results of such formula calculations, and the actual season average and May average prices as determined from United States Department of Agriculture Grain Market News quotations, were as follows (Tr. pp. 955-956, 1007-1008; Comp. Ex. 48):

Marketing Season	Calculated Season Average	Actual Season Average	Calculated May Average	Actual May Average
1955-56	$ 2.161	$ 2.13		
1956-57	2.243	2.26	$ 2.146	$ 2.14
1957-58	2.168	2.17	2.221	2.22
1958-59	1.941	1.94	1.904	1.89
1959-60	2.036	1.99	2.067	2.07
1960-61	1.965	1.98	1.863	1.88
1961-62	2.040	2.05	2.162	2.17
1962-63	2.067	2.10	2.137	2.13

43. In addition to the Cargill interoffice messages described above, the following wires were included among those transmitted by respondent Jaffray from

Cargill's Chicago office to its Wayzata office in April and May 1963. On April 19 (Comp. Ex. 59; Tr. pp. 1975-1985):

"Any more info on Spain. Like to have this info reach Uhl-mann [Uhlmann Grain Company] from some source other than Cargill . . ."

On April 24 (Comp. Ex. 15, p. 5; Tr. pp. 1728-1735, 1800-1816):

". . . Have to conclude Casey [Pillsbury buyer] underestimatting our unshipped sales but he knows his grind cud well control Chgo situation unless we see more demand from Burrus etc. Next two wks going tell tale and poss [possibility] no intentions on May 1 [to deliver on May futures] will force hand of these boys."

On April 26 (Comp. Ex. 15, p. 6; Tr. pp. 1703-1711, 1818-1822):

"G M [General Mills] trying awfully hard to convince us they don't need wht but were also worried abt [about] how much wht left here [Chicago] June 1. In other words they going fight the prems [premiums] and bank on dely [delivery on the May future] unless see Chgo stock disappear . . ."

On April 29 (Comp. Ex. 15, p. 7; Tr. pp. 1714-1719, 1827-1830):

"Altho C S [Central Soya Company] been selling some truck wht Chgo they admitted to third party they about cleaned up and this vol [volume] wudnt change mill dependence on G X [Chicago] visible [supplies]."

On May 6, in answer to a wire received by Cargill personnel summarizing crop conditions in the St. Louis area (Comp. Ex. 15, p. 9; Tr. pp. 1722-1723, 1839-1849):

"Excellent wht summary. Question is how much wht going be avail June 15 so we can fig old crop needs and what is going cost our pals."

On May 10 (Resp. Ex. 17; Tr. pp. 1851-1853):

"Hear locals [speculative traders] stating C K W [Chicago May Wheat Future] G G [going] to collapse to 185."

On May 16 (Resp. Ex. 18; Tr. pp. 1874-1876):

"Lamson [Lamson Bros., a commission firm] reports that a broker said that mills were told Cargill unable offer wht since all under offer to Spain."

44. On July 30, 1963, Samuel F. Gordon and two other representatives of the Commodity Exchange Authority interviewed respondent

Saunders, Donald C. Levin, then Cargill's secretary and general counsel, and Mel Middents, Cargill's assistant head wheat merchant, with reference to Cargill's transactions in the May 1963 wheat future (Tr. pp. 155, 159). Among the statements made by Mr. Levin or respondent Saunders or both during this interview were the following: That Cargill's operations in the May 1963 wheat future were undertaken after consulting with and receiving the approval of respondents Kelm and Diercks; that it was felt that the May future had to advance as a result of the sales to Spain and therefore respondent Saunders had Cargill increase its long May futures position; that this position was speculative; that if the sales to Spain had not been made the future might not have advanced as it did subsequently and might, in fact, have declined and resulted in losses to Cargill; that the Spanish business came at a good time because without it if Cargill had "bulled" the market there would have been criticism; that Cargill expected Chicago stocks of old crop wheat to be depleted by June 1, 1963, and that this depletion would not be helped by the movement of wheat from Toledo to Chicago because movement in this direction was unusual; that Cargill purchased 100,000 bushels of May futures on the last day because respondent Saunders felt that the future had to advance to reflect the true

price of cash wheat before trading ended; that Cargill's liquidating order prices on May 21 were based upon what was believed to be the price in Chicago of old crop wheat brought in from other points; that these liquidating orders were held off the market on May 21 until futures prices rose to the price necessary to bring wheat into Chicago; that prior to the entry of these orders on that day respondent Saunders "waited and watched because he knew the market was going up"; that the price of $ 2.28 1/4 which Cargill charged for warehouse receipts after trading ended was based upon the highest price specified in Cargill's liquidating orders of May 21; and that cash prices declined after May 21 because mill demand had been satisfied (Tr. pp. 169-177, 363-370, 382-396, 1738, 3782-3794, 3802-3804).

45. The prices of $ 2.28 and $ 2.29, which Cargill received for old crop No. 2 soft red winter wheat in Chicago on May 20 and 21, 1963, and the prices of $ 2.27 to $ 2.28 1/4 which it demanded and received for long May futures on the Chicago Board of Trade on May 21, did not reflect basic supply and demand conditions but were artificially high. Such prices were out of line with prevailing May futures prices in Kansas City and prevailing cash

prices in Kansas City, St. Louis and Toledo. Respondent corporation was able to demand and receive such prices because of its controlling long position in the Chicago May future and the limited supply of wheat available in Chicago for users of wheat and for delivery on the future on May 20 and 21. These factors resulted in a squeeze which was intentionally brought about by respondent corporation and the individual respondents, and which they exploited.

CONCLUSIONS

I

Trading in commodity futures is somewhat of a mystery to the general public and there is little literature upon the subject. It is a highly complex matter that is practically esoteric.

Much of the material in the lengthy record here, however, and indeed many of the Findings of Fact are devoted to explanations of the workings of the system and are not in dispute.

Too, many of the Findings of Fact above deal with indisputable physical facts such as purchases and sales of wheat futures and wheat by Cargill, etc. The contested issues deal mainly with the inferences to be drawn from the evidentiary findings of fact and with questions of law as to what constitutes price manipulation prohibited by the act.

Complainant contends that respondent corporation caused abnormally high and artificial prices for cash wheat in Chicago on May 20 and 21, 1963, and abnormally high and artificial prices for May wheat futures on the Chicago Board of Trade on May 21, 1963; that it acted willfully and with manipulative intent in so doing; and that it thereby attempted to and did in fact manipulate prices in violation of the Commodity Exchange Act as alleged in the complaint. Complainant contends further that the transactions in question were undertaken with the active participation of respondents Saunders and Jaffray and with knowledge, authorization and approval of respondents Kelm and Diercks, and that these individual respondents therefore acted with similar intent and are equally chargeable with respondent corporation for the violations in question.

Respondent Cargill says, in brief, that the evidence does not support the charges that the corporation manipulated or attempted

to manipulate cash or futures prices or that it had any intent to do so; or that the cash and futures prices reached on May 20 and 21, 1963, were, in fact, artificial or manipulated. It claims that such prices were justified by supply

and demand conditions and represented sound, normal and profitable business transactions. Other Cargill contentions will be discussed hereinafter.

The individual respondents adopt the brief and arguments of Cargill's counsel with respect to these principal issues and claim additionally that, irrespective of what conclusions may be reached as to the corporation, the individual respondents should not be held answerable. Counsel for the individual respondents argues that before taking any action, respondents Kelm, Diercks and Saunders, in accordance with the policy of the corporation, consulted with its legal counsel and relied upon counsel's advice that all contemplated transactions were legal and proper; that respondent Jaffray had no authority to make and did not in fact make any futures trades or export sales for Cargill; and that all the individual respondents acted in good faith and without any intent to violate the law. The individual respondents also rely upon the additional defenses urged by Cargill.

II

The complainant charges that the respondent corporation with manipulative intent attempted to and did manipulate May 1963 wheat futures on May 21, 1963.

As we observed in *In re Volkart Brothers, Inc. et al.,* 20 Agric. Dec. 306 (20 A.D. 306) (1961) (rev. *Volkart Brothers Company, Inc., et al.* v. *Freeman,* 311 F.2d 52 (Fifth Cir. 1962)) at p. 328, it is not uncommon for futures prices on an exchange to advance toward the end of trading, particularly on the last day, not because of any change in supply or demand factors generally for the spot or actual commodity on a regional or national market, but because of the technical condition within the futures market itself of a shortage of readily available supplies for shorts who must then buy futures to get out of the market. This condition, often called a "squeeze", may be a natural one, this is a non-planned accidental one, or it may be accomplished intentionally by one person or a group holding on to their dominating or substantial long position until the last moments of trading for the purpose of pushing prices up. See Technical Bulletin No. 747 (January 1941), United States

Department of Agriculture, *Grain Prices and the Future Market,* p. 70.

In one of the standard works on futures trading, Hoffman, *Futures Trading Upon Organized Commodity Markets in the United States* (V. Par., 1932), Chapter XVI entitled "Deliverable Cash Supplies and Futures Prices", under the heading (p. 313) "3. Artificial Factors Causing Abnormal Conditions", the following appears (p. 315):

"The Threat of Taking Delivery. Having greater possibilities of success and much more common is the threat of taking delivery. Here the long interests attempt to profit at the expense of the 'shorts'. By continuing long up to and into the delivery month, speculative short sellers find it increasingly difficult to buy in their contracts. The short interest, it will be recalled, has the option of choosing the day during the delivery month when the actual commodity will be delivered. This option only serves to postpone the time when an ultimate settlement will have to be made. With the hope that prices will break or that the long interest will take the initiative and liquidate, they may carry along their position well into the delivery month with little thought of acquiring the necessary supplies. At the end of the month when delivery must be made, supplies may be scarce and, in a frantic effort to close out their position, the current future advances rapidly. This process may or may not be accompanied by any manipulative intent but in any event it is an artificial situation producing a temporary derangement in prices."

To the same effect see *Report of the Federal Trade Commission on the Grain Trade,* Vol. VII (1926), p. 284; Baer and Saxon, *Commodity Exchanges and Futures Trading,* p. 83 (Harper, 1949).

We think that the evidence in this proceeding compels the conclusion that the sharp price rise on May 21, 1963, in the May future was due to a squeeze and

resulted in an artificially high price for the future, a price unrelated to basic supply and demand conditions for wheat or trading opinion of such conditions.

The cause is plainly visible from facts that are uncontested. On May 20 and 21, there was very little wheat available on the Chicago market to the shorts for delivery on their futures contracts. While other longs were liquidating, Cargill sat on its 1,990,000-bushel

long position until about 11:45 a.m. on May 21 with only 15 minutes of trading left. Then, when the future was selling at $ 2.20 after going up from $ 2.16 1/2 at 11:39 a.m., Cargill gave orders to sell *on an ascending scale of prices* from $ 2.27 to $ 2.28 1/2 and at 11:53 a.m., with seven minutes to go, Cargill had about 62 percent of the open interest and got its prices, except that 365,000 bushels remained unsold due to congestion in the pit and even as to this quantity Cargill got $ 2.28 1/4 a bushel as described in Finding of Fact 30. Shorts to the extent of 2,000,000 bushels had to come to Cargill and had to, and did, pay Cargill's prices in order to get out of the market.

The cause of the price rise is practically self-evident but the record evidence almost conclusively establishes that the futures prices reached on May 21, 1963, and the cash prices on May 20 and 21, 1963, were artificially high.

Respondents claim, and introduced testimony to the effect, that the rise was due to supply and demand factors for wheat or the trading opinion thereof. They argue that the wheat price was too low and that the rise was "corrective". But, as Finding of Fact 37 shows, the July futures price remained stable while the May futures price rose 15 5/8 cents in the May-July futures price spread, a phenomenon which had not occurred at such a time for the nine years prior to 1963. Again, during the last two days of trading, the May 1963 wheat futures price rose only 3 1/2 cents on the Kansas City Board of Trade and the spread increase between the May and July future was about the same. Too, the Chicago May future which had ranged from six to ten cents below the Kansas City May future, May 1-May 19, and which was six cents below Kansas City when trading opened on May 20, closed out 9 1/2 cents *above* Kansas City when trading ended on May 21. There was no such relationship with respect to the two futures in the nine years preceding 1963.

Chicago cash prices for No. 2 red winter wheat also climbed sharply toward the end of trading in the May 1963 future and then dropped. On May 20 the Sosland Chicago quotation was 9 to 10 cents over the May future ($ 2.11-$ 2.19). The Grain Market News cash quotation was $ 2.18 1/2-$ 2.17 3/4. On the next day, May 21, the Sosland Chicago quotation was 55 to 57 cents over the July future ($ 1.85-$ 1.86). The Grain Market News quotation for that day was $ 2.10-$ 2.28. On May 22, the Sosland Chicago quotation dropped by about 30 cents and the Grain Market News quotation

declined to $ 2.10-$ 2.15. Finding of Fact 39 graphically depicts the sudden and sharp upward surge in Chicago cash wheat prices on May 20 and May 21 and the precipitous decline immediately thereafter. n14

n14. "It appears . . . that comparison between cash prices at a time when the grain is and when it is not needed for delivery, should give some indication of the effect of this particular use upon the price and therefore of the effect of corners and squeezes." *Report of the Federal Trade Commission on the Grain Trade* (1926), Vol. VII, p. 245.

Dr. Will M. Simmons, economist and Chief of the Commodity Analysis Branch of the Economic and Statistical Analysis Division, Economic Research Service, United States Department of Agriculture, pointed out that the price rise for cash wheat in the Chicago market was not duplicated in other markets but that,

in fact, prices moved downward in these other markets at the time. He also examined cash price movements in Chicago and other markets during May in other years, and reviewed the statistics with respect to total stocks of wheat and stocks in the Chicago area during 1963 and other years. On the basis of this analysis, Dr. Simmons concluded that the prices and price movements of No. 2 soft red winter wheat in Chicago on May 20 and 21, were artificial and that they did not reflect basic supply and demand factors and that this artificiality was brought about by the movement of wheat out of Chicago at a time when there was an insufficient supply of deliverable grade wheat in Chicago to satisfy the open interest, and that this situation produced an over-reaction and caused a temporary price surge (Tr. pp. 990-1047). Dr. Simmons pointed out also that he reached this conclusion independently of and prior to the study by Mr. Rojko described in Findings 42 and 43 (Tr. pp. 1052-1055).

Even testimony from respondents' witnesses ascribed the sharp price rises on May 20 and May 21 as due to the depletion of Chicago stocks of deliverable wheat close to the expiration of trading in the future. See testimony of Dr. Willard W. Cochrane, Professor of Agricultural Economics, University of Minnesota (Tr. pp. 3443, 3444), n15 Owen Nichols, vice president of Mitchell Huchins & Company, a commodity brokerage firm (Tr. p. 2551) and Richard M. Withrow, a partner in Lawson Brothers, a commodity brokerage firm (Tr. pp. 2651-2653).

n15. ". . . One should not be surprised at the sharp rise [in cash wheat prices on May 20 and 21], one, that there was a large Spanish sale and it was particularly large in terms of the available stocks at the time. This was bound to have a strong price-enhancing effect . . . Then you have the man-made rule that [the May future] has to come to an end."

III

The next question for consideration is whether Cargill's activities described above were done with manipulative intent, that is, with intent to influence prices upward. Of course Cargill was not long because it wanted delivery of wheat upon its long contracts, or because it was hedging. Its long position was a speculative one and, at the least, it hoped or expected that the May futures price would go up. But we think that the preponderance of the evidence reveals that Cargill was not content merely with hopes and expectations and that it intentionally undertook to influence the May futures price and cash price upward.

Cargill intended that its sales of wheat to Tradax and the export of the wheat from Chicago would raise the wheat price in Chicago (Findings of Fact 19 and 44). In fact, on May 17 and 18, Cargill loaded two cargoes or about 770,000 bushels of its Chicago elevator for shipment to Baie Comeau although as of May 17 the Spanish Government had not yet accepted the offer made to it by Tradax on May 16 nor had Tradax accepted the offer of the second cargo made to it by Cargill on May 15. Indeed, before the second cargo of wheat was offered to Tradax for sale to Spain, respondent Saunders conferred with Donald C. Levin, Cargill's then secretary and general counsel, concerning the proposed offer and Mr. Levin said that "the legal problem . . . would be that if Cargill would sell wheat out of Chicago at an uneconomic price, that it would not be legal or proper" (pp. 1657, 1658). Cargill then offered the second load at a price equivalent to $ 2.09 a bushel, 5 1/2 cents a bushel over the Chicago futures price on that day. Saunders' conversation with Levin *must* have been about the effect upon Chicago wheat prices of the shipment of the wheat out of Chicago.

On May 15, the day Cargill made the second offer, Cargill bought an additional 50,000 bushels of May 1963 futures reaching a total long position of 1,930,000 bushels. During the last two days of trading, May 20 and 21, and up until the last few minutes of trading while other long traders liquidated some 10,700,000 bushels of May futures, Cargill increased its long position and when it finally gave orders to sell its almost 2,000,000 bushels of futures 15 minutes before the bell, the orders called for sales at prices seven to eight

cents higher than the price at which the future was then selling and within a fraction of a cent of the high price limit for the day and the high price for the life of the future.

Respondents urge for a number of reasons that they did not manipulate wheat prices in violation of the act. Among other reasons, they contend that there were stocks of deliverable wheat inside and outside of Chicago which the shorts could have delivered on their contracts under the Board of Trade's rule permitting delivery for seven days after the end of trading. Outside of soft red wheat being utilized by mills in Chicago, there was practically no available deliverable wheat in Chicago except that held by Cargill.

As far as soft red wheat outside Chicago is concerned, if there were supplies which could be economically deliverable by the shorts after May 21, it would hardly be necessary for the Chicago Board of Trade to come to Cargill after the end of trading and participate in the arrangement of dubious validity described in Finding of Fact 30.

As Mr. Charles Robinson of the Commodity Exchange Authority pointed out in the course of his testimony (Tr. p. 3861), that ". . . the warehouse receipt calls for 5,000 bushels and is a unit which can be delivered on a futures contract . . . . The track price is a price for a car. A car might range from 1,500 to 1,900 or 2,000 bushels of the same wheat, but unless the short can get -- can be sure of getting -- his hands on 5,000 bushels in carlots, he can't meet his obligation in the future contract, so where we have a situation where the shorts are willing to pay substantially more for wheat in quantities which will enable them to meet their obligations on futures contracts, than anyone . . . is willing to pay for one car or two cars of wheat, that to me is evidence of a squeeze in the futures market."

When Nelson D. Cornelius, Manager of the Grain Department of Merrill Lynch, Pierce, Fenner & Smith, Inc., was asked why he purchased Cargill's warehouse receipts rather than purchasing wheat from sources outside of Chicago, he testified as follows (Tr. pp. 665-666):

A. Well, as I said in my previous testimony, the only wheat that I tried to obtain or considered obtaining was this barge weight, yellow had wheat that was coming in. I knew it was coming into Chicago.

Q. And why was it that that was the only wheat that you considered obtaining?

A. Well, because of the time element. In other words, it had to -- first of all, it had to be either in store in Chicago elevator to be delivered on the Board of Trade contracts or it had to be on track in Chicago the last, I think it's three business days, of the month, consigned to a Chicago elevator and I knew it was impossible to get the wheat into Chicago on that basis, unless it was already en route.

It is plain that there were time and economic impediments to the importing of wheat into Chicago by shorts for delivery within the seven days allowed. The shorts preferred to pay the premiums caused by Cargill since that was less risky and less expensive.

Cargill accomplished a squeeze or "little corner". This is a manipulative technique "whereby a trader . . . gains control of the supply or future demand of a commodity and requires the shorts to settle their obligations, either by the purchase of deliverable quantities of the supply or off-setting long contracts, at an arbitrary abnormal and dictated price imposed by the corner-er". *Great Western Food Distributors, Inc.* v. *Brannan,* 301 F.2d 476, 478 (7th Cir. 1953) *cert. denied* 345 U.S. 997 (1953).

As we observed in *In re General Foods et al.,* 6 Agric. Dec. 288, 305 (6 A.D. 288, 305) (1947), manipulation of prices occurs when a person or group causes

prices to go up or down by means directed to either such end or prevents prices from going up or down by means directed to either such end. n16

n16. "An artificial or manipulated price is created whenever the manipulator makes the market price of a commodity, or of a futures contract, behave in some manner in which it would not behave if left to adjust itself to uncontrolled supply and demand." Campbell, *Trading in Futures,* 26 Geo. Wash. Law Review, 215, 234 (1958).

Arthur R. Marsh, a former president of the New York Cotton Exchange, in a hearing before a Congressional Subcommittee (*Cotton Prices, Hearings Before a Subcommittee of the Committee on Agriculture and Forestry,* U. S. Senate, 70th Cong., 1st Sess., pursuant to S. Res. 141, at pp. 201-203 (1928)), testified that manipulation is:

". . . any and every operation or transaction or practice, the purpose of which is not primarily to facilitate the movement of the commodity at prices freely responsive to the forces of supply and demand; but, on the contrary, is calculated to produce a price distortion of any kind in any market either in itself or in its relation to other markets. If a firm is engaged in manipulation *it will be found using devices by which*

the prices of contracts for some one month in some one market may be higher than they would be if only the forces of supply and demand were operative; or using devices by means of which the price or prices of some month or months in a given market may be made lower than they would be if they were freely responsive to the forces of supply and demand. Any and every operation, transaction [or] device employed to produce those abnormalities of price relationship in the futures markets is manipulation." (Emphasis supplied.)

We think it elementary that the successful pressuring of prices upward by the tactics employed by Cargill violated the act's prohibitions of the manipulation of prices. n17 Comment, Yale Law Journal "The Delivery Requirement": An Illusory Bar to Regulation of Manipulation in Commodity Exchanges (73 Yale Law Journal 171) says:

n17. Mr. Donald Levin, Cargill's then secretary and general counsel, stated in the July 30, 1963, meeting with representatives of the Commodity Exchange Authority that the Spanish business came along at a good time; that "If we had not sold to Spain and set there and *bulled* the market we could have been criticized." (Tr. p. 390) (Emphasis supplied). The verb "to bull" means to advance in price. (Webster's Third New International Dictionary, 1964). Mr. Levin did not appear as a witness at the hearing to explain what he meant and it should be assumed that he used the word in its ordinary meaning.

"A squeeze, on the other hand, involves no such preparation of the market for exploitation, *although the holding of a large futures position late in the delivery month, playing upon seller expectation that delivery will not be required is recognized as manipulative,* it will often appear so like ordinary market behavior that substantial problems of proof, along with a substantial risk of penalizing necessary market behavior, will come into existence if regulation is essayed" (Emphasis supplied).

The Comment disagrees with the Fifth Circuit in *Volkart, supra,* and makes the point that the problem in squeeze situations is whether there is shown to be manipulative intent present, it sets out guidelines to ascertain whether this is the case and it concludes that an intentional squeeze violates the act. We have concluded above that the evidence in this case clearly demonstrates manipulative intent.

In *Volkart* there was a small supply of available deliverable cotton and Volkart stood on its long position, more than twice the size of the deliverable

supply, into the last day of trading, pressuring the price upward. Volkart, however, had nothing to do with the fact that the available deliverable supply of cotton was

small. The Court held that the weight of the evidence did not support our finding or conclusion that Volkart had manipulated cotton futures prices.

In *Volkart* we think that the underlying view of the Court was that Volkart had merely exploited a situation which it had not created, n18 *i.e.,* a shortage of deliverable cotton, and that this was not manipulation in violation of the act.

n18. Of course Volkart created at least part of the situation since it intentionally made a demand for cotton double the available supply by not liquidating its long position until near the end of trading.

Here Cargill prepared the market for exploitation by the Spanish shipments out of Chicago with the intent that the exports would raise Chicago wheat prices. The setting is different from that in *Volkart.* The hearing examiner has listed a number of differences between the facts in *Volkart* and the facts here, concluding that *Volkart* does not control the outcome here. We agree. But if the ruling in *Volkart* is to the effect that intentional squeezes are not manipulation in violation of the act we, of course, do not agree. It is the purpose of the act to eliminate all manipulations. H. R. Rep. No. 421, 74th Cong., 1st Sess. 1-3 (1936); 62 Cong. Rec. 9406, 9414 (1922); 80 Cong. Rec. 6161, 6164 (1936) (remarks of Senator Pope). We believe that even if Cargill had not been the one to move the wheat out of Chicago on the Spanish sales, its trading in the future alone on May 21, 1963, constituted a manipulative squeeze in violation of the act.

IV

Respondents urge that at any rate the complaint should be dismissed insofar as the individual respondents are concerned. Respondents Kelm and Diercks had knowledge of the Cargill operations in issue and their purpose and approved them, and respondents Saunders and Jaffray actively participated in the operations. The individual respondents are, therefore, liable as well as the corporate respondent.

Respondents claim that under section 8 (b) of the Administrative Procedure Act (now 5 U.S.C. 558 (c)) they were entitled to notice and an opportunity to demonstrate or achieve compliance before the issuance of the complaint. n19 In cases of "willfulness",

however, these requirements do not apply and "willfulness" means that there need be present no more than an intention to perform the acts constituting the violation. *Great Western Food Distributors, supra,* at p. 484; *Goodman* v. *United States,* 286 F.2d 896 (7th Cir. 1961).

n19. The statutory provisions referred to apply to "licenses". A commodity futures trader does not have to have any permit, registration, or any other form of permission from the Secretary to trade. Of course, a futures commission merchant or a floor broker must register with the Secretary.

We have not gone into as much detail with respect to contentions of the respondents as did the referee (hearing examiner) in his recommended decision (112 pages). Any conclusion of his not mentioned specifically herein has our agreement and approval and, of course, any objection, exception, etc., of respondents inconsistent with this decision and order are overruled or denied.

This proceeding unfortunately has been a protracted one. Cases of this kind are usually lengthy and time-consuming. But there were factors present in this case, not attributable to respondents, which made for unusual delay and are not likely to recur in other proceedings under the act. Respondents have been under the constraints of the proceeding since the complaint was filed in June 1964. Taking this into consideration, together with respondents' apparent reliance upon the Circuit Court decision in *Volkart, supra,* as legitimatizing the conduct in issue, we conclude that the sanctions proposed by the referee should be suspended.

ORDER

The registration of respondent Cargill, Incorporated, as a futures commission merchant is suspended for a period of 90 days.

All contract markets shall refuse all trading privileges to respondents Cargill, Incorporated, Erwin E. Kelm, H. Robert Diercks, Walter B. Saunders, and Benjamin S. Jaffray, for a period of 90 days, such refusal to apply to all trading done and positions held directly by any of the said respondents, and also to all trading done and positions held indirectly through persons owned or controlled by them, or any of them, or otherwise.

The sanctions above, however, are suspended for each respondent. If any of the respondents is again found to have violated the act, after opportunity for a hearing, within two years from the date hereof, the suspended sanctions will be taken into account in determining the sanctions to be ordered in connection with any such violation.

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

LOAD-DATE: June 10, 2008