

Commodity Futures Trading Commission
CEA CASES

NAME: CARGILL, INCORPORATED V. THE BOARD OF TRADE OF THE CITY OF CHICAGO

DOCKET NUMBER: 6

DATE: FEBRUARY 24, 1938

DOCUMENT TYPE: ORDER

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE, THE
SECRETARY OF COMMERCE, AND THE ATTORNEY
GENERAL SITTING AS A COMMISSION PURSUANT
TO SECTION 6(a) OF THE COMMODITY EXCHANGE ACT
COMMODITY EXCHANGE ADMINISTRATION DOCKET # 6.

In Re Cargill, Incorporated Complainant v. The Board of Trade of the City of Chicago Respondent.

ORDER AND NOTICE OF HEARING

A complaint under the Commodity Exchange Act (U.S.C., 1934 ed., title 7, secs. 1-17; and U.S.C., 1934 ed., Supp. II, title 7, secs. 1-17a), (copy of which is attached hereto as Exhibit "A" incorporated in and made a part [ILLEGIBLE TEXT] having been filed with the Secretary of Agriculture on February 10, 1938, by Cargill, Incorporated, in which it is alleged that the Board of Trade of the City of Chicago, a contract market designated by the Secretary of Agriculture under the provisions of the Commodity Exchange Act, did violate said act by allowing persons desiring to make delivery of a commodity on a contract of sale of such commodity for future delivery, to do so without giving written notice of the date of delivery to the person obligated under the contract to accept delivery at least one business day prior to such date of delivery, and further by not providing for the prevention of manipulation of prices and, in fact, permitting its business conduct committee to aid and abet manipulation of prices; and

It having been determined that a hearing should be held before the commission designated by the Commodity Exchange Act, composed of the Secretary of Agriculture, the Secretary of Commerce and the Attorney General, as authorized by Section 6(a) of said act, for the purpose of determining whether the Board of Trade of the City of Chicago has violated the provisions of said act in the manner and form as alleged and to the end that appropriate action may be taken pursuant to the said act.

IT IS THEREFORE ORDERED that a hearing before this commission be held at 10 a.m., eastern standard time, on the 18th day of April, 1938, at Room 202, Administration Building, Department of Agriculture, Washington, D.C., or at such other time or place as may be designated by the Secretary of Agriculture, as chairman of the commission, at which time and place the Board of Trade of the City of Chicago, the respondent, and Cargill, Inc., the complainant, will have the right to appear and present such evidence with respect to the matters and things set forth herein as may be relevant and material.

IT IS FURTHER ORDERED that the Board of Trade of the City of Chicago, the respondent, may file with the Secretary of Agriculture, the chairman of this commission, within ten days after the receipt of the complaint, an answer in quadruplicate fully and completely stating the nature of the defense and

admitting or denying specifically in detail each material and relevant allegation of the complaint.

IT IS FURTHER ORDERED, that a copy of this notice and order be served personally or by registered mail on the Board of Trade of the City of Chicago and Cargill, Incorporated, by serving copies

hereof as hereinbefore directed upon one of the officers of each of said corporations.

IN WITNESS WHEREOF, the Acting Secretary of Agriculture, as acting chairman of the commission designated by the Commodity Exchange Act, has hereunto set his hand in the city of Washington, District of Columbia, this 24th day of February, 1938.

/s/ M. L. WILSON

Acting Secretary of Agriculture

Acting Chairman of Commodity Exchange Commission.

COPY

Exhibit "A"

2-10-38

TO THE HONORABLE, THE SECRETARY OF AGRICULTURE,

Washington, D. C.

Sir:

Cargill, Incorporated, complains to the Honorable, the Secretary of Agriculture, and presents to him, as a basis for such complaint, a statement of facts as follows:

1. The Board of Trade of the City of Chicago is a corporation organized by special legislative enactment of the State of Illinois, and is a "contract market," designated as such by the Secretary of Agriculture under the provisions of the federal Commodity Exchange Act, being the Act of Congress of September 21, 1922, as amended by the Act of June 15, 1936.

2. Cargill, Incorporated, is a Delaware corporation, having an office and place of business in the Chamber of Commerce Building, Minneapolis, Minnesota. Cargill Grain Company, a Minnesota corporation, was one of the predecessors in interest to Cargill, Incorporated, and Cargill Grain Company of Illinois, an Illinois corporation, is presently the wholly owned subsidiary of Cargill, Incorporated. Cargill, Incorporated, is engaged in the cash grain business as was Cargill Grain Company, and as is Cargill Grain Company of Illinois, and in this connection these companies used and use the facilities of and were and are affected by operations on the Board of Trade of the City of Chicago. Cargill, Incorporated, herein complains of violations by the Board of Trade of the City of Chicago of certain provisions of the Commodity Exchange Act from which Cargill, Incorporated, Cargill Grain Company and Cargill Grain Company of Illinois, or some one or more of them, suffered injury.

3. Section 5a of the Commodity Exchange Act provides in part as follows:

"Each contract market shall - * * * *

"(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. --"

4. Section 5b of the Commodity Exchange Act provides as follows:

"The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules and regulations of the Secretary of Agriculture thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a 'contract market' in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act."

5. Section 6b of the Commodity Exchange Act provides as follows:

"If any board of trade, or any director, officer, agent, or employee of any board of trade is violating or has violated any of the provisions of this Act or any of the rules or regulations of the Secretary of Agriculture thereunder, or any order issued by the commission pursuant to any provision of this Act, the commission, in lieu of revoking the designation of such board of trade as a 'contract market' may, upon notice and hearing and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such board of trade, director, officer, agent, or employee shall cease and desist from such violation or violations, and if such board of trade, director, officer, agent, or employee, thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such board of trade, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$ 500 nor more than \$ 10,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or

refusal to obey such order continues shall be deemed a separate offense."

6. On September 29, 1936, at about 11:30 A. M. Central Daylight Saving Time, Cargill Grain Company received the following communication from the Secretary of the Board of Trade of the City of Chicago:

"September 29, 1936

TO MEMBERS:

"At a special meeting of the Board of Directors held today, the following resolution was adopted:

"Acting under the provisions of Rules 251 and 287, the Directors hereby declare that notices of intention to deliver may be delivered to the Clearing House continuously on Tuesday, September 29, 1936 up to 8 o'clock P. M. and that payment shall be made on such deliveries prior to 2 o'clock P. M. on Wednesday, September 30, 1936.

"Such notices may consist of statement of intention to deliver and the customary documents shall be made available to the buyer at the time payment is made.

Yours very truly,

Fred H. Clutton,

Secretary."

7. The action taken by the Board of Directors of the Board of Trade of the City of Chicago, as evidenced by this communication from its Secretary, was in reckless disregard and in clear violation of Section 5a (5) of the Commodity Exchange Act above quoted, in that under such action of said Board of Directors persons desiring to make delivery of a commodity on a contract of sale on the Board of Trade of the City of Chicago were permitted to do so without giving written notice of the

date of delivery at least one business day prior to such date of delivery as required by Section 5a (5) of the Commodity Exchange Act.

8. Cargill Grain Company promptly objected to said proposed action by the Board of Trade of the City of Chicago, and such protest was delivered to the Board of Trade of the City of Chicago in time so that its Board of Directors could have recalled their improper and illegal action. The following telegram from Cargill Grain Company was delivered to the Secretary of the Board of Trade of the City of Chicago on September 29, 1936 at about 12:30 o'clock P. M. Central Daylight Saving Time:

"Minneapolis, Minn.

Sept. 29, 1936.

"Fred H. Clutton,
Secretary, Board of Trade,
Chicago.

"We are just advised of the action of the Board of Directors in deferring requirements for notices of intention to deliver until eight o'clock this evening.

"We invite your attention to Section 5A5 of the Commodity Exchange Act requiring that notice of delivery must be given at least one business day prior to the date of such delivery. Please accept this as notice on our part that we do not intend to waive any legal rights we may have under this statute.

CARGILL GRAIN COMPANY

By John H. MacMillan Jr.

Vice President and General Manager"

9. Further, on September 29, 1936, a communication was addressed by Messrs. Junell, Driscoll, Fletcher, Dorsey & Barker, of Minneapolis, attorneys for Cargill Grain Company, to the Secretary of the Board of Trade of the City of Chicago, stating

unequivocally that in their opinion the contemplated action of the Board of Trade of the City of Chicago was in violation of the Commodity Exchange Act. A copy of said letter is attached to this petition as "Exhibit A" thereto and by this reference made a part hereof.

10. Cargill Grain Company did not complain to the Commodity Exchange Commission of violations of the Commodity Exchange Act by the Board of Trade of the City of Chicago in 1936, hereinbefore and hereinafter set forth, because it was assured that such violations would not be repeated. However, in connection with deliveries on September, 1937 futures contracts, violations of the Commodity Exchange Act were continued.

11. In addition to the aforesaid violation of Section 5a(5) of the Commodity Exchange Act by the Board of Trade of the City of Chicago in 1936, both in 1936 and as recently as in September of 1937 the governing board thereof, being the Board of Directors, did not provide for the prevention of manipulation of prices but, to the contrary, permitted the so-called Business Conduct Committee of the Board of Trade of the City of Chicago to aid and abet manipulation of prices downward. Said Business Conduct Committee issued orders, made known to short sellers, upon holders of futures contracts for purchase of corn for September 1937 delivery to dispose of their commitments without any equivalent orders to holders of futures contracts for sale of corn for September delivery either to buy in their contracts or to refrain from further extending their short position. The same unauthorized demands made upon holders of futures contracts

in 1937 were also made in 1936 by the Business Conduct Committee of the Board of Trade of the City of Chicago to holders of futures contracts for purchase of wheat and corn for December delivery. These several actions constituted downward market manipulation by said Business Conduct Committee which was permitted by the governing body (Board of Directors) of the Board of Trade of the City of Chicago in direct violation of the Commodity Exchange Act, and particularly Section 5d thereof.

12. These repeated violations of the Commodity Exchange Act by the Board of Trade of the City of Chicago not only seriously injured and if not terminated will continue seriously to injure Cargill, Incorporated, but also are inimical to the best interests of the producers of grain, the grain trade and the public at large. The manipulation of prices for futures contracts downward with the resultant depressant effect on the price of cash commodities is injurious to the farmer. Violations of the provisions of law as to notice of delivery are injurious to the grain trade and members of the public who deal in futures contracts. Last minute decisions to deviate from the requirements of law as to time of notice of delivery benefit only those in control of the decision who themselves operate in the market, the public at large having no sufficient advance information to take advantage of such "emergency" relaxations. Such maneuvering causes grave uncertainty as to the sanctity of futures contracts and the general integrity of those who operate upon or through the Board of Trade of the City of Chicago and will

inevitably lead to public suspicion of all grain merchants.

13. Cargill, Incorporated, has been informed through various governing bodies of the Board of Trade of the City of Chicago and believes that the Board of Trade of the City of Chicago will in the future under the guise of alleged "emergencies" continue from time to time the aforesaid violations of the Commodity Exchange Act. Such violations are presently threatened and imminent in connection with futures contracts now being traded in on the Board of Trade of the City of Chicago and will work great injury to Cargill, Incorporated, and the public generally unless forthwith restrained.

In view of the foregoing, Cargill, Incorporated, respectfully requests that the Commission under the Commodity Exchange Act, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, be convened to give consideration to the matters here involved; that proper notice of the sitting of said Commission be given to the proper officers of the Board of Trade of the City of Chicago, to-wit:

Kenneth S. Templeton, President, and Fred H. Clutton, Secretary,

both of the City of Chicago, Illinois, with offices in the Board of Trade Building, and that such notice be also given to all present directors of the Board of Trade of the City of Chicago, to-wit:

Kenneth S. Templeton,
 Barnett Faroll,
 Orrin S. Dowse,
 Charles V. Essroger,
 Richard I. Mansfield,
 James A. Prindiville,
 Winthrop H. Smith,
 George H. Tanner,
 James E. Bennett,
 John E. Brennan,

Philip R. O'Brien,
Harry C. Schaack,
John G. McCarthy,
Harvey S. Austrian,
John J. Coffman,
Edwin J. Kuh, Jr.
George E. Booth,

and to all present members and acting substitutes of the Business Conduct Committee of the Board of Trade of the City of Chicago, to-wit:

Kenneth S. Templeton,
W. H. Smith,
R. F. Uhlmann,
M. R. Glaser,
T. Rodman,

that upon and after such notice and hearing before said Commission, the Commission in its discretion shall either (a) enter an order revoking the designation of the Board of Trade of the City of Chicago as a "contract market", (b) enter an order suspending such designation for a period not to exceed six months, or (c) enter an order directing that the Board of Trade of the City of Chicago, and such officers, directors and agents above designated, shall cease and desist from the violations hereinabove mentioned.

CARGILL, INCORPORATED
By (s) E. J. Grimes
Its (s) Vice-Pres't.

EXHIBIT A

September 29, 1936

Mr. Fred H. Clutton, Secretary
Board of Trade of the
City of Chicago
Chicago, Illinois

Dear Sir:

We are attorneys for Cargill Grain Company. We are informed that at a special meeting of the Board of Directors of the Board of Trade of the City of Chicago, held this morning, the following resolution was adopted:

Acting under the provisions of Rules 251 and 287 the Directors hereby declare that notices of intention to deliver may be delivered to the Clearing House continuously on Tuesday, September 29, 1936, up to 8 o'clock P.M. and that payment shall be made on such deliveries prior to 2 o'clock P.M. on Wednesday, September 30, 1936. Such notices may consist of statement of intention to deliver and the customary documents shall be made available to the buyer at the time payment is made.

Our client informs us that it had open contracts in September grain futures in substantial amounts on the Board of Trade of the City of Chicago. We are also informed that this resolution purports to apply to these transactions.

We have considered this matter and have advised our client that this resolution is invalid for the reason that it is contrary to the provisions of the Commodity Exchange Act and is also not within the scope of the powers of the Board of Trade under its own applicable rules and regulations. It is further our opinion that no emergency [ILLEGIBLE TEXT] itself is not equitable, and that it is [ILLEGIBLE TEXT] within the powers of the Board of Directors to pass resolutions such as this applicable in substance only to one situation.

By reason of the foregoing, we have advised our client that they have the alternative of refusing to accept deliveries tendered after notices of intention based upon the above resolution, or to make payments therefor under protest and to sell the grain so received for the account of whosoever may be interested therein and to charge any loss arising therefrom accordingly.

/s/ Very truly yours,

JUNELL, DRISCOLL, FLETCHER, DORSEY &
BARKER

by James E. Dorsey

Registered Mail and Special Delivery

LOAD-DATE: June 16, 2008

