

Commodity Futures Trading Commission
CEA CASES

NAME: SAMUEL E. COHEN, ALAN J. COHEN, JOEL COHEN, AND IVAR J. BLACKER

CITATION: 26 Agric. Dec. 801

DOCKET NUMBER: 139

DATE: AUGUST 28, 1967

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(No. 11,341)

In re SAMUEL E. COHEN, ALAN J. COHEN, JOEL COHEN, and IVAR J. BLACKER. CEA Docket No. 139. Decided August 28, 1967.

Trading limits -- Denial of trading privileges

The activities of respondents, acting pursuant to an expressed or implied agreement or understanding among themselves, in exceeding trading and position limits in the potato futures are violations of the act for which suspension of their trading privileges on all the contract markets for a period of 90 days is ordered.

Earl L. Saunders for Commodity Exchange Authority.

Ivar J. Blacker, Miami Beach, Fla., for respondents.

John J. Curry, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

DECISION AND ORDER

In this disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), the complaint charged that respondents, acting pursuant to agreement or understanding among them, made trades and held positions on the May 1966 potato future on the New York Merchantile Exchange in quantities in excess of permissible limits in wilful violation of section 4a of the Commodity Exchange Act (7 U.S.C. 6a) and the order of the Commodity Exchange

Commission establishing limits on positions and daily trading in potatoes for future delivery (17 CFR 150.10).

Respondents filed an answer and a hearing was held in Miami, Florida, on November 15, 1966, before Hearing Examiner John J. Curry. The hearing examiner issued a recommended decision to the effect that respondents had violated the act and the order of the Commission as charged in the complaint and a recommended order that respondents be denied trading privileges on the contract markets under the act for a period of 90 days.

Respondents did not file exceptions to the recommended decision and order of the hearing examiner. In view of this and after consideration of the entire record, the recommended decision and order of the hearing examiner are adopted as the final decision and order herein. The order shall become effective on September 11, 1967.

Copies hereof shall be served upon the parties and the contract markets under the act.

HEARING EXAMINER'S RECOMMENDED DECISION AND ORDER

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), instituted by a complaint and notice of hearing issued under section 6 (b) of the Act (7 U.S.C. 9) on August 3, 1966, by the Assistant Secretary of Agriculture.

The complaint alleges that during the period September 29, 1965, through May 10, 1966, the respondents, acting pursuant to an expressed or implied agreement or understanding among themselves, made trades and held positions in the May 1966 potato future on the New York Mercantile Exchange in quantities in excess of permissible limits, in wilful violation of section 4a of the Commodity Exchange Act and the order of the Commodity Exchange Commission establishing limits on positions and daily trading in potatoes for future delivery (7 U.S.C. 6a; 17 CFR 150.10).

The respondents filed separate answers, the recitals in which are identical. Each respondent in his answer denies generally the principal allegations of the complaint and states that "the respondents

named in the complaint never had a joint account and, in fact, each one traded for his own account, and each position was for his individual account."

An oral hearing was held in Miami, Florida, on November 15, 1966. John J. Curry, Office of Hearing Examiners, United States Department of Agriculture, was assigned as Referee and presided at the hearing. Respondent Ivar J. Blacker, an attorney at law, appeared as counsel on behalf of the respondents, and respondents Samuel E. Cohen, Alan J. Cohen and Ivar J. Blacker testified in their own behalf. Respondent Joel Cohen was not present at the hearing.

Earl L. Saunders, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for the complainant. Three witnesses testified for the complainant and 51 exhibits were received in evidence on behalf of the complainant. Both parties filed briefs after the close of the hearing.

PROPOSED FINDINGS OF FACT

1. The respondents are individuals residing in Miami Beach, Florida, with the following addresses: Samuel E. Cohen, 2995 Flamingo Drive; Alan J. Cohen, Saxony Hotel, 3200 Collins Avenue; Joel Cohen, 2995 Flamingo Drive; and Ivar J. Blacker, Casablanca Hotel, 6345 Collins Avenue. Respondent Samuel E. Cohen is the father of respondents Alan J. Cohen and Joel Cohen. The respondents, at all times material herein, were business associates or partners engaged in various enterprises, including the hotel business, and met daily to discuss the various enterprises in which they were engaged (Tr. 47, 49-51, 53, 98-99, 106-107).

2. The trades and positions involved herein were trades and positions in the May 1966 potato future on the New York Mercantile Exchange, a duly designated contract market under the Commodity Exchange Act. Trading in the May 1966 potato future was conducted in units of one contract or carlot consisting, at all times material herein, of 50,000 pounds of Maine-grown Irish potatoes. Trading in such future ended on May 10, 1966 (Tr. 31, 43).

3. The following table shows the individual short positions and the combined short positions of the respondents in the May 1966 potato future as of the close of trading on each day on which there

was a change in the position of any respondent (Tr. 35, 67; Complainant's Exhibits 42-45 and 46-50).

Date	Samuel E. Cohen	Alan J. Cohen	Joel Cohen	Ivar J. Blacker	Combined Positions
1965					
Sept. 29	50		25		75
30	85		25		110

Date	Samuel E. Cohen	Alan J. Cohen	Joel Cohen	Ivar J. Blacker	Combined Positions
1965					
Oct. 1	100		25		125
5	119		25		144
11	150		25		175
20	110		25		135
21	--		--		--
25	50		--		50
27	100		--		100
Dec. 9	150		50		200
15	150		100		250
22	150	100	100		350
23	150	150	100		400
1966					
Jan. 17	150	150	150	50	500
21	144	150	150	50	494
25	144	150	100	--	394
Mar. 4	144	150	144	150	588
25	144	150	144	50	488
28	144	150	144	100	538
Apr. 4	12	150	144	100	406
6	12	150	44	100	306
7	12	150	44	100	306
11	37	150	44	100	331
21	37	50	44	100	231
22	37	150	44	100	331
27	96	150	44	100	390
May 3	96	150	144	100	490
9	35	--	144	--	179
10	--	--	--	--	--

The above table shows all positions held by any respondent in the May 1966 potato future except a long position of 105 carlots held by respondent Samuel E. Cohen on April 4, 5, and 6, 1966. All positions shown in the above table were speculative and all changes in such positions resulted from trades (Tr. 64, 110).

4. (a) On March 4, 1966, speculative sales of 44 carlots were made for the account of respondent Joel Cohen and 150 carlots for the account of respondent Ivar J. Blacker (Complainant's Exhibits 48 and 49).

(b) On April 4, 1966, speculative purchases of 237 carlots were made for the account of respondent Samuel E. Cohen (Complainant's Exhibit 46).

(c) On May 9, 1966, speculative purchases of 61 carlots were made for the account of respondent Samuel E. Cohen, 150 carlots for the account of respondent Alan J. Cohen and 100 carlots for the account of respondent Ivar J. Blacker (Complainant's Exhibits 46, 47 and 49).

(d) On May 10, 1966, speculative purchases of 35 carlots were made for the account of respondent Samuel E. Cohen and 144 carlots for the account of respondent Joel Cohen (Complainant's Exhibits 46 and 48).

5. The positions described in Finding of Fact number 3 hereof were held, and the trades described in Finding of Fact number 4 hereof were made, pursuant to an expressed or implied agreement or understanding among the respondents.

6. On March 4, 1966, the Administrator of the Commodity Exchange Authority wrote a letter to each of the Cohen respondents. In all pertinent respects, the letters were identical. The letter addressed to respondent Alan J. Cohen was as follows (Complainant's Exhibit 51):

"March 4, 1966

"REGISTERED MAIL -- R.R.R.

Mr. Allen Cohen

Saxony Hotel

Miami Beach, Florida

Dear Mr. Cohen:

We have considered the trading and positions in potato futures on the New York Mercantile Exchange in your account and in the accounts of Mr. Samuel J. Cohen and Mr. Joel Cohen.

Our analysis reveals a pattern from which it appears that the three accounts are trading in a manner which makes such accounts subject to the provisions of section 150.10(f) of the orders of the Commodity Exchange Commission, pertaining to speculative limits in potatoes as contained in Insert No. 1 in the attached pamphlet.

This section states that the speculative limits apply to positions of, and trading by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were

done by, a single individual. A similar provision is applicable to all other commodities for which limits have been established.

It seems apparent that the combined positions of all these accounts are in excess of the speculative limits on potato futures, and should be reduced to within the permissible limits. The speculative limits on daily trading and positions in potato futures are 150 carlots in the March, April, and May futures, respectively, 300 carlots in any other future and 350 carlots in all futures combined. A guide to speculative limits on all commodities on which limits apply is also enclosed. Similar letters are being sent to Mr. Samuel J. Cohen and Mr. Joel Cohen.

Sincerely yours,

Alex C. Caldwell

Administrator

Enclosures -- 2"

7. The letters described in Finding of Fact number 6 hereof, together with the enclosures mentioned in the letters, were sent by registered mail on March 4, 1966. Respondent Alan J. Cohen received the letter addressed to him and informed respondents Samuel E. Cohen and Joel Cohen of its contents (Tr. 47, 54, 60). The letters to respondents Samuel E. Cohen and Joel Cohen were returned unopened (Tr. 60). At the time the above letters were sent to the Cohen respondents, the Commodity Exchange Authority was not aware of respondent Ivar J. Blacker's position in the market, n1 and, therefore, did not send a letter to him (Tr. 63).

n1. Respondent Ivar J. Blacker did not trade in the May 1966 potato future until March 4, 1966, the date the letters were mailed to the Cohen respondents.

PROPOSED CONCLUSIONS

I

Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) provides as follows:

". . . it shall be unlawful for any person --

"(A) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the

rules of the contract market or markets to which the order applies, any amount of such commodity during any one business day in excess of any trading

limit fixed for one business day by the commission in such order for or with respect to such commodity; or

"(B) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market, any amount of such commodity that shall result in giving such person a net long or net short position at any one time in or with respect to any such commodity in excess of any trading limit fixed by the commission for net long or net short position in such order for or with respect to such commodity."

The order of the Commodity Exchange Commission establishing limits on position and daily trading in potato futures (17 CFR 150.10) provides as follows:

"§ 150.10. *Limits on position and daily trading in potatoes for future delivery.* The following limits on the amount of trading under contracts of sale of potatoes for future delivery on or subject to the rules of any contract market, which may be done by any person, are hereby proclaimed and fixed, to be in full force and effect on and after November 27, 1964.

"(a) *Position limit.* The limit on the maximum net long or net short position which any person may hold or control in potatoes on or subject to the rules of any one contract market is 300 carlots in any one future and 350 carlots in all futures combined: *Provided*, That no person may hold or control a net long or net short position in excess of . . . (3) 150 carlots in the May potato future.

"(b) *Daily trading limit.* The limit on the maximum amount of potatoes which any person may buy, and on the maximum amount which any person may sell, on or subject to the rules of any one contract market during any one business day is 300 carlots in any one future and 350 carlots in all futures combined: *Provided*, That no person may buy or sell during any one business day more than . . . (3) 150 carlots in the May potato future.

"(f) *Application of limits.* *The foregoing limits upon positions and upon daily trading shall be construed to apply, respectively, to positions held by, and trading done by, two or more persons acting pursuant to an expressed*

or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single individual." (Emphasis Supplied).

II

The respondents do not dispute the fact that their combined trades and positions exceeded the permitted limits on the dates in question. The only issue is whether such trades were made, and such positions were held, by the respondents acting pursuant to an expressed or implied agreement or understanding. The respondents deny the existence of any such agreement or understanding, and insist that each of them traded independently on the basis of his own judgment. The record proves the contrary.

The following facts are established by evidence which the respondents have neither contradicted nor challenged:

(1) None of the respondents entered the May potato futures market until September 29, 1965 (Tr. 55, 67, 76-78; Complainant's Exhibits 46-50).

(2) With only one exception, the positions of each respondent were at all times on the short side of the market n2 (Tr. 55-57; Complainant's Exhibits 46-50).

(3) With only two exceptions, the positions of each respondent were all held through the same futures commission merchant, F. J. Reardon, Inc. n3 (Tr. 55-57; Complainant's Exhibits 1-41, 46-50).

(4) With the exception of respondent Samuel E. Cohen, none of the respondents had previously traded through F. J. Reardon, Inc., and he had traded in potato futures through that firm for approximately four or five years prior to the period in question (Tr. 76-78, 81-84, 91-93).

(5) Respondent Samuel E. Cohen gave to F. J. Reardon, Inc. most, if not all, of the orders calling for the trades for each respondent (Tr. 3-31, 72-76, 79-84, 92-95, 104, 108; Complainant's Exhibits 1-41).

(6) Respondent Samuel E. Cohen paid to F. J. Reardon, Inc. not only the margin for his own trades but a substantial portion of the margin required for the trades of each of the other respondents (Tr. 72-76, 84-85).

(7) F. J. Reardon, Inc. sent all confirmations and accountings, which it prepared in connection with the trading of each respondent, to a single address -- that of respondent Samuel E. Cohen (Tr. 34-36, 85-86; Complainant's Exhibits 42-45).

(8) During the period in question, reports were submitted to the Commodity Exchange Authority showing the trades and positions of each respondent, and all such reports were prepared and submitted by a single individual -- respondent Ivar J. Blacker (Tr. 49, 104-105). n4

n2. On April 4, 1966, respondent Samuel E. Cohen established a long position of 150 carlots in his account at The Siegel Trading Co. This position was liquidated on April 7, 1966 (Complainant's Ex. 46).

n3. In addition to the long position of 105 carlots established in the Samuel E. Cohen account at The Siegel Trading Co., respondent Joel Cohen established a short position of 25 carlots in his account at Bache & Co., Incorporated, on September 29, 1965. This position was covered on October 21, 1965 (Complainant's Exhibit 48).

n4. Under the regulations issued pursuant to the Commodity Exchange Act, a trader is obligated to report to the Commodity Exchange Authority whenever he holds a position in any one potato future in the amount of 25 carlots or more (17 CFR 15.00, 15.01, 15.02, 15.03).

Neal H. Stults, Assistant Director of the Compliance Division of the Commodity Exchange Authority, analyzed the respondents' trading, and concluded that they followed "a very set pattern" of making their trades as a group and distributing them among their accounts at such times and in such quantities as to avoid going over the maximum permissible limit in any one account (Tr. 3-31, 54-58, 65-67). In describing the factors which influenced him in his conclusion, Mr. Stults pointed out: (1) New accounts were regularly brought into the market when the account or accounts already in the market held positions at or near the maximum permissible limit, and, in each instance, the first sale which was made for each new account was so large that if the sale had been made for any account already in the market, the position in that account would have exceeded the maximum permissible limit; and (2) In most instances, each sale, which was made for any account already in the market, was so large that no other account holding a position could have accommodated the sale without exceeding the maximum permissible limit (Tr. 54-58). Mr. Stults gave *inter alia* the following examples which illustrate the manner in which new accounts were brought into the market and sales in the May 1966 potato future were distributed among the respondents' accounts (Tr. 3-31, 54-58):

(1) At the opening of trading on December 9, 1965, respondent Samuel E. Cohen was the only respondent who held a position,

and he held a short position of 100 carlots. On December 9, respondent Samuel E. Cohen gave to F. J. Reardon, Inc. an order calling for the sale of 100 carlots. The order was executed on December 9, and in accordance with respondent Samuel E. Cohen's instructions, the 100 carlots were allocated as follows, 50 carlots to his own account, and the remaining 50 carlots to a new account which he opened for respondent Joel Cohen.

(2) At the opening of trading on December 22, 1965, the only respondents holding positions were Samuel E. Cohen and Joel Cohen, and they held short positions of 150 carlots and 100 carlots, respectively. On December 22, respondent Samuel E. Cohen gave to F. J. Reardon, Inc. an order calling for the sale of 100 carlots. The order was executed on December 22, and in accordance with respondent Samuel E. Cohen's instructions, a new account was opened for respondent Alan J. Cohen, and the 100 carlots were allocated to that account.

(3) At the opening of trading on January 17, 1966, respondents Samuel E. Cohen and Alan J. Cohen each held a short position of 150 carlots, and respondent Joel Cohen held a short position of 100 carlots. Respondent Ivar J. Blacker held no position. On January 17, respondent Samuel E. Cohen gave to F. J. Reardon, Inc. an order calling for the sale of 60 carlots and another order calling for the sale of 40 carlots. The orders were executed on January 17, and in accordance with respondent Samuel E. Cohen's instructions, the 100 carlots were allocated as follows, 50 carlots to the Joel Cohen account, and the remaining 50 carlots to a new account which respondent Samuel E. Cohen opened for respondent Ivar J. Blacker.

(4) At the opening of trading on March 4, 1966, respondents Alan J. Cohen, Samuel E. Cohen and Joel Cohen held short positions of 150 carlots, 144 carlots and 100 carlots, respectively. Respondent Ivar J. Blacker held no position. On March 4, respondent Samuel E. Cohen gave to F. J. Reardon, Inc. three orders calling for the sale of 100 carlots, 20 carlots and 74 carlots, respectively, or a total of 194 carlots. The three orders were executed on March 4, and in accordance with respondent Samuel E. Cohen's instructions, the 194 carlots were allocated as follows, 44 carlots to the Joel Cohen account, and the remaining 150 carlots to the Ivar J. Blacker account.

The respondents do not deny the facts upon which Mr. Stults' analysis is based and they offer no explanation with respect to these facts.

Mr. Stults testified with respect to individual interviews which he had with respondents Ivar J. Blacker and Samuel E. Cohen on May 26, 1966, during the investigation which preceded the issuance of the complaint in this proceeding.

According to Mr. Stults, respondent Blacker stated that he was an attorney and familiar with the rules and regulations promulgated under the Commodity Exchange Act (Tr. 48); that he had been associated with the Cohen family for many years and "considered himself to be nearly one of the family" (Tr. 49); and that there were "many ventures" in which he and the Cohens participated (Tr. 51). Mr. Stults testified that respondent Blacker, "in describing the method which would be used in determining how the Cohen group was going to trade", stated that "each morning the Cohen group would meet"; that those attending these meetings were Samuel E. Cohen, Alan J. Cohen, Ivar J. Blacker, and, frequently, Joel Cohen when he was in town; that at these meetings "they would discuss the various business ventures, including the hotel operations, labor relations and commodity futures trading, and during this particular time [September 29, 1965, through May 10, 1966] it was the 1966 potato future"; that "the group would then decide which they would do, whether they would buy or whether they would sell in the May 1966 potato future"; and that "in the case of Mr. Samuel E. Cohen, if he had an opinion that was contrary to the group, that the others would let Mr. Cohen go his way and they would not take any position, rather than trade against him" (Tr. 49-50). Mr. Stults testified that he pointed out to respondent Blacker "the similarity between his trading and the trading of the Cohens"; and that respondent Blacker said the similarity resulted

from two causes, viz., the respondents used the same sources of information, and "We won't buck Sam" (Tr. 50).

According to Mr. Stults, respondent Samuel E. Cohen stated in his interview that he, his sons, Alan and Joel, and Ivar J. Blacker were associates (Tr. 47); that the respondents discussed among themselves their trading in commodity futures (Tr. 45); and that "as a close-knit family he just wouldn't and didn't trade against his sons or associates and his associates and his sons

didn't trade against him" (Tr. 46). Continuing, Mr. Stults testified that "he asked Mr. Cohen if it was conceivable that his sons could be trading on one side of the potato market and himself trading on the other side, that is, was it conceivable to him that Alan and Joel could be buying May potatoes at the time that he would be selling May potatoes or any other option"; that "Mr. Samuel E. Cohen got quite agitated and told me that he and his sons were a close-knit family and they didn't trade against each other"; that he (Stults) then asked; "Well, what would happen if you had one opinion, Mr. Cohen, and your sons had another opinion as to what you should be doing in the potato market, whether you should be buying or selling"; and that in reply "Mr. Cohen said, 'If I have one opinion and my sons have another, they don't trade or,' he said after a moment's hesitation, 'I don't trade'" (Tr. 44-46).

Respondents Samuel E. Cohen, Alan J. Cohen and Ivar J. Blacker, testified in their own behalf (Tr. 97-113, 116). The testimony of respondents Samuel E. Cohen and Alan J. Cohen consists for the most part of general denials that the respondents had an agreement to trade in "unison". Respondent Ivar J. Blacker's testimony consists of a single statement: "I would like to state for the record that I have heard the testimony of Mr. Sam Cohen and Alan Cohen and that my testimony would be substantially the same" (Tr. 116). Obviously, such testimony has little probative value.

The following excerpts from respondent Samuel E. Cohen's testimony are typical of the evidence given by him on direct examination (Tr. 100-101):

Q. Did you ever have an agreement or a plan with the defendants in this case, the respondents in this case, to purchase or sell in unison?

A. Oh, I never had agreement with none of them.

Q. You've heard the testimony by the government's witnesses.

A. I did, and it's not what they're saying.

Q. There never has been any such agreement?

A. Never, never, never.

Q. Did you help finance some of these transactions?

A. I never helped finance. The only time was if a margin call had come up and they didn't have the money, which happened many a time this past year especially, either my son or even you would ask me if I wouldn't loan you the money, which I've done many times.

Similarly, respondent Alan J. Cohen testified (Tr. 108):

Q. (By Mr. Blacker) Have we, or has the group that was mentioned here, ever planned or agreed between them to purchase in unison or to sell in unison at daily rates, or so forth, at any particular time?

A. No, sir. No, sir. Never. Never.

Q. All right.

A. We acted independently, and whenever anyone thought that he might do a certain purchase that particular day we never decided just then and there. It

might have been at let's say 10:00 o'clock or 12:00 o'clock before the market closed, I would get an urge and call up my father if he had the WATS line, because like he said, it's very difficult to get that line, and there's a lot of times I call up dad and say please, dad get my call in, I want to get 40 or 50 cars. I just felt like the market was right.

On direct examination, respondent Samuel E. Cohen made no reference to his interview with Mr. Stults. However, when asked on cross examination whether he told Mr. Stults that "I don't trade against my family or my partners and they don't trade against me", he replied: "That's right. I'm still saying it all the way through. I wouldn't go against them nor they me. We wouldn't be fighting one another. If I was on the market and I kept buying and they kept selling, naturally, we're fighting each other. I'd rather not trade. Many a day I didn't trade and they traded, or they traded and I didn't" (Tr. 102-103).

On cross examination, respondent Alan J. Cohen could not remember any market factor which influenced him in his trading (Tr. 110-111). When asked what type of potatoes were deliverable on the May 1966 potato future, he replied (Tr. 112): "I presume potatoes that are considered Irish potatoes, that are planted around certain times of the year." When asked when the May

potato future expired, his testimony was as follows (Tr. 111-112):

A. When did it expire, sir?

Q. Yes.

A. Oh, about December.

Q. December?

A. Well, maybe it was in January, '66.

Q. It expired in January of 1966?

A. Approximately about that time.

Needless to say, this is hardly the type of testimony which one would expect from a substantial trader who acted independently on the basis of his own judgment. Especially is this true in view of the fact that at the opening of trading on May 9, 1966, the penultimate day of trading in the May 1966 potato future, respondent Alan J. Cohen held a position of 150 carlots in that future (Complainant's Exhibit 47).

The facts and circumstances in this record compel the conclusion that, as charged in the complaint, the respondents acted pursuant to an agreement or understanding in making the trades and holding the positions described in the Findings of Fact. The concerted character of the respondents' trading is glaringly revealed by a long chain of circumstances, the concurrence of which could not possibly have been sheer coincidence. The Assistant Director of the Compliance Division of the Commodity Exchange Authority, who analyzed the respondents' trading, concluded, on the basis of facts which the respondents do not dispute, that they followed "a very set pattern" in their trading. Examination of the facts fully substantiates such a conclusion. Admittedly, the respondents had an understanding that they would trade on the same side of the market, and the facts in evidence show that the understanding was even broader. It is difficult to imagine more convincing evidence of a "team" operation than that presented in this record. The evidence is sufficient to sustain the charges even without the admission of an understanding for it is axiomatic that an illegal agreement or arrangement may be shown by a course of conduct. *American Tobacco Company v. United States*, 328 U.S. 781, 809; *United States v. Paramount Pictures*, 334 U.S. 131, 142; *United States v. Masonite Corporation*, 316 U.S. 265; 275.

"What parties do over a course of time is surely as demonstrative of their understanding and intent as what they say. It is settled, of course, that an agreement may be found in a course of dealings as well as through exchange of words." *United States v. Pullman Company*, 50 F.S. 123, 134 (D.C. Pa.). "Where there is uniformity of action showing an initial desire or threat to seek or compel a certain result, there is sufficient evidence of agreement, unless there is persuasive evidence to the contrary. Similarity of action by interested parties is not necessarily to be regarded as sheer coincidence." *Johnson v. J. H. Yost Lumber Co.*, 117 F.2d 53, 57 (C.A. 8), citing *Federal Trade Commission v. Pacific Paper Ass'n*, 273 U.S. 52, *Eastern States Lumber Ass'n v. United States*, 234 U.S. 600, and *Vitagraph, Inc. v. Perelman*, 95 F.2d 142 (C.A. 3).

III

The violations found herein were deliberate and serious and justify substantial sanctions. The primary purpose of the Commodity Exchange Act is to prevent or minimize unreasonable price fluctuations which are detrimental to both the producer and the consumer. The speculative limits on trading and positions have been established as a basic part of the measures designed to achieve that purpose. Considering all of the circumstances of this case, it is believed that in order to effectuate the purposes of the Commodity Exchange Act, each of the respondents should be denied all trading privileges on contract markets for a period of 90 days.

All contentions of the parties presented for the record have been considered and, whether or not specifically mentioned herein, any suggestions, requests, etc., inconsistent with this decision is denied.

PROPOSED ORDER

Effective 20 days after receipt of a copy hereof all contract markets shall refuse all trading privileges to Samuel E. Cohen, Alan J. Cohen, Joel Cohen and Ivar J. Blacker for a period of ninety (90) days, such refusals to apply to all trading done and positions held directly and also to all trading done and positions held indirectly through persons or firms owned or controlled by any of the respondents.

A copy of this decision and order shall be served on each of the parties and on each contract market.

LOAD-DATE: June 8, 2008

