Commodity Futures Trading Commission
CEA CASES

NAME: INDIANA FARM BUREAU COOPERATIVE ASSOCIATION INC. AND LOUIS II. JOHNSTON

CITATION: Comm. Fut. L. Rep. (CCH) P20,964; (1977-1980 TRANSFER BINDER)

DOCKET NUMBER: 75-14; 234

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NOTE: FORMERLY CEA DOCKET # 234. APPENDIX INCLUDED BUT WAS NOT IN THE CCH VERSION OF THE OPINION.

[P 20,964] In the Matter of Indiana Farm Bureau Cooperative Association, Inc., et al.

Commodity Futures Trading Commission. No. 75-14. December 12, 1979. Initial Decision in full text.

Manpulation -- Artificial Price -- Standing for Delivery -- Intent to Manipulate Not Shown. -- Despite a finding that an artificial price was established in a futures contract, an administrative law judge may not conclude that the contract was subject to manipulation if the trader accused of manipulation is not shown to have the requisite intent to manipulate. The respondent, an agricultural cooperative was alleged to have created an artificial price in the July 1973 corn contract on the Chicago Board of Trade through the accumulation of a large long position and standing for delivery, while knowing of a supply shortage. According to the ALJ, the cooperative had a commercial purpose in standing for delivery and this militated against a finding of intent to manipulate. The hedging activity of the cooperative also was found to explain the entering of scaled-up spread orders by the cooperative during the final month of the contract. The complaint against the cooperative and the manager of its grain division was dismissed.

See P 10,025, "Liabilities -- Prohibitions" division, Volume 1.

Darrold A. Dandy, Esq., William Hoar, Esq. and Lloyd Friesen, Esq., for the Division of Enforcement, Commodity Futures Trading Commission.

James Breen, Esq., Robert P. Howington, Jr., Esq. and John Stern, Esq., for respondents.

SHIPE, Administrative Law Judge: This proceeding was instituted on December 11, 1974, with the issuance of a "Complaint and Notice of Hearing Under Section 6(b) and 6(c) of the Commodity Exchange Act" (Complaint) by the United States Department of Agriculture. Upon the effectiveness of the Commodity Futures Trading Commission Act of 1974, (Public Law 93-463), on April 21, 1975, jurisdiction over all administrative proceedings that had arisen under the Commodity Exchange Act and were then pending before the Secretary of Agriculture, was transferred to the Commodity Futures Trading Commission. Section 412 of the 1974 Act provides that such pending proceedings shall be disposed of pursuant to the provisions of the Commodity Exchange Act, as amended (Act), that were in effect prior to the effective date of the 1974 Act.

The Complaint alleges that there is reason to believe that the respondents attempted to manipulate,

and did manipulate, the market price of a commodity for future delivery on or subject to the rules of a contract market. The specific futures contract in issue is the July 1973 corn contract traded on the Chicago Board of Trade (CBOT).

The July 1973 corn futures contract expired on July 20, 1973 at about 12:00 noon. On July 19, 1973, the CBOT Board of Directors voted to remove the 10-cent maximum daily limit on price fluctuation for the final day of trading in the contract. n1 The midpoint of the closing range in the contract was 259 1/2 on July 19th. The settlement price on July 20th was 380, though trades had occurred at 390 before the session closed. The contract did not reach 300 until approximately 11:24 a.m.

n1 Prices, spreads and bases are quoted in cents per bushels.

It is contended that the sharpness of the increase resulted in artificial prices and that these prices are attributable to the trading activity of respondents. Respondents held a long position of 4,705,000 bushels in the contract at the opening of trading on July 20th, and stood for delivery of 2,010,000 bushels upon expiration of the contract. They liquidated approximately 5000,000 bushels at prices of 370 to 390 in the last 20 minutes of trading.

On July 20, 1973, reported corn stocks in deliverable position in Chicago were 12,107,000 bushels, of which 4,511,000 bushels were reported to be deliverable. The Division of Enforcement (DE) claims, however, that only 511,000 bushels were in fact available for delivery.

During the summer of 1973, there was a heavy movement of export grain to, among other countries the Soviet Union, resulting in a shortage of transportation and elevator facilities used for shipping grain. Additionally, quality problems with the corn crop of 1972-1973 developed in some areas of production. DE contends that the demand of respondents for delivery in these circumstances produced the alleged artificial prices, and thus constituted manipulation within the meaning of Sections 6(b) and 6(c) of the Act (7 U.S.C. §§ 9 and 13b).

Respondents assert that DE has failed to prove that the price of the July 1973 corn futures contract was artificial on July 20, 1973, or that the respondents caused the price rise that occurred on that day, or that the respondents intended that their actions would cause an artificial price. They further dispute DE's contention that there was an insufficient supply of corn available to satisfy delivery requirements on the futures contract.

Oral hearings in this matter were held in November, 1976, February and March, 1977 and April, May and June, 1978. Post-hearing briefs, initial and reply, were filed in December, 1978, and March, 1979, respectively.

The respondents have submitted a motion for oral argument. Since it is believed that the issues are fully developed, the motion is denied.

Based upon the entire record, including the exhibits and testimony adduced, and the demeanor of the witnesses, the following Findings of Fact, Discussion of Facts and Law, Conclusions of Fact and Law, and Order are entered.

Findings of Fact

I. The Respondents

1. Indiana Farm Bureau Cooperative, Inc. (IFB), the corporate respondent, is a regional agricultural cooperative functioning under the Capper-Volstead Act, 7 U.S.C. §§ 291 and 292, and the Agricultural Marketing Act, 12. U.S.C. § 1141. DE REQ I, 38; Johnston 1726; Franklin 3102. The latter act declares it to be a policy of Congress to encourage the organization of producer-owned and producer-controlled cooperatives as a farm marketing system. Such cooperatives are organized locally (generally on a county-wide basis), as well as regionally and inter-regionally. IFB, as a regional cooperative, is owned by 77 local cooperatives, all but one of which is located in Indiana. Franklin 3108. It is a member of two interregional cooperatives -- Midstates Terminal Incorporated,

operator of a terminal elevator at Toledo, Ohio, and C.F. Industries, a producer of fertilizer material. It is also a part owner and member of Illinois Futures Company, which handles futures trading for its members on the CBOT. DE REQ I, 40; Johnston 1720-32, 1756, 1763, Franklin 3116. n2

n2 Transcript references are to witness and hearing session. The hearing transcript of November, 1976 is referenced I, and the hearing transcript of February and March, 1977 is referenced II. The hearing transcript of April, May and June, 1978, is referenced without session number. DE's first, second, and third requests for admissions are referenced DE REQ I, II and III, respectively. Respondents' requests for admissions are referenced RE Req. Exhibits are referenced DE (Division of Enforcement) or RE (Respondents), respectively. "Facts" refer to uncontroverted facts deemed admitted by order of December 18, 1975.

2. The purpose of agricultural cooperatives is to market grain for their members and to supply them with farming materials. Johnston 1743-44; Franklin 3103, 3113. IFB is organized into five supply divisions: Field and Poultry; Plant Food; Petroleum; Farm Building and Supply, and Seed. It has one marketing division, the Grain Division. Johnston 1730-41; Franklin 3113-14. Profits from its operations

are distributed to its members as patronage refunds in proportion to the amount of business done with the various divisions. Johnston 1777; Franklin 3111.

3. The Grain Division of IFB buys grain from its 77 members. Under the Capper-Volstead Act, it is required to do at least half of its business with members, and as a matter of policy, it ordinarily buys grain from other sources only to meet existing sales commitments. Johnston 1743, 2069-71, 2314-15. The members of IFB own approximately 170-180 country elevators that are used to receive and store corn purchased by them from local farmers. Johnston 1727. The local cooperatives compete with other buyers for the farmers' grain, based on bids supplied daily by IFB Johnston 1774, 2056, 2287. IFB also competes with other buyers for the grain of the local cooperatives who are under no obligation to sell their grain to IFB. Johnston 1743, 2058, 2070. In 1973, the Grain Division had sales of approximately $ 400,000,000.00, which amounted to about 65 percent of IFB's total sales. Johnston 1764-65; Franklin 3114.

4. In 1973, IFB's Grain Division operated grain elevators at six locations: Indianapolis, Princeton, and Redkey, Indiana; Louisville, Kentucky; Chicago, Illinois; and Baltimore, Maryland. The elevators at Indianapolis and Redkey receive grain by truck from points within a 75-mile radius of their respective location, and ship it out by rail to the Baltimore elevator, called the "Locust Point" elevator, from which it is exported. The elevator in Louisville, called the "Gold Proof" elevator, originates corn within a 75-mile radius in southern Indiana, and markets domestically in the southeastern United States, with occasional shipments to the Locust Point elevator, though no such shipments were made in 1973. The Gold Proof elevator maintains its own long and short position and its own futures account for hedging its cash position. The Princeton elevator receives corn principally by truck within a radius of 50 miles from Princeton, and ships it out by rail to points in the southeastern United States. The elevator in Chicago, called the "Gateway Elevator," can receive grain by rail, truck, or barge, and draws corn generally from northwestern Indiana, and some from northern Illinois, southern Michigan and Iowa. It ships out by vessel when the Great Lakes are open and by barge or rail when the lakes are frozen. It is "regular for delivery" on the CBOT. DE REQ I, 44; Johnston 1745-57; 1792; 2034-37; Heironymus 4325-26.

5. IFB is now, and was in 1973, a member firm of CBOT. Fact 1; DE REQ I, 35.

6. Respondent Louis M. Johnston (Johnston) has been the manager of the Grain Division of IFB since 1962, and has been a member of the CBOT since 1961. Fact 2; RE REQ I, 36 and 37; Johnston 1724-25, 2030. His managerial duties include

planning and development, labor relations, accounting, merchandising, buying, selling, and hedging. Elevator superintendents report to him. He handles about 90 percent of export sales, and practically all of IFB's futures transactions. Johnston 1724-25.

7. Johnston has been employed by the Grain Division and its predecessor, Indiana Grain Cooperative, Incorporated, since 1945. He graduated from high school and attended business college for one year. He served in the U.S. Navy during World War II. Johnston 2028. He enjoys an excellent reputation for competence and integrity within the grain business. Westerbeck 1095-96; Kattke 1225-26; Richards 1261; Walsh 1576-77; Catron 1616-18; Wilson 1633; Cotton 3357; Gaston 3375.

II. 1973 Corn

8. The crop year for corn is considered to begin on October 1st of each year, and to extend through September 30th, of the following year. Helmuth, DE Ex. 83, p. 9. Iowa and Illinois are the two major corn producing states. Each produced over one billion bushels of corn in the 1972-73 crop year. Indiana, Nebraska and Minnesota each produced about one half billion bushels in that year. These five states produced 67 percent of the nation's corn crop in 1972-73. DE REQ III, 70; DE Ex. 12.

9. In the 1972-73 crop year there were 5.6 billion bushels of corn produced in the United States. This was 68 million bushels less than the 1972-73 crop year, which had been the largest corn crop in history. In 1972-73, with a carryover of 1.1 billion bushels from the previous year, there was a total corn supply of 6.7 billion bushels. DE Ex. 83, Helmuth p. 9, DE Ex. 13.

10. There were quality problems with the 1972-73 corn supply, caused primarily by wet weather during the harvest and a hard winter. The harvest was delayed into the winter months and early spring. Some corn suffered field damage and other corn was damaged by the methods used to dry it. DE Ex. 26, DE Ex. 83, Helmuth, p. 10, 11. Additionally, corn that had been in storage for several years, and was therefore dry and brittle, was moving to market. Coonrod (1) 373; Kattke 1146; Walsh 1508-9; McCormick 1119. The magnitude of the 1972-73 corn quality problem is reflected in the grades of corn inspected in Chicago. In 1973, there were 16,972 railcars of corn inspected. Only 31.4 percent of these cars graded No. 2, or better, which was lower than in any of

the previous 10 years. About 28 percent graded No. 3 and 40 percent graded No. 4 or lower. DE Ex. 27; Ex. 83, Helmuth p. 11. The percentage of corn grading below grade No. 3, or lower, was the highest in 10 years. DE Ex. 27; Ex. 83, Helmuth p. 11. The quality of corn was not uniform, being worse in eastern Illinois, Indiana and Ohio, and better in Iowa. Parrott 143; 1146-47.

11. The largest demand for corn is for use as livestock and poultry feed within the United States. During the 1972-73 crop year, this demand accounted for 72 percent of the crop usage. This compared with approximately 78 percent during the ten previous crop years. The second largest demand for corn is for exports. In 1972-73 this accounted for about 21 percent of the demand, compared to 11 to 15 percent in the ten previous crop years. Corn processing, the third major demand for corn, accounted for about 7 percent of the corn usage in 1972-73, compared with about 8 percent in the ten previous crop years. DE Ex. 83, Helmuth p. 13 and Ex. 13.

12. Total disappearance (usage) of corn increased from 5,183 million bushels in 1972-73 to 5,991 million in 1972-73. Domestic feed use, increased by 332 million bushels and exports by 462 million in 1972-73 over the previous year. Instead of increasing as was generally expected because of the large crop, the carryover in 1972-73 decreased to 709 million bushels compared to 1,126 million bushels in 1972-73. The increase in corn exports in 1972-73 over previous years is shown below:

Crop Year Beginning	Exports in Millions

October 1	Of Bushels
1962	416
1963	500
1964	570
1965	687
1966	487
1967	633
1968	536
1969	612
1970	517
1971	796
1972	1258

DE Ex. 13; RE Ex. Bk. A, Hieronymus p. 10.

13. The increase in export demand was not fully anticipated by market observers. The U.S. Department of Agriculture projected in November, 1972, February, 1973, April, 1973, and May, 1973 that corn exports would be 1 billion bushels, but in August 1973, revised the estimate to 1.25 billion bushels, an increase of 250 million bushels. Almost one-half of the 1972-73 increase in corn exports over the previous year (462 million bushels) was purchased by the Soviet Union (125 million bushels) and the Peoples Republic of China (50 million bushels). The U.S. Department of Agriculture, in August 1973, estimated corn exports of 1,125 million bushels for the following year, thereby indicating a continued strong export demand. RE Ex. Bk. B, Sections 1 and 2.

14. The increased exports of corn, and other grains, resulted in a severe shortage of transportation facilities, particularly of rail cars. Delivery time for the Soviet grain purchases was shortened because of the time required to negotiate a shipping agreement. Little of the purchase was moved before December -- after the closing of the Great Lake ports. Reported rail car shortages exceeded 20,000 cars per day. Elevators became jammed with grain, resulting in cars being held for unloading, and aggravating the car shortages at origination points. Delays in the shipment of corn from Iowa to Chicago grew to as much as three months in the summer of 1973. Grain purchased for movement in the early spring was being moved in mid-summer. Increased transportation demands were reflected in increased barge and truck rates, and in abnormally large grain price differentials between country points and export delivery points. DE Ex. 22; Cordes I, 308; Corbin 1476-78; Hall II, 43-46; Hollander 3678-79; Johnson 781; Johnston 1763, 1778-79; Kattke 1149-52; Kubiak II, 85; L. Miller II, 449-50, 467; Morrison I, 285-87; McCaull 1353; R. Parrott 1152-53; Richards 1240; C. Parrott 3904-5.

15. Lake shipments of corn from Chicago during June, July, and August, 1973 were larger than they were for corresponding periods in any of the prior six years. A total of 22.8 million bushels of corn were shipped from Chicago via the Lake during that period as compared to 16.4 million bushels during the same period of 1972. Shipments during July, 1973 alone were 2.2 million bushels larger than in July, 1972 and were the most for that month in the prior six years. DE Ex. 24.

16. Chicago is situated between surplus and deficit areas of corn. In 1973, 124,490,000 bushels of corn were received in Chicago -- 4,734,000 by barge, 57,804,000 by rail, and 61,952,000 by truck. In 1973, there were 61,360,000 bushels of corn shipped from Chicago, 53,268,000 bushels by lake and seaway, 2,978,000 by Illinois waterway, 5,064,000 by rail and 50,000 by truck, leaving 58,993,000 bushels for city consumption and unaccounted for. RE Ex. Bk. A, Hieronymus, p. 6; DE Ex. 14.

17. CPC International, Inc. (CPC), and American Maize-Products Company (American Maize) each operate corn processing plants in the Chicago metropolitan area. These plants process a total of about 50 to 55 million bushels of corn a

year -- 20 million for American Maize, and between 30 and 35 million for CPC. DE Ex. 14; Westerbeck 1060; Richards 1239.

18. The principal firms shipping corn from Chicago by lake vessels during July 1973 were Cargill, Inc. (Cargill) and Continental Grain Company (Continental). These two firms accounted for about 80 percent of all lake shipments. DE Ex. 49.

III. Cash Prices

19. The U.S. Department of Agriculture quoted the following cash prices for No. 2 yellow corn in Chicago for the dates indicated. Futures price are shown for comparisons.

26846	CASH Quotations	JULY FUTURES (Settlement)	SEPT FUTURES (Settlement)
2	230 1/4	222 3/4	209 3/4
3	237 3/4	229 3/4	214 1/2
5	225 3/4	219 1/4	204 1/2
6	218 1/2	212 1/2	201 1/4
9	220 1/4	212 1/4	203 1/2
10	218	214	199
11	233	224	209
12	239	232	214 1/2
13	246 3/4	241 3/4	222 3/4
16	253 3/4	251 3/4	231 1/4
17	246	245 1/2	223 1/4
18	245 3/4	249 1/2	226 7/8
19	258 3/4	259 1/2	236 7/8
20	266 3/4	380	246 7/8
23	278 1/4		256 7/8
24	272 1/2		261 3/4
25	282		271 3/4
26	286		278
27	273		268
30	278		278
31	288		288

August 1978	CASH Quotations	SEPT FUTURES (Settlement)
1	274	278
2	267 1/4	271 1/4
3	278 3/4	281 1/4
6	288 1/4	291 1/4
7	299 1/4	301 1/4
8	311 1/4	311 1/4
9	316	317 3/4
10	300 3/4	327 3/4
13	337 3/4	337 1/4
14	339 3/4	347 3/4
15	323 1/2	337 3/4
16	315 1/2	337 3/4
17	303	320 1/2
20	304 1/2	311 1/2
21	288 1/2	301 1/2
22	279 1/2	291 1/2
23	269 1/2	281 1/2
24	279 1/2	290
27	270 1/4	280
28	259 1/4	270
29	258	264 1/2
30	248 1/2	254 1/2

August 1978	CASH Quotations	SEPT FUTURES (Settlement)
31	250 1/2	250 3/4

DE Exs. 4 and 6; RE Ex. A-E-2.

20. On July 20, 1973, U.S. Department of Agriculture quotations for No. 2 yellow corn were 257 to 258 at Kansas City, Kansas, 243 to 245 at Omaha, Nebraska, 260 to 261 at St. Louis, Missouri and 244 7/8 to 246 7/8 at Minneapolis, Minnesota. DE Ex. 6.

21. Cash prices of grain are developed independently by the Agriculture Stabilization and Conservation Service of the U.S. Department of Agriculture in connection with its market activity. Its records show the following cash prices for No. 2 yellow corn in Chicago on the dates indicated:

	1973			
	July 20	July 23	July 26	July 31
Delivered to Chicago	270 3/4	280 7/8	293 1/2	-
Spot Prices	266 7/8	280 7/8	-	288
FOB Vessel	276 7/8	291 7/8	-	318

DE Ex. 73; Walsh 1535-42, 1551.

22. On July 20, 1978, American Maize bid 267 for truck corn for delivery by July 28, 1973 Its highest bid during that month was 288 on July 31st. On August 14, 1973, its bid was 337-3/4. DE Ex. 7.

23. Shown below are bids for corn in Chicago by Cargill, Continental and Respondent IFB on the dates indicated:

July 1973846	CARGILL	CONTINENTAL	IFB
16	251 3/4	241 1/4	236 1/4
17	245 1/2	233 1/4	229
18	244 1/2	236 7/8	232
19	246 7/8	246 7/8	242
20	256 7/8	256 7/8	265
23	266 7/8	266 7/8	267
24	261 3/4	261 3/4	262
25	271 1/4	248	272
26	278	252	278
27	263	244 1/2	248

DE Ex. 7.

24. Cash purchases of Grade No. 2 or 3 corn at Chicago during July and August 1973, included the following:

DATE	BUYER	AMOUNT	PRICE
July 18	American Maize	20 cars	243 3/4
July 19	Farmers Grain	2,081 bushels	257
July 20	American Maize	12 truckloads 9 rail cars	252 to 268 1/2
July 20	Cargill	20,000 bushels	212-247
July 23	American Maize	33 truckloads 60 rail cars	256 1/2 to 279
July 23	IFB	360,000 bushels	276
July 23	G H Miller	20,000 bushels	320
July 25-27	Shatkin Trading Co	70,000 bushels	350
July 26	Dixie Portland	5,000 bushels	317
July 31	Shatkin Trading Co	10,000 bushels	350
July 31	Shatkin Trading Co	7,000	350
July 31	CPC	600,000 bushels	278
July 31	IFB	25,000 bushels	283
July 31	Cargill	35,000	291 1/4

DE Ex. 9.

25. The U.S. Department of Agriculture cash corn quotations increased from an average of 132 in October, 1972, to 340 on August 14, 1973, and thereafter declined to an average of 247 for September, 1973. The average of these price quotations for the crop year 1972-73 was 191 compared to 123 for the 1972-73 crop year. The 1972-73 price did not exceed 170 prior to the last week of April, 1973. RE Ex. Bk. A, Hieronymus, p. 11; DE Exs. 3 and 4.

IV. Government Controls

26. On June 13, 1973, President Nixon ordered a freeze on the prices of all commodities and services offered for sale, with the exception of the prices charged for raw agricultural products. On June 27, 1973, the Nixon Administration, through the Department of Commerce, embargoed the export of soybeans, cottonseed and certain products thereof. On July 2, 1973, the embargo was replaced with licensing requirements which permitted the export of one half of the soybeans contracted for prior to June 13, 1973. The price of soybean futures fell from $ 10.80 per bushel on June 27, 1973 to a low of $ 6.30 on July 9, 1973. RE Ex. Bk. B, Sec. 3.

27. When the exportation of soybeans was embargoed on June 27th, the Department of Commerce warned that: "If there is any substantial increase in export demand for corn, which could be the case as a result of the controls being imposed today," it may be necessary to control exports of corn. RE Ex. Bk. B, Sec. 4 (Export Control Bulletin No. 8b, at 3).

28. On July 18, 1973, after the close of trading on the CBOT, the White House issued a statement reading, in part:

To relieve the extreme high prices of feeds, which have an important effect on prices of meat, poultry, eggs, and dairy products, we have placed limitations on the export of soybeans and related products until the new comes into the market. These limitations will remain in effect for that period. But permanent control of exports is not the policy of this Government, and we do not intend at this time to broaden the controls beyond those now in force. To a considerable degree, export controls are self-defeating as an anti-inflation measure. * * * Unless present crop expectations are seriously disappointed, or foreign demands are extremely large, export controls will not be needed. However, reports of export orders for agricultural commodities will continue to be required. Our policy must always be guided by the fundamental importance of maintaining adequate supplies of food at home.

RE Ex. Bk. B, Sec. 3.

29. At a news conference on July 18, 1973, involving Secretary of the Treasury George P. Shultz, this question and answer were reported:

Question. Why didn't you just declare some limitation on exports now so you would immediately know that you would have plentiful supplies on the market?

Secretary Shultz. We have controls on soybeans and soybean derivatives for this year's crop. We think that is appropriate, and they will stay. We will continue to monitor exports and collect information in the program that has been put into effect and managed by the Commerce Department, so we will have knowledge of what the situation is.

We think at this moment of time if the crops are as good, or possibly a little better, than those forecasts, and if the world demand is as it has been forecast, we will be able to manage without export controls. But we will monitor it, and as the President says in his message, you must observe the fundamental principle that we must provide adequate food at home.

Having said that, I think it is undesirable -- if it can be avoided, it is undesirable to put controls on exports. * * *

RE Ex. Bk. B, Sec. 3.

V. 1973 Corn Futures Contracts

30. There were five futures contracts for the 1972-73 corn crop traded on the CBOT. Identified by the month in which they expired, they were December, 1972; March, 1973; May, 1973; July, 1973; and September, 1973. DE REQ I, 3. Each futures contract covered 5,000 bushels. DE REQ I, 4.

31. In July, 1978 (with the exception of July 20), the daily trading limit for corn contracts was 10 cents above or below the previous day's closing price (or settlement price if there was a closing range). DE REQ I, 6. On July 19, 1978, the CBOT Board of Directors removed the 10-cent daily trading limit on the July contract, effective July 20, 1973. DE REQ I, 7. Futures trading in the July, 1973, corn contract terminated on July 20, 1973, at approximately 12:00 p.m. CDT. DE REQ I, 29.

32. From June, 1972 to December, 1972, the July 1973 contract traded at a premium over cash quotations for No. 2 yellow corn at Chicago, as reported by the U.S. Department of Agriculture. Thereafter, with the exception of such quotations for June 14, July 18 and 19, 1973, the cash quotations were higher than the July futures prices. DE Exs. 3 and 3A; DE REQ II, 220-222; Mielke 50-52.

33. During June and July, 1973, the July contract traded at generally increasing premiums over the September contract. On June 1, 1973, the July contract closed approximately 9 1/2 cents over the September, and increased to 22 5/8 cents on July 18 and 19, 1973. DE Ex. 5.

34. The July contract was up the limit (10 cents) during the trading session or at the close on June 4, 5, 11, 12, 18, 19, 21 and July 2, 1973. It was down the limit during the sessions or at the close on June 7, 8, 14, 15, 26, 27, 28, and July 5, 1973. It was bid limit up on July 11, 12, 13, 16 and 19, 1973. The closing price on July 19 was 259 1/2 cents. RE Ex. Bk. B, Sec. 10.

35. Open interest in the July corn contract was 70,015,000 bushels on June 30, 1973. At the end of trading on July 19, 1973, the open interest was 17,130,000 bushels. The average open interest for the last day of a July contract for the years 1963 through 1976, excluding 1973, was 6,676,000 bushels. DE Ex. 37.

VI. Relation of Cash and Futures Prices

36. Many grain cash transactions are priced in relation to futures prices. The difference between the cash price and the futures price is the basis. In a basis transaction, the contract specifies the price as so many cents above or below a particular futures contract, as for example "5 over the July" or "5 under the July." The price is fixed at a later time, generally at the buyer's option, by applying the basis, plus or minus, to the price of the futures contract on the day the price is fixed. McCaull 1362; Johnston 2081-82.

37. Where a contract specifies a price in dollars and cents per bushel the transaction is referred to as a flat price transaction. Flat price transactions and basis transactions for which the price has been established are referred to as fixed price transactions. Basis transactions for which the price has not been established are unfixed price transactions. The actual fixing of the price of a basis transaction can be done in two ways. Normally, the buyer

selects the day on which the price of the contract is fixed. If the buyer is a hedger with his own futures account, he may "give up" futures to the seller at any price they agree upon, normally a price within the trading range of that futures contract on that day. This is a noncompetitive transaction done outside the pit ("ex pit"), although it is carded by the brokers and cleared through the clearing firms of the two parties much like any transaction which occurred in the pit. The account of the cash corn buyer shows a sale of corn futures at the agreed price and the account of the cash corn seller shows a purchase of corn futures at the agreed price. Secondly, if the buyer is not a hedger and does not have a futures account, he may instruct the seller to go into the pit and buy futures to price the contract. The seller then buys the futures for his own account and the price of the contract is fixed at the level where the futures are bought (plus or minus the basis). McCaull 1362; Johnston 2130-31; L. Miller 796; Hall II, 39; Kubiak II, 75-76 and 87; Kummer II, 592; Pratt II, 305-6, 310-11, 314-17.

38. Futures contracts enable grain traders to offset the risks of fluctuations in the market price of the cash commodity. If, for example, a firm owns a quantity of corn, bought at a fixed price, and the market price falls, the inventory decreases in value, which represents a loss to the company. Similarly, if it has sales of corn at a fixed price for delivery in the future which it has not yet covered with purchases and the market price rises, diminished profits or losses result. R. Parrott 165, 171; McCaull 1361; Johnston 2080.

39. To avoid these risks, a long cash position (inventory plus fixed price purchases) can be hedged by selling futures contracts in an equivalent amount. Therefore, if the price declines, the loss on the cash side is compensated for by a credit in the futures account. Any difference between the loss on the cash side and the credit on the futures side results from a change in the basis. McCaull 1363, 1395; R. Parrott 166-68; Kubiak II, 76; Pratt II 309; Johnston 2081.

40. A short cash position (fixed price sales) can be hedged by taking an equivalent long position in the futures market. If the basis does not change, movement of the market price, up or down, will have no economic effect on the company's position. McCaull 1361-62; R. Parrott 167-68; Kubiak II, 77.

41. Unfixed price purchases and sales are not hedged; until the price is fixed only the basis is established and there is no risk associated with changes in the market price. McCaull 1361; McElmury II, 105.

42. When the price of one of the transactions is fixed, price risk is created. If the purchase price is fixed first, the trader has a fixed price purchase (long cash position) which he hedges by selling futures. The short futures position will be held until the price of the sale is fixed at which time it is offset. Pratt II, 310-11.

43. When the price of a sale is fixed first, the trader has a fixed price sale (short cash position) which is hedged by purchasing futures. That long futures position is maintained until the unfixed price purchase of corn is priced. If between the two pricings the market price of corn increases there will be a loss on the cash side of the transaction and on gain on the futures side. If the market price of corn drops between the two pricings, the gain will be on the cash side and the loss on the futures side. McCaull 1364; Pratt II, 319-21.

44. Traders do not necessarily hedge individual transactions. Many transactions, long and short, cash and futures, offset each other. Therefore, combined (or net) positions may be hedged and individual cash transactions cannot be identified in the hedged position. McCaull 1417; Johnston 2084.

VII. Deliveries

45. Futures contracts on the CBOT can be satisfied or liquidated by (1) an opposite and offsetting transaction in the same contract prior to the expiration of trading in that contract, or (2) by delivery of the specified quantity of the commodity by the seller and its receipt and payment by the buyer during the delivery month in conformity with the rules and regulations of the CBOT. DE REQ I, 31.

46. Corn is graded by U.S. Department of Agriculture standards as No. 1, 2, 3, 4, 5 or sample grade. There are five grade factors: test weight per bushel, moisture; broken corn and foreign material; heat damage; and total damage. Corn of lower grades because of high moisture content, broken corn and foreign

material, or damage, can be up-graded. Moisture can be removed by drying, and broken corn and foreign material can be screened out. Corn which is of low grade because of a high percentage of damaged corn can only be upgraded by blending it with low-damage corn in order to reduce the total percentage of damaged kernels. Miller 793-94,808-11; Raskin 356-64; Bubnis 3989; RE. Ex. Bk. B, Sec. 8.

47. Deliverable grades include only corn graded No. 1, 2 or 3, for which warehouse receipts have been issued and registered with the CBOT Office of the Registrar. There is a "non-deliverable and/or ungraded" category that combines into one total, "non-deliverable

corn," which is corn of No. 4, No. 5 and sample grade for which warehouse receipts are issued and registered, and "ungraded" corn which is corn of any grade for which warehouse receipts have been issued and registered, but which are later cancelled. The Registrar's Office characterizes this "ungraded" corn as "free again." It is corn of known grade in an elevator and could include corn of both deliverable and non-deliverable grades. It could be re-registered and then considered "deliverable" or "non-deliverable" depending upon the grade. Shipments from an elevator are taken from the "ungraded" or "free grain" category. Clark I, 217-42; Kozlowski 633; L. Miller II, 457-60; RE Ex. Bk. E, Sec. 1.

48. The month in which a futures contract expires is the delivery month and deliveries can be made by a short at any time from the first of the month to the last business day. Trading ceases at noon on the eighth day before the last business day of the delivery month. Prior to that time a long receiving a receipt may redeliver by taking a short futures position. Any positions remaining open after the expiration must be settled by delivery on or before the last business day of the month. DE REQ I, 29, 32, 33.

49. A short, choosing to offset a corn futures position by delivery, does so by tendering through his clearing firm warehouse receipts for corn in an elevator regular for delivery on the CBOT. During the last three days of the delivery month, No. 1, 2 and 3 corn may also be delivered on track in cars consigned to an elevator regular for delivery. The warehouse receipts must be for No. 1, 2 or 3 yellow corn in 5,000 bushel lots. No. 2 yellow corn is deliverable at contract price, which is the settlement price of the future on the day delivery is made. If delivery is made after trading in the contract ceases, the contract price is the settlement price on the last day of trading. No. 1 yellow corn is deliverable at a one cent premium to the contract price, and No. 3 yellow corn at a 1 1/2 cent discount. DE Ex. 1; Hieronymus 4089-90; Helmuth 1646-47, 1786-88.

50. Ordinarily, a buyer of corn will pay a higher price for cash corn than for long futures contracts because the buyer cannot specify the warehouse at which delivery will be made, the date of delivery, or the precise grade of corn on a futures contract. Therefore, most futures contracts do not culminate in delivery. Kottke 1161-1164.

51. Traders make or take delivery when they calculate that to be the most economic source of supply or the best market for their commodity, considering the individual circumstances and commitments of the trader. Among the firms following this practice are Continental, Dreyfus, Bunge Corportion, Farmers Union Grain Terminal Association IFB, Goldkist, Inc., Ralston-Purina Company, and Early & Daniel. Kottke 1165, 1230, 1234; C. Parrott 3873-75; McCaull 1355, 1380-81; Kerwin 1669, 1674-75; Werner II, 100-01; Johnston 2092-93; Gaston 3370, 3381-82; Corder 301-03; 3176; Coonrod II, 368-69; Pratt 312-13.

52. In 1973, the Commodity Exchange Authority published reports of the stocks of grain in deliverable position for the CBOT futures contracts in exchange-approved and federally licensed warehouses. These reports were released each Tuesday and reflected stocks in position the preceding Friday. They showed

deliverable, and non-deliverable and/or ungraded stocks. The reports for July, 1973, and August 3, 1973, contained the following data on corn supply:

	July 6	July 13	July 20	July 27	August 3
		(Thousands of bushels)			
Deliverable Grades	3,953	4,336	4,511	5,183	3,935
Non-deliverable and/or Ungraded	7,688	6,768	7,596	7,162	7,770
Total	11,641	11,104	12,107	12,345	11,705

DE Exs. 16 and 47; Kass 862-865.

53. Ownership of corn in exchange-approved warehouse on July 20th was as follows:

Owner	Deliverable Grades	Non-Deliverable Grades		Ungraded	Total
		(thousands of bushels)			
Continental Grain Co	3,235	191		1,620	5,046
Commodity Credit Corp	421		366 *	11	798
National Starch **	340	313		-	653
Indiana Farm Bureau	228	-		656	884
Cargill, Inc	88	3,724		689	4,501
Louis Dreyfus	42		90 *	132	
Edmund O'Connor	25	-		-	25
Cottonwood Ranch	25	-		-	25
Lamson Bros Customers ***	20	-		-	20
William O'Connor	10	-		-	10
Dixie Portland	-	14		-	14
Total	4,434	4,569 *		3,105 *	12,108

* Commodity Credit Corp. owned 366 thousand bushels and Louis Dreyfus Corp. owned 90 thousand bushels in the Calumet elevator. This total of 456 thousand bushels is known to have consisted of about 327 thousand bushels of non-deliverable grades and about 129 thousand bushels of ungraded corn, but it was not possible to determine how much of each type of corn was owned by each firm.

** Stocks of corn owned by National Starch were of a special variety called "waxy maize."

*** The four customer accounts were Powers Bros. Farm, Josen, & Susan Hallwas, Richard Allison, and Wm. Lehmann. Each received futures delivery of 5,000 bushels on July 16th and redelivered on July 23rd.

DE Ex. 48.

54. Differences between these ownership figures and those shown in the stock report were caused by subsequent revisions in the figures of Continental Grain Co. Kass 887. Ownership of the stock is not public information and was determined by DE during its investigation. Kass 887-893.

55. On July 20, 1973, the Commodity Credit Corporation (CCC) owned 349,000 bushels of deliverable corn at New York Central Elevator and 658,000 at the Belt Elevator. Since both of these elevators are not regular for delivery their receipts are not tenderable in satisfaction of the CBOT delivery requirements. Transfer of grain from these elevators to elevators designated regular for delivery by the CBOT would cost 14 to 18 cents per bushel. American Maize also owned 381,000 bushels of waxy maize corn at the New York Central Elevator. DE Ex. 46.

56. According to records maintained by the CBOT there were 6,471,000 bushels of corn received in Chicago between July 19 and August 1, 1973. Between the same dates, 3,577 bushels of corn were shipped from Chicago. DE Ex. 86; RE Ex. 65; DE REQ II, 125.

57. Shown below are: settlements, including re-deliveries; the open interest at the opening of trading on the last day of trading; total and deliverable

stocks as of the last Friday preceding the last day of trading, in relation to the July corn futures contract for the years 1967 through 1974. See page 24A.

VIII. Warehouses

58. To be "regular for delivery" on the CBOT (i.e., its receipts may be tenderable to satisfy delivery requirements) a warehouse elevator must be located within the Chicago Railroad Switching District, and located on one or more rail lines. DE Ex. 1.

(Thousands of Bushels)

(1) JULY CONTRACT	(2) DELIVERY SETTLEMENTS	(3) OPEN INTEREST	(4) TOTAL STOCKS	(5) DELIVERABLE STOCKS	(6) %(2) of (4)	(7) % (2) of (5)	(8) % (5) of (3)
1967	5,555	11,140	5 572	2,800	99.7	198.4	397.8
1968	7,300	3,745	12,940	7,149	56.4	102.1	52.4
1969	11,475	10,675	7,430	5,537	154.4	207.2	192.3
1970	1,570	5,215	7,136	3,421	22.0	45.9	152.4
1971	2,805	9,005	8,689	7,177	32.3	39.1	34.3
1972	21,060	3,565	13,354	10,376	157.7	202.9	379.8
1973	2,290	17,130	12,107	4,511	18.9	50.8	379.8
1974	10,170	7,990	4,701	2,935	216.3	346.5	272.5

RE REQ 203, Attachment B.

59. In July 1973, the elevators regular for delivery of corn on the CBOT, were the following:

Cargill Elevator --	Operated by Cargill with a rated capacity of 23,720,000 bushels, capable of loading vessels with a draft up to 26 feet.
Continental Elevator B --	Operated by Continental with a rated capacity of 9,188,000 bushels, capable of loading vessels with a draft up to 26 feet.
Continental Elevator C --	Operated by Continental with a rated capacity of 6,750,000 bushels, capable of load ing vessels with a draft of up to 26 feet.
Gateway Elevator --	Operated by IFB with a rated capacity of 6,750,000 bushels, capable of loading ves sels with a draft of up to 26 feet.
Calumet Elevator --	Operated by Dixie Portland Flour Mills Inc with a rated capacity of 4,800,000 bushels, capable of loading vessels with a draft of up to 20 feet.
Rock Island Elevator --	Operated by Garvey Grain Company with a rated capacity of 3,800,000 bushels, capable of loading vessels with a draft of 26 feet.
Santa Fe Elevator --	Operated by Garvey Grain Company with a rated capacity of 1,800,000 bushels, capable of loading vessels with a draft of 13 feet.

DE REQ I, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23.

60. A holder of a receipt issued by the Santa Fe Elevator may require that elevator, at its expense, to make the grain available at a warehouse capable of loading vessels of ordinary draft (of 20 feet). Burke 1125-26.

61. There were two federally licensed warehouses in Chicago which were not located on water and were not regular for delivery: the Belt Elevator operated by Carey Grain Corporation and New York Central Elevator operated by Farmers Grain Dealers Association of Iowa. DE REQ I, 12 and 25.

IX. 1973 Corn Transactions of IFB

62. In January and April, 1973, IFB entered into several export contracts requiring it to ship corn, in June, July and August, 1973, from Baltimore (three contracts of one million bushels each), and from Chicago (five contracts for 600,000 bushels each, and one for 800,000 bushels). The contracts called for No. 3 yellow corn, maximum moisture of 15.5 per cent, which is considered standard export quality. By July 20, 1973, it had outstanding commitments of 2,796,400 bushels to be shipped from Chicago and 2,491,445 bushels from Baltimore. RE Exs. Bk. A, Hieronymus p. 85, A-F-1 and A-F-2. These export commitments, plus 1,629,000 bushels in domestic corn sales resulted in a total short cash position of 6,916,845 bushels on July 20, 1973. RE Ex. A-F-7.

63. On July 20, 1973, IFB had 4,070,000 bushels of corn in inventory and transit, plus

1,263,000 bushels of country purchases. However, a substantial portion of this was of subgrade quality, rendering its cash position net short. It also had 6,032,000 bushels of new crop purchases. An exhibit showing the cash and futures positions of IFB for each trading day in July and August, 1973, developed by its expert witness, Dr. Thomas A. Heironymus, is included as an appendix to this report. RE Exs. A-F-3, A-F-4 and A-F-7.

64. During 1973, IFB entered all of its futures orders through Illinois Cooperative Futures Company, a registered futures commission merchant. It maintained three accounts there:

Gold Proof Elevator -- Account Number 1160

Indiana Grain -- Account Number 1190

Feed Division -- Account Number 1191

DE REQ I, 39 and 41.

65. On July 2, 1973, the Gold Proof Account held a short position of 1,690,000 bushels of corn in the July contract. By July 18, 1973, this position was reduced to 550,000 bushels which represented a hedge against unpriced sales, basis the July contract. On July 19, 1973, the account was reduced by 360,000 bushels through an ex-pit transfer, July for September futures, with Indiana Grain Account No. 1190, at a price of 37 over the September, thereby changing the unfixed sales from basis the July future to basis the September future. As of 11:02 a.m. on July 20, 1973, the remaining positions in the Gold Proof Account had been closed through sell orders at prices no higher than 291. DE Exs. 30, 31, 33B, 40; DE REQ I, 89 to 121.

66. The Feed Division Account No. 1191 held a long position in the July contract of 75,000 bushels on July 2, 1973, but this was entirely liquidated by July 6, 1973. DE Ex. 33C.

67. Principally in issue in this proceeding are transactions in the Indiana Grain Account No. 1190. After the close of trading on July 2, 1973, Indiana Grain Account No. 1190 held a long position in the July contract of 795,000 bushels. From July 2 through July 9, 1973, Indiana Grain entered only 5 orders, all to purchase July corn futures at a specified price. Each of these orders was for a quantity less than 100,000 bushels. DE Exs. 30, 31 and 33A. On July 10, 1973, respondents entered two spread orders to buy a total of 4,100,000 bushels of the July contract and sell a like amount of the March, 1974 corn futures contract at 14 cents premium over the March for the Indiana Grain Account. One of these orders -- for 1,100,000 bushels -- was filled, increasing the Indiana Grain long position in the July 1973 contract and increasing its short position in the March 1974 contract. The second order was cancelled. At the close of trading on July 10, 1973, the Indiana Grain Account held a long position in the July contract and a short position in the September and other deferred contracts. DE Exs. 30, 31 and 33A; Johnston, 1911.

68. On July 11, 1973, respondents entered an order to purchase 2,490,000 bushels of the July contract and sell a like quantity in the September at a

premium of 14, July over September, for this account. That order was filled at July prices ranging from 219 to 221 and at September prices ranging from 204 to 205. DE Ex. 31. Later in the day on July 11, 1973, respondents entered 5 spread orders, each with instructions to buy 500,000 bushels of September futures, and to sell 500,000 bushels of July futures, at successive premiums of 22 cents, 23 cents, 24 cents, 25 cents and 26 cents, July over September, for the Indiana Grain Account. These orders were good until cancelled, but they were not filled because the market did not reach the spreads specified. On July 11, 1973, the July contract closed at 15 cents per bushel above the September. DE Exs. 2 (p. 19) and 31.

69. On July 12, 1973, respondents cancelled the 5 spread orders to liquidate 2,500,000 bushels in the July contract at permiums of 22 to 26 cents, entered on July 11, and replaced them with an order to buy 2,500,000 bushels of September corn futures, and to sell 2,500,000 bushels of the July contract, at a premium of 31 cents July over September. This new order to liquidate 2,500,000 bushels of Indiana Grain's July position was not filled but remained open. On July 12, 1973, the midpoints of the closing range for the July and September corn contracts were 232 and 214 1/2, respectively. DE Exs. 2 (p. 19) and 30.

70. On July 17, 1973, those spread orders to liquidate 2,500,000 bushels in the July contract were outstanding. On that date they were cancelled, and 5 spread orders were entered, each with instructions to buy 500,000 bushels of September futures and to sell 500,000 July futures at successive premiums of 33 cents, 34 cents, 35 cents, 36 cents and 37 cents, July over September These new orders to liquidate 2,500,000 bushels of Indiana Grain's July position were not filled and remained open. On July 17, 1973 the midpoints of the closing range for the July and September corn contracts were 245 1/2 and 223 3/4, respectively. DE Exs. 2 (p. 19) and 31.

71. On July 19, 1973, upon learning that the price limits would be removed from the July contract on July 20, 1973, respondents cancelled the spread orders to liquidate 2,500,000 bushels in the July contract, at premiums of 33 to 37 cents, entered on July 17, 1973. On July

19, 1973, the midpoints of the closing range for the July and September corn contracts were 259 1/2 and 236 7/8, respectively. DE Exs. 2 (p. 19) and 30; Johnston, 2123-4, 2142.

72. Between July 11 and July 19, Indiana Grain filled a number of orders to buy small (less than 100,000 bushels) quantities of the July contract, which further increased its long position in the July contract. These orders were entered to fix the price of cash sales made by Indiana Grain basis the July contract. DE Ex. 31; Johnston, 2129-32.

73. At the close of trading on July 19, 1973, IFB held a net long position in the July contract of 4,705,000 bushels. (Indiana Grain's position was long 4,895,000 bushels and Gold Proof's short position was 190,000 bushels). This position, the largest held by any trader in the July contract, represented 27.5 per cent of the long open interest. DE Exs. 30, 32, 33 and 34.

74. Before 11:02 a.m. on July 20, 1973, Gold Proof had completely liquidated its short position in the July contract. Therefore, Indiana Grain Account No. 1190 was the only account of IFB which then held a position in the July contract. DE Exs. 40 and 33B; DE REQ I, 108-110, 112-120.

75. At 8:53 a.m. on July 20, respondents entered a spread order to buy 2,250,000 bushels of September futures, and sell a like quantity in the July contract, at a premium of of 47 1/2, July over September, for the account of Indiana Grain. This order was later cancelled, and at 9:15 a.m., prior to the opening of trading respondents entered four spread orders as follows:

Order Number	Instructions on Order (Thousands of Bushels)
70489	Buy 500 Sept. corn, Sell 500 July corn; July + 44 1/2
70490	Buy 500 Sept. corn, Sell 500 July corn; July + 47 1/2

70491	Buy 500 Sept. corn, Sell 500 July corn; July + 52 1/2
70492	Buy 750 Sept. corn, Sell 750 July corn; July + 551/2

DE Ex. 40.

76. These orders were later modified, by reducing the spread premium by about 2 1/2. At about 9:59 a.m., respondents entered an order to sell 150,000 bushels in the July contract at 300. The July contract was trading at about 282 or 283 when this order was entered. DE Ex. 40; Johnston 1997, 2142-5; Catron, 1595, 1606-8; Warning, 1705. By approximately 11:24 a.m. on July 20, 1973, three of the spread orders were filled as follows:

Price Per Bushel At Which Order Was Filled

Order Number	July Future	September Future	Spread Premium	Time Report of Execution was made
70489	288	246	42	10:51 a.m.
70490	291	246	45	11:26 a.m.
70491	297	246	51	11:37 a.m.

DE Exs. 39 and 40; RE Ex. A-G-2.

77. The Indiana Grain Account then held a long position in the July contract of 3,395,000 bushels which represented about 62 per cent of the long open interest. Indiana Grain had one spread order (No. 70492) to buy 750,000 September and to sell 750,000 July at a premium of 53 cents, July over September, and one price order to sell 150,000 July at 300, in the corn pit which had not been filled. The price order was filed between 11:26 a.m. and 11:33 a.m. The spread order was filled between 11:26 a.m. and 11:28 a.m. DE Ex. 34, 39 and 40; RE Ex. A-G-2.

78. The July contract reached 370 for the first time at about 11:39 a.m. on July 20, 1973. At some time between 11:30 a.m. and 11:40 a.m., Mr. William Catron, called Respondent Johnston from the exchange floor to inform him of what was happening in the market, and explained that the July contract was having a hard time liquidating, that there were vacuums in it, and that there was a lack of sell orders in the pit. Mr. Catron also advised Respondent Johnston that the price was in the 370 range. Respondent Johnston then instructed Mr. Catron to sell 100,000 bushels at 370, 375, 380, 385, and 390, respectively, for a total of 500,000 bushels. Based upon these instructions Mr. Catron entered the following orders:

Order Number	Time Order was entered	Instructions on Order (Thousands of bushels)
70783	11:38 a.m.	Sell 100 July corn at 370
No Number	--	Sell 100 July corn at 375
70784	11:39 a.m.	Sell 100 July corn at 380
70787	11:40 a.m.	Sell 100 July corn at 385
70786	11:40 a.m.	Sell 90 July corn at 390

These orders were received at one time by Mr. Catron and written up by him as fast as he could and sent to the pit. All were executed, except for 5,000 bushels of the last order. DE Exs. 39 and 40; RE Ex. A-G-2; Johnston, 1998-9; Catron, 1595, 1597, 1611-14 and 1619.

79. After the close of trading on July 20, 1973, respondents held a long position of 2,010,000 bushels, on which it received delivery. DE Exs. 17 and 34.

80. Respondents received receipts for 1,470,000 bushels in Continental Elevators Band C; 90,000 bushels in Cargill Elevator; 425,000 bushels in Calumet Elevator; and 25,000 bushels on track. DE Ex. 51.

81. The corn in Calumet Elevator could not be applied to export contracts without being moved to an elevator with a draft of 26 feet. It was sold FOB Calumet Elevator. The 90,000 bushels in the Cargill Elevator was traded along with 15,000 bushels in the Calumet Elevator, for 85,000 bushels in the Continental Elevator, and 20,000 bushels received on track, which was moved into IFB's Gatway Elevator. DE Ex. 51; Johnston 2160-64.

82. All but 198,706 bushels of the corn stored in the two Continental Elevators were used to fill export contracts. That quantity was sold to a buyer on an existing contract to complete the loading of a vessel. RE Ex. A-F-1; Johnston 1940.

X. Other Traders

83. The open interest to be resolved on the last day of trading in the July 1973 corn futures contract was 17,130,000 bushels. The evidence identified all of the major positions, and accounts for 14,030,000 bushels of the open long positions. Of that number, 11,135,000 bushels were reported to the CEA to be hedge positions. There were the following:

Indiana Grain (IFB)	4,895,000
Louis Dreyfus Corp.	4,145,000
Continental	1,890,000
Ohio Farmers Grain Corp.	105,000
Stotler & Co.	100,000

DE Ex. 34; RE Exs. Bk. D-I, Sec. 17, 21, 27, Bk. A, Hieronymus, 79-80.

84. The positions of reporting speculators totaled 2,395,000. They were the following:

William O'Connor	600,000
John F. McKerr	525,000
John T. Gelderman & Co	385,000
Hennessy & Associates	310,000
Theodore Hartly	225,000
Mid-States Terminals	200,000
Farmers Grain & Supply	150,000

RE Ex. Bk. D-I, Sec. 23, 24, 25, 26, 27, Bk. A, Hieronymus, 73-76; DE Ex. 34.

85. The identified short positions of 100,000 bushels or more at the opening of trading on July 20, 1973, totaled 15,760,000. They were the following:

Sumitomo Shoki America, Inc.	4,420,000
Bunge Corporation	2,405,000
Cargill, Inc.	1,950,000
Peavey Company	1,520,000
Con Agra	1,170,000
Central Soya	780,000
Pillsbury Company	650,000
Cook Industries	430,000
Early & Daniels	345,000
Illinois Grain	335,000
R. F. Cunningham	310,000
Far Mar Co., Inc.	280,000
Gold Proof Elevator (IFB)	190,000
Ralston Purina	175,000
General Mills Inc.	150,000
B. C. Christopher & Co.	150,000
Farmers Union Grain Terminal Association	150,000
Evans Milling Co	150,000
Farmers Grain Dealers Assoc. of Iowa	100,000
Tabor & Co.	100,000

With the exception of 925,000 bushels for Sumitomo Shoki America Inc. (Sumitomo), all of the short positions were reported as hedges. None of the shorts, except Cargill, owned deliverable corn. RE Ex. Bk. D-I, Secs. 23, 24, 25, 26, 27, Bk. A, Hieronymus, 73-76; DE Ex. 34.

86. More than 4 million bushels of the short positions held at the opening of trading on July 20 represented hedges on corn that had been sold at unfixed prices, basis the July, which had not been priced. These positions included most of the short positions of Far Mar. Co.; Farmers Union Grain Terminal Association; Farmers Grain Dealers Association of Iowa; R. F. Cunningham; Pillsbury Company; Early and Daniel; Gold Proof Elevator; Illinois Grain Corp.; Central Soya and Cargill. The holders of these short positions could not offset them until the purchasers of the corn priced the contracts. Kubiak II, 77-78; Corbin 1479; Donnelly 374; Coonrod II, 367-68; Pratt 305-07; Kummer 591-94, L. Miller 819-22; Resp. Ex. A, Hieronymus, 40-43, 76-77, 105; Johnston 1960-61, 2134.

87. There were 2,225,000 bushels of corn delivered on the July 1973 corn contract, with 65,000 of these bushels being redelivered, making a total of 2,290,000 bushels that was satisfied by delivery, as follows:

Account	Initial Deliveries	Redeliveries (1000 bushels)	Total
Continental	1,600	--	1,600
Pillsbury Co.	350	--	350
Cargill, Inc.	100	--	100
Henry Bartelstein	70	30	100
Edmund O'Connor	25	--	25
Cottonwood Ranch	25	--	25
Bache & Co.	20	--	20
Lamson Bros. Customers	--	20	20
J. Kinsman/L. Standafer	20	--	20
Peavey Co.	--	15	15
George Redman	10	--	10
Farmers Elevator Co.	5	--	5
Total	2,225	65	2,290

DE Ex. 17.

88. Deliveries on the July contract were received as follows:

Account	Received	Redelivered * (1000 bushels)	Final Receivers
Indiana Grain (IFB)	2,010	--	2,010
Louis Dreyfus Corp.	200	--	200
Hennessy & Assoc.	25	25	--
Lamson Bros. Customers	20	20	--
Peavey Co.	15	15	--
Bache & Co.	10	--	10
Oliver Ecles	5	5	--
Paul Blesi	5	--	5
Total	2,290	65	2,225

* Includes corn that was redelivered by the receiver and corn received on delivery which was sold in the cash market to someone who "redelivered" it on the July future.

DE Ex. 17.

89. The Louis Dreyfus Corp. (Dreyfus), the largest long, other than the respondent, is a grain dealer operating on a worldwide scale. It exports grain from the Gulf; the Atlantic Coast, including Baltimore; the St. Lawrence at Port Cartier; and the Great Lakes, including Duluth-Superior, Milwaukee, Chicago, and Toledo. In 1973 the company had physical facilities at Port Cartier, Baltimore,

New Orleans, and Houston. Grain is originated in the interior for shipment to ports and is bought from other firms at ports. The company's emphasis is on overseas sales, arrangements for transportation, and supervision of the loading processes. Dreyfus buys from other exporters and often uses the facilities of other exporters for loading. RE Ex. Bk. A, Hieronymus, p. 56; Robinson (I) 145, 148-151, 164-166 and 170.

90. By 11:24 a.m. on July 20, 1973, Dreyfus' long position was reduced to 480,000 bushels. It sold 5,000 bushels at 300 and spread 275,000 to the September contract at a spread of 65. It took delivery of the 200,000 bushels partially

to meet immediate requirements to load a vessel in Chicago. On July 19, 1973, Dreyfus had a short cash old crop corn position out of the Greak Lakes of 2,020,000 bushels. RE Exs. Bk. D-II, Sec. 16, A-E-37, 23 and 25. DE Exs. 34, 70, 71 and 72.

91. Dreyfus' long position was a hedge against export sales. Until July 19, it had considered standing for delivery of a substantial amount, if not all, of its position in the July futures contract. The large price rise of the July future, relative to the September future, on July 20, made it more economical to move its long hedge position into the September futures and to shift the fulfillment of some of its sales commitments to other ports. During July and August, 1973 Dreyfus shipped a total of 1,296,000 bushels of corn from Chicago by lake vessel including the 200,000 bushels it received through delivery on the July future. On July 19 and 20, Dreyfus purchased a total of one million bushels of corn from Continental FOB Duluth-Superior. DE Exs. 49 and 53; RE Exs. 3 and 48; McCaull 1358-61, 1380-82, 1385, 1390, 1392 and 1408.

92. Continental is one of the nation's two largest grain exporting firms. It has extensive interior acquisition offices throughout the United States. It has export elevators at Portland, Oregon; Beaumont, Texas; Westwego, Louisana; Norfolk, Virginia; two at Chicago, one at Milwaukee, Wisconsin, one at Superior, Wisconsin, and a lease arrangement with the Three Rivers Elevator in Canada. Continental's, North America division has three principal regions, Chicago, St. Louis and Kansas City, which operated numerous elevators and facilities throughout the central United States. Kottke 1134-36; 1189-94; DE Ex. Bk. A. Hieronymus, 66-67.

93. On July 20, 1973, Continental changed from a net long position in the July contract of 1,890,000 bushels at the beginning of the day to a net short position of 1,600,000 bushels at the close of trading. Although Continental's long position at the beginning of trading represented about 11 percent of the long open interest, Continental had already agreed to transfer 1,050,000 bushels of its long position to Cargill to fix the price of that quantity of corn purchased from Cargill at the Gulf. The remainder of its long position was liquidated after the July-September spread exceeded 35 cents. As the price of the July contract increased, Continental initially sold one million bushels for delivery. By about 11:24 a.m. it had obtained a short position in the July contract of 1,090,000 bushels. When the contract went higher it sold (net) an additional 510,000 bushels for delivery, including 130,000 bushels at prices of 370, or higher. DE Ex. 34, 66 and 67; Kottke 1158-60, 1164.

94. Continental purchased 180,000 bushels of corn warehouse receipts (stored at Calumet Elevator) from the CCC at 281 on July 23, 1973. Of these, Continental delivered 105,000 bushels to partially satisfy its futures position, sold 70,000 bushels at 350 to Henry Bartelstein, and sold 5,000 bushels at 317 to Dixie Portland. Continental also delivered, in satisfaction of its short position, 1,495,000 bushels from its stock of corn stored in Continental elevators "B" and "C". Walsh, 1545; Wilson, 1624-27.

95. To make delivery of its short position, Continental was required to shift a portion of its export program away from Chicago and, as a result, it incurred

added expenses for demurrage, overtime, and activities related to the changed circumstances. Kottke 1167-1169.

96. Continental shipped from Chicago 3,730,000 bushels of corn in July and 2,371,000 bushels in August, 1973. DE Ex. 49.

97. On July 20, 1973, Continental had 5,046,000 bushels of corn in its two Chicago elevators, 3,235,000 of which was graded No. 3, or better. DE Ex. 48.

98. Continental sold 1,000,000 bushels of corn FOB Duluth-Superior on July 19 and 20, 1973, at a basis of 35 over the September futures price. Kott 1157.

99. Sumitomo is an American subsidiary of a large Japanese trading company. Headquartered in New York and engaged in exporting corn and other commodities from the United States, it has no physical grain facilities in this country. It buys corn FOB vessels at U.S. ports and sells it CIF a foreign port. In July, 1973, it owned no corn inventory and its cash position consisted entirely of priced and unpriced purchases and sales. Documents of record indicate that its entire short futures position was speculative, though only 925,000 bushels were so reported. Its 204 reports show that it held no net cash position in July and August, 1973; its priced purchases equalled its priced sales, and its unpriced purchases equalled its unpriced sales. RE Exs. 20, 21 and Bk. A, 64-65 and A-E-41.

100. Sumitomo traded through the clearing firm of Louis Dreyfus-A.C. Israel Commodity Corp. (Dreyfus-Israel), a partnership of Dreyfus and A.C. Israel. Kozlowski 599. On July 20, Sumitomo was short 3,920,000 bushels of corn and Dreyfus was long 3,440,000 bushels in their respective accounts at Dreyfus-Israel. RE Ex. Bk. A, Hieronymus 109-110. DE Ex. 34. On July 20, three July-September spread transactions, totaling 1,275,000 bushels were cleared

through Dreyfus-Israel in which Dreyfus and Sumitomo were on opposite sides. Two transactions, each involving 500,000 bushels were accomplished at spreads of 33 1/8 cents, premium the July. This was the smallest premium of any July-September traded on July 20 Kozlowski 671-726; RE Exs. 23, 24, 25, 29 and 30.

101. The July price on both transactions was 280 -- the lowest price at which the July contract traded on that day. All of the floor orders for both sides of the transactions are time stamped two to nine minutes after 9:50:30 a.m., which was the last time at which July corn traded at 280. RE Exs. 24, A-G-2; DE Exs. 39, 70, 71. The CBOT time and sales report shows a spread at the price of these transactions at 10:26:40 a.m. DE Ex. 39. The pit slip for that quotation, time stamped 10:26:40, bears a handwritten note, "Insert spread at 9:56." The Dreyfus floor orders are time stamped 9:55 a.m. and 9:57 a.m. According to the CBOT time and sales report, July corn traded at 285 from 9:54 a.m. to 10:02 a.m. and during the same period September corn traded in a range of 246 to 246 7/8. RE Ex. 25, A-G-2.

102. The third spread transaction between Sumitomo and Dreyfus was done at a July premium of 65 cents over the September. The Dreyfus floor order was time stamped at 11:37 a.m. and the Sumitomo floor order at 11:50. That spread was done at a July price of 310 and a September price of 245.

103. On July 20, Sumitomo closed its July short position and sold 4,025,000 bushels of September corn, of which it reported 2,000,000 bushels (the speculative limit) as speculative, although its cash position had not changed since it had reported 925,000 bushels of its position as speculative. RE Exs. Bk. D, Part I, Sec. 20 and A-E-41.

104. On July 20, Sumitomo expanded its short position by selling an additional 105,000 bushels of corn at 290. The entire July position of Sumitomo was closed before the trading ceased on July 20, more than 4 million bushels of which were spread to the September contract. When the futures price of September corn increased to 347 3/4 on August 14, these positions were offset.

The firm lost about $ 3.7 million on the transactions. RE Exs. Bk. A, Hieronymus, P. 66, Bk. D, Part I, Sec. 20.

105. Bunge Corporation (Bunge) is a major grain export company. Export sales are made primarily from its New York office. Interior branch offices acquire grain and arrange logistics to ports. Exports of corn are made through facilities on the Great Lakes, the East Coast, and the New Orleans Gulf area. RE Ex. Bk. A, Hieronymus, pp. 61-62.

106. Bunge offset its entire short position on July 20. All but 275,000 bushels were covered before 11:24 a.m. DE Ex. 34.

107. Cargill, Inc. (Cargill) is one of the two largest grain companies in the United States. It estimates that it does about 25 percent of the U.S. grain export business. Miller II 445. It owns and operates country elevators, interior merchandising offices, terminal elevators at all major markets, export elevators at most U.S. ports, owns and operates a river barge line, has a large number of leased rail cars under its direct control, has branch offices or agents in 25 to 30 countries, and operates shipping and receiving grain facilities in numerous places abroad. The Central region includes Illinois, northwestern Indiana, and southern Wisconsin, with offices located in Chicago, Gibson City, Tuscola, Peoria, Illinois, and Milwaukee, Wisconsin. RE Ex. Bk. A, Hieronymus, p. 71.

108. Of the 1,950,000 bushels in the Cargill position, 1,050,000 bushels were held for pricing a cash sale to Continental. Futures were exchanged with Continental to liquidate that portion of Cargill's position. Cargill had closed all but 90,000 bushels of the remainder of its position before 11:26 a.m. on July 20 at prices under 300. The balance was covered at prices of 305 and 317. Upon receiving a telephone call reporting a one-day delay in the arrival of a vessel, Cargill's trader entered an order to sell 100,000 bushels at about 11:40 for 325. Before the order was executed, the price rose to 340, at which price the order was executed. Cargill made delivery on the 100,000 bushels. DE Ex. 34. Miller 803-804, 820, 824 and 838.

109. Its elevator unloaded 3,321,000 bushels of corn in July, of which 2,150,284 bushels graded No. 3 or better. RE Ex. Bk. E, Sec. 1.

110. Between July 16 and July 31, Cargill sold over 1.6 million bushels of cash corn in Chicago, including 1,200,000 bushels of No. 2 yellow corn to CPC, half of which was for delivery in August. DE Ex. 9.

111. The Pillsbury Company (Pillsbury) is a commodity merchandising subsidiary of a large vertically and horizontally integrated company. Its various offices buy corn from county elevators and sell to processors, feed manufacturers, and exporters. It operates between 25 and 30 facilities in the Midwest. Most of its corn merchandising is in the central Corn Belt to the south and southeast. RE Ex. Bk. A, Hieronymus, p. 43.

112. Pillsbury's July 20 position was reduced to 100,000 bushels by 11:24 a.m. Most of the closed positions represented pricings on cash

sales made basis the July future. DE Ex. 34; Coonrod II, 367.

113. When the price of July corn became volatile in the last half hour of trading, Pillsbury sold 150,000 bushels at 350 for the purpose of making delivery. A few minutes later, when the July price declined sharply, Pillsbury began buying back the short position since it could do so at a profit without making delivery. It bought 25,000 bushels at 325, 10,000 at 315 and 80,000 at 300. Minutes later when the price advanced again, Pillsbury sold 95,000 at 330, 5,000 at 335, 10,000 at 340, 100,000 at 380 and 95,000 at 390. When July corn expired, Pillsbury was short 350,000 bushels, on which it made delivery. DE Ex. 34; Coonrod (11) 369-72; RE Ex. Bk. A, Hieronymus, p. 43-45; RE Ex. Bk. D-II, Sec. 8.

114. To make delivery, Pillsubry diverted corn from other merchandising channels, including corn in transit from Iowa, and a CCC purchase at Roberts, Illinois. Coonrod 2194-98.

115. Henry Bartelstein delivered a total of 100,000 bushels on the July contract. Mr. Bartelstein had not intended to make delivery but, through his own error, held a short July position of 100,000 bushels at the close of trading on July 20, 1973. In order to offset this position, Mr. Bartelstein made the following purchases through Shatkin Trading Co.:

(1) 70,000 bushels of corn warehouse receipts (in storage at Calumet) from Continental at 350 on July 25 or 27, 1973;

(2) 10,000 bushels of corn warehouse receipts (in storage at Continental "B") from Hennessy & Associates at 350 on July 31, 1973;

(3) 5,000 bushels of corn on track from A.E. Staley at 350 on July 31, 1973; and

(4) 15,000 bushels of corn on track from Hennessy & Associates at 280 on July 31, 1973.

DE Exs. 9, 11 and 17; Bartelstein, 1469-71; Eckles, 1681-82; Wilson, 1625-26; Mailers, 1049-51.

116. Edmund O'Connor and Cottonwood Ranch each delivered 25,000 bushels on the July contract. This was corn that they owned in store Chicago regular elevators. DE Exs. 17, 47 and 48.

117. Bache and Co. delivered 20,000 bushels on the July contract as did four customers of Lamson Bros. Neither Bache nor the four customers of Lamson Bros. intended to make or take delivery. Through an error, Bache delivered 20,000 bushels on the July contract on July 16, 1973. Bache purchased the warehouse receipts that they delivered from Continental on July 16, 1973 at 263, 15 over the July futures price. This delivery was received by four customers of Lamson Bros. and they redelivered their warehouse receipts on July 23, 1973. DE Exs. 7, 9 and 17; Wilson, 1623; Okayama, 1810-3; Kass, 962-3.

118. J. Kinsman and L. Standafer, two customers of G. H. Miller, each delivered 10,000 bushels on the July contract. To meet their short position in the July contract, they purchased corn from Pillsbury on July 23, 1973, through G. H. Miller at 320. At the price of 320, Pillsbury was willing to divert corn from its other merchandising channels. DE Exs. 9 and 17; Coonrod, 1298-1300.

119. Peavy delivered 15,000 bushels on the July contract. Through an error, the CBOT clearing records showed the Peavey house account had a short position in the July contract of 30,000 bushels and Peavey's customers had a long July position of 30,000 bushels after the expiration of trading on July 20, 1973. This error occurred when a sale of 30,000 bushels in the July contract for a customer cleared as a house trade. The customers received delivery of 15,000 bushels on July 27, 1973. After the error was discovered, the Peavey house account redelivered this corn on July 30, 1973. The remaining house position was transferred to the customer records at the CBOT clearing house, thus liquidating the remaining customer and house positions. DE Exs. 17 and 34; Kozlowski, 517-20.

120. George Redman delivered 10,000 bushels on the July contract. Rather than offset his short futures position at what he considered an artificially high futures price, Mr. Redman purchased 10,000 bushels of corn in Mitchellville, Iowa, trucked it to the Calumet elevator and delivered it on July 31, 1973. Mr. Redman went to great lengths to find a regular elevator willing to accept his corn for delivery. He was charged 10 cents for elevation and transit billing and was required to provide, without compensation, an extra 200 bushels (2 percent) to Dixie Portland to cover potential shrinkage. Despite his difficulties and costs, Mr. Redman was able to offset his short position in the July contract at a total cost of less than 280 per bushel. Mr. Redman had never delivered on any futures contract before July, 1973, nor has he delivered since that time. DE Exs. 9, 11 and 17; Redman, 1315-28.

121. Farmers Elevator Co. of Elmore, Minnesota (Farmers) delivered 5,000 bushels on the July contract. On July 20, 1973, Mr. Myron Johnson, manager of Farmers, saw the price of the July contract rise to what he considered to be an "astronomical level," 370. He then instructed his broker to sell one contract if the July contract returned to the 370 level. Mr. Johnson's order was filed prior to the close of trading on July 20, 1973. Farmers owned deliverable grade corn at its elevator in Elmore and with its own trucks was able to deliver 5,000 bushels at Cargill's elevator. Cargill charged Farmers 16 cents per bushel for elevation, handling and paperwork associated with making delivery. Farmers actually trucked to Chicago about 7,600 bushels and was paid 261 3/4 less weighing and inspection charges on the overage. Mr. Johnson believed that 261 3/4 was a fair price for his corn in Chicago in that he was bidding 210 to 225 for No. 2 yellow corn in Elmore and the normal price relationship for corn during the summer of 1973 was 35 to 40 less in Elmore than in Chicago. Farmers was able to make about 100 on the corn delivered on the July contract but would not have delivered corn in Chicago if the futures had not reached the high levels reported. DE Ex. 17; Johnson 775-88.

122. Hennessy and Associates (Hennessy) received delivery of 25,000 bushels because of an error in a customer account which was absorbed by the Hennessy house account. Hennessy sold 25,000 bushels to Shatkin Trading Co. for the account of Mr. Bartelstein on July 31, 1973 at 280 and 350. DE Exs. 9, 11 and 17; Mailers, 1049-51.

123. Four customers of Lamson Bros. each received delivery of 5,000 bushels on July 16, 1973, and sold July futures prior to the close of trading in the July contract on July 20, 1973. Each of the Lamson Bros. customers redelivered their corn on July 23, 1973. DE Ex. 17.

124. Bache and Co. received delivery of 10,000 bushels as a result of an error, when a customer's short position in the July contract was over-filled by 10,000 bushels on July 20, 1973. Bache accepted the long futures position into an error account and received delivery on July 27 and July 30, 1973. Bache was unable to sell the warehouse receipts at a price representative of the closing price on the July contract, so they were eventually redelivered on the September contract. DE Ex. 17; Okayama, 1814.

125. Oliver Eckles received delivery of 5,000 bushels on the July contract. Mr. Eckles did not intend to take delivery and thought he had liquidated all of the 10,000 bushels long position which he had established on July 11, 1973. After the close of trading on July 20, 1973, Mr. Eckles discovered that he had a long position and received delivery of 5,000 bushels on July 31st through A. E. Staley Co. On the same day, Mr. Eckles sold the corn to Shatkin Trading Co. through A. E. Staley Co., for the account of Mr. Bartelstein at 350. DE Exs. 11 and 12; Eckles, 1679-82.

126. On July 27, 1973, Paul Blesi received delivery through Garnac of 5,000 bushels on the July contract also as a result of an error. Mr. Blesi instructed his broker to sell the corn for him and on July 27, 1973, the warehouse receipts received by Blesi were sold by Garnac to Continental at 266 1/2. DE Exs. 11 and 17; Blesi, 768-73; Wilson, 1628.

Discussion of Facts and Law

Although *manipulation* is not defined in the Act, its proscription has been upheld against constitutional attacks as being void for vagueness, *Bartlett Frazier Co.* v. *Hyde,* 65 F.2d 350 (7th Cir. 1933), *cert. denied,* 290 U.S. 654 (1933), and its content has been discussed in numerous administrative and court decisions. *See e.g., Cargill, Inc.* v. *Hardin,* 452 F. 2d 1154 (8th Cir. 1971), *cert. denied* 406 U.S. 932 (1972), *aff'g Cargill, Incorporated, et al.,* 29 Agric. Dec. 880 (29 A.D. 880) (1970); *Volkart Brothers, Inc.* v. *Freeman,* 311 F.2d 52 (5th Cir. 1962), *rev'g Volkart Brothers, Inc., et al.,* 20 Agric. Dec. 306 (20 A.D. 306) (1961); *G. H. Miller & Co.* v. *United States,* 260 F.2d 286 (7th Cir.

1958), *cert. denied,* 359 U.S. 907 (1959) *aff'g G. H. Miller & Co.,* 15 Agric. Dec. 1015 (15 A.D. 1015) (1956); *Great Western Food Distributors, Inc.* v. *Brannan,* 201 F.2d 476 (7th Cir. 1953) *cert. denied,* 345 U.S. 997 (1953), *aff'g Great Western Food Distributors, Inc., et al.,* 10 Agric. Dec. 783 (10 A.D. 783) (1951); *General Foods Corp.* v. *Brannan,* 170 F.2d 220 (7th Cir. 1948), *rev'g General Foods Corporation,* 6 Agric. Dec. 288 (6 A.D. 288) (1947); *Hohenberg Bros. Company and Julien J. Hohenberg,* [1975-1977 Transfer Binder] COMM. FUT. L. REP. Co(CCH) P 20,271 (1977); *Vincent W. Kosuga, et al.,* 19 Agric. Dec. 603 (19 A.D. 603) (1960); *Fox Deluxe Foods, Inc., et al.,* 18 Agric. Dec. 582 (18 A.D. 582) (1959); *Landon* v. *Butler, et al.,* 14 Agric. Dec. 429 (14 A.D. 429) (1955). Citations below to the *Cargill, Volkart, G. H. Miller* and *Great Western* cases are to the court opinions.

Briefly, manipulation involves an artificial price, intentionally caused by a participant or participants in the market. The issues constituting manipulation are not easily separated, even for purposes of analysis. Intent, for instance, must be inferred from all of the circumstances surrounding the questioned activity, and "cause" must also be examined in the context of other factors. The issue of whether an artificial price occurred in the July, 1973, corn contract on July 20, 1973, will be considered first.

I. Artificial Price

On July 20, 1973, the price of the July 1973 contract rose from 259 1/2, limit bid at the close of the previous day, to a high of 390, and a settlement price of 380. DE contends that the prices reached on July 20 were artificial to the extent that they exceeded 300. In support of its position, DE offers a comparison of those prices with cash bids, market quotations, cash sales prices, and other price data. It is shown that the highest bids for Chicago corn in July 1973 were those of American Maize. Its bid on July 20 was 267; its highest bid for the month was 288. Respondents' highest cash bid during July 1973 was 283. The highest U.S. Department of Agriculture quoted cash price for corn in July 1973 was 288. The highest cash price quoted by the CCC in July 1973 was 318 FOB Chicago on July 31. Corn was purchased in Chicago during the first two days of August by CPC at about 280. American Maize had purchases on July 23 at prices ranging from 256 1/2 to 279. The highest price it paid in July was 292. The highest July price paid by Cargill was 291 1/4. Respondents made purchases on July 23 at 276.

Excluded from consideration by DE were sales of deliverable corn in warehouses approved for delivery on futures contracts in the quantities and at the following prices, on the days indicated:

July 23 -- 320 -- 20,000 bushels
July 25 -- 350 -- 70,000 bushels
July 26 -- 317 -- 5,000 bushels
July 31 -- 350 -- 10,000 bushels

The price rise on July 20 was 110 1/2 to 123 1/2 over the closing price on July 19 (259 1/2) and was the largest price rise in the years 1963 through 1976 on the last day of trading in the July contract. The next largest price movement on the last day of trading in the July corn contract was a 10-cent decline in 1974. During the same period the largest July over September spread on the last day of trading was 26 7/8, other than 1973, when the spread was 123 1/8 to 143 1/8.

Respondents question the probative value of some of the price comparisons of DE, and dispute its exclusion from consideration of the July prices over 300. In addition, respondents contend that many of the bids relied upon by DE were nominal and that there is no showing that transactions occurred at quoted prices. They further point out the exceptional value that futures-delivered corn would have to an exporter; such corn is of guaranteed export quality (No. 3 or better), in warehouses accessible to shipping vessels, and available in quantity on a date certain. These arguments are not refuted, but nevertheless they cannot be accepted as a full explanation of the futures prices that were reached in the last 35 minutes of trading on July 20. Nor do respondents rely entirely on such considerations; rather they posit a concept of artificiality different from that of DE.

Respondents argue that an artificial price cannot result where each market participant exercises reasonably responsible business judgment under the circumstances and acts in a manner consistent with its own economic interest. In respondents' view, only if a participant acts in a manner inconsistent with his own economic interest, and with his responsibility, can a distorted or artificial price result, and then only if the position of that participant is large enough to substantially influence the price. Under this definition, other factors of manipulation are subsumed into the issue of artificial price. The cases, however, recognize artificiality of price, apart from culpable activity. *Great Western, supra,* 201 F.2d at 479.

Even if respondents' definition of artificial price is accepted, an artificial price occurred here, at least if their contentions are also accepted that the shorts (particularly Sumitomo, who held a large position) were imprudent and irresponsible in holding their positions until the last day of trading when they had no capability or intention of making delivery. Under this view, the shorts were responsible for any artificial prices that were reached on July 20.

Somewhat alternatively, respondents argue that no artificial prices occurred. According to this analysis, corn supplies were scarce, for the reasons stressed by DE, and discussed elsewhere in this opinion, rendering it difficult to purchase quality corn in Chicago during the summer of 1973. Despite this, future prices remained 15 to 20 below the cash value of corn in Chicago. Respondents maintain that Chicago prices were relatively lower than prices at other points, that corn was being drawn to other points, and therefore, that Chicago prices had to rise to a level which would cause farmers to sell their corn, cause exporters to move commitments to other ports, and cause users to delay purchases. However, the threat of export controls on corn, and price controls restrained prices. Respondents claim that so long as the cash value of corn exceeded futures prices, the economically rational action of a hedged trader needed corn was to buy futures, and stand for delivery. It is argued that to have

bought cash corn, and sold futures to close the hedge, in those circumstances, would have widened the basis even further, and would have been contrary to the interest of the market, as well as the interest of the participants. Thus, it is contended that those traders holding a long position were acting responsibly to the market by standing for delivery, and thereby raising the futures prices. Respondents perceive the liquidation difficulties of this market as caused by the short period of time within which these adjustments were made, and aver:

If the shorts wait until the last 35 minutes of trading to indicate that they are not prepared to deliver, when it is virtually too late for long hedgers to begin making adjustments and too late for the market to find economic value with the participation of all potential sellers, then value has to be determined by those who do participate, on the basis of their best analysis of what that quantity and quality of corn, in that location and time frame, is worth, given the time limitations within which they must reach a decision.

Brief, p. 65.

Respondents cite the testimony of Dr. Hieronymus to refute the cash price comparisons of DE, where he stated in reference to the closing minutes of trading on July 20: "What was really the economic value of warehouse receipts for corn? I don't think it's represented by some concept of a cash price. . . . I doubt if there was one bushel of corn traded during that 35 minute period, of cash corn." Brief, p. 63.

However, the tests of artificiality offered by DE here were accepted by the court in *Cargill,* 452 F.2d at 1167-70. The court referred to an artificial price as one "which does not reflect *basic forces of supply and demand." Id.* at 1158, 1168 (emphasis supplied). It seems to follow, definitionally, that prices, concededly caused in part by time constraints incident to the liquidation of a futures contract, are not reflective of "basic forces of supply and demand." n3 Thus, it must be found that the price of the July corn futures contract on July 20 was artificial. This finding does not require a rejection of respondents' account of the events surrounding the liquidation of the contract. In fact, their account is accepted as accurate at least to this extent: the open position on the last day was large. When it developed in the last 35 minutes of trading that the existing shorts were determined not to deliver, prices became volatile. Prices in the next contract month, September, were locked up the limit, and were thus of limited guidance in ascertaining the cash value of corn. Therefore, uncertainty reigned; longs were uncertain at which price they could obtain cash corn if they gave up their right to delivery, and shorts were uncertain what price they would have to pay for corn to make delivery. When trading was completed it was evident that prices had gone higher than was warranted by the basic forces of supply and demand, although a sharp upward trend was obviously present.

n3 It cannot be assumed, however, that cash prices are always more competitively determined than futures prices, even when the latter develop in an expiring contract. According to unrefuted testimony, the cash prices of corn in Chicago are heavily influenced by the purchases of one firm, American Maize, a manufacturer who is able to pass its raw material costs through in the prices of its finished products. Westerbeck 108; 1106-1107; Johnston 1799; Hollander 3670.

It does not follow that the artificial level was reached at 300 as claimed by DE. This figure was arrived at by considering pre-July 20 cash prices, but excluding from consideration later July cash prices that were over 300 on the grounds that they were related directly or indirectly to the futures delivery obligations of the purchasers. Also excluded from consideration were higher futures and cash prices that reached 347 3/4 and 340, respectively, on August 14. It is somewhat arbitrary to conclude that the higher August prices cannot be considered since we are in any event retrospectively determining what price would have reflected basic supply and demand at the time. The September futures contract was repeatedly locked up the limit in the days following July 20. It is thus apparent that the July 20 futures prices reflected an acceleration in the upward price movement. When it is considered that the 347 3/4 September futures price on August 14, anticipated possible deliveries as late as September 30 and, thus, contemplated new crop supply, it is evident that the prices on July 20 were not as far out of line as DE's comparisons suggest.

Where futures prices have ranged from 259 1/2 for the July contract on July 19 to 347 3/4 on August 14 for the September contract, any precise figure separating artificiality from non-artificiality on July 20 is necessarily arbitrary. The futures prices on July 20 exceeded any relevant cash or futures price. The highest cash price shown was 350, though it was probably not a price reflecting basic forces of supply and demand since only 10,000 bushels were sold at that price. It must nevertheless be affirmed that the July futures price was to some extent artificial on July 20.

II. Causation

When a futures market tapers toward expiration with declining open positions it necessarily becomes oligopolistic and oligopsonistic since the actions of any participant affect price. The last contract bought and sold is 100 percent of the market. Therefore, it cannot be gainsaid that if respondents had offered to close their futures positions at 300, or less, the market results would have been different. Similarly, if the existing shorts had made delivery, the results would have been different. Still further, if the owners of the cash corn had made it available to the futures market, directly or indirectly, at 300 or less, the results would have been different. Thus, respondents' activity must be deemed a "cause," along with others, of the artificial prices that occurred. But it is clear that the term "cause" in manipulation cases refers to more than the determination of which must be derived from conduct occurring within the context of a specific market and surrounding conditions.

This conclusion is implicit in the perceptive definition of manipulation offered by Dr. John W. Helmuth, DE's expert witness, who defined manipulation as "the socially unacceptable exercise of the capacity to affect price." Whether the exercise of the capacity to affect price is socially unacceptable (which is interpreted to mean legally unacceptable) can be determined only by considering the questioned activity along with the circumstances in which it occurred. The trading activity of respondents, and the context of that activity is discussed below.

III. Intent

The manipulation cases recognize that "intent" is a necessary element in the offense of manipulation, but the concept remains somewhat elusive. Intent must be inferred from conduct; at the same time, the culpability of the conduct depends on the intent which accompanies it.

The Commission dealt with the subject in *Hohenberg,* in light of the Court opinions, and at least two distinct standards emerged. First, it is stated that manipulation is "conduct intentionally engaged in resulting in an artificial price . . . ." COMM. FUT. L. REP. P 21,477. This is substantially the standard claimed by DE to be applicable here.

On the other hand, the Commission also stated in *Hohenberg* that:

A finding of manipulation in violation of the Act requires a finding that the party engaged in conduct with the intention of affecting the market price of a commodity (as determined by the forces of supply and demand) and as a result of such conduct or course of action an artificial price was created.

Id. at 21,477. The Commission further stated that attempted manipulation is "the performance of an act or conduct which was intended to effect an artificial price." *Id.* The standard reflected in these statements is urged by respondents to be applicable here.

The difference in the two standards can be demonstrated by an example. If a trader with a long position stands for delivery of a commodity in an amount four times that of known deliverable supply (which DE claims occurred here) solely for the commercial purpose of obtaining the commodity to meet its sales obligations, and an artificial price results therefrom, that trader could be found guilty of manipulation under the first standard, but not under the second. The conduct may have been intentionally engaged in, but not for purpose of effecting an artificial price, though that result might have been expected.

While there is language in *Hohenberg* to support both standards, it seems probable that the more general standard of intent would be applied in the example posed, and no specific intent to effect an artificial price would be required. This conclusion is supported by the assertion of the Commission that a showing that questioned activity is "consonant with prudent business practices" is not in itself sufficient to refute an allegation of attempted manipulation. *Id.* at 21,478. It is believed that a trader may be presumed to have foreseen the consequences (artificial prices) of his conduct, and therefore to have "intended" those consequences, even though his conduct was commercially motivated. *Cf. Cargill, supra,* 452 F.2d at 1163. In any event, an endeavor will be made in the discussion that follows to apply that standard.

IV. Market Dominance

DE argues that respondents' long futures position was dominant, and that this, with the alleged lack of delivery supply available to the shorts, and various orders entered by respondents late in the trading on July 20 caused the price to reach artificial levels. Dr. Helmuth made an economic analysis of the market and respondents' trading, and concluded that they held a dominant position and that, therefore, they caused the artificial prices that occurred. His analysis was based on an assumed availability for delivery of 511,000 bushels of corn.

DE does not contend that respondents were in any manner responsible for the claimed absence of deliverable supply. It attributes that to transportation shortages, lack of elevator capacity (both resulting from heavy export shipments), and quality problems with the corn that is normally tributary to Chicago. But DE argues that the respondents exploited these economic circumstances.

V. Respondents' Futures Position

The total open interest at the opening of trading on July 20 was 17,130,000 bushels. Respondents held a net long position of 4,705,000 bushels, or 27.5 per cent of the total. At about 11:24 a.m., the open interest in the contract was approximately 5,490,000 bushels, of which respondents held 3,395,000 bushels, or 61.8 percent of the total. However, respondents had two unexecuted orders in the pit, one a spread order to sell 750,000 bushels in the July contract, and to buy that amount in the September contract, at a spread of 53 cents, July over the September, and a sell order for 150,000 bushels at 300. These orders were filled by 11:33 a.m., thereby reducing respondents' position to 2,495,000 bushels. Another 485,000 bushels of their position were sold, but only after the market reached 370. They received 2,010,000 bushels on delivery.

VI. Deliverable Supply

As indicated, the resolution of allegations of manipulation involving the exercise of market dominance -- activity sometimes referred to as "corners" or "squeezes" -- requires a determination of the amount of the physical (cash) commodity available for delivery in satisfaction of the futures contracts.

The complaint herein alleges that "there was an insufficient supply of deliverable grades of corn in deliverable position," and that this was known by respondents. The complaint further alleges that the stocks of deliverable grades available for delivery amounted to approximately 511,000 bushels.

DE arrives at its deliverable supply figure as follows: The CEA published figures showing the total amount of corn in Chicago on July 20, 1973 was 12,107,000 bushels, of which 4,511,000 bushels were of deliverable grades. DE determined the ownership of virtually all of this corn in its investigation. It found that of the deliverable grades, Continental owned 3,235,000 bushels, Cargill owned 88,000 bushels, Dreyfus owned 42,000 bushels, and respondents owned 228,000 bushels. The deliverable corn owned by these firms was eliminated from the deliverable supply on the grounds that it was "committed" to export and was not available for delivery on the futures market at economic prices. In addition, DE determined that 340,000 bushels of deliverable corn, owned by National Starch were of a variety called "waxy maize," which has a premium value above regular corn. That corn was also deleted from the deliverable supply. These deletions totalled 3,933,000 bushels, leaving a remainder of 501,000 bushels. To this was added 10,000 bushels delivered on the contract by an individual, making the total of 511,000 bushels, alleged as the available corn of deliverable grades.

DE argues that Respondent Johnston received and studied both the CEA and CBOT stocks of grain reports, and "therefore" was aware of the amount of deliverable grades of corn in Chicago and that "the stocks which were in Chicago elevators were likely committed to export." However, the ownership of the corn stocks was not published. Thus, if the owners' commitments were known it could not have been from the stock reports.

DE further argues that Respondent Johnston was aware of export movements generally and the transportation and elevator shortages caused by it, as well as the quality problems with the corn crop, and for these reasons knew that the Chicago stocks of corn "could very well have been committed to export sales."

It is upon these generalizations that DE proposes to eliminate from the deliverable supply the bulk of corn listed as deliverable in published reports. That the conditions described by DE with respect to transportation, elevator, and crop quality problems existed is not disputed. But it cannot be inferred, in the absence of any specific showing of commitments, that the entire stock of corn owned by Continental, for example, was committed to export in a manner that precluded its availability for delivery on the futures market at non-artificial prices. In fact, there are some rather specific matters of record that demonstrate that Continental's corn was not so committed. On July 19 and 20, it sold Dreyfus 1,000,000 bushels of export corn for loading at Duluth-Superior. Although this corn was not a part of the "deliverable supply," it was available to satisfy Continental's export commitment, and could have been substituted for Chicago corn for export purposes. Additionally, Continental sold over 1,000,000 bushels of corn on the futures market on July 20, at prices considered "economic" by DE. (Another 600,000 bushels were sold at higher prices.) Thus, the theory upon which DE's calculations of deliverable supply are based is refuted by clearly established facts.

DE also proposed to delete 88,000 bushels of corn from the deliverable supply owned by Cargill. That firm sold 100,000 bushels of futures corn on July 20. Its trader was on the exchange floor when trading became volatile and happened to receive a telephone call informing him that a vessel expected shortly in Chicago would be delayed one day. He thereupon sold one day's loading. This would appear to indicate that Cargill's corn delivery capability was committed. However, in the days following July 20, Cargill sold large amounts in Chicago of corn of good quality. This is not consistent with DE's grounds for excluding Cargill's deliverable corn from the deliverable supply.

It developed during the hearing that Dreyfus did have an immediate demand for export corn. If this fact had been known by traders at the time there would, perhaps, be a basis for excluding the deliverable corn of Dreyfus from the deliverable supply. But this could not have been specifically known, and as discussed, the inference of non-availability, based on corn movements generally, is unwarranted. For similar reasons the exclusion of "waxy maize" from the deliverable supply is not proper.

DE seeks to impute to respondents knowledge of corn stocks as published by the CEA and the CBOT, while at the same time denying that they were entitled to rely on the data published there. If it were shown that respondents, in fact, had the knowledge that DE imputes to them, the latter's position would be more viable.

There can be no dispute that the deliverable corn held by respondents should be excluded from the deliverable supply since the purpose of ascertaining the amount of deliverable supply is to determine the extent of respondents' market dominance.

There were possible sources of deliverable supply not included in the published data as deliverable. Some of the corn registered as undeliverable might have been upgraded and rendered deliverable. Respondents claim as much as 60 to 80 percent of such corn could have been made deliverable. DE argues that this estimate is too high and that in any event there was not sufficient time between July 20 and 31, when delivery was required, for any upgrading to be accomplished.

There was corn of deliverable grades in elevators not regular for delivery amounting to 1,007,000 bushels. For this corn to be delivered on the futures market, it would have had to be transferred to an elevator designated regular for delivery at an estimated cost of 14 to 18 cents per bushel.

Additionally, from July 19 to August 1, 1973, 6,471,000 bushels of corn were received in Chicago. (About 3,600,000 bushels were shipped from Chicago in the same period.) DE proposed to exclude from the deliverable supply all of the corn received in Chicago during this period, even though it could not find the disposition of an estimated 410,000 bushels, all of deliverable quality. Cargill's elevator received 1,071,591 bushels of corn in this period, of which 74.2 percent was graded No. 3 or better. Continental's elevators received 1,651,366 bushels of corn in the same period of which 64.1 percent were graded No. 3 or better.

Respondents contend that the deliverable supply of corn in Chicago was ample to meet its delivery demands. DE argues that there is a blatant inconsistency in respondents' claim that there was a large amount of corn available for delivery, while claiming that corn supplies were scarce. However, it is undisputed that large quantities of corn were in Chicago, as well as moving to and from Chicago. By DE's showing, over 6,471,000 bushels were received in Chicago during the period July 19 through August 1, 1979, while during the same period, 3,569,000 bushels were shipped from Chicago. The CEA reported that there were 4,511,000 bushels of deliverable corn in deliverable positions on July 20. On July 27 that figure had increased to 5,183,000 bushels. It must be recognized that while ownership changes with delivery, delivery does not remove a commodity from the deliverable supply.

As indicated, the conduct of respondents must be evaluated in its context. Therefore, the information available to them at the time must largely be controlling in arriving at the amount of deliverable supply. It is concluded that such figure should be set at no lower than 4,616,000 bushels, derived as follows: 4,434,000 bushels, the published deliverable supply, minus 228,000 bushels, the amount owned by respondents, plus 410,000 bushels, received in Chicago between July 20 and 31 and, as conceded by DE, not shown as committed. Although the latter figure is retrospectively developed, respondents could reasonably have anticipated that some corn would be received in Chicago in that period. Obviously, in view of the other possible sources of supply -- including corn stored in non-regular warehouses (1,007,000 bushels), total corn received in Chicago between July 20 and August 1, 1973 (6,471,000 bushels), and a portion of the "non-deliverable" or "ungraded" corn in warehouses regular for delivery (a total of 7,674,000 bushels) -- 4,616,000 bushels is a minimal figure.

VII. Combined Cash Supply and Futures Positions

It is not disputed that market dominance must be determined by conjointly considering both the cash supply of the commodity and the futures positions. Professor Bromberg analyzed

the commodity manipulation cases and found:

Although the decisions have not stated it in so many words, they sense that the most precise index of a corner is the proportion of shorts who must deal with the cornerer, and this is a function of the combined position. Specifically, this index is the number of shorts (which always equals the number of longs) minus the independent longs (i.e., not controlled by the cornerer) minus the independent cash supply, all divided by the number of shorts. 1 Bromberg, Securities Law: Fraud, Sec. 4.6, p. 82,330.

Professor Bromberg concludes that where "[all] the shorts can satisfy their obligations by dealing with the independents who hold longs or cash supplies there can be no corner." *Id.*

If the Bromberg formula is applied here, as of 11:24 a.m., the result would be a factor of -0-% n4 (5,490,000 (number of shorts) minus 2,095,000 (independent longs), minus 4,616,000 (independent cash supply) divided by

5,490,000 (number of shorts)). No short was compelled to deal with respondents to satisfy its obligations. And this leaves out of consideration the unexecuted orders to sell 900,000 bushels.

n4 Bromberg uses -0-% as the practical equivalent of a negative fraction.

In *Cargill,* the respondent held virtually all of the deliverable cash commodity, and at the opening on the last day of trading held about 24 percent of the open futures positions. By 11:53 a.m., it held 62 percent of the open futures positions. 452 F.2d at 1160. This was found to be a dominant and manipulative position. In *G. H. Miller* the accused respondents held 100 percent of the open futures positions on the last day of trading, and 72 percent of the cash commodity. *Id.* at 289. This was also held to be a dominant and manipulative position. In *Great Western,* respondent held at the opening on the last day of trading, 74 percent of the futures positions and 51 percent of the deliverable supply. This too was found to be a dominant and manipulative position.

Thus, the leading cases, where manipulation has been found, differ materially from the instant proceeding in the degree of domination over the combined futures positions, and cash supplies not controlled by the alleged manipulators.

It is, therefore, concluded that respondents' position was not dominant at 11:24 a.m., when DE claims the futures prices became artificial. However, manipulation may be effected, or attempted, by persons who do not hold a dominant position. See *Hohenberg,* COMM. FUT. L. REP. *supra* at 21,477. Therefore, the additional allegations of DE concerning respondents' trading activity and the intent thereof must be considered.

VIII. Market Abuse

DE refers to commentaries on the futures markets which emphasize that most futures contracts are not closed by delivery. From this, DE infers that an "abuse" of the futures market generally results when a long stands for delivery, as here, and that excessive deliveries will destroy a futures contract. This reasoning much too facilely makes the transition from description to proscription, and provides no guidance on when delivery is proper.

It will undoubtedly be found that where a contract has been terminated because of excessive deliveries that there has been an imbalance in the contract, rendering it more attractive to one side or the other to make or take delivery, and the disadvantaged side has declined to participate. It will also undoubtedly be found that most contracts are not closed by delivery because neither side finds it economical to do so. This differs from imputing a moral or legal taint to taking (or making) delivery, regardless of the economics involved.

It is difficult to perceive how longs can be prohibited from taking delivery without seriously impairing the viability of a contract. Legal action taken to protect a contract by constricting or prohibiting delivery may introduce a serious imbalance in the contract, and bring about the result which is sought to be avoided. (The difficulties inherent in any administratively imposed settlement price are demonstrated in the above discussion of artificial price.) In *Hohenberg,* the Commission approved the making of delivery for the purpose of obtaining the best price. It would be incongruous to hold that shorts may make delivery but longs may not take delivery.

Substantial deliveries occur in virtually every contract. The total deliveries on the July, 1973 corn contract were 2,225,000 bushels, including retenders. This was the smallest amount for any corn contract in the years 1971-72 or 1972-73. The largest amount of deliveries, including retenders, in that period was 48,230,000 bushels in the May, 1972 contract. There were 20,250,000 bushels delivered on the September, 1973 contract. The deliveries on the July, 1973, contract were the smallest on any July corn contract for the years 1967 through 1974.

DE points out that the shorts who made delivery changed their logistical plans to do so, and thereby incurred additional costs. However, it is not shown that they suffered financial losses by making delivery, or that any corn was brought to Chicago for futures delivery purposes for which there was not a commercial need.

It is not entirely clear from DE's position what it considers would have been the proper course of conduct for respondents in this market. Respondents, for instance, are criticized for not bidding more aggressively for cash corn in the summer of 1973. In response, respondents state that the futures price was more attractive, and that higher bids would only have drawn corn of less than exportable quality, which would not have filled their needs. If it is to be held that all traders, in the face of attractive futures prices in relation to cash prices, are legally obliged, nevertheless, to bid higher in the cash markets, to avoid tainting the futures market with deliveries, the economic nexus between cash and futures markets will have been severed. In fairness to DE, this is not quite their position, but that is the implication of its criticisms of respondents' low bidding for cash corn. The criticisms are not valid.

DE also seems to imply that respondents should have switched their plans for taking delivery when the cash and futures prices converged on July 20. However, it was, and is, very difficult to determine when this occurred. As previously discussed, respondents take the position that convergence did not take place until the closing minutes of trading when it was too late to change acquisition plans covering over two million bushels of corn.

In its initial brief, at 44, DE stated: "Respondent Johnston further knew that guaranteed deliverable grade corn was not available in Chicago at prices slightly above the July contract." This is not disputed by respondents. In fact, it is precisely their position. However, in its reply brief, at 73, DE asserts that, *"Respondents'* basic assertion about the cash-futures price relationship during July 1973 is not entirely accurate and needs more careful scrutiny . . . ." (Emphasis supplied). There follows a discussion of the academic writings which show that, for economic reasons, cash and futures prices never quite converge. This has been adverted to elsewhere herein as the reason for most futures contracts being offset, and not closed by delivery, and is not in dispute.

DE then argues that the closing price of the July contract on July 19 was higher than all of the various Chicago cash corn prices except FOB vessel prices, and those prices were exceeded on July 20 by the futures prices. The USDA quotation for July 19 was 258 3/4, while the futures price closed at 259 1/2. Thus, DE seems to take the position that while the cash and futures prices converged on July 19, corn was not available at those prices. It is not a viable position; price is a function of quantity. If corn *was* available at those prices we are then confronted with the question of why the shorts did not buy it to satisfy their futures contracts instead of paying up to 390 to cover their positions.

That corn was not available in quantity at the prices relied on by DE is shown by the transactions between Continental and Dreyfus, FOB Duluth-Superior at 35 over the September futures price, which was locked up the limit on July 19 at 236 7/8, resulting in a flat price of 271 7/8. These transactions covered a substantial quantity of corn -- one million bushels -- and involved large sophisticated firms. Such sales would not have taken place if the corn had been available in Chicago at 258 3/4 or 259 1/2, the USDA quotation, and the closing price on July 19 of the July contract, respectively. It should be noted also that Dreyfus took delivery of 200,000 bushels of corn on July 20, despite the futures prices on that day.

Necessarily, there was a convergence of cash and futures values during the trading of July 20. However, respondents' claim that it came too late for them to alter their acquisition plans seems entirely reasonable, considering the volatile prices in the closing minutes of the contract. It cannot, therefore, be found that their failure to settle their position instead of taking delivery was per se an abuse of the markets or manipulative.

IX. Shorts

It seems unavoidable that in examining the responsibilities of the longs in a futures market that the responsibilities of the shorts should also be considered. As previously discussed, respondents argue that the price fluctuation that occurred near the close of the market on July 20 was caused by the irresponsible actions of the shorts, who stayed in the market into the last day of trading, even though they had no delivery capability. Particular mention is made of Sumitomo, a major short. That firm was short 4,420,000 bushels at the opening on July 20 and was short 1,955,000 bushels at 11:24 a.m. It had no delivery capability and was determined not to make delivery. Virtually every trade witness in this

proceeding characterized such action as "irresponsible" or "imprudent." n5

n5 Sumitomo does not come off very well in this proceeding. Its position in the considered market was reported as a hedge. Though DE attempts to provide grounds for supposing the validity of that report, the position was clearly speculative. Moreover, any rational basis for the position is difficult to perceive. With corn supplies tight, and cash prices higher than the futures prices, ultimate convergence of the two was almost certain to occur at a higher level, resulting in a loss in any short futures position. The apparently speculative element was the possibility of government controls, which would have curtailed export shipments and precipitated a drastic price reduction. However, on July 18, the government issued statements, which, although equivocal, virtually assured that the anticipated action would not be taken before the July 1973 corn contract was liquidated. On July 19, the July corn contract was locked the limit up, which prevented liquidation of large amounts of the open interest. On July 20, Sumitomo actually increased its short position by 105,000 bushels, before beginning to liquidate, and still held a short position of 1,955,000 bushels at 11:24 a.m. Further more, the record leaves little doubt that 1,250,000 bushels of its position were offset in a non-competitive trade with Dreyfus. When officials of Sumitomo were later questioned about their futures trading activity in July 1973, their answers were evasive and contradictory.

DE argues that the shorts have, in any event, a right to offset their positions at "non-artificial" prices. As applied here, the corollary of this asserted "right" of the shorts is a "duty" on the part of the longs to forfeit their right to take delivery. The equity of this position is not easily perceived where parties have entered into, or continue in agreements, to make and take delivery, respectively, in the face of known conditions of supply and demand. With no alleged change in those conditions, and no claim that the longs have affected them, the shorts are to be relieved of their obligation to deliver. This implies that the futures market is too delicate to register supply and demand forces, and is something other than an economic institution.

The position seems to rest on the belief that no significant sacrifice would be imposed on the longs since they may obtain the commodity sought by futures delivery through purchasing it on the cash market at "non-artificial" prices. However, if the shorts purchase the cash commodity for futures delivery, the futures agreements are left inviolate, and futures prices retain their economic significance.

In *Volkart,* the court's opinion was construed as imposing virtually an unlimited duty on the shorts to make delivery unless the longs had interfered with the shorts' ability to deliver. *See* Note, *The Delivery Requirement; An Illusory Bar to Regulation of Manipulation In Commodity Exchanges,* 73 Yale L. J. 171 (1963). This note interpreted *Volkart* as removing any prohibition against "squeezes," which were defined as activity where the futures market alone is dominated. *Id.* at 176. The alleged manipulator in *Volkart* had a very small interest in the cash commodity, but held futures contracts amounting to 12,100 bales of cotton out of an open interest of 13,400 bales. There was a deliverable supply of about 5,000 bales. To be available for delivery, the cotton had to be certificated; the court held the shorts should have taken steps to have more cotton certificated prior to the last day of trading, when it was too late to complete the procedure.

The *Cargill* court was highly critical of the *Volkart* decision. It cited, and offered criticisms of the *Volkart* opinion similar to those set forth in the law journal note to the effect that squeezes would no longer be regulated if *Volkart* states the law. n6

> n6 It should be pointed out that DE's position here implicitly assumes the invalidity of *Volkart* in that the primary offense with which the instant respondents are charged is standing for delivery for an amount of a commodity in excess of the alleged deliverable supply. It is reasonably clear that this would not be an offense under *Volkart.* The criticisms of the *Cargill* court were not necessary for its decision since the respondent before it had controlled virtually all of the available cash commodity, which was not the case in *Volkart.* Thus, the law which respondents are charged with violating is far from clear in view of the two latest court decisions on the subject.

The *Volkart* court was clearly motivated by the belief that regulation of situations like that before it would impair the legitimate functioning of the futures market by relieving the shorts of their obligation to make delivery. An attempt was made in the *Note* to strike a balance between destructive regulation on the one hand, and the complete abandonment of any prohibition of squeezes, on the other. These proposals, as applicable here, are discussed below.

X. Delivery Purpose

The note states (*Id.* at 184-85):

If a trader's prolonged refusal to offset holdings can reasonably be characterized as a hedge for a spot sale not covered by a corresponding spot purchase until late in the delivery month, a court should not infer an intent to manipulate. Equally, a trader's actions might be interpreted as an ordinary reaction to unusually low futures prices. In this situation, it is to be anticipated that traders will hold either for delivery, if the imbalance is a protracted one, or until the closing of the futures-spot price gap. In short, where a refusal to offset is consistent with normal market conduct, such a refusal cannot be the basis for a finding of manipulation.

Cf. *Hohenberg,* COMM. FUT. L. REP., supra at 21,478.

Respondents contend that delivery was taken here to meet their cash commitments.

During the hearing DE attempted to establish, in its cross-examination of Respondent Johnston, that the cash commitments of respondents had been re-negotiated and, thus, respondents' commitments to deliver corn were not as claimed. The contracts allegedly modified were between respondents and one of their customers, Agro Company of Canada, Ltd. (Agro), and called for No. 3 corn. However, DE's contention was apparently abandoned on brief, and in its proposed findings it offered the following:

As of July 13, 1973, Indiana Grain had unshipped export corn sales of about 2.8 million bushels from Chicago for shipment by mid-August and owned only

150,000 bushels of corn grading No. 3 yellow or better in Chicago. Although Indiana Grain needed over 2 million bushels to meet its export commitments from Chicago, they did not express their demand for corn in the cash market until after July 20, 1973.

There was no finding proposed that these commitments were less than commercially firm.

The respondents filed with their initial brief a motion for judgment, or alternatively, to dismiss the complaint, based in part on DE's failure during the hearing to furnish them a copy of a letter written by Agro to DE which seemingly contradicted DE's position that the Agro contracts had been modified. (DE was subject to a procedural order requiring it to provide respondents with all evidence in its possession of an exculpatory nature. Respondents contended that the letter was exculpatory, and DE's failure to supply it was prejudicial to them.)

In response to that motion, DE did not reply directly to the issue raised, but rather counterattacked by renewing its allegations that "prior to July 20, 1973, Respondents had reached an agreement or understanding with Agro that export shipments would be delayed and/or lower quality corn could be substituted for contract grade corn, [and] that Respondents' need for corn was not as acute as they would like this court to believe."

Although a copy of the letter in question should have been furnished to the respondents, n7 DE's failure to do so did not constitute grounds, considered with other issues raised, for granting respondents' motion. The motion was, accordingly, denied, but respondents were given an opportunity to reply to the renewed allegations of DE. The matter has been reviewed in some detail, n8 and no evidence is found to support DE's assertions as to the existence of a general agreement to ignore the terms of the contracts with Agro. It appears that prior to July 20, one contract was partially modified to allow No. 5 corn to be substituted for No. 3, but this hardly supports DE's contention that a general agreement was reached to abandon the contractual terms. As the respondents show, the corn in question was being shipped to Europe by Agro, and contractual modifications would have affected those shipments. Doubtless there were efforts on all sides to be reasonable, but that does not entail the general abrogation of the agreements.

n7 The letter was marked for identification as respondents' Exhibit 63, but their offer of it into evidence was denied since it was not sworn to and was offered for the purpose of proving the truth of the matters it asserted.

n8 To support its position, DE refers to shipments made on a vessel named *Fifth Avenue,* from Chicago on or about June 29, 1973, which was partially loaded with No. 5 corn. This vessel was originally nominated to receive soybeans, but government controls intervened, reducing the amount of soybeans that could be loaded. IFB and Agro entered into a new contract for 106,000 bushels of No. 5 corn to fill the vessel. DE claims that instead, Agro should have demanded that No. 3 corn be supplied under a contract number 6002. However, the *Fifth Avenue* was destined for Glasgow, Scotland, and the contract 6002 was being shipped by Agro to Rotterdam, Holland.

DE also refers to shipments by a vessel, *Ondine,* loaded between July 9 and 12, 1973. Agro originally requested that about 270.000 bushels of No. 3 corn be loaded against contract 6002 on that vessel, but in fact only 72,400 bushels were loaded. Corn gluten feed pellets were loaded instead. The shipping dates stated for contract 6002 were July 1 to July 20. The remainder of the corn covered by this contract was loaded on or about August 8, 1973, with storage charges assessed on 196,000 bushels from July 21 through August 7, 1973. There is no basis for the contention that this contract was modified before July 20, or later.

DE argues that shipments under a contract number 5633, required to be shipped out of IFB's Locust Point Elevator at Baltimore, were delayed by agreement. When space became available on July 6, 1973, on a vessel named *Himmerland,* Agro and IFB entered into a new contract for sample grade corn rather than loading all of the No. 3 corn under contract 5633. However, it appears undisputed that respondents were entitled to 10 days' notice for loading at this port. Thus, the notice could only have been complied with by delaying the vessel, which sailed on July 11. On July 9, notice for loading was given, and instructions for loading were received by IFB on July 17 on another vessel, *Celerina.* On July 18, an agreement was reached to substitute No. 5 corn for No. 3 under contract 5633 insofar as the loading of *Celerina* was concerned. A similar substitution for the balance of the contract was made in September, along with a partial substitution on another contract, number 5776. The remainder of the applications to that contract were No. 3 corn.

Thus, on July 9, 1973, respondents' export corn commitments for shipment prior to August 31, 1973, were 2,868,800 bushels from Chicago and 5,656,245 bushels from Baltimore. On July 12, these commitments were 2,796,400 bushels and 5,287,845 bushels, respectively. Since these commitments were required to be met before the availability of a new crop, they are termed "old crop" commitments. Respondents held a long cash position, consisting of inventory, transit and country purchases, amounting to 6,215,000 bushels. However, a substantial portion of this corn was subgrade and not tenderable in satisfaction of export contracts, which required grade 3 or better. Dr. Heironymus computed the amount of sub-grade corn held by respondents as 4,826,000 bushels on July 9. That left only 1,389,000 bushels of corn to satisfy the stated commitments. Although these figures are estimates, their substantial accuracy is not challenged by DE. As indicated, DE asserts that on July 13, respondents owned only 150,000 bushels of corn graded No. 3 or better in Chicago. In the position statement developed by Dr. Heironymus, he subtracted the subgrade corn from "old crop" and added it to "new crop" on the theory that it could not be delivered in satisfaction of the old crop commitments, but could ultimately, through mixing, cleaning or other processing, be delivered against new crop commitments. (Appendix, Lines 4 and 16.)

On July 9, respondents had a July futures position of 1,010,000 bushels (Appendix, Line 14). With the subgrade corn considered as new crop, their overall old crop position, cash and futures, was short 4,646,000 bushels (Appendix, Line 16), while the new crop overall position was long 4,643,000 bushels. (Appendix, Line 30.) Short futures positions were held in the September, December and March contracts against new crop purchases.

On July 10, 1973, respondents entered two spread orders to buy a total of 4,100,000 bushels of July corn futures and to sell that amount of March, 1973, corn futures at a premium of 14 over the March contract. One such order for 1,100,000 bushels was filled. The other order was cancelled.

On July 11, respondents entered a spread order to purchase 2,490,000 bushels of July futures and sell the same amount of September futures at a premium of 14 cents, July over September. This order was filled. As a result of these orders, respondents' long position in the July contract was increased to 4,685,000 bushels on July 11, and their short position in deferred contracts was increased by the same amount. The effect of this was to move the hedge against a substantial portion of the sub-grade corn to deferred months, and replace it with a long futures position against old crop commitments. DE agrees that under CEA regulations, then governing, as well as under present Commission regulations, respondents' futures position was properly classified as a hedge. Reply Brief, Fn. 179 n9.

n9 The reference in Note 178 to the spread order executed on July 11 is mistaken. The testimony cited concerned spread orders entered later that would have offset the July 11 order that was executed. Koslowski, 563, 567.

It is concluded from the foregoing that respondents had an apparent commercial purpose for the corn taken on delivery. This militates against the claim that they took delivery for manipulative purposes. The disposition of the delivered corn is discussed following a consideration of certain orders, some of which did, and others would have, if executed, partially closed respondents' July futures position by offset instead of by delivery.

XI. Spread Orders and Hedging

On July 11, 12, and 17, respondents entered spread orders that would have offset 2,500,000 bushels of its long July position and the same amount of its short September position. These orders were placed away from the market at increasing spreads of July over September, and were not executed. The unexecuted spread orders of July 11 were entered after the order covering 2,490,000 bushels had been executed at a spread of 14. The later orders were entered at spreads of 22 to 26. On July 12, those orders were cancelled, and an order with a spread of 31 was entered. On July 17, that order was cancelled, and replaced by five orders at spreads of 33 to 37. DE contends that these orders were unrelated to respondents' hedging transactions, that they reflected an intent to manipulate the July 1973 corn futures contract, and refute the claim of respondents that they needed corn to meet cash commitments.

On February 10, 1974, Respondent Johnston was interviewed about the July 1973 corn futures contract by two Commission employees, Mr. John R. Mielke and Ms. Martha Shaw Kozlowski. Respondent Johnston was then questioned about, among other matters, the described spread orders. A report of the interview was prepared, based on notes taken during the interview and other documents, including the orders. Exhibit 54, but after prolonged controversy during the hearing and the submission of written briefs thereon, DE's request for its admission into evidence was denied. n10

n10 DE was required to serve on respondents all exhibits it intended to present at the hearing on or before March 15, 1976. DE served and filed exhibits in response to that order. Nevertheless, additional exhibits were received at the hearing upon a showing of reasonable grounds for their not having been produced in accordance with the prehearing order. The grounds offered for not having previously furnished Exhibit 54, were that the interviewers, who were appearing as witnesses at the hearing, were unable to recall from memory, even as refreshed by their notes and the interview report, what was stated on numerous subjects during the interview. Exhibit 54 was offered as "past recollection" recorded. Of course this rule merely *allows* a document into evidence in a court proceeding that might otherwise be excluded by the hearsay rule; it does not *require* the admission of documents for which there are other grounds for excluding. (Under the Federal Rules of Evidence such a document could only be read into the record, but not admitted as an exhibit, unless offered by an adverse party. Rule 803(5).) Counsel for DE did not indicate when he had discovered the loss of memory by his witnesses, and considering that admission of the document would place into the record statements of witnesses who would be unable to withstand cross-examination thereon, I determined that DE had not justified its failure to previously identify the document as an exhibit

Since the matter has been pursued on brief, the document has been examined and the arguments of the parties have been reconsidered. To avoid any contention that the result in this proceeding rests in any respect on that disputed evidentiary ruling, the prior ruling is reversed, and the interview report, DE Exhibit 54, along with the interviewers' notes which are marked as DE's Exhibits 55 and 58, are hereby received. n11 n11 DE has similarly pursued on brief, objections to a ruling on DE Exhibit 68. Although admission of that would not affect the outcome of this proceeding, the prior ruling excluding it is affirmed. I am convinced that the witness involved did not suffer from loss of memory; he chose not to affirm his prior statements.

As previously stated, the interview report refers to the spread orders entered by respondents on July 11, 12, and 17. One such reference is the following paragraph:

The orders entered by Indiana Grain on July 11 and 12, 1973, were spreading and not hedging transactions. Mr. Johnston stated, "We try to make a little extra money through these spreads." To do a good job in hedging it is important to place the hedge in the correct month, so Mr. Johnston moves the hedge back and forth against their cash position.

This is a somewhat puzzling paragraph since it is apparent that the dichotomy between "spreading" and "hedging" assumed in the first sentence has no general validity, and the view is attributed to Respondent Johnston in the last sentence that moving the hedge back and forth against a cash position (which is accomplished by spread orders) is doing a good job of hedging. The interview notes show that the first sentence was an interpretation, and probably a misinterpretation, of part of Respondent Johnston's answer to a question as to how the spread orders related to his hedging program. The complete question and answer, as recorded in Mr. Mielke's notes (RE Ex. 58) is as follows:

Question: How do all of the orders just discussed which were entered on July 11 and 12 relate to your hedging program?

Answer: They don't. We try to make a little extra money through these spreads. We move our hedges back and forth. To do a good job in hedging you have to be in the correct month, so I move hedges back and forth against the cash; I never exceed the cash position, however. Profits in futures transactions can be used to cushion our cash transactions if we have to pay more to get the cash grain.

Although the apparent assertion that the spread orders were not "related" to respondents' hedging program stands in complete contradiction to the remainder of the answer, DE predicated a good portion of its case on the claim that the spread orders were unrelated to hedging. When Respondent Johnston refused to affirm at the hearing that he had told the interviewers that the spread orders were unrelated to respondents' hedging program, DE sought to impeach him based on "his" prior inconsistent statement.

On brief, the parties have offered divergent concepts of hedging, but their respective positions now differ from that which would have been expected from the foregoing.

Respondents argue that "[it] is elementary that the purpose of hedging is not to make a profit." They quote Baer and Saxon in *Commodity Exchanges and Futures Trading* (1949), at 203-04, to the effect that:

Hedging is not used to make a profit, either speculative or otherwise, but to insure one already existing or to limit a loss already threatened. . . .

* * * * Its object is not to return a speculative profit, for the reason that any profit derived on the futures merely equalizes or offsets a loss which has been incurred on a transaction or market position in the physical market or vice versa. * * *

They also quote from the textbook of Dr. Hieronymus, *Economics of Futures Trading,* where he states that "the hedger is concerned about basis rather than price . . . price is of no concern to him," and further where he declares that hedgers are "nulls in the market with regard to price. They take no net positions and so have no effect on prices." Respondents contend, therefore, that as hedgers, they cannot be found to have manipulated futures prices.

DE argues in its reply brief that the position of respondents is not valid and the precepts upon which it is based are false. They also quote from Dr. Hieronymus' book, including a passage where he explicitly refutes the views of Baer and Saxon relied on by respondents, and states that hedgers "do not hedge to avoid risk but, rather, to make a profit" and again where he states that "[the] essence of hedging is speculation in basis."

DE quotes other writers n12 to the same effect, including Hoffman who wrote that "the interest of the hedger is centered entirely in the relative changes occurring between cash and futures prices" and Holbrook Working who stated that hedging is undertaken "in the expectation of a favorable change in the relation between spot and futures prices."

n12 Working. *Futures Trading and Hedging.* American Economic Review, p. 326 (June 1953): Hoffman, *Futures Trading Upon Organized Commodity Markets,* pp. 418-419 (1932); Paul, *"Treatment of Hedging in Commodity Market Regulation."* at 5 (U.S.D.A. Tech. Bul. No. 1538 (1976)).

It seems fairly clear that hedging in practice does not, as asserted by Baer and Saxon, consist of establishing and maintaining a static position analogous to insurance, but rather conforms to the trading strategy described by other authorities, including Dr. Hieronymus, quoted by DE. One writer summarizes the latter concept as follows: n13

While hedging does provide an opportunity to share risks with speculators or to fix processing margins, it is used by grain holders primarily to earn a trading profit. According to Holbrook Working, hedging is a form of arbitrage which is undertaken most commonly in expectation of a favorable change in the relation between cash and futures prices. The fact that risks are less with hedging than without is often a secondary consideration. T. A. Hieronymus defines hedging as speculating in cash-futures relationships.

n13 Hugh J. McDonald, *Understanding and Using the Commodity Futures Market,* at 13 and 14. Cooperative Extension Service, N.D. State University.

Inherent in such hedging activity is the shifting of futures positions from one contract to another, not only in relation to the "basis" or cash-futures price relationships, but in relation to the price spread between contracts. Such shifting of hedges is accomplished by spread orders.

While DE has shown that the description of hedging set forth in respondents' brief by their counsel is inconsistent with the opinions of various authorities, including respondents' expert witness (whose views may not be internally consistent), and has refuted respondents' argument that a hedger is incapable of affecting futures prices, it has thereby largely removed any grounds for its contention that the scaled-up spread orders entered between July 11 and 19 were unrelated to hedging and therefore reflect an intent and effort to manipulate the market; spread orders are entirely consistent with the speculating-in-basis concept of hedging now supported by DE.

These orders reflect a constantly changing appraisal of the advantages to a hedger of holding a July position as opposed to one in the September contract, and a willingness to change positions at varying spreads where cash and futures prices were rising. On the one hand the July contract was a possible source of cash deliveries, but on the other hand, that contract would have been most susceptible to a drastic decline in price if an embargo on corn exports, considered possible in light of an earlier embargo on soybeans, had been imposed.

DE seems to have the belief that the tendency and purpose of such orders were necessarily to move the market in the direction of the prices stated in the orders. However, the testimony is that those orders were held at the order desk, unstamped, and not sent to the pit. If the market had approached the prices stated, the orders would have been stamped and sent to the pit. When the first set of spread orders was entered, the open interest in the July contract was 49,650,000 bushels. In total, these orders covered 2,500,000 bushels, or approximately five per cent of the open interest on that day. The percentage increased to about 15 per cent of the open interest on July 19, but there is no reason to suppose the effect or purpose of the orders changed with the decline in the open interest. There appears to be nothing unusual in having orders in place in the event of sudden changes in the July-September spread, which could have occurred in one day.

DE quotes from the administrative decision in *Volkart,* 20 Agric. Dec. 305, 336 (20 A.D. 305, 336) (1961), *rev'd on other grounds, Volkart Bros. Inc.* v. *Freeman,* 311 F.2d 52 (5th Cir. 1962), where it is stated: "offers of sales of futures ahead of market prices and by means of a scale-up in prices do not indicate use of long contracts for procurement purposes." It is far from clear that the "offers" referred to there were unstamped orders as here. The opinion indicates that the trade was aware on the last day of trading of the size of the position held by the Volkart respondents. *Id.* at 318. It is not clear from the opinion but it is likely that if the position was known before the last trading day, the "offers" were also known to the trade. More significantly, those orders, unlike those here in issue, would have closed the alleged hedge with no change in a cash position, rather than shift the hedge to another contract. The implication in the administrative decision is that if those respondents had stood for delivery their contention would have been credible. This is not DE's position here.

The investigators testified that Respondent Johnston stated, during the interview, in reference to these spread orders, that "he [Johnston] got braver and braver and upped the ante." Respondent Johnston testified that those words were not a part of his vocabulary. Though repeatedly stressed by DE, it is not entirely clear what deduction is proposed to be drawn from the statement, assuming words of that import were used. It is clear that respondent Johnston became increasingly bullish on the July contract; this is stated in the interview. But in no event can such a statement be deemed that of a trader in control of the market, and set on a predetermined course. Rather it reflects the caution of one reacting to outside events, including the market.

In summary, it cannot be found that the entry of spread orders ahead of the market on July 11, 12 and 17 had any effect on the market, or evinced an intent to manipulate the market.

XII. Final Trades on July 20th

As discussed, those earlier spread orders were not filled. The orders entered on July 17 were outstanding on July 19, when the CBOT removed the daily price limits. Either on July 19, or on July 20 before the market opened, those orders were cancelled, and respondents entered a spread order to sell 2,250,000 bushels of corn in the July contract, and to buy 2,250,000 bushels in the September contract. Before the open of trading on July 20, that order was cancelled, and replaced by four spread orders in the same contracts covering 2,250,000 bushels of corn at spreads ranging from 44 1/2 to 55 1/2, July over September. These spreads were subsequently reduced by about 2 1/2. At about 9:59 a.m. respondents also entered an order to sell 150,000 bushels of July corn at 300. All of these orders were filled by 11:33 a.m.

Thereafter, Respondent Johnston was called by his floor trader and informed that the market was having trouble liquidating, that there was a shortage of sell orders in the pit, and that the price was about 370. It is not clear whether this price was a bid or sales price. Respondent Johnston immediately entered four orders for 100,000 bushels each and one for 90,000 bushels, at successive prices of 370, 375, 380, 385 and 390. These orders were filled at prices of 370, 380, 385 and 390. The latter was a partial fill, 85,000 bushels of the 90,000 bushel order. DE places a great deal of emphasis on these orders as evincing a manipulative intent. The market had reached 370 when they were entered, but had not reached the higher prices. The argument is that these orders caused the higher prices. Respondent Johnston stated that they were entered to help the market liquidate, but that he did not care whether they were filled. DE suggests that this logic is inexplicable. But actions are often taken with conflicting motives. The decision to enter these orders was made in a matter of seconds upon receipt of a telephone call. That Respondent Johnston wanted to do something toward alleviating the difficulty of the market, without jeopardizing his firm's interest, is entirely believable. At that time, he could not be sure if, or at what price, he could timely obtain the cash corn represented by the futures position. The liquidating prices on the futures market were not reassuring on this point.

Thirty-five fills at prices of 370 or higher occurred in this market. Nine of these fills related to these five orders of respondents. The price at the time they were entered was already far above what DE claims was an artificial level. The culpability of placing the five orders hinges on the legitimacy of respondents' taking delivery, for if they had stood for delivery, the market, concededly, would have gone higher. Therefore, these orders, having a reverse effect on the market from taking delivery, cannot be deemed to be a greater offense. Shorts made the decision to pay these prices to respondents and to other longs rather than attempting to obtain corn for delivery. In retrospect, that appears to have been a miscalculation, but it is not proof of a manipulative intent of respondents at the time.

Respondents argue that if they had primarily been motivated to seek a profit on their futures position, they would have liquidated more of their position instead of taking delivery on the bulk of it. DE counters this with an argumentative analogy that by respondents' reasoning a bank robber holding up only one teller in a bank would not have intended to rob the bank because other tellers were not robbed. This analogy casts more heat than light. When respondents, faced with an apparent opportunity to highly profitably liquidate their position, liquidated only one fifth of the position, they demonstrated a commercial need for the corn.

As stated, respondents took delivery of 2,010,000 bushels of corn on the July, 1973 corn futures contract. The settlement price of 380 was paid for this corn. There was a compensating credit in their futures account amounting to the difference between the purchase price of the position and the settlement price. Thus, the only profit derived by respondents from the artificial prices on July 20 accrued from the five orders entered in the closing minutes of the contract. Although the Commission found in *Hohenberg* that a profit motive was not an essential element of manipulation, it did recognize that possible profit was a factor to be considered. It cannot be found that the motive of respondents' trading here was to reap a profit from artificial futures prices.

DE takes the position that respondents intended from early July to liquidate a portion of their position after the prices became artificial. There is no evidence to support this, and it is contradicted by the credible testimony of Mr. Catron and Respondent Johnston, who agreed in their description of the circumstances in which these orders were entered. For the reasons stated, it is found that they did not evince a manipulative intent.

XIII. Disposition of Deliveries

The cited law journal note points out that the manner of disposing of a commodity received on delivery is a significant factor in determining whether there was a manipulative intent present in standing for delivery. *Id.* at 185. In satisfaction of their short position, respondents received 1,470,000 bushels of corn stored in Continental elevators, 90,000 bushels stored in Cargill's elevator, and 425,000 bushels stored in the Calumet elevator. They received delivery of 25,000 bushels on track. Respondents traded the Cargill corn and

15,000 bushels of the Calumet corn for 85,000 bushels in the Continental elevator, and 20,000 bushels on track. All but 198,706 bushels of the corn in the Continental elevators was used to fill existing contracts. The 198,706 bushels were sold to an existing buyer to complete the loading of a vessel carrying corn sold under existing contracts. The 25,000 bushels received on track and the 20,000 bushels on track taken in the trade were moved into their Gateway elevator.

All but 15,000 bushels of the corn received from the Calumet elevator was sold under contracts made after July 20. The testimony of Respondent Johnston, which is uncontradicted, is that the Calumet elevator was not a "good water house," *i.e.,* could not accommodate vessels having a draw of over 20 feet, and respondents' contracts required the corn to be accessible by larger vessels. Because of the dry condition of the corn, it would have lost grade if it had been transferred to another elevator. Thus, Respondents' disposition of the corn received on delivery here was entirely consistent with the commercial purposes for which they claim it was taken.

XIV. Statement of Intent

DE relies on various statements of Respondent Johnston which allegedly reflect an intent to manipulate the July, 1973 corn futures market. For instance, early in July, he told Mr. Catron, who was Executive Vice President of Illinois Cooperative Futures Company, and received the trading orders of respondents on the CBOT floor, and Mr. Clayton Johnson, a CBOT member, that he planned to take delivery of corn to meet his sales commitments. During the interview with the CEA investigators, Respondent Johnston made statements that he had intended to take deliveries for that purpose. He also stated in that interview that if he could have bought cash corn economically he would have done so. Thus, although his intention to take delivery was not quite as fixed as DE depicts it, clearly his intention was formed during July that unless conditions changed, delivery would be taken.

DE's argument on these statements rests on its premise that it is generally reprehensible to take delivery on a futures contract. The premise is too broad; whether taking delivery is proper depends on the surrounding circumstances, which have been discussed. The intention to take delivery does not aggravate those circumstances.

DE also refers to statements made to Mr. Catron requesting him to maintain a record of all of his orders because Respondent Johnston expected the CBOT to investigate his trading in the July corn futures contract. It is not self-evident that an individual, conscious of committing wrongful acts, would request an independent party to preserve a written record of those acts. The request is just as consistent with the belief that a complete record of all of the trading activity would reveal that no impropriety had been committed.

DE claims that the following statement, which is attributed to Respondent Johnston in the interview report, reveals a foreknowledge of the results of his trading: "He [Respondent Johnston] said that at $ 3.80 per bushel they would not take delivery of any more corn than the bare minimum because a minute or two later corn would be worth a dollar a bushel less." There is nothing in this statement to indicate that Respondent Johnston foresaw that the price would reach 380 before it occurred. That would have required prescience, indeed. Rather, the statement reveals that he was not certain at what price corn would actually be available. In the same interview, Respondent Johnston stated that when, on July 19, the price limits were raised in the July contract for the following day, he "thought the July/September price spread might increase by 10 to 20 cents per bushel over the spread on July 19." That spread on July 19 was about 23; July was 259 1/2; September was 236 7/8. Since the price limits were not removed on the September contract, it could not have exceeded 246 7/8 on July 20. Therefore, a 20-cent increase in the spread could not have resulted in a price of over 289 7/8 (246 7/8 plus 43) for the July contract. This indicates that the price *expected* by Respondent Johnston was well within the range of non-artificial or economic prices even as conceived by DE.

XV. CEA Notices

DE proffered as evidence two exhibits consisting of notices sent to respondents concerning the March and May, 1973 soybean contracts. Upon objection, the exhibits were not accepted into evidence because they referred to markets of remote relevance to this proceeding, and tended to raise inferences about respondents' trading that could have been refuted only by an examination of their trading in those markets. DE argues on brief that the exhibits should be received for the limited purpose of showing that respondents were aware that the CEA regarded large long positions in an expiring contract as a possible device of manipulation.

The statements in the exhibits referred to large long positions held by IFB in previous soybean contracts, and stated that the CEA was concerned about those positions, and that if any indication of artificial prices were found IFB would be investigated to see if there was any evidence of price manipulation.

Upon reconsideration of the ruling made during the hearing, these exhibits will be accepted for the purpose requested. But in considering those exhibits, it must be noted that no similar notice was given here. The two notices, which conveyed the knowledge that the CEA regarded large long positions in an expiring contract as a possible device of market manipulation, do not demonstrate that the CEA viewed respondents' position here as potentially manipulative. In fact, the absence of a notice here when notices had been sent on previous occasions, provided respondents with some grounds for thinking that the CEA did not view their long position as unduly large in the July, 1973 corn contract.

XVI. Final Summary

In final summary, as the foregoing discussion has shown, prices in the CBOT 1973 corn futures contract reached artificial levels on July 20, 1973. DE's claim that the standing for delivery by respondents was the legal cause of these artificial prices rests largely on DE's further claim that the bulk of the reportable deliverable supply was unavailable for delivery on the futures market. The evidence offered to support the latter contention consists mainly of data on the heavy corn export movements at the time. There were, however, cash transfers of ownership of corn throughout the period and futures deliveries were, in fact, made. Indeed, there were more deliveries made at prices under 300, which DE concedes were non-artificial prices, than DE claims were available for delivery. Thus, heavy export movements of corn are not proof that corn was unavailable for delivery on the futures market. At bottom, DE's claim is that the futures market cannot work where supply and demand are unusual. This cannot be concluded even on the basis of the events in issue here.

DE argues that the entry by respondents of scaled-up spread orders during July 1973 reflects an intention to manipulate the market. However, as shown, the entry of these orders was entirely consistent with the theory of hedging now embraced by DE. DE also lays heavy emphasis on the liquidation orders entered by respondents in the last twenty minutes of trading. The circumstances in which these orders were entered belie DE's contention that they reflected an intent, formed earlier in July, to manipulate the market.

The remainder of DE's claims are clearly makeweight, and without merit. Accordingly, the following conclusions are entered.

Conclusions of Fact and Law

1. The prices in the CBOT July 1973 corn futures contract reached artificial levels on July 20, 1973. It is not possible to state precisely at what price this occurred.

2. The trading of respondents was not a culpable or legal cause of the prices that were reached in that contract on July 20.

3. Respondents did not attempt or intend to cause the prices that were reached, and could not reasonably have foreseen that such prices would be reached because of their activity.

Order

It is ordered that the complaint in this proceeding be, and it is hereby, dismissed.

APPENDIX

EXHIBIT A-F-7 POSITION RECORD OF INDIANA GRAIN DURING JULY AND AUGUST, 1973
DIVIDED BETWEEN OLD AND NEW CROP, 000 bushels

	Line	June 29	July 2	July 3	July 5	July 6	July 9
Old Crop							
Cash							
Long							
Inv. & Transit	1	3,756	3,769	3,769	3,893	3,970	4,082
Country Purchases	2	2,471	2,286	2,352	2,226	2,232	2,133
Total	3	6,227	6,055	6,121	6,119	6,202	6,215
Subgrade	4	4,714	4,629	4,662	4,706	4,778	4,826
Net	5	1,513	1,426	1,459	1,413	1,424	1,389
Short							
Locust Pt. Exp.	6	2,787	2,787	2,787	2,787	2,787	2,787
Gateway Exp.	7	3,231	3,231	3,231	3,231	3,231	2,869
Other	8	1,633	1,637	1,638	1,656	1,607	1,931
Total	9	7,651	7,655	7,656	7,674	7,625	7,587
Cash Position	10	S6,138	S6,229	S6,197	S6,261	S6,201	S6,198
Unpriced Purch. (gives)	11	59	59	76	76	76	76
Unpriced Sales (takes)	12	857	857	796	796	615	618
Net Cash Position	13	S5,340	S5,431	S5,477	S5,541	S5,662	S5,656
Futures							
July	14	L 735	L 795	L 795	L 830	L1,010	L1,010
Net Position	15	S4,605	S4,636	S4,682	S4,711	S4,652	S4,646
New Crop							
Cash							
Inv. (subgrade)	16	4,714	4,629	4,662	4,706	4,778	4,826
Purchases	17	5,355	5,366	5,389	5,402	5,463	5,503
Total	18	10,069	9,995	10,051	10,108	10,241	10,329
Sales	19	7,947	7,947	7,947	7,947	7,947	7,947
Cash Position	20	L2,122	L2,048	L2,104	L2,161	L2,294	L2,382
Unpriced Purch. (gives)	21	10	10	10	10	10	0
Unpriced Sales (takes)	22	6,971	6,971	6,971	6,971	6,971	6,971
Net Cash Position	23	L9,083	L9,009	L9,065	L9,122	L9,255	L9,353
Futures							
Sept	24	S1,560	S1,575	S1,610	S1,610	S 115	S 130
Dec	25	S3,845	S3,735	S3,745	S3,755	S3,455	S3,280
March	26	L 960	L 960	L 960	L 960	S1,035	S1300
May	27						

	Line	June 29	July 2	July 3	July 5	July 6	July 9
July	28						
Net	29	S4,445	S4,350	S4,395	S4,405	S4,605	S4,710
Net Position	30	L4,638	L4,659	L4,670	L4,717	L4,650	L4,643
Net Company Position	31	L 33	L 23	S 12	L 6	S 2	S 3

>100> >101>

Line	July 10	July 11	July 12	July 13	July 16
1	4,137	4,261	4,317	3,902	4,024
2	2,085	1,966	1,891	1,842	1,732
3	6,222	6,227	6,208	5,744	5,756
4	4,849	4,897	4,906	4,507	4,557
5	1,373	1,330	1,302	1,237	1,199
6	2,787	2,491	2,491	2,491	2,491
7	2,869	2,869	2,797	2,797	2,797
8	2,320	2,568	2,595	2,167	2,142
9	7,976	7,928	7,883	7,455	7,430
10	S6,603	S6,598	S6,581	S6,218	S6,231
11	63	53	44	3	3
12	555	555	555	345	345
13	S6,111	S6,096	S6,070	S5,876	S5,889
14	L2,160	L4,685	L4,680	L4,910	L4,910
15	S3,951	S1,411	S1,390	S 966	S 979
16	4,849	4,892	4,906	4,507	4,557
17	5,510	5,545	5,520	5,580	5,691
18	10,359	10,437	10,476	10,087	10,248
19	7,947	7,947	8,947	8,947	8,947
20	L2,412	L2,[ILLEGIBLE TEXT]90	L1,529	L1,140	L1,301
21	0	1	1	0	0
22	7,371	7,371	8,371	6,626	6,626
23	L9,783	L9,860	L9,899	L7,766	L7,927
24	S 245	S2,745	S2,875	S2,935	S3,110
25	S2,485	S2,485	S2,495	S1,665	S1,720
26	S3,195	S3,195	S3,195	S2,320	S2,320
27					
28					
29	S5,925	S8,425	S8,565	S6,920	S7,150
30	L3,858	L1,435	L1,334	L 846	L 777
31	S 93	L 24	S 56	S 120	S 202

Line	July 17	July 18	July 19
1	3,762	3,933	3,983
2	1,604	1,434	1,345
3	5,366	5,367	5,328
4	4,256	4,314	4,313
5	1,110	1,053	1,015
6	2,491	2,491	2,491
7	2,797	2,797	2,797
8	1,730	1,725	1,657
9	7,018	7,013	6,944

Line	July 10	July 11	July 12	July 13	July 16
10	S5,908	S5,960	S5,929		
11	3	3	3		
12	285	120	0		
13	S5,626	S5,843	S5,932		
14	L5,040	L5,205	L4,895		
15	S 586	S 638	S1,037		
16	4,256	4,314	4,313		
17	5,713	5,770	5,819		
18	9,969	10,084	10,132		
19	9,947	9,947	9,947		
20	L 22	L 137	L 185		
21	0	0	18		
22	6,686	6,731	6,821		
23	[ILLEGIBLE TEXT],708	L6,868	L6,988		
24	S3,160	S3,225	S2,865		
25	S 720	S 730	S 730		
26	S2,320	S2,275	S2,275		
27					
28					
29	S6,200	S6,230	S5,870		
30	L 508	L 638	L1,118		
31	S 78	0	L 81		

Line	July 20	July 23	July 24	July 25	July 26	July 27	July 30	July 31
1	4,070	4,193	3,378	4,496	4,584	4,614	5,120	5,157
2	1,263	1,740	2,588	1,512	1,463	1,976	1,767	1,463
3	5,333	5,933	5,966	6,008	6,047	6,590	6,887	6,620
4	4,345	4,714	4,438	4,862	4,916	5,520	5,562	4,879
5	988	1,219	1,528	1,146	1,131	1,370	1,325	1,741
6	2,491	2,031	2,031	2,031	2,031	2,031	2,031	2,031
7	2,797	2,797	2,747	2,797	2,797	2,797	3,012	3,012
8	1,629	2,129	1,178	1,190	1,137	1,226	1,215	825
9	6,911	6,957	6,006	6,018	5,965	6,054	6,258	5,868
10	S5,923	S5,738	S4,478	S4,872	S4,834	S4,684	S4,933	S4,127
11	2	2	2	2	2	2	2	2
12	0	0	0	0	0	0	0	0
13	S5,925	S5,740	S4,480	S4,874	S4,836	S4,686	S4,935	S4,125
14	L2,010	L1,990	L 940	L 940	L 940	L 470	L 195	0
15	S3,915	S3,750	S3,540	S3,934	S3,896	S4,216	S4,740	S4,125
16	4,345	4,714	4,438	4,862	4,916	5,520	5,562	4,879
17	6,032	6,371	6,658	6,785	7,360	7,485	7,659	7,957
18	10,377	11,085	11,096	11,674	12,276	12,705	13,221	12,836
19	9,947	9,947	9,947	9,947	9,948	9,948	10,948	10,948
20	L 430	L1,138	L1,149	L1,727	L2,328	L2,757	L2,273	L1,888
21	18	221	121	121	121	121	121	121
22	6,821	6,921	6,921	6,921	6,921	7,041	8,256	8,360
23	L7,233	L7,838	L7,949	L8,527	L9,128	L9,677	L10,408	L10,127
24	S 650	S1,210	S1,410	S2,495	S3,695	S3,695	S2,320	S2,275

Line	July 20	July 23	July 24	July 25	July 26	July 27	July 30	July 31
25	S1,120	S2,130	S2,255	S1,445	S1,940	S1,940	S2,185	S2,505
26	S2,275	S2,275	S1,935	S1,935	S1,725	S1,325	S1,325	S1,325
27								
28								
29	S4,045	S5,615	S5,600	S5,875	S7,360	S6,960	S5,830	S6,105
30	L3,188	L2,223	L2,349	L2,652	L1,768	S2,717	L4,578	L4,022
31	S 727	L1,527	S1,191	S1,312	S2,128	S1,499	S 162	S 103

Line	Aug. 1	Aug. 2	Aug. 3	Aug. 6	Aug. 7	Aug. 8	Aug. 9	Aug. 10	Aug. 13
1	5,614	5,614	5,578	5,595	4,756	4,844	4,848	4,837	5,007
2	1,337	1,354	1,323	1,303	1,381	1,235	1,222	1,244	1,093
3	6,950	6,968	6,901	6,898	6,137	6,079	6,070	6,081	6,100
4	5,774	5,785	5,735	5,740	5,026	5,027	5,023	5,025	5,096
5	1,176	1,183	1,166	1,158	1,111	1,052	1,047	1,056	1,004
6	1,031	1,031	1,031	1,031	1,031	1,031	1,031	1,031	1,031
7	3,207	3,207	3,207	3,406	3,406	3,121	3,121	3,121	3,121
8	1,786	1,789	1,759	1,731	829	1,005	929	893	902
9	6,024	6,027	5,997	6,168	5,266	5,157	5,081	5,045	5,054
10	S4,848	S4,844	S4,831	S5,010	S4,155	S4,105	S4,034	S3,989	S4,050
11	1	1	1	1	1	0	0	0	0
12	0	0	0	0	0	0	0	0	0
13	S4,849	S4,845	S4,832	S5,011	S4,156	S4,105	S4,034	S3,989	S4,050
14	0	0	0	0	0	0	0	0	0
15	S4,849	S4,845	S4,832	S5,011	S4,156	S4,105	S4,034	S3,989	S4,050
16	5,774	5,785	5,735	5,740	5,026	5,027	5,023	5,025	5,096
17	8,192	8,382	8,492	8,851	9,184	9,497	9,730	10,046	10,151
18	13,966	14,167	14,227	14,591	14,210	14,524	14,753	15,071	15,247
19	11,948	11,948	11,948	11,948	11,948	15,948	17,573	17,573	17,573
20	L2,018	L2,219	L2,279	L2,643	L2,262	S1,424	S2,820	S2,502	S2,326
21	121	121	121	121	263	263	293	293	198
22	9,360	8,359	8,356	8,356	8,356	12,048	12,508	12,518	12,518
23	L11,257	L10,457	L10,514	L10,878	L10,355	L10,361	L9,395	L9,723	L9,994
24	S2,420	S2,370	S2,370	S2,160	S2,260	S2,165	S3,105	S3,955	S4,055
25	S2,485	S2,005	S1,920	S2,855	S3,395	S3,695	S1,375	S1,375	S1,375
26	S1,325	S1,325	S1,325	S1,325	S1,325	S1,325	S1,325	S 475	S 475
27							L 820	L 820	L 820
28									
29	S6,590	S5,700	S5,615	S6,340	S6,980	S7,185	S4,985	S4,985	S5,085
30	L4,667	L4,757	L4,899	L4,538	L3,375	L3,165	L4,410	L4,738	L4,909
31	S 181	S 88	L 67	S 473	S 781	S 929	L 376	L 749	L 859

Line	Aug. 14	Aug. 15	Aug. 16	Aug. 17	Aug. 20	Aug. 21	Aug. 22	Aug. 23
1	4,944	4,963	5,064	5,150	4,980	5,001	5,035	4,545
2	849	961	847	902	1,098	1,073	1,046	1,038
3	5,793	5,924	5,911	6,052	6,078	6,074	6,081	5,583
4	4,909	4,986	5,016	5,123	5,075	5,080	4,935	4,652

Line	Aug. 14	Aug. 15	Aug. 16	Aug. 17	Aug. 20	Aug. 21	Aug. 22	Aug. 23
5	884	938	895	929	1,003	994	1,146	931
6	1,031	1,031	1,031	1,031	1,031	1,031	1,031	1,031
7	2,906	2,906	2,906	2,906	2,376	2,376	2,376	1,790
8	798	757	703	688	987	1,247	1,228	1,327
9	4,735	4,694	4,640	4,625	4,394	4,654	4,635	4,148
10	S3,851	S3,756	S3,745	S3,696	S3,391	S3,660	S3,489	S3,217
11	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0
13	S3,851	S3,756	S3,745	S3,696	S3,391	S3,660	S3,489	83,217
14	0	0	0	0	0	0	0	0
15	S3,851	S3,756	S3,745	S3,696	S3,391	S3,660	S3,489	S3,217
16	4,909	4,986	5,016	5,123	5,075	5,080	4,935	4,652
17	10,235	10,336	10,542	10,694	10,845	10,957	11,105	11,190
18	15,144	15,322	15,557	15,817	15,920	16,037	16,040	15,842
19	17,573	17,573	17,573	17,573	17,573	17,573	17,573	17,573
20	S2,429	S2,251	S2,016	S1,756	S1,653	S1,536	S1,533	S1,731
21	198	198	198	198	198	198	200	200
22	12,518	11,623	11,623	11,548	11,548	9,873	9,873	9,890
23	L9,891	L9,174	L9,409	L9,594	L9,697	L8,139	L8,140	L7,959
24	S4,055	S4,055	S4,055	S4,030	S4,030	S2,620	S2,170	S2,170
25	S2,525	S1,710	S1,710	S2,420	S2,630	S1,940	S2,570	S2,570
26	S 475	S 475	S 475	S 475	S 475	S1,325	S1,325	81,375
27	L 820	L 820	L 820	L 820	L 820	L1,445	L1,445	L1,445
28	L 10	L 10	L 10	L 10	L 10	L 10	L 10	L 10
29	S6,225	S5,410	S5,410	S6,095	S6,305	S4,480	S4,610	S4,660
30	L3,666	L3,764	L3,999	L3,499	L3,392	L3,658	L3,530	L3,299
31	S 185	L 8	L 254	8 197	L 1	S 1	L 41	L 82

Line	Aug. 24	Aug. 27	Aug. 28	Aug. 29	Aug. 30	Aug. 31
1	4,582	4,620	4,403	4,445	4,445	3,809
2	942	917	879	833	838	819
3	5,524	5,537	5,282	5,278	5,283	4,628
4	4,633	4,653	4,438	4,451	4,454	3,924
5	891	884	844	827	829	704
6	1,031	1,031	1,031	1,031	1,031	1,031
7	1,790	1,518	1,518	1,518	1,050	1,050
8	1,258	1,533	1,098	1,081	1,533	790
9	4,079	4,082	3,647	3,630	3,614	2,871
10	S3,188	S3,198	S2,803	S2,803	S2,785	S2,167
11	0	0	0	0	0	0
12	0	0	0	0	0	0
13	S3,188	S3,198	S2,803	S2,803	S2,785	S2,167
14	0	0	0	0	0	0
15	S3,188	S3,198	S2,803	S2,803	S2,785	S2,167
16	4,633	4,653	4,438	4,451	4,454	3,924
17	11,267	11,315	11,384	11,832	11,852	11,862

Line	Aug. 24	Aug. 27	Aug. 28	Aug. 29	Aug. 30	Aug. 31
18	15,900	15,968	15,822	16,283	16,306	15,786
19	18,573	18,573	18,753	18,753	18,753	18,570
20	S2,673	S2,605	S2,931	S2,470	S2,447	S2,784
21	200	200	200	600	600	600
22	9,640	9,550	9,550	9,550	9,550	9,550
23	L6,767	L6,745	L6,419	L6,480	L6,503	L6,166
24	S1,170	S1,145	S1,150	S1,180	S 710	S 710
25	S2,675	S2,640	S2,640	S2,910	S2,345	S1,605
26	S1,375	S1,375	S1,375	S1,425	S2,475	S2,885
27	L1,445	L1,440	L1,365	L1,365	L1,365	L1,365
28	L 10	S 165	S 165	S 165	S 165	S 165
29	S3,675	S3,885	S3,965	S4,320	S4,330	S4,000
30	L3,092	L2,860	L2,454	L2,160	L2,173	L2,166
31	S 96	S 338	S 349	S 643	S 612	S 1

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