

III.

The Commission finds the following:

A. SUMMARY

During the period from May 21 through June 23, 2004 (the “Relevant Period”), DFA, Hanman and Bos attempted to manipulate the price of the Chicago Mercantile Exchange (“CME”) June, July, and August 2004 Class III milk futures contracts. DFA, Hanman and Bos attempted to manipulate Class III milk futures contract prices through purchases of cheddar cheese blocks on the CME Cheese Spot Call market (the “CME Cheese Spot Call”) in an effort to minimize potential losses from DFA’s speculative long Class III milk futures positions while liquidating such positions. In addition, on one or more days in 2004, DFA accumulated speculative contracts in Class III milk futures in excess of the CME position limit.

B. RESPONDENT

Dairy Farmers of America, Inc. is a Capper-Volstead dairy marketing cooperative that serves, and is owned by, more than 18,000 dairy farmers in 48 states. DFA markets the milk produced by its members, manufactures dairy products, food components and ingredients, and formulates and packages shelf-stable dairy products. During the Relevant Period, DFA processed milk into dairy products, including cheddar cheese. DFA’s principal place of business is located in Kansas City, Missouri.

Gary Hanman was President and Chief Executive Officer of DFA from January 1, 1998 until December 31, 2005. He is a resident of Platte City, Missouri.

Gerald Bos was Chief Financial Officer of DFA from January 1, 1998 until December 31, 2005. He is a resident of Weatherby Lake, Missouri.

C. FACTS

Trading in Class III milk futures contracts is conducted on the CME. The unit of trading is 200,000 pounds, or 2,000 hundredweight of milk. The Class III milk futures contract is cash-settled against the United States Department of Agriculture (“USDA”) Class III milk price. The Class III milk price is calculated by reference to, among other factors, the price of cheddar cheese. Trading in the spot-month futures contract terminates on the business day immediately preceding the day on which the USDA announces the Class III milk price for that contract month. CME Rule 5202.E provides that “no person shall own or control more than 1,500 contracts long or short in any contract month,” and Rule 5202.F requires that positions in accounts directly or indirectly owned or controlled by a person or persons shall be aggregated.

Cheddar cheese is bought and sold in the wholesale market. In addition, the CME Cheese Spot Call auction market conducts trading in both cheddar cheese 40-pound blocks and 500-pound barrels during 15-minute weekday sessions. CME members trade cheddar cheese blocks by posting bids and offers on a board. The final transaction price or the final unfilled bid or offer, if different from the last transaction price, during the trading session determines the

block and barrel settlement prices for the day. The volume of cheddar cheese traded on the CME Cheese Spot Call comprises less than two percent of the annual U.S. supply of cheddar cheese.

The U.S. cheese industry traditionally references the CME Cheese Spot Call price when negotiating wholesale forward natural cheese contracts. The USDA National Agriculture Statistics Service (“NASS”) conducts weekly surveys of major manufacturers to determine the prices of wholesale spot market cheese sales. This NASS cheese survey price is then used directly as a component in the USDA formula in order to calculate the announced USDA Class III fluid milk price. In turn, the Class III milk futures contract cash settles to this USDA Class III fluid milk price. The CME Cheese Spot Call prices, thus, play a significant role in establishing the Class III fluid milk and Class III milk futures prices, as well as the price of wholesale cheese sales.

As a dairy cooperative, DFA markets the milk produced by its members. During the Relevant Period, DFA’s business operations included processing milk into cheddar cheese, which it sold to wholesale customers. In addition, DFA purchased cheddar cheese in the wholesale cash market and on the CME Cheese Spot Call.

In early 2004, DFA, acting at the direction of Hanman and Bos, purchased speculative June, July and August Class III milk futures contracts. These long positions were tracked by DFA in an internal sub-account referred to as the “Arbitrage Account” and in internal sub-accounts designated for two subsidiaries.

Beginning on April 14, 2004, as sellers offered cheddar blocks on the CME Cheese Spot Call, DFA purchased block cheddar cheese. From May 21 to June 23, 2004, DFA, at the direction of Hanman and Bos, purchased and took delivery of a total of 323 loads (approximately 40,000 pounds per load) of cheddar cheese blocks at \$1.80 per pound on the CME Cheese Spot Call. During this period, DFA was the sole purchaser of cheddar cheese blocks on the CME.

As of May 21, 2004, the Class III milk futures long position held in all DFA accounts, including those of its subsidiaries, totaled in excess of 15,000 in nearby months, including 6,172 June contracts, 4,656 July contracts and 4,227 August contracts. By May 21, 2004, dairy product prices had begun to decline due to increased supply; therefore, DFA’s Class III milk futures position reflected an unrealized loss. DFA officers and employees engaged in the foregoing conduct, i.e., purchasing cheddar cheese on the CME Cheese Spot Call during the Relevant Period, with the intent to affect the price of the June, July, and August Class III milk futures contracts to minimize DFA’s losses as it liquidated its long speculative futures contract positions. Between June 3 and June 23, 2004, DFA offset its long Class III milk futures positions in the June, July, and August 2004 contracts.

D. LEGAL DISCUSSION

Section 9(a)(2) of the Act makes it unlawful for “[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity...” 7 U.S.C. § 13(a)(2) (2006). As such, the Commission has jurisdiction over completed and attempted manipulations in the cash commodity markets as well as in the futures markets. *See also CFTC v. Atha*, 420 F. Supp. 2d

1373, 1379 (N.D. Ga. 2006); *In re Zenith-Godley Company, Inc.*, 6 A.D. 900, 906, 909 (1947). Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (2006), together authorize the Commission to serve a complaint and provide for the imposition of, among other things, fines and penalties if the Commission “has reason to believe that any person . . . has manipulated or attempted to manipulate the market price of any commodity. . . for future delivery on or subject to the rules of any registered entity . . . or otherwise is violating or has violated any of the provisions of [the] Act.”

The following elements are required to prove an attempted manipulation: (1) an intent to affect the market price, and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477 (CFTC Feb. 18, 1977); *CFTC v. Bradley*, 408 F.Supp. 2d 1214, 1220 (N.D. Okla. 2005). During the Relevant Period, DFA, at the direction of Hanman and Bos, purchased cheddar cheese blocks on the CME Cheese Spot Call with the intent to affect the prices in the June, July, and August 2004 Class III milk futures contracts. By this conduct, DFA, Hanman, and Bos violated Sections 6(c), 6(d), and 9(a)(2) of the Act.

Section 4a(e) of the Act prohibits any person from violating a contract market’s trading limits if the Commission has approved those limits. During the relevant period, the CME had a Commission-approved trading limit on Class III milk futures contracts as provided in CME Rule 5202.E. For purposes of evaluating DFA’s possible violation under Section 4a(e) of the Act, the aggregation provisions of Section 4a(a) of the Act are applicable. *See, e.g., In re Volume Investors*, [1990-1993 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,234 at 38,676-77 (CFTC Feb. 10, 1992). Section 4a(a) of the Act requires that all futures positions controlled by a person be included in determining whether trading limits set by the Commission have been violated.² DFA owned all the accounts, including those of its subsidiaries, that held long speculative Class III milk futures positions. As a result, the DFA accounts must be aggregated for the purpose of determining whether DFA exceeded the CME speculative limit. On one or more days in 2004, DFA’s speculative Class III milk futures contracts, when aggregated with the speculative contracts in internal accounts assigned to its subsidiaries, exceeded the CME speculative position limit. Accordingly, DFA violated Section 4a(e) of the Act.

IV.

FINDINGS OF VIOLATIONS

The Commission finds that during the Relevant Period, DFA, Hanman, and Bos violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006), by attempting to manipulate the June, July, and August 2004 Class III milk futures contract prices. The Commission further finds that DFA exceeded the CME speculative position limit on one or more days in 2004 in the Class III milk futures contract in violation of Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2006).

² CME Rule 5202.F also explicitly states that all positions controlled by a person shall be aggregated in determining whether that person had exceeded CME trading limits.

V.

OFFER OF SETTLEMENT

Respondents have submitted an Offer in which they, without admitting or denying the findings herein, each: acknowledge receipt and service of the Order; admit the jurisdiction of the Commission with respect to the matters set forth in the Order and for any action or proceeding brought or authorized by the Commission based upon violations of or for enforcement of the Order; waive service and filing of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any and all objections to the staff's participation in the Commission's consideration of the Offer, any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, any and all claims that they may possess under the equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2007), relating to, or arising from, this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104-121, 110 Stat. 847 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to or arising from this proceeding.

Respondents stipulate that the record basis on which this Order is entered consists solely of the Order to which Respondents have consented, including the findings in this Order; and consent to the Commission's issuance of this Order. Pursuant to the Offer, Respondents agree to entry of the Order that: makes findings that (1) DFA, Hanman, and Bos violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006) and (2) DFA violated Section 4a(e) of the Act, 7 U.S.C. § 6a(e); orders Respondents to cease and desist from violating the provisions of the Act that they have been found to have violated; orders Respondents to pay a civil monetary penalty in the amount of \$12 million; and orders Respondents to comply with the conditions and undertakings as set forth in this Order. Further pursuant to the Offer, Hanman and Bos agree to the entry of the Order that orders that they be prohibited for a period of five (5) years from the date of entry of the Order from directly or indirectly: (a) trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006), for themselves or for or on behalf of any other person or entity, whether by power of attorney or otherwise; and/or (b) engaging in, controlling or directing the trading for any commodity futures, options on commodity futures and/or commodity options account for themselves or for or on behalf of any other person or entity, whether by power of attorney or otherwise.

Upon consideration, the Commission has determined to accept the Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondents DFA, Hanman, and Bos shall cease and desist from violating Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006);
2. Respondent DFA shall cease and desist from violating Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2006);
3. Respondents shall pay a civil monetary penalty in the amount of twelve million dollars (\$12,000,000) within ten (10) days of the date of entry of this order. Respondents shall pay this civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569

If payment by electronic funds transfer is chosen, the paying Respondent shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. The paying Respondent shall accompany payment of the penalty with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581, and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. §9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Respondents shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until Respondents have shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made;

4. Hanman and Bos are prohibited for a period of five (5) years from the date of entry of the Order from directly or indirectly: (a) trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006), for

themselves or for or on behalf of any other person or entity, whether by power of attorney or otherwise; and/or (b) engaging in, controlling or directing the trading for any commodity futures, options on commodity futures and/or commodity options account for themselves or for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

5. Respondents, as applicable, and their respective successors and assigns shall comply with the following undertakings set forth in the Offer:

a. DFA agrees not to engage in speculative trading in Class III milk futures contracts for a period of two (2) years from the date of the entry of this Order.

b. Compliance and Ethics Program

DFA shall (to the extent, if any, that it has not already done so) implement and maintain a compliance and ethics program designed to detect and prevent violations of the Act, 7 U.S.C. §§ 1, *et seq.*, and Commission Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2008), by any DFA director, officer, employee, or agent.

c. Review of Futures Trading and CME Cheese Spot Call Purchases

Within 30 days of entry of this Order, DFA shall retain, in consultation with the Commission's Division of Enforcement (the "Division"), a monitor (the "Monitor"), at DFA's expense, to review for a period of two years: 1) DFA's futures trading for compliance with the speculative trading prohibition in paragraph VI.4.a above, and 2) DFA's cheese purchases on the CME Cheese Spot Call to ensure that any such cheese purchases are made for legitimate business purposes, and not in an attempt to manipulate Class III milk futures contracts.

d. Monitor

Subject to the express limitations set forth herein, the Monitor's authority and duties are to be broadly construed. In order to determine DFA's compliance with paragraph VI.5.c, above, the Monitor shall, after providing reasonable advance notice to DFA, during normal business hours:

(i) inspect such DFA documents as reasonably necessary relating to DFA's transactions in Class III milk futures and/or the CME Cheese Spot Call markets; and

(ii) meet with and interview such employees, officers, and directors of DFA, and any other relevant persons, in each case as is reasonably necessary, relating to DFA's activities in the Class III milk futures and the CME Cheese Spot Call markets.

The Monitor shall prepare a confidential annual report on the yearly anniversary of the engagement that shall describe the execution of his responsibilities required

by the Order. The report shall include the Monitor's methodology, information relied upon, and basis for assessment. The Monitor shall make the confidential report available to the Division and DFA. The Monitor may extend the time period for issuance of the annual report with prior written approval of the Division.

The Monitor shall keep records of his or her activities. At any time during the course of the engagement, should the Monitor discover any evidence indicating that DFA or its officers, directors, employees or agents have violated provisions of the Act or the Commission's Regulations, or have violated any provision of the Order, the Monitor shall notify DFA, unless the Monitor in his or her discretion determines that notification directly to the Division is necessary and appropriate. DFA shall have thirty (30) days from the date of notice from the Monitor to provide notice to the Division of the alleged violation, after which the Monitor shall report the matter directly to the Division. If a matter is reported by the Monitor to the Division, the Monitor shall provide the Division any and all information relating to the evidence or alleged violations. This Paragraph shall not preclude the Monitor from discussing other related matters directly with the Division, provided that the Monitor informs DFA of such discussions.

DFA shall cooperate fully with the Monitor and the Monitor shall have the authority to take such reasonable steps, in his view, as may be necessary to be fully informed about the operations of DFA within the scope of his responsibilities as set forth in this Order. To that end, DFA shall provide the Monitor as reasonably necessary:

- (i) access to all files, books, records, personnel, and facilities that fall within the scope of responsibilities of the Monitor pursuant to this Offer and associated Order, subject to a legitimate claim of attorney-client privilege ("Privileged Materials");
- (ii) the right to interview any director, officer, employee, agent or consultant of DFA and to participate in any meeting concerning any matter within or relating to his duties; and
- (iii) the right to observe DFA's business operations that fall within the scope of responsibilities of the Monitor pursuant to this Order, subject to a legitimate claim of attorney-client privilege.

If DFA agrees, in its sole discretion, to provide the Monitor with access to Privileged Materials, the Monitor will agree (a) not to assert that DFA's provision of the Privileged Materials in any way constitutes a waiver by DFA of the attorney-client privilege and/or the work-product doctrine and (b) to maintain the confidentiality of the Privileged Materials and not to provide them to any third party, except to the extent that disclosure is required by law or may be necessary in furtherance of the Monitor's discharge of his official duties and responsibilities.

In the event that DFA seeks to withhold from the Monitor access to Privileged Materials, then DFA shall provide written notice to the Division and the Monitor of its intention to withhold access to information, documents, records, facilities and/or employees based upon an assertion of a valid claim of attorney-client privilege or application of the attorney work-product doctrine. Such notice shall include a general description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis of the claim.

The Monitor shall take appropriate steps to maintain the confidentiality of any information entrusted to him or her while executing his or her duties pursuant to this Order and shall share such information only with the Division, and individuals or entities hired by him or her. The Monitor shall also take appropriate steps to ensure that any consultants, entities, and/or individuals he or she engages to assist with the duties pursuant to the Order shall maintain the confidentiality of information obtained while executing his or her duties.

Any report made by the Monitor shall be made available for meaningful inspection by the Division.

DFA shall be responsible for payment of the Monitor's reasonable fees and expenses. The Monitor must submit itemized invoices to DFA.

e. Future Cooperation With the Commission

Respondents shall cooperate fully and expeditiously with the Commission and its staff, including the Division, in this proceeding, and in any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding or any current or future Government investigation related thereto. As part of such cooperation with the Commission, Respondents agree to:

- (i) comply fully, promptly, completely, and truthfully with any inquiries or requests for information or documents;
- (ii) provide authentication of documents and other evidentiary material; and
- (iii) produce any current (as of the time of the request) officer, director, employee, or agent of DFA, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation.

Respondent DFA designates Paul J. Pantano, Jr. to receive all requests for information pursuant to this undertaking. Respondent Hanman designates Scott Early to receive all requests for information pursuant to this undertaking. Respondent Bos designates Walter C. Greenough to receive all requests for information pursuant to this undertaking. Should Respondents seek to change the designated person to receive such requests, notice shall be given to the Division of such intention 14 days before it occurs. Any person designated to receive such request shall be located in the United States

f. Public Statements

Respondents agree that neither they nor any of their successors, assigns, employees, agents, attorneys or representatives shall take any action or make any public statement denying, directly or indirectly, any finding or conclusion in this Order or creating, or tending to create, the impression that this Order is without factual or legal basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall take all steps necessary to ensure that all of their employees, agents, attorneys and employees under their authority and/or actual or constructive control understand and comply with this undertaking.

Respondents shall undertake all steps necessary to ensure that all of their agents and employees under their authority and control understand and comply with the undertakings set forth in Part VI.4 of this Order.

The provisions of the Order shall be effective as of this date

By the Commission.



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 15, 2008