

Commodity Futures Trading Commission  
CEA CASES

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

**DOCKET NUMBER:** 120

**DATE:** JUNE 3, 1964

**DOCUMENT TYPE:** COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Cargill, Incorporated, Erwin E. Kelm, H. Robert Diercks, Walter B. Saunders, and Benjamin S. Jaffray, Respondents

CEA Docket No. 120

Complaint and Notice of Hearing under Section 6(b) of the Commodity Exchange Act

There is reason to believe that the respondents, Cargill, Incorporated, Erwin E. Kelm, H. Robert Diercks, Walter B. Saunders, and Benjamin S. Jaffray, have violated the Commodity Exchange Act (7 U.S.C. § 1 et seq.), and the regulations made pursuant thereto (17 CFR, Part 1), and in accordance with the provisions of section 6(b) of the Act (7 U.S.C. § 9), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

Respondent Cargill, Incorporated, hereinafter referred to as the respondent corporation, is a Delaware corporation with its principal office and place of business at the Cargill Building, Minneapolis, Minnesota. The respondent corporation is now and was at all times material to this complaint engaged in the grain merchandising business, registered as a futures commission merchant under the Commodity Exchange Act, and a clearing member of the Board of Trade of the City of Chicago.

II

Respondent Erwin E. Kelm, an individual whose business address is the same as that of the respondent corporation, is now and was at all times material to this complaint the president and a director of the respondent corporation, and a member of the Board of Trade of the City of Chicago.

III

Respondent H. Robert Diercks, an individual whose business address is the same as that of the respondent corporation, is now and was at all times material to this complaint an executive vice president and a director of the respondent corporation, and a member of the Board of Trade of the City of Chicago.

IV

Respondent Walter B. Saunders, an individual whose business address is the same as that of the respondent corporation, is now and was at all times material to this complaint a vice president of the respondent corporation, and a member of the Board of Trade of the City of Chicago.

V

Respondent Benjamin S. Jaffray, an individual whose business address is 1660 Field Building, Chicago, Illinois, is now and was at all times material to this

complaint an assistant vice president of the respondent corporation, and a member of the Board of Trade of the City of Chicago.

## VI

The Board of Trade of the City of Chicago, hereinafter referred to as the Board of Trade, is now and was at all times material to this complaint a board of trade duly designated as a contract market under the Commodity Exchange Act.

## VII

The transactions hereinafter described were carried out under the direction and supervision and by means of the acts of respondents Walter B. Saunders and Benjamin S. Jaffray, each in his capacity as an officer of the respondent corporation, and with the knowledge, authorization and approval of respondents Erwin E. Kelm and H. Robert Diercks.

## VIII

The futures transactions and positions referred to in this complaint relate to the May 1963 wheat future on the Board of Trade. The last day for trading in the May 1963 wheat future on the Board of Trade was May 21, 1963. The last day on which wheat could be delivered in satisfaction of contracts in such future was May 31, 1963. Except during the last three business days in May 1963, a person making delivery on such future was required by the rules of the Board of Trade to deliver wheat located in a grain elevator (in the Chicago switching district) which was federally licensed or which was approved by the Board of Trade for such delivery. The rules of the Board of Trade also

provided that during the last three business days in May 1963, delivery of wheat on such future could have been made in railroad cars located on track within the Chicago switching district and consigned or ordered to a federally licensed warehouse in such district, or to a grain elevator in such district approved by the Board of Trade for delivery.

## IX

The futures transactions and positions of the respondent corporation referred to in this complaint did not constitute hedging transactions or positions.

## X

The respondent corporation on April 15, 1963, bought 820,000 bushels of May wheat futures, covering its previous short position and creating a new long position of 250,000 bushels. By Friday, May 17, 1963, the respondent corporation had increased its net long position to 1,930,000 bushels. On Monday, May 20, 1963, the day prior to the last day for trading in the May wheat future, the respondent corporation reduced its long May position by 40,000 bushels to 1,890,000 bushels.

## XI

As of the close of business on May 16, 1963, the respondent corporation held in its Chicago elevator, a federally licensed warehouse located in the Chicago switching district, 1,147,810 bushels of deliverable wheat, that is, wheat which was eligible for delivery on the May 1963 wheat future on the Board of Trade. On May 17, 1963, the respondent corporation

loaded out 354,000 bushels of such wheat, 352,000 bushels of which it shipped on the S.S. Algacen to Baie Comeau, Canada. Such load-outs reduced the stock of deliverable wheat stored by the respondent corporation in its elevator in Chicago to 793,810 bushels as of the close of business on May 17, 1963. On Saturday, May 18, 1963, the respondent corporation loaded out 418,000 bushels of

deliverable wheat from its elevator in Chicago aboard the S.S. Patterson for shipment to Baie Comeau, Canada. Such load-out, together with some minor stock changes, reduced the deliverable wheat stored by the respondent corporation in its Chicago elevator to 377,972 bushels as of the close of business on Saturday, May 18, 1963. Such stock of deliverable wheat was unchanged on May 20, 1963, and by the close of business on May 21, 1963, had increased slightly to 378,671 bushels.

## XII

The respondent corporation on May 14, 1963, sold to its affiliated company, Tradax International, S.A., 466,667 bushels of No. 2 Red Winter wheat, at a price f.o.b. Baie Comeau, Canada, equivalent to \$ 2.13 per bushel, f.o.b. Chicago.

## XIII

The respondent corporation on May 15, 1963, offered to sell up to 15,000 long tons of No. 2 Red Winter wheat to the said Tradax Internacional, S.A., at a price f.o.b. one St. Lawrence port, equivalent to

\$ 2.03 1/2 per bushel, f.o.b. Chicago. Such offer was accepted on or about May 18, 1963, by the said Tradax Internacional, S.A., and on May 20, 1963, the respondent corporation confirmed to the said Tradax Internacional, S.A., the sale of 541,333 bushels of No. 2 Red Winter wheat, at a price f.o.b. Baie Comeau, Canada, equivalent to \$ 2.08 1/2 per bushel, f.o.b. Chicago.

## XIV

The deliverable wheat loaded out of respondent corporation's Chicago elevator, as set forth in paragraph XI above, was applied by the respondent corporation against the sales referred to in paragraphs XII and XIII above.

## XV

As of the close of business on May 17, 1963, the respondent corporation owned all except 20,000 bushels of the deliverable wheat in deliverable position. Such stocks of deliverable wheat not owned by the respondent corporation remained at or about such level during the remainder of the delivery month.

## XVI

At all times material to this complaint the stocks of deliverable wheat in deliverable position in Chicago constituted substantially all of the wheat available for delivery on the May 1963 wheat future on the Board of Trade.

## XVII

At all times on May 21, 1963, there was an insufficient supply of deliverable wheat in deliverable position not owned or controlled by the respondent corporation, and of long May wheat futures held by persons other than the respondent corporation to permit holders of short contracts in the May 1963 wheat future to satisfy such short contracts without purchasing May wheat futures or deliverable wheat from the respondent corporation. Such fact was known to the respondents.

## XVIII

On Friday, May 17, 1963, the price of the May 1963 wheat future on the Board of Trade ranged from \$ 2.05 1/4 to \$ 2.09 1/2 per bushel, and closed at \$ 2.09 1/8 -- \$ 2.09 1/2 per bushel. On Monday, May 20, 1963, the price of such future ranged from \$ 2.11 to \$ 2.19 per bushel, and closed at \$ 2.18 3/4 -- \$ 2.18 1/2 per bushel. On May 21, 1963, the price of the future ranged from \$ 2.15 1/4 to \$ 2.28 5/8 per bushel, and expired at a bid price of \$ 2.28 5/8 per bushel. This last price was the highest price permitted under the rules of the Board of Trade for the May 1963 wheat future on May 21, 1963.

## XIX

On May 21, 1963, prior to 11:00 a.m., the respondent corporation purchased 100,000 bushels of May wheat futures, 50,000 bushels at \$ 2.17 1/2 per bushel and 50,000 bushels at \$ 2.18. Such purchases increased the long May wheat position of the respondent corporation

to 1,990,000 bushels. At or about 11:00 a.m., on the same day, the respondent corporation entered into a transaction with another grain merchant whereby the respondent corporation sold 50,000 bushels of cash wheat to the merchant and took control over 50,000 bushels of long May wheat futures held by the merchant by obtaining from the merchant the exclusive authority to liquidate such futures for the account of the merchant.

## XX

At or about 11:45 a.m., on May 21, 1963, the respondent corporation placed orders for the sale of 1,990,000 bushels of May 1963 wheat futures, such orders setting forth the price limits below which such futures could not be sold. On the same date, at or after 11:00 a.m., the respondent corporation placed an order for the sale of the 50,000 bushels of futures controlled by the respondent corporation as specified in paragraph XIX above, at a price of \$ 2.26 per bushel or at the market price on the close.

## XXI

Subsequent to 11:53 a.m., on May 21, 1963, the respondent corporation sold for the account of the grain merchant referred to in paragraph XIX above, 50,000 bushels of May wheat futures at a price of \$ 2.26 per bushel pursuant to the order for such sale referred to in paragraph XX above. From about 11:54 a.m., on May 21, 1963, until the expiration of the May 1963 wheat future at 12:00 noon on that day,

the respondent corporation sold 1,625,000 bushels of May 1963 wheat futures at prices ranging from \$ 2.27 to \$ 2.28 5/8 per bushel, pursuant to the orders for the sale of 1,990,000 bushels of such futures referred to in paragraph XX above.

## XXII

In initiating and carrying out the transactions described in paragraphs X, XI, XII, XIII, XIV, XIX, XX and XXI above, the respondents acted with the purpose and intent of causing prices in the May 1963 wheat future which were arbitrary and artificial, and demanded and received such prices in the May 1963 wheat future. By reason thereof, the respondents, Cargill, Incorporated, Erwin E. Kelm, H. Robert Diercks, Walter B. Saunders, and Benjamin S. Jaffray, attempted to manipulate and did in fact manipulate the price of a commodity for future delivery on or subject to the rules of the Board of Trade in willful violation of sections 6(b) and 9 of the Commodity Exchange Act (7 U.S.C. §§ 9 and 13).

## XXIII

The operations of the respondents as described in paragraphs X, XI, XII, XIII, XIV, XVII, XIX, XX, XXI and XXII above, had the effect of causing No. 2 Red Winter wheat in Chicago to sell at prices ranging from \$ 2.27 to \$ 2.29 per bushel on May 20, 1963, and at prices ranging from \$ 2.26 1/2 to \$ 2.37 per bushel on May 21, 1963. Such prices for cash No. 2 Red Winter wheat were artificial. By such operations, the

respondents, Cargill, Incorporated, Erwin E. Kelm, H. Robert Diercks, Walter B. Saunders, and Benjamin S. Jaffray, attempted to manipulate and did in fact

manipulate the price of a commodity in interstate commerce in willful violation of sections 6(b) and 9 of the Commodity Exchange Act (7 U.S.C. §§ 9 and 13).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the said respondents. The respondents will have twenty (20) days after the receipt of this notice of hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D. C. 20250, an answer with an original and six copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each allegation of this complaint. Allegations not answered will be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the allegations of this complaint and a waiver of hearing. The respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer, or by filing an answer in which all of the material allegations of fact contained in the complaint are admitted and a hearing is not requested, a hearing will be held at 10:00 a.m., local time, on the 19th day of August, 1964, in Minneapolis, Minnesota, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing

the respondents will have the right to appear and show cause, if any there be, why an order should not be made directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be determined, and suspending or revoking the registration of respondent Cargill, Incorporated, as a futures commission merchant.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.,

JUN - 3 1964

[SEE SIGNATURE IN ORIGINAL]

Assistant Secretary

**LOAD-DATE:** June 12, 2008

