

Commodity Futures Trading Commission
CEA CASES

NAME: MARTIN T. DYKE, MARTIN T. DYKE III, and DYKE & CO.

CITATION: 29 Agric. Dec. 542

DOCKET NUMBER: 168

DATE: MAY 25, 1970

DOCUMENT TYPE: DECISION AND ORDER

ORDER

Effective immediately, the respondent, Rocco G. Cancellare, shall cease and desist from allocating commodity futures transactions to his own account when such transactions can be allocated to fill customers' orders which he has in hand, unless this is done with the prior knowledge and consent of such customers.

Effective on the thirtieth day after the date of entry of this order, (1) the respondent is prohibited from trading on or subject to the rules of any contract market for a period of 20 days, and all contract markets shall refuse all trading privileges to the respondent during this period, such prohibition and refusal to apply to all trading done and all positions held by the respondent directly or indirectly, and (2) the registration of the respondent as floor broker under the Commodity Exchange Act is suspended for a period of 20 days.

A copy of this Decision and Order shall be served on each of the parties and on each contract market.

(No. 13,144)

In re MARTIN T. DYKE, MARTIN T. DYKE III, and DYKE & CO. CEA Docket No. 168.
Decided May 25, 1970.

Financial requirements -- Undersegregation -- Records -- Cease and desist --
Stipulation

Respondents consented to the issuance of a cease and desist order for violations of the act alleged in the complaint which charged that during certain periods the respondent partnership failed to meet prescribed minimum financial requirements, was undersegregated in amounts ranging to approximately \$ 93,000 and that segregation records were not properly prepared and maintained.

Earl L. Saunders for Commodity Exchange Authority.
Szold, Schapiro & Coster, New York, N. Y., for respondents.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C, Chapter 1, 1964 ed., as amended, Supp. IV, 1989), instituted by a complaint and notice of hearing issued

on March 4, 1970, under sections 6(b) and 6(c) of the Act (7 U.S.C. Supp. IV, 9 and 13b). The respondents are charged with violating sections 4d, 4f and 4g of the Act (7 U.S.C. Supp. IV, 6d, 6f and 6g), and sections 1.17, 1.20, 1.21, 1.22, 1.23, 1.82 and 1.35 of the regulations thereunder (34 F.R. 599, 17 CFR 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35).

No hearing has been held in this proceeding. On May 22, 1970, the respondents filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)) in which they (1) admit the facts hereinafter set forth in paragraphs 1 and 2 of the Findings of Fact, (2) admit, for the purposes of this proceeding and for such purposes only, the facts hereinafter set forth in paragraphs 3 through 6 of the Findings of Fact, (3) waive the report of the Hearing Examiner, and (4) consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondents Martin T. Dyke and Martin T. Dyke, III, individuals, are now, and were at all times material to the complaint in this proceeding, the sole partners in respondent Dyke & Co., a New York partnership with offices at 82 Wall Street, New York, New York 10005. At all times material herein up to August 28, 1969, the said partnership, acting in the capacity of futures commission merchant under the Commodity Exchange Act, was engaged in trading in commodities for future delivery for the accounts of customers. Throughout the year 1969, the said partnership was registered as futures commission merchant under the Commodity Exchange Act. In accordance with the provisions of section 4f of the said Act (7 U.S.C. 6f, Supp. IV, 1969) and section 1.16 of the regulations thereunder (17 CFR 1.16), such registration expired on December 31, 1969, and the said partnership is not now so registered.

2. At the times hereinafter stated, respondent Dyke & Co., in the regular course of the partnership business, had on its books accounts of customers who were trading in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act. Such accounts, the trading therein, and the handling and disposition of funds in connection therewith, were subject to the provisions of the Commodity Exchange Act and the regulations issued thereunder. At all such times, respondent Dyke & Co. had to its credit with banks or other depositories sums of money

in varying amounts, held in segregated accounts and identified as customers' funds, representing deposits of margin by and trading profits belonging to such customers.

3. On June 2, 1969, and between July 9 and August 19, 1969, both inclusive, respondent Dyke & Co. was undersegregated in amounts ranging from approximately \$ 20,000 on June 2, 1969, to approximately \$ 93,000 on August 15, 1969, that is, the total amount of customers' funds held in segregation by the firm as described in paragraph 2 above, was from approximately \$ 20,000 to approximately \$ 98,000 less than the amount necessary to pay all credits and equities due to such customers.

4. (a) On each business day during the period from July 31, 1969, through August 7, 1969, both inclusive, respondent Dyke & Co. prepared and kept a record purporting to show the amount required to be held in segregation, and the amount segregated, which record indicated that the respondent firm had excess funds in segregation, whereas, in truth and in fact, the said firm was undersegregated as specified in paragraph 3 above.

(b) As of August 15, 1969, respondent Dyke & Co. had failed to prepare and maintain a daily segregation record, as of the close of business on August 8, 11, 12, 13, and 14, 1969, of the amount of money, securities, and property required to be held in segregation in order to pay all credits and equities due to its customers provided in section 1, 82 of the regulations issued under the Commodity Exchange Act (17 CFR 1.32).

5. On three occasions in 1967 and on two occasions in 1968, and prior to the acts and omissions described above, examination of the books and records of respondent Dyke & Co. by the Commodity Exchange Authority disclosed that the respondent firm was not properly preparing a daily permanent record of customers' funds required to be in segregation. The Commodity Exchange Authority called these matters to the respondents' attention and they assured

the Commodity Exchange Authority that corrective measures would be taken so that the records of the respondent firm would comply with the provisions of the Commodity Exchange Act and the regulations thereunder.

6. During the period from August 15, 1969, through August 28, 1969, both inclusive, while engaged as a registered futures commission merchant under the Commodity Exchange Act, respondent Dyke & Co. failed to meet the minimum financial requirements

prescribed by section 1.17 of the regulations (34 F.R. 599) issued by the Secretary of Agriculture under the said Act. Examination of the records of respondent Dyke & Co. by the Commodity Exchange Authority disclosed that as of August 15, 1969, the respondent firm had current liabilities which totaled \$ 502,637.68 while its current assets totalled only \$ 260,276.65.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, the respondents violated section 4d, 4f and 4g of the Commodity Exchange Act, and sections 1.17, 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35 of the regulations issued under the Act. The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation submitted by the respondent. The administrative officials believe that the prompt entry of the proposed order would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Act. The complainant recommends, therefore, that the stipulation be accepted and the proposed order be issued. It is concluded that the complainant's recommendation should be adopted.

ORDER

Effective immediately the respondents shall cease and desist from: (1) failing to treat and deal with customers' funds as belonging to such customers as required by section 4d of the Commodity Exchange Act (7 U.S.C. 6d, Supp. IV, 1969) and the regulations thereunder; (2) failing to hold customers' funds in segregated accounts as required by section 4d of the Commodity Exchange Act (7 U.S.C. 6d, Supp. IV, 1969) and the regulations thereunder; (3) failing to prepare and maintain (a) an accurate record as of the close of the market on each business day of the amount of money, securities and property which must be in segregated account in order to comply with the requirements of section 4d of the Commodity Exchange Act (7 U.S.C. 6d, Supp. IV, 1969) and the regulations thereunder, and (b) such other books and records relating to dealing in commodity futures in such form and manner and for such period as may be required by the Secretary of Agriculture; (4) engaging as futures commission merchant within the meaning of the Commodity Exchange Act without meeting the minimum financial requirements prescribed by section 1.17 of the regulations (34 F.R. 599) issued under the Commodity

Exchange Act; and (5) wilfully causing, aiding, counseling, commanding or inducing any futures commission merchant to engage in any such act or practice.

A copy of this Decision and Order shall be served on each of the parties and on each contract market.

LOAD-DATE: June 16, 2008

