

Commodity Futures Trading Commission
CEA CASES

NAME: DEAN WITTER & CO., INCORPORATED

CITATION: 30 Agric. Dec. 1034

DOCKET NUMBER: 178

DATE: AUGUST 25, 1971

DOCUMENT TYPE: DECISION AND ORDER

(No. 14,095)

In re DEAN WITTER & CO., INCORPORATED. CEA Docket No. 178. Decided August 25, 1971.

Segregation of funds -- Records -- Cease and desist -- Stipulation

Respondent is ordered to cease and desist from violations of the act in failing to hold customers' funds in segregated account and failing to maintain accurate records of such funds.

Earl L. Saunders for complainant.

Respondent *pro se*.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), instituted by a complaint and notice of hearing issued on August 20, 1971. The respondent is charged with violating sections 4d(2) and 4g of the Act (7 U.S.C. 6d(2) and 6g) and sections 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35 of the regulations thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35).

No hearing has been held in this proceeding. The respondent has filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)) in which it admits the facts hereinafter set forth in paragraph one of the Findings of Fact, (2) admits, for the purposes of this proceeding and for such purposes only, the facts hereinafter set forth in paragraphs two through four of the Findings of Fact, (3) waives the report of the Hearing Examiner, and (4) consents to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent, Dean Witter & Co., Incorporated, a Delaware Corporation with offices at 45 Montgomery Street, San Francisco, California 94104, is now, and was at all times material herein, a registered futures commission merchant under the Commodity Exchange Act and so engaged in business.

2. (a) At the times hereinafter stated, respondent Dean Witter & Co., Incorporated, in the regular course of its business as futures commission merchant, carried accounts of customers who traded in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act and the regulations thereunder. Such accounts, the trading therein, and the handling and disposition of funds in connection therewith, were subject to the provisions of the said act and regulations. At all such times, the respondent corporation had to its credit with banks or other depositories, money and securities in varying amounts, held in segregated accounts and identified as customers' funds,

representing deposits of margin by and trading profits accruing to such customers.

(b) During the period between June 5 and June 11, 1970, both inclusive, the respondent corporation was continuously undersegregated in amounts ranging from \$ 137,014 on June 10, 1970, to \$ 260,134 on June 11, 1970, that is, throughout the period mentioned the total amount of customers' funds held in segregation as above described, was from \$ 137,014 to \$ 260,134 less than the amount necessary to pay all credits and equities due to such customers.

(c) Under the regulations issued pursuant to the Commodity Exchange Act the respondent corporation was obligated at all times material herein to prepare and maintain a daily computation and record setting forth the amount of money, securities and property of its customers required to be held, and held, in segregated accounts in accordance with the requirements of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)). On numerous days during the period between August 13 and December 31, 1970, both inclusive, the daily computation and record that was prepared and kept by the respondent corporation to meet the requirements of the regulations contained errors which resulted in gross misstatements of the amount of customers' money, securities and property held in segregation.

3. Examination of the records of respondent Dean Witter & Co., Incorporated, by the Commodity Exchange Authority as of November 30, 1968, and examination of the records of Dean Witter & Co., the respondent corporation's predecessor partnership, as of March 31, 1966 and February 27, 1967, disclosed that the corporation and its predecessor partnership had not satisfactorily complied with the requirements of the Commodity Exchange Act and the regulations thereunder relating to the handling of customers' funds and to the preparation and maintenance of records in connection thereto. These matters were called to the attention of the corporation and to its predecessor partnership in writing by T. Reed McMinn, Director of the Commodity Exchange Authority's Eastern Region, on July 18, 1966, May 2, 1967 and April 24, 1969.

4. The respondent corporation, at all times material herein, had available in its general accounts funds more than adequate to cover any under-segregation in regulated accounts and to meet all obligations to customers. Upon discovery of the under-segregation, described in paragraph 2(b) above, the respondent corporation promptly transferred funds into segregated accounts to comply with the requirements of the Commodity Exchange Act and the regulations thereunder.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, the respondent violated sections 4d(2) and 4g of the Commodity Exchange Act (7 U.S.C. 6d(2), 6g), and sections 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35 of the regulations thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32, 1.35). 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 upon the date of service of this order upon the respondent, it 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) and the regulations thereunder;

(2) failing to hold customers' funds in segregated account as required by section 4d of the Commodity Exchange Act (7 U.S.C. 6d) and the regulations thereunder; and

(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) 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.

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

LOAD-DATE: June 10, 2008

