

Commodity Futures Trading Commission  
CEA CASES

**NAME:** JULIAN M. MARKS, STUART A. NEWMAN, MARSHALL K. SMITH, IRWIN M. EISEN, AND JAMES S. SCHONBERG

**DOCKET NUMBER:** 98

**DATE:** JANUARY 13, 1961

**DOCUMENT TYPE:** COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Julian M. Marks, Stuart A. Newman, Marshall K. Smith, Irwin M. Eisen, and James S. Schonberg, Respondents

CEA Docket No. 98

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

There is reason to believe that the respondents, Julian M. Marks, Stuart A. Newman, Marshall K. Smith, Irwin M. Eisen, and James S. Schonberg, have violated the Commodity Exchange Act (7 U.S.C. 1958 ed., Chapter 1), hereinafter called the act, and the regulations made pursuant thereto, and in accordance with the provisions of section 6(b) of the said act (7 U.S.C. 1958 ed., § 9), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

The Board of Trade of the City of Chicago, hereinafter called the Chicago Board of Trade, is now and was at all times material to this complaint a duly designated contract market under the act.

II

Respondent Julian M. Marks, an individual whose address is Care of Trading Floor, Chicago Board of Trade, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material to this complaint a registered floor broker under the act and a member of the Chicago Board of Trade.

III

Respondent Stuart A. Newman, an individual whose address is 945 Longaker Road, Northbrook, Illinois, was at all times material to this complaint a registered floor broker under the act and is now and was at all such times a member of the Chicago Board of Trade.

IV

Respondent Marshall K. Smith, an individual whose address is Care of Trading Floor, Chicago Board of Trade, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material to this complaint a registered floor broker under the act and a member of the Chicago Board of Trade.

V

Respondent Irwin M. Eisen, an individual whose address is Care of Trading Floor, Chicago Board of Trade, 141 West Jackson Boulevard, Chicago 4, Illinois, is now and was at all times material to this complaint a registered floor broker under the act and a member of the Chicago Board of Trade.

## VI

Respondent James S. Schonberg, an individual whose address is Room 1480, 141 West Jackson Boulevard, Chicago 4, Illinois, was at all times material to this complaint a member of the Chicago Board of Trade and a representative of the Uhlmann Grain Company, a registered futures commission merchant.

## VII

The contracts resulting from the execution of the orders hereinafter described were capable of being used for hedging transactions in interstate commerce in wheat or the products or by-products thereof, or for determining the price basis of transactions in interstate commerce in wheat, or for delivering wheat sold, shipped, or received in interstate commerce.

## VIII

On May 19, 1960, respondent James S. Schonberg, in his capacity as a representative of the aforesaid Uhlmann Grain Company, had in his possession an order to buy 25,000 bushels of May 1960 wheat futures on the Chicago Board of Trade for the account of a customer of his principal. Respondent James S. Schonberg filled the said order after the close of the trading session by means of direct and non-competitive negotiations with respondent Irwin M. Eisen,

as a result of which respondent Schonberg purchased 25,000 bushels of May 1960 wheat futures from respondent Eisen at \$ 1.94 per bushel. By reason thereof, respondents James S. Schonberg and Irwin M. Eisen executed a purchase and sale of wheat for future delivery on or subject to the rules of a contract market otherwise than by open and competitive methods in the trading pit during the regular hours prescribed by such contract market for trading in wheat futures, in willful violation of section 1.38 of the regulations under the act (17 CFR 1.38).

## IX

On May 19, 1960, respondent Julian M. Marks, in his capacity as floor broker, had received for execution an order to purchase 25,000 bushels of May 1960 wheat futures for the account of the Ralston Purina Company, a registered futures commission merchant. Respondent Julian M. Marks filled the said order by taking the sale side thereof for his own account by means of transactions with respondent Stuart A. Newman which constituted accommodation trades on the part of respondent Newman. The said respondents entered into such transactions after direct and non-competitive negotiations between themselves, pursuant to which respondent Marks purchased 25,000 bushels of May 1960 wheat futures for the account of his principal from respondent Newman, 15,000 at \$ 2.01-1/2 per bushel

and 10,000 at \$ 2.01-1/8 per bushel, and simultaneously sold the same quantities of the same future at the same prices for his own account to respondent Newman, who made the corresponding sales and purchases for his own account. By reason thereof, respondent Julian M. Marks willfully and knowingly and without the prior consent of his principal became the seller with respect to the buying order of such principal, in violation of section 4b(D) of the act (7 U.S.C. 1958 ed., § 6b(D)); respondent Stuart A. Newman entered into accommodation trades in willful violation of section 4c(A) of the act (7 U.S.C. 1958 ed., § 6c(A)); and respondents Marks and Newman executed a purchase and sale of wheat for future delivery on or subject to the rules of a contract market otherwise than by open and competitive methods, in willful violation of section 1.38 of the regulations under the act (17 CFR 1.38).

## X

On May 19, 1960, respondent Julian M. Marks, in his capacity as floor broker, had received for execution orders to sell 25,000 bushels of May 1960 wheat

futures on the Chicago Board of Trade for the accounts of Goodbody and Company, and Paine, Webber, Jackson & Curtis, registered futures commission merchants, and other orders to buy 25,000 bushels of such futures on the said exchange for the account of the said Goodbody and Company. Respondent Marks filled the said orders by offsetting them against each other by means of transactions

with respondent Stuart A. Newman which constituted accommodation trades on the part of respondent Newman. The said respondents entered into such transactions after direct and non-competitive negotiations between themselves, pursuant to which respondent Marks, acting for his principals, sold 25,000 bushels of May 1960 wheat futures to respondent Newman, 20,000 at \$ 1.96-1/2 per bushel and 5,000 at \$ 1.97 per bushel, and simultaneously purchased 25,000 bushels of such futures at \$ 1.97 per bushel from respondent Newman, who made the corresponding purchases and sales for his own account. By reason thereof, respondent Julian M. Marks filled orders for the sale of futures by offset against orders of other persons for the purchase of futures, in willful violation of section 4b(D) of the act (7 U.S.C. 1958 ed., § 6b(D)); respondent Stuart A. Newman entered into accommodation trades in willful violation of section 4c(A) of the act (7 U.S.C. 1958 ed., § 6c(A)); and respondents Marks and Newman executed purchases and sales of wheat for future delivery on or subject to the rules of a contract market otherwise than by open and competitive methods, in willful violation of section 1.38 of the regulations under the act (17 CFR 1.38).

## XI

On May 19, 1960, respondent Julian M. Marks, in his capacity as floor broker, had received for execution orders to sell a quantity of May 1960 wheat futures on the Chicago Board of Trade for the account

of D. R. Comenzo & Company, a registered futures commission merchant. Respondent Julian M. Marks filled a portion of the said orders after the close of the trading session, by taking the purchase side thereof for his own account by means of transactions with Irwin M. Eisen which constituted accommodation trades on the part of respondent Eisen. The said respondents entered into such transactions after direct and non-competitive negotiations between themselves, pursuant to which respondent Marks sold 35,000 bushels of May 1960 wheat futures for the account of his principal to respondent Eisen at \$ 1.94 per bushel and simultaneously purchased the same quantity of the same future at the same price for his own account from respondent Eisen, who made the corresponding purchases and sales for his own account. By reason thereof, respondent Julian M. Marks willfully and knowingly and without the prior consent of his principal became the buyer with respect to the selling orders of such principal, in violation of section 4b(D) of the act (7 U.S.C. 1958 ed., § 6b(D)); respondent Irwin M. Eisen entered into accommodation trades in willful violation of section 4c(A) of the act (7 U.S.C. 1958 ed., § 6c(A)); and respondents Marks and Eisen executed purchases and sales of wheat for future delivery on or subject to the rules of a contract market otherwise than by open and competitive methods in the trading pit during the regular hours

prescribed by such contract market for trading in wheat futures, in willful violation of section 1.38 of the regulations under the act (17 CFR 1.38).

## XII

On May 19, 1960, respondent Julian M. Marks, in his capacity as floor broker, had received for execution an order to sell 5,000 bushels of May 1960 wheat futures on the Chicago Board of Trade for the account of the aforesaid Paine, Webber, Jackson & Curtis. Respondent Julian M. Marks did not execute the said order but bucketed the same by taking the purchase side thereof for his own

account. In order to accomplish this, respondent Marks made entries on his trading card purporting to show a purchase of 5,000 bushels of May 1960 wheat futures at \$ 2.02 per bushel, and directed one Max Nierman, another floor broker, to make entries on the trading card of the said Max Nierman purporting to show a corresponding sale by Nierman for the account of the said Paine, Webber, Jackson & Curtis, and the said Max Nierman complied with such request and made such entries. Respondent Marks thereupon reported or caused to be reported to his principal that the sale had been executed by the said Max Nierman at the aforesaid price. By reason of such acts, respondent Julian M. Marks bucketed an order for the sale of wheat for future delivery on or subject to the rules of a contract market, knowingly and without the prior consent of his principal

became the buyer with respect to the selling order of such principal, caused false records to be entered and a false report to be made in connection with the execution of such order, and deceived the person from whom such order had been received with respect to the execution thereof, in willful violation of section 4b of the act (7 U.S.C. 1958 ed., § 6b); and failed to keep full and complete records of a futures transaction, in willful violation of section 4g of the act (7 U.S.C. 1958 ed., § 6g) and section 1.35 of the regulations thereunder (17 CFR 1.35).

#### XIII

On May 19, 1960, respondent Julian M. Marks turned over to respondent Stuart A. Newman for handling and execution, orders to sell a total of 40,000 bushels of May 1960 wheat futures on the Chicago Board of Trade for the account of the aforesaid Paine, Webber, Jackson & Curtis, which orders respondent Marks had theretofore received from the said firm. Respondent Newman thereupon sold to various other floor brokers 35,000 bushels of May 1960 wheat futures for the account of the said firm, 25,000 at \$ 1.93 per bushel and 10,000 at \$ 1.96 per bushel, but did not record the said sales on his own trading card. Instead, respondent Marks entered the said sales on his trading card as though such sales had been made by respondent Marks, and reported to his principal

that the said sales had been so executed. Respondent Newman did not execute the remaining 5,000 bushels of the said selling orders but bucketed the same by taking the purchase side thereof for his own account. In order to accomplish this, respondent Newman made entries on his trading card purporting to show a purchase of 5,000 bushels of May 1960 wheat futures at \$ 1.93 per bushel, and respondent Marks made corresponding entries on his trading card purporting to show a sale of the said quantity of such future at the said price, and reported to his principal that the sale had been executed. By reason of such acts, respondent Newman bucketed an order for the sale of wheat for future delivery on or subject to the rules of a contract market, and knowingly and without the prior consent of his principal became the buyer with respect to the selling order of such principal, in willful violation of section 4b(D) of the act (7 U.S.C. 1958 ed., § 6b(D)); respondents Marks and Newman caused false records to be entered and false reports to be made in connection with the execution of orders for the sale of wheat for future delivery, and deceived the person from whom such orders had been received with respect to the execution thereof, in willful violation of sections 4b(B) and 4b(C) of the act (7 U.S.C. 1958 ed., §§ 6b(B) (C)); and respondents Marks and Newman failed to keep full and complete records of futures transactions, in willful violation of section 4g of the act (7 U.S.C. 1958 ed., § 6g), and section 1.35 of the regulations thereunder (17 CFR 1.35).

#### XIV

On May 19, 1960, respondent Marks turned over to respondent Stuart A. Newman for handling and execution, an order to buy 5,000 bushels of May 1960 wheat futures for the account of the aforesaid Paine, Webber, Jackson & Curtis, which order respondent Marks had theretofore received from the said firm. Respondent Newman did not execute the said order but bucketed the same by taking the sale side thereof for his own account at \$ 2.01 per bushel, and respondent Marks then reported to his principal that its order had been executed at that price. Subsequently, upon complaint by Paine, Webber, Jackson & Curtis on behalf of the customer for whose account the order was placed, respondents Marks and Newman adjusted the price of the purported transaction to \$ 1.98 per bushel. By reason of such acts, respondent Newman bucketed an order for the sale of wheat for future delivery on or subject to the rules of a contract market, and knowingly and without the prior consent of his principal became the seller with respect to the buying order of such principal, in willful violation of section 4b(D) of the act (7 U.S.C. 1958 ed., § 6b(D)); respondents Marks and Newman caused false records to be entered and a false report to be made in connection with the execution of such order, and deceived the person from whom such order had been received with respect to the execution thereof, in willful violation of sections 4b(B) and 4b(C) of the act (7 U.S.C. 1958 ed., §§ 6b(B)(C)); and respondents Marks and Newman

failed to keep full and complete records of futures transactions, in willful violation of section 4g of the act (7 U.S.C. 1958 ed., § 6g) and section 1.35 of the regulations thereunder (17 CFR 1.35).

## XV

On May 19, 1960, respondent Marshall K. Smith, in his capacity as floor broker, had received for execution orders to sell 25,000 bushels of May 1960 wheat futures for the account of Lamson Brothers, a registered futures commission merchant, and other orders to buy 25,000 bushels of such futures on the said exchange for the account of the said principal. Respondent Smith filled the said orders by offsetting them against each other by means of transactions with respondent Irwin M. Eisen which constituted accommodation trades on the part of respondent Eisen. The said respondents entered into such transactions after direct and non-competitive negotiations between themselves, pursuant to which respondent Smith, acting for his principal, sold 25,000 bushels of May 1960 wheat futures to respondent Eisen at \$ 1.98 per bushel and simultaneously purchased the same quantity of the same future at \$ 1.98-1/2 per bushel from respondent Eisen, who made the corresponding purchases and sales for his own account. At the time of the said transactions, the price of the May 1960 wheat futures on the Chicago Board of Trade was not in excess of \$ 1.98 per bushel. By reason of the said acts, respondent Marshall K. Smith filled orders for the sale of futures

by offset against the orders of other persons for the purchase of futures, and cheated and defrauded customers of his principal, in willful violations of sections 4b(D) and 4b(A) of the act (7 U.S.C. 1958 ed., §§ 6b(D)(A)); respondent Irwin M. Eisen entered into accommodation trades in willful violation of section 4c(A) of the act (7 U.S.C. 1958 ed., § 6c(A)); and respondents Smith and Eisen executed purchases and sales of wheat for future delivery on or subject to the rules of a contract market otherwise than by open and competitive methods, in willful violation of section 1.38 of the regulations under the act (17 CFR 1.38).

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 25, D. C., 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 material and

relevant 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 material 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 and request a hearing, a hearing will be held at 10:00 a.m., local time, on the 7th day of March 1961, in Chicago, Illinois, 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 suspending or revoking any registrations of the respondents under the act which may be then in effect, and directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be determined.

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

Done at Washington, D. C.

January 13, 1961

/s/ Clarence L. Miller

Clarence L. Miller

Assistant Secretary

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

