

Commodity Futures Trading Commission
CEA CASES

NAME: BOUDEN, CLAY AND COMPANY, C. WHITNEY BOUDEN AND GEORGE W. CLAY, JR.

DOCKET NUMBER: STIPULATION 9

DATE: APRIL 6, 1949

DOCUMENT TYPE: STIPULATION OF COMPLIANCE

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

In re: Bouden, Clay and Company, C. Whitney Bouden and George W. Clay, Jr. New Orleans, Louisiana

Stipulation of Compliance Under the Commodity Exchange Act No. 9

WHEREAS, the Secretary of Agriculture has reason to believe that Bouden, Clay and Company, C. Whitney Bouden, and George W. Clay, Jr., have violated the Commodity Exchange Act, as amended, and the rules and regulations of the Secretary of Agriculture promulgated thereunder; and

WHEREAS, no complaint has been filed with respect to said violation and the above-mentioned persons desire to enter into a stipulation pursuant to the provisions of Section 0.4 (a) of the rules of practice under the Commodity Exchange Act; Now, therefore, the said Bouden, Clay and Company, C. Whitney Bouden, and George W. Clay, Jr., admit the following facts are true:

(1) At all times mentioned herein, Bouden, Clay and Company was, and is now, a partnership composed of C. Whitney Bouden and George W. Clay, Jr., organized under the laws of the State of Louisiana, with clearing house and membership trading privileges on the New Orleans Cotton Exchange, a contract market duly designated as such by the Secretary of Agriculture under the Commodity Exchange Act.

(2) Bouden, Clay and Company was at all times mentioned herein and is now, registered with the Secretary of Agriculture as a futures commission merchant under the Commodity Exchange Act. C. Whitney Bouden and George W. Clay, Jr., were, and are now, registered with the Secretary of Agriculture as floor brokers under the Commodity Exchange Act.

(3) At all times mentioned herein, E. Kirby Newburger was a member of the New Orleans Cotton Exchange and a partner in the firm of Kohlmeyer, Newburger and Company, which firm was registered with the Secretary of Agriculture as a futures commission merchant under the Commodity Exchange Act, and enjoyed clearing house and membership privileges on the New Orleans Cotton Exchange.

(4) Kohlmeyer, Newburger and Company (now Kohlmeyer and Company) was at the time pertinent to this stipulation, and is now, a large and well thought of cotton firm in the City of New Orleans. E. Kirby Newburger was, at the time of the transactions mentioned in this stipulation, considered a man of substantial financial strength, enjoying the confidence of the cotton trade and of Bouden, Clay and Company and its members.

(5) Sometime in January 1948 E. Kirby Newburger approached George W. Clay, Jr., and requested that he be given discretion to trade for the house account of Bouden, Clay and Company. He pointed out that such discretion would be of assistance to him in executing contra orders of customers of Kohlmeyer,

Newburger and Company. George W. Clay, Jr., on behalf of Bouden, Clay and Company acceded to this suggestion and it was agreed that there would be entered upon the records of Bouden, Clay and Company such transactions as E. Kirby Newburger reported he had executed pursuant to this discretionary power. In connection with such transactions it was understood that E. Kirby Newburger would protect Bouden, Clay and Company against financial loss.

(6) E. Kirby Newburger, during January, February, March and April 1948, reported to Bouden, Clay and Company that quantities of cotton futures had been bought from or sold to Bouden, Clay and Company pursuant to the agreement above described, and Bouden, Clay and Company entered these transactions on its books.

(7) Among the transactions reported by E. Kirby Newburger as described in paragraph (6) above, were included certain transactions in which it was indicated that E. Kirby Newburger had bought cotton futures from, or sold cotton futures to, George W. Clay, Jr., acting for the house account of Bouden, Clay and Company, and George W. Clay, Jr. caused such transactions to be entered on the books of Bouden, Clay and Company; WHEREAS, in truth and in fact, George W. Clay, Jr., had not, in connection with such transactions, traded with E. Kirby Newburger and such transactions had merely been entered by E. Kirby Newburger and by Bouden, Clay and Company without actual execution.

For example, on April 13, 1948, E. Kirby Newburger reported to Bouden, Clay and Company that he had bought from George W. Clay, Jr., acting for Bouden, Clay and Company, 200 bales of New Orleans July cotton futures at 36.31 cents per pound, and that he had sold to George W. Clay, Jr., acting for Bouden, Clay and Company, 200 bales of New Orleans July cotton futures at 36.70 cents per pound. The difference of .39 cents per pound between these two trades resulted in a loss in the house account of Bouden, Clay and Company. Bouden, Clay and Company has been advised by the Commodity Exchange Authority that the purpose and effect of this transaction and other transactions of a similar nature was to transfer funds from the house account of Bouden, Clay and Company to the personal trading account of E. Kirby Newburger on the records of Kohlmeyer. Newburger and Company.

(8) On or about April 16, 1948, Mr. H. S. Kohlmeyer of the firm of Kohlmeyer, Newburger and Company, informed C. Whitney Bouden and George W. Clay, Jr. that, in his opinion, E. Kirby Newburger was using Bouden, Clay and Company as a dupe to get a name on the other side of trades of customers of Kohlmeyer, Newburger and Company. C. Whitney Bouden and George W. Clay, Jr. then informed Mr. Kohlmeyer that E. Kirby Newburger would no longer be permitted to trade for the house account of Bouden, Clay and Company, and the above described agreement was then

terminated and no further trades were made. Thereafter, on or about June 1, 1948, C. Whitney Bouden, on behalf of Bouden, Clay and Company, voluntarily went to Mr. W. D. Espy, of the Commodity Exchange Authority, in New Orleans, and told him of the conversation which he had had with Mr. H. S. Kohlmeyer, and of the fact that Bouden, Clay and Company had immediately withdrawn from E. Kirby Newburger the permission to trade for the Bouden, Clay and Company house account. He also stated to Mr. Espy that inasmuch as Newburger had been doing business for Bouden, Clay and Company, Bouden, Clay and Company and the members of that firm wishes to say that the records of Bouden, Clay and Company were open to such inspections and examinations as the CEA might care to make Mr. Bouden further told Mr. Espy that Bouden, Clay and Company had had the greatest confidence in E. Kirby Newburger and had had no reason to suspect that any transactions made by him were out of order, and that he felt that Bouden, Clay and Company had been doped into an embarrassing position through misplaced confidence, personal friendship and long continued business association.

(9) C. Whitney Bouden was aware of the arrangement described in paragraph (5) above and of the entries made on the books of Bouden, Clay and Company pursuant thereto.

In addition to admitting the foregoing facts, Bouden, Clay and Company, C. Whitney Bouden, and George W. Clay, Jr., agree to discontinue and desist from all acts and practices which are in violation of the Commodity Exchange Act, as amended, and the rules and regulations promulgated thereunder, and further agree that this stipulation shall be admissible as evidence of acts and practices in violation of the said Commodity Exchange Act, as amended, and the rules and regulations promulgated thereunder, in any proceeding brought against this firm or its partners in connection with any subsequent violation of the said Act and regulations.

Done, at Washington, D. C., this 6th day of April 1949

/s/ Bouden Clay & Co.

Bouden, Clay and Company

By /s/ C. W. Bouden

/s/ C. Whitney Bouden C. Whitney Bouden

/s/ George W. Clay, Jr.

George W. Clay, Jr.

Witnessed by:

/s/ J. M. Mehl

/s/ Benj. H. Holstein

LOAD-DATE: June 16, 2008

