

Commodity Futures Trading Commission  
CEA CASES

**NAME:** RALPH W. MOORE

**CITATION:** 9 Agric. Dec. 1299

**DOCKET NUMBER:** 47

**DATE:** NOVEMBER 15, 1950

**DOCUMENT TYPE:** DECISION AND ORDER

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE SECRETARY OF AGRICULTURE**

**AGRICULTURE DECISIONS**

(No. 2606)

*In re* RALPH W. MOORE. CEA Doc. No. 47. Decided November 15, 1950.

**Denial of Trading Privileges -- Violations of Act and Regulations thereunder**

Where respondent, a trader in commodity futures, had been charged with preparing and circulating a purported memorandum to the press containing false and misleading information with respect to Government purchases of lard, with attempting to manipulate the price of this commodity, and with failing to report transactions in certain accounts which he owned or controlled, all in violation of the act and the regulations thereunder, and the respondent's defense, among others, was that the information distributed by him was true and misled no one, and that he neither owned nor controlled the accounts in question, the Judicial Officer held that the Government had proved its charges and ordered a denial of all trading privileges on all contract markets to the respondent for a period of 90 days, commencing on January 1, 1951.

**Charges of Violation of Act Established by Evidence**

The evidence in the record is more than preponderant to the effect that the information contained in respondent's memorandum to the press was false, misleading, and knowingly inaccurate. It establishes that the use of the names of the four Government officers as a reference was also false and misleading, that respondent knowingly delivered the memorandum to the press or caused it to be delivered for transmission in interstate commerce, and that the information in the memorandum tended to affect the price of lard in interstate commerce.

**Insufficiency of Evidence to Show Carrying of Certain Accounts to Evade Reporting**

Referee's recommendation that there is insufficient evidence to conclude that the respondent carried accounts in the names of other persons in order to evade the reporting requirements are approved.

**Violation of Act -- Manipulation of Prices -- False Market Information**

The issuance and circulation of the memorandum to the press constitutes a type of violation that is most serious and flagrant, for it amounts to an effort to manipulate prices on a commodity market and, therefore, throughout the country by means of false market information, and this is a case example of one of the principal evils against which the act was directed.

**Failures to Report as Proof of Violations of Act and Regulations thereunder**

Respondent's contention that the violations perpetrated by him amount only to isolated and unintentional failures to report are untenable since

his failures to report are so numerous that it cannot be concluded that these are isolated instances which should be disregarded.

**Success Not Indispensable Element of Violations of Act**

Success market-wise for a false, misleading or knowingly inaccurate report is not an indispensable element of violation.

**Inapplicability of Administrative Procedure Act in Cases of Willfulness**

Where respondent was familiar with reporting requirements and his failures to do so were intentional, knowing or voluntary, as distinguished from accidental, and are therefore "willful," prior notice and opportunity for demonstrating or achieving compliance are not required by the Administrative Procedure Act as the latter Act is not applicable in cases of willfulness.

**Court Decision Distinguished**

*General Foods Corporation, et al. v. Brannan*, 170 F.(2d) 220, 231 (C.C.A. 7th, 1948).

*Mr. Benj. M. Holstein* for complainant. *Mr. Ben Ivan Melnicoff*, of Washington, D. C., for respondent. *Mr. Jack W. Bain*, Hearing Examiner.

*Decision by Thomas J. Flavin, Judicial Officer*

**DECISION AND ORDER**

This is a disciplinary proceeding under the Commodity Exchange Act (7 U. S. C. Chapter 1), instituted by a complaint signed by the Acting Secretary of Agriculture. In general, the complaint charges the respondent, Ralph W. Moore of Granger, Texas, and Washington, D. C., (1) with evading the reporting requirements of the Commodity Exchange Act n1 and the regulations thereunder by failing or refusing to report contract positions, carried in his own name and in the names of other persons, that were required to be reported, and (2) with violating section 6(b) n2 and section 9 n3 of the act by preparing and circulating a

document purporting to be a memorandum to the press sponsored, authorized, endorsed or based upon information furnished by officials of the United States Government, stating that the United States Government was about to undertake heavy lard purchases for export when such were not the facts. Respondent was given 20 days to answer the complaint and oral hearing was set for July 7, 1948.

n1 "Sec. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary of Agriculture (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture . . . ."

n2 "Sec. 6. . . . (b) If the Secretary of Agriculture has reason to believe that any person (other than a contract market) is violating or has violated any of the provisions of this Act, or any of the rules and regulations made pursuant to its requirements, or has manipulated or is attempting to manipulate the market price of any commodity, in interstate

commerce, or for future delivery on or subject to the rules of any board of trade . . . ."

n3 "Sec. 9. Any person . . . who shall manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any board of trade, or who shall knowingly or carelessly deliver or cause to be delivered for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than \$ 10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution."

On June 11, 1948, the proceeding was assigned to Jack W. Bain, Office of Hearing Examiners, as referee, who at respondent's request extended the time for filing an answer and postponed the hearing. Respondent filed a motion to dismiss the complaint for failure to state a cause of action, failure to comply with the Administrative Procedure Act, lack of due process, etc. Oral argument upon the motion was had before the referee and the motion to dismiss was denied by him. A subsequent motion for a bill of particulars was also denied. An answer was filed on October 8, 1948, denying all the allegations of the complaint except those dealing with failure to report respondent's contract positions with respect to trading accounts carried in respondent's own name. As to these the answer says that failure to report was unintentional and inadvertent. The answer also raises the defenses contained in the motion to dismiss.

An advance session of the hearing was held on November 30, 1948, for the purpose of taking the testimony of one of complainant's witnesses who was in the United States temporarily and who would not be available later. Subsequent sessions of the hearing were held in the Department of Agriculture, Washington, D. C., on December 14, 15, 16, and 20, 1948, and April 26, 1949. Benjamin M. Holstein, Office of the Solicitor, appeared as counsel for complainant, and Ben Ivan Melnicoff, Washington, D. C., as counsel for respondent. At the close of the session of December 20, 1948, the complainant rested. Counsel for respondent again moved to dismiss the proceeding and the hearing was recessed to a later date for oral argument on the motion. On December 21, 1948, the referee certified the proceeding to the Secretary for the determination of certain questions arising in connection with the referee's ruling of August 31, 1948, denying respondent's motion to dismiss the complaint and exceptions to certain points in connection with

such ruling filed by complainant. On February 2, 1949, the Judicial Officer issued a decision holding that the certification did not present any question that required determination at that stage of the proceeding and remanded the same to the referee for continuation of the hearing and for post-hearing procedure. *In re Ralph W. Moore*, 8 Agric. Dec. 146 (8 A.D. 146. On April 26, 1949, when the hearing was resumed, leave to reopen the case on behalf of the complainant was requested and granted. One witness was then recalled who testified briefly, and complainant again rested. Counsel for the respondent then announced that respondent also rested and the hearing was concluded. The transcript of the hearing contains 574 pages. Fifty exhibits were put in evidence by complainant and two by respondent. Respondent's two exhibits were (1) a copy of a report of the President's Cabinet Committee on World Food Program with copies of a letter to the President by the committee and a statement by the President and (2) a copy of a newspaper story on the Cabinet Committee report. After the hearing, both parties filed suggested findings of fact and conclusions.

The referee issued his report on March 10, 1950, recommending findings of fact and conclusions substantially as charged in the complaint except that the

referee concluded that in the light of *General Foods Corporation et al. v. Brannan*, 170 F. (2d) 220 (C. C. A. 7th, 1948), there was no attempt to manipulate the price of lard by respondent within the meaning of the act. Respondent filed exceptions to the report and complainant also excepted to the referee's conclusion that there was no violation of the act by means of an attempt to manipulate lard prices. Complainant also excepts to the referee's recommendation that respondent's trading privileges be suspended for 30 days and contends that a longer suspension period should be ordered. Oral argument upon the exceptions to the referee's report was held before me in Washington, D. C., on August 17, 1950.

As indicated above, respondent offered no oral testimony at the hearing. His defense on the merits is, for the most part, that the complainant's case is not supported by the weight of the evidence. This defense of respondent and also other legal objections raised by him will be discussed under the heading "Conclusions."

#### **FINDINGS OF FACT**

1. Ralph W. Moore, the respondent, is an individual whose business address is 1707 N Street, N. W., Washington, D. C.

2. At all times material herein, the Board of Trade of the City of Chicago (hereinafter called the Chicago Board of Trade) and

the New York Cotton Exchange were contract markets designated under the Commodity Exchange Act.

3. At all times material herein, Merrill Lynch, Pierce, Fenner & Beane (hereinafter called Merrill Lynch), Daniel F. Rice & Company, Gerstenberg & Company, Harriss & Vose, Bache and Company, and Laidlaw & Company were registered futures commission merchants under the act.

4. During 1946 and through October 1947, in accounts with Daniel F. Rice & Company, Gerstenberg & Company, Merrill Lynch, and Harriss & Vose, respondent made purchases and sales for future delivery on contract markets involving 28,000 bales of cotton, 1,095,000 bushels of wheat, 2,140,000 bushels of corn, 3,905,000 bushels of oats, 70,000 bushels of rye, 18 carlots of eggs, and 3,880,000 pounds of lard.

5. On October 1, 1947, respondent was long 740,000 pounds of lard for future delivery on the Chicago Board of Trade, of which 100,000 pounds were for delivery in October 1947, 200,000 pounds in November 1947, 240,000 pounds in December 1947, 40,000 pounds in January 1948, and 160,000 pounds in March 1948. On that date respondent also had an interest in other commodity futures accounts carried by Laidlaw & Company and Merrill Lynch in the names of Ruth B. Aspinwall, Nina W. Laing, Elizabeth Anderson, James R. McDonald, Carolyn McIntosh, Carl Wilkens, Arline Hilyard, and Edward L. Traylor. On that date the net long position in lard futures in the account carried in the respondent's own name was 740,000 pounds and the aggregate net long position in lard futures in all the aforesaid accounts was 1,800,000 pounds (Government Exhibit 11).

6. About October 1, 1947, respondent composed and had typed in his office by his secretary, Miss Nina Laing, at his direction, the following document, hereinafter called Memo to the Press:

October 1, 1947

MEMO TO THE PRESS:

According to the President's September 26th statement of the estimated expert availabilities of edible fats and oils and peanuts approximately \$ 153,900,000 may be expended for the commodities. Of this amount lard will unquestionably account for the greater part of the funds to be spent.

Currently only \$ 5,263,246 has been used in the purchase of 29,261,900 pounds of lard. The amount spent in the same period for other edible fats and oils is considerably less than one-half million dollars.

This leaves approximately \$ 147,000,000 to be expended for the purchase of edible fats and oils to meet the caloric requirements of persons abroad as set forth in the President's statement.

Faced with this demand for lard the Department of Agriculture recently passed up the opportunity of acquiring a large offering of lard by purveyors at prices well below present levels.

With the promises to add to the exports of fats and oils to offset what now appears to be a curtailed grain export program, maximum purchases of fats and oils, with stress on lard are expected to be made from now until April.

Reference: Glenn Craig -- State Department

Colonel Stanley Andrews -- U.S.D.A.

Mr. E. J. Cronkhite -- U.S.D.A.

Mr. George L. Prichard -- U.S.D.A.

7. On October 1, 1947, respondent sent, by Miss Laing, two or three copies of the Memo to the Press to Harmer Reeside, the employee of Merrill Lynch who received orders from respondent for transactions in respondent's commodity futures accounts with Merrill Lynch, at the Washington, D. C., office of Merrill Lynch.

8. In the usual course of business, upon receiving the Memo to the Press, Reeside took it to Herbert J. Holland, then Washington representative of the commodity division of Merrill Lynch, who had it teletyped to the manager of the lard department of Merrill Lynch in Chicago, Illinois. When Holland inquired and was told by George L. Prichard that Prichard knew nothing of the Memo, Holland wired Chicago that the authenticity of the Memo was suspected.

9. Commodity news received is generally given wide distribution throughout the United States by Merrill Lynch in its regular course of business, but the Memo to the Press was not so distributed, the communications between Washington and Chicago being only inter-office communications. Respondent had received commodity news from Merrill Lynch in his dealings with it, and knew its practice of distributing such information.

10. On October 1, 1947, respondent left from 50 to 100 copies of the Memo to the Press on a table at the National Press Club, Washington, D. C., on which table material was customarily left for any reporters who might be interested. The National Press Club is frequented by many news reporters in Washington, both members and non-members of the Club.

11. On October 1, 1947, approximately 16 copies of the Memo to the Press were placed, by whom the evidence does not show, in

boxes assigned to news reporters in the press room of the United States Department of Agriculture, Washington, D. C., while reporters were attending a press conference in another room of the building. This press room is maintained by the Department for the use of reporters assigned by various news services to "cover" the Department, and is the place where official press releases of the Department are made available to the reporters. Only official releases of the Department and releases of other national or international agencies or organizations having some relation to agriculture are in the usual course of business distributed through this press room, and all releases, official or otherwise, first clear through the Office of Information of the Department. The Memo to the Press did not clear through the Department.

12. On October 1, 1947, one of the copies mentioned in Finding 11 was taken by Raymond Maxfield Barnes from the Agriculture press room box assigned to Barnes, then reporter for the Chicago Journal of Commerce, a newspaper published in Chicago, Illinois, with circulation in various states, containing principally business and market news, including news of the commodity and commodity futures markets. In accordance with the routine of such news paper, its Washington office wired a description of the Memo to the Press to its Chicago office, and upon receiving a request from the Chicago office for more information on the item concerning a considerable amount of lard, the Washington office, through Barnes, telephoned Prichard's office but did not reach him that day. When on the following day Prichard advised that the Memo was not official, the newspaper decided not to circulate it. In the usual course of business, any news received by the newspaper's Washington office is wired to Chicago, and the Chicago office decides whether to publish it.

13. On October 1, 1947, Ovid A. Martin, the reporter for the Associated Press assigned to cover the Department of Agriculture, received one of the copies mentioned in Finding 11 in his box in the press room. He thought it might mean a good news story and telephoned Prichard and Colonel Stanley Andrews, who told him it was unauthorized and that the indication that the Department would increase its lard purchases was untrue. In the usual course of business, when Martin receives a release containing information he thinks might lead to a news story, he checks for any unanswered questions and sends the story in to the Associated Press, where it is decided whether the story is to be used. If the decision is to use it, the story is distributed to some 2,000 newspapers in all of the 48 States. Martin did not prepare, and the Associated

Press did not distribute, a story based upon the Memo to the Press. Martin was not a member of the National Press Club but had received, from the table there, releases upon which he had based stories distributed by the Associated Press.

14. The Memo to the Press did not contain the heading usually appearing on Department press releases, and was on paper of a different size from that used for Department releases. Department releases do not usually contain the names of persons as references. The Memo did not appear to be a Department release to the Department employees and the news reporters who testified to having seen it.

15. None of the persons named as references in the Memo to the Press had authorized use of his name, none of them furnished any information on lard purchases to respondent, and none of them had any knowledge of the Memo until after it had been distributed.

16. The purchase of the large quantities of lard indicated in the Memo to the Press was not contemplated on or around October 1, 1947, and the indication of such purchase was knowingly inaccurate, untrue and misleading.

17. There is trading in lard for future delivery on the Chicago Board of Trade, but not on any other contract market. The price of lard futures on the Chicago Board of Trade is directly related to the market price of lard at Chicago and throughout the United States, and a change in the futures price is reflected in the market price.

18. Publication of news that purchases of lard would be made as indicated in the Memo to the Press would have caused increases in the price of lard futures on the Chicago Board of Trade, and in the market price of lard in Chicago and throughout the United States.

19. In October 1947, in discussing the Memo to the Press, respondent told employees of the Department that although the price of hogs had gone up, the price of lard had gone down, and he complained that procurement policies of the Department had kept the lard price too low.

20. Respondent thought the price of lard was too low and he issued the Memo to the Press in trying to raise it toward what he considered a proper level. By virtue of his long position in lard futures in his own name and the long

positions in lard futures in accounts in which he had an interest shown in Finding 5, respondent would have profited by an increase in price.

21. Section 4i of the Commodity Exchange Act requires a person to report to the Secretary's designee whenever such person's

daily trading, or long or short open contract position, in any future equals or exceeds such amount as the Secretary may specify. Regulations have been promulgated setting forth the details of this requirement. Under these regulations, a trader reaches reporting status whenever he owns or controls a long or a short open contract position in any one future of the commodity in question on any one contract market equal to or in excess of the amount fixed by the Secretary of Agriculture for that commodity. The trader then becomes obligated to report, for that particular day, all transactions and positions in all futures of such commodity on all contract markets, in all accounts which he owns or controls, and to file similar reports for any succeeding day when such accounts have transactions in that commodity, so long as he remains in reporting status. A final report is required on the day when the trader falls below reporting status. The amount fixed in the regulations for reporting purposes for lard is 250,000 pounds (17 CFR 9.21), for wheat and oats, 200,000 bushels (17 CFR 2.21), and for cotton 5,000 bales (17 CFR 3.21). The regulations require every person who "holds or controls" the applicable amounts to report (17 CFR 2.10, 3.10, 9.10) and one who directs trading for an account is deemed to control the account (17 CFR 1.3 (j)).

22. On October 3, 1947, through Merrill Lynch, respondent bought 100,000 pounds of lard for future delivery in November 1947, which added to 150,000 pounds previously bought by him in the November future, gave him a position of 250,000 pounds long in that future. He maintained such position until October 14, 1947, on which day he reduced such position to 200,000 pounds long by a sale of 50,000 pounds. In addition to the October 3 purchase and the October 14 sale mentioned, respondent made the following transactions in Chicago lard futures in October 1947: sold 40,000 pounds, March, on October 3; sold 40,000 pounds, December, and 40,000 pounds, March, on October 4; sold 40,000 pounds, December, and 40,000 pounds, March, on October 6; bought 40,000 pounds, December, on October 8; bought 80,000 pounds, March, on October 9; and sold 40,000 pounds, March, and 40,000 pounds, December, on October 14, making 11 lard futures transactions on six different days during the period October 3 through October 14, 1947. Respondent filed no reports for this period with the Commodity Exchange Authority.

23. Respondent told Harmer Reeside, by whom respondent's orders were taken at Merrill Lynch, that respondent did not want to be in reporting status. Respondent was told by Reeside that his position mentioned in Finding 22 contained one too many contracts,

and respondent instructed Reeside to liquidate that contract.

24. On October 10, 1947, the Chicago office of the Commodity Exchange Authority wrote respondent that he was in reporting status for lard, and asking him to report. Respondent answered by letter on October 22, followed by another on October 24, 1947, stating that, as to lard, "I am sure that I have never owned 250,000 pounds or more in any one option." He said he would be glad to furnish further information if called on.

25. On August 21, 1947, through Gerstenberg & Company, respondent bought 25,000 bushels of wheat on the Chicago Board of Trade for future delivery in December 1947, which added to the 185,000 bushels previously bought by him in that future, gave him a position therein of 210,000 bushels long. He maintained such position until September 2, 1947, on which day he reduced it to 185,000 bushels long by a sale of 25,000 bushels. In addition to the August 21 purchase and the September 2 sale mentioned, respondent made the following transactions

in Chicago wheat futures: August 23, 1947, sold 15,000 bushels, September delivery; August 26, 1947, bought 10,000 bushels, May delivery; August 27, 1947, sold 95,000 bushels, May delivery, and bought 90,000 bushels, September delivery; and September 29, 1947, sold 10,000 bushels, May delivery, making seven wheat futures transactions on six different days during the period August 21 through September 2, 1947. Respondent filed no reports for this period with the Commodity Exchange Authority.

26. On February 9, 1948, through Gerstenberg & Company, respondent sold 100,000 bushels of wheat for future delivery in September on the Chicago Board of Trade, which gave him a position of 210,000 bushels short in the September future, when added to the 110,000 bushels he had previously sold in that future through Daniel F. Rice & Company. Respondent held this position through February 11, 1948. In addition to the sale mentioned, respondent bought 100,000 bushels of the May wheat future on February 9, 1948, sold 10,000 of the May on the same day, bought 100,000 of the July on February 10, 1948, sold 100,000 of the May on the same day, and bought 10,000 May on February 11, 1948. Respondent filed no reports for this period with the Commodity Exchange Authority.

27. On August 22, 1947, respondent bought 15,000 bushels of oats for future delivery in December on the Chicago Board of Trade, which purchase gave him a long position of 200,000 bushels in that future. On the following day respondent bought 10,000

bushels and sold 20,000 bushels in that future, leaving his position therein 190,000 bushels long. In addition to the three transactions mentioned, on these two days respondent bought 90,000 bushels of oats for delivery in May and sold 20,000 for delivery in September. He filed no reports for this period with the Commodity Exchange Authority.

28. From July 31, 1947, to August 22, 1947, the respondent was the owner of commodity futures accounts carried in his own name on the books of Daniel F. Rice & Company, Gerstenberg & Company, and Merrill Lynch, and also had an interest in and controlled and directed trading in the commodity futures account of Elizabeth Anderson carried on the books of Merrill Lynch. On July 31, 1947, as the result of a purchase of September oats futures contracts executed on the Chicago Board of Trade by Gerstenberg & Company for the respondent's account, the aggregate net long position in September oats futures contracts on the Chicago Board of Trade in the accounts of respondent and Elizabeth Anderson reached 200,000 bushels and remained at 200,000 bushels continuously until August 4, 1947. On August 1, August 2, and August 4, 1947, on which dates the respondent was in reporting status by reason of his position in September oats, purchases and sales of September and December oats futures contracts were executed on the Chicago Board of Trade by Daniel F. Rice & Company and Merrill Lynch for the accounts of the respondent and Elizabeth Anderson, and on August 4, 1947, the aggregate net long position in September oats futures contracts on the Chicago Board of Trade in such accounts was reduced to 170,000 bushels. On August 20, 1947, as the result of a purchase of December oats futures contracts executed on the Chicago Board of Trade by Daniel F. Rice & Company for respondent's account, the aggregate net long position in December oats futures contracts on the Chicago Board of Trade in the accounts of the respondent and Elizabeth Anderson reached 205,000 bushels. The respondent filed no reports for this period with the Commodity Exchange Authority.

29. (a) From July 11, 1947, through October 18, 1947, the respondent was the owner of a commodity futures account carried in his own name on the books of Merrill Lynch and also had an interest in and controlled and directed trading in the commodity futures accounts of Lois Moore, Elizabeth Anderson, William J. Goodwin, James E. McDonald, Ruth B. Aspinwall, and Glenn Blackshear, carried on the books of Laidlaw & Company and Merrill Lynch.

(b) During the period from July 11 through October 18, 1947,

the respondent, because of purchases and sales of lard futures executed upon the Chicago Board of Trade by Merrill Lynch for the accounts of respondent and Elizabeth Anderson, was in a reporting status with respect to the combined accounts of all the persons named in Finding 29(a) upon approximately 90 days covering approximately 122 reportable items. He filed no reports for this period with the Commodity Exchange Authority.

30. On December 18, 1947, the respondent had a commodity futures account in his own name and had an interest in and controlled and directed trading in the commodity futures account of Lois Moore, his wife. These accounts were carried by Harriss & Vose. On this date, as the result of sales of December cotton futures contracts executed on the New York Cotton Exchange by Harriss & Vose for the respondent's account and for the account in the name of his wife, the aggregate net short position in December cotton futures contracts on the New York Cotton Exchange in the accounts of respondent and his wife reached 7,400 bales, by reason of which the respondent became subject to the requirement that he report to the Commodity Exchange Authority with respect to the open contracts in all cotton futures in his own account and in the account of his wife to the extent of his interest in or control of such accounts. He filed no reports with the Commodity Exchange Authority.

31. Respondent financed in whole or in part the accounts in names other than his own that are mentioned in Findings 5, 28, 29 and 30. He obtained no collateral or other security and many of the accounts were in the names of persons who could not give security and who were inexperienced in commodity trading. Most of the accounts were opened by respondent with deposits of cash, transfer of credit or checks issued by Lois Moore, respondent's wife. Trading orders were given by the respondent and accepted by the brokers although the brokers had on file no powers of attorney to respondent from the persons in whose names the accounts were carried. The accounts carried respondent's address. Checks constituting payments out of the accounts were delivered to the respondent and were endorsed by him as well as by the payee. The reasons respondent gave for his acts to investigators for the complainant were that these people were either friends of his or friends of his friends, and he wanted to help them make some money. In practically every instance the accounts showed a profit. He also told the investigators that he gave the profits to the persons in whose names the accounts were carried and that he merely got his money back. There were transfers of funds from

various accounts to others, and many from respondent's accounts to these accounts including deposits in these accounts of checks issued in the name of Lois Moore, respondent's wife.

## **CONCLUSIONS**

### **I**

The facts concerning the preparation, issuance and circulation of the Memo to the Press, covered by Findings 6 through 15, are either admitted or established by records and testimony neither impeached nor contradicted. Indeed the respondent admitted to the complainant's investigators that he composed and issued the Memo.

Respondent defends, however, by arguing that no violation of the act occurred. Complainant charges that respondent violated section 6(b) and two separate parts of section 9 n4 of the act by his activities in connection with the Memo, (1) the provisions dealing with the delivery for transmission in interstate commerce of false or misleading or knowingly inaccurate reports on conditions that affect or tend to affect the price of a commodity in interstate commerce, and (2) the provisions prohibiting manipulation or attempts to manipulate the price of any commodity in interstate commerce or for future delivery on or subject to the rules of any board of trade.

n4 Section 6(b) of the act under which this proceeding is brought provides in part: "If the Secretary of Agriculture has reason to believe that any person (other than a contract market) is violating or has violated any of the provisions of this Act, or any of the rules and regulations made pursuant to its requirements, or has manipulated or is attempting to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any board of trade. \* \* \*

Respondent insists that the information contained in the Memo to the Press was true and that the evidence shows that the Memo misled no one. Considering first the question of a violation of the provisions covering false, misleading or knowingly inaccurate reports on conditions that affect or tend to affect the price of a commodity in interstate commerce, the evidence is more than preponderant to the effect that the Memo was false, misleading and knowingly inaccurate. The Department of Agriculture was faced with no demand for lard, there was no intention, commitment or program to expend \$ 153,900,000 on fats, oils and peanuts with the greater part of \$ 153,900,000 to be spent on lard procurement and there was to be no stress on lard in procuring edible fats and oils. In fact, the emphasis was upon peanuts in the purchasing operations of the Department. Neither the President's statement nor the report of the Cabinet Committee even so much

as mentions the word "lard." There was no stress or emphasis upon lard procurement publicly announced or generally known and the respondent did not get any such information privately from the appropriate Government officials. On the contrary, the Memo and respondent's admissions to the investigators show that respondent was aggrieved because there *wasn't any such stress or emphasis*. He thought the Department's procurement policy on lard had kept lard prices from advancing as respondent wished.

The use of the names of the four Government officials as "References" was also false and misleading. None of these officials sponsored or endorsed the Memo, none supplied the information, and the information was false. The obvious purpose of placing their names upon the Memo was to give an appearance of reliability and authenticity. It is no valid escape for respondent to point out that the purpose of the Memo failed because of the discovery of its falsity before widespread publication. Success market wise for a false, misleading or knowingly inaccurate report is not an indispensable element of the violation.

The evidence also clearly establishes that respondent knowingly delivered the Memo to the Press or caused it to be delivered for transmission in interstate commerce. The information was wired from Washington, D. C., to Chicago, Illinois, by Merrill Lynch, the delivery to the Press Club was for news service representatives and newspaper reporters to forward the information to their newspapers throughout the country, and the deliveries at both Merrill Lynch and the National Press Club were in interstate commerce because the deliveries were made within the District of Columbia which, in itself, is interstate commerce as defined by section 2 (a) of the act. There is ample evidence in the record, too, that the information in the Memo tended to affect the price of lard in interstate commerce. Therefore, respondent's efforts to escape establishment of a violation of these provisions of section 9 must fail.

The referee concluded, however, that there was no attempt to manipulate the price of lard in violation of section 6(b) and other provisions of section 9, basing his opinion upon the decision in *General Foods Corporation et al. v. Brannan*, 170 F. (2d) 220, 231 (C. C. A. 7th, 1948), where the court held that taking two million bushels of so-called "distress" rye out of the open market to keep rye prices from declining was not an attempt to manipulate the price of rye within the meaning of the act.

In this case, the evidence is beyond dispute that the respondent issued the Memo for the purpose of raising lard prices. The respondent

did not testify and no other credible motivation is advanced on behalf of the respondent even in argument. Why the respondent wanted lard prices to go up is clearly demonstrated by the large long position in the trading account in his own name and the long positions in the accounts in which he had an interest. The respondent not only knowingly and willfully endeavored to bring about an artificial price but he knowingly and willfully used false and misleading information to do so. We believe that this is a clear-cut instance of an attempt to manipulate in violation of section 6(b) and section 9 of the act and is not governed by the decision of the Circuit Court of Appeals in the *General Foods* case.

## II

The respondent failed to report positions and transactions in accounts under his own name. Such failure was a violation of section 4i of the act and sections 2.10, 2.11, 2.21, 9.10, 9.11 and 9.21 of the rules and regulations. Findings 23 and 24 show that the respondent knew of the reporting requirements and that he did not wish to report. He argues that the violations amount only to isolated and unintentional failures to report but his failures to report are so numerous that we cannot conclude that these are isolated instances which should be disregarded. Respondent also invokes Section 9(b) of the Administrative Procedure Act, n5 5 U. S. C. § 1001 *et seq.* The respondent was given an opportunity to report his lard position and transactions (Finding 24) but failed to do so. In any event, he was familiar with reporting requirements and his failures must be regarded as intentional, knowing or voluntary, as distinguished from accidental, and are therefore "willful." Prior notice and opportunity for demonstrating or achieving compliance are not required by Section 9(b) of the Administrative Procedure Act in cases of "willfulness."

n5 "Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements."

We reach the conclusion also that the respondent violated the act and the regulations by failing to report the transactions and positions, described in Findings 28, 29 and 30, resulting from combining accounts in his own name with accounts in the names of other persons but controlled by the respondent.

The respondent claims that the evidence is not sufficient to conclude that the respondent "controlled" these latter accounts. Of

course neither the respondent nor any of the persons named appeared as witnesses at the hearing to throw any light upon the situation so that we have only the evidence introduced by the complainant to consider. This evidence, as described in Finding 31, is that the respondent had aggregate deposits of about \$ 30,000 in the Elizabeth Anderson account without collateral or security and that he opened the Goodwin, McDonald, Aspinwall and Black-shear accounts by transfers of credit, deposits of cash or by checks issued in the name of Lois Moore, his wife. There are many instances in the record involving other accounts where checks issued by or to Lois Moore were used by the respondent in his trading operations. In the accounts named, the respondent gave the trading orders to the brokers although on some occasions the respondent's associate, Nina Laing, gave orders in the Anderson account. Although the persons in whose names the accounts were carried gave no powers of attorney to the brokers, the brokers accepted the respondent's orders without question.

These factors and other facts outlined in Finding 31 make up a pattern of control by respondent over the named accounts. The technical fact that legally the named persons could withdraw funds from the accounts does not negative control. They did not do so except for one relatively small item in the Anderson account. Accordingly, we conclude that the respondent was in violation of section 4i of the act and sections 2.10, 2.11, 2.21, 3.10, 3.11, 3.21, 9.10, 9.11, and 9.21 of the rules and regulations. For the reasons given above with respect to accounts in the respondent's own name, Section 9(b) of the Administrative Procedure Act is of no avail to respondent in connection with the failures to report involving the controlled accounts.

### III

We agree with the referee in his recommendation that there is insufficient evidence to conclude that the respondent carried accounts in the names of other persons in order to evade the reporting requirements. We have also refrained from making any findings as to the respondent's part ownership of the Farm Products Company.

Farm Products Company comes into the case by virtue of a 1947 Harriss & Vose account designated "Dyke Cullum, account Farm Products Company." The complaint alleged and the referee found that the respondent was part owner of this company and that, therefore, the respondent should have reported the trading of the

company when, as found in Finding 30, the combined accounts of the respondent and his wife reached reporting status with respect to cotton. The evidence as the hearing discloses that in 1946 Merrill Lynch and Rache & Company had accounts in the name of Farm Products Company which were opened by Dyke Cullum and by the respondent as partners. However, no such partnership or joint account agreement was executed in connection with the Harriss & Vose account. After the referee's report was issued, a letter was received from Dyke Cullum stating that the respondent withdrew from Farm Products Company before it made any trades on any commodity exchange.

Since the respondent was in reporting status with respect to his own account and his wife's at any rate, the matter of the respondent's duty to report the trading in the 1947 Harriss & Vose account of "Dyke Cullum, account Farm Products Company" is dropped in view of the question raised as to the respondent's interest in the account.

### IV

To the extent that this decision and order are inconsistent with findings and conclusions suggested by the respondent, or motions, objections and exceptions not specifically discussed herein, of course such findings, conclusions, motions, suggestions, objections, exceptions, etc., are denied.

The question remains as to what sanction should be ordered. The failures to report are much the lesser of the violations found. The issuance and circulation of the Memo to the Press constitutes a type of violation that is most serious and flagrant, namely, an effort to manipulate prices on a commodity market and, therefore, throughout the country by means of false market information. This is a case example of one of the principal evils against which the act was directed. It is our opinion that the respondent's trading privileges should be suspended for a period of 90 days.

### ORDER

Commencing on January 1, 1951, all contract markets shall refuse to Ralph W. Moore the privileges of trading thereon, either directly or indirectly, for a period of 90 days.

Copies hereof shall be served upon the parties by registered mail or in person and upon each contract market.

**LOAD-DATE:** June 8, 2008

