

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. NICHOLS & COMPANY, INC., A CORPORATION, AND NICHOLS & COMPANY, A PARTNERSHIP COMPOSED OF J. H. NICHOLS, A. O. WELLMAN, R. P. HACKETT, W. B. SOUTHWORTH, AND J. HARVEY WELLS

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UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

COMMODITY EXCHANGE ADMINISTRATION

CE-A Docket No. 25

Secretary of Agriculture, Complainant v. Nichols & Company, Inc., a corporation, and Nichols & Company, a partnership composed of J. H. Nichols, A. O. Wellman, R. P. Hackett, W. B. Southworth, and J. Harvey Wells, Respondents

Proceedings, Findings of Fact, Conclusions, and Order

PROCEEDINGS

On February 14, 1941, pursuant to the provisions of the Commodity Exchange Act, as amended (7 U. S. C. 1940 ed. 1), the Assistant Secretary of Agriculture issued a complaint against Nichols & Company, Incorporated, of Boston, Massachusetts, and Nichols & Company, a Boston partnership composed of J. H. Nichols, A. O. Wellman, R. P. Hackett, W. B. Southworth, and J. Harvey Wells, the respondents. It was alleged that the partnership, which was registered as a futures commission merchant, was an agency of the corporation. The corporation was charged with having manipulated, in October 1940, the prices of the then current wool top future and of spot wool tops, by means of its large holdings and high bids in the future, and high quotations for spot tops. It was also charged with having refused representatives of the Department access to records on spot wool after it had filed the required reports of its holdings in futures, and with having taken the other side of customers' trades without the prior consent of the customers. It was alleged that the partnership had filled orders of customers by offsetting them against orders of other customers in 1939 and 1940, and had segregated insufficient funds for customers in October 1940. A hearing was set for March 19, 1941, in Boston.

A copy of the complaint was served upon each respondent by registered mail on February 17. On March 10, respondents filed requests for specifications, which were denied by the referee, and an answer in which various allegations in the complaint were admitted, denied, or explained.

At the appointed time and place, the hearing began before Jack Z. Bain, the referee. Charles W. Bucy, Office of the Solicitor, Department of Agriculture, appeared for the Government, and Edward C. Park, of Withington, Cross, Park, and McCann, of Boston, for the respondents. During the six days of the hearing, ten witnesses testified, and much documentary evidence was introduced, in such forms as tables, charts, letters, market reports, and the like. For purposes of convenience and clarity, the evidence is summarized according to the issues involved, in the order in which they were raised by the complaint, rather than in the order in which the evidence appears in the record.

Partnership as Agent

The documentary evidence and the testimony of Mr. Wellman, Mr. Southworth, and Mr. Wells give a general history of the relations between Nichols & Company, Inc., the corporation, and Nichols & Company, the partnership. Although the members of the partnership, in their individual capacities, owned only 23.2 percent of the voting stock in the corporation, from 1935 through 1940 all of the capital stock (except Southworth's share, later mentioned) was owned by Wellman, Nichols, and Hackett, for themselves or as trustees for their families, or by members of their families, and they exercised practical control of the corporation. On May 24, 1935, the corporation made its first trade in wool futures. About six weeks later, Wellman, Nichols, and Hackett formed the partnership, for the purposes of learning to handle futures intelligently and of executing the corporation's futures orders more easily than by putting them through outside brokers. The corporation put up all funds needed for establishing the partnership, amounting to \$ 28,010, as a loan. Up to September 1940, it regularly loaned further sums to the partnership, the balance at times exceeding \$ 300,000. From its organization through 1940, partnership profits were distributed to Wellman, Nichols, and Hackett in exact ratio to the percentage of corporation stock owned by them and their families, and any change in corporate ownership by these three interests resulted in a corresponding change in the distribution. All partnership profits were so distributed until Southworth and Wells became partners, after which time all except those portions going to Southworth and Wells were so distributed.

Before 1937 the partnership executed orders for the corporation only. It had no separate office. The three partners thought that, after a change had been made in the form of the futures contract at Wellman's suggestion, they could then recommend the futures market

to their friends, and that they should branch out and solicit futures business. On January 1, 1937, they opened a separate office which they had prepared for the partnership. This office is a room in one corner of the office building floor occupied by the corporation, and it is referred to as the futures room. It opens into the elevator hall and into the corporation's quarters. The passage between it and the corporation's space is kept open. The opening into the hall is through a corridor in which hats and coats are sometimes hung.

Mr. W. B. Southworth, who had been assistant secretary of the Wool Top Exchange, was put in charge of the futures room when it was opened. The partnership employed him to handle the futures business when it decided to branch out. On February 10, 1937, Southworth was made a partner of Nichols & Company. He was to receive ten percent of the profits. He put up no capital, but in 1939 and 1940 let his share of the profits accumulate as capital. He became a member of the Wool Top Exchange in September 1937, and conferred the privileges of his membership upon the corporation, entitling it to reduced commission rates on its futures trades instead of the full charges it had been paying. For this, he was made assistant treasurer of Nichols & Company, Inc., on August 4, 1938, but little of his time is taken by work for the corporation. In April 1940, he was issued one share of the corporate stock, as it was thought that an officer of the corporation should be a stockholder.

Mr. J. Harvey Wells was a clerk for the partnership from its organization, serving on the floor of the Exchange in New York. On July 1, 1938, he became a partner, the active partner in executing futures orders. He put in no capital, and was entitled to five percent of the partnership profits, with a minimum guaranteed. He acts as broker for others as well as for the partnership. He is not an officer of the corporation, and has no authority to trade for it except as orders are transmitted to him.

By the end of 1940, the partnership had about 200 futures customers. It pays its own office rent, and has its own telephone. In 1940 it executed 2,195 orders for the corporation, and 10,190 orders for others. It has offices in New York and Philadelphia in which the corporation transacts no business.

It is quite apparent that before 1937 the only function of the partnership was to handle the futures orders of the corporation for which it was named. Actually, it was merely a department, division section, or agency of the corporation, which created and financed it, and whose owners received its profits in exact proportion to their corporate ownership. When the business expanded, a separate office and additional employees were required, but there was no change in control, financing, or distribution of profits. Technically,

two partners were added to the original three, but it would not seem that the 15 percent interest of the two materially lessened the control of the three who retained 85 percent. Nor does it appear that the new partners' duties changed when they became partners. The only essential difference was that thereafter they were paid by receiving a split of the profits instead of a straight salary. It is not thought that the changes resulting from the partnership's handling of orders for others alter its real status as an agency of the corporation. There may be nothing immoral or fraudulent in the method of organization used, and it may be desirable, or even necessary, for some purposes, but these considerations do not obscure the true picture of the situation as a whole.

Manipulation

The testimony and exhibits show that there was great activity in the wool business in the last quarter of 1940. There was a strong apparel market, aided by Government purchases. There was a shortage in the supply of certain types of wool, and demand, consumption, and prices were the highest since 1918. In October the spread between domestic and foreign wool prices was unusually large, due partially to specification of domestic wool in Government contracts. The October future sold as much as 14 cents higher than the December, and due to the spread between the domestic and foreign top, it reflected the foreign rather than the domestic price. On October 24, the future fluctuated down from \$ 1.24 to \$ 1.09, and back to \$ 1.21. Nichols & Company, Inc., held considerably the largest long position in the October future, it being so dominant a factor that Wool Top Exchange officials asked and received assurances from Wellman that the future would not be allowed to run away on the high side. In making an investigation of the situation, the Commodity Exchange Administration sent representatives to Nichols & Company and Nichols & Company, Inc.

The evidence put in by both sides on the charge of manipulation is voluminous, but it is not thought necessary to summarize it in detail. There are a number of items which, taken alone, point to one conclusion or the other, but as a whole the evidence does not support the charges of manipulation.

Access to Records

Mr. Douglas B. Bagnell, in charge of the Division of Investigations, Commodity Exchange Administration, testified that the wide spread of the December under the October future, and the concentration of the October long holdings in one firm, caused him, early in October 1940, to send Mr. Purcell, an accountant, to Nichols & Company to ascertain, in general, its position in spot wool. Purcell, reported on this about October 6. After the erratic price movement of October 24, Bagnell directed Mr. Gillis, an

auditor for the Commodity Exchange Administration, to take Purcell with him and obtain complete information as to Nichols' spot and futures position for September and October. On October 31, Bagnell, with Gillis, went to Nichols and told Wellman he wanted information as to Nichols' cash position, or inventory, late in October, and its purchases and sales for some weeks prior, to determine the relationship between its spot and futures operations. Wellman said his inventory could not be ascertained within a million pounds. Bagnell asked that Gillis and Purcell be given access to the records to try to find a solution. After a complaint by Wellman about the continued presence of the auditors, Bagnell told Wellman, by telephone about November 22, that they were having

difficulties in obtaining spot position and shrinkage figures, and, if given data on these, they would get out promptly. Wellman replied that it would be impossible to get either of these figures then, but that shrinkage figures on each lot of wool could be determined after the lots had been combed, within a few weeks. On November 29, Bagnell wrote Wellman, outlining former conversations regarding the investigation, and asking Wellman's intentions as to furnishing records which would establish the correctness of Nichols' classification, in its report to the Department, of its futures holdings as hedges, which records the act required Nichols to keep. By letter dated December 6, Wellman replied that there was no running inventory record; that shrinkage figures would be useless if they were kept; that some cards kept by Hackett contained shrinkage estimates, but they were not company records and "we see no reason why we should hand them over"; that perhaps he could suggest some simpler way of getting at the facts if the Department would state what it wished to show; and that he ought to be advised of the purpose of the inquiry if the information was sought as a basis for criticism or complaint. No. reply was made to this letter. About December 10, Gillis reported he had obtained all the data he could get. Bagnell wanted Nichols' spot position, in top equivalent, late in October, to consider with its futures position, and its spot purchases and sales, in top equivalent, in September and October, to consider with its purchases and sales of futures. Shrinkage is the biggest factor, the starting point, in getting a top equivalent for grease wool. It is difficult for him to believe that as large a firm as Nichols could operate without something approaching inventory figures, and that it bought wool without making and recording estimates of the shrinkage.

Mr. Maurice A. Gillis, an accountant for the Commodity Exchange Administration, testified to his investigation, with Purcell, of Nichols' records, on Bagnell's instructions. He went to Wellman, who referred him to Southworth for the partnership records. Examination of these was completed in about three days. After Bagnell's conference with Wellman, Gillis and Purcell told Wellman that they wanted the inventory record as of late in October, and the records of purchases and sales of wool and wool top for September and October. Wellman said it was impossible to get an inventory figure,

but he told Mr. Killoway, an employee of the corporation, to give them what they wanted. They examined the purchase journal, and checked it against the invoices. The journal showed that some lots of grease wool bought were sent directly to the combers. Killoway told them that other lots were shipped to the combers from their warehouses, and showed them some combing orders bearing this out. Some lots identified on the combing orders had been on hand for some time, one over a year. Gillis then asked Wellman for the cards from which Nichols obtained the information as to what lots were on hand available for combing. Wellman replied that Gillis had all the information he would get along that line. They examined the sales journal, which showed contracts, but not deliveries on the contracts. They saw sales slips, some of which contained notations that they applied on or completed certain contracts. They asked Killoway for some record showing how much was due to be shipped on the contracts at a given time, and he said there was a record showing how each contract was filled, but that they must see Wellman for that. Wellman said there was such a record, but that they could not have it, as the person using it was too busy to be disturbed. Without this information, they could not determine what Nichols' commitments were in spot wool and top. Nichols bought about 1,500 lots of grease wool in September and October, on all of which Gillis wanted the shrinkage. With that, the top equivalent of each lot could be estimated. Wellman was annoyed because the records had to be checked.

Mr. Harrison P. O'Connell, an accountant who had audited Nichols' books for six of the past thirteen years, testified that the corporation kept no running inventory that would be available for inventory purposes. He had conferred with Wellman about installing a controlled inventory system, but no such system had been set up on December 31, 1940, when he audited the books. He could not have

said, from the books, what the inventory was on October 25. Nichols had a card inventory, as a memorandum record, of the grease wool coming in and going to combing mills. When the wool is combed, this record becomes complete, showing shrinkage. He checked Nichols' record, in book form, showing shipments against each contract. 95 to 97 percent of the invoices showed the contract number to which they applied.

Mr. Arthur O. Wellman, president of Nichols & Company, Inc., testified, on this issue, that Bagnell and Baston asked his cooperation in making a study of the October futures as compared to spot wool transactions, for which they needed data on purchases and sales of top futures and of spot wool and top in September and October, and on inventory as of September 1 and late in October. They were amazed when he told them there was no inventory, and that he could not estimate it within a million pounds. They did not mention that there was a complaint against Nichols, nor that it had to give the information, and Wellman thought it was only a

request for the study they were making. He told them Nichols was very busy, and they said the study would not take long. Thereafter, he had many talks with Gillis, who asked for record after record. Wellman tried to get him to accept ten percent, and estimate the rest, on various records requested, but he would not. Gillis interfered with the work of Nichols' employees by talking to them, and his smoking and coming in late made him a bad influence. Only a few of the employees were allowed to smoke. Wellman never mentioned smoking or late arrivals to Gillis, nor complained of his conduct to the Commodity Exchange Administration, but had all requests of Gillis for records referred to him, Wellman. When Gillis asked for the contract book, a record showing applications on contracts, and replied to Wellman's query that he would have to check the results he obtained, Wellman refused to let him see the record, telling him he already had all the figures. From the records Gillis had seen, he could have dug out the desired information, but to find what amounts remained undelivered on contracts made before September, he would have had to examine the figures for several months or a year before September. From the contract book, a cut off as of any given day can be made. Gillis did not ask for the shrinkage cards, but Mr. Aylor, of the Commodity Exchange Administration, did. Wellman told Aylor the shrinkage on them was only an estimate, of no value to him, that the cards were confidential records of the buyer, and that he could not see them. He told Aylor that the combing reports, when they were received, would be available to show the shrinkage. Combing reports would not show shrinkage by lots. Shrinkage on grease wool runs from 20 to 80 percent, and is the greatest factor in determining the top output. To hedge, information is needed on stock on hand and forward purchases and sales. On all foreign wool purchased, the shrinkage is estimated when customs duties are paid. Wellman thought that only a study was being made, but after Bagnell's letter of November 29, he began to wonder, and wrote that he would consider whether to give additional information if the Government would say definitely what use it intended to make of the information.

The testimony leaves no doubt that Nichols & Company, Inc., through its president, refused Department representatives access to what shrinkage records it had on the grease wool it held, and to its records showing its sales commitments, necessary items to consider in determining whether it had correctly reported its futures holdings as hedges.

Taking Customers' Trades

Respondents conceded that, before May 1940, the partnership, as a futures commission merchant, executed wool top futures trades in which the corporation was on one side and another customer was on the other, without the other customer's consenting to the commission merchant's taking the other side of his trade. After May 1, 1940, because of a ruling of the Acting Chief of the Commodity

Exchange Administration that a futures commission merchant could not do indirectly through a subsidiary what it could not do directly, consent was obtained from the other customer before the partnership executed a trade between the corporation and another customer.

Mr. Wells testified that Mr. George Baston, in charge of the New York office of the Commodity Exchange Administration, had said, about October 1938, that the corporation's account should be carried as a house account by the partnership, but that if the partnership used two brokers, or gave out one side, in executing a trade between the corporation and another customer, there would be no violation of the rules against acting as principal and broker in the same transaction. Instances of such trades occurred often, in which he always gave one side of the trade to another broker for execution.

Mr. Southworth testified that Mr. George Atz, of the Commodity Exchange Administration, had told him, late in 1938, that the partnership must treat the corporation account as a house account, for segregation purposes. Southworth had objected, saying this would cause trouble in executing orders from the corporation on one side and another customer on the other. He discussed the matter with Baston, who said that if two brokers were used in executing such orders, there would be no violation. Southworth instructed Wells accordingly.

It is clear that the corporation, through the partnership as its agent, up until May 1940, took the other side of its customers trades without their prior consent.

Offsetting Orders

Respondents conceded that Wells often received orders to buy and sell the same future at the same price. In most cases, one side, the purchase or the sale, was given to another Exchange member for execution, and Wells executed the other side. It frequently resulted that Wells made the trade with the member who had been given the other side.

Wells added that sometimes he gave one side to another broker, but that the partnership's clerk gave out the one side on some occasions, in which cases Wells would not know the situation when he traded with the other broker. The partnership often executed both sides of a trade, using two brokers, but every such trade was made by outcry in the ring, and the two brokers who had partnership orders to purchase and sell did not always make the trade with each other. Wells did not think this constituted offsetting, and the seven or eight other brokers used in this method of executing trades knew the situation and did not think there was offsetting. These included the president and other responsible officials of the Exchange.

Southworth said he did not think that the partnership was offsetting when it used two brokers. Others followed the practice and did not think they were offsetting. Had the Commodity Exchange Administration ruled otherwise, he would have been delighted to change the method, as the use of two brokers added to the expense of executing the trade.

The facts on this issue are not in dispute, but respondents contend that there was no offsetting when two brokers were used, one executing the purchase and the other the sale. Both brokers were acting for the partnership, which leaves it in the position of handling both sides of a trade. Although it has put the trade through the ring, it has filled orders of two customers by causing them to offset each other.

Segregation of Funds

The testimony and exhibits show that, according to its records, the partnership had \$ 1,000 more than was required in customers' segregated funds on October 26, 1940. In computing the required amount, customers' deficit accounts were not taken into consideration. These amounted to \$ 5,298.13; so that the partnership appeared to have actually about \$ 4,298 less than the required amount segregated. However, commissions on customers' open trades, amounting to

\$ 6,885.36, had likewise not been considered. When both items omitted are taken into account, it is found that there were more than sufficient funds segregated. Deficit accounts formerly had been considered in computing the amounts to be segregated, and it was an oversight that the column for them had been omitted from the computation sheet. When its omission was noticed, the column was restored.

While the formula used omitted a necessary element for proper computation of the amount required to be segregated, there were actually sufficient funds in segregation.

Referee's Report and Oral Argument

The referee's report was served in September. It contained proposed findings similar to those herein, and a proposed order that the registration in the name of Nichols & Company be revoked. Respondents filed exceptions to the report, a brief, and a request for oral argument. The argument was held on December 11 before the Assistant Secretary.

It was contended, for the respondents, that the records refused were not records which they were required to keep, as they pertained to spot wool transactions, and not to futures. It was said that those records were useless in determining whether futures purchases were hedges, because they did not reflect the situation at the time

the futures were purchased. Respondents held such a large position in futures that they were required to make daily reports, in which they classified their futures holdings as hedges. The regulations require that holders of such positions in futures keep records showing the details concerning their futures contracts and all related transactions. To determine the nature of respondents' futures holdings, it was necessary to know their position in the spot commodity, and these records were necessary to determine that. They were records which respondents were required to keep, and to keep open to representatives of this Department.

Respondents contended that no proper request had been made for the refused records, in that the Government had not told respondents its purposes in asking the records, and had not shown them why the particular records were needed. Their refusal was said not to be unqualified, but only a request to know why they were wanted. Even if the refusal could be construed to be qualified, which the record does not seem to warrant, the contention is not well taken. The act places the duty of supervising and investigating operations on the commodity futures markets upon this Department, and to enable this to be done, representatives of the Department are given access to records. The Department is not required to determine, beforehand, the specific need it might have for every record it might wish to see, and to state that purpose to the keeper of the record and see if he agrees that seeing it will be of value to the Government in accomplishing its stated purpose.

Respondents complained that auditors spent five or six weeks checking their records. There is no doubt that some inconvenience is caused by the enforcement of the Commodity Exchange Act, as of almost any law, but inconvenience does not justify failure to comply with the statute. It is evident that respondents' lack of cooperation with the auditors was responsible for some of the time required. As counsel said, business men may be pardoned for impatience with Government investigations in their offices. Such impatience, however, is no sound basis for allowing the person investigated to direct the investigation.

As to the corporation's taking customers' trades, it was argued that this was not willfully done, it was stopped when Government representatives questioned it, and no customer was harmed. The corporation acted with full knowledge of what it was doing. In such case, its acts were in violation of the statute. There is no proof as to whether any customer was harmed, but the customers

involved did not receive the type of impartial service which the act requires of a futures commission merchant.

It was claimed that, since there is no expressed public policy against combining the business of a dealer and a futures commission merchant, there is no basis for disregarding the corporate entity and considering the partnership and corporation as one and the same, because no wrong is involved in considering them as separate entities. The law with respect to piercing the corporate veil does not require that we shut our eyes to the true facts of this case. No form of organization can obscure the fact that there is, in truth, just one business here.

Respondents argued that offsetting is done in the office, not in the trading ring, and that using two brokers in executing opposite orders of customers is better than using one broker and an official observer. Since a commission merchant may not offset the order of one customer against an order of another, he may not do this by having two of his agents act for him.

It was contended that registrations should be revoked only if necessary for the public interest, and that the public interest does not require that respondents be put out of business. Public interest and policy are served when laws are enforced. Revocation and suspension of the registrations of persons who have violated the act are methods of enforcement. The public interest requires that those who engage as futures commission merchants should obey the laws which regulate that business.

The exact nature of all of the refused records is not clear. If respondents did not keep records showing all of the details concerning their inventory of spot wool hedged in wool top futures, they were not keeping such records as the act requires of them. This proceeding involves no charge that they did not keep adequate records, and should not be construed as a decision upon that question.

FINDINGS OF FACT

1. Nichols & Company, Inc., is a Massachusetts corporation whose principal office is at 140 Federal Street, Boston, Massachusetts.

2. Since its organization, Nichols & Company, Inc., has engaged in the wool business, principally buying grease wool, having it processed into wool tops, and selling the wool tops.

3. From 1935 through 1940, all of the capital stock of Nichols & Company, Inc., except for one share issued to W. B. Southworth in April 1940, was owned by Arthur O. Wellman, John H. Nichols, and Robert P. Hackett, for themselves or as trustees for their families, or by members of their families, and Wellman, Nichols, and Hackett exercised control over the corporation.

4. Nichols & Company, Inc., began to buy and sell wool top futures on the Wool Associates of the New York Cotton Exchange, Inc., a contract market, on May 24, 1935.

5. In July 1935, Arthur O. Wellman, John H. Nichols, and Robert P. Hackett formed Nichols & Company, a partnership, to learn to handle futures intelligently and to execute the futures orders of Nichols & Company, Inc., more easily than by putting them through outside brokers.

6. Nichols & Company, Inc., put up the \$ 28,010 needed to organize Nichols & Company, as a loan, and regularly loaned further sums to the partnership up to September 1940, the balance at times exceeding \$ 300,000.

7. Before 1937 Nichols & Company maintained no office and executed futures orders for Nichols & Company, Inc., only. On January 1, 1937, a separate office was opened for the partnership, and futures orders were solicited from others than the corporation.

8. Nichols & Company's office is a room in one corner of the floor occupied by Nichols & Company, Inc. It is connected with the corporation's offices by an open door, and with the elevator hall by a corridor sometimes used for hanging hats and coats. It is known as the futures room.

9. W. B. Southworth was in charge of the futures room for Nichols & Company from its opening. On February 10, 1937, he was made a partner in the company, to receive ten percent of the profits. He put up no capital, but allowed his 1939 and 1940 profits to accumulate as capital. His duties before and after becoming a partner were substantially the same.

10. W. B. Southworth became a member of the Wool Associates in September 1937, and conferred his membership privileges upon Nichols & Company, Inc., entitling it to reduced commissions on futures trades made through Nichols & Company or other brokers. For this, he was made assistant treasurer of the corporation in August 1938. Little of his time was spent for the corporation, but he was issued one share of stock in April 1940, as it was thought an officer should be a stockholder.

11. J. Harvey Wells was a clerk for Nichols & Company from its organization. In July 1938, he was made a partner entitled to five percent of the profits, with a minimum guaranteed. He put in no capital, and his duties before and after becoming a partner were substantially the same.

12. Nichols & Company registered with the Secretary of Agriculture as a futures commission merchant for the years 1937, 1938, 1939, 1940, and 1941, and its registration has not heretofore been suspended or revoked.

13. In 1940, Nichols & Company had about 200 futures customers. It executed 2,195 futures orders for Nichols & Company, Inc., and 10,190 futures orders for others. It paid its own office expenses, and had offices in New York and Philadelphia.

14. From 1935 through 1940, all profits of Nichols & Company, except the portions distributed to Southworth and Wells pursuant to their interests as set out in Findings 9 and 11, were distributed to Arthur O. Wellman, John H. Nichols, and Robert P. Hackett in exact ratio to the percentage of stock in Nichols & Company, Inc., owned by them and their families, any change in these respective corporate interests being reflected in the distribution of partnership profits.

15. Nichols & Company is, and was in 1940, actually a part of, or an agent of, Nichols & Company, Inc.

16. The evidence in the record does not support the charge that Nichols & Company, Inc., manipulated, or attempted to manipulate, the price of spot wool or of wool top futures in October 1940.

17. During October 1940, Nichols & Company, Inc., reported its holdings in wool top futures, as required by the Commodity Exchange Act, classifying its long holdings as hedges.

18. Between October 20 and December 11, 1940, properly accredited representatives of the Department of Agriculture, in the offices of Nichols & Company, Inc., requested access to card records showing estimates of shrinkage on lots of grease wool purchased by Nichols & Company, Inc., during September and October 1940, and to a record showing what amounts of wool tops had been shipped on contracts of sale of wool tops in October 1940. The records requested were available, but the corporation, through its president, Arthur O. Wellman, refused such representatives access to them.

19. Each of the records to which access was refused, as mentioned in Finding 18, was necessary to show the details of matters reported by Nichols & Company, Inc., as mentioned in Finding 17.

20. During the first four months of 1940, Nichols & Company, Inc., acting through its agent, Nichols & Company, took the other side of customers' trades in wool top futures on the Wool Associates of the New York Cotton Exchange, Inc., a contract market, without having received the consent of the customers involved.

21. On many occasions during 1940, Nichols & Company executed a buying order and a selling order for the same wool top future at the same price, but from different customers, by knowingly having

one broker execute the purchase and another broker execute the sale. Such orders were executed by outcry in the ring, and resulted in trades in which Nichols & Company was the futures commission merchant on both sides.

22. The officials of Nichols & Company who caused the trades mentioned in Finding 21 to be made did not think the practice used constituted offsetting.

23. In October 1940, Nichols & Company had adequate funds set aside, or segregated, as customers' funds.

24. The memberships of Arthur O. Wellman and J. Harvey Wells on the Wool Associates of the New York Cotton Exchange, Inc. are registered for Nichols & Company, and the membership of W. B. Southworth is registered for Nichols & Company, Inc., giving Nichols & Company and Nichols & Company, Inc. members' trading privileges on the Exchange.

25. Wool top futures contracts on the Wool Associates of the New York Cotton Exchange, Inc. may be used for hedging, delivering, or fixing the price basis of transactions in wool tops in interstate commerce.

CONCLUSIONS

The record shows that the respondent corporation refused access to records required to be kept open, in violation of section 4(i) of the act. Through its agent, the partnership, the corporation took the other side of customers' trades, in violation of section 4b(D) of the act. The respondent partnership, an agent for whose acts the respondent corporation is responsible under section 2 of the act, offset the orders of some customers against orders of other customers, in violation of section 4b(D) of the act. These violations would authorize suspension of the trading privileges of the corporation, the partnership, and each of their officials who directed the illegal acts, and revocation of the registration as futures commission merchant, under sections 2 and 6(b) of the act. It is concluded, however, that trading privileges need not be denied, but that the registration should be suspended for 90 days.

ORDER

IT IS ORDERED that the registration as futures commission merchant in the name of Nichols & Company be, and it is hereby, suspended for a period of 90 days, beginning on the effective date of this order.

IT IS FURTHER ORDERED that a copy hereof be served by registered mail or in person upon the respondents, and upon each contract market, and that this order shall become effective on December 31, 1941.

Done at Washington, D. C., this 29th day of December 1941. Witness my hand and the seal of the Department of Agriculture.

(S) Grover B. Hill

Assistant Secretary of Agriculture

(SEAL)

LOAD-DATE: June 11, 2008

