

Commodity Futures Trading Commission  
CEA CASES

**NAME:** DEAN WITTER & CO., INCORPORATED

**CITATION:** 33 Agric. Dec. 11

**DOCKET NUMBER:** 197

**DATE:** FEBRUARY 1, 1973

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 15,613)

*In re* DEAN WITTER & CO., INCORPORATED. CEA Docket No. 197. Decided  
February 1, 1973.

**Customers' Funds -- Undersegregation Of -- Suspended Sanction**

Where the stipulation of respondent has been accepted in connection with its violation of the Act and regulations, the Order herein is issued.

*Darrold A. Dandy*, for complainant.

*Stephen F. Selig*, New York, N. Y., for respondent.

*Decision by Donald A. Campbell, Judicial Officer.*

**DECISION AND ORDER**

**PRELIMINARY STATEMENT**

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1), instituted by a complaint and notice of hearing issued on August 31, 1972. It is alleged in the complaint that the respondent Dean Witter & Co., Incorporated, wilfully violated sections 4d and 4g of the Commodity Exchange Act (7 U.S.C. 6d, 6g), and sections 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35 of the regulations thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32, and 1.35).

No hearing has been held in this proceeding. The respondent has filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)) in which it (1) admits the facts hereinafter set forth in paragraphs 1 and 2 of the Findings of Fact, (2) admits for the purpose of this proceeding and for such purposes only the remaining facts set forth in the Findings of Fact, and (3) waives oral hearing on the charges in the complaint and the report of the Referee and consents to the entry, without further proceeding, of the order contained herein.

**FINDINGS OF FACT**

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

2. At the times hereinafter stated, respondent Dean Witter & Co., Incorporated, in the regular course of its business as futures commission merchant, carried accounts of customers who traded in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act and the regulations thereunder. Such accounts, the trading therein, and the handling and disposition of funds in connection therewith, were subject to the provisions of the said Act and regulations. At all such times, the respondent corporation

had to its credit with banks or other depositories, money and securities in varying amounts, held in segregated accounts and identified as customers' funds, representing deposits of margin by and trading profits accruing to such customers.

3. During the periods between July 21 and September 3, 1971, and September 6 and October 7, 1971, the respondent corporation was continuously undersegregated in amounts ranging from \$ 15,684.39 on September 2, 1971, to \$ 413,768.51 on August 2, 1971, that is throughout the periods specified above, the total amount of customers' funds held in segregation as above described, was from \$ 15,684.39 to \$ 413,768.51 less than the amount necessary to pay all credits and equities due to such customers.

4. On each business day during the periods specified above, the respondent corporation prepared and kept a record purporting to show the amount required to be held in segregation, and the amount segregated, which record indicated that the respondent

corporation had in excess funds in segregation, whereas, in truth and in fact, the said firm was undersegregated as specified above.

5. The respondent corporation at all times material herein had available in its general accounts funds more than adequate to cover any undersegregation in regulated accounts and to meet all obligations to customers.

#### **CONCLUSIONS**

By reason of the facts set forth in the Findings of Fact, it is concluded that, as alleged in the complaint, the respondent Dean Witter & Co., Incorporated, wilfully violated sections 4d and 4g of the Commodity Exchange Act (7 U.S.C. 6d, 6g) and sections 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35 of the regulations thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35). The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation submitted by the respondent. The administrative officials believe that the prompt entry of the proposed order would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Act. The complainant recommends, therefore, that the stipulation be accepted and the proposed order be issued. It is concluded that the complainant's recommendation should be adopted.

The sanction in this case is much less than I would impose in a litigated case involving these violations. However, as stated in *In re Arthur N. Economou*, CEA Docket No. 167, p. 186, fn. 120 (Decision filed January 15, 1973):

In a case where a consent order is agreed to by the parties, there is no record or argument to establish the basis for the sanction. It may seem less severe than appears warranted because of problems of proving the allegations of the complaint or because of mitigating circumstances not revealed to the \* \* \* Judicial Officer.

It goes without saying that "Consent orders issued without a hearing will be given no weight whatsoever in determining the sanction to be imposed in a litigated case." *In re Arthur N. Economou*, *supra*, p. 186, fn. 120.

#### **ORDER**

1. The registration of respondent, Dean Witter & Co., Incorporated, as futures commission merchant under the Commodity

Exchange Act is suspended for a period of 10 days.

2. The respondent is prohibited from trading on or subject to the rules of any contract market for a period of 10 days, and all contract markets shall refuse all trading privileges to the respondent during this period. Such

prohibition and refusal shall apply to all trading done and positions held directly or indirectly by the said respondent.

3. The above ordered sanctions, however, are suspended and shall not become effective unless, within three years from the date of issuance of this order, and after opportunity for hearing, the said respondent is again found to have violated the Commodity Exchange Act or the regulations thereunder. If such a violation is found, a supplemental order may be issued in this proceeding against the said respondent, without further notice, implementing the provisions of paragraphs 1 and 2 above, which shall be in addition to any sanction which may be imposed as a result of such subsequent violation.

**LOAD-DATE:** June 9, 2008

