Key Cases in Manipulation

Philip Johnson
Partner
Kirkland and Ellis
I am supposed to be discussing with you this morning some of the attributes of an illegal manipulation of the futures markets. If any of you ever took Philosophy 101, you probably will remember that there’s a distinction made between substance and essence—substance being simply describing what you’re looking at or what’s happening, and essence being what’s really involved. I’m going to give you the substance today rather than the essence because I don’t think anyone fully understands the essence of manipulation.

First of all, while we all know that Congress is very interested and very concerned about the potential for manipulation in the futures markets, and that there is much rhetoric and furor over the issue from time to time, it has had the wisdom never to define what a manipulation is in the statute; and the Supreme Court has never had an opportunity to pass on that issue under the Commodity Exchange Act. As a result, there have been some very liberal interpretations made particularly in the courts as to what an illegal manipulation might be.

In the Cargill case, the Court of Appeals attempted to finesse the issue with the statement that says the methods and techniques of manipulation are limited only by the ingenuity of man. That doesn’t tell you much but it may exhaust that particular Court of Appeals’ knowledge of the law of manipulation. More recently, here in Chicago in a case brought by some traders against some floor brokers, the District Court held that the rearrangement of trades on the floor of an exchange is a form of manipulation. The legislative history of the act suggests quite the opposite. Nevertheless, because there is no chiseled-in-granite definition of a manipulation, there is always the potential that the courts will, in fact, take whatever view of manipulation they choose to and feel free to do exactly that. I mentioned that Congress has indicated a preoccupation with this subject and there are by my count at least 14 sections in the Commodity Exchange Act that either deal directly with manipulation without ever defining it, as I mentioned, or that are involved somehow in a containment theory so that manipulations are not likely to occur. I’m going to list them very briefly for you so that you’ll get an idea of the dimensions of the Congressional preoccupation with this issue.

Section 3 of the act which defines the purposes of the statute speaks of the futures markets as being susceptible to manipulation, and goes on to say that these are events that frequently occur. The statistics on actual manipulation cases certainly don’t bear out the “frequently” characterization. In fact, it’s quite rare for there to be manipulation cases. There are, perhaps, not more than a half dozen manipulation cases of any true significance that have been reported in the courts.

Section 4a deals with speculative position and trading limits which, as you know, the Commission has the authority under the act to impose on speculators but not on bona fide hedgers. This is not really a manipulation section but it’s part of the containment concept that if you can keep the speculators—the oil folks and others—from taking enormous positions in your markets, somehow or another you’re going to have less of a potential for market manipulation to take place.

Section 5(d) of the act, which has to do with what an exchange must have in its rule book and within its capability in order to be licensed by the government,
says that one of the most important things that an exchange must have to be licensed are rules that provide for the prevention of manipulations and corners.

Section 5a(4) of the act is the only section of the act that refers to a concept called the “squeeze.” Except for that section, there is nothing in the act about “squeezes.” I will talk about them later.

Section 5a(10), which was added in 1974, authorizes the Commission to require exchanges to add new delivery points or to change the price differentials under the contract for different grades of commodities so that available supply at delivery points is not so small as to encourage manipulations, or the price differentials are not so odd as to vary significantly from the normal commercial practice.

There are two additional sections which indicate what happens to an exchange if it doesn’t have rules that adequately provide for the prevention of manipulation. I want to emphasize that it doesn’t say “prevent” manipulation; it says “provide for” the prevention of it. Even the Congress understands that there is no such thing as the perfect cop. The two sections are 5a and 6(b). They provide that the license of an exchange can be suspended or revoked, or that a cease-and-desist order or civil penalties which can go as high as $100,000 per violation can be assessed against an exchange if it does not adequately provide for the prevention of manipulations and corners.

There are also provisions in the act, Sections 6(b) and 6(c), which deal with the commission of manipulations and corners by users of the market. I would point out that the contract markets, the exchanges, are not included within those sections. I read that to mean that Congress generally appreciates the fact that an exchange in and of itself is not likely or perhaps not even capable of committing a manipulation of the market in the economic sense. Section 6(b) governs administrative proceedings by the Commission affecting the license on an offender, denying trading privileges, or assessing money penalties. Section 6(c) of the act provides that the Commission may seek injunctions against people who are engaged in a manipulation or corner or any other type of violation of the act.

Section 8a(6) provides that the Commission may notify an exchange and share information with it whenever it has reason to believe that there is a market disruption in process, which, of course, would include anything that looked like the emergence of a manipulative situation. The Commission under Section 8a(7) can change exchange rules and can change rules, for example, that seem to the Commission to be encouraging the type of environment or situations in the market where a manipulation could occur.

Under Section 8a(9) of the Act, the Commission can actually intervene in the markets in certain emergencies—and manipulations are specifically identified as such an emergency—and order the exchanges to take whatever action the Commission deems appropriate to reduce or prevent the potential for that type of offense.

Section 9(b) provides that if one commits a manipulation or for that matter attempts to, he can be a guest of the federal government for up to five years. If
it's an entity, it can be fined up to half a million dollars; if an individual, up to $100,000. So it's a serious offense. Congress has made no bones about that.

There is, finally, a provision in the section dealing with the creation of registered futures associations. For conceptual purposes, think of the NASD. Such an organization can be created in the futures business and, if so, it must be licensed; and in order to be licensed, it too must have rules that provide for the prevention of what they call “manipulative acts and practices.” That is a phrase far more common in the securities laws than it is in commodities.

I think it is important to point out that although the statute seems quite preoccupied with the subject of manipulation, the language used throughout it is very divergent. It's very unclear whether Congress is talking about a manipulation in a particular situation or not. I'd like to give you some of the words and phrases used which may or may not suggest that the particular type of conduct or a particular situation may be a manipulation. Obviously the act talks specifically about manipulations and corners. Where it does that, there's no question that, if one engages in this type of conduct, one is violating those particular sections.

As I mentioned before, there is one section of the act that talks about "squeezes," and I'll get into that later. There are several that talk about "corners," as I mentioned. There are many of them that talk about sudden or unreasonable fluctuations in price, without pointing the finger at anyone in particular. One does not know for sure whether those sections are triggered under a given set of circumstances or not. There are sections referring to excessive speculation, to market congestion, to the abnormal movement of a commodity in interstate commerce. The section dealing with injunctions talks about restraining trading. There are several references to disruption of the market. There's one section dealing with fair dealings with the people who use the market. As I mentioned earlier in the licensing provision for the futures associations, it talks about manipulative acts or practices. How many of these sections can be invoked and cited in the case of manipulation is unclear because, as in the case of the definition of manipulation, Congress has not defined what it means by a "market congestion" or "squeeze" or anything else. So, in terms of the draftsmanship of pleadings, how many of these sections to invoke is often a question that's left very much up in the air.

For the rest of this discussion, I'm going to make a distinction that often is not made. I don't know whether it's correct, but it's useful for communication purposes. If I talk about a manipulation, I'm talking about a price manipulation. If I talk about a corner, I'm talking about the seizure of the cash supply, whether it's used to affect prices or not. Frequently, the courts have referred to corners when they were talking about futures market price manipulations, and I think that there is enough confusion without using words interchangeably which probably should not be used interchangeably.

Almost all price manipulations that have ever reached the courts have been long manipulations—that is, where the objective is to force prices up and not to force them down. I'm sure the economists in the audience could tell more readily than I can why that's true. As I see it, if a short manipulation requires control of a massive amount of a commodity, and, therefore, the incurring of the expense of acquiring or controlling a massive amount, it makes sense that a
short manipulation would occur less frequently than in the case of a long manipulation which typically takes place when supplies are tight and you don't have to buy it in order to take control over it.

I'm going to talk now about the elements of a classic manipulation as the courts have perceived them. Basically, there are three things involved in the court perception of the manipulation. The first is that the person accused of the manipulation must have had the ability to achieve what he set out to do. Typically that means that his position in the futures market is perceived to be dominant and that his interest in the cash market is either dominant or that cash supplies are so low that the market itself is taking care of that problem for him. Briefly, what's necessary in a long manipulation is to make sure that the short, who has an obligation to deliver the commodity, can't get it and that you're the only person that he can turn to to offset in the futures market. Fundamentally, that's what manipulation is all about.

The second element is the creation of an artificial price. I'll talk at greater length in just a moment about what that means or what the courts perceive it to mean.

The third element is that there must be an intent to cause that artificial price to occur. I want to caution you, however, that unsuccessful attempts are a violation of the law just as much as successful attempts are; and that an artificial price can be not only a price that rises or falls, but a price that is being purposely stabilized by the violator; and that a manipulation is unlawful even if it turns out to be unprofitable. One can manipulate to cut his losses just as well as he can manipulate to make a lot of money. Or, one can attempt to manipulate and not be successful, and the fact that one makes no profit does not mean that he is not in violation of that statute.

I want to examine the elements a bit. Under the question of the ability to influence prices, first of all, there is the question of can the shorts find the cash commodity and deliver it so they don't have to deal with this person in the futures market. To decide whether or not that option is really available, it's necessary to look at what is generally considered the available supply of the underlying commodity, sometimes called the "visible supply." The courts, in doing that, will invariably count the commodity exactly as it is described in the contract—what is normally called the "par" commodity. If it's No. 2 yellow corn, they will count all No. 2 yellow corn, forgetting for the moment where it may be located, or whether it may be committed to other uses. Basically, in terms of deciding what's involved, they will generally include the par commodity. Often, though, they will exclude any grade of the commodity that is of a significantly higher price. In two of the cases, the Great Western case and the G.H. Miller case, fresh eggs at the Chicago Mercantile Exchange were excluded because it was a contract for refrigerator eggs which generally sold at a price that was significantly lower than fresh eggs. While fresh eggs could be delivered technically on the contract, the courts held they would not include the fresh eggs because they were much more expensive.

In the Cargill case back in the 1960's, despite Cargill's urgings, the court said in effect: "We are not going to include hard wheat. It's a soft wheat contract. Hard wheat can be delivered on the contract technically but there's no premium allowed for it, and we're not going to include it here because it's a
more expensive grade. We're going to look at only what soft wheat is available in deciding whether the shorts do or do not really have an opportunity to deliver on this contract."

This gave rise to what the courts have come to call the "economic impediment" theory, namely, that if a short must go and acquire a commodity that is substantially more expensive than the grade normally delivered on the contract, it may be that he shouldn't be required to do that. In some instances, the courts have said that they would not hold the shorts to that obligation in any event. Also, even if the par grade exists but is located in, say, Hawaii, it's going to get excluded. Understand that on all futures contracts you can only make delivery from specified locations and specified elevators or warehouses or vaults. So, if it is not reasonably possible to move that commodity from where it is into a delivery location, the courts are going to exclude it.

This comes to another question: "When do you make this calculation?" That can become quite a game. Do you assess the available supply of the commodity at the beginning of the delivery month? Do you do it on the day that the manipulation is alleged to have occurred, or what do you do? There really is no set time. The courts, however, have tended to look very close to the date when the manipulation actually occurred, and to say what exactly would have been available to the shorts on or about that date.

One significant exception to that occurred in the Volkart case. There the court was deeply troubled that the shorts who could have, evidently, at relatively little expense, gotten cotton in New Orleans or in New York which had not yet been fully qualified for delivery but was there already, simply refused or failed to get it so-called "certificated" so that it could be delivered. In that respect, the court looked back to the past and said: "What could people have done two days, three days, five days before the alleged manipulation occurred?" The courts will frequently look back into that period, but my reading of the cases is that the date that they tend to be most interested in is the date when the manipulation allegedly occurred.

There's a difference in what is available and what is deliverable, and I think my discussion of the Volkart case indicates that difference. The deliverable supply of a commodity is quite a bit smaller obviously than the available supply, because a deliverable commodity is generally described as including only what is in the delivery location and what has been fully qualified for delivery. Even in those instances in which it can be shown that although the supply is there and could be delivered but is firmly and irrevocably committed to some other use (such as to a miller for processing or whatever), it will often be excluded.

The selection of the dates on which these kinds of calculations are made is critical. The earlier the assessment is made, the larger the supply is; and the later the assessment is made, the smaller it is. So, what typically happens is the same game that gets played in the antitrust practice about relevant markets and reasonable interchangeability and other concepts of that nature. The government argues that it ought to be calculated at the time that it is most favorable to its position - namely when it looks like supplies are low - and, of course, the respondent insists that the calculation should be made at a much earlier date when it would appear that it really didn't have control of much or most of the supply that could have been available to the shorts.
It's necessary also to show that the person accused of manipulation had a dominant position in the futures market. That's not really defined anywhere, although I can give you some numbers from some of the cases. In the G.H. Miller case, at one point the respondent had 100 percent of the futures position. That, we will presume, is dominance. In the Great Western case, the percentage of the open interest in the outstanding contract ranged from 60 to 75 percent. Those were the highs. In the Volkart case, Volkart had 90 percent of the open interest in that cotton contract and conceded that it was a dominant position. The highest percentage of the open interest that Cargill had, if I read the case correctly, was about 62 percent. In all those cases, dominance was found to have existed. As I say, it's a practical issue. If you are a short, must you go to this accused person to get out of the market? If the answer to that is "yes," and if there is an artificial price resulting from it, and the person to whom you must turn is responsible for it and intended it to occur, you have a manipulation.

In terms of your dominant position in the futures market, the timing of the calculation is critical. In the Volkart and G.H. Miller cases, the calculation was made on the day that the manipulation was alleged to have occurred. In the Cargill case, the calculation was made in the last 15 minutes of trading on the last day. So, again, it is a question of persuading the court as to what time to look at. Clearly, as a contract expires, if the accused has held on to his position, his percentage goes up and becomes a greater part of the open interest, while the rest of the contract is liquidating out.

Quite frequently, the courts will look to the actions of the violator over the entire period when it was accumulating its futures position. It's quite common for the courts to say that XYZ had 7 percent of the open interest on the 3rd of the month and 17 percent on the 5th, and 45 percent on the 12th, and a dominant position by the time the contract appeared to be in trouble.

Basically, the courts look at the cash market situation and at the futures market situation. When the numbers are right—and the numbers are quite flexible—and when it appears that the shorts or at least a significant percentage of them cannot deliver and that they're going to have to turn to one particular person or concerted group to offset in the market, then the conditions for a manipulation or squeeze are present.

A squeeze is fundamentally a manipulation but lacks one of the classic attributes. In a classic manipulation, the violator will have gone into the cash market and somehow taken control of what would have been available to deliver. In the squeeze, nature has done that for him. The supplies are low through no fault of his, but, nevertheless, they're unavailable. So nature or the economy or something has done that half of his work for him. That is what is typically referred to as a squeeze.

We get now to the question of the artificiality of the price that results. This is one of the more difficult issues because price in the futures market is the price; whether it's artificial or not depends upon the judgment called by whoever is looking at it. Here's what the courts tend to compare that price with in order to decide whether or not it's artificial. Frequently, the court will look at the historical prices of the same contract. If it is a May contract in wheat, the courts will go back and look at the May contract in wheat for previous years. If the current price is substantially out of line with what it has been in the past, and if
there is nothing in the economics of the current market to suggest that the difference is justified, that will be a significant consideration in the court’s mind.

The court will also look at the supply-and-demand situation at the time to see if there was any particular reason from an economic standpoint why that price was where it was. Occasionally, the government will try to construct what the true value of the commodity should have been. Those kinds of analyses are frequently admitted into evidence. They’re not necessarily reliable, but, nevertheless, there is an opportunity on some occasions to make a hypothetical analysis of what the commodity would have been worth.

Current cash market prices are frequently examined. Since, however, manipulations often occur or are alleged to occur when the cash market is in just awful shape—that is, supplies are extremely low and everyone is going around begging for it and taking it in trucks or the back of station wagons or any way they can get it—going into the cash market to look at cash market prices under those type of circumstances doesn’t really tell you much.

Sometimes the commodity or another grade of it is being traded on another market. Frequently the courts will compare the price of the contract that’s under suspicion with the prices being realized in those other markets. If there is typically a differential of $.05 or $.08 a bushel between your contract and the contracts traded elsewhere, and if that differential is way out of line, that’s a significant consideration to the court.

The courts will frequently look at the spread relationship between the month that’s under suspicion and other months in the same contract on the same market. If the spread relationship in this instance is substantially different from what it typically is, that will be considered significant in terms of the question of artificiality.

The courts will frequently also say, “All right, what happened to the value of this commodity after all these events took place?” If, at the time that the offset in the market or the deliveries in the futures market occur, the value of the commodity is $3.00; and three days later the value of the commodity is $2.00, the courts consider that to be very significant. The phrase used in connection with that is called “burying the corpse.”

There must be an intent to create artificial prices. Here there is a lawyer’s debate. I apologize for that. The question is: do you have to show that the person accused of manipulation actually intended to cause an artificial price; or do you simply have to show that he engaged in a course of conduct intentionally and knowingly which resulted in the creation of an artificial price? The courts over the years have typically required the specific intent test. You must show that this particular person wanted artificial prices. However, the Cargill case, which is probably the freshest and most influential of the cases in this area, had some language in it that created some doubt. This kind of phrase appeared in that case: “You prove intent if you show that the conduct was intentionally engaged in, and resulted in an artificial price.” Not surprisingly, that language was picked up by the Commodity Futures Trading Commission in a subsequent manipulation case, the Hohenberg Brothers case. The commission said: “Well, that’s what we mean or, in other words, we want specific intent.”
Hohenberg decision seemed to go both ways, leaving the store open for anyone to pick off the shelf what he wants to pick off. More recently, in the Indiana Farm Bureau case, the administrative law judge did, in fact, go shopping and took his pick. He decided that general intent was enough. If one does something consciously and intentionally, it makes no difference whether he wanted artificial prices or not. If artificial prices are the consequence, he is guilty of manipulation. From what I understand, that case is going up before the full Commission.

Now how do you prove that someone intended to manipulate the market? Typically, the evidence has to be circumstantial. One looks at the conduct and at what took place, and draws his own conclusions as to whether it’s likely that this person intended to achieve what actually happened. But that’s not always the case. The evidence tends to be flimsy in cases of anything like direct evidence of intent. However, once in a while, some kinds of evidence gets in which might be of interest to you.

In the Cargill case, the government found a Telex or a communication of some sort within Cargill in which part of the communication referred to “what it’s going to cost our pals.” The government argued that meant right from the start that Cargill was going to squeeze this market and that it was very clear Cargill was going to play this game. There are those who think that communication did not mean that and was not intended to mean anything of the sort. Nevertheless, the government was successful in getting it into evidence, and I think the court was influenced by it.

In the Great Western case, a company official obliged the government by telling the government investigators that the company wanted to widen the spread relationships between this contract and other contracts in which it had an interest. In effect, he confessed to an intent to affect market prices.

In the G.H. Miller case, there is a recitation of an incident where a friend of a person accused of manipulation called up and said: “I’m really hurt from this.” The fellow accused of manipulation apologized to him for having gotten caught in the middle of it. He said he didn’t intend to get him caught in the middle of it. So there are occasions in which there is evidence in fact which may be ambivalent, not fair, and not an accurate interpretation of what’s going on; but, nevertheless, in almost all these cases, the government will try to come up with something that looks like the “smoking gun.”

There are other considerations in proving intent. Was it profitable? I mentioned earlier you don’t have to make a profit to manipulate the markets, but would anyone intend to manipulate the market if he lost his shirt? It’s unlikely. He may not make as much as he wants; he may cut his losses; he may even lose some money. But if the plan of action on his part is clearly likely to be contrary to his economic interest, it’s a fair assumption he is not intending to bring about what happened to him.

Another factor that occurred in both the Cargill case and in the Indiana Farm Bureau case was the use in the final day of trading of so-called “step-up orders.” You give your broker an order and you say: “Buy so much at this price, and buy so much at a nickel over and a nickel over that, etc.” The courts are not at this point clear in their own mind as to what significance to attach to that. I think
the fact that Cargill put orders in right near the close of that market at its big step-ups—much higher than the market reached in the course of the day—was perceived by the court as indicating Cargill did, in fact, want to move that market up. In the Indiana Farm Bureau case, similar orders were put in, but the administrative law judge said that he wasn’t going to attach any significance to that fact for other reasons. In any event, it is likely that if someone puts step-up orders in the market and the market accommodates those orders, the court is at least going to take notice of that fact in its decision.

Causation as such is rarely referred to in these cases—that is, did all this which took place really cause the price to go up. The Cargill case addressed causation specifically and said it is a factor. Most of the cases, however, do not. The Volkart case dealt with causation in a backhanded way by saying: this wasn’t caused by the long squeezing the market; this was caused, in effect, by the shorts sitting on their hands when they should have made preparations for delivery. It’s not articulated that way but that seems to be the inference.

From a lawyer’s standpoint, the next question would be: what is the proof standard? To what extent do I have to persuade the court? It’s not a beyond-a-reasonable-doubt standard. That much is clear. That’s the standard in criminal cases and it may well be that, if a criminal prosecution is brought for manipulation, it would be the standard. But in the civil area or in administrative proceedings before the Commission, that is not the standard. The standard is the preponderance or the greater weight of the evidence. It’s like a balance. Which way does it tip? But there’s a curlicue in that as well. The courts have become extremely deferential to the trier of facts’ assessment of the credibility of witnesses. These are extraordinarily complex cases. They involve the introduction of an immense amount of expert economic testimony, many documents and many statements by the people who are accused of having committed it. The question is: whom do you believe? When the evidence in the case focuses heavily on whom you believe, even though on appeal the court is going to say what the preponderance of evidence shows, the court is going to accept almost invariably every fact found by the trier of fact which is based upon the credibility of witnesses. If there were ten witnesses, and nine said it didn’t happen and one said it did; and the one who said it did was deemed more credible than the others by the trier of fact, it’s not going to be a nine-to-one matter in the Court of Appeals. It’s likely to be that the one will prevail over the nine because of the deference to the credibility issue.

Manipulation law has a number of idiosyncrasies to it and I want to mention several. In a number of these cases, there seems to be an undercurrent that futures markets are not legitimate markets. In the Great Western case, for example, the court said there are two kinds of demand for the cash commodity. There’s the real demand which comes from commercials, and there’s the technical demand which comes from the shorts in the futures market. The implication was that, although a short is recognized to have a duty to deliver on his contract, it isn’t legitimate for him to do it.

The Cargill case, in effect, said the same thing—namely, delivery is a legitimate feature of the contract but it should never be used; and if it is used, then it isn’t appropriate. So the question is: are these real contracts or are they not real contracts? Is the futures market supposed to be a market that does what it says it’s going to do, or is it supposed to pull its punch at the end of every
contract and discourage any kind of delivery at all and any kind of short demand for the cash commodity? The courts are very ambivalent on that subject.

There's talk in the Cargill case in particular and there's also a reference in the statute to the abnormal movement of commodity in interstate commerce. This means that if corn is supposed to go from Illinois to the Gulf, and instead it backs up and comes into Chicago because the Chicago futures price is higher, that's abnormal. I'm not sure it's abnormal from an economist's viewpoint, but it's abnormal because it's swimming upstream when the flow should normally be in the opposite direction. Again, the question is: what are these prices that are made in the futures market supposed to do? Are they supposed to be ignored by the commercial trade? And if they are not supposed to be ignored, then, quite obviously, reversing the barges and bringing them up the river instead of down is a perfectly legitimate and sound economic decision to make. Yet the courts and even the statute itself suggest that anything that develops in the futures markets which results in a businessman's changing his decision as to where he is going to sell his product so that it goes into the higher price market and then goes back into the normal channels, is somehow bad.

There's the unending question of the obligation of the shorts to make delivery. The Cargill case and the Volkart case in particular seem to hit that question head on. I am a short. I have entered a contract obligating myself to deliver the commodity. Do I really have to? What's going to happen to me if I don't? Well, the first thing that is going to happen to me is that I will have to offset with somebody in the futures market, and I will probably have to pay a premium to offset in the futures market because I have simply not made any arrangements to exercise the other option available to me. So, let's presume the price goes up. Then what happens? In the Volkart case, the court said: "Short, that's your loss. You should have prepared." In the Cargill case, the court said: "You can't expect the shorts to do that. That's unreasonable."

This brings me to another issue. What is a long to do when a short, who should have made preparation for delivery, comes begging to him to get out of the market? What is a long to do? Remember that these are competitive markets. These markets work only as long as everybody is fighting to get the best possible price he can. What is a long to do? I think the policy of the CFTC says: "Faced with that situation, pull your punches; don't get the best price you can; don't negotiate toughly; let the guy out somehow. Otherwise, face a manipulation investigation and the strong possibility that instead of blaming him for having put himself in this predicament, you're going to get charged with a manipulation."

I want to end with just a thought. The futures market has imperfections and the cash market has imperfections. But the futures market may well be, even under the most imperfect situations, at least as good a market as the cash market. If that's true and if these aberrations do occur from time to time, the question occurs to me: is it reliable to look into the cash market and to compare the futures market with that existing cash market? If the existing cash market is at "A" and the futures is at "B," must the cash market be right and the futures market wrong. It's just a footnote on my part. I'm not sure that's a reliable analysis to make. Even when it is conceded that there are problems in the futures market, it may not be warranted to conclude that, if there are
problems in the futures market, the cash market is giving you better information than the futures market. Although you can take the futures market apart and find out what’s wrong with it, you cannot take the cash market apart at the same time and find out whether the reading it’s giving you is any better than the reading you’re getting in the futures market.
Research on Speculation Seminar Report

November 6 and 7, 1980

© Chicago Board of Trade