

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In re:  
  
Rockland P. McMahan,  
  
Respondent.

08-07  
CFTC Docket No.  
  
COMPLAINT AND NOTICE OF  
HEARING PURSUANT TO  
SECTIONS 6(c) AND 6(d) OF THE  
COMMODITY EXCHANGE ACT

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The Commodity Futures Trading Commission (“CFTC” or “Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges, that:

I.

Summary

1. On or about October 21 or 22, 2004, Rockland P. McMahan, a feeder cattle order buyer in western Texas, reported to a United States Department of Agriculture (“USDA”) market price reporter in Amarillo, Texas, that he had purchased 1,800 head of feeder steers weighing an average 725 pounds at \$118.00 per hundred-weight in the cash feeder cattle market. The USDA included this purchase in its weekly cash market feeder cattle report on Friday, October 22, 2004, which is used as a source of marketing information that is intended to aid producers, consumers, and distributors in the sale and purchase of livestock, meat, grain and their related products. In fact, McMahan did not purchase or have a *bona fide* agreement to purchase any feeder steers

weighing between 700 and 849 pounds as he had reported. Thus, his report to the USDA was false.

2. The Chicago Mercantile Exchange, Inc. ("CME") incorporated the purported "direct sale" of 1,800 head included in the USDA report in calculating the CME Feeder Cattle Index ("Index") price series for each of the days from October 22 through October 28, 2004.

3. Because the CME's Feeder Cattle futures contract cash settles to the value of the Index on the last trading day, and McMahan reported the sale during the last week of trading in the contract, the reported direct sale affected the settlement price of the October 2004 feeder cattle futures contract.

4. In the course of performing their normal surveillance activities, market surveillance staff from the Commission's Division of Market Oversight ("DMO") questioned McMahan about the direct sale of the 1,800 head that contributed to the value of the October 2004 Index. DMO informally asked McMahan for details about the direct sale. In addition, DMO sent McMahan formal requests for information about the cash market transaction pursuant to the authority conferred under Section 4i of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6i (2002), and Commission Regulations ("Regulations") 1.31 and 18.05, 17 C.F.R. §§ 1.31 and 18.05 (2007).

5. McMahan failed to produce adequate records upon request, and provided false, misleading or materially incomplete responses to these inquiries.

## II.

### The Respondent and Other Relevant Entities

6. Respondent Rockland Palmer McMahan, familiarly known as “Rock,” is the self-employed owner and operator of McMahan Cattle Co., S&R Cattle Co., Ltd. and McMahan Order Buying, Ltd., all of which he operates out of offices located at 1515 South Capital of Texas Highway in Austin, Texas 78746. Individually and through his companies, McMahan’s primary business is buying and selling feeder cattle and calves to and from ranchers and feedlots as an “order buyer.” Neither McMahan nor any of his entities have ever been registered with the Commission. At all relevant times, McMahan has been a reportable trader in the feeder cattle futures contract and has maintained a feeder cattle hedge exemption with the CME in connection with hedging his cash market activities.

### Other Relevant Entities

7. The Chicago Mercantile Exchange, Inc. is a registered entity and a designated contract market for trading feeder cattle futures contracts pursuant to Section 5 of the Act, 7 U.S.C. § 7. The CME’s principal place of business is in Chicago, Illinois. The trading venues for the feeder cattle futures contract include the CME’s trading floor in Chicago, Illinois and the CME GLOBEX electronic trading platform.

8. Bovina Cattle Feeders (“Bovina”) is a 42,000-head capacity custom feedlot located in Farwell, Texas 79325, in which McMahan is a 10% owner.

### III.

#### Facts

##### *The Chicago Mercantile Exchange's Feeder Cattle Futures Contract*

9. Feeder cattle are young steers (castrated males) that are sent to feedlots for finishing into "fed" or "fat" cattle for eventual slaughter. The CME's feeder cattle futures contract enables cattle producers to manage their price risk more effectively and fosters price discovery in the livestock industry.

10. A CME feeder cattle futures contract consists of 50,000 pounds of feeder steers, with a minimum price fluctuation or "tick" of \$0.00025 per pound, which equates to \$12.50 per contract. In practice, the feeder cattle futures contract is quoted in dollars per hundred-weight ("CWT"). The CME's feeder cattle futures monthly listings include: January, March, April, May, August, September, October and November. During the relevant time, to meet the specifications for inclusion in the CME feeder cattle futures contract, cattle were required to be steers of average weight between 700 and 849 pounds that were USDA graded #1 muscling, Medium or Medium/Large frame.

11. The CME's feeder cattle futures contract is cash-settled based on the CME feeder cattle Index; accordingly, there is no physical delivery of feeder steers. The final settlement price for the contract is the value of the Index on the last trading day of the futures contract, which, with certain exceptions not relevant here, is the last Thursday of the contract month – in this case, Thursday, October 28, 2004.

12. The CME calculates the Index on a daily basis using a weighted average of feeder cattle sales publicly reported by the USDA for the previous seven (7) days for an area covering twelve contiguous western and southwestern states of the United States where most of the nation's cash feeder cattle are traded. Texas is one of the twelve states

surveyed. More specifically, the CME extracts from the USDA reports information pertaining to reported sales of cattle meeting the specifications for inclusion in the Index. Under the CME's rules, the Index includes all eligible sales reported by the USDA – *i.e.*, cattle identified as feeder steers of average weight between 700 and 849 pounds, USDA grade #1 muscling, Medium or Medium/Large frame.

13. The CME posts this Index daily on its website, [www.cme.com](http://www.cme.com). The CME also posts the contract specifications for the feeder cattle futures contract and the rules regarding the feeder cattle contract on its website.

14. Various commercial services publish price quotations of the Index and the CME feeder cattle contract. McMahan and other participants in the cattle industry observe these quotations and USDA reports in the ordinary course of business, and use them in making cash market, hedging and speculative trading decisions.

15. The primary function of USDA's Livestock and Grain Market News ("LGMN") branch is to compile and disseminate information that will aid producers, consumers, and distributors in the sale and purchase of livestock, meat, grain, and their related products nationally and internationally. The LGMN's mission is to provide to the agricultural industry accurate and unbiased marketing information depicting current trade conditions that will promote orderly marketing and enhance competition.

16. Among the reports LGMN prepares are daily and weekly reports of feeder cattle sale activity. These reports identify sales of cattle by sex, weight range, muscling score, frame size, and other descriptive information. The USDA generally reports auction sales on a daily basis, but reports "direct sales", which are privately negotiated transactions, on a weekly basis on Fridays. The prices at which direct sales occur, unlike

auction prices, are voluntarily reported to the USDA at the discretion of the parties to the transaction.

**McMahan Reported a Purchase of 1,800 Head of Feeder Cattle Weighing an Average of 725 pounds to the USDA**

17. Over a period of several years, it was a practice of the USDA LGMN Market News reporters (“reporter”) to telephone industry sources, including McMahan, and collect information about any cattle purchases or sales during the preceding week for purposes of preparing the weekly Texas Weekly Direct Feeder Cattle Summary. McMahan was under no obligation to respond to these inquiries, but, until April 2005, he regularly provided information to the USDA in response to the inquiries.

18. On or about Thursday, October 21 or Friday, October 22, 2004, a reporter telephoned McMahan and asked whether McMahan had purchased or sold any cattle that week. The reporter was collecting the “direct sale” information for purposes of preparing the Texas Weekly Direct Feeder Cattle Summary for the week ending October 22, 2004 (the “Summary”).

19. In response to the reporter’s inquiry, McMahan stated that he had purchased 1,800 head of feeder steers that he identified as weighing an average of 725 pounds at an average price of \$118.00/CWT.

20. The USDA’s LGMN included this direct sale reported by McMahan in compiling the Summary, listing the transaction as 1,800 head of medium and large frame #1 feeder steers at a price of \$118.00/CWT.

21. In calculating the value of the Index for each day from October 22 through 28, 2004, the CME included all eligible transactions reported by the USDA in the Summary, including the 1,800 head reported by McMahan.

22. The settlement price for the October 2004 feeder cattle futures contract was based, each day, on the Index value of that day.

**McMahan Knew or Should Have Known that His Purported Direct Sale Would Be Reported by the USDA and Incorporated Into the CME's Index, and Would Affect the Feeder Cattle Futures Settlement**

23. McMahan did not, in fact, purchase any feeder steers weighing between 700 and 849 pounds in the week preceding the Summary.

24. McMahan never advised the reporter that the direct sale of 1,800 head of feeder steers at \$118.00/CWT was not a completed sale at the time McMahan reported it or that the 1,800 head did not actually comprise any feeder steers weighing between 700 and 849 pounds.

25. McMahan knew or should have known that the reporter collected information concerning direct sales in order to report cash market feeder cattle transactions and that the direct sale he reported would be included by the USDA in its weekly cash market feeder cattle report on Friday, October 22, 2004.

26. McMahan also knew or should have known that because he reported a purchase of feeder steers that averaged 725 pounds, the sale information likely would be included by the CME in calculating the value of the Index and thereby factored into the pricing of the October 2004 Feeder Cattle contract.

**McMahan Failed to Produce Adequate Cash Market and Other Records To The Commission, As Requested Under Section 4i of the Act and Regulations 1.31 and 18.05**

27. On Wednesday, November 3, 2004, DMO Market Surveillance Branch Chief William Kokontis and Senior Industry Economist David A. Kass contacted and spoke with McMahan. The DMO staff advised McMahan that they were conducting routine surveillance and had questions about the direct sale of 1,800 head that they

understood McMahan had reported to the USDA. They advised McMahan that they would be sending a letter calling for documentation to put the trade into context and validate the transaction.

28. In a letter dated Friday, November 5, 2004, Kokontis formally asked McMahan to provide information on any transactions of physical cattle at any time during the month of October 2004 pursuant to the Commission's authority to obtain information under Section 4i of the Act and Regulations 1.31 and 18.05. The letter enclosed a notice warning against making false or fraudulent statements or submitting any false writing or document, knowing it to contain false, fictitious or fraudulent information.

29. As a result of subsequent telephone discussions between McMahan and DMO staff, on or about November 8 and 10, 2004, McMahan agreed to provide DMO with details on the 1,800 head that McMahan had reported to the USDA, plus a sample of the monthly statement of cash market activity to McMahan's banks. DMO staff requested McMahan to supply the details as requested in the 18.05 letter – *i.e.*, the buyer, seller, transaction date, price, number of head, location, weight, plus any other details McMahan thought would corroborate the transaction and support its validity – and McMahan promised to do so.

30. On Monday, November 22, 2004, McMahan provided DMO with an invoice dated October 26, 2004, purporting to reflect that he had purchased 1,750 steers of average weight of 705 pounds at \$118.00/CWT from Bovina. The purchase price shown on the invoice was \$1,455,855. McMahan also supplied a copy of the livestock



bill of sale draft dated October 27, 2004 in the same amount that he used to pay for the cattle.

31. Bovina did not create the invoice in the ordinary course of business. McMahan did not disclose to DMO that the invoice specifying the purchase of 1,750 steers averaging 705 pounds at \$118.00/CWT was created by Bovina's bookkeeper at McMahan's request.

32. In fact, Bovina had not sold cattle fitting the description in the invoice. Bovina instead sold McMahan approximately 930 steers weighing an average of approximately 900 pounds and 1,829 heifers. No later than October 26, 2004, Bovina sent McMahan a list of the cattle he purchased, including the pen numbers, number of head, sex, pay weight, cost per CWT, purchase amount, current feed expense, projected feed expense and projected out date.

33. Kokontis followed up on the data McMahan supplied on November 22, 2004, with a letter dated December 28, 2004, also issued pursuant to the Commission's authority under Section 4i of the Act and Regulations 1.31 and 18.05. This letter sought specific information about the 1,750 head that McMahan claimed he had bought from Bovina, set forth in six enumerated questions. McMahan responded by telephone on January 10, and in writing by facsimile transmission on January 12, 2005.

34. McMahan's January 12, 2005 response to the enumerated questions implied that McMahan bought and retained ownership of the 1,750 steers at Bovina.

35. During the course of sworn investigative testimony, McMahan contended that at the time he reported the direct sale of 1,800 head of feeder steers averaging 725 pounds at \$118.00/CWT to the USDA, McMahan had a handshake agreement with

Bovina's general manager to sell McMahan some feeder steers weighing more than 850 pounds and other feeder steers weighing approximately 525 pounds that, taken together, constituted a total of about 1,800 head weighing about 725 pounds. McMahan contended that toward the end of October 2004, he and the general manager agreed to substitute heifers for the lighter weight steers. None of these animals, however, were independently eligible for inclusion in the Index.

36. Despite multiple opportunities to do so over the course of several telephone conversations and an exchange of correspondence over a period of two-and-one-half months, McMahan never told DMO that the transaction he had reported to the USDA had not been completed as he had reported it.

#### IV.

#### Violations Of The Act And The Regulations

#### COUNT I

#### McMAHAN VIOLATED SECTIONS 6(c), 6(d), AND 9(a)(2) OF THE ACT BY KNOWINGLY DELIVERING A FALSE OR MISLEADING OR KNOWINGLY INACCURATE REPORT CONCERNING MARKET INFORMATION THAT TENDED TO AFFECT THE PRICE OF FEEDER CATTLE

37. The allegations contained in paragraphs 1 through 36 are realleged and incorporated herein by reference.

38. The purchase of 1,800 feeder steers that McMahan reported to the USDA concerned market information that affected or tended to affect the price of feeder cattle in interstate commerce.

39. In October 2004, McMahan knowingly delivered through interstate commerce a false or misleading or knowingly inaccurate report to the USDA concerning market information that affected or tended to affect the price of a commodity in interstate

commerce, in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2002).

## COUNT II

### McMAHAN VIOLATED SECTION 4i OF THE ACT AND REGULATIONS 1.31 AND 18.05 BY FAILING TO KEEP AND PRODUCE ADEQUATE RECORDS SHOWING HIS CASH AND OTHER POSITIONS, AND BY PROVIDING FALSE, MISLEADING OR KNOWINGLY INACCURATE INFORMATION TO DMO

40. The allegations contained in paragraphs 1 through 36 are realleged and incorporated herein by reference.

41. Because McMahan was a reportable trader, DMO was empowered to seek books and records underlying the direct sale of 1,800 feeder steers that McMahan reported to the USDA in October 2004 pursuant to Regulations 1.31 and 18.05, 17 C.F.R. §§ 1.31 and 18.05, and Section 4i of the Act, 7 U.S.C. § 6i.

42. DMO sent McMahan letters dated November 5 and December 28, 2004, that specifically identified DMO's authority to seek cash market and other information under Regulations 1.31 and 18.05. These letters sought specific information about the feeder steers that McMahan claimed he had bought. The November 5 letter asked McMahan to produce documentation to support the purchase of 1,800 head that McMahan had acknowledged reporting to the USDA. The December 28 letter asked McMahan about the 1,750 head that McMahan claimed he actually bought from Bovina, set forth in six enumerated questions.

43. McMahan failed to produce to DMO adequate cash market and other records, and delivered to DMO false or misleading or knowingly inaccurate responses to its requests.

44. The book and recordkeeping requirements and inspection provisions contained in Section 4i and Regulations 1.31 and 18.05 are essential to permit the Commission to accomplish the purposes of the Act. By failing to produce adequate cash market and other records upon request, and by providing false, misleading or knowingly inaccurate information to DMO, under circumstances when he was called to produce records showing his cash market and other positions, McMahan violated Section 4i of the Act, 7 U.S.C. § 6i (2002), and Regulations 1.31 and 18.05, 17 C.F.R. §§ 1.31 and 18.05 (2007).

45. Each and every instance in which McMahan failed to produce adequate cash market and other records upon request, or provided false, misleading or knowingly inaccurate information in response to DMO's inquiries, is a separate and distinct violation of Section 4i and Regulations 1.31 and 18.05.

### COUNT III

**McMAHAN VIOLATED SECTIONS 6(c), 6(d), AND 9(a)(3) OF THE ACT BY KNOWINGLY MAKING FALSE OR MISLEADING STATEMENTS OF MATERIAL FACT TO THE COMMISSION OR KNOWINGLY OMITTING MATERIAL FACTS NECESSARY TO MAKE THE STATEMENTS NOT MISLEADING**

46. The allegations contained in paragraphs 1 through 36 are realleged and incorporated herein by reference.

47. During multiple occasions from November 2004 through the present, McMahan knowingly made or caused to be made to representatives of the Commission one or more statements orally and in reports or documents required to be filed under the Act or Regulations concerning material facts that were false or misleading or omitted information necessary to make the statements not misleading concerning feeder cattle

cash market information, in violation of Sections 6(c), 6(d), and 9(a)(3) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(3)(2002).

48. Each and every instance in which McMahan knowingly made or caused to be made statements concerning material facts that were false or misleading or omitted information necessary to make the statements not misleading concerning feeder cattle cash market information, is a separate and distinct violation of Sections 6(c), 6(d), and 9(a)(3) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(3).

## V.

### **Relief Requested**

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth above are true and, if so, whether an appropriate order should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2002).

Section 6(c) of the Act allows the Commission to: (1) prohibit the Respondent from trading on or subject to the rules of any registered entities, and require all registered entities to refuse such person all privileges thereon for such period as may be specified in the Commission's Order, (2) if the Respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that Respondent, and (3) assess against a Respondent a civil monetary penalty of not more than the higher of \$120,00 for each violation committed between October 23, 2000 and October 22, 2004, \$130,000 for violation committed on or after October 24, 2004, or triple the monetary gain to the Respondent for each violation.

Section 6(d) of the Act allows the Commission to enter an Order directing that the Respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

## VI.

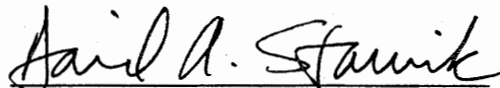
WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Section III above be held before an Administrative Law Judge, in accordance with the Commission's Rules of Practice under the Act ("Rules"), 17 C.F.R. §§ 10.1 *et seq.* (2007), at a time and place to be set as provided by Section 10.61 of the Rules, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81 through 10.107.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a), shall serve two copies of such Answer and of any documents filed in this proceeding upon Rosemary Hollinger, Regional Counsel and Associate Director, Scott R. Williamson, Deputy Regional Counsel, and David A. Terrell, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe, Suite 1100, Chicago, Illinois 60661. If Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, Respondent shall be deemed in default and the proceeding may be determined against Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served upon the Respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision in this matter except as witness or counsel in a proceeding held pursuant to notice.

By the Commission.



David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: March 18, 2008