

## [Securities Regulation Daily Wrap Up, COMMODITY FUTURES—Cheese price manipulation claim proves full of holes, \(Sept. 1, 2015\)](#)

Securities Regulation Daily Wrap Up

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The Seventh Circuit Court of Appeals has affirmed dismissal of claims that a cheese producer manipulated the price of milk futures in violation of the Commodity Exchange Act. Milk, and not cheese, served as the commodity underlying the futures contracts at issue because Class III milk prices determined the settlement of the contracts. As the record contained no evidence that the cheese producer specifically intended to cause an artificial price in milk, the appellate panel upheld the judgment of the district court ([\*In re Dairy Farmers of America, Inc. Cheese Antitrust Litigation\*](#), September 1, 2015, Bauer, W.).

**Background.** The plaintiffs, Indriolo Distributors, Inc., Knutson's, Inc., and Valley Gold, LLC, had filed a class action complaint alleging that Schreiber Foods, Inc. conspired with Dairy Farmers of America (DFA) to manipulate the price of Class III milk futures. Specifically, the plaintiffs alleged that Schreiber Foods and DFA purchased cheese traded on the Chicago Mercantile Exchange (CME) in order to stabilize prices between May and June 2004 while DFA and a butter manufacturer unwound their milk futures positions at a profit. Schreiber and DFA then stopped buying cheese, allegedly causing the cheese price to crash at the end of June.

The plaintiffs contended that Schreiber Foods violated the Commodity Exchange Act by conspiring to manipulate CME cheese prices, which necessarily resulted in higher CME Class III milk future prices. Schreiber Foods, in turn, argued that its purchasing activity during the relevant time period was neither unusual nor parallel to DFA's activity and could be explained by Schreiber Food's independent business interest in preventing a large spread between the prices of block cheese and barrel cheese. The district court ultimately granted summary judgment in favor of Schreiber Foods, holding that the Commodity Exchange Act does not provide a private right of action for manipulation of CME cheese prices because the commodity underlying the CME Class III milk futures contract at issue was Class III milk, not spot cheese.

**Commodity Exchange Act.** On appeal, the plaintiffs argued that they could proceed on their Commodity Exchange Act claim because: (1) spot cheese was the commodity underlying the Class III milk futures contracts; and (2) they had raised a genuine issue of fact as to Schreiber Foods' involvement in price manipulation. The Seventh Circuit disagreed, however, observing that under the CME Rulebook, which governed the contract, the USDA Class III price for milk for the month determined the settlement price of Class III milk futures traded on the CME. As milk was thus the underlying commodity, the plaintiffs had to raise a genuine issue of fact as to whether Schreiber Foods specifically intended to manipulate the price of *milk* in order to survive Schreiber Foods' motion for summary judgment.

Moreover, the appellate panel stated, the record contained no evidence that Schreiber Foods was even interested in milk futures, let alone any evidence showing specific intent to cause an artificial price. At most, the evidence merely revealed that Schreiber Foods had a continual interest in the CME cheese spread. The evidence would also more easily support an inference that Schreiber Foods was interested in keeping milk prices down, as higher milk prices would only serve to increase the company's costs, the Seventh Circuit observed. The plaintiffs' aiding and abetting claim likewise failed on the element of intent because the evidence simply did not support an inference that anyone at Schreiber Foods was aware of the alleged plan to affect the Class III milk futures market. Accordingly, the district court's grant of summary judgment was affirmed.

The case is [No. 14-3239](#).

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