PRICE VOLATILITY IN THE SILVER FUTURES MARKET

HEARINGS

BEFORE THE

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

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THURSDAY, JUNE 26, 1980

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION OF THE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:49 a.m., in room 324, Russell Senate Office Building, Hon. Donald W. Stewart (chairman of the subcommittee) presiding.

Present: Senators Stewart and Leahy.

STATEMENT OF HON. DONALD W. STEWART, A U.S. SENATOR FROM ALABAMA

Senator STEWART. It is my pleasure to convene this third day of hearings, by the Subcommittee on Agricultural Research and General Legislation, on futures trading.

During our May 1 and 2, 1980, hearings, we heard from all of the concerned Federal entities. We also received testimony from the exchanges, brokerage houses, bullion dealers, and the Silver Users Association. As a result of their testimony before this subcommittee and the Committee on Banking, Housing, and Urban Affairs, I proposed an amendment on the Senate floor to H.R. 6285, the Egg Research and Consumer Information Act Amendments of 1980. We felt this particular recommendation ought to become law, too.

That amendment, which was enacted into law last week, will establish the structure for the submission of one comprehensive report from all of the interested agencies on both the silver situation and the potential for disruptions in other futures markets. I am personally looking forward to receiving the recommendations of the joint working group. This study will be invaluable to those who are concerned with the future of futures trading in this country.

There were some apparent problems that existed in the futures market, particularly in the silver futures market. And I will say at this point that I am not pleased with the mechanism that we have available, both in the market itself and also in the regulatory agencies, to deal with some of the areas where we had those problems.

I have not proposed, nor will I propose, legislation to deal with that matter at this time. However, I believe that anyone who is involved would say that there are some problems that perhaps should be dealt with or should have been dealt with better, whether it be by the exchanges or by the regulatory agencies that have the responsibility for covering this particular area here in Wash-

ington. And I have communicated this concern particularly to the CFTC, and also to the Chairman of the Federal Reserve, and to the Treasury representatives that came here, and to Mr. Williams, who is Chairman of the SEC.

I would hope that those groups will follow the language of the statute or the amendment that was passed, and work together to provide us with a document that will be helpful, not only to those of us here, but to all who are interested in the market.

I look forward to hearing from them about that report.

Today, it is my pleasure to welcome Mr. Goldschmidt and Mr. Waltuch to the subcommittee. I would like to state that these two gentlemen are appearing voluntarily. A breakdown in communications was the only reason that they did not appear with the other brokerage houses at our May 2 hearings.

Since Conti was trading for a considerable portion of speculative short traders in the silver futures markets, I believe that Mr. Goldschmidt's and Mr. Waltuch's testimony will be indispensable to our efforts.

And our first witness will be Mr. Goldschmidt.

STATEMENT OF WALTER GOLDSCHMIDT, CHAIRMAN, CONTICOMMODITY SERVICES, INC., CHICAGO, ILL.

Mr. GOLDSCHMIDT. Senator Stewart, I have prepared some testimony. If you want me to read it——

Senator STEWART. If you will summarize that, Mr. Goldschmidt, and then we will start with some questions.

Mr. GOLDSCHMIDT. It is a short statement. Perhaps reading it would make the point.

Senator STEWART. That will be fine.

Mr. GOLDSCHMIDT. I think perhaps we will try to get through it. It would be better than summarizing it, I think.

My name is Walter Goldschmidt. I am chairman of ContiCommodity Services, Inc., a subsidiary of Continental Grain Co.

I grew up in the grain business and began my business career as a runner on the Chicago Board of Trade. I have been active with futures markets for over 30 years. During that time, I have had the privilege to serve as president of the Milwaukee Grain Exchange and director for the Chicago Board of Trade for 6 years. I have also participated in the creation of ContiCommodity Services, an organization which, since its founding 10 years ago, has emerged as one of the leading futures merchants in the United States and abroad.

Because of my extensive participation in the futures industry and my concerns for it, I am most pleased to be here to discuss this issue.

The importance of the commodity futures markets to this country is difficult to overstate. Most national and international commodity transactions have reference to the futures markets. It is vital, therefore, for participants—both inside and outside the market—to believe that the markets operate fairly and in the public interest.

I can readily appreciate that you and Congress are concerned with the violent fluctuations that have occurred in the silver market during the period between September 1979, and April 1, 1980.

I have heard many reasons for these events. Many solutions have been offered to prevent a similar reoccurrence, such as, to curtail the role of the speculator in futures markets; to impose position limits for all commodities; and to transfer the authority to set margins to Federal agencies.

Senator STEWART. Mr. Goldschmidt, this is a congressional hearing, and let's you and I just pretend that all of those people are not here.

Mr. GOLDSCHMIDT. If you would prefer I don't read this——

Senator STEWART. If you don't want to read it, go ahead and testify. Don't pay attention to the press at all. I don't.

Mr. GOLDSCHMIDT. I appreciate that.

Let us address some of these questions and discuss what led us to this situation. First of all, the futures markets system reflects price—it does not create the conditions that make price. For me, the salient aspect of these events has been that the system worked, that the market, in the final analysis, prevailed; that every clearing member met its obligations and that no participant in the market, either speculator or commercial hedger, suffered financially from a failure of the system itself.

Senator STEWART. You would not say the Hunts suffered financially from speculation in the market?

Mr. GOLDSCHMIDT. The point here I am making is the system itself. They suffered from taking a risk, and I have no——-

Senator STEWART. Which is normal?

Mr. GOLDSCHMIDT. Which is normal. We should not be concerned about any speculator who is willing to take the risks that add to his wealth or detract from it. That is not the fault of the futures markets system.

Senator STEWART. In other words, those individuals chose to participate in the market, and they lost in the market, which is still questionable, isn't it?

Mr. GOLDSCHMIDT. Whether they lost or not?

Senator STEWART. Yes.

Mr. GOLDSCHMIDT. It is questionable. I don't know.

But the system, as I said, proved itself, as it has so many times in the past, to be bigger than any of the participants. And that is what you were just saying.

Consequently, we must, and I am sure you will, be wary of tampering with a system which has provided the hedging mechanism and price discovery function so vital to our economy.

Senator STEWART. As long as the market does that well, we won't tamper with it. We might find there is a need for some kind of increased regulatory activity if it is not doing what it is supposed to do.

Mr. GOLDSCHMIDT. That is correct. And I think my paper develops some of this.

Senator STEWART. Maybe what is being suggested does not speak to the problem that we have here.

Mr. GOLDSCHMIDT. For example?

Senator STEWART. Well, allowing the Federal Reserve to set margins. It may be that that is not the solution to the problem we had in the silver market.

Mr. GOLDSCHMIDT. I think maybe we better have a discussion rather than reading it, because you are hitting the salient points. I agree with that.[1]

The only suggestion I have here that might have prevented the accelerated price of both up and down to some degree would have been the imposition of position limits on speculative positions.

As you may know, in the agricultural commodities, we have had those for years. They have been effective, and I think they would have been effective in the case of silver had they been applied at the right time. My point here is that should be beforehand rather than after.

Senator STEWART. In other words, you feel that the position limits were applied too late?

Mr. GOLDSCHMIDT. They were applied too late. The authority existed to apply them, but they were applied too late.

Senator STEWART. Why do you think the exchanges did not impose those limits sooner? What is your feeling about that?

Mr. GOLDSCHMIDT. Before the CFTC was formed, we had regulated commodities, all of which had position limits, but the nonregulated commodities did not. And most of us in the commodities business for years have felt, particularly in the silver market, that no problem existed which required position limits. It was much larger and very big—an entire national market—a market that would flow from one part of the world to another.

But I don't think it anticipated the type of extraordinarily large interest that developed. Because of the many reasons that I gave in my paper, these large investors were willing to trade their dollars for silver.

Senator STEWART. In other words, the Afghanistan situation and the Iranian situation?

Mr. GOLDSCHMIDT. All of it. It was a whole series of events. And I am mostly thinking that really the value of the dollar or the value of money became less attractive.

Senator STEWART. People wanted to get into precious metals and hold the value of what they had?

Mr. GOLDSCHMIDT. That is right.

Senator STEWART. You oppose in principle the setting retroactively of position limits?

Mr. GOLDSCHMIDT. Absolutely, yes.

Senator STEWART. You don't feel like that ought to——

Mr. GOLDSCHMIDT. Well, retroactive position limits is tantamount to forced liquidation. If you are in the market and have a thousand for all and you set the limit to a thousand members, you have to sell.

Senator STEWART. If you had been in a position of setting limits, imposed position limits, when in this situation would you have done so?

Mr. GOLDSCHMIDT. Well, we debated——

Senator STEWART. I wasn't present when that debate took place.

Mr. GOLDSCHMIDT. In retrospect, perhaps position limits should have been imposed in all commodities originally and that authority should remain with those closely associated with it; because they have to be tailor made to every market.

[1] See p. 51 for the prepared statement of Mr. Goldschmidt.

Senator STEWART. When in this particular situation would you have imposed position limits? You say they were set too late. When would you have done it?

Mr. GOLDSCHMIDT. September, when one could have discovered the size of some of the positions already established at that point.

Senator STEWART. You are saying the size of the position of the market participants was apparent in September.

Who were those market participants that created the problem at that particular time?

Mr. GOLDSCHMIDT. I only know this in retrospect. I surely did not know that in September.

Senator STEWART. How would you have imposed the limits?

Mr. GOLDSCHMIDT. The clearinghouses do know it.

Senator STEWART. In retrospect, what do you know?

Mr. GOLDSCHMIDT. We have heard that the Hunts had massive positions. Our customers had large positions.

Senator STEWART. Are you saying you were not aware at that time?

Mr. GOLDSCHMIDT. I want to point out one thing; that in September, when I became aware of what ContiCommodities customers' position was, we did not want our customers to increase their position further. We took that position.

Senator STEWART. Did they actually in September increase their positions?

Mr. GOLDSCHMIDT. The total of our customers' futures positions after September declined.

Senator STEWART. In other words, you caused your clients to discontinue trading after that time and encouraged them not to trade?

Mr. GOLDSCHMIDT. We came out publicly that we did not want them to increase their positions.

Senator STEWART. When did your firm begin trading silver futures contracts for clients?

Mr. GOLDSCHMIDT. ContiCommodity is about 10 years old. I think we began to trade silver futures very early.

Senator STEWART. Can you give me a date at all?

Mr. GOLDSCHMIDT. 1970, 1971.

Senator STEWART. Was the level of activity during the spring of 1979 through March 1980, higher than it had been in the past?

Mr. GOLDSCHMIDT. Ours, or the level of the market?

Senator STEWART. Conti.

Mr. GOLDSCHMIDT. It was high. It had been higher, yes.

Senator STEWART. It was higher in 1979 than it had been in the past?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Significantly higher?

Mr. GOLDSCHMIDT. In silver, yes.

Senator STEWART. Well, what we are talking about is silver. The report prepared for this committee, at my request, by the Commodity Futures Trading Commission, states that during the first half of 1979, accounts in silver futures held at Conti were in the following names:

Naji Nahas, Geneva, Switzerland——

Mr. GOLDSCHMIDT. The second name was what?

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Senator STEWART. Nahas.

Mr. GOLDSCHMIDT. That is a name.

Senator STEWART. I know.

Banque Populaire, Geneva, Switzerland; Norton Waltuch, New York; Gilion Financial, Geneva, Switzerland; ContiCapital Management, Inc., Chicago; ContiCapital Limited, Nassau, Bahamas.

When were these accounts first taken by Conti?

Mr. GOLDSCHMIDT. As to my knowledge, Nahas, the early part of 1979.

Senator STEWART. Early 1979?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. What about Banque Populaire?

Mr. GOLDSCHMIDT. Banque Populaire account was probably opened in August of 1979.

Senator STEWART. Mr. Waltuch?

Mr. GOLDSCHMIDT. Waltuch is an account executive with Conti, who has probably had an account since 1970.

Senator STEWART. I think we are talking about extensive activity in this particular market?

Mr. GOLDSCHMIDT. Well, Mr. Waltuch——

Senator STEWART. If you know——

Mr. GOLDSCHMIDT. Mr. Waltuch bought some silver, but he bought up to August, but didn't buy after August.

Senator STEWART. What about Gilion Financial?

Mr. GOLDSCHMIDT. Gilion Financial was a smaller account. I believe it might have been opened in August.

Senator STEWART. 1979?

Mr. GOLDSCHMIDT. 1979, or maybe later. Not before that.

Senator STEWART. ContiCapital Management, Inc.?

Mr. GOLDSCHMIDT. I really don't think ContiCapital Management, Inc., had any silver for their own account. They trade for customers. This is a subsidiary for ContiCommodity Services, established for the purpose of handling customers' funds.

Senator STEWART. When did you establish it?

Mr. GOLDSCHMIDT. It was an idea we have had for quite some time, but I think formally established in August.

Senator STEWART. August of 1979?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Who did you deal for; who did you trade for?

Mr. GOLDSCHMIDT. One whom we dealt for was the next item, which was ContiCapital, Ltd., which was a fund which was established and one of their customers was this commodity fund. In addition to that, they had numerous of what we called managed accounts, where people with large sums of money would deposit with the group to be managed.

Senator STEWART. Who were you representing?

Mr. GOLDSCHMIDT. In ContiCapital Management?

Senator STEWART. ContiCapital Management.

Mr. GOLDSCHMIDT. ContiCapital, Ltd.

Senator STEWART. Who were the participants in the market?

Mr. GOLDSCHMIDT. I am trying to think. I don't have a list of the shareholders of ContiCapital, Ltd.

Senator STEWART. Any foreign participants in that group?

Mr. GOLDSCHMIDT. Yes. Banque Populaire was one of those.

Senator STEWART. You mean Banque Populaire was represented by ContiCapital, Limited?

Mr. GOLDSCHMIDT. Right. And Mr. Nahas was one. And there were 30 or 40 other different names who owned shares in the fund.

Senator STEWART. Were Banque Populaire and Mr. Nahas' accounts managed accounts, or were they separate accounts?

Mr. GOLDSCHMIDT. No. Banque Populaire had an account which was their own account. Mr. Nahas had his own account. But in addition to their personal accounts they had a participation in that fund.

Senator STEWART. In other words, they were taking positions on their own and also taking positions through ContiCapital, Ltd.?

Mr. GOLDSCHMIDT. Money they had deposited in ContiCapital, Ltd., was managed by ContiCapital Management and the investors had no voice or decision to make about what was done in the fund.

Senator STEWART. Were you buying soybeans or silver?

Mr. GOLDSCHMIDT. Both. There was actually very little silver in the fund.

Senator STEWART. Took small positions?

Mr. GOLDSCHMIDT. Relatively, in the ContiCapital, Ltd., fund.

Senator STEWART. Let's say in August 1979, how many contracts would be represented by the ContiCapital, Ltd., fund?

Mr. GOLDSCHMIDT. In silver?

Senator STEWART. Silver.

Mr. GOLDSCHMIDT. We can get that exact information. But the ContiCapital Fund was not a big participant in the silver market in terms of——

Senator STEWART. That may be a relative matter.

Mr. GOLDSCHMIDT. Well, that is true, but I am relating it to what I have read and what the Hunts had, and even what the Banque Populaire might have had in terms of size.

Senator STEWART. Now you say these accounts were taken on by Conti first around August 1979, all of these we named?

Mr. GOLDSCHMIDT. Beg pardon? January. Remember, I said January 1979 for Nahas.

Senator STEWART. OK.

Mr. GOLDSCHMIDT. I don't know the exact dates—I didn't open the accounts, but we can give you that information.

Senator STEWART. Close enough for Government work. You have got January 1979 for one, and then August 1979 for the others.

Before we proceed any further, a colleague of mine is here. I wanted to know if you wanted to break in at this point and make a statement. I have made one. If you want to make one please do.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM VERMONT

Senator LEAHY. If I could take a couple of minutes to do so. I appreciate your courtesy. I am going to have to go back to another hearing; like all of us, I have several things going at once.

But I would like to commend you for calling these hearings. Your resolve and that of the Committee for a full and thorough investigation of the recent silver trading incident has been most impressive. I have been privileged to take part in quite a few hours of those hearings.

This investigation is extremely important, not only for the welfare of silver futures trading, but for the commodities industry as well.

It is important that we thoroughly understand the example of what happened with silver futures trading between September 1979, and April 1980. It may well be that Congress should consider basic changes in the laws governing all futures trading.

I might say in that regard, I have quite an interest in your own statement, Mr. Goldschmidt.

But these hearings are an important forum for determining whether the potential exists for problems similar to the recent silver trading incident in other areas of commodity futures trading.

It has been suggested, Mr. Chairman, that last winter, the New York and Chicago exchanges were very slow in their actions to stabilize the silver market. Perhaps they were slow in limiting positions and increasing margins. Serious questions must be asked about what impact the market position of the exchanges' own members had on their decisions to both act and not act when they did.

In the same vein, Mr. Chairman, we must look to the role that the Commodity Futures Trading Commission played in the silver trading incident. Again, this case study must tell us if their regulatory duties failed, or whether in a statutory sense the CFTC had its hands tied.

Mr. Chairman, all of us laud the theory of self-regulation in the free market economy. We know well the vagaries of overregulation and excess government red tape. The commodity futures industry, like the securities industry, should be allowed a maximum amount of freedom. To the extent that such self-regulation proves a failure, however, it is the citizens at large who pay an unfair price. To prevent that happenstance, Mr. Chairman, it is our duty to reexamine the effectiveness of Government regulatory controls.

I ask that my whole statement be made part of the record.[1]

Senator STEWART. It will be made part of the record.

I thank the Senator for his statement.

Senator LEAHY. I look forward to these hearings. I suspect the points I raised and the points you raised are going to be answered. I do not think that anybody should consider the hearing a witch hunt, but if we have problems in the Federal Government we should correct them. If we have problems within the commodities or the people who make up the commodities, whether the controllers, the various commodity exchanges, or the traders or others involved with it, that we should take steps to correct that; because when we are talking about such enormous amounts of money and such potential to manipulate large parts of the economy of the United States, I think the people demand that they have first the knowledge of what happened, and then whether this is an inescapable fact of life or whether it is something that we should control.

I do not pretend to have the answers to that.

Senator STEWART. I do not, either, Senator. And I would say this much to the Senator from Vermont, that I think determining what happened is our first responsibility. Some have rushed to judgment

[1] See p. 51 for the prepared statement of Senator Leahy.

with legislation and other things and I do not know that that is the proper approach to take. This might not get too much in the way of headlines as something else would; but I do not think that is what we are here for.

Senator LEAHY. It may be so, but I found reading the transcripts of these hearings has been more interesting than most others.

Senator STEWART. I thank the Senator.

Senator LEAHY. I appreciate the chairman's courtesy.

Senator STEWART. Did the same floor broker trade for all of these accounts?

Mr. GOLDSCHMIDT. No.

Senator STEWART. Who did?

Mr. GOLDSCHMIDT. Well, we have had several floor brokers that normally handle our business.

Senator STEWART. Who were those brokers who traded, for instance, for Mr. Nahas?

Mr. GOLDSCHMIDT. Actually, I cannot know all the floor brokers—I know one of two that did.

Senator STEWART. Could you provide that for us?

Mr. GOLDSCHMIDT. I can get that information.

Senator STEWART. Who traded for Banque Populaire?

Mr. GOLDSCHMIDT. Mr. Waltuch often did.

Senator STEWART. I assume he traded for himself, did he not? You said you also had somebody else.

Mr. GOLDSCHMIDT. We had several floor brokers on the exchange.

Senator STEWART. Did you primarily trade for Banque Populaire?

Mr. GOLDSCHMIDT. I don't think so.

Senator STEWART. Who else did?

Mr. GOLDSCHMIDT. Our normal procedure is that we send the orders to the floor and we have selected a group of floor brokers who we feel can do the best job for us, for our clients, and business is directed to those.

Senator STEWART. What about Gilion Financial?

Mr. GOLDSCHMIDT. They all would be handled in a similar fashion.

Senator STEWART. You are saying in your testimony here, then, that Mr. Waltuch did not trade on a primary basis for any accounts other than his own; that the burden of trade was equally shared? Is that my understanding of what your testimony is?

What are you saying?

Mr. GOLDSCHMIDT. Mr. Waltuch's duties—let us define the duties.

There are floor brokers in the pit that trade in the pit. That is their primary profession. Waltuch is an account executive at Conti-Commodity Services, whose primary duty is to deal with a client from his office. Mr. Waltuch is also a member of the exchange, and on occasion he would go to the pit and in fact execute orders like a floor broker would, but that is not his primary duty and responsibility.

Senator STEWART. Was he in charge of managing these accounts, primarily, then, as account executives?

Mr. GOLDSCHMIDT. The word "manage" in our business—let's talk about two different kinds of accounts.

If you have one account that determines for itself what trades to enter, we don't call those managed accounts.

Senator STEWART. I assume he managed his own account?

Mr. GOLDSCHMIDT. He also managed ContiCapital, Ltd.'s account.

Senator STEWART. What about ContiCapital Management?

Mr. GOLDSCHMIDT. ContiCapital Management's role was to be an adviser to ContiCapital, Ltd.

Senator STEWART. Then he performed primarily functions for you in that capacity?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. What about Gilion?

Mr. GOLDSCHMIDT. Gilion Financial would be an ordinary account. They determine themselves when they want to buy, with some advice from us.

Senator STEWART. Who gave that advice?

Mr. GOLDSCHMIDT. Tom Waldeck and Norton Waltuch shared the advice.

Senator STEWART. Who?

Mr. GOLDSCHMIDT. Mr. Norton Waltuch might have given the advice, while Advicorp in Geneva, who would be the advisers of those accounts——

Senator STEWART. From your perspective, Mr. Waldeck advised those people?

Mr. GOLDSCHMIDT. He gave his best judgment.

Senator STEWART. Mr. Nahas—who advised, Mr. Nahas?

Mr. GOLDSCHMIDT. Mr. Nahas determined his own trading decisions.

Senator STEWART. Who dealt with him?

Mr. GOLDSCHMIDT. Mr. Waldeck.

Senator STEWART. What about Banque Populaire?

Mr. GOLDSCHMIDT. That, I believe, was shared between Mr. Waltuch and Mr. Waldeck, in Geneva.

Senator STEWART. Is Mr. Waldeck in Geneva an employee of Conti?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Was Mr. Waltuch advising Mr. Waldeck and he, in turn, advising Banque Populaire?

Mr. GOLDSCHMIDT. I suspect they both talked to each other. But again they were talking to the Advicorp, who was adviser, so the bank and adviser were separate.

Senator STEWART. I am talking about Conti, the man who served as chief adviser for all of these accounts. That, as I understand your testimony, would be Mr. Norton Waltuch?

Mr. GOLDSCHMIDT. There are certain technicalities when we say adviser. They did not have discretion over the accounts; they just give information as to what the market was doing, what their opinion was.

Senator STEWART. Do you charge for that?

Mr. GOLDSCHMIDT. No; there is no separate charge for that.

Senator STEWART. Do you get a commission on the——

Mr. GOLDSCHMIDT. Right.

Senator STEWART. Isn't the commission some kind of reimbursement for what you do in that capacity?

Mr. GOLDSCHMIDT. The commission is set for us to be profitable and offer a service. We have a research department.

Senator STEWART. He takes advantage of that, and he offers them the help and advice, and they trade with you?

Mr. GOLDSCHMIDT. That is right.

Senator STEWART. What else would you do if you didn't do that?

Mr. GOLDSCHMIDT. Execute the orders for them.

Senator STEWART. Of course, I have an order you could execute. There are orders. Once you learn the process, buy them at the proper time. The advice is really what you are paying for, isn't it?

Mr. GOLDSCHMIDT. Yes, but, you know, much of our business is simple execution. And I think some people in the business might think it is a little more complicated than that. You have observed the trading in the pit.

Senator STEWART. Did you serve as a conduit of those orders?

Mr. GOLDSCHMIDT. Absolutely.

Senator STEWART. Mr. Waltuch?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. I believe you had some floor brokers who would take the information he provided them and carry it out——

Mr. GOLDSCHMIDT. Specific orders, we would carry out.

Senator STEWART. But he was the one there to perform the function that we were talking about a minute ago, all of these accounts?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Were these proprietary or omnibus accounts?

Mr. GOLDSCHMIDT. You want me to name them one by one?

Senator STEWART. If you feel more comfortable.

Mr. GOLDSCHMIDT. I really don't know what it amounts to. I presume you are addressing the question to the bank, more or less. I don't really know.

Senator STEWART. Well, where you do know, tell us. Where you don't know, tell us you don't know.

Mr. GOLDSCHMIDT. I assume Mr. Nahas was trading for his own account. I don't know about the bank. Norton Waltuch was trading for his own account. I don't know about Gilion Financial. ContiCapital, I already mentioned were not traded. ContiCapital, Ltd., that was for the accounts of shareholders in that mutual fund.

Senator STEWART. Do you have an idea who the shareholders were?

Mr. GOLDSCHMIDT. We have a list.

Senator STEWART. Could you provide us the list?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. What about Gilion Financial? Could you provide us with a list who they were trading for?

Mr. GOLDSCHMIDT. I have no knowledge that they were trading for anybody other than themselves, since it is a company.

Senator STEWART. You don't know whether or not any of these people were foreign customers at all?

Mr. GOLDSCHMIDT. Well, yes. I think Mr. Nahas is Brazilian. Banque Populaire, most likely for themselves. Waltuch is obviously United States. Gilion Financial was opened in Geneva. And ContiCapital, Ltd., is a mutual fund.

Senator STEWART. You are saying here, telling me today that you all don't know who those customers were?

Mr. GOLDSCHMIDT. These customers?

Senator STEWART. Or the people who these people represented.

Mr. GOLDSCHMIDT. In the case of Banque Populaire, I have no idea; you are right. As far as Nahas, we know Mr. Nahas.

Waltuch, Gilion Financial, we received orders from Advicorp., ContiCapital, Ltd., we will present you with a list of shareholders.

Senator STEWART. And that is all the information you have about it at this time?

Mr. GOLDSCHMIDT. That is right.

Senator STEWART. Do you know if any of the foreign customers, like Mr. Nahas, or perhaps others, were trading silver through other futures commission merchants when they were trading silver through you?

Mr. GOLDSCHMIDT. Yes. It became known that they were dealing with others; yes.

Senator STEWART. Let's find out when you found out about that. You say through that period?

Mr. GOLDSCHMIDT. Well, there were times when, for example, Mr. Nahas would want to switch futures from one house to another, which is common practice, give it up to Merrill Lynch or Hutton, or one of those.

Obviously, it became known——

Senator STEWART. When was that?

Mr. GOLDSCHMIDT. October, November, I believe, perhaps.

Senator STEWART. Could it have been earlier?

Mr. GOLDSCHMIDT. That I knew that they had accounts somewhere?

Senator STEWART. That Conti knew.

Mr. GOLDSCHMIDT. It could have been, but my own personal knowledge, no.

Senator STEWART. Who would know in Conti? Would Mr. Waltuch have known?

Mr. GOLDSCHMIDT. He might know more about that than I do, yes.

Senator STEWART. Is there any reason for you to be concerned over the identity of the beneficial owners?

Mr. GOLDSCHMIDT. When dealing with Banque Populaire, the fourth largest bank in Switzerland?

Senator STEWART. What makes Banque Populaire different from anybody else?

Mr. GOLDSCHMIDT. Well, the First National Bank here would open up an account with us; I wouldn't be concerned either.

Senator STEWART. If position limits were imposed and speculators wanted to avoid the position limits, if you are not concerned about the identity of a customer from going to First National Bank or Banque Populaire and starting trading, you don't ask questions.

Wouldn't it be possible for someone to avoid the speculative limit going that way?

Mr. GOLDSCHMIDT. In this country, if you as an individual exceed the speculative limit, it is your duty to report it.

Senator STEWART. Let's say a fellow is taking a position to manipulate the market. Is he the kind of fellow who will rush down and tell you?

Mr. GOLDSCHMIDT. If anyone wants to violate the rules——

Senator STEWART. He won't be the kind of fellow who would be inclined to tell you he was doing that, would he?

Mr. GOLDSCHMIDT. This is the system in this country now. See, in silver, there were no position limits, so there wasn't that requirement. But if a commodity position limit is set, I am sure the individuals——

Senator STEWART. Position limits were later placed there, were they not?

Mr. GOLDSCHMIDT. They were later placed sometime in January or February.

Senator STEWART. If what you are saying is true about the people who live here, then foreign investors, or speculators could do it without any problem at all, and our folks over here could not.

Do you think that is a good situation to have prevail in a market?

Mr. GOLDSCHMIDT. As you probably know, the CFTC is currently addressing that particular question. One of their arguments is that the foreign investor should not have more privileges than the U.S. investor does.

Senator STEWART. Do you consider that a privilege that the U.S. investor would not have?

Mr. GOLDSCHMIDT. The privilege?

Senator STEWART. To be able to avoid——

Mr. GOLDSCHMIDT. It would be something that U.S. citizens would not enjoy over a U.S. citizen living somewhere else; because we as a country have these rules.

Senator STEWART. Of course, I am not talking about the other areas; I am talking about this one right here.

Mr. GOLDSCHMIDT. No; it would be a disadvantage.

Senator STEWART. Shouldn't the futures commission merchants have the chance, have the opportunity to protect against this type of thing because it might disrupt the market?

Mr. GOLDSCHMIDT. One could. I don't know how one would do it. As to the Swiss banks, if talking about that particular area, I am sure we are all familiar with their secrecy laws. In the past communications have been between governments rather than between private merchants.

Senator STEWART. If an individual in a foreign country wanted to participate in a squeeze of a market or an attempt to gain control, wouldn't an attractive vehicle be one of these omnibus accounts where the identity of the individual owners is not a concern of yours and can be maintained as far as the secrecy can be maintained by the rules they play by?

Mr. GOLDSCHMIDT. If these were your objectives, this might be one of the ways. There are several others. This is my concern in a sense.

Senator STEWART. What are some of the others they might use? You have indicated there are several others.

Mr. GOLDSCHMIDT. We are talking here of the futures industry, a very regulated industry. But an individual goes out in the cash market and buys silver in a Swiss bank or even in London.

Senator STEWART. Weren't some of these people taking delivery on the futures market, actual delivery of silver, and some of the

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steps were taken by Comex, and other exchanges? Weren't they going to the cash market and obtaining silver?

Mr. GOLDSCHMIDT. I believe so. They didn't do it with us.

Senator STEWART. Didn't that take place?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. And that is one of the things that you just indicated that you would do in the event that you wanted to acquire a strong enough position with that market to manipulate it?

Mr. GOLDSCHMIDT. I wouldn't do it if that is what you are saying.

Senator STEWART. I said, you just indicated that is what you could do if you wanted to obtain that kind of position.

Mr. GOLDSCHMIDT. This is one of the ways you would accumulate silver.

Senator STEWART. For the purpose of obtaining a stronger position, manipulate the market and therefore the price?

Mr. GOLDSCHMIDT. You know, one of my contentions is that, yes, a speculator can affect price momentarily. Futures trading in silver, the momentary excessive price fluctuation can occur if a speculator participates. But over the long run, as we have already seen, nobody was big enough for the market, and I am not sure there is no one who can manipulate the silver market in a meaningful way.

Senator STEWART. We are going to take a short break right here.

I will be back in about 15 or 20 minutes. If you want to, we can get a bite to eat and start the hearing at 1:15.

[Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 1:15 p.m.]

AFTERNOON SESSION

Senator STEWART. We will call the hearing back to order.

You previously stated that the high margin requirements imposed by Comex actually resulted in silver prices going higher than they would have been in the absence of those actions.

Can you please elaborate for us on that theory?

Mr. GOLDSCHMIDT. Yes.

It is a theory, and can be explained simply as follows:

That any market that has fewer participants in it will become more volatile and more subject to market swings.

Senator STEWART. So your high margin requirements forced a number of people out of the market?

Mr. GOLDSCHMIDT. Forced a number of people out and, No. 2, it prevented quite a few people from entering. So that simple act, while it is intended to do otherwise, very often can be the wrong direction.

Senator STEWART. How would you have dealt with the situation, by imposing position limits?

Mr. GOLDSCHMIDT. This is all easy, in retrospect.

Senator STEWART. Tell us what you would have done in that respect.

Mr. GOLDSCHMIDT. First, I think position limits should be in commodity markets. As far as margin requirements are concerned——

Senator STEWART. In other words, you are saying the position limit should have been in place in the silver market?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Prior to the time imposed?

Mr. GOLDSCHMIDT. That is correct. That is one constructive feature that I could add to the subject.

As far as application of margins, I think I would not have raised them so dramatically—with position limits, you would not have had the problem to that extent. So the second would be an academic question. I think I would not have put the margins quite as high or put them in in the same manner as was done. I think in retrospect, they were put in too steeply and too much pressure was put on people who were unable to meet them; and in the long run, they didn't do what they were supposed to do anyhow.

So I think I would have moderated it and given more advance notice for doing so.

Senator STEWART. What were they supposed to do anyhow? What was stated that they were going to do when imposed?

Mr. GOLDSCHMIDT. Well, the margin in our business, is a security deposit. The futures markets are not a place where goods are typically exchanged; it is a temporary push.

Senator STEWART. What were these things supposed to do?

Mr. GOLDSCHMIDT. Well, I assumed that the exchanges did that in order to prevent what they call excessive speculation. And in my opinion, the people who were participating at that time had the long positions and apparently had the capital to continue to be in markets and stay in, as a matter of fact, even extend their position in the cash market.

What I was trying to say is, the purpose of margins is to make the accounts good. The exchanges however used margins for trying to keep speculators out.

Senator STEWART. Would you go one step further and say they increased the margins at this particular point in time in the way they did to force people who were already in the market, out? That is the charge that has been made by some of the participants.

Mr. GOLDSCHMIDT. It would force the people out who were on the wrong side of the market. But the ones who were long would be able to get money from the market, and did not have that effect.

Senator STEWART. Are you saying that the higher margin requirements didn't impose any difficulties whatsoever on the people who were, say, in the Hunts' position?

Mr. GOLDSCHMIDT. When you say "whatsoever," I wouldn't want to say whatsoever. Obviously, it affects many people.

But my point in my testimony was that I think the high margins accelerated the price movement, both up and down, because the margins, made entry more difficult.

Senator STEWART. And you indicated that they intended to keep speculators out. Do you think they perhaps used this to drive people out of the market?

Mr. GOLDSCHMIDT. I don't think they, the exchanges as such, had an intention to drive people out of the market.

Senator STEWART. Let's say the Hunts, they had to borrow at one point in time $150 million a day; I think 2 days, or $100 million a

day. They accumulated a tremendous amount of debt, say, in a 3- or 4- or 5-day period of time.

What caused that?

Mr. GOLDSCHMIDT. I don't know the Hunts' positions, really; and I am not so sure—you mean—is the implication that because they raised the margins that they had to come in and buy—they had to borrow money to pay for the margins?

I don't know.

Senator STEWART. I am asking you. You say margins didn't affect them. What caused that? Why did they have to borrow the money?

Mr. GOLDSCHMIDT. I can educate you on something I know. But in talking about the Hunts, it may be—

Senator STEWART. Are you telling me you were involved in this market and you do not know why they had to borrow that money each day?

Mr. GOLDSCHMIDT. If you are long in silver in the market and the market goes up every day, you collect money. It comes to you. They went out and perhaps bought cash silver. I do not know.

Senator STEWART. What happens when the price goes down?

Mr. GOLDSCHMIDT. Oh, now, that is a different issue. Now we are talking about when the price goes down. That is when the Hunts had to come in and put up the margins. It was on the road up which we were discussing.

Senator STEWART. On the road down?

Mr. GOLDSCHMIDT. On the road down, it goes just as quickly because even the Hunts had to scramble around to put up margins. We are talking about three different sets of margins. One is an initial margin, one is a variation margin, and the third is the margin that the futures commission merchants had to put up with the clearinghouse.

Senator STEWART. I have heard that explained before. If you use the original margin, initial margin, is that what they used?

Mr. GOLDSCHMIDT. As the system works, you come in and put in initial margins——

Senator STEWART. What did Comex raise when they raised the margin?

Mr. GOLDSCHMIDT. They did both. They raised the initial margins and variation margins. The way it works, you put in initial margins. If the market goes below variation margins, you have to call the customer back to initial. But there is quite a spread between initial and variation. It happens in the accounts which even go past variation. That is when it becomes binding and the money has to be brought in quickly. And at that point the Hunts were demanded to put up a lot of money which I guess they were not able to do because of some illiquidity.

Senator STEWART. Did that have a correlation with the imposition of higher margins? If they had not imposed the higher margin requirements, would they have had to come in with as much money as they did as we went down in price?

Mr. GOLDSCHMIDT. Probably not. You know, they had more on deposit than they would have had otherwise. But the major impact on the futures commission merchants like Bache was owed to the clearinghouse every night, the exchange of money. I do not know

what their position was at the time. Every night you had to put up money for the clearinghouse if it is not there.

Senator STEWART. What name did you mention?

Mr. GOLDSCHMIDT. Bache.

Senator STEWART. And do they clear it with the clearinghouse each night?

Mr. GOLDSCHMIDT. And we do, too.

Senator STEWART. I know.

You were saying that is one of the areas where we had some pressure, is that correct?

Mr. GOLDSCHMIDT. I would think so.

Senator STEWART. And the experienced professionals involved in the futures industry, do you believe the board of governors of Comex were motivated by self-interests when they took their action regarding silver? That assertion has been made in other hearings and been made by people who participated.

Mr. GOLDSCHMIDT. I can speak for my own experience, having been a board member for 6 years in the Chicago Board of Trade.

There are issues that arise at these board meetings that would be in some conflict of interest with the firm maybe that you would represent. In such case, at the board of trade, at least, we noted it, we excused ourselves and walked out. Whether this happened at Comex, I am not a participant.

Senator STEWART. I know you are not a participant. But I am not talking about the actual activities that took place in the hearing, I am talking about the result of those activities. The allegation is that the imposition of a position limitation and the high margin requirement was in the best interest of those people who served on the board. You just indicated that some of these requirements might have had exactly the opposite results of what they anticipated they would have and might have created some difficulties for them.

Do you think its worth taking a look at whether their self-interest was involved?

Mr. GOLDSCHMIDT. Are you assuming then that these individuals participated in these discussions?

Senator STEWART. I am assuming that they took that action. They have indicated previously that the people who made the decision with regard to these actions that were taken were a silver committee. The chairman of the committee was a public interest member.

Mr. GOLDSCHMIDT. That is correct. There are two questions, Senator.

The silver committee was representing the board of directors, which was formed apparently because the board felt they did have a conflict of interest. And they appointed a special silver committee made up of members who did not have interest in the silver market itself. So they dealt with some of those issues. This must have been the way they dealt with it.

But there obviously were conflicts of issues on that board.

Senator STEWART. So your response was conflict of interest? You do not know whether they participated or not?

Mr. GOLDSCHMIDT. No.

Senator STEWART. Were you or any representative of Conti a member of the Comex board during that period?

Mr. GOLDSCHMIDT. No.

Senator STEWART. What is the relationship between Capital Management, Inc. and ContiCapital, Ltd. and ContiCommodity Services?

Mr. GOLDSCHMIDT. ContiCommodity Services is the futures commission merchant. ContiCapital Management is a subsidiary of ContiCommodity Services. The fund was ContiCapital, Ltd., which is a mutual fund being advised by ContiCapital Management.

Senator STEWART. What is the necessity or legal requirement causing you to deal in commodities, ContiCapital Management or ContiCapital, Ltd.? Was it a mutual fund or just another vehicle to allow people to have the opportunity to invest?

Mr. GOLDSCHMIDT. ContiCapital, Ltd. is a mutual fund not unlike mutual funds in securities. This particular one has its own stock and was created for the purpose of getting professional management in a variety of all the commodities. As a matter of fact, we separated within ContiCapital Management individuals who specialized in certain areas. So it was set up to trade in commodities.

Senator STEWART. Is it a conduit for foreign capital into our commodities markets? Is that what the purpose of it is?

Mr. GOLDSCHMIDT. The reason this was offshore is that an SEC type of a fund disseminated in this country requires more work in organizing, and otherwise it is very similar.

Senator STEWART. Does it avoid the surveillance of the SEC? Is that the reason you went offshore with it?

Mr. GOLDSCHMIDT. It is not to avoid the surveillance. We also have funds you have to register with the SEC. This is constructed for the purpose of larger participants offshore. There is really no need to go through the extensive registration procedure that is required by the SEC.

Senator STEWART. Which is to protect perhaps the unsophisticated investor. You thought these investors were more sophisticated? Do you know who they were?

Mr. GOLDSCHMIDT. We have a list we will submit to you.

Senator STEWART. Did your firm ever trade silver futures for any members of the Hunt family?

Mr. GOLDSCHMIDT. Not to the best of my knowledge.

Senator STEWART. Did you ever approach the Hunts about trading through your firm?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. What was their response?

Mr. GOLDSCHMIDT. The Hunts had been our customers for maybe 6 or 7 years in sugar. I recall making a trip to Dallas to have them become a customer of ContiCommodity.

Senator STEWART. Is that in sugar?

Mr. GOLDSCHMIDT. The business they have done with us——

Senator STEWART. Has been in sugar?

Mr. GOLDSCHMIDT. Sugar. They might have had other commodities occasionally.

Senator STEWART. You made a trip to Dallas?

Mr. GOLDSCHMIDT. Eight years ago, yes.

Senator STEWART. When did you go?

Mr. GOLDSCHMIDT. Five or six years ago.

Senator STEWART. And you asked them to trade silver through your firm?

Mr. GOLDSCHMIDT. No. Asked them to trade commodities.

Senator STEWART. Was there any effort to get them to trade through your firm in the silver market?

Mr. GOLDSCHMIDT. Not at that time, no.

Senator STEWART. Not at what time?

Mr. GOLDSCHMIDT. No. I mean not specifically. We were trying to get them as an account.

Senator STEWART. Any time after that, did you encourage them to trade with your firm in the silver futures market?

Mr. GOLDSCHMIDT. No. I had one conversation after that with Mr. Hunt where I tried to see whether he was interested in buying silver, but he was not.

Senator STEWART. When was that?

Mr. GOLDSCHMIDT. In 1980, March, maybe, February, March.

Senator STEWART. February or March of 1980, you contacted one of the Hunts about buying silver?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Who was that and where was it?

Mr. GOLDSCHMIDT. I made a call to their office in Dallas and asked for an appointment to see Mr. Hunt. And I was told that Mr. Hunt was going to be traveling from Europe through New York and he would give me a call and see me when he did.

Senator STEWART. Which Hunt was that?

Mr. GOLDSCHMIDT. This is Bunker Hunt.

Senator STEWART. And did you indicate to him that the conversation would be about the purchase of silver or the sale of silver?

Mr. GOLDSCHMIDT. Well, he has known of me, and so he accepted the appointment. And I met him for breakfast for a short period.

Senator STEWART. What did you discuss?

Mr. GOLDSCHMIDT. I discussed with him whether he had any interest in buying silver. I was very curious about all of his activities. We did not know anything about it. He indicated to me at that point that he had enough silver, and I had no idea how much he had at that time.

Senator STEWART. Were you talking about a position in the market or talking about silver bullion in the cash market? What were you talking about selling him?

Mr. GOLDSCHMIDT. I was not trying to get him as a customer, if that is what you mean.

Senator STEWART. Had anybody asked you to make inquiries?

Mr. GOLDSCHMIDT. No.

Senator STEWART. Did you think perhaps that you if you could get them to buy some silver, you could find somebody who would be willing to sell them some?

What prompted this call to Dallas and the breakfast?

Mr. GOLDSCHMIDT. The fact that it was very evident that Mr. Hunt for years had been a participant in the silver market. Our firm was active in the silver market. If you get a chance to talk to Mr. Hunt about silver, I think that would have been worthwhile.

Senator STEWART. What period of time was this? Do you recall the day?

Mr. GOLDSCHMIDT. I cannot recall, but I can check my calendar. It was February or March. I cannot recall the exact date.

Senator STEWART. It took place in New York?

Mr. GOLDSCHMIDT. New York, yes.

Senator STEWART. You talked with him about purchasing silver and you are not talking about taking a futures position.

Were you aware of the fact they had gone into the cash market after the fairly restrictive——

Mr. GOLDSCHMIDT. That was correct. And that was part of it. We had heard that he had bought quite a bit of cash silver and exchanged futures for them.

Senator STEWART. You had heard that he had bought a good bit of cash silver?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. When were those sales?

Mr. GOLDSCHMIDT. I think these events occurred, I believe, in December.

Senator STEWART. In other words, he purchased a good bit——

Mr. GOLDSCHMIDT. I did not have this as firsthand knowledge.

Senator STEWART. Please tell me what you know.

Mr. GOLDSCHMIDT. At that time it was supposedly going on between Mocatta and Hunt. And the rumors had it that Hunt bought the silver from Mocatta in exchange for futures.

Senator STEWART. When did that take place?

Mr. GOLDSCHMIDT. I think it took place in December.

Senator STEWART. Do you have an idea of the amount of the sale?

Mr. GOLDSCHMIDT. It was sizable. I do not know the exact amount.

Senator STEWART. Can you give me an approximation?

Mr. GOLDSCHMIDT. The number that was thrown around was like $500 million.

Senator STEWART. What was the price of silver on the market at that time, say, in December, do you remember?

Mr. GOLDSCHMIDT. You are asking me questions of detail that——

Senator STEWART. So far you have been fairly informative.

Mr. GOLDSCHMIDT. The point is I cannot know what the price of silver was that Hunt traded. You know, the market goes up and down. I think the silver, the record is clear what the price of silver was in December. It moves around too fast for me to keep track of December prices. Somewhere 18 to the twenties.

Senator STEWART. $18 to $20 an ounce?

Mr. GOLDSCHMIDT. Up to 25 or 28. I mean, you know, the record is clear.

Senator STEWART. Well, there is no big——

Mr. GOLDSCHMIDT. I cannot remember. It was as high as 28 in December. But this was an exchange of cash for futures.

Senator STEWART. What does that indicate to you that was taking place at this particular period of time? That is a sizable purchase. Is it normal for somebody to come into this market and buy $500 million worth of silver?

Mr. GOLDSCHMIDT. No, sir, it is not normal. And I do not think Mr. Hunt in that sense is a normal individual.

Senator STEWART. Well, I am aware he is a normal individual.

Mr. GOLDSCHMIDT. I am talking about his wealth.

Senator STEWART. That is what I mean. I do not mean any disparagement of the individual, I am saying that not many people make that kind of purchase.

Are you aware of any other purchases of that size in the cash market at that particular time?

Mr. GOLDSCHMIDT. I was not aware of it at that time, but subsequently it is known that he also purchased very large amounts from Engelhard.

Senator STEWART. During that period of time?

Mr. GOLDSCHMIDT. Must have been in that area. That was not as well publicized.

Senator STEWART. He also had a pretty good position within the market itself and was taking delivery on those.

Were you ever requested by Comex to keep Mr. Waltuch off the Comex trading floor or out of the silver trading ring?

Mr. GOLDSCHMIDT. There was discussion about that, and I thought that it was an improper request.

Senator STEWART. Let us see if we cannot respond, because I do not want to be putting you in the position of being interrogated.

You said there was a discussion. In that discussion did Comex request you to keep Mr. Waltuch off the trading floor or out of the silver trading ring?

Mr. GOLDSCHMIDT. This is not a question I want to answer yes or no on. The answer is simply this, that I was called and it was suggested to me that Mr. Waltuch perhaps not go on the trading floor. But I felt it was a completely improper request, that Mr. Waltuch was a member of the exchange and I saw no reason in the world why he should not go on the trading floor. Even though after awhile Mr. Waltuch and I had a conversation and he decided himself that it would probably be best because of the notoriety that he received and the ridiculous comments that were made that when he walks on the floor the market goes up. He then did not go on the trading floor, at least not as often as he used to.

Senator STEWART. Do you recall who you were representing in your meeting with Mr. Hunt?

Mr. GOLDSCHMIDT. I was not representing anyone.

Senator STEWART. Mr. Goldschmidt, are you telling me that no one indicated to you that they had silver bullion that they would want you to negotiate some kind of sale?

Mr. GOLDSCHMIDT. I knew where silver bullion was, but I had absolutely no specific requests from anyone.

Senator STEWART. Would you walk into a meeting with a man like that who might offer to purchase and even had some knowledge of purchasing $500 million worth of silver, a man as sophisticated as yourself and as good a trader apparently as you are that you would not know what you were talking about?

What if he said at that particular point in time he wanted silver, who would you have gone to to have gotten it?

Mr. GOLDSCHMIDT. Then I would have taken steps to be able to get it. And I would have known where to go. As you said, I would know that. I did not go into that meeting with the idea of concluding a transaction, none whatsoever.

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Senator STEWART. Did you do any purchasing of silver at this particular time in the cash market, and if you were selling some, did you buy any for any of your customers during this particular period of time?

Mr. GOLDSCHMIDT. I would have to maybe ask Norton whether he, in fact, did buy any silver.

Senator STEWART. Let him step up here and tell us.

STATEMENT OF NORTON WALTUCH, VICE PRESIDENT, CONTI-CAPITAL MANAGEMENT, INC., CONTICOMMODITY SERVICES, INC., NEW YORK, N.Y.

Senator STEWART. Did you buy any?

Mr. WALTUCH. We did an exchange, EFP, exchange for physicals.

Senator STEWART. What was the nature of that and when did it take place?

Mr. WALTUCH. Well, the exchanges for physicals started in September, if I am not mistaken, September or October and continued into February and March.

Senator STEWART. What is an exchange for physicals?

Mr. WALTUCH. There is a long, 100 contracts of futures for, let us say, July delivery, and he would like silver today.

Senator STEWART. He just gives the person the futures contract and you give him the bullion?

Mr. WALTUCH. That is correct. So I could go to Phillips Bros. or Engelhard, the bullion dealers, and say I would like to exchange a hundred contracts of silver for an equivalent amount.

Senator STEWART. Who primarily were you doing that for?

Mr. WALTUCH. I did some for Banque Populaire, I did some for Mr. Nahas, and I may have done some for Gilion Financial. I do not recall whether they did any or not.

Senator STEWART. Did you do any for yourself?

Mr. WALTUCH. Yes, I did.

Senator STEWART. Can you give me some idea of how much silver you placed for Mr. Nahas in that fashion, and for Banque Populaire, yourself and for Gilion Financial?

Mr. WALTUCH. For myself, I can tell you. For myself, actually it was the reverse. I sold physical silver to the Banque Populaire for futures in January for my personal account. For the other accounts, I really do not know. I would have to check my records.

Mr. GOLDSCHMIDT. These transactions did not go through Conti-Commodity in any way.

Senator STEWART. Mr. Goldschmidt, I do not assume that either one of you are saying anything up here today, Mr. Goldschmidt, that is anything other than the unvarnished truth. I would not imply anything about you at all during this proceeding. Do not worry about that.

Mr. Waltuch, did they go through ContiCommodity?

Mr. WALTUCH. Well, the futures positions were held at Conti-Commodity. When the futures positions were given up for the physicals, the futures positions were given up to the other participants who had the bullion, and the positions were closed out at Conti. So it was just as if it were a sale of futures at Conti and the clients arranged for the direct payment to the seller of the bullion.

Senator STEWART. You were going to tell me what the amount was of bullion in exchange.

Mr. WALTUCH. I said I cannot give you amounts for Mr. Nahas or Banque Populaire. I would have to check our records.

Senator STEWART. And Gilion Financial?

Mr. WALTUCH. Mr. Goldschmidt can do that, or some of the Conti people can do that.

Senator STEWART. If you could have that done for the record, I would appreciate it.

Mr. WALTUCH. Yes. We will take care of that.

Senator STEWART. Thank you, Mr. Waltuch.

Do you recall, requesting a meeting in November 1979 with Mr. Lee Berendt, who is president of Comex? Were you there?

Mr. GOLDSCHMIDT. Beg pardon?

Senator STEWART. Did you call a meeting with the president of Comex in November 1979, back on the question about Mr. Waltuch being kept off the trading floor?

Mr. GOLDSCHMIDT. I recall discussing that with him, yes.

Senator STEWART. And did they not in fact request you to keep Mr. Waltuch away from the Comex silver ring at that time?

Mr. GOLDSCHMIDT. Is that not what I answered? I mean, I thought I answered that question.

Senator STEWART. Maybe you did. You said you could not give me a yes or no. You said there was a discussion about it.

Mr. GOLDSCHMIDT. What it was is this—I repeat it: that Mr. Berendt suggested that it probably was not wise to have Mr. Waltuch go to the trading floor. Or he might have put it in stronger terms. I felt this was not a proper request.

Senator STEWART. In effect, he said to keep him off the floor, did he not?

Mr. GOLDSCHMIDT. He probably did. But the point is, I did not agree with him.

Senator STEWART. That is my question. What reason did Comex offer as a basis for that request?

Mr. GOLDSCHMIDT. That is what I disagreed with. Because it has often been said that when Norton walks on the trading floor the silver market goes up.

Senator STEWART. Why would that be? I have heard that. It has been indicated that that might have been the reason for the request. Why would his presence on the floor cause the prices to go up?

Mr. GOLDSCHMIDT. There is not a logical explanation excepting the fact that most often during that period when Mr. Waltuch did go on the floor he had orders from certain clients to buy, and apparently they felt when he was coming on the floor there was buying going on. If Mr. Waltuch had this kind of facility, we would have sent him on the floor when the market was going down, to keep it up. I took issue with it.

Senator STEWART. What percentage of your financial business does the silver futures trading represent?

Mr. GOLDSCHMIDT. In terms of commissions? I presume you mean not in dollars. Not very much.

Senator STEWART. A very small percentage?

Mr. GOLDSCHMIDT. Small percentage.

Senator STEWART. What was it prior to the time this increased activity took place in silver?

Mr. GOLDSCHMIDT. Would you give me the opportunity to check those numbers?

Senator STEWART. I am not going to hold you to the numbers. Give me a ball park figure.

Mr. GOLDSCHMIDT. Five to ten, let us say; 5 to 10 percent, and maybe before it was 2 to 3 percent.

Senator STEWART. So it increased appreciably as far as the percentage over the past year or year and a half?

Mr. GOLDSCHMIDT. It did.

Senator STEWART. Do you believe that foreign traders in our futures markets should be treated differently from domestic traders, or the same?

Mr. GOLDSCHMIDT. I believe we touched upon that a little earlier.

Senator STEWART. Do you want that response to serve as your answer to that question?

Mr. GOLDSCHMIDT. If it was satisfactory.

Senator STEWART. Satisfactory to me, if it is with you.

Mr. GOLDSCHMIDT. Sure.

Senator STEWART. Do you believe that Congress should authorize the Federal Reserve Board to set margins on financial futures contracts, including silver? I believe you responded to that in your statement.

Let me explain why I am asking these questions in the way I am. You see, there is not a large number of Senators who are present here today at this hearing. That does not mean that they are not doing their job. They are most likely in a hearing somewhere else. It is my responsibility to build as good a record as we possibly can, so that once they read it, and have their staff read it, and summarize it, we have as much on the record as possible.

What is your feeling about that?

Mr. GOLDSCHMIDT. My feeling is very clear on this matter. That I believe the margins setting authority should remain primarily with the exchanges. I think the outline that I gave in my paper, that is a sensitive decision to make, when and how to set margins, and I think it is best done with the people who are closest to the market. And the further you remove it, the less likely they would do it correctly.

As I said, Comex did not use it as wisely as they could have.

Senator STEWART. Are there any debts of foreign traders currently owed to your firm resulting in activities in the silver futures markets, particularly Mr. Nahas' account?

Mr. GOLDSCHMIDT. None that I know of right now.

Senator STEWART. No debts owed to you by any foreign trader? With regard to the silver situation, I am not talking——

Mr. GOLDSCHMIDT. There was money owed to us, but all the matters have been settled.

Senator STEWART. What was the amount of that debt on March 28?

Mr. GOLDSCHMIDT. I wish I was a computer here. I think we can furnish that for you perhaps. But I do not have that in my mind. All I know is the end result of all the silver involved in the debt we

had, with Mr. Nahas in particular, resulted in a loss to ContiCommodity.

Senator STEWART. So the debt was not settled dollar for dollar?

Mr. GOLDSCHMIDT. No, it was not. I think the loss got down to a substantial sum, some $10 million, after taxes.

Senator STEWART. What did you say?

Mr. GOLDSCHMIDT. I said the result of all this was, I would say, that when collections are done, and everything is cleared out, that the loss to ContiCommodity from Mr. Nahas was under $10 million, after taxes.

Senator STEWART. What about before taxes?

Mr. GOLDSCHMIDT. Logically, the tax rate, if it was 48 percent, you would have to make the calculation. Twice that.

Senator STEWART. Double?

Mr. GOLDSCHMIDT. It would have been if 48 percent.

Senator STEWART. So you are talking about $20 million?

[Mr. Goldschmidt nodding.]

Senator STEWART. Well, in effect, then you just took a loss of $20 million, and he did not settle up on anything?

Mr. GOLDSCHMIDT. That is correct. Well, that is not correct. The result of that was that the net was that.

Senator STEWART. The net was $20 million?

Mr. GOLDSCHMIDT. Right.

Senator STEWART. After tax loss——

Mr. GOLDSCHMIDT. He supplied assets, and there were other settlements——

Senator STEWART. What did he supply in the way of assets, to pay the debt he owed?

Mr. GOLDSCHMIDT. He had some moneys he had in this Conti-Capital Ltd. that he returned to us, the fund that I mentioned before.

Senator STEWART. What was that amount of money?

Mr. GOLDSCHMIDT. $2 to $3 million.

Senator STEWART. What other assets?

Mr. GOLDSCHMIDT. He provided us with vessels, oceangoing vessels, of substantial value.

Senator STEWART. Have you got any idea as to their value?

Mr. GOLDSCHMIDT. Yes. We had several estimates made of their value.

Senator STEWART. What is about the best estimate you have of their value?

Mr. GOLDSCHMIDT. $17 million.

Senator STEWART. Any other assets?

Mr. GOLDSCHMIDT. There were some other small amounts of moneys that he had in accounts, that he turned over to us. And there were some moneys that came from one of the banks in Paris.

Senator STEWART. What was that bank?

Mr. GOLDSCHMIDT. B-A-I-I, Banque Arabe, B-A-I-I.

Senator STEWART. Was that in connection with any silver trading activities that he was involved in through that bank?

Mr. GOLDSCHMIDT. This, I do not know. The money that the bank gave to us he owed.

Senator STEWART. Was that just money he had there in an account that did not have anything to do with silver trading?

Mr. GOLDSCHMIDT. I do not know. I mean, there could be silver trading.

Senator STEWART. Was the total debt somewhere in the neighborhood of $40 million?

Mr. GOLDSCHMIDT. Talking about ourselves?

Senator STEWART. Yourself, that he owed you.

Mr. GOLDSCHMIDT. At one time.

Senator STEWART. Was it in excess of that, and if so, how much?

Mr. GOLDSCHMIDT. It changes, up and down. I mean, with the market, it has gone up and down, varied. In other words, depending on where the silver market, depending on what the debts would have been at any given time.

Senator STEWART. At the time you settled with him, or attempted to make settlement with him, was the $17 million worth of vessels, and $2 or $3 million, what was the debt?

Mr. GOLDSCHMIDT. The debt was in excess of that.

Senator STEWART. What was the amount?

Mr. GOLDSCHMIDT. Fifty-one.

Senator STEWART. Fifty-one million?

Mr. GOLDSCHMIDT. About that.

Senator STEWART. When the figure was $51 million what was the date?

Mr. GOLDSCHMIDT. The beginning of May, I am told.

Senator STEWART. Now, did this result from the trading activities that took place by Mr. Nahas through your firm in connection with the silver market?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Was Mr. Nahas' account properly margined each day throughout the period of September 1979 through March 1980?

Mr. GOLDSCHMIDT. No, not each day. The market went up and down. But until the end, there were ample assets available.

Senator STEWART. Is it not true that this account was unmargined for at least 30 days during this period?

Mr. GOLDSCHMIDT. You mean after the drop of the silver?

[Senator Stewart nodding.]

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. That occurred after the silver price began to fall?

Mr. GOLDSCHMIDT. Sure. That would be the reason for being on margin.

Senator STEWART. What were those dates, do you recall?

Mr. GOLDSCHMIDT. The big drop of silver, March 17.

Senator STEWART. March 28 was the big drop, I think, the last drop?

Mr. GOLDSCHMIDT. They—you know, these are numbers.

Senator STEWART. Was it 30 days prior to that date?

Mr. GOLDSCHMIDT. Mr. Nahas' account had ample funds until the big drop of silver occurred, which was an unprecedented drop, which you could not protect yourself against, and that was the cause of the tremendous losses. The market went down precipitously.

I think we were protected, at least to $20, or $18 or $19. But when this liquidation took place——

Senator STEWART. When it went from $18 to $19 on down to $10.80, that period of time, why did you all not liquidate and close out the account, as soon as it became under margin?

Mr. GOLDSCHMIDT. We did as much as we could. We froze the account, and liquidated in as orderly a fashion as we could.

Senator STEWART. What were his holdings at that time?

Mr. GOLDSCHMIDT. The holdings of the account? What time? You know, I do not have the numbers in front of me, if that is what you are asking.

Senator STEWART. March 1 through 28 is the date that I would be interested in.

Mr. GOLDSCHMIDT. I do not have that number at the moment. We could supply it.

Senator STEWART. Could you supply that for our record, and indicate it to us?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. It may not be necessary after you get through with testimony, but it may be necessary for you to indicate to us how it was margined.

Were the activities in silver, by your firm, for foreign accounts limited to trading futures contracts on exchanges in the United States, or did you trade on other exchanges?

Mr. GOLDSCHMIDT. We traded on the London Exchange.

Senator STEWART. For some of these same people that we mentioned earlier?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Was Mr. Nahas one of those?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Banque Populaire?

Mr. GOLDSCHMIDT. I am not sure we had silver for Banque Populaire in London.

Senator STEWART. Mr. Waltuch?

Mr. WALTUCH. I do not recall. I do not think so. If there was, it was a relatively small position. I do not recall them being in London with us, in any significant way.

Senator STEWART. What about yourself?

Mr. WALTUCH. I traded from time to time in London. Very small.

Senator STEWART. Gilion Financial?

Mr. WALTUCH. I do not recall. I do not think so. I cannot say Gilion was not involved in London, I do not think they were involved through us.

Senator STEWART. I am asking you if they were involved through your firm.

Mr. WALTUCH. I do not think Gilion was, no.

Senator STEWART. ContiCapital, Ltd.?

Mr. WALTUCH. I do not believe ContiCapital, Ltd., was involved in London.

Senator STEWART. Are you stating emphatically that they were or were not?

Mr. WALTUCH. I am fairly certain that ContiCapital, Ltd., was not involved in London, but I would not want to swear to it. There might well have been a few contracts. I do not recall.

Senator STEWART. What kind of position were you taking for Mr. Nahas in London at this particular period of time?

Mr. WALTUCH. I think the largest position he had in London was something between 90 and 100 contracts.

Senator STEWART. What does that represent in terms of ounces of silver?

Mr. WALTUCH. A hundred contracts in London would be equivalent to a million ounces. It is a double contract in London.

Senator STEWART. Banque Populaire?

Mr. WALTUCH. I do not think Banque Populaire had a London position with us.

Senator STEWART. What was your position during this period of time?

Mr. WALTUCH. In London?

Senator STEWART. Yes.

Mr. WALTUCH. Twenty contracts.

Senator STEWART. Were there any activities outside of the exchanges that you represented these people in, in the cash market transactions?

Mr. WALTUCH. No, sir. Outside of the exchange, for physicals that I mentioned previously.

Senator STEWART. Did any employee of your firm, Mr. Goldschmidt, either directly or indirectly solicit silver futures business from foreigners, specifically Arabs, or West Germans, from the spring of 1979 through March of 1980, and specifically I am talking about Mr. Waltuch, or Mr. Waldeck, of your Geneva office?

Mr. GOLDSCHMIDT. I believe that they—I am pretty sure when we organized ContiCapital Management that they took a trip through Europe in the summer, and tried to solicit business for various accounts.

Senator STEWART. Were they successful in that endeavor?

Mr. GOLDSCHMIDT. Yes.

Senator STEWART. Were there any members of any royalty, who got involved in either the Arabs or the West Germans in the silver futures markets?

Mr. GOLDSCHMIDT. No, I do not think so.

Senator STEWART. Mr. Waltuch?

Mr. WALTUCH. No.

Senator STEWART. Could you tell us where the Arab participants in this ContiCapital, Ltd., came from?

Mr. WALTUCH. Are you asking me, Senator?

Senator STEWART. Yes.

Mr. WALTUCH. ContiCapital, Ltd., had no—at least not to my knowledge—had no Arab royal family participation. We had European banks that purchased shares of ContiCapital, Ltd., and some individuals, but I do not recall the names.

Senator STEWART. What countries did you visit, outside of West Germany?

Mr. WALTUCH. West Germany and Switzerland.

Senator STEWART. Did you meet with any people from any countries other than West Germany, and if so, what countries were these people from?

Mr. WALTUCH. I met one Saudi Arabian, and two or three Lebanese.

Senator STEWART. What is the name of the Saudi Arabian?

Mr. WALTUCH. Mr. Fustok.

Senator STEWART. Could you give me the name of the other individual?

Mr. WALTUCH. Mr. Nahas is a Lebanese, although he is a Brazilian citizen. And an associate of his, who is another Lebanese. His name is F-A-I-Z. He never opened an account with us.

Senator STEWART. Where did you meet these people?

Mr. WALTUCH. Mr. Fustok in Paris, Mr. Nahas in Geneva.

Senator STEWART. Some of these being banking firms that you met with trading with people who perhaps came from an Arab country?

Mr. WALTUCH. Senator, I do not know who the banks were trading for. When you are handling European banks, you do not ask too many questions, because you will not get the business.

Senator STEWART. Could they have been, Mr. Waltuch?

Mr. WALTUCH. They could have been.

Senator STEWART. About when did you take this trip to West Germany and Switzerland?

Mr. WALTUCH. This was in May of 1979.

Senator STEWART. Was anybody else present in the meeting, besides you and these individuals you talked to about participating?

Mr. WALTUCH. Well, when I had a meeting with Mr. Fustok, Mr. Nahas was present. When I met with Mr. Nahas, there were two people from a company called Advicorp, which is a Geneva based management company.

Senator STEWART. And did Advicorp indicate who they were representing?

Mr. WALTUCH. Mr. Waldeck, my associate in Geneva, and Mr. Auer, another participant in Capital Management located in Chicago.

Senator STEWART. Mr. Goldschmidt, are you familiar with Harry Marshall?

Mr. GOLDSCHMIDT. Yes, I am.

Senator STEWART. Is he employed by Conti?

Mr. GOLDSCHMIDT. That is correct.

Senator STEWART. In what capacity?

Mr. GOLDSCHMIDT. He is director of operations in New York.

Senator STEWART. Has he turned over certain documents to Conti's attorneys regarding Mr. Waltuch's silver trading activities?

Mr. GOLDSCHMIDT. I am not very clear on what you are asking.

Senator STEWART. Has he turned over certain documents to Conti's attorneys regarding Mr. Waltuch's silver trading activities?

Mr. GOLDSCHMIDT. I would not know.

Senator STEWART. Would anyone here representing your company be aware of that?

Mr. LYMAN. We have obtained, as attorneys for Conti ——

Senator STEWART. State your name.

Mr. LYMAN. Arthur Lyman. We have obtained records with respect to silver trading of all accounts that had significant positions, including Mr. Waltuch.

Senator STEWART. What is the purpose of this action, Mr. Goldschmidt?

Mr. GOLDSCHMIDT. The purpose of collecting this information?

Senator STEWART. Well, the purpose of collecting the information with regard to Mr. Waltuch's activities.

Mr. GOLDSCHMIDT. Well, when you had an occurrence like we had, I think we asked, as Mr. Lyman just said, to have a complete investigation made about all clients that were dealing with us, and all the people in silver positions.

Senator STEWART. In fact, Conti is currently investigating Mr. Waltuch's activities, along with other participants?

Mr. GOLDSCHMIDT. That is correct.

Senator STEWART. You mean other people who——

Mr. GOLDSCHMIDT. We made a thorough analysis of all the positions. The line relationship with an account executive is such that the account executive has first line responsibility for the clients that he brings in the house. This is the rule that is in the industry, and it is the rule of ContiCommodity Services. Therefore, Mr. Waltuch had first responsibility for Mr. Nahas' deficit, and it was in that connection, plus all the other accounts to be looked at that we made this particular study.

But I do not know whether, for instance, Harry Marshall was the one who supplied the information.

Senator STEWART. Pursuant to my request that counsel for Comex has provided the subcommittee with a list of customer accounts in Comex silver futures contracts that may have assumed those silver positions on behalf of, or in concert with, other market participants, in an attempt to circumvent the silver position limit rule adopted by Comex on January 7, 1980.

I am going to ask that my request letter, and the response of Mark Buckstein of Baer, Marks & Upham be made a part of the record.

[The following material was received by the subcommittee:]

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, D.C., June 18, 1980.

MARK A. BUCKSTEIN,
Baer, Marks & Upham,
New York, N.Y.

DEAR MR. BUCKSTEIN: As counsel to the Commodity Exchange, Inc., I would appreciate your supplying the Subcommittee on Agricultural Research and General Legislation with the following information:

(1) A list of the silver futures accounts on the exchange in January 1980 that COMEX believed may have been an attempt to circumvent the silver position limit imposed by the exchange and the futures commission merchants who traded those accounts; and

(2) A statement regarding whether COMEX ever requested Mr. Walter Goldschmidt or any other representative of Conti Commodity Services to keep Mr. Norton Waltuch off the COMEX trading floor or out of the silver trading ring and, if such a request was made, when it was made.

I am requesting this information in preparation for a hearing to be held by the subcommittee on June 26, 1980. Therefore, if at all possible, it would be most helpful if we could have the requested information by June 24, 1980.

Thank you for your kind cooperation in this matter.

Sincerely,

DONALD W. STEWART,
Chairman, Subcommittee on Agricultural Research and General Legislation.

BAER MARKS & UPHAM,
New York, N.Y., June 23, 1980.

Re Commodity Exchange, Inc.

Mr. DONALD W. STEWART,
Chairman, Subcommittee on Agricultural Research and General Legislation, U.S. Senate, Washington, D.C.

DEAR SENATOR STEWART: I refer to your letter of June 18, 1980 requesting certain information pertaining to our client, Commodity Exchange, Inc. ("Comex"). In our capacity as counsel to Comex, we supply the following information for your use:

(a) The following customer accounts that maintained positions in Comex silver futures contracts at the following futures commission merchants during and after January, 1980, may have assumed those silver positions on behalf of, or in concert with, other market participants, in an attempt to circumvent the silver position limit rule adopted by Comex on January 7, 1980:

CUSTOMER AND FUTURES COMMISSION MERCHANT MAINTAINING ACCOUNT

(1) Jean Jacques Bally c/o Advicorp—ACLI International Commodity Service, Inc. ("ACLI").
(2) Paul Bisoffi c/o Advicorp—ACLI.
(3) Maret Rene c/o Advicorp—ACLI.
(4) Pierre Alain Hirschi c/o Advicorp—ACLI.
(5) Raf Jabbour c/o Coprosol S.A.—ACLI.
(6) Nassif Jabbour c/o Coprosol S.A.—ACLI.
(7) Antoine Achkar c/o Imovest Inter S.A.—ACLI.
(8) Selim Gabriel Nassif c/o Imovest Inter S.A.—ACLI.
(9) Imovest Inter S.A.—ACLI.
(10) Emir Fayez Chehab c/o Imovest Inter S.A.—ACLI.
(11) Banque Populaire Suisse—ACLI and ContiCommodity Services, Inc. ("Conti").
(12) Naji Nahas c/o Imovest Inter S.A.—Conti.
(13) Gilion Financial, Inc. c/o Imovest Inter S.A.—Conti.
(14) Mahmoud Fustock—Conti.
(15) Aldabi Trading Corp.—Conti.
(16) Robert Ramsey—Conti.
(17) Antoun Asfour—Conti.

There may have been other similar accounts at Conti bearing the following names: Reticorp; Rasitra; and Pontamar.

(b) At a meeting that I attended in November, 1979, Mr. Lee H. Berendt, President of Comex, at the behest of the Comex Special Silver Committee, requested Mr. Walter Goldschmidt to keep Mr. Norton Waltuch away from the Comex silver ring.

If I can be of any further assistance to your Subcommittee, please do not hesitate to contact me.

Respectfully,

MARK A. BUCKSTEIN.

Mr. LYMAN. May we have a copy of that, Senator?

Senator STEWART. Yes, you may.

At any time was Conti concerned that the accounts of Mr. Nahas, Gilion Financial, Inc.—I hope I pronounce this right—Mahmoud Fustock, Aldabi Trading Corp., Robert Ramsey, Antoun Asfour were attempting to circumvent the silver positions?

Mr. GOLDSCHMIDT. These accounts were opened as individual accounts. And from the list that I see, subsequent to the market decline, Mr. Nahas accepted financial responsibility for, I think, three out of these accounts that I see listed here, plus the three on the top of the page. So six accounts subsequent to the silver drop, Mr. Nahas took responsibility for them after that. He took financial responsibility.

It was not known to us, and not known to us today, whether he had any other interest in these accounts. One was his employee.

Senator STEWART. Who was that?

Mr. GOLDSCHMIDT. Mr. Robert Ramsey.

Senator STEWART. Did you or Mr. Waltuch know who Mr. Ramsey was at the time he took out this account?

Mr. GOLDSCHMIDT. Yes, we knew.

Senator STEWART. That he was an employee?

Mr. GOLDSCHMIDT. Well, he used to work for Continental Grain years ago, and therefore we knew him. And I believe he is employed, at least half of the time—he is employed at a company Mr. Nahas has some interest in. Yes, we knew that.

Senator STEWART. Who guaranted these accounts of Aldabi Trading Corp., Robert Ramsey—I do not know how to pronounce his name—Antoun Asfour?

Mr. GOLDSCHMIDT. By Nahas, financial guarantee.

Senator STEWART. At that time, they were taken out?

Mr. GOLDSCHMIDT. No. When these accounts were taken out, they came in as individual accounts.

Senator STEWART. Who is that employee, if you know? One of your employees got these?

Mr. GOLDSCHMIDT. One of the employees, yes.

Senator STEWART. Were they aware at the time that these people were connected in some way, at least Mr. Ramsey was connected, in some way?

Mr. GOLDSCHMIDT. Mr. Ramsey's account had been opened, probably, I do not know, several years before that.

Senator STEWART. Who called and made the trading decisions on a day-to-day basis for Robert Ramsey, or the Aldabi Trading Corp., or Antoun Asfour accounts?

Mr. GOLDSCHMIDT. Personal knowledge, I do not have. But the point is, I think it would be Advicorp in Geneva. Whether they work for Ramsey or not, I do not personally know.

Senator STEWART. Was not Mr. Nahas the one who called and made contact with your firm about these particular accounts?

Mr. GOLDSCHMIDT. I do not have that personal knowledge.

Senator STEWART. Mr. Waltuch?

Mr. WALTUCH. No, Mr. Nahas did not open these accounts, or contact us.

Senator STEWART. Did you make any trading decisions during the course of time that these accounts were opened with you, prior to March 28 of this year, for these accounts?

Mr. WALTUCH. No, sir. I am sorry, the only one that we did have some trading positions for was Robert Ramsey. The other account orders emanated from Geneva.

Senator STEWART. From whom?

Mr. WALTUCH. Advicorp in Geneva.

Senator STEWART. Was that not the one you met with over there?

Mr. WALTUCH. That is true.

Senator STEWART. You all were discussing the possibility of investing in the silvers futures market. At that time did they later take out a contract in the name of some of these people?

Mr. WALTUCH. No. Advicorp never had an account with us.

Senator STEWART. To your knowledge, did they have an account with anybody on the exchange there?

Mr. WALTUCH. Well, subsequent to this whole situation, I have found out through the Comex study, that the principals at Advicorp had positions, or accounts at ACLI.

Senator STEWART. Did you ever go down in the trading pit during this period of time?

Mr. WALTUCH. Which particular time are you talking about, Senator?

Senator STEWART. Well, let us take from May 1979 through March 28, 1980.

Mr. WALTUCH. Yes. Frequently.

Senator STEWART. Did you trade—apparently you did. You got good press on what happened when you came there and traded. Did you trade on a fairly regular basis?

Mr. WALTUCH. I was there frequently, yes.

Senator STEWART. Representing these accounts that we have referred to previously?

Mr. WALTUCH. Yes.

Senator STEWART. And you are telling me and this committee that you were not aware of the fact that Advicorp was taking positions through ACLI at that time?

Mr. WALTUCH. I had no reason to even think that they had a position in ACLI. They never divulged that to me.

Senator STEWART. In other words, you went to Geneva, Switzerland and talked about silver trading positions for accounts of West Germans and Arab interests, and you were not aware of what Advicorp was there discussing?

Mr. WALTUCH. Advicorp has a power of attorney for Banque Populaire Suisse. Banque Populaire Suisse was the fourth largest bank in Switzerland. Banque Populaire Suisse had a sizable account with ACLI.

Senator STEWART. Were you aware they were trading a substantial amount of silver, Banque Populaire Suisse, ACLI, and also with you all?

Mr. WALTUCH. No.

Senator STEWART. Did you subsequently learn that they obtained——

Mr. WALTUCH. I think here we are getting a little confused on the timing.

Senator STEWART. I am not confused.

Mr. WALTUCH. I am.

Senator STEWART. You mean in May, and you are indicating to me from May, March of 1980 when this thing stopped pretty substantially, I asked if you know if some of these folks came in, Advicorp and Banque Populaire. You stated you knew Banque Populaire did. You stated you did not know Advicorp was a principal mover in the situation.

Mr. WALTUCH. I did not say that. I said I met in May 1979 with Advicorp. I said I knew they had a sizable trading account with ACLI. I am sorry, Advicorp did not have an account with ACLI, Banque Populaire Suisse had an account. Advicorp held a power of attorney for Banque Populaire Suisse, trading in precious metals and currencies. We were anxious to get the contract for Banque Populaire Suisse because it was the fourth largest bank in Switzerland. They subsequently, after May, opened the account with us.

I believe it was sometime in August. They continued to trade with ACLI.

Senator STEWART. And you were aware of that?

Mr. WALTUCH. I was aware they were trading with ACLI, yes, sir.

Senator STEWART. You were not aware Advicorp was trading with any of the others?

Mr. WALTUCH. I had no information to lead me to believe that any of the individuals at Advicorp had positions at other houses. They had never had a position with us.

Senator STEWART. Do you know a Jean-Jacques Bally?

Mr. WALTUCH. Yes, sir.

Senator STEWART. Would Conti be interested in knowing that Mr. Nahas and Bally had the trading authority for 10 foreign silver accounts at ACLI International Commodity Service, Inc.?

Mr. GOLDSCHMIDT. I would not know that.

Senator STEWART. Did you, or anyone else at Conti know that this was the case?

Mr. GOLDSCHMIDT. This is the first time I heard that.

Senator STEWART. Mr. Waltuch, would you know?

Mr. WALTUCH. I found out that Mr. Bally and Mr. Nahas had interest in accounts at ACLI, with the letter I received from Comex, requesting me to attend a hearing sometime in April.

Senator STEWART. And of this year?

Mr. WALTUCH. That is correct. After the position had been liquidated.

Senator STEWART. Did you communicate that to Mr. Goldschmidt after you found out about it?

Mr. WALTUCH. I think Mr. Goldschmidt found out at the same time I did.

Senator STEWART. What would you have done if you had known they had these positions at the same time they were trading with you, say, sometime during the period of time we mentioned earlier, between May and the time you met with some of these folks over there in Geneva until March 1980?

Mr. WALTUCH. Well, these people, first of all, did not have accounts at Conti.

Senator STEWART. Had you known that they were taking positions, as they apparently were, with ACLI, and also some of them with you, Mr. Nahas for one, what would you have done?

Mr. WALTUCH. Well, had I known that Mr. Nahas had a sizable position with ACLI, I would have been a bit more uneasy about his position with us, because the exposure in the market would have been much greater.

Senator STEWART. That is the only concern you would have had?

Mr. WALTUCH. That is correct.

Senator STEWART. What would have been your concern, Mr. Goldschmidt, if you had known that at that time?

Mr. GOLDSCHMIDT. I think there are probably many customers who have accounts in several houses. We, of course, do not know when they do or do not. I share my views with Norton, that had we known Mr. Nahas in particular had had a sizable position in other houses, we would have been more concerned, and might have been more restrictive, and might have had less of a loss.

Senator STEWART. But the loss to your firm due to overexposure of Mr. Nahas would have been your only concern?

Mr. GOLDSCHMIDT. If your question is are we concerned about a person over position limits, or anything of that nature, sure, we would be.

Senator STEWART. Was there a possibility he could have traded in more than one firm, and circumvented the position limits?

Mr. GOLDSCHMIDT. If he would not report his position, and if the CFTC would not have his name on record, which I think they did have, as in our case—I do not know what name he used in the other houses—I think the CFTC has the capability of aggregating these accounts, even through another house. But they do not communicate that back to the futures commission merchants, because there is something proprietary here between futures merchants.

Senator STEWART. Had you known that, and it is an open-ended question in your exposure, would you have been concerned about anything else?

Mr. GOLDSCHMIDT. I cannot think of anything right now. I mean, those two issues would have been concerns.

Senator STEWART. Well, if you had known that perhaps some of these particular individuals were trading in concert within this market, and also in the cash market, would that have caused you some concern?

Mr. GOLDSCHMIDT. Yes, I think it would have, if I had known that.

Senator STEWART. What would that trading in concert have caused to happen in the marketplace if, for instance, everybody decided to go buy?

Mr. GOLDSCHMIDT. I do not know where we are going here, because we are speculating, if and what.

Senator STEWART. Let us say all of a sudden, in August of 1979, a number of people began to enter the silver market in this country, and take certain long positions, the exchanges reacted in such a way that they were forced out of the market, and they went to the cash market, and the same principles, and when position limits were imposed and fairly restrictive margin limits were imposed, other entities popped up that might or might not have connections with these people and they took positions perhaps to circumvent the position limits, what would that cause that market to do?

I know you have indicated it is a worldwide market, but it is not as big as the gold market, is it?

Mr. GOLDSCHMIDT. Maybe not. But let me give you my views.

Senator STEWART. What would happen if that kind of concerted action were to take place?

Mr. GOLDSCHMIDT. First of all, I feel that anyone who would try to manipulate the market, who has ever tried to manipulate the market, would be foolish to attempt it.

Senator STEWART. Let us assume we agree it is foolish to try to do it. You are saying, even in this instance, if they were trying it, what would happen if they attempted it for a certain period of time, how would we know that was taking place?

Mr. GOLDSCHMIDT. I think it would be difficult to know.

Senator STEWART. What happens when they start doing that?

Mr. GOLDSCHMIDT. What if they were buying silver? I would say the markets were going up. The price would go up.

Senator STEWART. A pretty substantial increase?

Mr. GOLDSCHMIDT. Depends on conditions. I submitted in my paper——

Senator STEWART. I know what you submitted.

Mr. GOLDSCHMIDT. Please. If you are a speculator and try to manipulate, and do whatever you do, if the conditions are not ripe for the market to go up, my feeling is, and we have experienced it many times, that buyers come in thinking markets will go up. And if conditions are such, they are wrong, they will be punished for being wrong. This is exactly what happened, and did happen.

Senator STEWART. Let us just assume, had you had any idea of how much in the way of a position these folks held, what their holdings totally represented at any one given point in time——

Mr. GOLDSCHMIDT. No, sir. It was a surprise to me, as to the size of the holdings.

Senator STEWART. What did you learn their holdings were?

Mr. GOLDSCHMIDT. Reading some of the documents, and the positions of the Hunts for example, it is much larger.

Senator STEWART. How much was it, though?

Mr. GOLDSCHMIDT. I think the record shows. I do not know.

Senator STEWART. Let us accumulate it for the record.

Mr. GOLDSCHMIDT. Has anybody got the report from the CFTC, or the hearings of the Rosenthal committee, which details the holdings of the Hunts?

Senator STEWART. I do not know whether this would be the most accurate portrayal of it or not.

Mr. GOLDSCHMIDT. It would be more accurate than what I know, because that is where I get my information from.

Senator STEWART. We are trying to get as accurate information as we possibly can. If you would accumulate for me the positions that your clients held during that particular period of time, we can get the Hunts. And we will get the ones from ACLI, and we will get it accumulated on the record.

Let us say that it was 300 million ounces, or 400 million ounces. Would that be a substantial position that would indicate to you that somebody had a pretty good piece of the action, as they say in my part of the country?

Mr. GOLDSCHMIDT. Undeniably, yes.

Senator STEWART. And what would that be an indicator of——

Mr. GOLDSCHMIDT. The interesting part about the silver market has been that in the whole situation that the nearby silver was always selling at a huge discount over the deferred, and there was never a case of what you might call a cash squeeze. There was ample silver being liberated from the market to make it available. As the market went up, the more silver came out from households, and everywhere. There was never a shortage of silver during that entire period.

If you kept buying and buying, the nearby month was always below the deferred, indicating there was never a tightness.

Being a student of the market, there was never concern on my part there would be a manipulation or price squeezes, because there was ample supply of silver, on a constant basis, available if anybody wanted to buy.

Senator STEWART. That may be true, but there were a number of price increases, when silver was an ingredient. You are not going to deny that, are you?

Mr. GOLDSCHMIDT. Absolutely not.

Senator STEWART. I would hope you would not say that the activities on the market, were still operating as a discovery mechanism?

Mr. GOLDSCHIIDT. Again, as I tried to indicate in my paper, I think it was an unacceptable volatility that took place in the marketplace, and I think there were many forces that caused it, both fundamental and others induced by changes and large speculators.

Senator STEWART. I appreciate your testimony here today, Mr. Goldschmidt, and your patience. I apologize for having to be off somewhere else. I probably should have been here. I apologize for keeping you waiting. And if you want to, I have some questions I need to ask Mr. Waltuch, but I am through with you.

Mr. GOLDSCHMIDT. Thank you very much.

Senator STEWART. Mr. Waltuch, what is your current position with ContiCommodity Services?

Mr. WALTUCH. I am vice president.

Senator STEWART. How long have you held that position?

Mr. WALTUCH. Approximately 8 years.

Senator STEWART. What are your responsibilities in that position?

Mr. WALTUCH. I was formerly the manager of the New York branch office of ContiCommodity Services, and currently I am vice president in charge of ContiCapital Management.

Senator STEWART. How long have you been manager of that, New York?

Mr. WALTUCH. I was manager of the New York Branch since December 1970 until May 1979.

Senator STEWART. And then you went into the Conti——

Mr. WALTUCH. Capital Management.

Senator STEWART. What were your responsibilities with ContiCapital Management?

Mr. WALTUCH. I was a money manager, handling managed accounts.

Senator STEWART. Did you deal with managed accounts and the purchasing of all commodities, or did you specialize?

Mr. WALTUCH. No. We traded in all commodities, but it so happened that the silver market was one of the most active markets, and obviously it attracted or demanded a good portion of my time.

Senator STEWART. So you spent the major portion of your time in that new position in the silver futures market?

Mr. WALTUCH. Yes.

Senator STEWART. Are you a member of all domestic boards of trade?

Mr. WALTUCH. I am a member of all exchanges except for the Chicago Mercantile Exchange. I am a member of the International Monetary Market, which is part of the Chicago Mercantile Exchange. I am not a member of Kansas City or Minneapolis.

Senator STEWART. Are those memberships in your capacity as an employee of Conti, or personal memberships?

Mr. WALTUCH. The memberships in the New York exchanges belong to ContiCommodity. The Chicago Board of Trade and the International Monetary Market memberships are my own.

Senator STEWART. I have asked you about ContiCapital Management, or your activities with that particular company or that particular entity. You have indicated that your primary function with that entity was silver futures trading.

What else did ContiCapital Management deal with other than silver futures?

Mr. WALTUCH. My responsibilities were the——

Senator STEWART. I asked you about your responsibilities.

Mr. WALTUCH. I just want to make one point clear here; that my responsibilities were not only silver, but just about all of the New York traded commodities. ContiCapital Management provided a broad coverage of all markets. My responsibility was for the so-called world commodities, such as gold, silver, copper, sugar, and cocoa. The grains and livestock were handled by my two associates.

First, I have Auer located in Chicago, and Waldeck, located in Geneva.

Senator STEWART. Did Mr. Waldeck work for you primarily in the silver area, or metals area, or did he deal in other commodities?

Mr. WALTUCH. We discussed all commodities.

Senator STEWART. Did you trade futures contracts for your own account or in partnership with someone else?

Mr. WALTUCH. Yes, my own account.

Senator STEWART. Were there any partnership arrangements that you had?

Mr. WALTUCH. I had one small account that I was partners with another friend of mine in.

Senator STEWART. Who is that?

Mr. WALTUCH. Mr. Ed Coster, who is a very good friend of mine.

Senator STEWART. Was that in silver?

Mr. WALTUCH. It was in all commodities, not just silver.

Senator STEWART. Was that the only one you had other than your own personal account?

Mr. WALTUCH. That is correct.

Senator STEWART. Did you do the silver trading for your account and for that partnership account only on Comex?

Mr. WALTUCH. I would say 99.9 percent of the transactions.

Senator STEWART. Again, you traded some on the London exchange?

Mr. WALTUCH. Some on the London, and I may have made a few small transactions on the Chicago Board of Trade.

Senator STEWART. Were you advising people that they should buy silver durinq this particular period in time we referred to earlier, spring of 1979, to March of 1980?

Mr. WALTUCH. Yes, sir. It started even earlier. It started in the fall of 1978.

Senator STEWART. So you were advising most of these accounts that you were dealing with in the fall of 1978 that they ought to buy silver?

Were the foreign silver accounts that you traded for Conti net long or net short on March 28, 1980?

Mr. WALTUCH. Net long.

Senator STEWART. Did you trade any contracts for shorts in the silver market from the time we mentioned earlier, the spring of 1979 through 1980 on, aside from spread transactions?

Mr. WALTUCH. No.

Senator STEWART. Were you personally net long or net short in the silver futures markets on March 28, 1980?

Mr. WALTUCH. I believe on March 28 I was out of the market.

Senator STEWART. When did you get out?

Mr. WALTUCH. Oh, I started liquidating some of my longs in December 1979, and started liquidating scale up. I sold some in January, sold some in February, and a large portion of it in March.

Senator STEWART. Did you personally make or lose money in silver futures?

Mr. WALTUCH. I made some money in silver.

Senator STEWART. This is aside from the money that you generated in trading for the accounts of others?

Mr. WALTUCH. Yes.

Senator STEWART. The report prepared for this committee, at my request, by the Commodity Futures Trading Commission, states that during the first half of 1979, accounts in silver futures held at Conti were in the following names, that we have mentioned earlier, your name and Nahas, Banque Populaire, and the rest.

Were you personally trading all of these accounts?

Mr. WALTUCH. I don't know what you mean by personally trading.

Senator STEWART. Were you managing the affairs of accounts?

Mr. WALTUCH. Can we go over the list?

Senator STEWART. Mr. Nahas.

Mr. WALTUCH. Mr. Nahas; I was not managing his account. He made his own decisions.

Senator STEWART. Who did he communicate those decisions to?

Mr. WALTUCH. To me.

Senator STEWART. And did you then instruct either a broker on the floor or do it yourself?

Mr. WALTUCH. Yes.

Senator STEWART. Banque Populaire.

Mr. WALTUCH. The same.

Senator STEWART. Who told you what to do?

Mr. WALTUCH. They told me what to do through Advicorp, who had their power of attorney.

Senator STEWART. That is the group that met with you in May 1979?

Mr. WALTUCH. Yes.

Senator STEWART. Of course, I assume you advised yourself as to what—you are next on the list.

Mr. WALTUCH. Yes.

Senator STEWART. What about Gilion Financial?

Mr. WALTUCH. Advicorp gave me instructions for Gilion Financial.

Senator STEWART. And of course ContiCapital Management or ContiCapital Ltd?

Mr. WALTUCH. ContiCapital Management had no positions of their own.

Senator STEWART. They took it through ContiCapital, Ltd.?

Mr. WALTUCH. No. ContiCapital Management never had positions of their own. ContiCapital Management was just the entity that was managing the individual accounts that we had power of attorney over.

Senator STEWART. I assume you are responsible, or in your role, you advised ContiCapital, Ltd., what to do?

Mr. WALTUCH. Yes.

ContiCapital, Ltd., was an account of ContiCapital Management.

Senator STEWART. Information came one way; you are sitting in New York and you get this information.

Are you telling us here that you never called them back and told them anything?

Mr. WALTUCH. No, I didn't say that.

Senator STEWART. When they called you and told you, Mr. Waltuch, we want you to do certain things, did you ever say, I don't know whether I would do that or not, or I don't know whether this would be the wisest thing to do?

Mr. WALTUCH. There were many instances where they called up or I spoke to them and we were chatting about the market, and they said, should we increase our position, and I said, should we increase our position, and I said, no.

Senator STEWART. So you were in effect giving these people who were calling advice? In other words, it strikes me as unusual that you would travel all the way to Geneva, Switzerland and talk to them and acquire accounts and never tell them.

Mr. WALTUCH. I didn't say I never told them anything.

Senator STEWART. You did advise them?

Mr. WALTUCH. Absolutely.

Senator STEWART. Were you personally trading these accounts?

Mr. WALTUCH. No. These accounts made their own decisions. They leaned on me for advice.

Senator STEWART. Took your advice as part of the ingredients that they used to make their decision?

Mr. WALTUCH. That is correct.

Senator STEWART. Did you go to the floor with orders during this particular period of time and actually make a trade?

Mr. WALTUCH. Yes, I did.

Senator STEWART. Did you have any authority to make discretionary decisions on how any of these accounts would be traded?

Mr. WALTUCH. No.

Senator STEWART. You did not?

Mr. WALTUCH. No.

Senator STEWART. Other than your own that you made, and I assume ContiCapital Management?

Mr. WALTUCH. ContiCapital, Ltd., I had discretion.

Senator STEWART. You have indicated you are familiar with Advicorp of Geneva, Switzerland.

Who are the principals in that outfit?

Mr. WALTUCH. The two principals that I spoke to on a regular basis were Mr. Jean-Jacques Bally——

Senator STEWART. I am sorry; I mispronounced that.

Mr. WALTUCH. "Bally," like the ballet show. And the other one, a Mr. Pierre Alain Hirshey.

Senator STEWART. You say you talked to these people on a regular basis. Was that during May 1979, up to March 1980?

Mr. WALTUCH. Yes.

Senator STEWART. Do you still converse with them?

Mr. WALTUCH. I haven't spoken to them in the last few weeks. Up until, let's say, a few weeks ago, they were speaking to me on a regular basis.

Senator STEWART. What was the nature of those conversations during the first time frame we mentioned? Did you talk about silver?

Mr. WALTUCH. Not only silver; we would discuss world political situations, which, of course, had a dramatic influence on the price of silver.

Senator STEWART. You discussed those events as they affected the price of silver?

Mr. WALTUCH. Not only silver, but every commodity in general, and to a good extent, gold and currencies.

Senator STEWART. That was all the nature of the conversations?

Mr. WALTUCH. No. We chatted on a daily basis. In fact, in many instances, more than once a day on the condition of the market, how the market was acting, what news was coming out that might affect the market one way or the other, who was buying, who was selling, what financial news was coming out. Anything that might have a price determining effect on the market.

Senator STEWART. During the course of the conversation, did they ever indicate to you that they were buying or selling silver?

Mr. WALTUCH. Just what they told me, that I should do for them at Conti.

Senator STEWART. In other words, you were handling an account for them at Conti, or how was that?

Mr. WALTUCH. The only thing I knew they were doing—the only positions I assumed they had were the positions they had at Conti.

Senator STEWART. Banque Populaire?

Mr. WALTUCH. Banque Populaire I knew had positions elsewhere.

Senator STEWART. What other positions did they hold?

Mr. WALTUCH. I know Banque Populaire had accounts elsewhere because there were times they had me give trades up to other houses.

Senator STEWART. But were they calling you with regard to Mahmoud Fustock and Gilion Financial?

Mr. WALTUCH. Yes, sir.

Senator STEWART. Did Conti treat the foreign accounts that I have mentioned as speculative or hedge accounts?

Mr. WALTUCH. The individuals were speculative; the Banque Populaire was a hedge account.

Senator STEWART. How did you arrive at the determination that it was a hedge account?

Mr. WALTUCH. We were told by Advicorp that the positions that Banque Populaire was taking were hedging positions.

Senator STEWART. What difference would the classification of accounts with respect to hedging have?

Mr. WALTUCH. Just a slightly lower margin, really not a significant difference.

Senator STEWART. Did Banque Populaire's account ever exceed the speculative trading limits imposed by Comex?

Mr. WALTUCH. When Banque Populaire put on their positions there were no limits on their positions. Once the position limits were instituted, they never exceeded the limits. They were continually in the process of reducing their positions.

Senator STEWART. Your statement is, once the trading limits positions were imposed, they never exceeded that?

Mr. WALTUCH. Once they had—when the position limits were instituted by Comex—and I do not recall the dates, because there were so many different dates various actions were taken by Comex—once position limits were instituted by Comex, they did not add additional positions, because at that time, they were very near the so-called limit.

Senator STEWART. What did they do to get below the limits?

Mr. WALTUCH. They were liquidating, took delivery of some, liquidated some.

Senator STEWART. How long did it take them to get within the limits, Mr. Waltuch; do you remember?

Mr. WALTUCH. About a week after it became effective, the position limits became effective, they were down to position limits or less.

Senator STEWART. When did you first start trading silver futures for Mr. Nahas?

Mr. WALTUCH. January 1979.

Senator STEWART. That is the date Mr. Goldschmidt gave us earlier.

What were the circumstances surrounding him coming into Conti? Who got him in touch with you?

Mr. WALTUCH. Mr. Robert Ramsey, who was a former employee of Continental Grain Co., who I knew from my past visits to European offices of Continental, that had left Continental about 2 years prior to January 1979. He called me and asked me what I thought about the orange juice futures markets.

Senator STEWART. Orange juice?

Mr. WALTUCH. Yes. He called me and asked me what I thought about the orange juice futures markets.

Senator STEWART. Is there such a thing?

Mr. WALTUCH. Yes. They call it frozen concentrated orange juice. That market from time to time gets very, very active, depending on weather conditions, et cetera. And about 2 years prior to January, 1979, there was a very, very active and strong futures market in orange juice because of a drastic freeze that took place in the State of Florida, destroying a major portion of the crop. And Mr. Ramsey knew that I was very active in orange juice and had contacts in the industry. And he called me and asked me about orange juice.

I told him I did not believe that the orange juice market afforded any interesting opportunities either up or down because the market was in a state of oversupply and there was no reason, outside of anyone who may perhaps want to be hedging production, there was no interest on my part for getting involved in orange juice.

I asked him why he made the call, and he gave me that reason. He said, well, he was now working with a company that had

associated with it an individual who had expressed an interest in orange juice futures, because he was interested in getting involved——

Senator STEWART. When was——

Mr. WALTUCH. Let me go on.

He expressed an interest in an individual. He asked me if—he mentioned to me that an individual he was employed by was interested in getting involved in orange production land in Brazil. And he put him on the phone and I gave him the same information, I was not interested in orange juice. And he introduced Mr. Nahas. And Mr. Nahas said, "What do you like now?" And I said at that time, I was very, very bullish on silver. And that is how it developed.

Senator STEWART. Did Mr. Nahas give you any idea as to how much money he was able to channel into futures trading as far as silver was concerned?

Mr. WALTUCH. One of the questions I ask anyone before they open an account with me is how much they are willing to risk.

Senator STEWART. In response to that question, how much did he indicate to you?

Mr. WALTUCH. As I said, he was willing to risk a half a million dollars.

Senator STEWART. He never did give you the figure of $51 million?

Mr. WALTUCH. No, sir.

Senator STEWART. Was the Nahas account considered a sizable account by you?

Mr. WALTUCH. Yes.

Senator STEWART. When did you start trading silver futures for the Banque Populaire account? Was that in August 1979, as they have indicated?

Mr. WALTUCH. I believe it was in August 1979.

Senator STEWART. Was that after your meeting in May 1979?

Mr. WALTUCH. Yes.

Senator STEWART. Is that where you first made contact with them?

Mr. WALTUCH. Yes, sir.

Senator STEWART. I assume you kept in contact with them after that meeting and finally got their work in August 1979?

Mr. WALTUCH. That is correct. There was a time lag from the time that they expressed a desire to open the account until they finally did, because a bank is a big, bureaucratic organization and it takes time to get the necessary documents, et cetera.

Senator STEWART. Do you know whether there is a business relationship between Mr. Nahas and Mr. Bally, or Mr. Hirshey or with Banque Populaire?

Mr. WALTUCH. Well, I don't know if Mr. Nahas has a business relationship with Banque Populaire. And I don't know of any business relationship between Bally, Hirshey and Nahas. I know they know each other and fairly close.

Senator STEWART. How did you arrive at this information?

Mr. WALTUCH. Well, my visit with them, I could judge that they were very close.

Senator STEWART. Mr. Nahas and these two gentlemen, when you were there, I assume that was in May, talking about silver?

Mr. WALTUCH. That is correct. Mr. Nahas introduced me to Advicorp.

Senator STEWART. Was the Banque Populaire account a proprietary account for the bank or an omnibus account for undisclosed beneficial owners?

Mr. WALTUCH. I had no idea what type of account it was.

Senator STEWART. You never asked?

Mr. WALTUCH. No, I didn't.

Senator STEWART. Wouldn't there be some reason for you to be concerned as to whether or not it was a proprietary or omnibus account?

Mr. WALTUCH. No.

Senator STEWART. You don't have any concern whatsoever as to who they were representing in purchasing silver in the markets?

Mr. WALTUCH. It is the fourth largest bank in Switzerland.

Senator STEWART. I do not understand what that has to do with it. You know, the fact that it is the fourth largest, the first largest, the second largest. Did you ever get concerned about the position in the market and wonder who they were trading for if they were doing something improper?

Mr. WALTUCH. No. I was never concerned about the Banque Populaire account.

Senator STEWART. You just thought if they were big enough, it didn't matter who they were trading for, what they were doing or, what effect that would have on the markets?

Mr. WALTUCH. I was never concerned about the Banque Populaire.

Senator STEWART. Are you talking about the firm or the effect it would have in regard to positions they were taking with respect to——

Mr. WALTUCH. No. 1, to the exposure of the firm. I was never concerned about exposure about the Banque Populaire; and, No. 2, they handled themselves in a very businesslike manner, and I got the impression they were involved in the futures markets and using it in a proper way.

Senator STEWART. Mr. Bally and Mr. Hirshey are both making trading decisions for Banque Populaire and Mahmoud Fustock and those accounts?

Mr. WALTUCH. Yes, sir.

Senator STEWART. Were their trading decisions for these accounts similar or identical during this period of time?

Mr. WALTUCH. Well, they were all long.

Senator STEWART. Were they purchasing long positions about the same time?

Mr. WALTUCH. I would say on a regular basis they were all buying silver, yes.

Senator STEWART. What about trading patterns of Gilion Financial in silver futures? Was that similar to the trading patterns of these two, Banque Populaire and Fustock?

Mr. WALTUCH. They were long; yes.

Gilion Financial, by the way, liquidated significantly earlier than the others.

Senator STEWART. Is the Mahmoud Fustock the same Mahmoud Fustock who was a member of the syndicate, which included, among others, Nelson Bunker Hunt and Naji Nahas, that was going to market silver bonds?

Mr. WALTUCH. Yes, he is.

Senator STEWART. Did you know of Mr. Fustock's business relationship with Mr. Hunt and Mr. Nahas? Did you know about this prior to the disclosure in the media?

Mr. WALTUCH. No. I knew Mr. Nahas knew Mr. Fustock. They knew each other.

Senator STEWART. But you did not know about their business relationship?

Mr. WALTUCH. No.

Senator STEWART. Do you know if any of the foreign interests that you traded for also had accounts with other brokerage houses? You may have answered this before.

Mr. WALTUCH. I think I did answer that earlier. Banque Populaire had accounts elsewhere.

Senator STEWART. That is the only one?

Mr. WALTUCH. I think Mr. Nahas had accounts elsewhere.

Senator STEWART. You were aware of that?

Mr. WALTUCH. I was aware he had accounts elsewhere, but that was very early.

Senator STEWART. Were you aware of the fact that any of these people or entities guaranteed the accounts of other individuals with other brokerage houses?

Mr. WALTUCH. No, sir.

Senator STEWART. And when did you become aware that Mr. Nahas was guaranteeing the accounts of Mr. Ramsey and some of the others?

Mr. WALTUCH. That was in the middle of March of this year.

Senator STEWART. Middle of March 1980?

Mr. WALTUCH. Yes, sir.

Senator STEWART. Who did you report that to? Did anybody say anything about that?

Mr. WALTUCH. I didn't report it. The guarantee was given on the request of Mr. Goldschmidt.

Senator STEWART. During our previous hearings we learned of the business relationship between Mr. Nahas and Nelson Bunker Hunt.

Have you ever met Nelson Bunker Hunt?

Mr. WALTUCH. Yes.

Mr. STEWART. Where and when did you meet Mr. Hunt?

Mr. WALTUCH. I met him once in Kentucky during the yearling sales last year.

Senator STEWART. When was that?

Mr. WALTUCH. It was in July. He had a—he was there for the sales and he had a private sale the next day of some of his yearlings.

Senator STEWART. Did you talk with him at all during that period of time?

Mr. WALTUCH. Well, he came over and asked me what I thought about silver.

Senator STEWART. So you discussed silver and the purchasing of silver?

Mr. WALTUCH. Not the purchasing of silver. He asked me my opinion of silver.

Senator STEWART. What did you say?

Mr. WALTUCH. I said I was bullish in silver; I thought the silver market would be significantly higher.

Senator STEWART. Did you have an extended conversation or a brief conversation?

Mr. WALTUCH. Ten or fifteen minutes, perhaps.

Senator STEWART. That is all that took place during that particular period of time?

Mr. WALTUCH. No. That meeting. I met him again in September in Paris, and again in October in Zurich.

Senator STEWART. What did you discuss at those meetings?

Mr. WALTUCH. Well, it was sort of a one-way discussion, because he was picking my brain and asking me what I thought about silver.

Senator STEWART. In other words, the purpose of the meeting was to discuss the purchase of silver?

Mr. WALTUCH. No, sir; it was not the purpose of the meeting; it was not to discuss the purchase of silver. The purpose of the meeting was, he was asking me my opinions.

Senator STEWART. Did you indicate to him at that time again that you were bullish on the purchase of silver?

Mr. WALTUCH. Yes, sir.

Senator STEWART. Did you solicit his account at that time?

Mr. WALTUCH. No, sir.

Senator STEWART. Did you indicate to him at all that you were dealing or trading for other accounts at that time?

Mr. WALTUCH. Well, he knew I was dealing for other accounts.

Senator STEWART. How did he know you were dealing for other accounts?

Mr. WALTUCH. Well, anyone who follows the financial pages would know that I was greatly involved in silver.

Senator STEWART. Who else was involved at that time in those meetings?

Mr. WALTUCH. Mr. Nahas was present.

Senator STEWART. Who else?

Mr. WALTUCH. That is all.

Senator STEWART. So you and Mr. Nahas and Mr. Nelson Bunker Hunt met and talked on two occasions. Was Mr. Nahas with you on both occasions?

Mr. WALTUCH. Yes, sir.

Senator STEWART. Were there any other representatives of the other interests there at any of those meetings?

Mr. WALTUCH. No. One of Mr. Nahas' friends was present.

Senator STEWART. Who was that?

Mr. WALTUCH. Mr. Faiz.

Senator STEWART. Who is Mr. Faiz?

Mr. WALTUCH. A Lebanese friend of Mr. Nahas.

Senator STEWART. What other interests were represented at that time?

Mr. WALTUCH. I believe at the meeting or the discussion we had in Zurich, I think Mr. Nahas' cousin was also present, a Mr. Nassif.

Senator STEWART. Were there ever any Saudi Arabian interests present at any of these meetings that you had with Mr. Nelson Bunker Hunt?

Mr. WALTUCH. No.

Senator STEWART. Was Mr. Fustock ever present at any of those?

Mr. WALTUCH. No. The only time I saw Mr. Fustock was in the presence of Mr. Nahas.

Senator STEWART. Did you ever speak to Mr. Nelson Bunker Hunt by phone after Comex imposed their emergency silver requirements?

Mr. WALTUCH. Yes, I did.

Senator STEWART. What was the nature of that conversation?

Mr. WALTUCH. Well, we discussed what we felt was the improper actions taken on the part of Comex to try and penalize the longs, knowing that I was long. When I say "I," my clients.

Senator STEWART. You say you felt like improper actions were taken by Comex that penalized the longs, and what were those?

Mr. WALTUCH. Well, the retroactive position limits, the retroactive margins, every action that was taken by the Comex was to the detriment of the longs and completely one sided.

Senator STEWART. Did you see that as representing a conflict of interest, that other participants in the market that might have been short that served on the board of directors of Comex had? Did they influence that activity?

Mr. WALTUCH. Yes, sir. Knowing the makeup of the board of governors of Comex and knowing who they represented, I felt that it was certainly a conflict of interest.

Senator STEWART. I think testimony in a previous hearing before the Banking Committee, that there was a public interest representative of the board of directors who directed the activities of the Comex board during this particular period of time; and as a result of that public interest representative chairing the silver committee during this particular volatile period in the silver market, that the board had in effect insulated themselves from the decision and removed that conflict of interest.

Do you buy that story?

Mr. WALTUCH. No, sir.

The Comex Silver Committee was formed, I guess, in September or October sometime, due to, I guess, the extreme displeasure that I and Walter Goldschmidt expressed about the uneven handling of the situation on the part of the longs—on the part of the board of governors of Comex.

Senator STEWART. Who did you express that to?

Mr. WALTUCH. To Mr. Lee Berendt, the president of Comex.

Senator STEWART. Mr. Berendt had a meeting where he asked you to stay off the floor?

Mr. WALTUCH. No. He never asked me that.

Senator STEWART. Did you know he had a meeting with Mr. Goldschmidt?

Mr. WALTUCH. I knew he met with Mr. Goldschmidt. I do not recall the fact that Mr. Lee Berendt said I should stay off the floor.

Senator STEWART. Were you present at the meeting?

Mr. WALTUCH. No, sir.

Senator STEWART. Did Mr. Goldschmidt ever indicate to you that he told you to stay off the floor?

Mr. WALTUCH. I don't recall. It may very well have been. But I think——

Senator STEWART. Why would they ask you to stay off the floor?

Mr. WALTUCH. They couldn't.

Senator STEWART. Did Mr. Goldschmidt ever ask you to stay off the floor?

Mr. WALTUCH. He asked me if maybe I could make myself a little less conspicuous, but he didn't absolutely say that I should definitely stay off the floor.

Senator STEWART. When was that?

Mr. WALTUCH. I was a member——

Senator STEWART. When was it that he indicated you ought to make yourself a little less conspicuous on the floor?

Mr. WALTUCH. Probably October or November 1979.

Senator STEWART. Would it have made any difference regarding your bullish outlook on silver had you known of the financial arrangement that the Hunts had entered into to acquire their holdings in the silver, cash and futures market? Would it have made any difference to the advice you would give to your friends or position you would take?

Mr. WALTUCH. No.

Senator STEWART. You were not surprised, as Mr. Goldschmidt was, when you found out about the positions they were taking?

Mr. WALTUCH. I was surprised at the extent of the position. I did not dream that they had as sizable a long position as it ultimately was shown that they did have.

Senator STEWART. Had you been aware of that, would that have affected your attitude toward the views you were giving other people?

Mr. WALTUCH. No. I do not think that anyone can influence a market for any extended period of time if the market does not deserve to be there.

Senator STEWART. Are the Conti foreign accounts still in the silver futures markets?

Mr. WALTUCH. We have a very modest long position.

Senator STEWART. What is the magnitude of that position?

Mr. WALTUCH. I don't know. The only one that still has a sizable position is Banque Populaire. I can't give you the size, but we can give you those figures. Every day they sell off a few when the market is strong.

Senator STEWART. Are they in the process of liquidating?

Mr. WALTUCH. Yes. Their position has continuously diminished.

Senator STEWART. What was the magnitude of their position on March 28?

Mr. WALTUCH. I can't give you that.

Senator STEWART. Compared to now?

Mr. WALTUCH. Oh, it was sizably larger.

Senator STEWART. What do you mean by "sizably larger"?

Mr. WALTUCH. I think they must have reduced their position since March 28 by half. Just a guess on my part.

Senator STEWART. Two times as large, then, on March 28 as today, and slowly but surely liquidating?

Mr. WALTUCH. Yes, sir.

Senator STEWART. I assume Mr. Nahas liquidated what positions he had.

Mr. WALTUCH. Yes, sir.

Senator STEWART. You have liquidated yours?

Mr. WALTUCH. Yes, sir.

Senator STEWART. The rest of the clients you represent other than Banque Populaire——

Mr. WALTUCH. Well, some of my clients still have silver positions. I still have a few. I still believe in silver.

Senator STEWART. How about giving us the positions on March 28 for those you represented that we listed a few moments ago and give us the position today.

Mr. WALTUCH. I can't do that now.

Senator STEWART. I am not asking you to do that now. Just provide it for the record.

Mr. WALTUCH. We will take care of it.

Senator STEWART. Did you ever tell your clients or others when silver was $9 an ounce that your initial objective was to bring the price to $12.50?

Mr. WALTUCH. That may well be from $9 to $12.50. But my objective when I started getting behind silver in the fall of 1978, the market was about between $5.50 and $6, and I thought the market could go to perhaps $9.

Senator STEWART. Once it reached $9——

Mr. WALTUCH. Once it reached $9, then I thought perhaps it could go to $12 or $13.

Senator STEWART. How do you get the price to go to $12, to $13, do you participate in causing that to happen?

Mr. WALTUCH. No. The market forces take care of themselves.

Senator STEWART. Well, you represented primarily longs, didn't you? Doesn't that cause the price to go up?

Mr. WALTUCH. Not necessarily. If the market did not deserve to go up, I could buy every ounce of silver in the world and it wouldn't go up. There were factors——

Senator STEWART. Mr. Waltuch, if you tell me the Iranian crisis and Afghanistan crisis, the inflationary crisis in our country—perhaps someone got together and put their testimony together prior to the time they came here. I heard that from everybody who has testified here so far, that because of those events, the price of silver went up.

Mr. WALTUCH. Well, Senator, if you look into the silver situation and start examining the fundamentals, when you look at silver, and to a greater extent, gold, the fundamentals don't really mean that much in those markets. It is emotion. And when the emotion is such because of a possible eruption of a world conflagration, rampant inflation where people with assets are worried about losing these assets, confrontation with the Russians in the Middle East——

Senator STEWART. What is the price of silver today?

Mr. WALTUCH. Today it about $16.

Senator STEWART. How high has it gotten since March 28?

Mr. WALTUCH. Eighteen or nineteen dollars.

Senator STEWART. The Russians are still in Afghanistan.

Mr. WALTUCH. People are becoming somewhat immune to it.

Senator STEWART. Are they still there?

Mr. WALTUCH. Still there.

Senator STEWART. Haven't we had a breakout, a conflict in another part of the world recently?

Mr. WALTUCH. That is true.

Senator STEWART. What did that do?

Mr. WALTUCH. The price of gold has gone up significantly since March 28. And you have to realize that the silver market has a pall hanging over it, the supply the Hunts will have to dispose of. And when the market has an overhanging supply that might possibly be dumped on the market, people are uneasy about accumulating positions again. That is why the world market performed better than the silver market.

Senator STEWART. Did you ever mention what price silver could attain?

Mr. WALTUCH. I never dreamed it would go to $50.

Senator STEWART. Did you ever mention a price you thought it would attain?

Mr. WALTUCH. Emotions were rampant in December or January, and I felt the market would go to $25 or $30.

Senator STEWART. Did you tell other people that you thought it might go to $25 or $30?

Mr. WALTUCH. I told clients that I spoke to, yes.

Senator STEWART. Did you ever discuss that with Mr. Nahas and some of these other gentlemen that you have talked about?

Mr. WALTUCH. Yes, I did.

Senator STEWART. Did you ever discuss that with Mr. Hunt?

Mr. WALTUCH. No.

Senator STEWART. How did you finance your personal account?

Mr. WALTUCH. How did I finance it?

Senator STEWART. Yes.

Mr. WALTUCH. With my own funds.

Senator STEWART. Mr. Waltuch, that is all the questions I have; and I thank you and Mr. Goldschmidt and the folks from Conti for being courteous enough to come up here on a voluntary basis.

Let me just indicate that for the purposes of the record, we will have Mr. Goldschmidt's full statement included in the record.

[Whereupon, at 3:37 p.m., the subcommittee adjourned, subject to call of the Chair.]

APPENDIX

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM VERMONT

Mr. Chairman, I would like to commend you for calling these hearings. Your resolve and that of the Committee for a full and thorough investigation of the recent silver trading incident has been most impressive. This investigation is extremely important, not only for the welfare of silver futures trading, but for the commodities industry as well.

It is important that we thoroughly understand the example of what happened with silver futures trading between September 1979 and April 1980. It may well be that Congress should consider basic changes in the laws governing all futures trading. These hearings are an important forum for determining whether the potential exists for problems similar to the recent silver trading incident in other areas of commodity futures trading.

It has been suggested, Mr. Chairman, that last winter the New York and Chicago exchanges were very slow in their actions to stabilize the silver market. Perhaps they were slow in limiting positions and increasing margins. Serious questions must be asked about what impact the market position of the exchanges' own members had on their decisions to both act and not act when they did.

In the same vein, Mr. Chairman, we must look to the role that the Commodity Futures Trading Commission played in the silver trading incident. Again, this case study must tell us if their regulatory duties failed, or whether in a statutory sense the CFTC had its hands tied.

Mr. Chairman, all of us laud the theory of self regulation in the free market economy. We know well the vagaries of over regulation and excess government red tape. The commodity futures industry, like the securities industry, should be allowed a maximum amount of freedom. To the extent that such self regulation proves a failure, however, it is the citizens at large who pay an unfair price. To prevent that happenstance, Mr. Chairman, it is our duty to reexamine the effectiveness of government regulatory controls.

Mr. Chairman, today's hearing also investigates another factor that might well suggest tighter controls on the commodity futures industry. The question of collusion between commodity traders and foreign countries and American traders with large positions in the market may well point to further evidence that a basic restructuring of the futures market is necessary. I have serious doubts that important regulatory matters involving foreign nationals can be left to the exchanges. Although I am not one who usually encourages new federal participation, it may be that federal controls are necessary if we are to prevent future crises.

Again, Mr. Chairman, I commend you for holding this hearing and look forward to working with you to put the information you are collecting to good use.

STATEMENT OF WALTER GOLDSCHMIDT, CHAIRMAN, CONTICOMMODITY SERVICES, INC., CHICAGO, ILL.

My name is Walter Goldschmidt. I am Chairman of ContiCommodity Services, Inc., a subsidiary of Continental Grain Company.

I grew up in the grain business and began my business career as a runner on the Chicago Board of Trade. I have been active with futures markets for over thirty years. During that time I have had the privilege to serve as President of the Milwaukee Grain Exchange and Director for the Chicago Board of Trade for six years. I have also participated in the creation of ContiCommodity Services, an organization which, since its founding ten years ago, has emerged as one of the leading futures merchants in the United States and abroad.

Because of my extensive participation in the futures industry and my concern for it, I am most pleased to be here today at your invitation.

The importance of the commodity futures markets to this country is difficult to overstate. Most national and international commodity transactions have reference to the futures markets. It is vital, therefore, for participants—both inside and

outside the market—to believe that the markets operate fairly and in the public interest.

I can readily appreciate that you and Congress are concerned with the violent fluctuations that have occurred in the silver market during the period between September 1979 and April 1, 1980.

I have heard many reasons for these events. Many solutions have been offered to prevent a similar reoccurrence, such as, to curtail the role of the speculator in futures markets; to impose position limits for all commodities; and to transfer the authority to set margins to a Federal Agency.

Let us address some of these questions and discuss what led us to this situation. First of all, the futures markets system reflects price—it does not create the conditions that make price. For me, the salient aspect of these events has been that the system worked, that the market in the final analysis prevailed, that every clearing member met its obligations and that no participant in the market, either speculator or commercial hedger, suffered financially from a failure of the system itself.

I believe the system proved itself, as it has so many times in the past, to be bigger than any of the participants. Consequently, we must, and I am sure you will, be wary of tampering with a system which has provided the hedging mechanism and price discovery function so vital to our economy.

If the system worked so well, what then caused this unprecedented and undesirable volatility of the silver market?

My life-long experience as a trader and as a hedger in the futures markets leads me to conclude that the dramatic rise and fall of silver prices was largely a response to fundamental market forces.

It is now common knowledge that individuals with substantial means began to accumulate large amounts of silver in 1979. This accumulation occurred during a period not only of high inflation—but of expectations for even greater inflation; a period of relatively low interest rates, a period of unsettling international events, such as Iran and Afganistan; and a period of high currency fluctuations.

All these factors made it attractive to own precious metals, such as gold and silver rather than cash. It is not surprising that both gold and silver prices peaked on the same day. Given the interplay between the relatively low interest rates and soaring inflation against the background of international crises, gold and silver were the logical hedge for individuals with substantial assets.

Markets are not perfect. They move to excess, both on the upside and the downside. As the silver market began to rise dramatically, the exchanges became concerned and began to take steps to prevent "excessive speculation". They have many tools available to them, and the one they used first was to substantially increase the margin requirements. Margins increased from $2,000 to $60,000 at one point. Details of the margin changes at the Comex are attached.

In my opinion, as the exchanges repeatedly raised the margin requirements, they made the markets less liquid by restricting participation to those who either had very substantial means or had made a lot of money in the market by being on its long side and could use the profits to meet the higher margins.

The high margins stood as a barrier to increased participation by forces that might have been on the short side of the market, not only the speculative community but hedgers as well.

As hedgers, our experience has been that markets which have broad and extensive speculative participation are the most valuable for hedging. We, of course, also find that the converse is true.

Hedgers are reluctant to participate in a market that is volatile and illiquid. The sharp rise in margin requirements, by unintentionally increasing the volatility and illiquidity of the silver market, had the effect of driving out the hedgers. So, contrary to popular belief that raising margins will reduce price levels, I submit to you that the excessive use of that tool caused the silver market to peak higher than it would have otherwise if the margin tool had been used with more restraint.

While it is often overlooked, there is a fundamental economic principle which holds that the greater the number of market participants the more likely that price variations will be smaller. It is the diversity of opinion among a large number of participants in the market which assures price stability.

Critics have suggested that speculation causes excessive market fluctuations. A closer examination of the facts suggests that any effect attributable to "excessive speculation" at worst will be temporary and that speculative participation is healthy and essential for the futures markets.

In July, the price of silver was approximately $9 per ounce. Margin requirements were $2,000 and the daily Comex volume averaged 18,000 contracts.

By comparison, in December and January when the price moved from $19 to $44 per ounce, the average daily volume was about 6,500 contracts. The average daily volume had dropped by two-thirds from the previous July.

Is it logical to say then that the increase in price was caused by speculation or was it caused by the thinness of the market and the basic underlying fundamentals? I believe the latter.

Just as I believe that the intervention of the exchanges had the unintended effect of intensifying the natural rise of silver prices, so, too, it had the effect of accelerating the decline. When the Comex finally adopted the extreme measure of permitting trading for liquidation only, it came during a time when the Federal Reserve Board and the Government, concerned about inflation, were tightening the money supply, inducing interest rates to climb to unprecedented levels. This, together with other events, led to a reversal in investors' attitudes. Instead of the previoulsy prevailing determination to convert cash into goods, they now began converting goods into cash.

This change in psychology affected, not only the silver market, but most of the other commodities traded on futures exchanges. The initial drop, therefore, from the high of $48 down to $17, in my opinion, was the result of fundamental economic forces applied to a market made thin by the actions and concerns of the exchanges. This precipitant drop triggered what we now know was the forced liquidation of one of the largest participants in the history of futures trading, causing a further decline in price down to the $10–$11 area.

This, in my opinion, is a thumbnail sketch of what has occured.

I would like now to address the questions and concerns about what should be done to prevent this from happening again.

Two of the most frequently discused topics are margins and position limits.

As to the question of whether margin setting authority should be transferred to a Federal Agency, there must be an awareness that margins perform a function in the commodity market distinctly different from their function in the security market. It is unfortunate that we are using the same word to explain two distinct concepts.

In security markets when someone purchases stock on margins, there is an actual transfer of an asset. The seller is paid in full for the stock he has sold to the buyer. If the buyer does not have sufficient funds to pay for the stock, he can and does automatically borrow the rest through his margin account. Thus, the net purchases of stock on margins can, in this manner, generate credit.

In commodities by contrast, margins function as a good faith deposit to secure a contract obligation, and is not a source of credit. Futures contracts are designed to be offset—and most frequently are offset by a transaction of an opposite nature. They are a temporary sale or temporary purchase.

However, during the relatively infrequent time when delivery is actually taken, the buyer has to pay in full. In other words, commodity markets are not designed to be the primary place for the actual physical exchange of goods, but are for the transfer of risk and for their price discovery functions.

As I have already stated, the tool of raising margins was, if anything, overapplied by the exchanges. It is not reasonable to assume that had this authority been lodged with the CFTC or any other Governmental Agency, it would have really been more judicioulsy exercised.

It is always easy to look back and conclude that one might have done something differently. But, I doubt whether any agency necessarily further removed from and with less understanding of the market place, would have done better than the exchanges.

In light of this, I believe that it would be a mistake to shift the margin setting authority from the exchanges to the CFTC or the Federal Reserve Board. I refer you to the paper written on the subject recently by Dr. Mark Powers, formerly of the CFTC on the role of margins in commodity markets.

On the other hand, the imposition of position limits on speculative positions in the silver market, in my opinion, would have been an effective tool to control overconcentration in speculative positions.

I am not stating that the market would not have gone up and down, as suggested by the underlying fundamentals, but position limits might have reduced "excessive" price movements.

We have lived with position limits in the agricultrural futures markets for years, and they have been an effective tool. When they were finally applied to the silver market in retrospect, they were applied too late, and they were applied retroactively.

Position limits should be known in advance to all the market participants and should be set at levels sufficiently high enough not to impair liquidity and low enough to prevent excessive accumulations of speculative futures positions.

What I am saying is that such limits must be tailor-made for each commodity, and the authority should remain in the hands of those closest to the market place to strike the correct balance.

If the exchanges default on their responsibility, the CFTC already possesses ample authority to set limits on speculative positions.

In summary, my observations are: that the market responded to economic forces, it reflected the value of the underlying physical commodity. Yes, like all markets do, it moved to excess, it corrected itself—but, again, to excess. The price movement was unacceptably severe. However, sufficient regulatory authority does exist with the exchanges to prevent abuses with ample oversight authority by the CFTC.

I believe that you will ultimately come to the same conclusions that I have—namely, that new legislation is not required or called for in this complex matter.

I thank you for the opportunity to participate in these discussions.

Commodity Exchange, Inc., Margin Schedule [1] for Silver, Feb. 26, 1979 through Apr. 28, 1980

Feb. 26, 1979, all contracts	$2,000
Sept. 4, 1979, all contracts	3,000
Sept. 6, 1979, all contracts	5,000
Sept. 18, 1979, all new contracts	7,500
Sept. 18, 1979, (after 12 noon) all new contracts	20,000
Oct. 26, 1979, all new contracts	50,000
Oct 30, 1979, all new contracts after including previous position to determine proper level:	
1 to 100	10,000
101 to 250	20,000
251 and over	30,000
Jan. 10, 1980, all new contracts after including previous position to determine proper level:	
1 to 100	20,000
101 to 250	30,000
251 and over	40,000
Feb. 4, 1980, all contracts (retroactive):	
1 to 100	40,000
101 to 250	50,000
251 and over	60,000
Mar. 13, 1980, all contracts (retroactive):	
1 to 10	30,000
11 to 100	40,000
101 to 250	50,000
251 and over	60,000
Mar. 27, 1980, all contracts (retroactive):	
1 to 10	25,000
11 to 100	35,000
101 and over	40,000

[1] Minimum speculative nonspot margin rate: (1) Option to reduce margin on old positions from higher levels.

HEINOLD COMMODITIES INC.,
AFFILIATED WITH HEINOLD HOG & CATTLE MARKETS,
Chicago, Ill., June 16, 1980.

Hon. ED JONES,
Chairman, Subcommittee on Conservation and Credit,
Committee on Agriculture, U.S. House of Representatives, Washington, D.C.

Hon. DONALD STEWART,
Chairman, Subcommittee on General Legislation, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

DEAR SIRS: This letter is submitted in connection with the hearings scheduled by the Subcommittees for May 21-22 and May 29, 1980 regarding legislative proposals under the Commodity Exchange Act, as amended.

Heinold Commodities, Inc. is a major futures commission merchant having more than 100 offices throughout the United States and in Europe and capital of more than seventy million dollars. We thus are vitally affected by the decisions of this committee, as are our 14,000 customers, many of whom are farmers and producers

of livestock who rely upon the futures markets to hedge against fluctuations in the cash markets.

Heinold believes that no changes should be made in the Commodity Exchange Act or the regulatory structure of the futures industry at this time. Sepcifically, we oppose proposals which would transfer authority for establishing margins from exchanges to either the CFTC or the Federal Reserve Board. We continue to believe that the CFTC's exclusive jurisdiction is superior to overlapping or duplicative jurisdiction with other federal agencies.

We do, however, have specific suggestions for action to be taken by the CFTC and exchanges to improve existing regulation of the futures markets.

In summary, we recommend the following:

1. *Adoption of Charlie's rule.*—In 1977, the CFTC proposed but did not adopt a rule which would have required exchanges to determine whether any trader who controlled more than 25 percent of the open interest in an expiring delivery month, had created a market congestion requiring exchange action. We supported this rule then, and we do now, because we believe it will assist in orderly liquidation of markets.

2. *Amend capital rules to "haircut" speculative lending.*—As noted below, we believe that loans by FCMs were a major contributing factor to the price increases in silver. We do not believe that it is desirable for brokerage firms to be in the business of lending money to their customers or accepting physical commodities as collateral for customer loans in order to permit customers to leverage or finance their positions in the futures markets. Such loans can be deterred if the CFTC and exchanges would apply a substantial "haircut" to any such loans for capital purposes. In other words, if exchanges valued a broker's note from a speculator at a markedly reduced percentage of its face value, brokers would be deterred from making such loans. Such a policy would also better insure the capital integrity of the brokerage community.

3. *Insure confidence in exchange decision-making bodies.*—The integrity of and public confidence in market-sensitive decisions made by exchange committees should be safeguarded. To achieve this result, we recommend that the exchanges adopt regulations insuring that committees with authority to make market-sensitive decisions are not placed in situations giving rise to either actual or apparent conflicts of interest.

4. *Amend intra-day trading regulations.*—The recent price swings in silver were aggravated by daily price fluctuations limits at exchanges. The permissible movement was different at the two exchanges and free trading occurred only in the spot month. We recommend that exchanges be required by the CFTC to adopt expanded daily trading limits which are identical among exchanges for commodities trading on more than one exchange.

The flurry of recent legislative proposals stems from recent price fluctuations in silver futures traded on exchanges in New York and Chicago. We have carefully monitored the actions taken by exchanges during the past six months. In this connection, we refer you to the detailed statement of the President of the Chicago Board of Trade filed May 1, 1980 with the Senate Committee on Agriculture, Nutrition and Forestry. As set forth in this and a similar statement filed by The Commodity Exchange, Inc., the exchanges met many times during the past year to study the silver market and adjusted margin levels and even established position limits in response to price levels and open interest in the silver markets. We believe that these statements demonstrate the need for ongoing review of the market by an expert surveillance body.

You have heard substantial testimony relating to the numerous factors in supply and demand which affected silver prices. We will not add to that testimony. We believe that the markets' rapid rise and decline was also due, in part, to two artificial factors. The first was the decision by several brokers to lend money to the Hunts for use as margin. These loans, which were reported to be for several hundred million dollars and collateralized by silver bullion, permitted extraordinary leverage by speculators. The traders took delivery of large quantities of silver in December, thus placing pressure on the market, and then used the silver so acquired to borrow money to acquire additional long positions. The effect was to "pyramid" the traders' investment, permitting control of vast quantities of silver with relatively modest capital.

The second factor, which contributed to the decline in price, was the impact of exchange rules. Increases in margin requirements in January and February 1980 obviously reduced the leverage which the longs could obtain. When prices began to fall, daily price fluctuation limits soon limited trading to the spot month, the only month to which daily limits did not apply. As a result, selling demand was channeled into one month, rather than being dispersed among the eight months in

which silver is traded. When the Hunts missed margin calls on March 25, 1980, the liquidation of their positions the following day occurred in one month only. With huge selling demand focused on the spot month, the price crashed from $20 to $11. At the same time, as a result of the unduly narrow daily trading limits, contracts for months other than the spot month reflected artificially high values.

In our judgment, this silver episode carries lessons for ways to improve regulation of futures trading.

The first lesson is that we do not need more legislation. We believe that the present regulatory structure is superior to these alternatives. Legislative proposals have been made which would give the CFTC or the Federal Reserve Board the authority to set margins for trading and financial instruments and precious metals, such as gold and silver. (S. 2704 and H.R. 7183). The CFTC already has emergency authority to establish margins, which it has used only once. We have seen no evidence that the CFTC is better equipped than the exchanges to assume general responsibility for margins. Indeed, the CFTC has been following the market closely since last fall and has taken no action which differed from that of the exchanges. The Chairman of the CFTC testified in November that the CFTC had adequate statutory authority under present law to monitor the silver markets. In the case of the Federal Reserve, its Chairman has stated that it does not seek, and is not able to assume, responsibility for establishing margin levels for futures trading. (Hearings, Senate Committee on Agriculture, Nutrition and Forestry, May 1, 1980). We are skeptical of the ability of either the CFTC or the Federal Reserve to monitor markets with the expertise or flexibility which the exchanges possess. We therefore believe that exchanges should continue to set margins, subject to the CFTC's emergency authority.

Another issue which has been raised in recent hearings is whether the CFTC should continue to retain "exclusive jurisdiction" to regulate the futures industry. This jurisdictional grant was included in the 1974 Amendment to the Act and was reaffirmed to the Futures Trading Act of 1978. The philosophy underlying the grant of exclusive jurisdiction is that one expert agency should regulate all aspects of futures trading. This position is grounded in the conclusion, with which we agree, that "the substantive economic value of futures trading is the same for a farmer, a manufacturer or a financial institution." Sen. Rep. No. 95-850, 95th Cong. 2d Sess. 13-14 (1978). The proposal to transfer authority over margins to the Federal Reserve is thus a major departure from the principles underlying existing law. Like the periodic expressions of interest of the Securities and Exchange Commission in regulating the futures markets, such legislation would fragment the present regulatory structure. The unique expertise of exchanges to act rapidly would be lost. Second, the proposed recipient of the legislative grant has expressed doubt of its ability to discharge this responsibility. Third, we fear that the Federal Reserve Board and the SEC would be inclined to overregulate the fast-moving and complex futures markets. As former SEC Chairman Hills stated in 1978, the SEC staff would regard "futures trading as being unholy" and feared that the staff might "so encrust the (futures) industry with regulation as to be counter-productive." Chicago Sun-Times, April 7, 1978.

Although we believe that the present legislative structure is adequate, we believe that changes in CFTC and exchange rules would reduce the likelihood of recurrences of the recent roller-coaster ride in silver. For example, we concur with the recent decision of the CFTC to reconsider a rule on market congestion known in the industry as "Charlie's Rule." This regulation was proposed in 1977 and subsequently withdrawn. It would require exchanges to monitor trading in the delivery month and, in the case of traders owning more than 25 percent of the open interest in an expiring future, determine whether the position would cause undue congestion in liquidation. This proposal has several advantages. First, it applies to hedgers and speculators alike, both of whom may cause congestion or attempt manipulations. Second, it applies only to the delivery month, where the likelihood of a "squeeze" or congestion is most likely to occur. Third, it does not require intervention in the market, but permits such action when necessary. We, therefore, strongly suggest that the subcommittees support this rule in their review of CFTC activity.

As noted above, we believe that loans by brokers to large traders contributed to the rapid rise in silver prices. The decisions of major firms to lend money to speculators were unwise and contrary to their, and the industry's, interest. In our opinion, such loans involve brokers in an activity—extension of credit—for which they are ill-equipped and undercapitalized. What is the proper governmental response to unwise business decisions by firms in a regulated industry? Rather than transferring margin authority to the Federal Reserve, we suggest a simpler and more direct solution. We believe that the CFTC should amend its capital requirements (and require exchanges to amend theirs) to discourage loans for purposes of

margin. This can be accomplished by providing for a "haircut" (or reduction in value) of members' notes or accounts receivable which represent obligations incurred to trade futures. A substantial "haircut" of these "assets"—which the silver episode teaches us were very risky ones—would provide ample incentive to FCMs not to make such loans, and would result in the direction of this business to the banking community. Such a change would be beneficial to the industry, but would not upset established responsibilities of exchanges for setting margin requirements.

The Subcommittees have heard testimony relating to the possibility of increased use of speculative limits. However, there are certain disadvantages to the use of speculative limits. Speculative limits provide an absolute barrier to market entry. Although the CFTC has jurisdiction to establish limits for all commodities, it has done so only in the grains, eggs, potatoes, and cotton. Unfortunately, the CFTC's use of speculative limits has not been responsive to growth in markets. The Commodity Exchange Authority established position limits in corn and soybeans in 1938 based on such factors as trading levels, open-interest, and crop or production output at that time. Since 1938 the limit has been increased only once—to 3,000 bushels per trader in 1975—despite huge increases in trading volume, open-interest, and crop and production output.

If speculative limits are to be set at all, we believe that the CFTC should set limits based on volume, liquidity and open-interest and should adjust those limits every few years. Moreover, limits must be high enough so as not to interfere with normal market activity.

Our third recommendation concerns the elusive concept of self-regulation. We believe it imperative that our exchanges, as public institutions, avoid both actual and apparent impropriety in the decisions they make that affect the market. We therefore support action by the exchanges to insure that persons who participate in market-sensitive decisions are not placed in any situations of either actual or apparent conflict of interest.

Finally, as noted above, we believe that present daily trading limits encouraged the rapid rise and decline of the silver markets. "Daily trading limits," as their name implies, restrict price movement in a futures contract in any one day. The purpose of the restriction is to give traders additional time to furnish margin in volatile markets. Another purpose is to cushion price moves in such markets. These limits normally do not apply to the spot (expiring) future, which must be allowed to fluctuate with the cash price. During both the rise and the fall in silver, movements in the cash market exceeded daily limits—and thereby concentrated trading activity in the spot month while allowing prices in other months to remain at artificially high levels.

In our judgment, daily limits inhibited an orderly absorption of excess demand. They, in effect, compressed the entire market into the spot month. This problem could have been avoided by progressive expansion of the daily limits; we would encourage exchanges to consider this generally. Moreover, the two contract markets in silver had different daily price limits.

We believe that exchanges should be required to adopt identical daily price fluctuation limits for the same commodities. The advantages of these changes are apparent from a review of the recent experience in silver. With wider daily limits set identically between the Board of Trade and the Comex, more trading would have occurred in a greater number of months throughout the period. Inter-market trades would have been facilitated. Most importantly, major price movements—as at the end of March—would not have been confined to one month.

We hope that these comments will be of assistance to the subcommittees in reviewing recent events in the silver market. Heinold Commodities, Inc. appreciates the opportunity afforded by the subcommittees to present its views to them.

Very truly yours,

ROBERT C. FIVIAN,
Executive Vice President.

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