December 15, 2009

To whom this may concern in the Department of Justice:

It is my understanding that the DOJ is looking into situations that might involve Anti-Trust Act violations in and around the agriculture industry and that they are seeking written comments before a series of workshops are held this spring. Please forward this correspondence to the appropriate Division, Section, or Personnel.

I have enclosed a series of letters and follow up communications I have had with various industry professionals regarding the settlement mechanism for commodity contracts at the Board of Trades and specifically the wheat contract at the Kansas City Board Of Trade. The people I have been in contact with and their association with the matter is: Randy Place, my broker, Barry Flinchbaugh, KSU Ag econ. and Director at the KCBT, David Amato, CFTC, Kyle Bauer, KFRM farm radio, Congressman Moran and his Ag aide Mike Zamrzla, Senator Brownback, Senator Roberts, Jeff Borchardt, KCBT President and CEO, Ned Bergman, USDA, David Kirkland, USDA, Dennis McKinney, friend, farmer, and State Treasurer for Kansas, Kanza Coop, local COOP in luka, Ks, Dean Stoskopf, President of the Kansas Wheat commission, Gerry Gulke, market consultant, Tom Polansek, Tom Beall, Kansas Attorney General's Office, Kansas Livestock Association and Jim Lammle, KCBT director.

My original letter went out September 14, 2009. There are two significant responses. One from Jeff Borchardt where he seems to be justifying the grain companies actions and while failing to acknowledge any problem. The other is from the acting Director of the CFTC, Richard Shifts, Where he admits this has been an issue for decades. My hope is that someone in the DOJ can force the issue so we do not have live with this market abuse for several more decades.

Sincerely,

Berry K. Bortz

My Original letter

Dear

We have a serious problem in commodity markets. The futures market has at times been disconnected from the cash market. This issue has ramifications beyond just the price of grain. All phases of a comprehensive risk management program are skewed by this disconnect. Crop revenue insurance doesn't work correctly, cash contracts become unavailable, elevators will only buy grain 3 1/2 hours a day, at times elevators will only purchase grain in lots of 5000 bu. and the obvious, hedges have become incredibly unpredictable. It is my belief that this disconnect has occurred not because of a lack of delivery points but because of the ability of the regular warehouses to block access to the delivery mechanism to 93.9% of market participants. This problem is not only occurring in the Kansas City market but even more so in Chicago. I am focused on the situation revolving around the KCBOT but most of these arguments are applicable to the CBOT. So as I go forward in this letter I would like you to think about these three questions:

1. As a matter of contract law are the contracts being offered by the BOT bogus since the delivery mechanism is unavailable to 99,9% of market participants?
2. Are there so few of players in the terminal markets that they need to be regulated like public utilities?
3. Can we reconnect the futures markets to the cash market without an ACT of CONGRESS?

My name is Berry Bortz, I farm in Pratt County, Kansas, approximately 50 miles SW of Hutchinson and 70 miles west of Wichita. It has been my belief for some time that the futures market has been disconnected from the cash markets for increasing lengths of time. I think this was never made more evident than last summer and fall's debacle in the markets when the grain companies couldn't even use the future markets to offset their risk and had to quit offering contracts to their farmer patrons. Grain at local coops could only be sold for three and one half hours a day and sometimes only in 5000 bushel lots. My kids and some landlords didn't even have 5000 bushels. In my opinion the KCBOT and its board of directors had the wisdom to foresee the potential problems and had increased the number of delivery points to include elevators in Wichita, Salina, and Abilene besides those in Hutchinson and KC. What they failed to see was that the real problem wasn't the number of delivery points but the ACCESS to those delivery points. All these delivery warehouses are controlled by ABC&D (ADM, Barlett, Cargill, and DeBruce). It doesn't matter how many delivery points there are if only 4 entities can deliver and they have the ability to block the delivery mechanism. I would think these companies would want to correct some of the problems after last year's fiasco but apparently their greed and hunger for power has blinded their common sense so they insist on blocking as much access to the delivery mechanism as possible. The result is that the futures market has severed most of its relationship to the cash market i.e. the basis in Hutchinson is $-.70. Weed I say more? Remember how far apart Chicago and Minneapolis wheat was when it went off the board last July.

Several years ago I attempted to deliver wheat to Hutchinson against KCBOT wheat contracts. At that time ADM and Cargill were not accepting wheat on open storage, but Farmland was but only through its member COOP's. So I attempted to deliver via my local Coop. Farmland refused to write the warehouse receipt. At that time I believe all three warehouses were delivering wheat themselves, I contacted the

CFTC and Jim Lammle showed up at my door step one day and we went through the events and the warehouse act and so forth. Ultimately the delivery period passed and I ended up selling my wheat at a terrible basis. Before Mr. Lammle left he told me if I wanted to try again that he would help me through the process and I believe he spent some time trying to educate the warehouses of their responsibilities as public warehouses and regular warehouses for points of delivery. I was mad enough to write an editorial that was published in the High Plains Journal, which caught the attention of the Kansas Wheat Growers. The editorial and Mr. Lammle were featured as the main topic at their annual meeting in Salina that year.

In July 2008, the basis was very weak. This time I already had wheat on open storage in Hutchinson at Cargill, so I notified them of my intent and requested a warehouse receipt. They promptly called back and informed me that they really did not want me to do that and they were willing to '"push"[1] the bid for a very short time(untii the end of our phone conversation) if I wouldn't deliver. The push was enough to make it non economical to pursue delivery any further. However, because of my cowardness and not pushing for what was RIGHT, Trying to reconnect futures to cash, I became part of the problem and the situation got worse.

This year I again had wheat on open storage in Hutchinson at Cargill, only this time I was determined to do the right thing and go ahead with delivery. I also wanted to enlighten the local coops to do the right thing and push to get my friends and neighbors every penny that was available. The basis Aug. 30 was -.55. I was partially successful, on Sept. 9 I delivered 4 receipts and on Sept. 11 I delivered 1. However my efforts to educate and rally the Coops were thwarted and upon receipt of my last receipt I was informed that they (Cargill) would never issue deliverable warehouse receipts to an individual again. One coop was informed by ADM that they wouldn't issue a receipt at any price. Another was told that they would be charged $.30 / bu. for a receipt. Essentially the delivery process is being controlled and operated by an exclusive good ole boys club that does not want anybody else to play on what they think should be their exclusive playground.

Personally I believe that every business day should be a deliverable day but I know that the reality is the powers that be, would never let that happen, so let's compromise, I propose that delivery periods be extended for the whole month not just the first two weeks of the contract month and somehow the majority of the participants, regardless of size need the guaranteed access to the delivery mechanism. My suggestion is rather than reopen the warehouse act and all the applicable anti-trust and monopoly taws, that the Board of trade be proactive and require all the delivery sites to issue receipts to anyone who requests one that has grain on open storage or forfeit their own right to EVER deliver as a company. If the company continues to block the delivery mechanism sizable fines would be assessed followed by a ban to even use the board by the company or any of its subsidiaries or parent companies. If the grain companies counter by not offering open storage and requiring all grain to be sold or placed under an NPE contract while charging exorbitant fees, then some type of cash settlement mechanism would kick in when open storage is unavailable thus making the delivery option unavailable to the warehouses also. Because of the extremely small number of players in the terminal markets I'm not sure how to eliminate collusion and manipulation of a cash settlement. In a perfect world where manipulation was not an issue, when an entity wanted to deliver and space wasn't available at his

location of choice, then a default cash settlement would be invoked on the close of the day. Bids from all regular warehouses would be averaged and adjusted for their basis differences and the average calculated and used to settle his position on the Board. Then the initiating entity could sell the grain with a very predictable basis. Physical delivery is the preferred settlement mechanism because of the inherent safeguards against manipulation so cash settlement should only be used as a default when open storage is verifiably unavailable. Regardless of the mechanism it has to be available more than just 60 days a year.

If we can get in to improving the delivery process then some of the fees need to be addressed also. Load out and storage rates are capped but unloading fees and administrative cost to write receipts are open and left vulnerable to abuse. Thank you for your time and consideration.

Sincerely,

Berry K. Bortz

Subject: KCBOT delivery
From: Berry Bortz <cb.farms@dishmail.net>
Date: Mon, 14 Sep 2009 10:25:33 -0500
To: Flinchba@ksu.edu

Dr.Flinchbaugh, As a director of the KCBOT I thought you might be interested in the attached letter. I spoke to Jim Lammle last week and he requested I put my story in a letter and get you a copy as well as Jeff Borchardt. I am also sending copies to our congressional delegation, the CFTC, USDA warehouse division, and Kansas Attorney General. Thanks Berry

KCBOT delivery.docx	**Content-Type:** application/vnd.openxmlformats-officedocument.wordprocessingml.document **Content-Encoding:** base64

Subject: Thoughts on delivery
From: Berry Bortz <cb.farms@dishmail.net>
Date: Thu, 10 Sep 2009 17:23:11 -0500
To: Jerrygulke@gmail.com

Dear Jerry; I was a client of yours for a number of years and have continued to read your articles. Several years ago I tried to deliver wheat against KCBOT contracts and was blocked by the warehouses from doing so. This year I was actually able to deliver against 5 contracts but was informed when I picked up my receipts that they would never issue negotiable warehouse receipts again to an individual. Apparently the interpretation of the warehouse act has changed and they believe even though the companies routinely deliver there is no requirement that they allow access to the delivery mechanism to the public. The separation between cash and futures has never been worse than last years debacle, The Board and the board of directors thought that the solution was to have more delivery points but the real problem lies in the access to the delivery mechanism. Even if the warehouses are required to issue receipts for grain on open storage my fear is they will rebut by only allowing NPE contracts at outrages fees. So the first thing I thought of was to use a cash settlement mechanism when no open storage was available. But then the question arises how to keep the grain companies from manipulating the cash prices to fit their positions when we really only have 4 companies that control the "regular" warehouses. I'm pissed off enough that I'm going to take this as far as I can because I believe the system is fundamentally broke and needs fixed. I would be very greatful for any thoughts you have on the issue, you have always been an advocate for ag and free markets and I believe this is worth the fight to preserve those entities. Thank You, Sincerely Berry K. Bortz

Subject: Re: Thoughts on delivery
From: Berry Bortz <cb.farms@dishmail.net>
Date: Thu, 24 Sep 2009 08:27:34 -0500
To: Gerald Gulke <jerrygulke@gmail.com>

Thanks, I completely understand the need to keep warehouses functioning, what I have a problem with is without a reliable delivery or settlement mechanism to keep the markets somewhat correlated I might as well be betting on the Packer vs. Bears game. (a little ficicous, but seriously you're betting on what index fund wants to stay in for how long) With delivery only being available to the warehouses the rest of the market participants are at a serious disadvantage. Right now Cargill is putting wheat in flat storage that they are buying at -.70 hedging the carry for July, and because they can deliver they are guaranteed to pick up .90. Profits unavailable to even our local Coops. Locals tried to hedge at harvest in July for the Dec. carry and because of the basis deterioration they are down .50. I'm still thinking some type of cash settlement similar to feeder cattle lets the warehouses work and allows producers to be competitive in their merchandising. If the mechanism works the markets will converge and the settlement mechanism is very rarely used. I think it would work relatively straight up for corn since there is so many different end users that could be utilized in an index. Wheat and beans appear to be completely different with just a couple real players involved. Me being a farmer, my second question I posed in my original letter was meant to be a seed for a solution so as I didn't come off as a total flake. It also helps to let the political types think they came up with an idea on their own to feed their egos. What I had in mind was a very specific phone company that got too big for her britches in the 70's and was forced to make babies, and that happened despite utilities having exemptions to most of the anti-trust laws. Thanks again, Berry

Gerald Gulke wrote:

> *Berry, I asked Gordon Linn to respond to your delivery comments--- he is well versed in these matters and had input into possible fixing of the wheat delivery and convergence problems--- hope this helps somewhat
> *
> **
> The delivery process in commodities has been debated and debated without consensus for decades - That probably won't change,, but maybe I can make a few points that may explain the various parties ideas, issues, and problems.
>
> It is pretty simple to conceptualize that a delivery system where everyone who wants to deliver- can deliver - simply won't work. Producers who want to utilize the futures markets to market their products, and who for some reason want to burden their futures pricing mechanism with delivery quantities/paperwork that could humble prices- don't have or see the complete economic picture.. Complete access to futures markets make them cash markets! . But with limited storage space, unload and loading capacity issues, freight price volatility, or regional advantages or disadvantages, delivery elevators do not operate in a perfect world. These elevators are licensed by the government and by the delivery market for certain tonnage and must be able to perform to certain standards. However, they are not public facilities but rather profit making enterprises, we hope, so mandating they respond to all who want to utilize their space to move grain into the marketplace at any point and any time is unrealistic. Multiplying these delivery elevators over a broad market area can simply create a futures swap market within itself penalizing anyone who wants to utilize delivery to acquire product (trust me, you will get the grain in the worst possible origin and the worst possible quality and terms).
>
> Those delivery elevators may in fact, be the best market for corn, but demand for utilizing the limited space and abilities for wheat or beans may provide profit margins that far exceed the golden grain. Or the sheer risk of having an elevator or market tied up with one commodity in excess supply? That scene could potentially inhibit abilities to service other grain demands, depress prices, and create storage and transportation risks that threaten margins, abilities, and maybe even the integrity of the system - It just can't happen. . Those who would deliver quantities to pressure prices or who want to take delivery to distort shortages cannot be allowed to navigate, influence, or capitalize on the futures markets which are the core of the risk management and commodity pricing system in the u.s. and in the world. Our U.S. futures market system is the envy of the free world providing stable, free, and open markets every hour and every day - but they are importantly - futures markets - leveraged and margined to the clearing house every day - pick your time but not your place.
>
> On Thu, Sep 10, 2009 at 5:23 PM, Berry Bortz <cb.farms@dishmail.net <mailto:cb.farms@dishmail.net>> wrote:
>
> > Dear Jerry; I was a client of yours for a number of years and have continued to read your articles. Several years ago I tried to deliver wheat against KCBOT contracts and was blocked by the warehouses from doing so. This year I was actually able to deliver against 5 contracts but was informed when I picked up my receipts that they would never issue negotiable warehouse receipts again to an individual. Apparently the interpretation of the warehouse act has changed and they believe even though the companies routinely deliver there is no requirement that they allow access to the delivery mechanism to the public. The separation between cash and futures has never been worse than last years debacle, The Board and the board of directors thought that

the solution was to have more delivery points but the real problem lies in the access to the delivery mechanism. Even if the warehouses are required to issue receipts for grain on open storage my fear is they will rebut by only allowing NPE contracts at outrages fees. So the first thing I thought of was to use a cash settlement mechanism when no open storage was available. But then the question arises how to keep the grain companies from manipulating the cash prices to fit their positions when we really only have 4 companies that control the "regular" warehouses. I'm pissed off enough that I'm going to take this as far as I can because I believe the system is fundamentally broke and needs fixed. I would be very greatful for any thoughts you have on the issue, you have always been an advocate for ag and free markets and I believe this is worth the fight to preserve those entities.
Thank You, Sincerely Berry K. Bortz

Subject: RE: KCBOT delivery
From: "Barry Flinchbaugh" <bflinchb@agecon.ksu.edu>
Date: Sun, 20 Sep 2009 14:02:00 -0500
To: "Berry Bortz" <cb.farms@dishmail.net>

Mr. Borty: I have thoroughly read your letter and have discussed it with the officials at the KCBOT and in Washington. It is on the agenda for our next board. You will hear from the KCBOT shortly.

BF

From: Berry Bortz [mailto:cb.farms@dishmail.net]
Sent: Mon 9/14/2009 10:25 AM
To: Flinchba@ksu.edu
Subject: KCBOT delivery

Dr.Flinchbaugh, As a director of the KCBOT I thought you might be interested in the attached letter. I spoke to Jim Lammle last week and he requested I put my story in a letter and get you a copy as well as Jeff Borchardt. I am also sending copies to our congressional delegation, the CFTC, USDA warehouse division, and Kansas Attorney General. Thanks Berry

borchardt.docx

KANSAS CITY
BOARD OF TRADE

September 22, 2009

Sent via email to:
Mr. Barry K. Bortz
cb.farms@dishmail.net

Dear Mr. Bortz:

Thank you for your letter of September 14 concerning owners of open storage grain in exchange-registered delivery warehouses and their ability to obtain delivery receipts for such. According to the USDA-FSA Warehouse License & Examination Division, a federally-licensed warehouse must, upon request of the owner of open storage grain, issue a warehouse receipt for such stored grain. However, the type of receipt issued is left to the sole discretion of the warehouse (i.e., bulk receipt, delivery receipt, etc).

The U.S. Warehouse Act grants the Secretary of Agriculture exclusive authority over federally-licensed warehouses. As such, the Kansas City Board of Trade ("KCBT") rules governing registered delivery warehouses may only impose reasonable requirements as to location, accessibility and suitability for warehousing and delivery purposes. Accessibility relates to railway connections and bulk receiving and loading facilities adequate for the prompt dispatch of business. Suitability pertains to storage capacity, load-out capacity, bonding, insurance and financial requirements.

In closing, a registered delivery warehouse may, but is under no obligation, to issue delivery receipts to owners of open storage grain in such facility.

Sincerely,

Jeff C. Borchardt
President & CEO

Subject: Re: [Fwd: Re: KCBOT delivery]
From: Berry Bortz <cb.farms@dishmail.net>
Date: Tue, 29 Sep 2009 20:14:40 -0500
To: Kyle Bauer <kbauer@kfrm.com>

Chicago is worse than KC, CFTC wants them to implement a variable rate storage charge. Talk about confusing. Best explanation I have read but still confusing is Jerry Gulke's comments on DTN last Fri. They still haven't addressed the limited access to a delivery or settlement mechanism.

Kyle Bauer wrote:

> I swear I heard something in the last week about them investigating a problem with deliveries, but maybe that was Chicago.
>
> -----Original Message-----
> From: Berry Bortz [mailto:cb.farms@dishmail.net] Sent: Tuesday, September 29, 2009 8:04 AM
> To: Dennism@treasurer.state.ks.us
> Subject: [Fwd: Re: KCBOT delivery]
>
> Dennis, Please find attached responses from Jeff Borchardt and Barry Flinchbaugh. I was slightly encouraged by Flinchbaugh's note but I found Borchardt's to be a little curious for a man in his position. He seemed to get bogged down in the minutia and either did not realize or did not want to acknowledge the problem presented by a lack of convergence, nor did he offer any hint of a resolution of the issue. If I'm reading between the lines correctly, they are going to use the "ostrich defense" (bury their heads in the sand) unless some other governing body forces them to change, ie an Act of Congress that I asked about in my letter. Also I have not heard from the Attorney General. Thanks, Berry

Subject: CBOT VARIABLE STORAGE RATE FOR WHEAT
From: Berry Bortz <cb.farms@dishmail.net>
Date: Mon, 05 Oct 2009 13:17:49 -0500
To: SECRETARY@CFTC.GOV

Mr. Secretary, In my opinion, the convergence issue is not a problem with storage rates. It is not a problem with number of delivery locations. It is however, a problem with the accessibility of the delivery mechanism to the majority of the market participants. This is true for Chicago as well as Kansas City. Grain companies are blocking access by refusing to issue deliverable receipts to everyone except a very exclusive group. I understand the need to keep warehouses open for business so that crops can be handled in a timely manner and in times like this year when we are blessed with abundant crops, storage space is tight. I would prefer physical delivery be made more accessible but if that is unrealistic then it appears a cash settlement is the most reasonable answer. If you are truly interested in convergence then every business day would be a possible settlement day. A minimum number of elevators', warehouses', end users', and exporters' bids would be averaged each day to post a daily cash price. No one company or their subsidiary would have more than one bid in the average. The holder of the short position would declare he wanted to cash settle. The Average cash price for the day would be used to settle his position. A carry factor could be used for the off month such as first half June would be 6 back of July, Second half June would be 3 back of July and the whole Month of July would be settled straight. Some type of correction factor for location may also need to be applied. Because every business day is in a settlement period and no company has more than one bid in the average, manipulation should be minimized. USDA already collects price info for their PCP and Acre program. I am not sure, but I don't think the warehouses they monitor for their calculations even know who they are. I have tried to find out only to be told that is not public information, all they would say is they use a terminal in Kansas City and one in Amarillo. I am not sure I agree with that philosophy but I understand it. Personally I would prefer more openness so there would be a higher sense of accountability. By switching to a cash settlement, all market participants would have access to the same marketing tools creating a much more fair and competitive market. The corn market appears to lend itself to cash settlement the easiest because of the huge number of unrelated end users. Soybeans and wheat appear to be the most difficult because of the limited number of players in the terminal markets. Perhaps we have reached a point where there are so few of players that they need to be regulated much the same as a public utility is. Or maybe the anti-trust laws need to be enforced or some combination of the two could be applied to the large grain companies. Thank You for your time and consideration. By the way I am a farmer from Pratt County, Kansas

Berry K. Bortz
30142 NE 100th Ave.
Preston, Ks 67583
620-656-4425 Home
620-546-6077 Cell

Subject: RE: KCBOT delivery
From: "Amato, David J." <damato@CFTC.GOV>
Date: Wed, 23 Sep 2009 13:35:54 -0400
To: Berry Bortz <cb.farms@dishmail.net>

Berry,

I presented your wheat letter concerning KCBOT delivery issues to Commissioner Michael Dunn this morning. He will be in contact probably via the phone to discuss it further with you.

Also as an FYI there is a dial-in on wheat convergence it will mostly be on CBOT wheat but you might find it interesting.

Below is the information if you would like to listen in.

Thank,
David Amato

Subcommittee on Convergence to Convene the Third Session
Washington, DC - On Wednesday, September 23, 2009, from 2 p.m. to 5 p.m., members of the Subcommittee on Convergence in Agricultural Commodity Markets will conduct their third public conference call.

The Subcommittee on Convergence in Agricultural Commodity Markets, a subcommittee of the CFTC's Agricultural Advisory Committee, was formed by the CFTC to identify the causes of poor cash-futures convergence in select agricultural commodity markets and advise on actions to remedy the situation. The Subcommittee held its first two public conference calls on June 8, 2009 and July 23, 2009.

The conference call is open to the public.

Participant Dial-In Number: (866) 312-4390

Conference ID: 32008899

Leader Name: Andrei Kirilenko

Last Updated: September 22, 2009

-----Original Message-----
From: Berry Bortz [mailto:cb.farms@dishmail.net]
Sent: Monday, September 14, 2009 10:31 AM
To: Amato, David J.
Subject: KCBOT delivery

Please read the attached letter and get it to ever needs to see it.
Thanks Berry

Subject: Re: KCBOT delivery
From: Berry Bortz <cb.farms@dishmail.net>
Date: Tue, 17 Nov 2009 07:33:46 -0600
To: "Amato, David J." <damato@CFTC.GOV>

Just kind of a follow up fyi thing, I have not received any reply or phone call as of today. Thanks Berry

Amato, David J. wrote:

> Berry,
>
> I presented your wheat letter concerning KCBOT delivery issues to Commissioner Michael Dunn this morning. He will be in contact probably via the phone to discuss it further with you.
>
> Also as an FYI there is a dial-in on wheat convergence it will mostly be on CBOT wheat but you might find it interesting.
>
> Below is the information if you would like to listen in.
>
> Thank,
> David Amato
>
> ---
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> The conference call is open to the public.
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> Participant Dial-In Number: (866) 312-4390
>
> Conference ID: 32008899
>
> Leader Name: Andrei Kirilenko
>
> Last Updated: September 22, 2009
>
> -----Original Message-----
> From: Berry Bortz [mailto:cb.farms@dishmail.net] Sent: Monday, September 14, 2009 10:31 AM
> To: Amato, David J.
> Subject: KCBOT delivery
>
> Please read the attached letter and get it to ever needs to see it. Thanks Berry

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202)418-5260
Facsimile: (202)418-5527
www.cftc.gov

Division of
Market Oversight

November 25. 2009

Mr. Barry Bortz
50142 Northeast 100lh Avenue
Preston. KS 67583

Dear Mr. Bortz,

1 am responding to your recent letter to Congressman Moran expressing serious concerns that regular warehouses are restricting access to grain futures delivery and the resulting impact upon agricultural commodity risk management, particularly with respect to the Kansas City Board of Trade (KCBT) wheat futures market. Your letter follows up on conversations you had in September with both our Kansas City and Chicago offices, which were followed by your letter to David Amato, our wheat surveillance economist in Chicago.

Mr. Bortz. your specific concerns about basis convergence and access to futures delivery, especially in wheat, are very much in the forefront of issues on. the Commission agenda, In fact, the Commission has held a number of public meetings over the last few years about convergence in grain futures -particularly Chicago Board of Trade (CBOT) wheat. The Commission's Agricultural Advisory Committee (ACC, chaired by Commissioner Dunn, even took the unprecedented step of setting up a subcommittee 011 convergence issues made up of agricultural industry representatives, including Vince Peterson, representing the National Association of Wheat Growers. That subcommittee identified a number of agricultural markets with convergence problems, but chose the CBOT wheat contract as the one to address initially. The subcommittee delivered a report on CBOT wheat convergence, which was discussed by the full AAC on October 29. [A webcast and transcript of that meeting are available at: http://www.cftc.gov/newsroom/cftcevents/2009/oeaevent10290.html.]

With respect to your experience in KCBT wheat futures, I can see from your description of the events that you are knowledgeable about the futures and cash markets for wheat. As you note, when the KCBT added delivery locations it increased the facilities available for wheat delivery—now at a total of four locations with a capacity of 156 million bushels--but not necessarily the access to those facilities by parties other than the total of six different warehouse owners. This has been an issue with warehouse delivery instruments for grain going back several decades, We have put you in touch with a US Department of Agriculture representative, who should have been able to answer any of your questions about the warehousemen's obligations under the U.S. Warehouse Act. and I understand that you have been in contact with representatives of the KCBT—as have we,

In closing, we always appreciate hearing from market participants, especially those, like you, that raise thoughtful questions. I hope that I have satisfied you that the Commission is actively engaged in the issues that you have raised and that we are addressing your concerns.

Sincerely,

Richard ShiIts
Acting Director

cc: Jerry Moran. U.S. House of Representatives

Subject: [Fwd: Reply letter - KCBOT delivery]
From: Berry Bortz <cb.farms@dishmail.net>
Date: Tue, 17 Nov 2009 07:55:05 -0600
To: Flinchba@ksu.edu

Dr. Flinchbaugh, Please find the attached letter from Jeff Borchardt. It is the only response I have received. The last sentence is very troubling to me and I would think it would be so to any one who promotes free and fair markets. Jeff seems to be justifying that it is perfectly acceptable that only 5 entities have access to a settlement mechanism when prices are distorted and the other 99.9999% of the market particapants who are supposedly using the same contracts are being denied access to the mechanism. I don't know how else to say it so I'll just blurt it out just as you are famous for, "This just reeks of corruption and manipulation." Thanks again, Berry K. Bortz

Subject: Reply letter - KCBOT delivery
From: "Jeff Borchardt" <jeffb@kcbt.com>
Date: Tue, 22 Sep 2009 15:51:34 -0500
To: <cb.farms@dishmail.net>

Dear Mr. Bortz,

Attached please find a response to your letter dated September 14.

Regards,

Jeff Borchardt
Kansas City Board of Trade

-----Original Message-----
From: Kcbt
Sent: Monday, September 14, 2009 4:00 PM
To: Jeff Borchardt
Subject: FW: KCBOT delivery

-----Original Message-----
From: Berry Bortz [mailto:cb.farms@dishmail.net]
Sent: Monday, September 14, 2009 1:17 PM
To: Kcbt
Subject: KCBOT delivery

Dear Jeff Please read the attached letter, I have visited with Mr. Lammle about this and he thought you would be interested in it also.
Thanks Berry

Reply letter - KCBOT delivery.eml	**Content-Type:**	message/rfc822
	Content-Encoding:	7bit

Barry Bortz Response Letter.pdf	**Content-Description:**	Barry Bortz Response Letter.pdf
	Content-Type:	application/octet-stream
	Content-Encoding:	base64

Subject: [Fwd: Re: [Fwd: Reply letter - KCBOT delivery]]
From: Berry Bortz <cb.farms@dishmail.net>
Date: Mon, 23 Nov 2009 10:03:13 -0600
To: tom.beall@ksag.org

This is a reply from Dr. Flinchbaugh. If some one had time and was well enough versed in the matter it would probably be a good idea to try and attend the Board meeting just to let them know "Big Brother" is watching.
Thanks Berry

Subject: RE: [Fwd: Reply letter - KCBOT delivery]
From: "Barry Flinchbaugh" <bflinchb@agecon.ksu.edu>
Date: Sun, 22 Nov 2009 23:44:40 -0600
To: "Berry Bortz" <cb.farms@dishmail.net>

Berry: I am going to the board meeting on Tuesday and will discuss your concerns with Jeff.

BF

From: Berry Bortz [mailto:cb.farms@dishmail.net]
Sent: Tue 11/17/2009 7:55 AM
To: Flinchba@ksu.edu
Subject: [Fwd: Reply letter - KCBOT delivery]

Dr. Flinchbaugh, Please find the attached letter from Jeff Borchardt. It is the only response I have received. The last sentence is very troubling to me and I would think it would be so to any one who promotes free and fair markets. Jeff seems to be justifying that it is perfectly acceptable that only 5 entities have access to a settlement mechanism when prices are distorted and the other 99.9999% of the market particapants who are supposedly using the same contracts are being denied access to the mechanism. I don't know how else to say it so I'll just blurt it out just as you are famous for, "This just reeks of corruption and manipulation." Thanks again, Berry K. Bortz

Re: [Fwd: Reply letter - KCBOT delivery].eml	**Content-Type:** message/rfc822 **Content-Encoding:** 7bit

Subject: RE: kcbot delivery
From: "Dean/Mary Anne Stoskopf" <stoskopf@opiwireless.com>
Date: Tue, 15 Sep 2009 11:49:48 -0500
To: "'Berry Bortz'" <cb.farms@dishmail.net>

Berry,
I forwarded you letter to Justin Gilpin. He is the new CEO for the KWC and KAWG. Justin has worked for the last 3 years at General Mills. He was a grain purchaser in Kansas City. Justin was also on the basis committee for the KCBOT.
Justin said that he would get in touch with you about your issues. I hope this will help. Dean

-----Original Message-----
From: Berry Bortz [mailto:cb.farms@dishmail.net]
Sent: Monday, September 14, 2009 8:36 PM
To: stoskopf@opiwireless.com
Subject: kcbot delivery

Dean,

Thought you might be interested in this. Berry

Subject: kcbot and cftc
From: Berry Bortz <cb.farms@dishmail.net>
Date: Thu, 03 Dec 2009 22:41:15 -0600
To: mike.zamrzla@mail.house.gov
CC: Flinchba@ksu.edu, Kyle Bauer <kbauer@kfrm.com>

Mike, by now I trust you and the Congressman have received a copy of the letter the CFTC sent me dated Nov. 25, 2009. The third paragraph is very troubling to me. I quote " This has been an issue with warehouse delivery instruments for grain going back several decades." If the CFTC has recognized this problem for several decades, their words, not mine, how many more decades before they do something to fix it? Just what in the sam hell are we paying these guys in Washington to do if not to regulate and create solutions????? In my opinion it is high time to do something rather than pretending to be an ostrich. I see three alternatives; 1. Regulate the players in the grain terminal markets much like you would a public utility. 2. Breakup the large grain companies to put competition back in the market place just like we did ma bell. 3. devise a different settlement mechanism for contracts that is available to all market participants. Personally I dislike option 1 the most just because our regulatory agencies' track record of enforcing existing regs is not very good. They tend to turn their backs when big money companies get involved. 2 presents problems with raising capital to invest in the industry in today's economic climate. This leads us to option 3 which probably involves some type of cash settlement with some combination of the other 2 options. I don't mean to unload on you so forgive me if it comes across that way. This whole deal with both the KCBOT and the CFTC responding by basically acknowledging the problem but electing to not solve the issue just really aggravates me. Thanks Berry