LEGISLATION

The Commodity Exchange Act of 1936

That phase of the New Deal which, by regulating the exchanges on which agricultural commodities are sold, seeks to assure the farmer a fair return for his product and the consumer a dependable food supply at low cost is one recent reform which may not be described as being wholly without precedent in our history. The Commodity Exchange Act [1] is merely a series of amendments to the Grain Futures Act [2] which, despite several Supreme Court tests, has been in effect since 1922. In this respect, the Commodity Exchange Act bears little resemblance to what is sometimes thought of as a companion piece of legislation, the Securities Exchange Act; [3] for the latter in seeking to control stock and curb markets enters upon a field distinctly new to federal regulation. Nevertheless, the constitutionality of the Commodity Exchange Act has been challenged,[4] and therefore it is the purpose of this note to examine the extent to which these amendments introduce unconstitutional features into federal regulation of agricultural markets and to consider whether such recent decisions as the *Schechter* case,[5] the *Panama Refining Co.* case,[6] and the *Bituminous Coal* case [7] affect the validity of the regulations already upheld. The amendments will be treated here as constituting four classes: (1) those which prohibit certain conduct on the part of traders using the exchange facilities; (2) those which regulate brokers' dealings with their principals; (3) those which regulate the conduct of the exchanges themselves; and finally (4) those which strengthen the enforcement provisions of the earlier act.

I

Section 4 (a) of the Act [8] contains probably its most important and most controversial provision. After reciting that excessive speculation in commodity futures,[9] by causing sudden and unreasonable price changes, unduly burdens interstate commerce in those commodities, the Act authorizes the Commodity Exchange Commission [10] to fix limits on the amount of trading by any person and prohibits trading in excess thereof. The theory underlying the provision is that a few large-scale speculators, if the size of their holdings is not limited, will be able to control price movements,[11] but the Act was not designed to eliminate

1. 49 STAT. 1491 (1936), 7 U. S. C. A. § 1 (Supp. 1936).
2. 42 STAT. 998 (1922), 7 U. S. C. A. § 1 (1926). See Note (1934) 2 GEO. WASH. L. REV. 457.
3. 48 STAT. 74 (1933), 15 U. S. C. A. § 77a (Supp. 1936).
4. Board of Trade v. Milligan, 16 F. Supp. 859 (W. D. Mo. 1936); Bennett v. Board of Trade, *unreported,* Fed. Dist. Ct. N. D. Ill., Sept. 1936; Moore v. Chicago Merc. Exchange, *unreported,* Fed. Dist. Ct. N. D. Ill., Aug. 1936. The Act was held constitutional in all three cases. Certiorari was denied by the U. S. Supreme Court when it was sought to avoid an appeal to the Circuit Court of Appeals. (1936) 4 U. S. L. WEEK 1.
5. Schechter Poultry Corp. v. United States, 295 U. S. 495 (1935).
6. Panama Refining Co. v. Ryan, 293 U. S. 388 (1935).
7. Carter v. Carter Coal Co., 298 U. S. 238 (1936).
8. 49 STAT. 1492, 7 U. S. C. A. § 6a (Supp. 1936).
9. Futures are contracts of sale for future delivery. 42 STAT. 999 (1922), 7 U. S. C. A. § 5 (1926).
10. The commission consists of the Secretary of Agriculture, the Secretary of Commerce and the Attorney General. 49 STAT. 1492, 7 U. S. C. A. § 2 (Supp. 1936).
11. This is especially true at certain seasons of the year, as in September when the crop is moving to market; large scale short selling by a few speculators will have an unduly depressing effect at a time when the market needs support most. *Hearings before Committee on Agriculture and Forestry on H. R. 6772,* 74th Cong., 2d Sess. (1936) 211, 212.

speculation entirely.[12] Under the existing economic organization, speculation performs an indispensable function in providing a continuously liquid market and in reducing the risks involved in marketing and distributing commodities.[13] Hence the Act is directed against only *excessive* speculation, causing price changes wholly unjustified by changes in the supply and demand factors. Moreover, hedging[14] does not constitute speculation under the Act, so that in computing trading limits hedging transactions are not to be considered.

The constitutional problem raised by the section is two-fold: (a) May the federal government, without usurping powers reserved to the states, prohibit excessive speculation in commodity futures? (b) If so, has the power been properly exercised, considering that the amount of speculation permitted is not stipulated in the Act but is to be fixed by a commission? The first question, despite the vagueness of the concept which is the constitutional basis of this provision—interstate commerce—seems clearly to require an affirmative answer. It is settled that commodity futures contracts are local transactions, since delivery, if contemplated at all,[15] is not required to be made by interstate shipment.[16] Like other intrastate transactions, however, they may directly affect interstate commerce and so be amenable to federal regulation.[17] That grain futures contracts are intrastate transactions of this sort was held in *Board of Trade v. Olsen,*[18] which declared the Grain Futures Act constitutional. That Act, however, merely gave the Secretary of Agriculture power to revoke the licenses of grain exchanges as "contract markets" because "manipulation . . . on the exchanges unduly burdened interstate commerce."[19] Yet, a congressional finding that manipulation unduly burdens interstate commerce is not essentially different from one that excessive speculation unduly burdens interstate commerce, given the premise, approved by the Supreme Court, that commodities[20]

12. Opponents of the Act have contended it would have that effect. See, for example, *Hearings before Committee on Agriculture and Forestry, supra* note 11, at 40, 41, where it was also urged that margin restrictions would sufficiently control excessive speculation, without trading limits. But at pp. 210, 211, it is pointed out that margin requirements would not deter large scale operators who generally have large enough resources to meet high margin requirements.

13. Huebner, *The Insurance Service of Commodity Exchanges* (1931) 155 ANNALS 1.

14. Hedging transactions are ". . . sales of any commodity for future delivery . . . to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity, or, conversely, purchases . . . for future delivery . . . to the extent that such purchases are offset by sales of the same cash commodity." 49 STAT. 1493, 7 U. S. C. A. § 6a (3) (Supp. 1936). In computing the amount which any person may hedge, there is included the amount of the commodity the person intends to raise within the next year on his own land as well as an amount which would be a reasonable hedge against his ownership or purchase of products of the commodity, or against the sale of such products.

15. Intention to deliver grain under the contract is necessary in some states to prevent it from being held void as a gambling transaction. Dickson v. Uhlmann Grain Co., 288 U. S. 188 (1933).

The Grain Futures Act did not legalize contracts unlawful by state law; it merely set out additional conditions to the legality of such contracts. See Taylor, *Trading in Commodity Futures,* 43 YALE L. J. 63, 95-102; at 101, it is estimated that 95% of the futures contracts made on the Kansas City Board of Trade violate Missouri law.

16. Ware & Leland v. Mobile County, 209 U. S. 405 (1908); Hill v. Wallace, 259 U. S. 44, 69 (1922); Moore v. New York Cotton Exchange, 270 U. S. 593, 604 (1926).

17. E. g. United States v. Patten, 226 U. S. 525 (1913) (running a corner in cotton on the New York Exchange held unlawful obstruction to interstate commerce under the Sherman Anti-Trust Act); United States v. Ferger, 250 U. S. 199 (1919) (forgery of bill of lading for goods shipped in interstate commerce validly made a federal offense).

18. 262 U. S. 1 (1923).

19. 42 STAT. 999 (1922), 7 U. S. C. A. § 5 (1926).

20. The Grain Futures Act upheld in the *Olsen* case dealt only with grain; the present Act includes wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs and Irish potatoes. The same principles seem to be involved.

moving from the farms through the exchanges to the consumers in all parts of the nation are in a "stream of interstate commerce." [21] Naturally serious obstructions to the flow of that stream may be caused by individuals whose volume of trading for speculative purposes goes beyond reasonable bounds,[22] just as manipulation of prices may have that effect, as by making production unprofitable or by putting consumption beyond the power of some sections of the population. It is this strategic position of the exchanges—like valves regulating the flow of commodities from producers to consumers all over the country—that caused the Supreme Court to conclude that the Chicago Board of Trade was "engaged in a business affected with a public national interest and is subject to national regulation as such".[23]

The second question relates to the doctrine of the Separation of Powers and the prohibition against the delegation of legislative power to another body. These principles, however, are not rigidly observed, so that a certain amount of delegation is permissible. The cases allowing delegation are of two classes: those where the law which the legislature has enacted is to become effective upon an independent body finding a given fact to exist; [24] and those where the independent body is given the authority to make rules in accordance with sufficiently definite standards set by the legislature.[25] Here, the case turns upon the nature of the standards set up in the Act to guide the commission in establishing trading limits. The authority granted is "to fix such limits . . . as the commission finds is necessary to diminish, eliminate or prevent" the burden on interstate commerce caused by excessive speculation and the consequent "sudden or unreasonable fluctuation" and unwarranted changes in prices. Standards such as "just and reasonable rates",[26] "unfair, unjust and discriminatory practices" [27] have been held sufficiently definite in the Packers and Stockyards Act,[28] an Act whose similarity to the Grain Futures Act was used to sustain generally the latter in *Board of Trade v. Olsen.* The standard here in question is hardly less definite. Moreover, it is quite clear that the authority delegated is not capable of efficient exercise by the Congress itself. The exchanges in the country vary greatly in the volume of trading done on them,[29] so that excessive speculation by an individual on the Duluth Exchange might not be such on the Chicago Board of Trade, and even within the same market excessive speculation at one season might not be such at another time. An administrative body alone could adjust its regulations to meet the changing situations and yet adhere closely to the controlling policy designed by Congress in the Act.

21. The *Olsen* case utilized the metaphor applied in Stafford v. Wallace, 258 U. S. 495, 519 (1922), to the shipment of livestock.

22. *Hearings before Committee on Agriculture and Forestry, supra* note 11, at 278.

23. Board of Trade v. Olsen, 262 U. S. 1 (1923). The *Schechter* and *Bituminous Coal* cases cite this case with approval, distinguishing the regulation of grain exchanges and of stockyards [upheld in Stafford v. Wallace, 258 U. S. 495 (1922)] from fixing prices and wages in the poultry slaughtering business and fixing wages for miners of coal.

24. The Brig Aurora, 7 Cranch 382 (U. S. 1813); Field v. Clark, 143 U. S. 649 (1892); Hampton & Co. v. United States, 276 U. S. 394 (1928).

25. Union Bridge Co. v. United States, 204 U. S. 364 (1907); Interstate Comm. Comm. v. Illinois C. R. Co., 215 U. S. 452 (1910); United States v. Grimaud, 220 U. S. 506 (1911).

26. Packers and Stockyards Act, 42 STAT. 164 (1921), 7 U. S. C. A. § 206 (1926), held valid in Tagg Bros. & Morehead v. United States, 280 U. S. 420 (1930).

27. Packers and Stockyards Act, 42 STAT. 165 (1921), 7 U. S. C. A. § 208 (1926), held valid in Farmers' Livestock Commission v. United States, 54 F. (2d) 375 (E. D. Ill. 1931).

28. Held generally valid in Stafford v. Wallace, 258 U. S. 495 (1922).

29. Eighty-six per cent of grain futures trading in the United States is transacted on the Chicago Board of Trade. *Hearings before the Committee on Agriculture and Forestry, supra* note 11, at 210.

Section 8a (5) of the Commodity Exchange Act [30] presents a related problem, by giving the Commission authority "to make . . . such rules . . . as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act." This is almost identical with a provision of the Packers and Stockyards Act,[31] upheld in *Stafford v. Wallace*,[32] and the grazing Act,[33] upheld in *U. S. v. Grimaud*.[34] While these standards—those in section 4a and in section 8a (5) of the Act—are quite broad, they are not without the limits which the precedents warrant. *Panama Refining Co. v. Ryan* does not compel a different conclusion, for in that case no standard whatsoever was given the President to determine when he should prohibit shipments in interstate commerce of oil produced in excess of state quotas.[35] Less easily distinguishable is the *Schechter* case, which held invalid the delegation to the President of authority to approve codes of fair competition. The only standard given was that the President "effectuate the policy of" the National Recovery Act,[36] and the policy was set out in another section—a conglomeration of purposes, some conflicting, which in substance would convey authority to rehabilitate all industry.[37] One important distinction between the delegation invalidated by the *Schechter* case and that in section 8a (5) of the Commodity Exchange Act lies in a difference of degree: The Commodity Exchange Act relates only to excessive speculation and certain specified abuses in commodities trading and does not attempt to cure all the dislocations of all trade and industry. The standard of section 4a would seem to be definite enough despite the *Schechter* case, for the latter case did not present any standard as definite as "excessive speculation" causing "unreasonable fluctuations and unwarranted changes in price" on the commodities exchanges.

Section 4c of the Commodity Exchange Act [38] prohibits fictitious sales and seems to be clearly valid under the holding in *Board of Trade v. Olsen*, for the term "manipulation" as used in the Grain Futures Act would include those practices more specifically named in the present Act. The position taken by one of the exchanges in *Board of Trade v. Milligan*,[39] that fictitious sales do not affect interstate commerce directly can derive little support from the *Schechter* case, where *Board of Trade v. Olsen* was cited without any suggestion that it was no longer law. That part of section 4c which prohibits option contracts [40] by which offers are kept open a day or so presents a more serious question, but the conclusion that such transactions encourage excessive speculation and cause unreasonable market fluctuations would seem well founded. In the Futures Trading Act,[41] these contracts were taxed prohibitively, but the tax was held uncon-

30. 49 STAT. 150, 7 U. S. C. A. § 12a (5) (Supp. 1936).
31. 42 STAT. 169 (1921), 7 U. S. C. A. § 228 (1926).
32. 258 U. S. 495 (1922).
33. 30 STAT. 35 (1897), 16 U. S. C. A. § 551 (1926).
34. 220 U. S. 506 (1911).
35. "The President is authorized to prohibit the transportation in interstate commerce . . . of petroleum, . . . in excess of the amount permitted to be produced . . . by any . . . state." 48 STAT. 200 (1933), 15 U. S. C. A. § 709 (Supp. 1936).
36. 48 STAT. 195 (1933), 15 U. S. C. A. § 701 (Supp. 1936).
37. 48 STAT. 195 (1933), 15 U. S. C. A. § 701 (Supp. 1936), lists the following purposes: remove obstruction to free flow of commerce; promote the organization of industry; further united labor action; eliminate unfair competitive practices; promote the fullest utilization of the productive capacity of industry; increase consumption and purchasing power; reduce unemployment; improve labor standards; rehabilitate industry; conserve natural resources.
38. 49 STAT. 1494, 7 U. S. C. A. § 6c (Supp. 1936).
39. 16 F. Supp. 859 (W. D. Mo. 1936), Bill of Complaint 32, 33.
40. Also called privileges and indemnities, puts and calls, bids and offers.
41. 42 STAT. 187 (1921).

stitutional in *Trusler v. Crooks* [42] for the same reason that the Futures Trading Act generally was held unconstitutional three years earlier in *Hill v. Wallace*,[43] *i. e.*, on the ground of the lack of a congressional finding that such transactions on the exchanges affect interstate commerce directly. The Grain Futures Act omitted to deal with them because it was passed before *Trusler v. Crooks*, and at a time when it was thought *Hill v. Wallace* had not invalidated this provision of the Futures Trading Act. The present Act in outlawing these transactions adopts the suggestions of many exchange officers and the rules already in force on the exchanges.[44]

II

In attempting to deal with the relations of floor brokers, commission merchants and the public, the Act departs in important respects from the Grain Futures Act. Section 4b [45] prohibits exchange members from defrauding their customers and from representing both buyer and seller in the same transaction without their principals'—the customers'—consent. Section 4d [46] requires that commission merchants treat as trust funds sums which they hold for their principals, with the exception that customers' accounts may be commingled and may also be invested in specified securities. It is clear that these provisions aim only to impose the duties of a fiduciary upon a class of men who, under accepted legal theory as well as by every consideration of policy, ought to bear such obligations. The provisions would seem to establish a limitation reasonably incident to the regulation of interstate commerce,[47] although they have been attacked as having no relation to the objective of stabilizing commodity markets, which has been the justification for the regulations already considered. That the states might punish such frauds as are here prohibited, of course, does not constitute this regulation an invasion of state power.

III

Those sections of the act which deal with the conduct of the exchanges themselves adopt the technique of the Grain Futures Act, all of whose provisions were made operative by the device of licensing the exchanges on condition that their rules prohibit certain things and require others. Thus, under section 5a (7) of the present Act [48] the exchange must require that all futures contracts permit performance to be made by delivery of warehouse receipts issued under the United States Warehouse Act,[49] even though the warehouse is not also licensed by state law. It has been contended that, where the state law requires [50] state licensing of all grain elevators, this provision which forbids discrimination against federally licensed elevators would be invalid.[51] The argument is that the federal Act was not intended to occupy the whole field of elevator regulation to the exclusion of the states, because the federal Act expressly provides that it is

42. 269 U. S. 475 (1926).

43. 259 U. S. 44 (1922).

44. *Hearings before Committee on Agriculture and Forestry, supra* note 11, at 220-225. But see p. 137, where exchange officials petition the end of the prohibition against indemnities.

45. 49 STAT. 1493, 7 U. S. C. A. § 6b (Supp. 1936).

46. 49 STAT. 1494, 7 U. S. C. A. § 6d (Supp. 1936).

47. See United States v. Donahue Bros., 59 F. (2d) 1019 (C. C. A. 8th, 1932), where the provision of the Packers and Stockyards Act which imposed the duties of a fiduciary on commission merchants was upheld.

48. 49 STAT. 1498, 7 U. S. C. A. § 7a (7) (Supp. 1936).

49. 39 STAT. 486 (1916), 7 U. S. C. A. § 241 (1926).

50. ILL. CONST. art. XIII.

51. *Hearings before Committee on Agriculture and Forestry, supra* note 11, at 100-105. The contention is answered at pp. 228, 229, 263-271.

not to conflict with or impair the operation of state laws.[52] While this point must be conceded, it by no means follows that Congress may not subsequently occupy the whole field and make its own regulation controlling in this particular phase of interstate commerce. The dispute is as to whether Congress has done so by this provision in section 5a (7), but since the conflict between state law and the section in question is so apparent and there is nothing in the section which shows an intent to avoid that conflict—as there was in the original Warehouse Act—it would follow that Congress intended that the federal law be controlling.

Section 5a (4) [53] requires the exchanges to cease trading, from three to ten days before the end of the month, in contracts calling for the delivery of a commodity during the current month when the Secretary of Agriculture finds such provision will tend to prevent market congestion endangering price stability. This section was designed to prevent corners by giving sellers an opportunity to buy cash grain and satisfy their contracts during the three to ten day period when there will be no demand from new contracts for delivery in that month—since trading in them will have ceased.[54] The provision would seem to be valid as against the contention that it did not directly affect interstate commerce or was an unconstitutional delegation of legislative authority to the Secretary of Agriculture, under reasoning similar to that which should validate the excessive speculation limitation of section 4a.

Section 5a (5) [55] provides that the seller must give the buyer at least one day's notice of delivery under a futures contract, and that the Secretary of Agriculture may fix a longer period (up to 10 days) for such notice where he finds that it will diminish "unfair practices". While this standard might seem the vaguest in the Act on the point of delegation of legislative power and of doubtful validity in view of the *Schechter* decision, yet it presents a problem distinct from that in the case of power delegated to devise *"such rules* as will diminish unfair practices." Congress here has specified what the law shall be [56] and leaves it to the Secretary to decide *when* it shall be called into force, namely, when he finds "unfair practices" will be diminished thereby. A situation midway between these two cases is that where the provisions of the Packers and Stockyards Act are to come into effect upon the finding of the Secretary of Agriculture that "unfair practices" exist. It has been held in that case that "unfair practices" is sufficiently definite for a finding of fact upon which a law is to become effective whether or not it is definite enough to be a guide in the making of rules by an administrative officer.[57]

The hostility of exchanges towards cooperatives, which made necessary an express stipulation in the Grain Futures Act that no exchange will be licensed unless it does not discriminate against cooperative associations, has been responsible for some new provisions relative to cooperatives in the Commodity Exchange Act.[58] Section 6a (1) [59] prohibits the suspension from membership by

52. Congress, by the United States Warehouse Act, has not made federal regulation of warehouses exclusive; hence, state regulation is valid. Independent Gin & Warehouse Co. v. Dunwoody, 40 F. (2d) 1 (C. C. A. 5th, 1930). See 42 STAT. 1285 (1923), 7 U. S. C. A. § 269 (1926).

53. 49 STAT. 1497, 7 U. S. C. A. § 7a (4) (Supp. 1936).

54. *Hearings before the Committee on Agriculture and Forestry, supra* note 11, at 124, 125.

55. 49 STAT. 1497, 7 U. S. C. A. § 7a (5) (Supp. 1936).

56. *Viz.,* that trading shall be suspended from three to ten days.

57. Handy Bros. Co. v. Wallace, 16 F. Supp. 662 (E. D. Pa. 1936).

58. That the possibility of discrimination is not altogether remote may be seen from the fact that the protection of the Grain Futures Act was successfully sought in Board of Trade v. Wallace, 67 F. (2d) 402 (C. C. A. 7th, 1933), *cert. denied,* 291 U. S. 680 (1934).

59. 49 STAT. 1499, 7 U. S. C. A. § 10a (1) (Supp. 1936).

the exchange of financially responsible cooperatives, except following a hearing before the commission upon a complaint after three days' notice. A commission order to continue or suspend the cooperative's membership is reviewable by the Circuit Court of Appeals, but its order is not to stay pending the review.[60] Thus unlike other exchange members, cooperatives may not be expelled unless and until the Commission so orders or its order to the contrary has been set aside by the courts.[61]

The policy of fostering cooperatives and protecting them from the hostility of other traders on the exchanges which seems to justify the different procedure for expulsion provided for them resulted also in the Grain Futures Act in too favorable a treatment of them in the matter of rebates. Thus while other exchange members were forbidden by exchange rules to record a sale at one price and then pay to the seller an additional price as a discount from the broker's commission,[62] cooperatives were permitted to return to their members dividends which were based upon the quantity of grain delivered to the cooperative by the members. The only qualification upon this so-called "patronage dividend right" was that it be paid out of earnings, and this restriction became of little importance because of the set-up of the grain cooperatives. A national cooperative paid its regional member associations certain sums for advertising or "educational" purposes, from which the individual producers were paid patronage dividends based on the quantity sold by the producer through the cooperative. These dividends were paid out of the regional cooperative's surplus, but in many cases the money which they thus distributed came from the national cooperative which had no surplus. The present Act requires that such dividends coming ultimately from the national cooperative be paid out of its surplus.[63]

IV

Probably the most serious weakness in the former Grain Futures Act was its unwieldy and cumbersome enforcement provisions. The Act provided for revocation of the exchange's license to operate as a "contract market";[64] it required exclusion from exchange trading privileges of individuals who *are* violating the act;[65] it punished as a misdemeanor trading except through licensed exchanges;[66] and made unlawful the use of the mails or other means of communication in interstate commerce to circulate false crop or market information.[67] The disruption to trade and the possible economic loss to many thousands of innocent people which might be caused by the revocation of the designation of the Chicago Board of Trade, for example, as a contract market, quite understandably might cause an official to hesitate long before invoking the aid of such a provision. While exclusion of individuals from trading privileges may seem to go to the other extreme in providing a punishment too mild to deter those bent on "making a killing" by market manipulations, an even more serious weakness was revealed in this provision by the case of *Cutten v. Wallace*.[68] In that case the present tense, "*is* violating", as used in the Act, was held to pre-

60. The order is not penal and so a stay could be prohibited by the Act.

61. An exception to this provision is recognized where the cooperative is suspended because of inability to meet its obligations.

62. *Hearings before Committee on Agriculture and Forestry, supra* note 11, at 95, 97.

63. The separate entity of national and regional cooperatives is, in effect, disregarded by the Act.

64. 42 STAT. 1001 (1922), 7 U. S. C. A. § 8 (1926).

65. 42 STAT. 1002 (1922), 7 U. S. C. A. § 9 (1926).

66. 42 STAT. 999, 1003 (1922), 7 U. S. C. A. §§ 6, 13 (1926).

67. 42 STAT. 1003 (1922), 7 U. S. C. A. § 13 (1926).

68. 298 U. S. 229 (1936).

vent the exclusion of a trader for past violations. The limited scope of the *penal* provisions of the old Act (against trading through unlicensed exchanges and against spreading false crop or market information) prevents them from being an important factor in the regulation of the exchanges.

On the other hand, the amendments contained in the Commodity Exchange Act strengthen materially the enforcement provisions of the Grain Futures Act. Under section 6b [69] of the new Act, in the event that the exchange violates any of the Act's provisions, a cease and desist order may issue against the *officers* or *agents* of the exchange in addition to the possibility of revocation of the exchange's license. A violation of the order entails heavy criminal punishment, with each day's violation constituting a new offense. The new Act remedies the defect revealed by the *Cutten* case, so that past violations as well as present violations may lead to an exclusion from trading privileges. A closer control over the member's trading activities is afforded by requiring registration of commission merchants and floor brokers with the Secretary of Agriculture who has power to suspend.[70] Finally, the Secretary is authorized to inspect the books and records of the exchanges [71] of the members,[72] and of the warehouses [73] in which are stored commodities deliverable on futures contracts.

While the constitutionality of the enforcement provisions of the old Act was not ruled upon in *Board of Trade v. Olsen,* a lower federal court has upheld them since that decision,[74] and there would not seem to be much doubt of their validity in view of the validity of the general provisions of the former Act and the fact that a judicial review is granted under the penal sections of that Act. The additional sanctions of the Commodity Exchange Act have ample precedent —the registration and inspection provisions are almost identical with those in the Packers and Stockyards Act.[75] Criminal penalties for the violation of administrative regulations were upheld in *United States v. Grimaud.*[76]

Conclusion

The Commodity Exchange Act, irrespective of opinions of other New Deal legislation, presents no startling innovations either in policy or in manner of operation. It does buttress in important respects the existing federal grain exchange regulations, extending them to the other commodity markets. Its enforcement provisions are much more workable than those under the former law. Its chief weakness on the ground of constitutionality springs from doubt as to the meaning of the *Schechter* and the *Bituminous Coal* cases; only if those cases constitute a departure from the pre-existing law as to interstate commerce and the delegation of legislative authority can the general validity of the Commodity Exchange Act be challenged. It is unlikely that those cases have such a meaning since *Board of Trade v. Olsen* is cited in both cases without even a suggestion that it is being overruled; and, as has been held in the lower federal courts,[77] the principles held valid in the *Olsen* case are decisive of the present Act's validity.

N. L. P.

69. 49 STAT. 1500, 7 U. S. C. A. § 13a (Supp. 1936).
70. 49 STAT. 1494, 1500, 7 U. S. C. A. §§ 6d (1), 12a (Supp. 1936).
71. 49 STAT. 1497, 7 U. S. C. A. § 7a (2) (Supp. 1936).
72. 49 STAT. 1496, 7 U. S. C. A. § 6g (Supp. 1936).
73. 49 STAT. 1497, 7 U. S. C. A. § 7a (3) (Supp. 1936).
74. Board of Trade v. Wallace, 67 F. (2d) 402, 407 (C. C. A. 7th, 1933), *cert. denied,* 291 U. S. 680 (1934).
75. The inspection provisions of the Grain Futures Act were held valid in Bartlett Frazier Co. v. Hyde, 65 F. (2d) 350 (C. C. A. 7th, 1933), *cert. denied,* 290 U. S. 654 (1933).
76. 220 U. S. 506 (1911).
77. See *supra* note 4.