



OFFICE OF
THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 31, 1987

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The Honorable Patrick J. Leahy
Chairman
Committee on Agriculture, Nutrition and Forests
United States Senate
SR-328A Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

This is in response to your letter of July 17, 1987, concerning the Commission's resolution of SEC v. Ivan F. Boesky, 86 Civ. 8767 (RC) (S.D.N.Y.). You have asked a series of questions regarding the manner in which the settlement was reached and structured. As you are aware, I was not at the Commission at the time the Commission considered the Boesky settlement. Thus, I have relied on information provided to me by the Commission's staff in order to respond to your letter.

It may be helpful in responding to your questions to put the Boesky settlement in context. The Commission's discussions regarding a settlement with Mr. Boesky were parallel to discussions between counsel for Mr. Boesky and the Office of the United States Attorney for the Southern District of New York ("USAO"). The principal objectives of the Commission were to ensure that Mr. Boesky was enjoined from future violations of the federal securities laws; that he disgorged profits that he or companies under his control obtained while in possession of material nonpublic information received from Dennis Levine (and paid an appropriate penalty under ITSA); and, following a closely supervised transition period to prevent unnecessary losses to potentially innocent persons, that he was barred from the securities industry. The USAO sought a plea to an appropriate federal felony. Both the Commission and the USAO believed that obtaining Mr. Boesky's cooperation in the investigation of other potential violations of the federal laws was critical to the continuing investigation of insider trading and other law violations by both agencies.

These discussions culminated in the execution of letter agreements between Mr. Boesky and the Commission and Mr. Boesky and the USAO, respectively. These agreements, of which you have copies that include all material terms, gave both the Commission and the USAO all of the relief that each agency deemed appropriate.

The agreements provided that the contemplated administrative, injunctive and criminal matters would be filed in the future once their precise terms had been worked out between the parties, but that Mr. Boesky's cooperation with the authorities would begin immediately, even before definitive court documents had been drafted. During this interim period, which ended on November 14, 1986, the USAO believed it most important to obtain Mr. Boesky's assistance in the collection of evidence as a cooperating witness by, among other methods, conducting monitored conversations with suspected violators of the federal criminal laws.

If this type of investigative effort were to be successful, it was essential that knowledge of Mr. Boesky's agreement and cooperation with the government be tightly held and kept on a need-to-know basis. On-site monitoring of Mr. Boesky's activities by government agents would have immediately alerted employees of Mr. Boesky's firm and the investment community of unusual activity at the firm. In addition, off-site (and thus necessitating after-the-fact) monitoring of trading activities would not have prevented trades from occurring and also would have required the cooperation of persons within the Boesky organization, other than Mr. Boesky, which would, in turn, have exposed Mr. Boesky's cooperation.

At the same time, it was also recognized that Mr. Boesky had to comply with both the federal securities laws and other laws. Both the Commission and the USAO took steps to ensure such compliance. Thus, the Commission's agreement with Mr. Boesky expressly limited his civil immunity to "conduct occurring prior to the date of this Agreement." Neither Mr. Boesky nor any person or entity affiliated with him was given any immunity for any violations of law occurring after the date of the agreement. The agreement signed by the USAO provided:

Your client agrees not to commit any other crimes whatsoever. Should your client commit any further such crimes, or should it be determined by this Office that your client has intentionally failed to give complete, truthful, or accurate information and testimony or has otherwise violated any provisions of this Agreement, your client shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecutions may be premised upon any information provided by your client, and such information may be used against him.

Thus, had Boesky violated either the federal securities or commodities laws during the period preceding the entry of the injunction on November 14, 1986, he would have been in breach

of his agreement. In that case, any evidence he had given the government, including his own admissions of illegal conduct (in addition to that charged regarding insider trading on tips from Dennis Levine), could and would have been used against him. These safeguards built into the respective settlement agreements provided a powerful incentive to comply with the law. Mr. Boesky also had the active and ongoing advice of counsel expert in federal regulations pertaining to his investment business who had negotiated, and understood the importance of, the terms of his agreements with the government. Thus, Mr. Boesky understood that he could not commit further violations without losing the benefits of his agreement. Moreover, Mr. Boesky's firms continued to be subject to the routine surveillance efforts of the stock, options and futures exchanges and the SEC and CFTC.

Although this system did not provide for on-site inspection of Mr. Boesky's daily financial activities, it was apparently successful. While Mr. Boesky maintained short futures positions throughout the period from September 10, 1986 to February 26, 1987, these positions were offset by larger long positions held in the stock market by the companies whose investments he controlled, and, therefore, appear to have been hedging transactions which one would expect from a prudent portfolio manager. During this period, the stock market and its indices generally rose in price, thereby rendering the short futures positions unprofitable. As a result, the entities under Mr. Boesky's investment control lost money in the futures markets. There is no evidence of which we are aware that Mr. Boesky violated the law in his stock or futures activities from the date of his agreement with the government onward.

The Commission's effort to time the announcement of Mr. Boesky's injunction and administrative sanction so as to reduce to the extent possible adverse effects on the market in general was also successful. By the close of the market on November 14, the companies whose investments were managed by Mr. Boesky were sufficiently liquid that there was no need for margin, stock loan and other calls which could have forced mass liquidations of hundreds of millions of dollars worth of securities with the possibility of a snowball effect on the marketplace in general. Although the Dow Jones Industrial Index declined on November 18 and 19 with the publication of news that certain persons had received subpoenas issued by the Commission and that tape recordings had been made of persons' conversations with Mr. Boesky, the market reaction corrected itself. On November 14, the Commission notified officials of other relevant regulatory agencies and organizations who were in a position to monitor possible unusual developments and take corrective action if needed.

With this background in mind, let us turn to your specific questions. In answering these questions, references to trading or transactions by Boesky refer to trading in accounts managed by him and not in personal accounts.

Question 1: During the negotiations of the settlement agreement, was the SEC aware of Mr. Boesky's futures positions in the stock-index futures market or that he was actively trading in these markets?

Answer: The Commission's staff was generally aware that Mr. Boesky conducted futures transactions incident to his stock market investing. The Commission was not specifically aware of the size or nature of these positions.

Question 2: During these settlement negotiations between the SEC and Mr. Boesky were there any discussions between the SEC and Mr. Boesky or his attorneys, Mr. Pitt or Mr. Levine, concerning Mr. Boesky's futures position or his trading on stock index futures markets?

Answer: As noted above, it was contemplated that Mr. Boesky's organizations would continue to engage in trading securities during the period between the entry into settlement agreement and the filing of the civil injunctive action and administrative proceeding. It was imperative to the ongoing investigative effort that trading activity continue with the safeguards built into the settlement agreements. The Commission did not attempt to monitor directly the specific trading decisions made by the Boesky organization during this period, either in securities or commodities. As noted, both the Commission and the United States Attorney's Office stressed the need for Mr. Boesky to obey all federal laws and built into their agreements provisions designed to accomplish this result.

Question 3: When was the special compliance agent, referenced in paragraph 2 of the settlement agreement between Mr. Boesky and the SEC, appointed by the SEC?

Answer: Gerald F. Rath was appointed special compliance agent on November 14, 1986.

Question 4: After the settlement between the SEC and Mr. Boesky was signed, were Boesky's futures positions at any time monitored by the SEC or by the special compliance agent appointed by the SEC pursuant to the settlement agreement?

Answer: Prior to November 14, 1986, these positions were monitored as described above. Beginning on November 17, they were monitored by Gerald F. Rath, and his associates. Mr. Rath and his colleagues received daily position reports showing

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Question 9: If indeed, Mr. Boesky had positions in options on stock indexes which were monitored by the special compliance agent, why would he not have the same interest in monitoring Mr. Boesky's stock-index futures positions?

Answer: As stated in response to Question 4, Mr. Rath did monitor Mr. Boesky's stock-index futures positions during the period of his service.

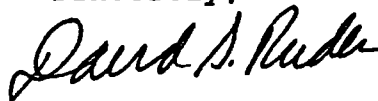
Question 10: Was there ever any consideration given during the negotiations of the settlement agreement between Mr. Boesky and the SEC to advising the CFTC of such negotiations?

Answer: As noted above, the Commission and the United States Attorney's Office believed that it was critical to maintain the utmost confidentiality regarding Mr. Boesky's agreement with the government in order to obtain the maximum benefit from his cooperation. Accordingly, the agreement was kept on a need-to-know basis within the Commission and the Department of Justice until shortly before the injunction was entered on November 14. At that time, the Commission staff notified other relevant financial agencies, including the CFTC, of the forthcoming announcement in order to assure the stability of the nation's financial markets.

As I am sure you can appreciate, the information on Boesky stock and futures positions is non-public. I understand that, absent extraordinary circumstances, it is not the Committee's practice to disclose publicly any non-public material without prior consultation with the Commission, and that you will follow this practice with respect to these materials.

I believe that this letter answers the questions that you have posed. Should you have any further questions, please contact Richard Ketchum, Director, Division of Market Regulation, at (202) 272-3000.

Sincerely,



David S. Ruder
Chairman