

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - :

86 Cr. 378 (MEL)

IVAN F. BOESKY, :

Defendant. :

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GOVERNMENT'S MEMORANDUM WITH REGARD TO THE
SENTENCING OF IVAN F. BOESKY

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On April 23, 1987, the defendant Ivan F. Boesky pleaded guilty to a one-count information charging him with conspiring to make false filings with the Securities and Exchange Commission ("SEC"), in connection with the securities of Fischbach Corp., in violation of Title 18, United States Code, Section 371. That violation subjects the defendant to a maximum five-year term of imprisonment, a maximum fine of \$250,000, and a mandatory assessment of \$50.

As we have previously advised the Court, and as we set forth in this submission, Boesky has been cooperating with the United States Attorney's Office for the Southern District of New York and with the SEC. In view of the pendency of ongoing grand jury investigations arising out of information provided by Boesky, the Government has filed two versions of its sentencing memorandum. Pursuant to the order of this Court, an unredacted memorandum has been filed under seal; in that memorandum, the subject matter of Boesky's cooperation and a recitation of the status of the Government's related investigations has been set forth. In addition, in keeping with the requirements of Fed. R. Crim. P. 6(e), we have publicly filed a memorandum

redacted to preserve grand jury secrecy and prevent premature or unfair disclosure of the subjects and substance of the ongoing investigations.

The information set forth herein has been collected from the defendant and a variety of sources. The Government has not endeavored to recount in this Memorandum all of the information that the defendant has provided.

This memorandum describes Boesky's participation, with others, in serious and widespread criminal subversion of regulatory safeguards designed to prevent manipulations of stock prices, unlawful takeover activity, undercapitalized broker-dealers, and false books and records.

The fruits of Boesky's cooperation with the Government, however, have also been exceptional. As set forth below, Boesky initiated contact with the Government; at the time he did so, only his arrangements with Dennis B. Levine were known to the Government. All of the other investigations and prosecutions described herein are based upon information provided by Boesky in the course of his cooperation.

In determining what sentence is appropriate, the Government respectfully requests that this Court consider both Boesky's extensive criminal conduct and his extensive cooperation.

I. GOVERNMENT'S STATEMENT OF FACTS
REGARDING CRIMINAL CONDUCT OF
IVAN F. BOESKY

As we set forth below, Boesky entered into unlawful agreements with others in order to trade in securities on the basis of inside information and to avoid certain regulatory restrictions on his brokerage business. In addition, he agreed to accommodate others by purchasing or holding stock positions at their request; although Boesky seldom was told the purpose of those accommodations, his activities allowed others to achieve market-related

advantages in securities transactions or to avoid regulators restrictions. Prior to his initiating contact with the United States Attorney's Office, through Levine's cooperation the Government was aware of the insider trading scheme described immediately below. Apart from this scheme, the Government's first knowledge of the various criminal activities described in this Memorandum come from Boesky himself.

A. Insider Trading -- Dennis B. Levine

Beginning in the spring of 1985 and continuing until his arrest in May, 1986, Dennis B. Levine, an investment banker formerly employed at Drexel Burnham Lambert, Inc. ("Drexel"), among other places, supplied Boesky with inside information on at least six occasions.* Levine's misuse of inside information predated his first such dealings with Boesky. Boesky traded in securities based on Levine's information.** The arrangement called for payments to Levine from Boesky based on the value of Levine's information. If Levine was the primary source of information, Boesky would pay him five percent of his profits. When Boesky already had taken a position and Levine's additional information was helpful but not primary reason for his trading activity, Boesky agreed to pay Levine one percent of Boesky's profits. Boesky and Levine had not agreed on a method of making the payment to Levine at the time of Levine's arrest. Levine never received any money from Boesky. According to calculations

* Levine, in June, 1986, pleaded guilty to one count of insider trading in violation of the securities laws, one count of perjury at an SEC deposition and two counts of tax evasion for failure to report his gains from his illegal trading. Levine was sentenced to a two-year term of incarceration.

** Boesky's trading in the securities referred to in this memorandum was conducted on behalf of corporations or limited partnerships over which he exercised investment direction and control; the profits referred to herein are the profits of those entities. Boesky did not trade in these securities through any individual account. As used in this Memorandum, references to "Boesky" include the entities through which he traded.

made by the SEC, Boesky's entities made approximately \$50 million from trading in securities of companies with respect to which Levine provided information.***

Levine acquired inside information both in his capacity as an investment banker and from a group of accomplices employed at other investment banks and law firms in the securities industry. The information Levine passed on to Boesky was both his own and that which members of his ring had misappropriated from their employers. Boesky did not know Levine's source for the information.

B. Insider Trading - Martin Siegel

In August 1982, Boesky commenced an illegal arrangement with Martin Siegel, one of the most prominent investment bankers involved in mergers and acquisitions. When he was at Kidder, Peabody & Co., Siegel provided Boesky with inside information concerning corporate transactions involving Kidder's clients. Boesky and Siegel agreed that Siegel was to receive five percent of the Boesky profits for which Siegel was the primary source of Boesky's information and one percent when Siegel's information was helpful, but not the primary reason for Boesky's trading activity.

According to calculations made by the SEC, Boesky entities made over \$30 million from trading in securities of companies with respect to which Siegel provided information. Siegel, in turn, was paid over \$700,000 in cash. The money was passed to Siegel through intermediaries. This illegal exchange of information ended in the fall of 1985.

Siegel has pleaded guilty to one count of conspiracy to violate the securities laws and one count of tax evasion. He is cooperating with this Office and is awaiting sentence.

*** Pursuant to his agreement with the SEC, Boesky disgorged personal funds representing profits made by Boesky's entities.

Siegel consented to an injunction against future violations of the federal securities laws and agreed to be barred from federally regulated securities businesses.*

C. Criminal Accommodations

(1) Accommodations by Boesky for Others

* As noted below, Siegel and Kidder Peabody have agreed to pay penalties and disgorgement in excess of \$30 million.

(c) Accommodation for Guinness plc

In 1986, Gerald Ronson, one of the limited partners in Boesky's arbitrage partnership, arranged for Boesky to meet

Guinness as involved in a contested takeover of another British company. Guinness and a competing offeror each were offering to exchange their stock for the stock of the target company. Thus, the success of Guinness' offer was contingent upon its stock having a relatively higher trading price than its competitor's stock.

asked Boesky, among others, to purchase large amounts of Guinness stock to artificially affect its market price and make the Guinness offer more attractive.

and Roger Seelig, an English investment banker, acting on behalf of Guinness, also asked Boesky to sell the competing bidder's stock short to artificially depress its market price and make the competing bidder's offer less attractive.

committed Guinness to guaranteeing Boesky against loss and to a specified level of profit with respect to liquidation of Boesky's preexisting Guinness-related stock positions and the shares to be purchased or sold pursuant to Guinness' direction. Gerald Ronson vouched for Guinness and in these arrangements. Boesky agreed and directed the trading, pursuant to this agreement, on a day-to-day basis. When Guinness successfully completed the takeover, Guinness fulfilled its commitments to Boesky by repurchasing some of the shares he had acquired and by investing \$100 million in Boesky's recently-formed limited partnership. During the course of the transaction, Boesky learned that Ronson and , another limited partner in his firm, had also caused entities

under his control to purchase Guinness securities pursuant to similar arrangements with Guinness.

(2) Accommodations for Boesky

(b) Jefferies

Boyd Jefferies (“Jefferies”) was President and Chairman of Jefferies & Co., the largest brokerage house in the third market.* Boesky frequently used Jefferies & Co. to effect lawful securities transactions. Nevertheless, on occasion, Jefferies also accommodated Boesky’s requests to hold stock positions without discussing Boesky’s interest. In such circumstances when, for _____ regulatory reasons, Boesky wanted to appear to liquidate portions of his securities holdings, Boesky “parked” certain securities positions with Jefferies & Co. In the spring of 1985, Jefferies agreed to carry certain securities positions on his firm books in order to conceal Boesky’s continuing interest in the positions, it was agreed, would later be returned to Boesky. Throughout the arrangement, Boesky agreed to bear any m_____ risks and agreed to

* The third market is an the over-the-counter market for exchange-listed securities. Jefferies could execute trades when the exchanges were closed.

reimburse Jefferies & Co. for the cost of _____. In order for this scheme to succeed it was essential that the books and records of both Jefferies' and Boesky's brokerage houses be falsified in order to conceal Boesky's continuing ownership.

During the period Jefferies & Co. held stock for Boesky, the aggregate market value of the stock declined. This necessitated a payment of \$3 million from Boesky to Jefferies & Co. An invoice falsely reflecting payment due from Boesky to Jefferies & Co. for investment banking services was created. Under that guise, Jefferies & Co. was compensated for its losses.

As a result of Boesky's cooperation, Jefferies has pleaded guilty to two felony violations of the securities laws and is awaiting sentence. Jefferies also consented to entry of an injunction enjoining him from future violations of the federal securities laws, and consented to be barred from the securities industry for at least five years. Jefferies & Co. consented to an injunction barring it from future violations and agreed to extensive new procedures to ensure compliance with the federal securities laws.

(d) Other Parking Accommodations

C. Failure to Disclose Participation in a Group
Controlling Over Five Percent of an Issue

II. EXTENT AND TIMELINESS OF BOESKY'S
COOPERATION

Boesky initiated contact with this Office . The plea agreements with this Office and the SEC were executed . Boesky began providing information on . Boesky's plea agreements were based on his proffer of evidence with respect

; . Boesky fulfilled his proffer with respect to each of these subjects. In addition, as set forth more fully below, Boesky provided additional information that went far beyond the proffer. Boesky's actual cooperation identified the following additional subjects: Guinness plc; Ernest Saunders; ; Gerald Ronson; Roger Seelig;

; Kidder, Peabody & Co., Incorporated; ; Michael Davidoff; Setrag Mooradian; and others. None of the subjects of Boesky's proffer and none of

the additional subjects identified by Boesky were under investigation before Boesky began cooperating. In addition, individuals whom Boesky identified and who are now cooperating with this office have provided information leading to new investigations which may result in additional indictments.

When Boesky reached an agreement to plead guilty to one felony count of conspiracy and to cooperate, he was aware that Levine was cooperating with the Government. He was also aware, however, that the investigation of his activities with Levine had only recently commenced. Although the Securities and Exchange Commission had subpoenaed Boesky, no documents had been produced and no testimony had been taken. This Office had not initiated any contact with, or made any request of, Boesky. Boesky initiated contact with this Office. Without Boesky's cooperation, this Office could not have proceeded against Boesky without a lengthy and complex investigation. Obviously, the Government had no assurance that Boesky would have been convicted. Moreover, any investigation of the subjects identified by Boesky would have awaited, and been contingent upon, a successful completion of the Boesky prosecution.

By coming forward at such an early juncture, Boesky enabled this Office to employ him covertly to collect evidence against others before they were alerted to the existence of any investigation. Representatives of this Office requested Boesky to make and tape record telephone calls and to arrange and tape record meetings with various subjects of Government

investigations. In each and every case he carried out the Government's instructions. The evidence collected in this manner significantly furthered the Government's investigations.

Boesky prepared for and attended numerous and extensive meetings with various Government agents from this Office, the SEC and the U.S. Postal Service. Such meetings have been continuing and have not yet concluded. Throughout these meetings Boesky has been candid and forthcoming, and the information he has provided has been corroborated by other evidence in the case. Boesky arranged for the indexing, cataloging and production, pursuant to subpoena, of several hundred thousand pages of documents from the files maintained by his entities. Boesky repeatedly directed the attention of this Office to the most significant of these documents. Boesky encouraged his employees to cooperate with this Office and the SEC. Many of these have done so and provided this Office with corroboration of Boesky's evidence and additional evidence.

Boesky's cooperation enabled this Office to stop ongoing criminal activities by others and to prevent crimes affecting the securities markets that would otherwise have occurred.

In addition to his agreement and cooperation with this Office, Boesky agreed with the SEC to (a) pay \$50 million of his own money into an escrow fund to pay claims of persons who might have claims against him or the entities over which he had exercised investment discretion and control; (b) pay an additional \$50 million of his personal assets as a civil penalty; (c) be enjoined from violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and the rules thereunder; (d) be barred from regulated securities businesses for life; and (e) cooperate with the SEC. At the request of this Office Boesky submitted a letter of resignation to the Michigan State Bar and subsequently consented to be disbarred from the practice of law. Boesky's cooperation with the SEC has resulted in civil enforcement action against Martin

Siegel; Boyd Jefferies, Jefferies & Co., Kidder, Peabody & Co., Inc., Michael Davidoff and Setrag Mooradian, and continuing SEC investigations of dozens of other persons, which are expected to result in additional enforcement actions.

III. FRUITS OF COOPERATION

The criminal conduct exposed by Boesky is under active investigation by this Office and the SEC. To date, the fruits of Boesky's cooperation with the Government have been substantial. Martin Siegel, the former Kidder Peabody partner and Drexel managing director, has pleaded guilty to a conspiracy during his tenure at Kidder Peabody to swapping inside information with the head arbitrageur at Goldman, Sachs & Co. In addition, Siegel pleaded guilty to evading taxes on the cash payments he received from Boesky. Siegel is awaiting sentencing before Judge Ward and is cooperating with the government in its investigation of the Goldman Sachs-Kidder Peabody arrangement. He has reached a settlement with the SEC worth between six and nine million dollars. As a result of Siegel's cooperation, Kidder Peabody has agreed with the SEC to pay \$25 million in disgorgement and civil penalties, disband its risk arbitrage department, and make structural changes to correct and prevent the criminal conduct revealed there by Boesky and Siegel.

Jefferies has pleaded guilty to two five-year securities law felonies and is awaiting sentencing by Judge Lasker. Jefferies pleaded guilty to aiding the recording of false entries in the books of Boesky's brokerage house in connection with the creation of the false invoice detailed above in the discussion of his arrangement with Boesky. He also pleaded guilty to a violation of Regulation T for the illegal extension of credit to another arbitrageur in connection with a scheme to manipulate the price of a stock. Jefferies is cooperating with the United States

Attorney's Office and the SEC. His cooperation will probably lead to criminal charges being filed against other prominent persons in the investment banking, arbitrage and brokerage communities. Jefferies has confirmed Boesky's revelation of criminal accommodations for valued customers, a practice that apparently is deeply rooted in the brokerage industry.

In addition, Michael Davidoff, Boesky's head trader, has pleaded guilty to a five-year felony for violations of the net capital rules for the fraudulent transactions he executed with , discussed above. Davidoff is also cooperating with the Government. Davidoff consented to a civil injunction enjoining in from future violations by the federal securities laws and agreed to be barred from the securities business.

Boesky encouraged his employees to cooperate with the Office and many of them are doing so. They have exposed additional criminal conduct that Boesky and this Office were unaware of, including

In England, an investigation of Guinness arising from Boesky's information has resulted in the indictment of Guinness chairman Ernest Saunders, as well as Gerald Ronson, Roger Seelig, Sir Jack Lyons, and Anthony Parnos, a London stockbroker.

To successfully uncover and prosecute sophisticated economic crimes, information provided by cooperating witnesses is often vital. Boesky has provided such vital information. What Boesky has given the Government is a window on the rampant criminal conduct that has permeated the securities industry in the 1980's, to an extent unknown to this Office before Boesky began cooperating. This window was enlarged by the cooperation of Jefferies, Siegel and Boesky's employees. This is not the group of rogue employees and outsiders exposed by Levine. Boesky directly, and indirectly through Jefferies and Siegel,

revealed that criminal conduct is at the heart of substantial amount of market activity by established securities industry professionals.

CONCLUSION

Boesky has engaged in serious and widespread criminal conduct. He has participated with others in unprecedented subversion of regulatory safeguards designed to prevent manipulations of stock prices, unlawful takeover activity, undercapitalized broker-dealers, and false books and records. At the same time, his cooperation with the Government has been unprecedented. Not since the legislative hearings leading to the passage of the 1933 and 1934 Securities Acts has the Government learned so much at one time about securities law violations. In determining what sentence is appropriate, the Government respectfully requests that Your Honor consider both Boesky's extensive criminal conduct and, in mitigation, his outstanding cooperation.

Respectfully submitted,

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