

MEMORANDUM

October 13, 1982

TO : John Huber, Deputy Director  
FROM : Peter Romeo, Chief Counsel *PR*  
RE : Letter from Alan S. Donnahoe  
dated October 8, 1982

Bill Toomey and I have reviewed the latest letter from Mr. Donnahoe and have the following comments concerning it:

(1) No justification has been furnished for the proposed exemption, except that insiders who exercise stock options are at market risk - like all other purchasers of securities.

(2) Section 16(b) does not discriminate against insiders who hold stock options. The section simply reflects the intent of Congress to restrict short term transactions by insiders. Given this intent, why should option shares be treated preferentially over, for example, shares purchased in the market?

(3) Although the operation of Section 16(b) may increase market risk for insiders, both for option securities and other securities, the very language of the section makes it clear that Congress meant to reduce significantly an insider's freedom to buy and immediately sell. An exemptive rule which would restore this freedom for the exercise of long term option shares would not just modify the statutory provision, it would contradict it. Accordingly, it would be inappropriate for the Commission to adopt the proposed exemption.

(4) Rule 16b-9 already takes into account to a certain extent the market risk attendant to long-term options by excluding all profits on those options, except for those arising in the preceding six months, from recovery under 16(b).