



OFFICE OF THE
GENERAL COUNSEL

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

MEMORANDUM

September 7, 1989

TO: Amy Schwartz
White House Counsel's Office

FROM: Paul Gonson

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In connection with your review of Richard C. Breeden's SF 278, you asked me last evening whether a Commissioner of the Securities and Exchange Commission would be precluded from making securities purchases by reason of that portion of Section 4(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78(d), which provides that no SEC Commissioner shall

". . . participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title."

Attached is a photocopy of a letter I sent on February 11, 1975 to David Reich, Esq., Ethics Counselor at the Civil Service Commission (the predecessor to the U.S. Office of Government Ethics). I opined that Section 4(a) did not prevent an SEC Commissioner from purchasing and holding securities, but that the applicable restrictions were found in Rule 5 of the Commission's Conduct Regulation. Attached to my letter were 1957 SEC memoranda supporting that conclusion. While there is apparently no documentation to that effect, Mr. Reich concurred in this interpretation of Section 4(a).

The Commission has made this interpretation explicit in its Conduct Regulation. See 17 CFR 200.735-3 n.2, which states, referring to the provision of Section 4(a), "This does not preclude Commissioners from engaging in securities transactions." For your ready convenience, a copy of n. 2 is attached.

Attachments

Copy to: Richard C. Breeden