DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

August 14, 1984

Dear John:

Doug Ginsburg was kind enough to allow me to "invite myself" to meet with you after your luncheon this Thursday, August 16. I hope to join you all about 1:15 in Doug's office to talk about corporate takeover legislation.

In particular, we would like to talk about two issues which you and I discussed at lunch several weeks ago: (1) precedents, or lack thereof, for federal intrusion into corporate law, and (2) the SEC's additional statistical analysis of the impact of greenmail on stock prices.

I would hope we could also explore possible resolutions of these issues between the SEC and the Administration. Three things strike me quickly:

(1) On greenmail, I would think it would be useful if the SEC and the Administration could share the collective research on the current status of state lawsuits and how these might provide a solution to the greenmail.

(2) On golden parachutes, I would like to discuss whether the recent tax act has implemented a great deal of what the SEC desires to accomplish with its golden parachutes prohibition. Some summary material on the tax provision is attached to this letter. I would also like to discuss the potential approach which I mentioned at lunch under which golden parachutes would come under some kind of shareholder approval requirement (similar to the SEC proposal on greenmail).

(3) I understand from Doug that you all are preparing a letter to Tim Wirth criticizing some of the more offensive features of the bill which has just been reported out of the Dingell Committee; I would be interested in receiving a copy of that letter when it is available.

I look forward to seeing you Thursday.

Sincerely,

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Thomas J. Healey

The Honorable
John S. R. Shad, Chairman
Securities & Exchange Commission
450 5th Street, N.W., Suite 6000
Washington, D.C. 20549

Attachment

cc: Mr. Doug Ginsburg

Federal Income Tax Treatment of Golden Parachute Payments

The Tax Reform Act of 1984 has adopted new rules designed to discourage "golden parachute" arrangements under which excessive severance payments are made to corporate executives as part of a corporate takeover. These rules deny the payor (normally the acquired or acquiring corporation) any deduction for any "excess parachute payment" and impose upon the recipient of an "excess parachute payment" a 20 percent excise tax, in addition to regular income and social security taxes.

Briefly, the operation of the golden parachute rules is as follows. The rules treat as a "parachute payment" any payment or payments in the nature of compensation received by an officer, shareholder, or highly compensated employee of a corporation if (a) the payment is contingent on a change in the ownership of the corporation or of a substantial portion of the assets of the corporation, and (b) either the payment has a present value at the time of the change of ownership which equals or exceeds three times the recipient's "base amount," i.e., his average compensation from the corporation for the five most recent taxable years or the payment is pursuant to an agreement that violates any securities laws or regulations. Any payment pursuant to an agreement entered into or amended within one year before a change in ownership of a corporation is presumed to be contingent on a change in ownership of the corporation. A "parachute payment" will be treated as an "excess parachute payment" to the extent it exceeds the recipient's base amount or, if greater, an amount which the recipient is able to establish is reasonable compensation for personal services actually rendered by him.

Because the golden parachute rules have only recently been enacted, there is not yet an indication of how effective they will be. The rules were, however, opposed by the Treasury Department as an unnecessary incursion by the federal tax laws into an area more effectively addressed by either federal securities laws or state law limitations on corporate waste. The Treasury Department and the tax bar are concerned that the rules are both complicated and broad; where a corporate acquisition occurs, the rules may affect traditional compensation and retirement payments as well as "golden parachute" payments.