

E. WISCONSIN, CHAIRMAN
JAKE GARN, UTAH
JOHN HEINZ, PENNSYLVANIA
WILLIAM L. ARMSTRONG, COLORADO
ALFONSE M. D'AMATO, NEW YORK
CHIC HECHT, NEVADA
PHIL GRAMM, TEXAS
CHRISTOPHER S. BOND, MISSOURI
JOHN H. CHAFEE, RHODE ISLAND
DAVID K. KARNES, NEBRASKA

DONALD W. HIEGLE, JR., MICHIGAN
PAUL S. SARBANES, MARYLAND
CHRISTOPHER J. DODD, CONNECTICUT
ALAN J. DIXON, ILLINOIS
JIM SASSER, TENNESSEE
TERRY SANFORD, NORTH CAROLINA
RICHARD C. SHELBY, ALABAMA
BOB GRAHAM, FLORIDA
TIMOTHY E. WIRTH, COLORADO

KENNETH A. MCLEAN, STAFF DIRECTOR
LAMAR SMITH, REPUBLICAN STAFF DIRECTOR AND ECONOMIST

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

January 6, 1989

The Honorable David S. Ruder
Chairman
Securities and Exchange Commission
450 Fifth Street
Washington, D.C. 20549

Dear Chairman Ruder:

A number of important issues regarding leveraged buyouts and other going private transactions were raised in S. 1323, the Tender Offer Disclosure and Fairness Act of 1987, which was reported out of the Senate Banking Committee on September 30, 1987 by a vote of 14-6, but which was never enacted into law. Other issues have arisen as a result of several recent, highly publicized transactions.

The purpose of this letter is to request that the Treasury Department and the appropriate regulatory agencies conduct an analysis of the following:

1. Significant transactions (value greater than \$100 million) which have taken place over the last five years including: the number and size of such transactions; the economic reasons prompting the transactions; the "success" of such transactions measured by appropriate criteria (e.g., growth, revenues, costs); the economic impact of such transactions (e.g., their effect on the efficient allocation of resources in the economy); the amount of additional debt which has been incurred to finance these transactions; the ability of borrowing entities to service debt with existing cash flows, and in the event of a general economic downturn, the extent to which these entities have sold assets to payoff the debt incurred; and to the extent quantifiable, the short-term and long-term number of job losses and/or gains associated with such transactions.
2. The extent to which members of management have participated in such transactions as equity investors, and the terms of such participation.

3. The number of instances in which companies engaging in these transactions have subsequently "gone public," and the results thereof.
4. The number of instances in which (1) members of management have initiated these transactions in the absence of any announced takeover attempt of the issuer, (2) members of management have initiated such transactions as a response to an announced takeover attempt, and (3) a leveraged buyout firm has initiated such transactions.
5. Whether the conflict of interest identified by the SEC in its Rel. No. 34-17719 when management participates in these transactions is satisfactorily addressed by the Commission's disclosure requirements under Rule 13E-3.
6. Whether opinions of fairness and other appraisals pertaining to the transaction or the issuer's worth are being made available to shareholders, bondholders, and other interested parties.
7. Whether fairness is an appropriate disclosure criterion, or whether the party taking the company private should be required to disclose any valuations it has made, or that have been made on its behalf, of the issuer as a going concern, in liquidation, or through partial asset sales.
8. Whether the fairness opinions rendered by investment bankers have any value given the apparent conflict of interest when the level of fees of the investment banker are contingent upon the success of the transaction.
9. The impact on bondholders of such transactions, and whether bondholders should be accorded additional protections under the federal securities laws.
10. The extent of participation by pension funds in leveraged buyout transactions, either as a lender or equity participant, and whether such activity by pension funds is appropriate as a matter of public policy.
11. Whether the participation of banks and other financial services firms in leveraged buyouts poses any "safety and soundness" concerns.

12. Whether banks that participate in LBO loans conduct appropriate credit analysis and whether they are obtaining enough information from borrowers, and whether they are obtaining information not available to shareholders.
13. Whether banks should be required to report their LBO exposure.
14. Whether government insured deposits should be allowed to be invested in leveraged buyouts or in the high yield securities that are subsequently issued to retire the loans.
15. The impact of LBO financing on the money supply and the cost of funds to other borrowers.
16. Whether these transactions are encouraged by or are the result of incentives in the tax code and, if so, the advantages and disadvantages to revisions in the tax code modifying these incentives.
17. Whether the pace and size of LBO activity results in an excessive level of corporate debt that could make the economy more vulnerable in the next recession.
18. What effect, if any, LBO activity has on the long-term competitiveness of American firms.
19. Whether it would be appropriate to impose, as some commentators have suggested, a "margin" requirement on such transactions, so that entities engaged in these transactions would be required to provide an appropriate level of capital, for example 20-25%.

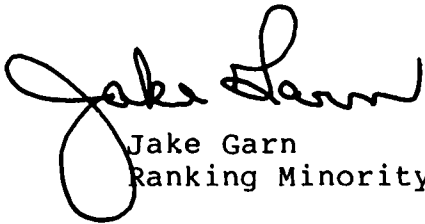
We envision that the Chairman of the SEC, the Treasury and the Federal Reserve Board would respond to issue 1, the SEC to issues 2-10, all the bank regulators to issues 11-14, and the Treasury and Federal Reserve Board to issues 15-19. However, we would encourage responses to as many of these issues as possible.

In particular we hereby solicit your views on ways for improving the procedures, fairness and financing of these transactions as well as any recommendations you may have for reducing any serious risk that may occur as a result of the next economic downturn. In addition, if you believe some action is

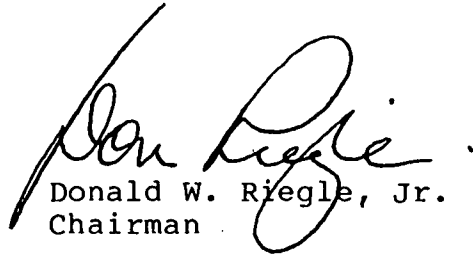
necessary, please indicate whether current rulemaking authority is sufficient, or whether legislation would be necessary.

We would appreciate your response to this inquiry by February 1, 1989. If you have any questions please feel free to contact either of us or Steven B. Harris or Bradley D. Belt of the Committee staff.

Sincerely,



Jake Garn
Ranking Minority Member



Donald W. Riegle, Jr.
Chairman

cc. Nicholas Brady
Robert L. Clarke
Alan Greenspan
L. William Seidman