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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

December 22, 1987

Harvey Pitt, Esq.
Fried, Frank, Harris, Shriver & Jacobson
1001 Pennsylvania Ave, NW
Washington, D.C. 20004

Dear Harvey:

Let me thank you for the invaluable assistance you have given me and the Securities Subcommittee throughout the past year on legislation to develop a statutory definition of illegal insider trading and for offering to see this process through until the end of the legislative session in 1988.

As you know, the Subcommittee held its fourth, and in all likelihood final, hearing on insider trading legislation on December 15, 1987. I am enclosing a copy of the transcript of that hearing together with the testimony of the witnesses.

It is my understanding that the Securities and Exchange Commission will be submitting to the Subcommittee a proposed legislative history to accompany their insider trading proposal by January 15, 1988. I will obviously want to share that proposal with you, John Olson and Ted Levine so that we can work together prior to finalizing our own product.

In the interim, it would be extremely helpful to the Subcommittee if you would summarize for us the major issues, as you view them, that have resulted from the hearings, together with your best judgment regarding how these issues should be resolved. Obviously, the views of the Ad Hoc Legislative Committee, the Commission, and the Securities Industry Association are of particular importance. Issues that immediately come to my mind include among others:

- the "possession" vs. "use" standard;
- institutional liability and defenses;
- the scope and operation of derivative liability;
- tipper liability and the personal benefits test;

- the treatment of analysts (and protecting the free flow of information into the markets);
- private rights of action and damages;
- the prohibition against trading and tipping while in possession of material, nonpublic information relating to a tender offer.

These issues and an accompanying analysis, will clearly have to be considered by the Subcommittee and the full Committee prior to the markup of legislation. Your input and views in this regard would be greatly appreciated.

Again, many thanks for your ongoing leadership and commitment to this legislative initiative.

With all best wishes for a healthy, happy and prosperous 1988.

Sincerely,



Donald W. Riegler, Jr.
Chairman
Securities Subcommittee