Law offices of Loeb and Loeb
Newport Beach, California

September 23, 1981

Mr. George A. Fitzsimmons
Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

RE: FILE NO. S7-891, PROPOSED REVISION OF CERTAIN EXEMPTIONS FROM THE REGISTRATION PROVISIONS OF THE SECURITIES ACT OF 1933 FOR TRANSACTIONS INVOLVING LIMITED OFFERERS AND SALES

Dear Mr. Fitzsimmons:

I would like to offer the following comments regarding the proposed Regulation D contained in Release No. 33-6339, dealing with the matters referenced above, proposing to change the current limited offering exemptions contained in Rules 146, 240 and 242:

1. The Commission has done an admirable job in revising the exemptions referenced above, and should be commended for its results to date.

2. I would respectfully recommend that the restriction on remuneration paid for solicitation or sales contained in proposed Rule 502(e) be amended so as not to apply to solicitation of or sales to accredited investors. Although the proposed rule is currently not explicit on this point, it would appear to prohibit the payment of finder's fees for solicitation of or sales to accredited investors. This seems contradictory to the rationale for proposed Rule 502(e) and to the concept of accredited investors, and to work against the intent of the proposed Form D.

2.1 Finders fees are important to private offerings.

2.1.1 As you know, a finder's fee is sometimes paid to an individual that is not a registered broker/dealer for activities that are limited to introducing opportunities to potential investors, without any activity in advising or persuading the potential investor or in negotiating the terms of any sale of securities.

2.1.2 This practice occupies such an established and important role in the placement of private securities that at least one law journal article by a prolific and respected writer in the field has been dedicated solely to this practice. See Augustine and Pass, "Finder's Pees in Security and Real Estate Transactions, " 35 Bus. Law. 485 (1980).

2.1.3 Finder's fees play an important role in the placement of private offerings because such offerings are often too limited to interest professional registered broker/dealers and consequently must be distributed through a network of friends and associates. One would expect that this activity is indeed essential to the private offerings that are the target for encouragement from the proposed revisions. Therefore, the proposed revisions should leave some role for finder's fees.

2.2 Finder's fees should be allowed for transactions with accredited investors.

2.2.1 The concept of the accredited investor, a concept which has been astutely and correctly expanded in definition and applicability by these proposed rules, is based on the idea that certain individuals of experience, sophistication and wealth are able to take care of their own interests as investors without the assistance of the full registration regime due to their judgment, bargaining power and financial strength. With this concept in mind there appears no reason to prohibit such accredited investors from the widest possible access to private offerings, as would be provided if such offerings could be encouraged through the payment of finder's fees to individuals who are not registered broker/dealers. Against this consideration is weighed only the stated rationale for the limitation in Rule 502(e). To quote the synopsis in the commentary accompanying the proposed Regulation D, in part C.5 thereof, the restriction on remuneration would "provide safeguards for investor protection since a registered broker/dealer, pursuant to its suitability obligations, must make a determination as to whether participation in the offering is appropriate for each investor." Although, this seems an admirable goal in the case of non-accredited investors, this thinking seems inappropriate in the case of offers or sales to accredited investors. The fundamental concept of an accredited investor is that such an investor can make its own determination as to its participation without the assistance of third parties. Hence, to apply this restriction to transactions with accredited investors would be to make the accredited investors pay the price of reduced access to offerings (specifically those offerings that are too limited to interest registered broker/dealers), in order to receive the non-benefit of advice that such investors have been assumed not to need. This inconsistency in thinking may at first glance seem to be a fine point, but upon reflection its effects appear to be so important as to demand remedy. There would, however, appear to be no argument quite so strong to eliminate the restriction on finder's fees as far as transactions with non-accredited investors are concerned.

2.2.2 There are many private offerings, the very sort of limited offerings that are intended to be aided by the proposals in question, that are too limited to interest registered professional broker/dealers. For these offerings to be considered by accredited investors other than personal acquaintances of the issuer, it is necessary for these offerings to be made available through the activities of finders. This would appear to be a long established practice in the field. If the proposed Rule 502(e) were to eliminate all finder's fees for exempt offerings, it would prove to be a severe detriment to the offering of-private securities, issues, rather than the boon that is intended. On the other hand, to restrict these offerings only as far as finders working with non-accredited investors may be a reasonable restraint to be placed on these issues in defense of those smaller investors less able to fend for themselves.

2.2.3 If proposed Rule 502(e) stands as written, eliminating the use of finder's fees in transactions with accredited investors, it would serve only to force small exempt issuers to act outside of the proposed safe harbors of Regulation D, in reliance on the statutory exemptions such as found in Section 4(2). This would simply eliminate their obligation to file the proposed Form D and thereby necessarily defeat the intent of Form D to gather information on exempt issues. Keeping the SEC in the dark as to exempt offerings seems to be a high price for the public to pay in exchange for the dubious achievement of requiring accredited investors to listen to the unneeded and probably unheeded advise of registered broker/dealers.

3. I would also like to suggest that each of the proposed rules reference in their text the specific statutory section that they are interpreting and from which they derive their authority. Although the proposed Regulation D does represent an excellent coordinated system of exemptions that is to be encouraged, the regulation should not take the tone of free-floating legislation promulgated upon its own authority, but should instead clearly refer back to its statutory roots on a rule by rule basis.

The opportunity to make the comments contained in this letter are greatly appreciated. The comments of this letter are solely the opinions of the undersigned and do not necessarily represent the views of Messrs. Loeb and Loeb nor of any other attorney associated with the law firm.

Respectfully submitted,

Stephen Glazier