

Deloitte Haskins + Sells  
New York, NY

October 5, 1981

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

Dear Mr. Fitzsimmons :

PROPOSED REVISION OF CERTAIN EXEMPTIONS FROM THE  
REGISTRATION PROVISIONS OF THE SECURITIES ACT OF 1933 FOR  
TRANSACTIONS INVOLVING LIMITED OFFERS AND SALES (FILE NO. S7-  
891)

We are pleased to respond to the Commission's request in Release No. 33-6339 for comments on the proposed revision of certain exemptions from registration provisions.

#### Overview

We support the Commission's efforts under proposed Regulation D to coordinate the various limited offering exemptions and to streamline the existing requirements applicable to private offers and sales of securities.

#### Definition of Accredited Investor

The term "accredited investor" includes "any natural person who had an individual adjusted gross income in excess of \$100,000..." We question the inclusion of such gross income test in the definition of an accredited investor. In our view, the \$100,000 gross income test does not have any identified relationship to an individual's ability to bear investment risk.

#### Information Requirements

Under the 60% rule, the issuer may provide the disclosure information required by paragraph (b)(2) to all purchasers or elect to provide such information, as well as certain other information, to non-accredited investors on their written request. The ability of this option to reduce preparation cost is diminished because the

issuer will have to prepare full disclosure information required by paragraph (b)(2) in the event that one non-accredited investor requests such information.

#### Type of Information to be Furnished

The information specified in Part II of Form 1A of Regulation A is required to be furnished for offerings up to \$1,500,000. The information specified in Part 1 of Form S-18 is required to be furnished for offerings of \$1,500,001 to \$5,000,000. A comparison of these forms reveals that the specified information requirements are almost identical. The significant differences include: risk factors and dilution in Item 4 of Form 1A, capitalization table in Item 5, legal proceedings in Item 8, and stock options in Item 11 of Form S-18.

We note that proposed Forms S-1, S-2 and S-3 do not require capitalization tables, and we assume this requirement will be eliminated for all forms. We believe the nature of the other differences, particularly legal proceedings and risk factors, are also relevant to offerings below \$1,500,000. We suggest the disclosure requirements be conformed for offerings up to \$5,000,000.

Although the disclosure requirements should be conformed for offerings up to \$5,000,000, we believe that the option for a balance sheet audit should be retained as proposed for offerings up to \$1,500,000 when audited financial statements for the most recent fiscal year cannot be obtained without unreasonable effort or expense.

#### Conditions to be Met

Proposed Rule 505 contains certain disqualifying provisions, not contained in Rule 504, that would prohibit the issuer from using the exemption provided by Rule 505. Such provisions include making of a false filing with any state, the conviction of a felony involving fraud or deceit, etc. We believe these disqualifying provisions also should be applicable to Rule 504 offerings.

Under proposed Rule 504, in order to be exempt from the provisions of Section 5 of the Act, the issuer must not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. To be eligible for this exemption under proposed Rule 505, the issuer must not be subject to the reporting requirements of Section 13 or 15(d) of the Act for 36 months preceding the offering. (We interpret this requirement to mean 36 consecutive months). We believe this 36 month limitation also should be applicable to Rule 504 offerings.

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We would be pleased to answer any questions that the Commission or its staff may have with respect to our comments.

Yours truly,  
Deloitte Haskins & Sells

cc: Mr. Clarence Sampson  
Mr. Lee Spencer  
Mr. Edward Greene