Law Offices of
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October 2, 1981

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

Re: Proposed Regulation D; File No. S7-891

Dear Mr. Fitzsimmons:

We have several comments regarding proposed Rule 502(e) that we wish to bring to the Commission's attention. As you are aware, that proposed rule would provide that no commission or similar remuneration can be paid or given for soliciting prospective buyers in connection with sales of securities in reliance on proposed Regulation D unless such commission or similar transaction related remuneration is paid or given to a broker-dealer registered under both Section 15(b) of the Exchange Act and pursuant to applicable regulations in these states in which the securities are to be offered. Such a restriction is not presently placed upon issuers that offer their securities in reliance upon Rule 146.

Our concern is with the impact of the proposed rule upon those persons who are registered as "finders" pursuant to the Michigan Uniform Securities Act, as amended (the "Michigan Act"). Section 401(u) of the Michigan Act defines a "finder" as "a person who, for consideration, participates in the offer to sell, sale or purchase of securities by locating, introducing or referring potential purchasers or sellers". Finders are specifically included in the definition of investment advisors set forth in Section 401(f) of the Michigan Act and are therefore required, pursuant to Section 103(d) of the Michigan Act, to register as investment advisors with the Michigan Corporation and Securities Bureau.

The activities of a finder are limited to locating, introducing or referring potential purchasers or sellers. Unlike a broker-dealer, a finder is not authorized to act as a common law agent with authority to negotiate or conclude any contracts for the purchaser or sale of securities. Finders are excluded from the definition of "agent" and "broker-dealer" in the Michigan Act because persons within those categories possess the authority of a common law agent. Any offers and sales resulting from the finder's "participation" in the offer and sale of securities will be proposed and concluded by the issuer, a broker-dealer, a statutory agent, other

agent of the issuer or other would-be purchaser or seller. Section 102(c) of the Michigan Act places several restrictions on the activities of a finder and provides that it is unlawful for any investment adviser acting as a finder to:

(1) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.

(2) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of his or her finding activities before the sale or purchase that the person is acting as a finder, a payment for services as a finder, the method and amount of payment, as well as any beneficial interest, direct or indirect, of the finder or a member of the finder's immediate family in the issue of the securities or commodities that are the subject of services as a finder.

(3) Participate in the offer, purchase or sale of a security or commodity in violation of section 301 (setting forth the registration requirement for securities). However, if the investment adviser makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state, or alternatively the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301 his or her activities as a finder shall not violate section 301.

(4) Participate in the offer, purchase or sale of a security or commodity without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This section shall not require independent investigation or alteration of offering materials furnished to the finder.

(5) Fail to inform or otherwise insure disclosure to all persons involved in the transaction as a result of his or her finding activities of any material information which the finder knows, or in the exercise of reasonable care should know based on the information furnished to him or her, is material in making as investment decision, until conclusion of the transaction.

(6) Locate, introduce or refer persons that the finder knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience or need to diversify investments.

It is clear to us that proposed Rule 502(e) would prevent those persons who are registered as finders under the Michigan Act from being compensated for participating in any offerings of securities that are made pursuant to proposed Regulation D. We are not convinced that the benefits of such a rule outweigh its

costs. In Release No. 33-6339, the Commission stated its belief that this proposed rule will 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. However, as stated above, Section 102(c)(6) of the Michigan Act does impose a statutory suitability requirement on finders and makes it unlawful for a finder to "locate, introduce or refer persons that the finder knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments." In addition, under Rule 146 and also under proposed Rule 506 (at least with respect to non-accredited purchasers) the issuer shall have reasonable grounds to believe and, after making reasonable inquiry, shall believe, immediately prior to making any sale, that each purchaser either alone or with his offeree representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment. Even though this requirement does not directly impose a requirement on the issuer to make a determination as to whether participation in the offering is appropriate for each investor, it does at least indirectly impose such a requirement on the issuer by requiring it to only sell its securities to those persons who have such knowledge and experience in financial and business affairs that they are capable of evaluating the merits and risks of the prospective investment. It seems unlikely that an investor who has such knowledge and experience in financial and business affairs that he is capable of evaluating the merits and risks of the prospective investment would, on the other hand, be unable to determine for himself whether the prospective investment was a suitable one for him.

The Commission also stated in Release No. 33-6339 that it did not believe that the additional requirements set forth in proposed Rule 502(e) will add any burdens to the issuer since in most instances persons soliciting prospective buyers or selling the issuer's securities would be subject to broker-dealer registration provisions under applicable state and federal laws. As set forth above, finders are excluded from the definitions of "broker-dealer" and "agent" under the Michigan Act but are required to register as investment advisors pursuant to that Act. However, since a finder is limited solely to introducing, locating and referring potential buyers and sellers of securities and cannot act as a common law agent for either party and negotiate or conclude any sales, the finder, therefore, cannot "effect transactions in securities for the account of others" and therefore should not be considered to be a "broker" as defined in Section 3(a)(4) of the 1934 Act. A finder would be an "investment advisor" as defined in Section 202(a)(11) of the Investment Advisors Act of 1940 but, provided it maintains its principal office and place of business in Michigan and all of its clients are residents of the State of Michigan and it does not furnish advice or issue reports or analysis with respect to securities listed or admitted to unlisted

trading privileges on any national securities exchange, the finder would be exempt from registration under the Investment Advisors Act of 1940 by virtue of Section 203(b)(1) of that Act. Therefore, although a finder is required to register as an investment advisor under the Michigan Act, as long as its activities are purely intrastate, it should not be subject to the federal broker-dealer or investment advisor registration requirements.

Preventing an issuer from using these registered finders would place an additional burden on issuers by foreclosing them from utilizing a valuable source of referrals of potential investors. Indeed, the issuer would be limited to relying entirely upon the efforts of registered broker-dealers or its own officers, directors or employees. This is a significant deterrent to many issuers, for participation by broker-dealers in private offerings is oftentimes impossible due to their lack of interest or extremely expensive to the issuer because of the large brokerage fees. Because of a generally assumed lower overhead, finders would appear to be more likely to participate in a private offering with a lower sales consideration than registered broker-dealers and issuers might avoid the costly expense allowances demanded and received by many broker-dealers because of the large scale of their brokerage operations.

We hope that the Commission will carefully consider the issues raised in this letter and respectfully request that the Commission amend its proposed Rule 502(e) so that it will not prevent persons who are registered as finders pursuant to the Michigan Act from receiving compensation for locating, introducing or referring potential buyers and sellers in transactions that are made in reliance on proposed Regulation D.

Very truly yours,

Gary D. Bruhn