Proskauer Rose Goetz & Mendelsohn
New York, NY

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

Re: File No. 57291 -- Proposed Regulation D
Securities Act Release No. 3-6339 (August 7, 1981)

Dear Mr. Fitzsimmons:

Reference is made to File No. S7-891 and Securities Act Release No. 33-6339 (August 7, 1981) (the "Proposed Revision of Certain Exemptions from the Registration Provisions of the Securities Act of 1933 for Transactions Involving Limited Offers and Sales"). Over the last ten years, this firm has represented and continues to represent many clients, both public and private, who have offered and sold or desire to offer and sell securities pursuant to the exemptive provisions of the Securities Act of 1933 (the "Securities Act"). Given our experience with the exemptive provisions of the Securities Act, we would like to offer the following comments on several specific provisions of proposed Regulation D, which comments are designed to assist the Commission in its development of a coherent scheme for relieving issuers of the burdens of registration provisions:

1. Proposed Rule 502(c) - "Limitation on Manner of Offering".

We agree that the offer and sale of securities by means of a general solicitation or general advertising is inconsistent with the private offering exemptions. Nevertheless, the proposed elimination of the safe-harbor for seminars and meetings with and letters and other written communications to qualified offerees significantly detracts from the Commission's goal of replacing subjective tests with objective tests whenever this can be done without undermining regulatory objectives. We believe that the present provisions of Rule 146 deal appropriately with this problem by permitting mailings to qualified offerees and permitting seminars or meetings with qualified offerees. Rule 146 also permits "unsophisticated" offerees, accompanied by their sophisticated professional advisers, to attend seminars or meetings without the issuer risking any loss of the Rule 146 exemption.

One consequence of the proposed elimination of the ‘qualified offeree’ concept is to eliminate Rule 146’s safe-harbor concept for certain seminars and mailings. Nevertheless, the safe harbor outlined in the preceding paragraph, which provides for certain seminars and mailings under Rule 146, has merit and should be retained. A satisfactory formulation of Rule 502(c) would be that seminars or meetings do not constitute a form of general solicitation or general advertising so long as all persons present are either accredited investors or non-accredited investors accompanied by purchaser representatives.

One technical point is worthy of note in connection with this area. Rule 146(c)(3), which Regulation D would delete, had the effect of prohibiting certain mailings unless directed exclusively to qualified offerees. Presumably, the deletion liberalizes the proposed Rules by permitting letters and circulars. However, the elimination of the provision listing letters and circulars as one type of activity which would result in a general solicitation does not, nor should it, result in permitting mass mailings. Since there remains some implicit restraint on mailings it would be useful to retain, in Rule 502(c), a specific provision permitting letters, circulars, and other written materials to be directed to a limited group. The simplest formulation would be to retain language similar to Rule 146(c)(3) but specifically permit mailings to persons who would qualify as accredited investors.

2. Proposed Rule 501(a)(4) - "Accredited Investor" and Proposed Rule 501(f) - "Executive Officer."

Under proposed Rule 501(a)(4), each director or executive officer of an issuer is treated as an "accredited investor" for purposes of securities which are sold pursuant to proposed Rules 505 and 506. Proposed Rule 501(f) defines the term "executive officer" as meaning "... the president, secretary, treasurer any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy-making functions for the issuer ..." and expands on the current definition of "executive officer" contained in Rule 242(a)(1)(iii) by allowing executive officers of subsidiaries to be deemed executive officers of an issuer if they perform such policy functions for the issuer. We believe that proposed Rules 501(a)(4) and 501(f) should be expanded to expressly include not only executive officers of subsidiaries, but should also include officers and directors of corporate general partners of issuers and general partners of general and/or limited partnerships which act as general partners of issuers.

The concept reflected in proposed Rules 501(a) (4) and 501(f), while suited to a situation involving a corporate issuer, does not, in our judgment, adequately deal with transactions involving partnership issuers. A significant number of issuers who raise capital under Rule 146 are limited partnerships. The use of limited partnership issuers is, as the Commission is undoubtedly aware, the

predominant structure used in oil and gas and real estate syndications. Frequently, the limited partnership issuer will have as its general partner either a corporation, general partnership or limited partnership. We therefore recommend that proposed Rules 501(a)(4) and 501(f) be expanded to include the officers and directors of the corporate general partners and the general partners of the general partnerships and limited partnerships which act as general partners of limited partnership issuers.

In accordance with Securities Act Release No. 33-6339, we are enclosing two additional copies of this letter. We would be pleased to discuss with you any questions you may have concerning any aspects of this letter.

Respectfully submitted,

Richard H. Rowe