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August 10, 1982

1933 Act/Rule 502(b)(2)(iii)
Regulation D

David B. H. Martin, Jr., Esq.
Office of Chief Counsel
Division of Corporate Finance
Securities and Exchange Commission
500 N. Capitol Street
Washington, D. C. 20549

Dear Mr. Martin:

The purpose of this letter is to request on behalf of this Firm the Staff's interpretation of the types of exhibits which must accompany or be available to an investor acquiring interests in a limited partnership pursuant to an offering under Regulation D. Specifically, we are inquiring as to the necessity of having available to investors (i) an opinion of counsel regarding the legality of the limited partnership interest being offered by the issuer pursuant to Regulation D and (ii) an opinion of tax counsel concerning tax matters relating to the offering.

While we are mindful of the Commission's requirements for application of an interpretive letter as set forth in Securities Act Release No. 5127, particularly as to the requirements for naming a company and discussing hypothetical situations, we are making this request on behalf of this Firm, and therefore we are not including with this request the name of a specific company. Typically, this Firm represents limited partnerships which are desirous of raising venture capital through private offerings to a limited number of purchasers in reliance upon the exemptions from registration requirements under the Securities Act of 1933 ("Act") afforded by §3(b), §4(2) and either Rule 504, 505 or 506 of Regulation D promulgated pursuant to the Act. Therefore, please regard this Firm as the person requesting the interpretation.

For purposes of your interpretation, you should assume that the offering is being made by a limited partnership [either formed or to be formed following the sale of a minimum number of units of limited partnership interests ("Units")] which will

be engaged in the business of exploring for and developing oil and gas. As such, there will be the usual tax benefits available in the form of intangible drilling and development costs, deductible management fees and administrative fees, ammortizable organizational costs, and, to the extent that the wells are developed, tangible completion costs, including ACRS depreciation and investment tax credit, and cost or percentage depletion to the extent of any oil and gas production. The Units issued by the limited partnership will not be evidenced by any certificate and may only be resold or otherwise transferred with the consent of the general partner of the limited partnership.

The maximum size of the offering of Units will be less than $5,000,000 and will be made pursuant either to Rule 505 or Rule 506 of Regulation D. Accordingly, pursuant to Rule 502(b)(2)(A) the information furnished to prospective investors will be comparable to the information required in Part I of Form S-18. The question arises as to what additional information in the form of exhibits must be made available to investors, upon their written request, prior to their purchase of Units.

Rule 502(b)(2)(iii) of Regulation D states that exhibits required to be filed with the Commission as part of the registration statement need not be furnished to each purchaser if the contents of the exhibits are identified and the exhibits are made available to the purchaser, upon his written request, prior to his purchase of the securities being offered by the issuer. Item 601(b)(5) and (8) of Regulation S-K, relating to exhibits to be filed with (among other filings) a registration statement on Form S-18, requires the filing with such a registration statement of (i) an opinion of counsel regarding the legality of the securities being registered and (ii) an opinion of counsel regarding tax matters under certain circumstances. Footnote (8) to the table under Item 601 provides that the exhibits concerning tax matters "need only be filed with other applicable registration forms where the tax consequences are material to an investor and a representation as to tax consequences is set forth in the filing." Another portion of that footnote indicates that with respect to offerings to which Securities Act Industry Guide 5 (i.e., those pertaining to real estate) are involved, a revenue ruling from the Internal Revenue Service supporting tax matters and tax consequences "when such tax matters are material to the transaction for which the registration statement is being filed" may be substituted for an opinion of counsel.

We believe that the above Regulations should not be interpreted as requiring formal opinions of counsel regarding legality and tax consequences in small offerings of limited partnership units such as described above. We believe that valid arguments exist which permit offerings to be made pursuant to Regulation D without the necessity of preparing and making such opinions available to prospective investors. We believe that the making available of such exhibits should be required only if the issuer engages counsel specifically to prepare such exhibits, in other words only if such opinions are otherwise available.

In general, the preparation of both an opinion as to the legality of the securities and as to tax matters from an economic standpoint constitutes an extremely expensive undertaking, which could more than double the legal fees of a typical small offering. Normally, an issuer in a smaller offering (i.e., slightly in excess of $500,000) desirous of complying with the law is not in the position to absorb such costs.

To require the preparation of such exhibits appears to us to be counterproductive to a primary purpose of Regulation D, which we understand was to continue the trend of relaxing the regulatory environment which, in the past, has at times tended to thwart the ability of small businesses to raise capital. This trend commenced with the relaxation of aspects of Regulation A, the adoption of Rule 242, the introduction of a simplified registration statement on Form S-18, followed by the enactment of the Small Business Investment Incentive Act of 1980, including the addition of §4(6) and the increase of the ceiling in §3(b) from $2,000,000 to $5,000,000, and culminating at the present time with the adoption of Regulation D. As stated in the narrative to the final rules in Securities Act Release No. 6389:

> "The Regulation is designed to simplify existing rules and regulations, to eliminate any unnecessary restrictions that those rules and regulations place on issuers, particularly small business, and to achieve uniformity between state and federal exemptions in order to facilitate capital formation consistent with the protection of investors."

Certainly, imposing the requirement that issuers, particularly issuers seeking to raise more than $500,000 but less than $5,000,000, under either Rule 505 or Rule 506 of Regulation D, must undertake to obtain an opinion of counsel regarding the legality of the securities and the tax matters associated with any such offering would often result in prohibitive costs to the issuer, not to mention time delays, and as a consequence

could tend to discourage many small businesses from utilizing the alternative afforded by Regulation D in raising capital. Prior to the adoption of Regulation D, it was not the normal practive in offerings of limited partnership units to obtain such opinions of counsel.

Therefore, we believe that the literal interpretation of the footnotes (5) and (8) to the table to Item 601 of Regulation S-K should not be read into Rule 502(b)(2)(iii) as requiring a limited partnership issuing units of its limited partnership interests to investors to incur the expense of and the delays in obtaining opinions of counsel regarding the legality of the units and tax matters associated with an investment in the offering in order to make the same available to investors.

To assist this Firm in dealing with current and future offerings under Rules 505 and/or 506 of Regulation D, we would appreciate your interpretation of whether Rule 502(b)(2)(iii) as it applies to a limited partnership, either formed or to be formed, as described in this letter requires the issuer to obtain (i) an opinion of counsel as to legality and/or (ii) an opinion of counsel regarding tax matters.

Very truly yours,

HOPPER, KANOUFF, SMITH AND PERYAM

By Ward E. Terry, Jr.
Ward E. Terry, Jr.

WET:slr