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Honorable George A. Fitzsimmons
Securities & Exchange Commission
500 N. Capital Street
Washington, D.C. 20549

RE: 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

Dear Mr. Fitzsimmons:

We would like to comment with favor on proposed Regulation D which, if adopted, would replace the existing limited offering exemptions in Securities and Exchange Commission Rules 146, 240 and 242. We believe that the changes contained in proposed Rules 505(b) and 506(b) will be particularly helpful to the small issuer. However, we think that proposed Rule 502(e), insofar as it expressly permits broker-dealers registered under the Securities Exchange Act of 1934 to receive remuneration for solicitation but not, perhaps, purchaser representatives, may create an ambiguity not present under current Rule 146 as to such representatives' ability to receive remuneration from the issuer. We suggest that proposed Rule 502(e) be revised to expressly permit issuer remuneration of purchaser representatives.

Proposed Rule 505(b) raises the aggregate dollar limitation on small offerings exempt from registration under Sections 4(6) and 3(b) of the 1933 Act from two million dollars every six months to five million dollars every twelve months. We agree with the Commission's proposal to increase the limitation to the maximum amount authorized by Congress in the Small Business Incentive Act of 1980, rather than merely to increase the limitation incrementally or not at all. Inflationary pressures have sent all costs up, and two million dollars is for many issuers today not enough to adequately fund even a modest business venture. In addition, the rising expense of registration burdened many public issues in the two to five million dollar range to the point of discouraging business ideas which otherwise might contribute to the U.S. economy.

As the Commission is aware, the net effect of the two million dollar limit has been to force small businessmen with start-up costs above that figure to finance their

ventures through two or more issues of less than two million dollars each. In order to avoid integration of these multiple issues and achieve exemption from registration, awkward and financially unnecessary changes in the form of such ventures have sometimes been made at considerable expense to the issuer. The proposed five million dollar ceiling will remove the need for and the cost of such complex multiple issues and will allow the small businessman to more directly, easily and less expensively capitalize a business venture with merely a single financing.

Proposed Rule 506(b) introduces the small-issues concept of "accredited investor" into the private offering area and will operate to raise the effective total number of purchasers who can participate in an issue. Although under current Rule 146 investors who purchase securities of the issuer in the amount of $150,000 or more may participate in unlimited numbers, the actual number of investors able and willing to make such an investment in a single venture is small. Thus, this feature of the current rule is not often used in connection with new businesses and is therefore not particularly helpful to either an issuer or an investor. Proposed Rule 506(b) however, while it reduces the $150,000 minimum, will more importantly allow investors who meet certain high net worth and adjusted gross income requirements to participate in unlimited numbers regardless of the amount of securities they purchase from the issuer.

We believe that the redefinition and expansion of the unlimited class of investors who may participate in a private offering is a significant improvement for both the issuer and the investor. The net worth and adjusted gross income requirements as outlined in proposed Rule 501(a) are sufficient to separate the sophisticated and knowledgeable investor from the average investor, while the issuer gains the advantage of being able to sell his investment units in an unseasoned venture in smaller blocks to more purchasers, and the purchasers gain the advantage of less risk by being able to more greatly diversify their investments.

The fact that the number of purchasers may be increased by allowing an unlimited number of accredited investors to purchase does not in any way destroy the private nature of an offering. The Supreme Court has clearly held that it is not the number of offerees but their ability to protect themselves by their own knowledge or bargaining power that is important in determining whether or not an offering is private, and even an "infinity" of sophisticated offerees would not, by itself, disqualify the offer as private. SEC v. Ralston Purina Co., 346 U.S. 119, 125 n.11 (1952).

As noted previously, we do have one suggestion which we believe will improve proposed Rule 502(e). As proposed, that Rule would permit the remuneration of registered broker dealers by issuers for the solicitation of prospective buyers in financings accomplished under proposed Regulation D. Although we agree that

broker-dealers should be remunerated by issuers for such services, we feel that the effect of this proposed rule on the current ability of offeree representatives in Rule 146 transactions to receive remuneration is unclear. Under proposed Rule 506(c) the current requirement that offeree representatives disclose the fact that they are receiving remuneration from the issuer will remain unchanged, thus creating the inference that such remuneration will still be permissible. However, the Commission's comment on Rule 502(e) on page 40 of SEC Release No. 33-6339, states:

"Proposed Rule 502(e) 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 this regulation unless such commission or similar transaction related remuneration is paid or given to a broker-dealer registered both under Section 15(b) of the Exchange Act and pursuant to applicable regulations in those states in which the securities are to be offered, or to a bank as defined in Section 3(a)(2) of the Securities Act, as permitted by law."

This comment appears to indicate that proposed Rule 502(e) excludes absolutely any type of issuer remuneration to purchaser representatives. As we believe that purchaser representatives who render important professional advice to prospective investors ought to be able to be remunerated by issuers, we recommend that the potential ambiguity of the proposed Rule 502(e) be eliminated and revised to expressly permit purchaser representatives to be remunerated by issuers.

The need for issuer remuneration to such representatives is clear. Under both current Rule 146 and proposed Rule 506, unsophisticated investors are required to consult offeree representatives (or purchaser representatives) regarding the merit and risk of a particular offering before they may participate in it as purchasers. As many private offerings are complex and unique, and the advisability of investment in them is dependent upon detailed analyses of both the offering and an offeree's total financial picture, issuers should be encouraged to take seriously the role and responsibility of such representatives to the unsophisticated investor by compensating such representatives for their time and effort.

Indeed, the need for a serious and thorough job by such representatives under current Rule 146 will become even more important under proposed Rule 506. Subsection (b)(1) of the proposed Rule will remove the requirement of Rule 146 that broker-dealers, in addition to offeree representatives, must determine the ability of each unsophisticated investor to bear the economic risk of investment in the issue prior to permitting the sale. The proposed Rule instead would require only that the broker-dealer determine that each unaccredited investor or his purchaser representative has the requisite knowledge and experience to

evaluate such risks to the unaccredited investor. This change will leave the purchaser representative with the sole responsibility for advising the unsophisticated investor of the economic risk involved, and he should be compensated by the issuer accordingly for the substantial time and risk of liability to the investor which this function may entail.

The Commission should not be deterred from permitting remuneration by issuers to purchaser representatives by the fact that purchaser representatives are not subject to the same type of comprehensive regulation as are registered broker-dealers. Possible abuses of a remuneration system will be controlled in three ways. First, from a practical standpoint, those who act as purchaser representatives are often already the legal, financial or accounting advisors of the unsophisticated investor. Their ongoing relationship with their client should engender loyalty to the client in the face of issuer remuneration. Second, such compensation from the issuer, as noted previously, will have to be disclosed by the purchaser representative to the purchaser under proposed Rule 506(c) so that the purchaser will be apprised of the potential economic benefit to his representative of a favorable recommendation. Finally, any incentive such compensation might create for a purchaser representative to abandon his duties to his investor in favor of self-interest or collusion with the issuer should be effectively checked by the threat of civil liability of the purchaser representative as a "participant" under Section 12 of the Securities Act of 1933.

In recent years the courts have broadly defined the term "offer or sell" under Section 12 to include not only issuers and broker-dealers but all participants whose actions are a substantial factor in causing a purchaser to buy a security, See, e.g., Lewis v. Walston & Co., 487 F.2d 617, 621-22 (5th Cir. 1973). Thus, in Lawler v. Gilliam, 569 F.2d 1283 (4th Cir. 1978); the court found a management consultant and a business consultant who were being paid by an issuer to solicit offers to be liable under Section 12(1) because they recommended a different purchase arrangement to an investor than the one which the investor had requested when he originally sought their assistance. 569 F.2d at 1287-88. Although the consultants in this case were not acting as offeree representatives, the concept of participant liability should logically extend to purchaser representatives as well and thus prevent any temptation to abuse issuer remuneration.

This firm often represents individuals and groups who desire to start up new businesses, and we wholeheartedly endorse your efforts to make the rules regarding limited offerings and small issues more harmonious and more reflective of both the capital formation needs of new ventures and the acumen and interests of potential investors in these ventures. Although we feel that proposed Regulation D could be improved in the way just discussed, we are in agreement with the general purpose and procedure of the Regulation and urge

you to allow the benefit of this significant change in the law to be received by the small business community as soon as possible after the close of the comment period.

Respectfully submitted,

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By: John D. Evans