University of San Francisco
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October 5, 1981

George A. Fitzsimmons, Secretary
Securities & Exchange Commission
Washington D.C. 20549

Re: File No. S7-891

Dear Mr. Fitzsimmons:

I would like to offer the following comments and suggestions on your proposed Regulation D. While I think it embodies a basically sensible approach to simplifying and rationalizing the various exemptions for non-public offerings, Rules 505 and 506 contain two anomalous provisions which seem to have found their way in simply because Rule 505 traces its lineage to Section 3 (b) while Rule 506 traces its lineage to Section 4 (2) .

1. I think this is the appropriate time to get rid of the "bill of attainder" or "bad guy" provisions which have been carried over from Regulation A via Rule 242 into proposed Rule 505 (a) (2) , (3) and (4). On measuring Rule 505, I found that approximately 19 of its 28 inches were devoted to detailing the various categories of tainted persons whose association with an issuer disqualifies that issuer from using the Rule. I do not think these disqualification provisions (which might be perfectly appropriate in determining whether someone should be associated with an investment company or broker-dealer) have any place in an exemption from the 1933 Act disclosure requirements. They become particularly inappropriate in the proposed scheme, since they will apply only to Rule 505 and not to Rule 506, under which issuers associated with disqualified persons will be able to sell even larger amounts of securities under substantially the same conditions.

2. I cannot understand why you have retained the sophistication requirement in Rule 506, unless it is to appease the ghost of Ralston Purina , which apparently still stalks the corridors at 500 North Capitol Street. If there is any logical place for a sophistication requirement, it is Rule 505, which will be the exemption normally used for making an offering only to individual investors of modest means. Since an issuer cannot sell to more than 35 non-accredited purchasers, and since anyone who purchases $100,000 or more becomes an accredited purchaser, it would be impossible to sell more than $3,500,000 of an issue to

non-accredited purchasers. In fact, as a practical matter, it is unlikely that sales to non-accredited purchasers of any issue would exceed $2,000,000 or so, since anyone who could afford to invest $80,000 or $90,000 could probably be induced to raise his investment to $100,000 and become "accredited." But since Rule 506 will be used only for offerings of more than $5,000,000 (except for offerings by companies registered under the 1934 Act, and by issuers disqualified from using Rule 505), a majority of the securities in almost every offering under Rule 506 will be taken by accredited purchasers. Applying the same "efficient market" analysis that you used to justify the elimination of the specific information requirements in Rule 502 when more than 60% of the issue is purchased by accredited institutions, it would appear that any unsophisticated small purchasers in Rule 506 offerings will be protected by the analysis done by the accredited purchasers (whom you presume to be sophisticated), as long as the terms of sale are the same for all. Thus, the only logical place for a sophistication requirement (if you really think it's useful) is in Rule 505, under which an entire issue can be sold to relatively small individual investors.

Another benefit of the elimination of these two provisions is that the proposed rules would become more readily understandable by people approaching them for the first time. The rules relating to the basic exemptions from the 1933 Act are the ones most likely to be consulted by lawyers and other who are unfamiliar with the federal securities laws and the doctrines developed under them. Making those rules more easily comprehensible is therefore likely to promote more widespread compliance with their terms.

Sincerely,

David L. Ratner
Marshall Madison Visiting
Professor of Law