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October 13, 1981

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

Re: File No. S7-891; "Accredited Investor" Comment on Proposed Regulation D.

Dear Mr. Fitzsimmons:

We are responding to your request for comments on proposed Regulation D, Securities Act Release No. 6339. We apologize for missing the comment deadline, but Ms. Chester informed us that comments sent out late would be considered. Generally, we applaud the Commission's efforts to streamline and clarify the limited offer exemption provisions of the Act. The proposal generally accomplishes its goals with one notable exception, upon which we comment herein.

The requirement of proposed Rule 501(a)(5)(iii) that a non-cash purchaser of \$100,000 or more satisfy an obligation to pay within two years in order to be "accredited" is somewhat out of touch with present commercial practices, particularly in the context of energy-oriented offerings, and fails to appropriately address the concerns expressed by the Commission with respect to deferred payments. We believe that a distinction should be drawn between (1) a traditional installment investment spread over several years and (2) the practice of investing the full amount at the outset through issuer-arranged bank financing which is personally assumed by the investor to the extent of his investment and, typically, is secured by the investor's irrevocable bank letter of credit.

In the latter case, the investor regularly pays his portion of the interest on the loan and typically also pays a portion of loan fees as well as a carrying charge on his letter of credit.

The principal is repayable unconditionally upon maturity of the loan, with prepayments likely to be required out of the investor's portion of the issuer's distributions. Typically, with the anticipated extended time to payback of energy

programs, the term of the bank loan may be five years or even more. Upon maturity or in the event of a payment default, the lender may draw on the letter of credit security. The bank issuing the letter of credit would then require payment from the investor or extend a personal loan to the investor for the amount of the draw.

As we read your proposal, in order for such an investor to be "accredited", at least \$100,000 of the "installment" obligation must be paid within two years after investing. Apparently, you believe that the present value of a lengthier obligation would substantially reduce the actual investment, thereby allowing investors with less means, sophistication and bargaining power to go uncounted in the 35 purchaser limit.

If the obligation were fixed in amount and time, then perhaps your concerns are appropriate. In the circumstances outlined above, however, the obligation should not be characterized as an "installment" transaction. Rather, the investor must pay interest currently. The loan may or may not be repaid within two years, depending on the issuer's distributions. Moreover, such investors generally must have substantial means in order to obtain large letters of credit from recognized lenders and tend to have more bargaining power than investors paying in cash.

In fact, the method outlined above is the functional equivalent of a loan to the investor and investment of the loan proceeds into the issuer, but with the issuer arranging one loan rather than each investor borrowing separately. For partnership agreement purposes, the letter of credit investor's capital account is essentially the same as that of cash investors.

Proposed Rule 501(a)(5)(iii) is contrary to the Staff's recent interpretation in Continental-American Drilling Program 1981-I, Ltd. (July 24, 1981) and the Hilliard-Lyons letter (August 21, 1979) referred to in the Continental-American request letter. See also The Corporate Counsel, May-June 1981 issue at page 6, which article arose from discussions between the undersigned and General Counsel's office of the Division of Corporation Finance.

Thank you for your consideration of our comments. We would be pleased to discuss this subject with you by telephone and provide you with further information and samples of documentation (partnership agreement provisions, loan assumption and letters of credit) should you so desire.

Very truly yours,

Michael Gettelman

cc: William Morley
Paula Chester
Michael Kargula