

SEP 1 0 1982

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: Hopper, Kanouff, Smith and Peryam
Incoming letter dated August 10, 1982

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

Your letter seeks interpretive advice from this Division as to the relationship between Rule 502(b)(2)(iii) under the 1933 Act and the appropriate disclosure for an issuer that offers interests in an oil and gas limited partnership in reliance on Regulation D. Specifically, you have asked whether or not Rule 502(b)(2)(iii) should be construed as requiring the issuer to make available to investors an opinion of counsel regarding the legality of the securities to be issued and an opinion of counsel concerning the tax consequences of an investment in the offering.

The premise of the disclosure requirements of Regulation D is that, if an issuer is required as a condition of an exemption to furnish specific information to investors, it should furnish the same kind of information, "to the extent material to an understanding of the issuer, its business, and the securities being offered," as would be required if the securities were being registered. Thus, in determining what disclosure is appropriate for an offering in reliance on Regulation D, an issuer should first determine what disclosure would generally be deemed appropriate if the issuer intended to register the proposed offer and sale of securities. Next, the issuer should evaluate that disclosure in terms of its materiality to the investors' understanding of the issuer, its business and the securities being offered. Because the ultimate test under Regulation D is one of materiality, the Division is unable to express a view as to whether or not specific items of disclosure are required in a Regulation D offering. On the other hand, given the framework of the disclosure provisions of Regulation D, the Division may provide some guidance for the analysis of your inquiry with respect to exhibits.

Rule 502(b)(2)(iii) provides that the issuer is not required to furnish the exhibits that would accompany the form of registration or report governing the issuer's disclosure document if the issuer identifies the contents of those exhibits and makes them available to purchasers upon written request prior to purchase. This provision is similar to that found in former Rule 146 at paragraph (e)(1)(ii)(c).

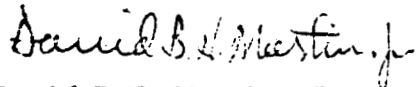
Any form of registration to which an issuer refers in preparing its disclosure document in an offering under Regulation D requires that the issuer furnish the exhibits required by Item 601 of Regulation S-K. Item 601 requires that the issuer furnish, among other exhibits, an opinion of counsel as to the legality of the securities being issued. Thus, under Rule 502(b)(2)(iii) an issuer in a Regulation D offering should identify the contents of this opinion of counsel and make it available to purchasers upon written request.

Item 601 of Regulation S-K also sets forth certain requirements for an opinion of counsel as to tax matters. For an offering not involving a real estate limited partnership, the issuer should provide a tax opinion that supports a representation in the prospectus of tax consequences that are material to an investor. In a registration statement

for a limited partnership, it is generally the case that tax consequences of an investment are material and thus are discussed in the prospectus. This derives in part from the Commission's specific guidance as to disclosure of tax matters in offerings involving real estate limited partnerships. See Guide 5 of the Securities Act Industry Guides. In a registration statement for interests in any entity that will engage in oil and gas exploration, drilling and production, it also is generally the case that tax consequences of an investment are material and thus are discussed in the prospectus. This explains the Commission's guidance with respect to disclosure of tax matters in Item 14 of Guide 4 of the Securities Act Industry Guides.

In a disclosure document for a Regulation D offering of interests in an oil and gas limited partnership, therefore, the issuer must determine whether or not a discussion of the tax consequences that would generally be part of a registration statement for such securities is material to an understanding of the issuer, its business and the securities being offered. If the issuer makes the determination that these tax consequences will be discussed in the Regulation D disclosure document, then Rule 502(b)(2)(iii) requires the issuer to identify and make available to investors the supporting opinion of counsel.

Sincerely,



David B.H. Martin, Jr.
Special Counsel