

**PUBLIC**

5 APR 1994

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 94-52-CC  
Andrews & Kurth L.L.P.  
File No. 132-3

Your letters dated January 28, 1994, February 24, 1994 (as corrected on April 5, 1994) and April 1, 1994 seek our concurrence that a finance subsidiary organized as a limited liability company that issues non-voting preferred member interests, 1/ or a partnership that issues non-voting preferred partner interests as described in your letter may rely on the exemption for finance subsidiaries under Rule 3a-5 under the Investment Company Act of 1940 (the "Investment Company Act"). 2/

You state that a finance subsidiary established as a partnership issuing preferred partner interests will comply fully in all respects with Rule 3a-5, except that the transaction will involve the issuance of non-voting preferred partner interests by a partnership instead of non-voting preferred stock by a corporation. 3/ You state that a partnership may issue preferred partner interests with the same rights, preferences, voting and other investment characteristics as those of preferred stock issued by a corporation. 4/ You further state that the parent company of the partnership, or a company controlled by the parent company, will own all of the partnership's securities other than

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- 1/ The staff previously has taken the position that finance subsidiaries organized as limited liability companies that issue non-voting preferred member interests may rely on the exemption for finance subsidiaries under Rule 3a-5. See Lehman Brothers Inc. (pub. avail. Mar. 8, 1994); Inco Limited (pub. avail. Mar. 4, 1994); Merrill Lynch & Co. (pub. avail. Mar. 2, 1994). Having stated our views, we no longer will respond to letters in this area unless they present novel or unusual issues.
- 2/ Generally, Rule 3a-5 exempts from the definition of investment company a subsidiary that is organized to finance the operations of its parent company or companies controlled by its parent company, provided such companies are not themselves investment companies under Section 3(a) of the Investment Company Act. Under paragraph (b)(1) of Rule 3a-5, "[a] 'finance subsidiary' shall mean any corporation (i) [a]ll of whose securities other than debt securities or non-voting preferred stock . . . are owned by its parent company or a company controlled by its parent company."
- 3/ Telephone conversation on March 25, 1994 between Alison Baur and Stuart Bressman.
- 4/ Id.

the non-voting preferred partner interests as required by Rule 3a-5(b)(1)(i). 5/

In the release adopting Rule 3a-5, the Commission stated that it was appropriate to exempt a finance subsidiary from all provisions of the Investment Company Act where neither its structure nor its mode of operation resembles that of an investment company. 6/ The Commission stated that it found this to be the case where the primary purpose of the subsidiary is to finance the business operations of its parent or other subsidiaries of its parent, and where any purchaser of the finance subsidiary's debt instruments ultimately looks to the parent for repayment and not to the finance subsidiary.

You state that, as is the case with a finance subsidiary organized as a corporation, the partnership will be formed for the purpose of financing the business operations of its parent or other subsidiaries of its parent, and the proceeds from the sale of preferred partner interests will be loaned by the partnership to its parent company or companies controlled by the parent company. You further state that the preferred partner interests issued by the partnership would (i) have priority rights to certain distributions equivalent to the rights of preferred stock; (ii) have a liquidation preference that is equivalent to the liquidation preference for preferred stock; (iii) be non-voting, except under limited circumstances that are effectively the same as those under which non-voting preferred stockholders of a corporation relying on Rule 3a-5 would have voting rights; (iv) be convertible or exchangeable in compliance with Rule 3a-5 if the terms of the preferred partner interests provide for conversion and exchange; and (v) benefit from a parent's guarantee in compliance with Rule 3a-5. 7/

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5/ According to your letters of February 24 and April 1, when Rule 3a-5 was adopted in 1984, institutions, including banks, thrifts, and insurance companies, were the primary purchasers of the securities of finance subsidiaries. You represent that, at that time, state investment laws greatly restricted the kinds of entities, other than corporations, in which these institutions could invest. You believe, therefore, that partnerships were not included in the definition of finance subsidiary in Rule 3a-5 because, at the time the rule was adopted, the partnership structure did not offer a viable financing alternative for institutions in which to invest.

6/ Investment Company Act Release No. 14275 (Dec. 20, 1984) (adopting Rule 3a-5).

7/ Telephone conversation on March 25, 1994 between Alison Baur and Stuart Bressman.

Based on the facts and representations in your letters and telephone conversation, we would not recommend enforcement action to the Commission if a finance subsidiary organized as a partnership that issues non-voting preferred partner interests as described in your letter relies on the exemption for finance subsidiaries under Rule 3a-5. Because this position is based on the facts and representations made in your letters and telephone conversation, you should note that any different facts or circumstances might require a different conclusion.

A handwritten signature in black ink, appearing to read "Alison E. Baur", with a long, sweeping horizontal stroke extending to the right.

Alison E. Baur  
Attorney

ANDREWS & KURTH L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

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ACT ICA of 1940  
SECTION \_\_\_\_\_  
RULE 3a-5  
PUBLIC  
AVAILABILITY 4/5/94

*Investment Company Act of 1940 Rule 3a-5*

January 28, 1994

**VIA TELECOPY AND FEDERAL EXPRESS**

Office of Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Attention: Thomas S. Harman, Esq.  
Chief Counsel

Re: Interpretive Advice with Respect to Rule 3a-5  
under the Investment Company Act of 1940

Dear Mr. Harman:

We wish to request the advice of the Staff of the Division of Investment Management of the Securities and Exchange Commission with respect to the following interpretive question with respect to Rule 3a-5 under the Investment Company Act of 1940, as amended (the "Act"). We have previously discussed this issue with Alison Baur of the Staff, and we are submitting this request at her suggestion.

Rule 3a-5(a) under the Act provides that, subject to certain enumerated conditions, a finance subsidiary will not be considered an investment company under Section 3(a) of the Act and securities of a finance subsidiary held by the parent company will not be considered investment securities under Section 3(a)(3) of the Act. Paragraph (b) of Rule 3a-5(b) states that a "finance subsidiary" shall mean any corporation" that satisfies the conditions in clauses (i) and (ii) of that paragraph. A number of our clients have inquired of us whether they can use a partnership or a limited liability company as a finance subsidiary under Rule 3a-5. We hereby seek your concurrence that the definition of "finance subsidiary" in Rule 3a-5(b) is not strictly limited to corporate entities and may include a partnership or

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a limited liability company that otherwise satisfies the conditions set forth in Rules 3a-5(a) and 3a-5(b).

In Securities and Exchange Commission Release No. IC-14275 (the "Release"), the Commission stated that it "believes that it is appropriate to exempt a finance subsidiary from all provisions of the Act where neither its structure nor its mode of operations resembles that of an investment company." We believe that whether the subsidiary is organized as a corporation or as a partnership or a limited liability company and whether the securities held by the parent are shares of stock, partnership interests or member interests should be irrelevant in determining whether its structure or mode of operation resembles that of an investment company. As stated in the Release, the "primary purpose" of the finance subsidiary is "to finance the business operations of the parent" (page 17) and should be unaffected by whether it is organized as a corporation, a partnership or a limited liability company. In addition, whether the entity is a corporation, a partnership or a limited liability company, it would still satisfy the Commission's intent, as stated in the Release, that "the finance subsidiary is essentially a conduit for the parent to raise capital for its own operations or for the business operations of its other subsidiaries" (page 5).

Although the introduction to the definition of "finance subsidiary" in paragraph (b) of Rule 3a-5 does not expressly include partnerships or limited liability companies, there appears to be no legislative or practical policy for such entities to be excluded from such definition. Section 2(a)(43) of the Act contains a definition of the term "wholly-owned subsidiary," which includes "a company 95 per centum or more of the outstanding securities of which are owned by [a] . . . person." The term "company," in turn, is defined in Section 2(a)(8) as a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not. . . . In addition, Rule 8b-2 (Definitions) under the Act states that "[a] 'subsidiary' of a specified person is an affiliated person who is controlled by the specified person. . . ." The term "person," as defined in Section 2(a)(28) of the Act, means "a natural person or a company," thereby including a partnership. We submit that in keeping with the tenor of the statute, Rule 3a-5(b) should be interpreted to define a finance subsidiary as any "company" that meets the conditions thereafter set forth.

Although the limited liability company form is relatively new in the United States, at least 37 states have enacted limited liability company legislation. Limited liability companies are quite similar in their characteristics to limited partnerships, as well as corporations. The members of limited liability companies are shielded from personal liability, as are the stockholders of a corporation or the limited partners of a limited partnership. A limited liability company is generally managed by a small committee of members, such as the general partner of a limited partnership or the directors of a corporation. Similar to limited partnerships and corporations (and unlike S corporations), limited liability companies can have more than one class of ownership interests with different priorities and allocations. Thus, in terms of issuing securities, all three forms of business entities are practically indistinguishable. The voting equity of all three can be held by one parent entity, while non-

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voting securities can be issued to raise capital — the essential function of a finance subsidiary.

A finance subsidiary that is a partnership or a limited liability company would issue preferred securities rather than shares of preferred stock. In the case of a partnership, such securities would take the form of preferred partner interests and in the case of a limited liability company such securities would take the form of preferred member interests. State laws governing partnerships and limited liability companies permit such entities to issue such classes of interests having such relative rights, powers and duties as the governing documents of such entities may establish, in the same manner that preferred stock may have such relative rights, powers and duties as a corporation's charter may establish. Accordingly, preferred securities of a partnership or a limited liability company could be drawn to have substantially the same rights, preferences, voting and other investment characteristics as corporate preferred stock. Therefore, as a corollary to the above request, we also request that the Staff concur that the term "non-voting preferred stock" in Rules 3a-5(b) and (b)(1) encompass non-voting preferred partner interests in the case of a partnership and non-voting preferred member interests in the case of a limited liability company.

In view of the foregoing, we respectfully request that the Staff concur with our conclusions that (i) the definition of "finance subsidiary" in Rule 3a-5(b) of the Act includes partnerships and limited liability companies, as well as corporations, and (ii) the term "non-voting preferred stock" in Rule 3a-5 includes preferred partner interests and preferred member interests with similar investment characteristics.

If you have any questions with regard to this request, please contact Mark Zvonkovic of this firm at (212) 850-2828 or the undersigned at the number above. In addition, should you disagree with the conclusion which we have expressed herein, we request an opportunity to discuss the same prior to your response to this letter.

Sincerely yours,



Stuart Bressman

cc: Alison Baur, Esq.

**ANDREWS & KURTH L.L.P.**

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*Investment Company Act of 1940 Rule 3a-5*

February 24, 1994

Office of Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

Attention: Alison Baur, Esq.  
Associate Counsel

Re: Interpretive Advice with Respect to Rule 3a-5 under  
the Investment Company Act of 1940

Dear Ms. Baur:

This letter is in response to the questions the Staff raised in a telephone call with me on February 22, 1994 and supplements this firm's letter to you, dated January 28, 1994, which requested interpretive advice with respect to Rule 3a-5 under the Investment Company Act of 1940, as amended (the "Act").

In the aforementioned telephone conversation the Staff raised the question why limited partnerships were not included in the definition of "finance subsidiary" in Rule 3a-5 even though, unlike limited liability companies, limited partnerships existed under most state laws in 1984, when Rule 3a-5 was enacted. Nothing in Release No. IC-14275 (under which Rule 3a-5 was enacted) suggests an answer to that inquiry, nor does anything in such release or in other releases related to the finance subsidiary exemption suggest that limited partnerships were intentionally excluded. We believe that the Commission inadvertently excluded limited partnerships in the definition of "finance subsidiary," because in 1984 limited partnerships were used only in certain industries, primarily oil and gas and real estate, and in any event were not entities that issued securities of the type that would be issued by the traditional "finance subsidiary." In fact, in 1984, legal investment laws in effect in most states greatly restricted the types and amounts of investments that regulated institutions in those states (e.g., banks, savings and loan institutions, trusts and insurance companies) could make in securities issued by

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entities other than corporations. Since in 1984 the primary purchasers of a finance subsidiary's securities were regulated institutions and such institutions did not invest in securities issued by limited partnerships, proponents of the enactment of the finance subsidiary exemption would not have brought to the Commission's attention the failure of the Rule to include limited partnerships in the definition of finance subsidiary.

Since 1984, legal investment laws in the states have been amended to recognize securities issued by limited partnerships as permitted investments for regulated institutions. In addition, limited partnerships are now entities widely used by many industries and many limited partnership debt and preferred equity securities are listed on the major securities exchanges. In short, securities issued by limited partnerships are now investments commonly accepted by participants in the financial markets. We believe that there is no policy reason with respect to the availability of the finance subsidiary exemption to distinguish between limited partnerships, limited liability companies and corporations.

State laws creating limited partnerships and limited liability companies specifically authorize those entities to issue preferred securities. A comparison of Section 17-302 of the Delaware Limited Partnership Act and Section 18-302 of the Delaware Limited Liability Company Act shows the two authorizing provisions to be almost identical. Both Sections are in all material respects the same as Section 151 of the Delaware Corporation Law. Each of those three sections authorize the entity, whether it be a corporation, limited partnership or limited liability company, to issue securities having such relative rights, powers and duties as the entities' governing instruments shall designate. Each section also authorizes the entity to confer upon holders of its securities full, limited or no voting rights. Accordingly, we believe that limited partnerships and limited liability companies may authorize and issue non-voting preference securities in exactly the same manner as corporations do.

Many publicly traded limited partnerships have issued Preference Units. An example is Arcadian Partners, L.P. Its securities are listed on the New York Stock Exchange. These securities have a preferred right to distributions, in the same way that corporate preferred stock does, and these securities have limited voting rights except in the certain circumstances (e.g., liquidation or merger) as corporate preferred would. At the time of issuance of these preference securities, all of the securities issued by Arcadian Partners other than the preference securities and other than debt securities were owned by Arcadian's parent company. Although to our knowledge no similar examples of publicly traded limited liability companies exist there is no statutory or practical reason that a limited liability company could not also issue a non-voting preference security and otherwise have all of its securities, other than such non-voting preference security and debt securities, owned by its parent or companies controlled by its parent.

In view of the foregoing, we respectfully request that the Staff of the Division of Investment Management concur with our conclusions that (i) the definition of



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"finance subsidiary" in Rule 3a-5(b) of the Act includes partnerships and limited liability companies, as well as corporations, and (ii) the term "non-voting preferred stock" in Rule 3a-5 includes preferred partner interests and preferred member interests with similar investment characteristics.

If you have any questions with regard to this request, please contact Stuart Bressman of this firm at (212) 850-2833 or the undersigned at the number above. In addition, should you disagree with the conclusion which we have expressed herein, we request an opportunity to discuss the same prior to your response to this letter.

Sincerely,



Mark Zvonkovic

cc: Stuart Bressman

**ANDREWS & KURTH L.L.P.**

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WRITER'S DIRECT NUMBER:

(212) 850-2833

April 1, 1994

**VIA TELECOPY AND FEDERAL EXPRESS**Alison Baur, Esq.  
Office of Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549Re: *Interpretative Advice with Respect to Rule 3a-5 under the  
Investment Company Act of 1940*

Dear Ms. Baur:

Last week, you requested some independent support for the two statements made on page 2 of our letter to the Division, dated February 24, 1994, regarding the status of limited partnerships and their treatment under state legal investment laws in 1984 (see copy enclosed). After reviewing all sources readily available to us and contacting a number of law firms and state securities commissioners, we have been unable to obtain copies of the specific legal investment laws that were in effect at that time. However, enclosed are the following supporting materials, which I hope you will find helpful:

1. A Survey as to Legality for Investment prepared by this firm with respect to a public offering in 1986 of Depositary Units representing Limited Partners' Interests in Perkins Family Restaurants, L.P. (the "Legal Investment Survey");
2. A copy of the Prospectus, dated August 7, 1986 (the "Mesa Prospectus"), from a Subordinated Note offering by Mesa Capital Corporation ("MCC"), a subsidiary of Mesa Limited Partnership ("MLP"), with certain sections highlighted (excerpted pages only in telecopy);
3. A copy of a ruling request letter, dated October 23, 1986 (the "Ruling Letter"), submitted to the Internal Revenue Service by Baker & Botts,

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A REGISTERED LIMITED LIABILITY PARTNERSHIP

**Alison Baur, Esq.**  
**April 1, 1994**  
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counsel to MLP and MCC, in connection with the Mesa Offering (pages 1-3 only in telecopy); and

4. A copy of an article from the Spring 1989 issue of *The Journal of Corporate Taxation* (the "JCT") entitled "Use of Thinly Capitalized Corporate Subsidiaries in Financing Transactions" (excerpted pages only in telecopy).

The enclosed materials evidence the fact that as late as in 1986 and 1989, as the case may be, a significant number of states had legal investment laws and other regulations that prohibited or discouraged certain types of institutions (e.g., banks and insurance companies) from making loans to, or purchasing the debt or other securities of, limited partnerships. As a result of these prohibitions, a partnership would not have been deemed a viable alternative to serve as a finance subsidiary at the time that Rule 3a-5 was enacted in 1984 and partnerships would likely not have been considered by the Commission when adopting the Rule.

The Legal Investment Survey indicates that the subject securities (i.e., Depository Units representing Limited Partners' Interests) were not legal investments for savings banks, trust funds and insurance companies, or were significantly restricted in their eligibility as legal investments for such institutions (see footnotes (1), (2) and (4) - (9)), in a large number of states. The Units were not eligible for investment by savings banks in 41 states and were significantly restricted as such in the nine remaining states. The Units were not eligible for investment by trust funds in 12 states and were significantly restricted as such in one additional state. The Units were not eligible for investment by life insurance companies in nine states and were significantly restricted as such in 36 additional states. The Units were not eligible for investment by other insurance companies in 13 states and were significantly restricted in 34 additional states.

The MCC Subordinated Note offering is an example of how companies around the time Rule 3a-5 was enacted responded to the states' investment prohibitions. In order to issue \$300 million of debt securities, MLP, a limited partnership, organized a corporate finance subsidiary, MCC, to issue its debt. It is our understanding that one of the primary reasons that MLP set up this corporation was that, at that time, the debt of a limited partnership was not an acceptable investment for regulated institutions, but the debt of a corporation was. This reason is set forth in the Ruling Letter which states on page 3 that:

Normally, pension funds and other fiduciary-managed organizations are large purchasers of investment-grade debt obligations issued by companies with substantial assets and net worth. MLP was advised, however, that the laws of many states restricted the right of such organizations to make investments that do not meet certain criteria and that, while typically a debt obligation of a corporation would meet such criteria, a debt obligation of a partnership would not.

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Alison Baur, Esq.  
April 1, 1994  
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The JCT article states on page 4 that:

The motivation for interposing such a thinly capitalized [intermediary] corporation [in a financing transaction] often comes from state law. For example, a number of states still have legal investment laws that prohibit or discourage certain types of lending institutions from making loans to noncorporate borrowers or to foreign corporations. Where the ultimate borrower is to be a partnership, a trust, or a foreign entity, the interposition of a corporation (domestic) may make it possible or more attractive for institutions subject to these laws to participate as lenders.

The JCT article continues on page 8 to state that:

. . . the purpose of incorporating such a corporation is normally to achieve an important business advantage, for example to achieve the advantage of making it possible or more attractive for certain institutions to make funds available to the ultimate borrower.

In addition, attorneys in this firm who were personally involved in a number of partnership financings during the late 1970's and early 1980's recall that in each of those financings the issue arose whether a corporate subsidiary should be formed to issue debt securities rather than the partnership itself. This was specifically because the debt securities of partnerships were not readily accepted as permitted investments for regulated institutions at that time. This recollection has been confirmed with lawyers at a number of other law firms. In addition, a number of states today (e.g., California, Massachusetts and Ohio) continue to prohibit or significantly restrict investments by regulated institutions in securities issued by partnerships.

I hope the enclosed information satisfies your requirements. If you have any questions, or require any further information, please do not hesitate to call Mike Rosenwasser of this office at (212) 850-2816 or me at the number above.

Sincerely yours,

  
Stuart Bressman

cc: Michael Rosenwasser  
Mark Zvonkovic

**ANDREWS & KURTH**

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5,043,000 DEPOSITARY UNITS  
 Representing Limited Partners' Interests in  
**PERKINS FAMILY RESTAURANTS, L.P.**

SURVEY AS TO LEGALITY FOR INVESTMENT

September 11, 1986

Drexel Burnham Lambert Incorporated  
 Dain Bosworth Incorporated  
 Moseley Securities Corporation  
 Sutro & Co. Incorporated  
 As Representatives of the Several Underwriters,  
 c/o Drexel Burnham Lambert Incorporated  
 60 Broad Street  
 New York, New York 10004

Gentlemen:

The following survey (the "Survey") contains our opinion relating to the legality of the above depositary units (herein referred to, in the singular or the plural, as the context may require, as "Units") for investment by savings banks, fiduciaries and insurance companies subject to the laws of the respective States and the District of Columbia. Such opinion is based upon an examination of the legal investment laws, if any (as such laws are summarized or reproduced in unofficial publications) financial information contained in the Perkins Family Restaurants, L.P. Registration Statement with the Securities and Exchange Commission ("Commission") on July 17, 1986, and as amended by Amendment No. 1 thereto filed with the Commission on September 11, 1986. The Survey is furnished only for the general information of the prospective underwriters, and no savings bank, insurance company or fiduciary is entitled to rely upon it as an opinion of counsel as to the legality of the Units for investment purposes.

The opinion contained in the Survey is restricted to legality as of the date hereof. The opinion relates only to whether the Units are of the type permitted in the various States and should not be construed as indicating that formal requirements have been complied with (including qualification of the Units with any public authorities) for rendering the Units eligible for investment in the various States. Such requirements have not been indicated in the Survey.

It should be noted that certain States impose, among other things, limitations as to the amount, percentage and character of funds that may be invested in certain types of securities, including securities that are eligible only by virtue of authority to invest in securities not otherwise eligible for investment and in the securities of any one corporation, and as to the price that may be paid for securities; general requirements as to the application of "prudence" and other tests in making investments; supervision by administrative authorities; and requirements as to the type of authorization for particular investments. Except as otherwise indicated, the opinion expressed herein is subject to any such restrictive provisions.

We have not consulted with local counsel in any state, and, as members of the Bar of the State of Texas and the District of Columbia, we do not purport to be experts in the law of any other jurisdiction involved.

Sincerely,

**ANDREWS & KURTH**

**5,043,000 DEPOSITARY UNITS**  
**Representing Limited Partners' Interests In**  
**PERKINS FAMILY RESTAURANTS, L.P.**  
**SURVEY AS TO LEGALITY FOR INVESTMENT**

As of September 11, 1986

(This Survey should be read in conjunction with the applicable footnotes)

The status of the Units with respect to their eligibility for investment by savings banks, trust funds and insurance companies under the statutes of the following States appears to be as indicated:

<u>State</u>	<u>Savings Banks</u>	<u>Trust Funds</u>	<u>Life Insurance Companies</u>	<u>Other Insurance Companies</u>
Alabama	(1)	Not Legal	Legal(4)	(1)
Alaska	Not Legal	(1)	Legal(2)	Legal(2)
Arizona	Not Legal(14)	(1)	Legal(2)	Legal(2)
Arkansas	(1)	Legal(3)	Legal(2)	Legal(2)
California	Not Legal	Legal(3)	Legal(5)	Legal(2)
Colorado	(1)	Legal(3)	Legal(2)	Legal(2)
Connecticut	Legal(7)	Legal(3)	Legal	(1)
Delaware	(1)	Legal(3)	Legal	Legal
District of Columbia	(1)	Legal(3)	Legal(2)	Not Legal
Florida	(1)	Legal(3)	Not Legal(10)	Not Legal(10)
Georgia	(1)	Legal(3)	Legal(2)	Legal(2)
Hawaii	Not Legal	Legal(3)	Legal(2)	Legal(2)
Idaho	(1)	Legal(3)	Legal(2)	Legal(2)
Illinois	(1)	Legal(3)	Legal	Legal
Indiana	Legal(3)	Legal(3)	Legal(2)	Legal(2)
Iowa	(1)	Legal(3)	Not Legal	Legal(2)
Kansas	(1)	Legal(3)(13)	Legal(8)	Legal(8)
Kentucky	(1)	Not Legal	Legal(2)	Legal(2)
Louisiana	(1)	Legal(3)	Legal(2)	Legal(2)
Maine	Legal(6)	Legal(3)	Legal(4)	Legal(4)
Maryland	(1)	(1)	Not Legal	Not Legal
Massachusetts	Not Legal	(1)	Not Legal	Not Legal
Michigan	Not Legal	Legal(3)	Legal(2)	Legal(2)
Minnesota	Not Legal	Legal(3)	Legal(2)	Legal(2)
Mississippi	(1)	Legal(3)	Legal(2)	Legal(2)
Missouri	(1)	(1)	Legal(2)	(1)
Montana	Not Legal	Legal(3)	Legal(4)	Legal(4)

State	<u>Savings Banks</u>	<u>Trust Funds</u>	<u>Life Insurance Companies</u>	<u>Other Insurance Companies</u>
Nebraska	(1)	Legal(3)	Legal(2)	Legal(2)
Nevada	(1)	Legal(3)	Legal(4)	Legal(4)
New Hampshire	Legal(7)	Not Legal	Legal	Legal
New Jersey	Legal(2)	Legal(3)	Legal(2)	Legal(2)
New Mexico	(1)	Legal(3)	Legal(4)	Legal(4)
New York	Legal(7)	Legal(3)	Legal	Legal(2)
North Carolina	(1)	Legal(3)	Legal(2)	Not Legal
North Dakota	(1)	Legal(3)	Legal(2)	Legal(2)
Ohio	Legal(8)	Not Legal	Legal(2)	Legal(2)
Oklahoma	(1)	Legal(3)	Legal(2)	Legal(2)
Oregon	Legal(2)	Legal(3)	Legal(7)	Legal(7)
Pennsylvania	Legal(9)	Not Legal	Not Legal	Not Legal
Rhode Island	Not Legal	Legal	(1)	(1)
South Carolina	(1)	Legal(3)	Not Legal	Not Legal
South Dakota	(1)	Legal(3)	Legal(2)	Legal(2)
Tennessee	(1)	Legal(3)	Not Legal(10)	(1)
Texas	(1)	Legal(2)(11)	Legal(2)	Legal(2)
Utah	(1)	Legal(3)	Not Legal	Not Legal
Vermont	Legal(2)	(1)	Legal(7)	Legal(7)
Virginia	(1)	Legal(3)	Legal(12)	Legal(12)
Washington	Not Legal	Legal(3)	Legal(2)	Legal(2)
West Virginia	(1)	Not Legal	Legal(2)	Legal(2)
Wisconsin	Not Legal	Legal(3)	Legal(2)	Legal(2)
Wyoming	(1)	Legal(3)	Legal(4)	Legal(4)

(1) No relevant statutory provision.

(2) Eligible only by virtue of authority to invest to a limited extent in securities not otherwise eligible for investment.

(3) Provided "prudent investor" test is met.

(4) Eligible only by virtue of authority to invest to a limited extent in securities not otherwise eligible for investment, provided the securities qualify as a "sound investment."

(5) Eligible for "excess funds investment."

(6) Eligible only by virtue of authority to invest to a limited extent in securities not otherwise eligible for investment, provided the savings bank's directors consider them to be sound, prudent investments.

(7) Eligible, subject to "prudent investor" test, only by virtue of authority to invest to a limited extent in securities not otherwise eligible for investment.

(8) Eligible only by virtue of authority to invest to a limited extent in securities not otherwise eligible for investment, as approved by the institution's board of directors.

(9) Legal if such investment is authorized by the savings bank's articles of incorporation.

(10) Unless approved for investment by appropriate state authority.

(11) Except for guardians of estates of wards.

(12) Provided the Units will not subject buyer to any assessment other than for taxes or wages.

(13) Except for conservators, who must secure a court order to authorize investments.

(14) Effective October 1, 1986, there will be no relevant statutory provision.

Attention is also directed to the existence in the statutes of certain States of restrictions as to the percentage of assets and character of funds which may be invested in the Units.

PROSPECTUS

**RECEIVED**

OCT 23 1986

\$300,000,000

**Mesa Capital Corporation**

12% Subordinated Notes due August 1, 1996

(Interest Payable February 1, May 1, August 1 and November 1)

Bechtel Information Services Guaranteed on a Subordinated Basis by and  
Gaithersburg, Maryland Secured by a Subordinated Note of

Mesa Limited Partnership → 33-6454-01

Rule 424(b)  
Registration No.  
① 3 -6454

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RECD S.E.C.

AUG 11 1986

The Notes will be unconditionally guaranteed on a subordinated basis by Mesa Limited Partnership and Mesa Operating Limited Partnership (collectively, the "Partnership"), the sole stockholder of Mesa Capital Corporation ("Capital"), and will be secured by a subordinated note of equal tenor of the Partnership (the "Partnership Note"). The Partnership Note will be unsecured. The Notes will be subordinate to all Senior Indebtedness (as defined) of Capital, and the guarantee by the Partnership of the Notes and the Partnership Note will both be subordinate to all Senior Indebtedness (as defined) of the Partnership. The indenture pursuant to which the Notes will be issued will not restrict the incurrence of Senior Indebtedness by Capital or the Partnership. The principal amount of Senior Indebtedness of the Partnership at June 30, 1986 was approximately \$1,078 million, which amount is expected to be reduced by approximately \$286 million upon the application of the net proceeds of this offering. See "Capitalization" and "Description of Notes."

Payments of interest on the Notes may, at the option of Capital and the Partnership, be made in whole or in part in depositary receipts representing common units of limited partnership interest in the Partnership ("Common Units"). Common Units to be delivered for purposes of any such payment will be valued at between 75% and 90%, depending on the trading volume of the Common Units, of the average Sale Price (as defined) of the Common Units for a specified period prior to the applicable payment date. See "Description of Notes — Payment of Interest in Common Units of the Partnership." Capital and the Partnership currently intend to make all payments of interest on the Notes in cash.

The Notes will be redeemable, in whole at any time or in part from time to time, at the option of Capital, at the redemption prices set forth herein, plus accrued interest thereon, except that prior to August 1, 1991, no such redemption may be made from or in anticipation of money borrowed at an effective interest cost to Capital or the Partnership of less than 12¼% per annum. See "Description of Notes."

Application has been made to list the Notes on the New York Stock Exchange.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE  
SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION  
PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS.  
ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The net proceeds to Capital and the Partnership from the sale of the Notes will be \$286,821,000 (or 95.607% per Note), plus accrued interest, if any, from August 14, 1986, before deduction of expenses estimated at \$580,000. Capital and the Partnership have agreed to indemnify the Underwriter against, and to provide contribution with respect to, certain liabilities, including liabilities under the Securities Act of 1933. See "Underwriting."

The Notes may be sold by Drexel Burnham Lambert Incorporated to the public in one or more transactions prior to August 14, 1986, at negotiated prices or at varying prices determined at the time of sale.

The Notes are being offered by the Underwriter subject to prior sale, when, as and if delivered to and accepted by the Underwriter and subject to approval of certain legal matters by counsel for the Underwriter. It is expected that delivery of the Notes will be made against payment therefor on or about August 14, 1986 at the offices of Drexel Burnham Lambert Incorporated, 60 Broad Street, New York, New York.

**Drexel Burnham Lambert**

INCORPORATED

August 7, 1986



### SUMMARY

*The following summary is qualified in its entirety by the more detailed information and financial statements, including the notes thereto, set forth elsewhere in or incorporated by reference into this Prospectus.*

#### The Partnership and Capital

The Partnership is a Delaware limited partnership engaged in the exploration for and production of oil and gas in the United States. The Partnership was formed to succeed to the business and assets of Mesa Petroleum Co., a Delaware corporation. On June 30, 1986, the Partnership acquired the assets and assumed the liabilities of Pioneer Corporation, a Texas corporation.

Capital is a wholly-owned Delaware subsidiary of the Partnership recently organized for the purpose of raising capital from external sources for the benefit of the Partnership.

#### Industry Conditions

Prices for oil and natural gas declined significantly during the first half of 1986, and further price reductions are possible. There is currently a worldwide surplus of oil and a nationwide surplus in natural gas deliverability. Such factors could adversely affect the operations and financial condition of the Partnership.

#### The Offering

Issue .....	\$300,000,000 of 12% Subordinated Notes due August 1, 1996.
Interest Payment Dates .....	February 1, May 1, August 1 and November 1.
Guarantee .....	Payment of principal of and interest on the Notes will be unconditionally guaranteed on a subordinated basis by the Partnership.
Security .....	The Notes will be secured by the pledge of the Partnership Note, which will be unsecured and subordinate.
Subordination .....	The Notes will be subordinate to all existing and future Senior Indebtedness of Capital, and the Guarantee and the Partnership Note will be subordinate to all existing and future Senior Indebtedness of the Partnership. At June 30, 1986, the Partnership had outstanding Senior Indebtedness, including indebtedness of Pioneer assumed by the Partnership on such date, in the aggregate principal amount of approximately \$1,078 million. Upon application of the net proceeds of this offering, the aggregate principal amount of Senior Indebtedness of the Partnership is expected to be reduced by approximately \$286 million. Neither the indenture governing the Notes and the Guarantee nor the financing agreement governing the Partnership Note will restrict the incurrence of Senior Indebtedness by Capital or the Partnership.
Form of Interest Payments ....	Interest on the Notes may be paid in cash or, at the option of Capital and the Partnership, may be paid in whole or in part in the form of Common Units. Any such Common Units will be valued for such purpose at between 75% and 90%, depending on the trading volume of the Common Units, of the average Sale Price of the Common Units for a specified period prior to the applicable interest payment date. Capital and the Partnership currently intend to make all payments of interest on the Notes in cash.
Optional Redemption .....	The Notes will be redeemable at the option of Capital, in whole or in part at the redemption prices set forth herein, plus accrued interest thereon, except that prior to August 1, 1991, such redemption may be made with money borrowed at an effective interest cost of less than 12 1/4% per annum.
Use of Proceeds .....	Proceeds of the offering will be used to reduce outstanding indebtedness under the Partnership's principal revolving credit facility.
Listing .....	Application has been made to list the Notes on the New York Stock Exchange.

## THE PARTNERSHIP AND CAPITAL

### The Partnership

The Partnership is a Delaware limited partnership engaged in the exploration for and production of oil and gas in the United States. Approximately 90% of the Partnership's equivalent hydrocarbon reserves are natural gas reserves. The Partnership was formed in connection with a two-step plan of complete liquidation and dissolution (the "Mesa Plan") of Mesa Petroleum Co., a Delaware corporation ("Mesa Petroleum"). In the first step of the Mesa Plan, on December 27, 1985 Mesa Petroleum transferred all of its oil and gas and other operating assets to the Partnership in exchange for the assumption by the Partnership of certain Mesa Petroleum liabilities and the issuance to Mesa Petroleum of Common Units of the Partnership. Mesa Petroleum then distributed such Common Units to its stockholders. Following such first step, Mesa Petroleum has remained in existence for the purpose of disposing of its remaining assets and satisfying its remaining liabilities. In the second step of the Mesa Plan, which is presently expected to occur in early 1987, Mesa Petroleum will use the net proceeds of its winding up to purchase newly issued Common Units from the Partnership and will distribute such Units to its stockholders as a final liquidating distribution (the "Final Mesa Distribution"). See "Capitalization." The Partnership is the successor to Mesa Petroleum for financial statement purposes.

On June 30, 1986, the Partnership consummated a transaction (the "Pioneer Acquisition") with Pioneer Corporation, a Texas corporation ("Pioneer"), in which the Partnership acquired the assets and assumed the liabilities of Pioneer. See "Business of the Partnership — Acquisition of Pioneer Corporation."

The general partners of the Partnership (the "General Partners") are T. Boone Pickens, Jr., founder and chairman of Mesa Petroleum, and Pickens Operating Co., a Texas corporation wholly owned by Mr. Pickens. The Partnership conducts its operations through Mesa Operating Limited Partnership, a Delaware limited partnership in which the Partnership owns a 99% interest as a limited partner (the "Operating Partnership"). Unless the context otherwise requires, references herein to the "Partnership" are to the Partnership and the Operating Partnership, viewed as a single entity. The Partnership maintains its principal executive offices at One Mesa Square, P. O. Box 2009, Amarillo, Texas 79189, where its telephone number is (806) 378-1000.

### Capital

Capital, a Delaware corporation, was recently organized as a wholly-owned subsidiary of the Partnership for the purpose of raising capital from external sources. Capital will not engage in any business activities other than offering securities or borrowing money for the benefit of the Partnership. The assets of Capital consist of \$1,000 in cash and a \$999,000 note receivable from the Partnership. Capital has no liabilities.

**BAKER & BOTTS**

OTHER OFFICES  
WASHINGTON, D.C.  
DALLAS  
AUSTIN

ONE SHELL PLAZA  
810 LOUISIANA  
HOUSTON, TEXAS 77002-4995

TELEPHONE (713) 229-1234  
TELECOPIER (713) 229-1733  
TELEX 78-2778

G-42,081  
MESA LIMITED PARTNERSHIP  
(Mesa Capital)

October 23, 1986

Associate Chief Counsel (Technical)  
Internal Revenue Service  
Attention: CC:IND:S:3, Room 6545  
111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Re: Mesa Limited Partnership

Dear Sir:

You are respectfully requested to rule that certain promissory notes in the aggregate principal amount of \$300 million issued by Mesa Capital Corporation ("Capital") should be treated as direct obligations of Mesa Limited Partnership ("MLP"), a publicly-owned, billion-dollar limited partnership, because such notes were issued solely to raise funds for use in MLP's business, were sold solely on the credit of MLP's guarantee, and will be serviced solely with funds provided by MLP, all as more particularly described below.

Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended (the Code"), and all regulatory references are to the Treasury regulations thereunder.

**PARTIES**

The parties involved are

MLP, a Delaware limited partnership whose Employer Identification Number is 75-2110450,"

T. Boone Pickens, Jr. ("Pickens"), an individual whose Taxpayer Identification Number is 445-24-1904,"

Pickens Operating Co. ("Pickens Co."), a Texas corporation wholly owned by Pickens whose Employer Identification Number is 75-2071043,"

**Associate Chief Counsel (Technical) -2-**

Mesa Operating Limited Partnership ("Operating LP"), a Delaware limited partnership whose Employer Identification Number is 75-2110528, and

Capital, a Delaware corporation whose Employer Identification Number is 75-2115388.

The address of each of MLP, Operating LP, Pickens, Pickens Co., and Capital is One Mesa Square, P.O. Box 2009, Amarillo, Texas 79189; and the telephone number of each is (806) 378-1000. Their tax and information returns are filed on the basis of the calendar year, and the District Director at Dallas, Texas, has audit jurisdiction over such returns. Pickens and Pickens Co. use the cash method of accounting; the other parties use the accrual method.

Pickens and Pickens Co. (collectively "General Partners") are the sole general partners of MLP and Operating LP. The General Partners have a 1% interest in the general profits and losses and capital of MLP and a 1.101% interest in the general profits and losses and capital of Operating LP. MLP owns all of the limited partnership interest in Operating LP, which consists of a 98.9899% interest in the general profits and losses and capital of Operating LP. Operating LP is engaged primarily in the development and production of oil and gas. The two-tier partnership structure permits changes in ownership of limited partnership interests in MLP without resulting in a change in the partners of Operating LP and thereby avoids the necessity of having to record changes in limited partnership interests in each of the states in which the Operating LP engages in business. For convenience, Operating LP will be disregarded and its assets and liabilities will be treated as if owned directly by MLP in which the General Partners have a 2% interest. The assets, liabilities, business, and financial statements of MLP are described in more detail at pages 4-14 of the prospectus attached hereto as Exhibit A ("Prospectus").

The limited partnership interest in MLP has been divided into Units, of which currently there are two classes: Common Units and Preference A Units. The two classes of Units are economically the same except that for a limited period the Preference A Units have a preferred and limited right to earnings and distributions. As of July 18, 1986, there were over 65 million common units issued and outstanding and over 61 million Preference A Units issued and outstanding. Both Units trade on the New York Stock Exchange and on July 18, 1986, had an aggregate market value in

Associate Chief Counsel (Technical) -3-

excess of \$1.5 billion. As of the date of this letter, the number of outstanding Units and the aggregate market value is substantially greater.

#### BACKGROUND

MLP was formed at the end of 1985 to succeed to the oil and gas business of Mesa Petroleum Co. As of June 30, 1986, MLP had assets with a book value in excess of \$2.6 billion, and debts in excess of \$1 billion, most of which was borrowed pursuant to a revolving bank credit agreement. MLP wished to issue its 10-year subordinated debentures to obtain funds to reduce its bank debt.

Normally, pension funds and other fiduciary-managed organizations are large purchasers of investment-grade debt obligations issued by companies with substantial assets and net worth. MLP was advised, however, that the laws of many states restricted the right of such organizations to make investments that do not meet certain criteria and that, while typically a debt obligation of a corporation would meet such criteria, a debt obligation of a partnership would not.

#### THE PLAN

As a possible means of permitting more state regulated organizations to invest in MLP debt obligations, MLP adopted the following plan:

(a) Capital was organized with \$1,000 cash and a \$999,000 note receivable from MLP. Its purpose was limited to offering securities or borrowing money for the benefit of MLP. Page 4 of the Prospectus.

(b) Capital was made the nominal issuer of promissory notes, that had an aggregate face amount of \$300 million, an interest rate of 12% per annum, and a maturity date of August 1, 1996 ("Capital Notes"). The Capital Notes were guaranteed by MLP.

(c) The Capital Notes were sold in a Firm Underwriting for \$286,821,000. In the Prospectus, the business and financial condition of Capital are disclosed in three sentences. The business and financial condition of MLP are discussed in considerable detail.

(d) All the proceeds from the sale of the Capital Notes were immediately lent to MLP for an MLP note ("MLP Note") exactly sufficient to service the Capital Notes.

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