COMMODITY FUTURES TRADING COMMISSION
2033 K Street, NW, Washington, DC 20581
(202) 254 - 8955
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DIVISION OF
TRADING AND MARKETS

94-55

April 29, 1994

Re: Request for CPO Registration Relief

Dear :

This is in response to your letter to the Division of Trading and Markets ("Division") dated February 15, 1994, as supplemented by telephone conversations with Division staff, wherein you request that the Division not recommend that the Commission take any enforcement action against "X" for failure to register as a commodity pool operator ("CPO") in connection with its serving as a general partner of the "Fund".

Based upon your letter, as supplemented, we understand the facts to be as follows. You and "X" are the general partners of the Fund. You are a registered CPO, established the Fund and make all trading decisions for the Fund. In addition, you are solely responsible for soliciting participations in the Fund. "X"'s primary business is managing real estate limited partnerships that do not trade in the commodity interest markets. "X" is a corporation wholly owned by "A", your wife. You are the president and a director of "X".[1/] "X" performs no operational or trading functions for the Fund and serves as a general partner of the Fund on the advice of your attorney, who advised you that it would be prudent to have a corporate entity, as well as an individual, serve as a general partner of the Fund so as to provide legal continuity to the Fund in the event that you for any reason become unable to serve as a general partner of the Fund.

Inasmuch as "X" will be a general partner of the Fund, it will be serving as a CPO of the Fund and, absent relief, must register as a CPO. In support of the instant request, by letter

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1/ In this connection, you represent that your wife does not participate in the operation of "X" and was made the sole owner of "X" for estate planning purposes.

dated April 22, 1994, you and "X" provided the Division with a written acknowledgment whereby both accept joint and several liability for any violation of the Commodity Exchange Act (the "Act"), 7 U.S.C. §1 et seq. (1988 & Supp. IV 1992), or Commission regulations thereunder committed in connection with serving as general partners and CPOs of the Fund.

In light of the foregoing, the Division will not recommend that the Commission take any enforcement action against "X" for its failure to register as a CPO in connection with its serving as a general partner of the Fund. This position is, however, subject to the conditions that "X" will not exercise discretion, supervision or control over, or take part in: (1) the solicitation, acceptance or receipt of funds or property to be used for purchasing interests in the Fund, or (2) the investment, use or other disposition of funds or property of the Fund. This position is subject to the further condition that "A", the owner of "X", submits a Form 8-R and fingerprint card to the National Futures Association for clearance purposes and has no statutory disqualification from registration under the Act.

We note that "X" remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. §6o (1988 & Supp. IV 1992), and to all otherwise applicable provisions of the Act and the Commission's regulations thereunder, e.g., the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations and Rules 4.20 and 4.41,[2/] which apply to each person who comes within the CPO definition, regardless of registration status. Moreover, the position which we have taken herein is solely applicable to "X" in connection with its serving as a CPO of the Fund.

The position taken in this letter is based upon the representations that have been made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that your activities or those of "X" change in any way from those as represented to us.

Further, this letter represents the position of the Division of Trading and Markets only. It does not necessarily represent the views of the Commission or any other office or division of the Commission. If you have any questions concerning this

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2/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

correspondence, please contact me or Barbara S. Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

cc: Daniel A. Driscoll, National Futures Association

MC/mc