COMMODITY FUTURES TRADING COMMISSION
2033 K Street, NW, Washington, DC 20581
(202) 254 - 8955
(202) 254 - 8010 Facsimile

DIVISION OF
TRADING AND MARKETS

94-70

May 23, 1994

Re: No-Action Relief from Regulation as a CPO

Dear :

This is in response to your letter dated April 15, 1994 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, wherein you request On behalf of "X" relief from regulation as a commodity pool operator ("CPO") in connection with its operation of the "Fund".

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Fund, which commenced operations in the Spring of 1992, was formed for the principal purpose of investing in marketable securities. Its prime objective is to seek above average rates of return with limited exposure to market risk and, in furtherance of this purpose, from time to time the Fund invests in stock index futures contracts for the purpose of hedging its securities positions.

The Fund's general partner is "X". "A" and "B", who are brothers, are "X"'s sole directors, officers and shareholders. "X", "A" and "B" are not subject to any statutory disqualification under Section 8a(2) or 8a(3) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §12a(2) or 12a(3) (1988 & Supp. IV 1992). The Fund has fourteen limited partners, twelve of whom are members of "A"'s and "B"'s family ("A", "B", their parents, and certain of their adult children and stepchildren). One of the other two limited partners is an advertising executive who: (1) has known "B" for at least 40 years and keeps in close, regular contact with him; (2) does his own investing; (3) is an "accredited investor" under Regulation D of the Securities Act of 1933; (4) has a net worth in excess of $1,000,000; and (5) has contributed approximately $10,000, or one percent of his net worth, to the Fund. The other limited partner is a trust whose settlor and trustee (the same individual): (1) has known "A" for at least 20 years and keeps in close, regular contact with him; (2) is an

accredited investor; and (3) is a beneficiary of the trust.[1/] The trust has a net asset value in excess of one million dollars and has contributed approximately $10,000, or one percent of its assets, to the Fund.

To date, "X" has operated the Fund pursuant to a claim of exemption under Rule 4.13(a)(2).[2/] It now seeks to accept additional investors such that the aggregate gross capital contributions to the Fund will exceed the $200,000 limit specified in Rule 4.13(a)(2) and, accordingly, it seeks regulatory relief. In this regard, you represent that there has not been and will not be any general solicitation for the Fund.

The additional investors in the Fund would be (other) adult children of "A"; a "long-established" family real estate partnership, of which "B" and his first cousin are the general partners and the children of "A" and "B" and the first cousin are the limited partners; and two natural persons. With respect to the natural persons you represent that each: (1) has known "B" or "A" for at least 30 years and remains in close, personal contact with him; (2) is a "qualified eligible participant" under Rule 4.7;[3/] and (3) will invest no more than one percent of his net worth in the Fund.

Based upon the foregoing, the Division will not recommend that the Commission take any enforcement action for failure to register as a CPO against "X" if it accepts aggregate gross capital contributions in excess of $200,000 to the Fund and continues to comply with Rule 4.13.

The relief issued by this letter does not excuse "X" from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. §6o, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4.

1/ The other beneficiary of the trust is the father of the settlor and trustee of the trust.

2/ Commission records indicate that "X" filed a Rule 4.13(a)(2) claim of exemption on December 21, 1993. Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

3/ One of these potential investors is a registered broker-dealer and the other is a businessman/investor with a substantial inheritance.

This letter is based on the representations you have made to us as stated above and is strictly limited to those representations. Any different, changed or omitted facts or conditions might require us to reach a different conclusion.[4/] In this regard, we request that you notify us immediately in the event the Fund's operations, including its membership composition, change in any way from those as represented to us.

This letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Barbara S. Gold, Assistant Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

4/ For example, in the event the Fund accepted limited partners other than those specified herein, the position taken herein may no longer obtain.