

CFTC Letter No. 98-26**April 7, 1998****Division of Trading & Markets****Re: Section 4m(1) -- Request for No-Action Position Regarding Commodity Pool Operator Registration**

Dear :

This is in response to your letter dated November 5, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile dated December 30, 1997 and telephone conversations with Division staff. By your correspondence, you request that the Division grant relief from the requirement to register as a commodity pool operator ("CPO") pursuant to Section 4m(1) of the Commodity Exchange Act ("Act")¹ to "X" in connection with its acting as the managing member of a private investment limited liability company (the "Fund") that intends to enter into commodity interest contracts using a small percentage of the Fund's assets. You believe that relief is appropriate due to the fact that, among other things, the Fund intends to commit only a modest amount of its assets to commodity interest trading. At this time, the Division is unable to grant your request.

As you know, there is currently no exception to the obligation to register as a CPO based on the fact that a fund makes only de minimis investments in commodity interests, regardless of whether these investments are made for speculative or bona fide hedging purposes or whether the general purpose and intent of the fund is to engage primarily in securities transactions. In light of the important customer protection issues at stake, Division staff believe that notice and comment rulemaking is the appropriate procedure for evaluating whether some type of de minimis exception to the CPO registration requirements is consistent with the intent of the Act and is otherwise in the public interest. To that end, we invite you to file a petition for rulemaking on this issue or to comment on any future rulemaking initiated by the Commission or by another industry participant.

If you have any questions regarding this correspondence, please contact David Battan or Charles O'Brien of my staff, at (202) 418-5450.

Sincerely,

I. Michael Greenberger

Director

¹ 7 U.S.C. § 6m(1) (1994).