

CFTC Letter No. 98-25**March 31, 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 February 17, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your facsimile dated March 5, 1998, your letter dated March 24, 1998 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 general partner of two private investment limited partnerships (the "Funds") that intend to enter into commodity interest contracts using a small percentage of their assets. You believe that relief is appropriate due to the fact that, among other things, the Funds intend to commit a modest amount of their 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, are solely incidental to the securities trading of the fund 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).