

MEMORANDUM

TO: MARY ANN GADZIALA

FROM: DAVID K. KARNES

DATE: MARCH 9, 1989

RE: TECHNICAL AMENDMENTS TO FINANCIAL INSTITUTIONS,
REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989

As we have discussed, investor limited partnerships have been organized for the specific purpose of acquiring distressed institutions from FSLIC. Approximately \$120,000,000 was raised by America First Financial Fund 1987-A, approximately \$246,000,000 has been raised to date for America First Financial Fund 1988 with the offering still in progress, and additional capital has been raised by US Thrift Acquisition Partners sponsored by Merrill Lynch with this offering also still in progress.

Because these funds represent an infusion of capital into the industry from outside, and because the ownership of the thrifts is transferred to a broadly-based group of public investors, it is the ideal solution to the thrift crisis from a public policy standpoint. It is difficult to criticize arm's length transactions as "government giveaway programs for the rich" when the public has the right to participate in an offering.

We appreciate your concern with keeping any exemption from the commonly-controlled institution indemnification provision as narrow as possible. At the same time, we think that this potentially important new source of capital for the industry must not be throttled in its infancy. We have drafted a proposed technical amendment to the bill which we believe accomplishes your purposes, while at the same time preserving the availability of the exemption for the future. This proposed technical amendment is attached as Exhibit A.

The exemption has been limited to publicly-traded limited partnerships which propose to control financial institutions. I believe that we can definitively confirm that there are only three such entities, the two America First funds and the Merrill Lynch fund. Financial institutions and their holding companies are examined in Branch 1 or Branch 2 of the Division of Corporate Finance of the Securities and Exchange Commission. Branch 1 is administered by Branch Chief John F. Murphy (272-2717), Branch 2 by Branch Chief Steven C. Duvall (272-2735) and their Assistant Director is A. Richard Tow (272-2733). They would know if there have been any other filings, and I intend to be in touch with them.

Insofar as future offerings are concerned, the proposed technical amendment provides that the exception would only apply to limited partnerships approved as holding companies by the Board of Governors of the Federal Reserve System or the Federal Home Loan Bank Board (System). The proposed comment clarifies that such regulatory agencies can withhold their

approval if the purpose of a restructuring is to avoid the cross indemnification provision of the Act. Thus, the proviso is limited to (1) the existing three funds, and (2) similar funds specifically approved by regulatory authorities in the future.

I would appreciate it if you would give consideration to this revised proposal, and advise me of your views.

D.K.K.