MAY 2 _ 1982

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: Winthrop Financial Co., Inc. ("Winthrop")
Incoming letters dated April 23, 1982

Your letters seek, on behalf of Winthrop, interpretive advice from this Division as to provisions of Regulation D under the 1933 Act. Winthrop is engaged in the organization and sponsorship of real estate limited partnerships, and your questions relate to offerings of interests in real estate limited partnerships pursuant to exemptions from 1933 Act registration contained in Regulation D. In one letter you request advice as to the date on which a five-year installment obligation may start to run for purposes of determining whether a purchaser qualifies as an "accredited investor" under Rule 501(a)(5). In the other letter you seek the Division's interpretation of the disclosure requirements of Rule 502(b)(2)(i)(A) as applied to real estate limited partnerships that will acquire properties with the proceeds of the offering.

Under Rule 501(a)(5), an investor purchasing at least $150,000 of the securities being offered qualifies as an "accredited investor" under certain circumstances if the securities are paid for by an unconditional obligation to pay "within five years of the sale of the securities to the purchaser." For purposes of measuring the length of the installment obligation, Winthrop seeks the Division's concurrence that the five-year period may commence at the date the investor's subscription is accepted and the funds are delivered to the issuer by the escrow agent, rather than at the date upon which the subscription is received into escrow from the investor. Based on the representations in your letter, and solely for purposes of determining the date of commencement of the five-year installment obligation under Rule 501(a)(5), the Division is of the view that the time period of the investor's obligation to pay may be measured from the date the subscription is accepted from the investor and the funds are delivered to the issuer by the escrow agent. It should be noted that this interpretation applies only to the issue discussed and therefore should not be regarded as an opinion as to when the sale of the limited partnership interest occurs.

Your second question involves the provisions of Rule 502(b)(2)(i)(A) as they relate to the disclosure of financial statements of significant properties to be acquired. Rule 502(b)(2)(i)(A) requires an issuer in an offering up to $5,000,000 to furnish the same kind of information as would be required in Part I of Form S-18. Currently, that form is not available for use by limited partnerships, and Rule 502(b)(2)(i)(A) provides that if the Form S-18 is not available the issuer should refer to Part I of a form of registration that the issuer would be entitled to use. A real estate limited partnership presumably would refer to Form S-1 or Form S-11. As you know, the Commission has proposed expanding the availability of Form S-18 to limited partnerships. See Release No. 33-6388 (March 3, 1982).

1933 Act / Rule 501(a)(5)

Under Form S-1 or Form S-11, disclosure regarding significant properties to be acquired is governed by Rule 3-14 of Regulation S-X (17 CFR 210.3-14). Currently, that rule requires audited income statements for the properties for the three most recent fiscal years. The Commission, however, has proposed that this rule be amended. See Release No. 33-6354 (October 7, 1981). Under the proposed amendments, if it meets three conditions, the issuer may present one year of audited income statements, instead of three. In the proposed amendments to Form S-18 at Item 21(g), the Commission has included a special instruction for real estate operations to be acquired. This instruction follows the format of Rule 3-14 of Regulation S-X and requires two years audited income statements, but permits presentation of only one year of audited statements if certain conditions are met.

Given these requirements and proposed amendments, this Division has the following views with respect to the presentation of financial statements of properties to be acquired in offerings under $5,000,000 pursuant to Regulation D. If the issuer is following current Rule 3-14 of Regulation S-X, the issuer may rely on the language in Rule 502(b)(2)(i)(A) of Regulation D and present two years of income statements on properties to be acquired, only one year of which must be audited. If the Commission adopts Rule 3-14 of Regulation S-X in its proposed form, then the Regulation D issuer that meets the three conditions in the new Rule 3-14 may present only one year of audited income statements, with no additional requirement to present a second year on an unaudited basis. If the Regulation D issuer cannot meet the three conditions of proposed Rule 3-14, then it may present two years of income statements on properties to be acquired, but only one year need be audited.

If the Regulation D issuer is following Form S-18 and assuming the Commission adopts the proposed instruction in that form with respect to properties to be acquired, then the issuer may present only one year of audited income statements on properties to be acquired if the issuer satisfies the conditions in the instruction. If the Regulation D issuer cannot meet the conditions in the Form S-18 instruction, then it may present two years of income statements, only one of which must be audited.

Rule 502(b)(2)(i)(A) also provides that if the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, then the issuer may furnish financial statements prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant. In applying this provision, it is the Division's view that where the limited partnership issuer cannot obtain, without unreasonable effort or expense, the requisite financial statements regarding properties

to be acquired, then the issuer may furnish financial information for such properties prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

Because these positions are based upon the representations made to the Division in your letters, it should be noted that any different facts or conditions might require different conclusions.

Sincerely,

David B.H. Martin, Jr.

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Special Counsel