

## **EQUIPMENT PROGRAMS**

*As amended May 7, 2007 (originally adopted Nov. 20, 1986 and amended April 22, 1988)*

### **I. INTRODUCTION.**

#### *A Application:*

1. The rules contained in these guidelines apply to qualification, and registration of PROGRAMS formed to own equipment and either (a) lease it to non-AFFILIATES, or (b) operate the equipment themselves or through AFFILIATES. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain guidelines may be modified or waived by the ADMINISTRATOR.

COMMENT: The purpose of the guidelines is to establish uniform and consistent standards to be applied by the various state securities ADMINISTRATORS throughout the country. These standards are primarily designed for public programs which acquire and own and either lease or operate equipment of any kind. Excluded shall be PROGRAMS formed to acquire or develop and operate a business and eventually dispose of the business as a whole rather than dispose of identified pieces of equipment. In such PROGRAMS, actual ownership and operation of equipment is incidental to the business of the PROGRAM. An example of this exclusion would be a PROGRAM formed to acquire, develop and operate cable television systems, where the purchase of equipment is incidental to the business. Among other things, the guidelines apply to drilling rig PROGRAMS, service and supply PROGRAMS, and cable television PROGRAMS which do not fall within the above exclusion.

2. Where the individual characteristics of specific PROGRAMS warrant modification from these standards, they will be accommodated insofar as possible while still being consistent with the spirit of these guidelines. When required by the ADMINISTRATOR, a CROSS REFERENCE SHEET shall be furnished with the application.
3. Where these guidelines conflict with disclosure requirements of the Securities and Exchange Commission, the guidelines will not apply.

*B. Definitions:* Where terms used in the PROSPECTUS are subject to more than one interpretation and such terms are material to PROGRAM provisions, the PROSPECTUS shall contain a glossary of such terms. Any discrepancies between the definitions set forth in these GUIDELINES and the definitions set forth in the glossary shall be indicated in the application filed with the ADMINISTRATOR.

1. *ACQUISITION EXPENSES:* expenses including but not limited to legal fees and expenses, travel and communication expenses, costs of appraisals, accounting fees and expenses, and miscellaneous expenses relating to selection and acquisition of equipment, whether or not acquired.

2. *ACQUISITION FEE*: the total of all fees and commissions paid by any party in connection with the initial purchase or manufacture of equipment acquired by a PROGRAM. Included in the computation of such fees or commissions shall be any commission, selection fee, construction supervision fee, financing fee, non-recurring management fee, or any fee of a similar nature, however designated.
3. *ADMINISTRATOR*: the official or agency administering the securities law of a State.
4. *AFFILIATE*: (a) any PERSON directly or indirectly controlling, controlled by or under common control with another PERSON (b) any PERSON owning or controlling 10% or more of the outstanding voting securities of such other PERSON (c) any officer, director, or partner of such PERSON and (d) if such other PERSON is an officer, director or partner, any company for which such PERSON acts in such capacity.
5. *ASSESSMENTS*: additional amounts of capital which may be mandatorily required of or paid at the option of a PARTICIPANT beyond his subscription commitment.
6. *CAPITAL CONTRIBUTION*: the gross amount of investment in a PROGRAM by a PARTICIPANT, or all PARTICIPANTS, as the case may be.

COMMENT: Funds reinvested pursuant to Subsections VIII.D and E of these GUIDELINES are not considered to be "investments" in the PROGRAM for purposes of calculating CAPITAL CONTRIBUTIONS.

7. *CARRIED INTEREST*: an interest taken in a program by a PERSON, other than the promotional interest provided for in Sections IV.C. 3 and IV.D., for which full consideration has neither been paid nor is to be paid.
8. *CASH AVAILABLE FOR DISTRIBUTION*: CASH FLOW plus cash funds available for distribution from PROGRAM reserves less amounts set aside for restoration or creation of reserves.
9. *CASH FLOW*: PROGRAM cash funds provided from operations, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements (other than cash funds withdrawn from reserves).

COMMENT: The PROGRAM agreement should contain appropriate language to effectuate this provision.

10. *COMPETITIVE EQUIPMENT SALE COMMISSION*: that brokerage fee paid for services rendered in connection with the purchase or sale of equipment

which is reasonable, customary and competitive in light of the size, type and location of the equipment.

11. *CROSS REFERENCE SHEET*: a compilation of the Guideline sections, referenced to the page of the PROSPECTUS, PROGRAM agreement, or other exhibits, and justification for any deviation from the Guidelines.
12. *EQUIPMENT MANAGEMENT*: personnel and services necessary to the leasing activities of the PROGRAM, including but not limited to, leasing and re-leasing of PROGRAM equipment, arranging for necessary maintenance and repair of the equipment, collecting revenues, paying operating expenses, determining that the equipment is used in accordance with all operative contractual arrangements and providing clerical and bookkeeping services necessary to the operation of PROGRAM equipment.
13. *FRONT-END FEES*: fees and expenses paid by any party for any services rendered during the PROGRAM'S organizational or acquisition phase including ORGANIZATION AND OFFERING EXPENSES, LEASING FEES, ACQUISITION FEES, ACQUISITION EXPENSES, and any other similar fees, however designated by the SPONSOR. FRONT-END FEES shall not include any ACQUISITION FEES or ACQUISITION EXPENSES paid by a manufacturer of equipment to any of its employees unless such PERSONS are AFFILIATES of the SPONSOR.

COMMENT: It is anticipated that fees and expenses covered by the last sentence may be incorporated into the purchase price, and these are not to be construed as FRONT-END FEES. The general approach in these definitions and the limits contained in Section IV. is that there should be no duplication of fees.

14. *FULL PAYOUT LEASES*: leases under which the non-cancellable rental payments due during the initial term of the lease are sufficient to recover the PURCHASE PRICE OF EQUIPMENT.
15. *INDEPENDENT EXPERT*. A PERSON with no current material or prior business or personal relationship with the SPONSOR who is engaged to a substantial extent in the business of rendering opinions regarding the value of assets of the type held by the PROGRAM, and who is qualified to perform such work.
16. *INVESTMENT IN EQUIPMENT*: the amount of CAPITAL CONTRIBUTIONS actually paid or allocated to the purchase, manufacture, or renovation of equipment acquired by the PROGRAM, including the purchase of equipment, working capital reserves allocable thereto (except that working capital reserves in excess of 3% shall not be included), and other cash payments such as interest and taxes but excluding FRONT-END FEES.

17. *LEASING FEE*: the total of all fees and commissions paid by any party in connection with the initial lease of equipment acquired by a PROGRAM.
18. *NET DISPOSITION PROCEEDS*: the proceeds realized by the PROGRAM from sale, refinancing or other disposition of PROGRAM EQUIPMENT, including insurance proceeds or lessee indemnity payments arising from the loss or destruction of the EQUIPMENT, less all PROGRAM liabilities.
19. *NET LEASE PROVISIONS*: contractual arrangements under which the lessee assumes responsibility for, and bears the cost of, insurance, taxes, maintenance, repair and operation of the leased asset and where the non-cancellable rental payments under the lease are absolutely net to the lessor.

COMMENT: A lease may be deemed to contain NET LEASE PROVISIONS even if some minor costs or responsibilities remain with the lessor or if the lessor retains the option to require and pay for a higher standard of care or a greater level of maintenance or insurance, than would be imposed upon the lessee under the terms of the lease.

20. *NET WORTH*: the excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to any particular asset may be added to the depreciated cost of such asset to compute total assets. The amount of depreciation may be added only to the extent that the amount resulting after adding such depreciation does not exceed the fair market value of such asset.
21. *OPERATING LEASES*: leases which will return to the lessor less than the PURCHASE PRICE OF EQUIPMENT from rentals payable during the initial term of the lease.
22. *ORGANIZATIONAL AND OFFERING EXPENSES*: expenses incurred in connection with preparing a PROGRAM for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of PROGRAM INTERESTS and all advertising expenses except advertising expenses related to the leasing of the PROGRAM's equipment.
23. *PARTICIPANT*: the holder of a PROGRAM INTEREST.
24. *PERSON*: any natural person, partnership, corporation, association, or other legal entity.
25. *PROGRAM*: a limited or general partnership, joint venture, unincorporated association or similar organization, other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from an interest in equipment.

26. *PROGRAM INTEREST*: the limited partnership unit or other indicia of ownership in a PROGRAM.
27. *PROSPECTUS*: shall have the meaning given to that term by Section 2(10) of the Securities Act of 1933, including a preliminary PROSPECTUS; provided, however, that such term as used herein shall also include an offering circular as described in Rule 256 of the General Rules and Regulations under the Securities Act of 1933, or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.
28. *PURCHASE PRICE OF EQUIPMENT*: the price paid upon the purchase or sale of a particular item of equipment, including the amount of ACQUISITION FEES and all liens and mortgages on the equipment, but excluding points and prepaid interest.
29. *ROLL UP*: a transaction involving the acquisition, merger, conversion, or consolidation either directly or indirectly of the PROGRAM and the issuance of securities of a ROLL-UP ENTITY. Such term does not include:
- (a) a transaction involving securities of a PROGRAM that have been for at least 12 months listed on a national securities exchange or traded through the National Association of Securities Dealers Automated Quotation National Market System; or
  - (b) a transaction involving the conversion to corporate, trust or association form of only the PROGRAM if, as a consequence of the transaction, there will be no significant adverse change in any of the following:
    - (i) PARTICIPANT'S voting rights;
    - (ii) the term of existence of the PROGRAM;
    - (iii) SPONSOR compensation; or
    - (iv) the PROGRAM'S investment objectives.
30. *ROLL-UP ENTITY*: the partnership, corporation, trust, or other entity that would be created or would survive after the successful completion of a proposed ROLL-UP transaction.
31. *SPECIFIED EQUIPMENT PROGRAM*: a PROGRAM where, at the time a securities registration is ordered effective, at least 75% of the net proceeds from the sale of PROGRAM INTERESTS are allocable to the purchase or renovation of identified equipment or one specified type of identified equipment. Reserves shall not be included in the 75%.

COMMENT: Identified equipment means items of equipment (not types of equipment) actually specified in the Prospectus at the date of effectiveness.

One specified type of identified equipment is narrowly defined. For example, one specified type of equipment would be commercial aircraft, marine containers or computer software. A broader category, e.g. transportation or computer equipment will not be considered to be one specified type of identified equipment.

32. *SPONSOR*: any PERSON directly or indirectly instrumental in organizing, wholly or in part, a PROGRAM or any PERSON who will manage or participate in the management of a PROGRAM, and any AFFILIATE of any such person. SPONSOR does not include a PERSON whose only relation with the PROGRAM is that of an independent equipment manager and whose only compensation is as such. SPONSOR does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of PROGRAM interests.

## II. REQUIREMENTS OF SPONSORS.

A. *Experience*. The SPONSOR, the general partner, or their chief operating officers, shall have at least three years relevant equipment leasing or other experience which demonstrates sufficient knowledge and experience to acquire and manage the type of equipment the PROGRAM will purchase. Any of the foregoing or any AFFILIATE providing services to the PROGRAM shall have had not less than three years relevant experience in the kind of service being rendered or must otherwise demonstrate sufficient knowledge and experience to perform the services proposed.

B.

### 1. NET WORTH Requirement of SPONSOR.

The financial condition of the SPONSOR liable for the debts of the PROGRAM must be commensurate with any financial obligations assumed in the offering and in the operation of the PROGRAM. At a minimum, such SPONSOR shall have an aggregate financial NET WORTH, exclusive of home, automobile and home furnishings, of the greater of either \$50,000 or an amount at least equal to 5% of the gross amount of all direct participation offerings sold within the prior 12 months plus 5% of the gross amount of the current offering, to an aggregate maximum NET WORTH of such SPONSOR of one million dollars. In determining NET WORTH for this purpose, contingent liabilities and the use of promissory notes will be evaluated by the ADMINISTRATOR to determine the appropriateness of their inclusion in NET WORTH computation.

COMMENT: The ADMINISTRATOR may want to consider the terms of the note, including whether the note is demand or recourse, as well as the maker's ability to honor the note through the use of liquid assets.

2. Financial Information Required. The SPONSOR shall provide as an exhibit to the application the following financial information in support of its NET WORTH:
  - a. Corporate SPONSORS shall submit a balance sheet as of the end of their most recent fiscal year, prepared in accordance with generally accepted accounting principles and examined and reported upon by an independent certified public accountant in accordance with generally accepted auditing standards. A balance sheet for the prior fiscal year which meets the above qualifications shall be used if the most recent fiscal year has ended not more than ninety days prior to the date of filing, and an unaudited balance sheet as of a date not more than one hundred thirty-five days prior to the date of filing should also be prepared. Such statements shall be included in the PROSPECTUS.
  - b. Where the NET WORTH requirement of this section cannot be met by corporate SPONSORS, a balance sheet for each non-corporate SPONSOR (including individual partners or individual joint ventures of a SPONSOR) as of a date not more than one hundred thirty-five days prior to the date of filing an application shall be submitted. Such balance sheet shall be prepared in accordance with generally accepted accounting principles and reviewed and reported upon by an independent certified public accountant under the review standards set forth by the American Institute of Certified Public Accountants. In such case, a representation of the amount of such NET WORTH must be included in the PROSPECTUS, or in the alternative, a representation that such SPONSOR meets the NET WORTH requirements of this section.
- C. Tax Ruling or Opinion. The SPONSOR must have a tax ruling from the U.S. Internal Revenue Service or an opinion of qualified tax counsel concerning the flow-through of tax benefits and other tax consequences to the PARTICIPANT. An opinion of counsel shall be in form and substance satisfactory to the ADMINISTRATOR and shall be unqualified except to the extent permitted by the ADMINISTRATOR.

COMMENT: An opinion meeting the requirements of ABA Formal Opinion 346 (Revised) of the American Bar Association Standing Committee on Ethics and Professional Responsibility and any applicable law shall be deemed satisfactory.

- D. Reports to ADMINISTRATOR. The SPONSOR shall submit to the ADMINISTRATOR any other information which the ADMINISTRATOR requires, including, but not limited to, reports and statements required to be distributed to PARTICIPANTS.
- E. Liability and Indemnification.
  1. The PROGRAM shall not provide for indemnification of the SPONSOR for any liability or loss suffered by the SPONSOR, nor shall it provide that the

SPONSOR be held harmless for any loss or liability suffered by the PROGRAM, unless all of the following conditions are met:

- a. The SPONSOR has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the PROGRAM, and
- b. the SPONSOR was acting on behalf of or performing services for the PROGRAM, and
- c. such liability or loss was not the result of negligence or misconduct by the SPONSOR, and
- d. such indemnification or agreement to hold harmless is recoverable only out of the assets of the PROGRAM and not from the limited partners.

For purposes of this section, AFFILIATES must be performing services on behalf of the PROGRAM and acting within the scope of the general partner's authority.

2. Indemnification of the SPONSORS will not be allowed for any liability imposed by judgment, and costs associated therewith, including attorney's fees, arising from or out of a violation of state or federal securities laws associated with the offer and sale of partnership units. Indemnification will be allowed for settlements and related expenses of lawsuits alleging securities law violations, and for expenses incurred in successfully defending such lawsuits, provided that a court either:
  - a. approves the settlement and finds that indemnification of the settlement and related costs should be made, or
  - b. approves indemnification of litigation costs if a successful defense is made. Every application for registration must contain an undertaking that such parties seeking indemnification will apprise the court of the positions of the ADMINISTRATOR and the SEC with respect to indemnification for securities laws violations, before seeking court approval for indemnification.
3. The PROGRAM may not incur the cost of that portion of liability insurance which insures the SPONSOR for any liability as to which the SPONSOR is prohibited from being indemnified under this section.

### **III. SUITABILITY OF PARTICIPANTS**

#### *A. General Policy.*

1. The SPONSOR shall establish minimum income and net worth standards for PERSONS who purchase PROGRAM INTERESTS.



2. The SPONSOR shall propose minimum income and net worth standards which are reasonable given the type of PROGRAM and the risks associated with the purchase of PROGRAM INTERESTS. PROGRAMS with greater investor risk shall have minimum standards with a substantial NET WORTH requirement. The ADMINISTRATOR shall evaluate the standards proposed by the SPONSOR when the PROGRAM'S application for registration is reviewed. In evaluating the proposed standards, the ADMINISTRATOR may consider the following:
  - a. the PROGRAM'S use of leverage;
  - b. tax implications;
  - c. mandatory deferred payments;
  - d. assessments;
  - e. balloon payment financing;
  - f. potential variances in cash distributions;
  - g. potential PARTICIPANTS;
  - h. relationship between potential PARTICIPANTS and the SPONSOR;
  - i. liquidity of PROGRAM INTERESTS;
  - j. performance of the SPONSOR'S prior programs;
  - k. financial condition of the SPONSOR;
  - l. potential transactions between the PROGRAM and the SPONSOR; and
  - m. any other relevant factors.

*B. Income and Net Worth Standards.*

1. Unless the ADMINISTRATOR determines that the risks associated with the PROGRAM would require lower or higher standards, each PARTICIPANT shall have:
  - a. a minimum annual gross income of \$70,000 and a minimum NET WORTH of \$70,000; or
  - b. a minimum NET WORTH of \$250,000.
2. NET WORTH shall be determined exclusive of home, home furnishings, and automobiles.
3. In the case of sales to fiduciary accounts, these minimum standards shall be met by the beneficiary, the fiduciary account, or by the donor or grantor who directly or indirectly supplies the funds to purchase the PROGRAM INTERESTS if the donor or grantor is the fiduciary.
4. The SPONSOR shall set forth in the final PROSPECTUS:
  - a. the investment objectives of the PROGRAM;
  - b. a description of the type of PERSON who might benefit from an investment in the PROGRAM; and

- c. the minimum standards imposed on each PARTICIPANT in the PROGRAM.

*C. Determination that Sale to PARTICIPANT is Suitable and Appropriate.*

1. The SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall make every reasonable effort to determine that the purchase of PROGRAM INTERESTS is a suitable and appropriate investment for each PARTICIPANT.
2. In making this determination, the SPONSOR or each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall ascertain that the prospective PARTICIPANT:
  - a. meets the minimum income and net worth standards established for the PROGRAM;
  - b. can reasonably benefit from the PROGRAM based on the prospective PARTICIPANT'S overall investment objectives and portfolio structure;
  - c. is able to bear the economic risk of the investment based on the prospective PARTICIPANT'S overall financial situation; and
  - d. has apparent understanding of:
    - (1) the fundamental risks of the investment;
    - (2) the risk that the PARTICIPANT may lose the entire investment;
    - (3) the lack of liquidity of PROGRAM INTERESTS;
    - (4) the restrictions on transferability of PROGRAM INTERESTS;
    - (5) the background and qualifications of the SPONSOR or the PERSONS responsible for directing and managing the PROGRAM; and
    - (6) the tax consequences of the investment.
3. The SPONSOR or each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM will make this determination on the basis of information it has obtained from a prospective PARTICIPANT. Relevant information for this purpose will include at least the age, investment objectives, investment experience, income, NET WORTH, financial situation, and other investments of the prospective PARTICIPANT, as well as any other pertinent factors.
4. The SPONSOR or each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall maintain records of the information used to determine that an investment in PROGRAM INTERESTS is suitable and appropriate for each PARTICIPANT. The SPONSOR or each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall maintain these records for at least six years.

5. The SPONSOR shall disclose in the final PROSPECTUS the responsibility of the SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM to make every reasonable effort to determine that the purchase of PROGRAM INTERESTS is a suitable and appropriate investment for each PARTICIPANT, based on information provided by the PARTICIPANT regarding the PARTICIPANT'S financial situation and investment objectives.

*D. Subscription Agreements.*

1. The ADMINISTRATOR may require that each PARTICIPANT complete and sign a written subscription agreement.
2. The SPONSOR may require that each PARTICIPANT make certain factual representations in the subscription agreement, including the following:
  - a. The PARTICIPANT meets the minimum income and net worth standards established for the PROGRAM.
  - b. The PARTICIPANT is purchasing the PROGRAM INTERESTS for his or her own account.
  - c. The PARTICIPANT has received a copy of the PROSPECTUS.
  - d. The PARTICIPANT acknowledges that the investment is not liquid.
3. The PARTICIPANT must separately sign or initial each representation made in the subscription agreement. Except in the case of fiduciary accounts, the PARTICIPANT may not grant any PERSON a power of attorney to make such representations on his or her behalf.
4. The SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall not require a PARTICIPANT to make representations in the subscription agreement which are subjective or unreasonable and which:
  - a. might cause the PARTICIPANT to believe that he or she has surrendered rights to which he or she is entitled under federal or state law; or
  - b. would have the effect of shifting the duties regarding suitability, imposed by law on broker-dealers, to the PARTICIPANT.
5. Prohibited representations include, but are not limited to the following:
  - a. The PARTICIPANT understands or comprehends the risks associated with an investment in the PROGRAM.
  - b. The investment is a suitable one for the PARTICIPANT.
  - c. The PARTICIPANT has read the PROSPECTUS.

- d. In deciding to invest in the PROGRAM, the PARTICIPANT has relied solely on the PROSPECTUS, and not on any other information or representations from other PERSONS or sources.
6. The SPONSOR may place the content of the prohibited representations in the subscription agreement in the form of disclosures to the PARTICIPANT. The SPONSOR may not place these disclosures in the PARTICIPANT representation section of the subscription agreement.

*E. Completion of Sale.*

1. The SPONSOR or any person selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM may not complete a sale of PROGRAM INTERESTS to a PARTICIPANT until at least five business days after the date the PARTICIPANT receives a final prospectus.
2. The SPONSOR or the PERSON designated by the SPONSOR shall send each PARTICIPANT a confirmation of his or her purchase.

*F. Minimum Investment.* The ADMINISTRATOR may require a minimum initial and subsequent cash investment amount.

#### **IV. COMPENSATION AND EXPENSES.**

*A. Introduction.* All forms of fees, reimbursement, compensation and remuneration paid to the SPONSOR from any source in connection with the PROGRAM shall be reasonable, taken as a whole, and shall be presumed reasonable if permitted by these Guidelines. Any other form of remuneration may be permitted if fully justified, supported and permitted by the ADMINISTRATOR. All such remuneration shall be disclosed in the PROSPECTUS.

*B. Organizational and Offering Expenses.* ORGANIZATIONAL AND OFFERING EXPENSES shall be reasonable and shall comply with all statutes, rules and regulations imposed in connection with the offering of other securities in the State. Compensation of broker-dealers and agents for selling PROGRAM INTERESTS or assisting in the organization of the PROGRAM shall be in cash.

*C. Investment in Equipment.*

1. The SPONSOR shall be required to commit a substantial portion of the PROGRAM's CAPITAL CONTRIBUTIONS toward INVESTMENT IN EQUIPMENT. The remaining CAPITAL CONTRIBUTIONS may be used to pay FRONT-END FEES. If CAPITAL CONTRIBUTIONS are paid on an installment basis, the FRONT-END FEES shall be paid to the SPONSOR pro rata as installments are paid.

2. The SPONSOR shall commit a percentage of CAPITAL CONTRIBUTIONS to INVESTMENT IN EQUIPMENT which is equal to the greater of:
  - a. 80% of the CAPITAL CONTRIBUTIONS reduced by .0625% for each 1% of indebtedness encumbering PROGRAM equipment; or
  - b. 75% of CAPITAL CONTRIBUTIONS.
  
3. If the SPONSOR enters into an INVESTMENT IN EQUIPMENT commitment in excess of that specified in paragraph 2. above, the following mutually exclusive forms of compensation are viewed as reasonable alternatives to FRONT-END FEES:
  - a. For each 1% of CAPITAL CONTRIBUTIONS committed to INVESTMENT IN EQUIPMENT in excess of the minimum amount required the SPONSOR may take an additional promotional interest equal to 1% of all distributions from CASH AVAILABLE FOR DISTRIBUTION and NET DISPOSITION PROCEEDS remaining after PARTICIPANTS have received a cash return of 100% of their CAPITAL CONTRIBUTIONS; or
  - b. The SPONSOR may take a fully participating CARRIED INTEREST equal to 1% for the first 2.5% of additional INVESTMENT IN EQUIPMENT, 1% for the next 2% of additional INVESTMENT IN EQUIPMENT, and 1% for each 1% of additional INVESTMENT IN EQUIPMENT thereafter.
  
4. Except as permitted by paragraph 3. above, no CARRIED INTEREST in the PROGRAM shall be allowed.

COMMENT: The purpose of this section is to require the SPONSOR to invest a specified percentage of CAPITAL CONTRIBUTIONS in the acquisition of equipment and use the balance for FRONT-END FEES or defer a portion of the FRONT-END FEES for an additional promotional interest or CARRIED INTEREST.

This will avoid the necessity of having to attempt to establish the reasonableness of the various FRONT-END FEES on an individual basis. However, the formula continues the tradition of other NASAA guidelines by allowing the SPONSOR's fee to increase as leverage is employed to acquire equipment. The PROSPECTUS should include an example demonstrating the mechanics of the formula.

To calculate the percent of indebtedness encumbering PROGRAM EQUIPMENT in paragraph 2., divide the amount of indebtedness by the PURCHASE PRICE OF EQUIPMENT, excluding FRONT-END FEES. The Quotient is multiplied by .0625% to determine the percentage to be deducted from 80%.

The following are examples of application of the formula:

- (1) No indebtedness--80% to be committed to INVESTMENT IN EQUIPMENT.
- (2) 50% indebtedness-- $50\% \times .0625\% = 3.125\%$   
 $80\% - 3.125\% = 76.875\%$  to be committed to INVESTMENT IN EQUIPMENT.
- (3) 80% indebtedness-- $80\% \times .0625\% = 5\%$   
 $80\% - 5\% = 75\%$  to be committed to INVESTMENT IN EQUIPMENT.

D. *Promotional Interest*: An interest in the PROGRAM will be allowed as a promotional interest provided that the amount or percentage of such interest is reasonable. Such an interest will be presumed reasonable if it is within the limitations expressed below:

1. An interest equal to:
  - a. 5% of all distributions from CASH AVAILABLE FOR DISTRIBUTION and 1% of all distributions from NET DISPOSITION PROCEEDS until such time as the PARTICIPANTS have received a return of their CAPITAL CONTRIBUTIONS plus an amount equal to 8% of CAPITAL CONTRIBUTIONS per annum cumulative; thereafter the SPONSOR's interest in all distributed CASH AVAILABLE FOR DISTRIBUTION plus distributed NET DISPOSITION PROCEEDS may increase to 15%. For each 1% less taken in the unsubordinated CASH AVAILABLE FOR DISTRIBUTION under subparagraph 1.a., the subordinated interest may increase by 1%, or,

COMMENT: This provision would allow the SPONSOR an interest only in CASH AVAILABLE FOR DISTRIBUTION prior to satisfaction of the subordination requirements except for the 1% interest in NET DISPOSITION PROCEEDS.

- b. 20% of all distributed CASH AVAILABLE FOR DISTRIBUTION and distributed NET DISPOSITION PROCEEDS after a return to the PARTICIPANTS of their CAPITAL CONTRIBUTIONS plus an amount equal to 8% of CAPITAL CONTRIBUTIONS per annum cumulative.
2. For purposes of this paragraph, the cumulative return to each PARTICIPANT shall commence no later than the end of the calendar quarter in which the PARTICIPANT'S CAPITAL CONTRIBUTION is made.

COMMENT: Income earned on impounded funds and distributed to PARTICIPANTS may be used to satisfy the cumulative return requirement.

3. For the purposes of this paragraph, the CAPITAL CONTRIBUTIONS of the PARTICIPANTS shall be reduced only by distributions from CASH AVAILABLE FOR DISTRIBUTION, and distributions from NET DISPOSITION PROCEEDS.

COMMENT: Only CASH AVAILABLE FOR DISTRIBUTION and NET DISPOSITION PROCEEDS actually paid to PARTICIPANTS, as opposed to allocations for bookkeeping purposes, may be used to satisfy the subordination requirements of Section IV.D.

The PROSPECTUS should include an example of how the PARTICIPANT'S 8% cumulative return is calculated upon a decreasing base of CAPITAL CONTRIBUTIONS. For example, on a \$100 investment, a \$10 distribution would result in a \$2.00 reduction in CAPITAL CONTRIBUTIONS, leaving a \$98 base upon which the 8% return would be calculated in year two. The \$2.00 reduction consists of \$2.00 in distributions in excess of that required to satisfy the cumulative return requirement.

D. *Equipment Management Fee.* If the SPONSOR performs the services as described below, the fees paid to the SPONSOR shall be the lesser of the maximum fees set forth below in paragraphs 1. through 4., whichever is applicable, or the fees which are competitive for similar services for similar equipment. Except for the fee provided in paragraph 3. below, included in these fees shall be fees paid by the PROGRAM to PERSONS who are not AFFILIATES.

1. The SPONSOR may charge the PROGRAM an annual fee for EQUIPMENT MANAGEMENT, not exceed 5% of gross rental payments for OPERATING LEASES; or
2. The SPONSOR may charge the PROGRAM an annual fee for EQUIPMENT MANAGEMENT not to exceed 2% of gross rental payments in the case of FULL PAYOUT LEASES which contain NET LEASE PROVISIONS; or
3. The SPONSOR may receive a fee of 1% of gross rental payments if it arranges for and actively supervises the performance of the services in paragraph 1. above by non-AFFILIATES; or
4. If the SPONSOR provides both EQUIPMENT MANAGEMENT and additional services relating to the continued and active operation of PROGRAM equipment, such as on-going marketing and re-leasing of equipment, hiring or arranging for hiring of crews or operating personnel for PROGRAM equipment and similar services, it may charge the PROGRAM a fee not to exceed 7% of gross rental payments from equipment operated by the PROGRAM.

COMMENT (1): This subparagraph 4 is not intended to limit the costs or PROGRAM personnel hired to operate equipment so long as such costs do not include salaries, fringe benefits, travel expenses, and other administrative items incurred or allocated to any controlling persons (as defined in Section V.G.1.b. of these Guidelines) of the SPONSOR. Further, the terms "executive management" used in Section V.G.1.b. do not include those individuals who provide EQUIPMENT MANAGEMENT services to the PROGRAM and who are not involved in executive policy making decisions, regardless of title.

If maintenance and repair of the equipment is required, that cost should be borne by the lessee, or the service may be provided by the SPONSOR as permitted by Section V.G.2. of these Guidelines.

COMMENT (2): The distinction between the first three limitations on fees and the fourth limitation concerns the level of services provided by the SPONSOR who operates the equipment on behalf of the PROGRAM. The 7% fee should only be allowed where the PROGRAM equipment is actually being operated on behalf of the PROGRAM by PROGRAM personnel, and not when its simply leased out under OPERATING LEASES or FULL PAYOUT LEASES. It should be noted that a syndicator who has the necessary facilities to provide maintenance, repair and storage services to PROGRAM equipment and provides extensive marketing efforts in order to reemploy PROGRAM equipment may be considered to be operating equipment on behalf of

the PROGRAM. A PROGRAM which enters into vendor leasing agreements with manufacturers of equipment will not be considered to be operating equipment on behalf of the PROGRAM.

*F. Resale Fee.*

1. In SPECIFIED EQUIPMENT PROGRAMS, the total compensation paid to the SPONSOR for the sale of PROGRAM equipment shall be limited to one-half of the COMPETITIVE EQUIPMENT SALE COMMISSION, subordinated as in Section D.1.b. above. If such amount exceeds 3% of the contract sales price, the SPONSOR shall state the current COMPETITIVE EQUIPMENT SALE COMMISSION, the basis upon which such was determined, and the method to be used in establishing the COMPETITIVE EQUIPMENT SALE COMMISSION at the time of sale. The total of all such commissions paid to all PERSONS shall not exceed the COMPETITIVE EQUIPMENT SALE COMMISSION.
2. In all other PROGRAMS, the total compensation paid to the SPONSOR for the sale of PROGRAM equipment shall be limited to one-half of a COMPETITIVE EQUIPMENT SALE COMMISSION, not to exceed 3% of the contract sales price and subordinated as in Section D.1.b. above. In no event shall total commissions paid to all persons exceed the COMPETITIVE EQUIPMENT SALE COMMISSION. If the SPONSOR participates with an independent broker on resale, the subordination requirement shall apply only to the commission earned by the SPONSOR.

*G. Re-Leasing Services.* Subject to the provisions of Section V.G.2.b. and 3., the SPONSOR may provide re-leasing services to the PROGRAM if all of the following conditions are met:

1. The SPONSOR represents that it has and will maintain adequate staff which it will utilize in rendering such services to the PROGRAM.
2. The services will be provided at a price that does not exceed the lesser of the competitive rate for comparable services for similar equipment or 2% of gross rental payments derived from the re-lease of such equipment after the time that the re-lease of such equipment has been consummated as a result of the efforts of the SPONSOR. Such payment for services shall be paid as each rental payment is made over the term of the lease.
3. The SPONSOR may not be paid or reimbursed for re-leasing services where the equipment is re-leased to a previous lessee of AFFILIATES of such lessee.
4. The SPONSOR has rendered substantial re-leasing services in connection with such re-lease.
5. The SPONSOR is compensated for rendering EQUIPMENT MANAGEMENT services pursuant to paragraphs 1., 2., or 3. of section IV.E.



## **V. CONFLICTS OF INTEREST AND INVESTMENT RESTRICTIONS.**

### *A. Sales and Leases to or from PROGRAM.*

1. Notwithstanding the provisions of paragraph 2. the SPONSOR may purchase equipment in its own name (and assume loans in connection therewith) and hold title thereto on a temporary or interim basis (generally not in excess of six months) for the purpose of facilitating the acquisition of such equipment or the borrowing of money or obtaining of financing for the PROGRAM, or any other purpose related to the business of the PROGRAM, provided: (a) it is in the best interest of the PROGRAM; (b) such equipment is purchased by the PROGRAM for a price no greater than the cost of such equipment to the SPONSOR, except compensation in accordance with Section IV. of these Guidelines; (c) there is no difference in interest terms of the loans secured by the equipment at the time acquired by the SPONSOR and the time acquired by the PROGRAM; and (d) no other benefit arises out of such transaction to the SPONSOR apart from compensation otherwise permitted by these Guidelines.

COMMENT: "Cost" is interpreted to mean the reasonable, necessary and actual expenses incurred by the SPONSOR or its AFFILIATES, as determined in accordance with generally accepted accounting principles, in holding title to equipment on a temporary or interim basis.

2. The PROGRAM shall not purchase or lease equipment from nor sell or lease equipment to, the SPONSOR, including equipment in which the SPONSOR has an interest, except that the PROGRAM may lease equipment to the SPONSOR under a lease arrangement made at the outset and on terms no more favorable to the SPONSOR than those offered other PERSONS and fully described in the PROSPECTUS. Notwithstanding the foregoing, the PROGRAM may purchase new equipment from the SPONSOR if such PERSON is in the business of manufacturing and selling such equipment to PERSONS not affiliated with the PROGRAM, the transaction occurs at the formation of a SPECIFIED EQUIPMENT PROGRAM and the terms thereof are fully described in the PROSPECTUS, the equipment is sold at the lower of manufacturer's cost without mark-up or fair market value, and the equipment is subject to a prearranged lease. Such equipment may not be leased to the SPONSOR.

COMMENT: The term "manufacturer's cost without mark-up", is used to insure that profits, if any, to be earned by the manufacturer should come from the promotional interest of the manufacturer/SPONSOR/

The prohibition in the last sentence of this section is based on the significant conflict of interest which exists where a SPONSOR manufacturers equipment, sells it to a limited partnership of which it is the general partner, and then leases it to an operating AFFILIATE.

3. If the PROGRAM has been formed for the primary purpose of financing equipment to be ultimately used by the SPONSOR in its business, the SPONSOR shall have the right to purchase the equipment at the time of sale at fair market value as determined in a commercially reasonable manner. Such purchase price shall be not less than that

established by an independent appraiser. However, the sale may not take place until any applicable investment tax credit is no longer subject to recapture from PARTICIPANTS unless the SPONSOR indemnifies the PROGRAM.

B. *Loans.* No loans may be made by the PROGRAM to the SPONSOR.

C. *Dealings with Related PROGRAMS.* A PROGRAM shall not acquire equipment from a PROGRAM in which the SPONSOR has an interest.

D. *Exchange of PROGRAM INTERESTS.* The PROGRAM may not acquire equipment in exchange for PROGRAM INTERESTS, except for equipment which is described in the PROSPECTUS which will be exchanged immediately upon effectiveness. In addition, such exchange shall meet the following conditions:

1. A provision for such exchange must be set forth in the PROGRAM agreement, and appropriate disclosure as to tax effects of such exchange must be set forth in the PROSPECTUS;
2. The equipment to be acquired must come within the objectives of the PROGRAM;
3. The purchase price assigned to the equipment shall be no higher than the value supported by an appraisal prepared by an independent qualified appraiser;
4. Each PROGRAM interest must be valued at no less than market value if there is a market or if there is no market, fair market value of the PROGRAM's assets as determined by an independent appraiser within the last 90 days, less its liabilities, divided by the number of PROGRAM INTERESTS outstanding;
5. No more than one-half of the PROGRAM INTERESTS issued by the PROGRAM shall have been issued in exchange for equipment;
6. No securities sales or underwriting commissions shall be paid in connection with such exchange.

E. *Exclusive Agreement.* A PROGRAM shall not give the SPONSOR an exclusive right to sell or exclusive employment to sell equipment for the PROGRAM.

F. *Commissions on Financing, Refinancing, Reinvestment or Distribution.* A PROGRAM shall not pay, directly or indirectly, a commission or fee (except as permitted under Section IV.) to a SPONSOR in connection with the reinvestment or distribution of CASH AVAILABLE FOR DISTRIBUTION or of the proceeds of the resale, exchange, or refinancing of PROGRAM equipment.

G. *Services Rendered to the PROGRAM by the SPONSOR.*

1. Expenses of the PROGRAM.

- a. All expenses of the PROGRAM shall be billed directly to and paid by the PROGRAM. The SPONSOR may be reimbursed for the actual cost of goods and materials used for or by the PROGRAM and obtained from entities unaffiliated with the SPONSOR. The SPONSOR may be reimbursed for the administrative services necessary to the prudent operation of the PROGRAM provided that the reimbursement shall be at the lower of the SPONSOR'S actual cost or the amount the PROGRAM would be required to pay to independent parties for comparable administrative services in the same geographic location. No reimbursement shall be permitted for services for which the SPONSOR is entitled to compensation by way of a separate fee. Excluded from the allowable reimbursement (except as permitted under Section IV.C) shall be:
  - (1) rent or depreciation, utilities, capital equipment, other administrative items; and
  - (2) salaries, fringe benefits, travel expenses, and other administrative items incurred or allocated to any controlling person of the SPONSOR.
  
- b. Controlling PERSON, for purposes of this subsection, includes but is not limited to, all PERSONS, whatever their titles, who perform functions for the SPONSOR similar to those of:
  - (1) Chairman or member of the Board of Directors;
  - (2) Executive Management, such as the
    - (a) President,
    - (b) Vice-President or Senior Vice-President,
    - (c) Corporate Secretary,
    - (d) Treasurer;
  - (3) Senior Management, such as the Vice-President of an operating division who reports directly to Executive Management; or
  - (4) Those holding 5% or more equity interest in the SPONSOR or a PERSON having the power to direct or cause the direction of the SPONSOR, whether through the ownership of voting securities, by contract, or otherwise.
  
- c. The annual PROGRAM report must contain a breakdown of the costs reimbursed to the SPONSOR. Within the scope of the annual audit of the SPONSOR'S financial statements, the independent certified public accountants must issue a special report on the allocation of such costs to the PROGRAM in accordance with the PROGRAM agreement. The special report shall at minimum provide:
  - (1) A review of the time records of individual employees, the costs of whose services were reimbursed;
  - (2) A review of the specific nature of the work performed by each such employee.

The special report shall be in accordance with the American Institute of Certified Public Accountants United States Auditing standards relating to special reports. The additional costs of such special report will be itemized by said accountants on a PROGRAM by PROGRAM basis and may be reimbursed to the SPONSOR by the PROGRAM in accordance with this subparagraph only to the extent that such reimbursement, when added to the cost for administrative services rendered does not exceed the competitive rate for such services as determined above.

COMMENT: The following is an illustration of a report prepared by ABC Accountants expressing an opinion on reimbursed costs of XYZ Program:

We have examined the schedule of costs reimbursed as defined in the PROGRAM Agreement dated \_\_\_\_\_ of XYZ Program for the year ended 12-31- \_\_\_\_\_. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the schedule of costs reimbursed referred to above presents fairly the costs reimbursed of XYZ Program for the year ended 12-31- \_\_\_\_\_, on the basis specified in the PROGRAM agreement referred to above.

- d. The PROSPECTUS must disclose in tabular form an estimate of such proposed expenses for the next fiscal year together with a breakdown by year of such expenses reimbursed in each of the last five public programs formed by the SPONSOR.

COMMENT: This section permits the SPONSOR to be reimbursed for a portion of the costs incurred in performing certain administrative functions for the PROGRAM provided the SPONSOR is both qualified to perform such functions and does so at a cost no greater to the PROGRAM than that which an unaffiliated PERSON would charge the PROGRAM. Regardless of the capacity in which controlling persons of the SPONSOR serve the PROGRAM, their salaries may not be allocated to the PROGRAM.

2. Other Services. The SPONSOR may provide other services for the PROGRAM, if necessary. At a minimum, self-dealing arrangements must meet the following criteria:
  - a. The compensation, price or fee charged for providing such services must be comparable and competitive with the compensation, price or fee of any other PERSON who is rendering comparable services or selling or leasing comparable goods and materials which could reasonably be made available to the PROGRAM, and
  - b. The fees and other terms of the contract shall be fully disclosed, and
  - c. The SPONSOR must be independently engaged in the business of providing such services to other than AFFILIATES and at least 75% of the PERSON's gross revenue from providing such services must be derived from other than the SPONSOR.

3. Contracts for Goods and Services. All services or goods for which the SPONSOR is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid. The contract may only be modified by vote of a majority of the then outstanding PROGRAM INTERESTS. The contract shall contain a clause allowing termination without penalty on 60 days notice.

*H. Rebates, Kickbacks and Reciprocal Arrangements.*

1. No rebates or give-ups may be received by the SPONSOR nor may the SPONSOR participate in any reciprocal business arrangements which would circumvent these guidelines. Furthermore, the PROSPECTUS and PROGRAM charter documents shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with AFFILIATES.
2. No SPONSOR shall directly or indirectly pay or award any commissions or other compensation to any PERSON engaged by a potential investor for investment advice as an inducement to such advisor to advise the purchaser of interests in a particular PROGRAM; provided, however, that this clause shall not prohibit the normal sales commissions payable to a registered broker-dealer or other properly licensed PERSON for selling PROGRAM INTERESTS.

*I. Commingling of Funds.* The funds of a PROGRAM shall not be commingled with the funds of any other PERSON. Nothing contained in this Section shall prohibit a SPONSOR from establishing a master fiduciary account pursuant to which separate subtrust accounts are established for the benefit of affiliated limited partnerships, provided, that PROGRAM funds are protected from claims of such other partnerships and/or creditors. The prohibition of this Section shall not apply to investments meeting the requirements of Section V.J.

*J. Investments in Other PROGRAMS.*

1. Investments in limited partnership interests of another PROGRAM shall be prohibited; however, nothing herein shall preclude the investment in general partnerships or ventures which own and operate specific equipment provided the PROGRAM acquires a controlling interest in such other ventures or general partnerships and the non-controlling interest is owned by a non-AFFILIATE. In such event, duplicate fees shall not be permitted.
2. Notwithstanding the foregoing, the PROGRAM shall be permitted to invest in joint venture arrangements with other PROGRAMS formed by the SPONSOR, if such action is in the best interest of all PROGRAMS and if all of the following conditions are met:
  - a. The PROGRAMS have substantially identical investment objectives;

- b. There are no duplicate fees;
- c. The SPONSOR compensation should be substantially identical in each PROGRAM;
- d. The PROGRAM must have a right of first refusal to buy if another PROGRAM desires to sell equipment held in the joint venture;
- e. The investment of each PROGRAM is on substantially the same terms and conditions;
- f. The joint venture is done either for the purpose of effecting appropriate diversification for such PROGRAMS or for the purpose of relieving the SPONSOR from a commitment entered into pursuant to Section V.A.1;
- g. The PROSPECTUS must disclose the potential risk of impasse on joint venture decisions since neither PROGRAM controls and the potential risk that while one PROGRAM may buy the equipment from the other joint venturer in the event of a sale, it may not have the resources to do so.

COMMENT: In certain situations, it would be to the advantage of the PROGRAM to be able to invest in a joint venture with other PROGRAMS when no PROGRAM has sufficient money to make the entire investment even if the PROGRAM does not acquire a controlling interest. However, in order to provide the necessary protections, there is a need not only to require full disclosure of the joint venture arrangements, but also to set out substantive standards that must be adhered to in order to assure these protections.

K. *Lending Practices.* When financing is made available to the PROGRAM by the SPONSOR, the SPONSOR may not receive interest and other financing charges or fees in excess of the amounts which would be charged by unrelated lending institutions on comparable loans for the same purpose. The SPONSOR shall be prohibited from providing permanent financing for the PROGRAM. For purposes of this section, permanent financing shall mean any financing with a term in excess of twelve months.

L. *Minimum Capitalization.* Before commencing business all PROGRAMS, other than SPECIFIED EQUIPMENT PROGRAMS, shall provide for gross proceeds from the offering of not less than \$1,000,000 after payment of all ORGANIZATIONAL and OFFERING EXPENSES. An escrow of funds may be required to guarantee this minimum.

M. *Statement of Investment Objectives.* The PROSPECTUS must state specific investment objectives of the PROGRAM. It should indicate whether the primary objective is to obtain current income, tax benefits or capital appreciation for its PARTICIPANTS. The PROSPECTUS shall state the general types of equipment to be acquired and shall indicate whether the equipment will be leased under FULL PAYOUT LEASES or OPERATING LEASES or whether the PROGRAM will operate the equipment itself. The size, scope and risk factors of such investment shall be consistent with the objectives of the PROGRAM.

N. *Multiple Programs.* SPONSORS are prohibited from offering for sale PROGRAM INTERESTS in more than one PROGRAM simultaneously unless the PROGRAMS have

different investment objectives or are SPECIFIED EQUIPMENT PROGRAMS. The method for allocating investment opportunities among PROGRAMS of the SPONSOR seeking to acquire similar types of equipment shall be reasonable. The method shall be described in the PROSPECTUS.

COMMENT: This section should not be read so as to prohibit the serial offering of PROGRAMS pursuant to a single SEC Registration Statement.

*O. Period of Offering and Expenditure of Proceeds.* The offering period of PROGRAM interests in a PROGRAM may not exceed one year from the date of effectiveness unless permitted by the ADMINISTRATOR. While the proceeds of an offering are awaiting investment in equipment, the proceeds may be temporarily placed into short-term, highly liquid investments which afford appropriate safety of principal, such as U.S. Treasury Bonds or Bills. Any proceeds of the offering of PROGRAM INTERESTS not committed for investment within two (2) years from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the PARTICIPANTS as a return of capital.

COMMENT: For purposes of this section the date of effectiveness is generally considered the date of SEC effectiveness for the initial partnership in a series PROGRAM. For subsequent partnerships in the series, the date of effectiveness will be when the partnership commences its offering.

*P. Assessments, Installment Payments, Warrants, Options, or Other Staged or Deferred Payments.* Plans calling for assessments, installment payments, warrants, options, or other staged or deferred payments shall not be allowed in other than SPECIFIED EQUIPMENT PROGRAMS.

*Q. Distributions in Kind.* Distributions in kind shall not be permitted except upon dissolution and liquidation, and then only to a liquidating trust which has been established for the purpose of the liquidation of the assets of the PROGRAM, and the distribution of cash in accordance with the terms of the PROGRAM agreement.

*R. Appraisal and Compensation.*

1. In connection with a proposed ROLL-UP, an appraisal of all PROGRAM assets shall be obtained from a competent, INDEPENDENT EXPERT. If the appraisal will be included in a PROSPECTUS used to offer the securities of a ROLL-UP ENTITY, the appraisal shall be filed with the SEC and the states as an Exhibit to the Registration Statement for the offering. Accordingly, an issuer using the appraisal shall be subject to liability for violation of Section 11 of the Securities Act of 1933 and comparable provisions under state laws for any material misrepresentations or material omissions in the appraisal. PROGRAM assets shall be appraised on a consistent basis. The appraisal shall be based on an evaluation of all relevant information, and shall indicate the value of the PROGRAM'S assets as of a date immediately prior to the

announcement of the proposed ROLL-UP transaction. The appraisal shall assume an orderly liquidation of PROGRAM assets over a 12 month period. The terms of the engagement of the INDEPENDENT EXPERT shall clearly state that the engagement is for the benefit of the PROGRAM and its PARTICIPANTS. A summary of the independent appraisal, indicating all material assumptions underlying the appraisal, shall be included in a report to the PARTICIPANTS in connection with a proposed ROLL-UP.

2. In connection with a proposed ROLL-UP, the PERSON sponsoring the ROLL-UP shall offer to PARTICIPANTS who vote "no" on the proposal the choice of:
  - (a) accepting the securities of the ROLL-UP ENTITY offered in the proposed ROLL-UP; or
  - (b) one of the following:
    - (i) remaining as PARTICIPANTS in the PROGRAM, and preserving their interests therein on the same terms and conditions as existed previously; or
    - (ii) receiving cash in an amount equal to the PARTICIPANTS' pro-rata share of the appraised value of the net assets of the PROGRAM.

COMMENT: With respect to the options specified in Subsection V.R.2.(b), the PERSON sponsoring the ROLL-UP needs only offer one of these alternatives to dissenting investors who do not wish to accept the security of the ROLL-UP ENTITY.

3. The PROGRAM shall not participate in any proposed ROLL-UP which would result in PARTICIPANTS having democracy rights in the ROLL-UP ENTITY which are less than those provided for under Sections VI.A. and VI.B. of these Guidelines. If the ROLL-UP ENTITY is a corporation, the voting rights of PARTICIPANTS shall correspond to the voting rights provided for in these Guidelines to the greatest extent possible.
4. The PROGRAM shall not participate in any proposed ROLL-UP which includes provisions which would operate to materially impede or frustrate the accumulation of shares by any purchaser of the securities of the ROLL-UP ENTITY (except to the minimum extent necessary to preserve the tax status of the ROLL-UP ENTITY). The PROGRAM shall not participate in any proposed ROLL-UP which would limit the ability of a PARTICIPANT to exercise the voting rights of its securities of the ROLL-UP ENTITY on the basis of the number of PROGRAM INTERESTS held by that PARTICIPANT.
5. The PROGRAM shall not participate in any proposed ROLL-UP in which PARTICIPANTS' rights of access to the records of the ROLL-UP ENTITY will be less than those provided for under Section VI.D. of these Guidelines.
6. The PROGRAM shall not participate in any proposed ROLL-UP in which any of the costs of the transaction would be borne by the PROGRAM if the ROLL-UP is not approved by PARTICIPANTS.



## **VI. RIGHTS AND OBLIGATIONS OF PARTICIPANTS.**

- A. *Meetings.* Meetings of the PROGRAM may be called by the SPONSOR or the PARTICIPANTS holding more than 10% of the then outstanding PROGRAM INTERESTS, for any matters for which the PARTICIPANTS may vote as set forth in the PROGRAM agreement. Upon receipt of a written request, either in person or by registered mail, stating the purpose(s) of the meeting, the SPONSOR shall provide all PARTICIPANTS within ten days after receipt of said request, written notice (either in person or by certified mail) of a meeting and the purpose of such meeting to be held on a date not less than fifteen nor more than sixty days after distribution of such notice, at the time and place specified in the request, or if none, at a time and place convenient to PARTICIPANTS.
- B. *Voting Rights of PARTICIPANTS.* The limited partnership agreement must provide that a majority of the then outstanding PROGRAM INTERESTS may, without the necessity of concurrence by the SPONSOR, vote to (1) amend the limited partnership agreement, (2) dissolve the PROGRAM, (3) remove the SPONSOR and elect a new SPONSOR, (4) approve or disapprove the sale of all or substantially all of the assets of the PROGRAM except pursuant to a plan disclosed in the final PROSPECTUS. The agreement should provide for a successor SPONSOR where the only SPONSOR of the PROGRAM is an individual. With respect to any PROGRAM INTERESTS owned by the SPONSOR, the SPONSOR may not vote or consent on matters submitted to the PARTICIPANTS regarding the removal of the SPONSOR or regarding any transaction between the PROGRAM and the SPONSOR. In determining the requisite percentage in interest of PROGRAM INTERESTS necessary to approve a matter on which the sponsor may not vote or consent, any PROGRAM INTERESTS owned by the SPONSOR shall not be included.

COMMENT: The exercise of voting rights by PARTICIPANTS shall not be restricted or subject to satisfaction of conditions prior to the exercise of the rights.

- C. *Reports.* The PROGRAM agreement shall provide that the SPONSOR shall prepare and distribute to PARTICIPANTS the following reports:
1. For other than SPECIFIED EQUIPMENT PROGRAMS, a report of equipment acquisitions made during each quarter shall be sent to all PARTICIPANTS within sixty days following the end of each quarter, until the proceeds of the offering are fully invested or returned to the PARTICIPANTS, as set out in Section V.O. of these Guidelines. Such reports shall include, by way of illustration and not limitation, a statement of the actual PURCHASE PRICE OF EQUIPMENT, including terms of the purchase, a statement of the total amount of cash expended by the PROGRAM to acquire such items of equipment (including and itemizing all commissions, fees, expenses and the name of each payee), and a statement of the amount of proceeds in the PROGRAM which remain unexpended or uncommitted.

2. In the case of a PROGRAM registered under Section 12(g) of the Securities Exchange Act of 1934, within sixty days after the end of each quarter of the PROGRAM, a report containing the same financial information contained in the PROGRAM's Quarterly Report on Form 10-Q filed by the PROGRAM under the Securities Exchange Act of 1934.
3. In the case of all other PROGRAMS, within sixty days of the end of the first six months of each fiscal year, a report, prepared on the same accounting basis to be utilized in the annual reports, containing:
  - a. a condensed balance sheet, which may be unaudited;
  - b. a condensed statement of income for the period then ended, which may be unaudited;
  - c. a CASH FLOW statement for the period then ended, which may be unaudited; and
  - d. other pertinent material regarding the PROGRAM and its activities during the quarter covered by the report.
4. In the case of all PROGRAMS, within seventy-five days after the end of each PROGRAM's fiscal year, all information necessary for the preparation of the PARTICIPANTS' federal income tax returns.
5. In the case of all PROGRAMS, within 120 days after the end of each PROGRAM's year, an annual report containing: (i) a balance sheet as of the end of its fiscal year and statements of income, partners' equity, and changes in financial position and a CASH FLOW statement, for the year then ended, all of which, except the CASH FLOW statement, shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of an independent certified public accountant, (ii) where forecasts have been provided to the holders of PROGRAM interests, a table comparing the forecasts previously provided with the actual results during the period covered by the report, and (iii) a breakdown of distributions to PARTICIPANTS for the period covered thereby separately identifying distributions from: (1) CASH FLOW from operations during the period, (2) CASH FLOW from operations during a prior period which had been held as reserves, (3) proceeds from disposition of equipment and investments, and (4) reserves from the gross proceeds of the offering originally obtained from the PARTICIPANTS.

For each piece of equipment acquired by the PROGRAM which individually represents at least 10% of the PROGRAM's total investment in equipment, the SPONSOR shall include a status report as part of the annual report, which status report shall indicate: (i) condition of equipment, (ii) how equipment is being utilized as of the end of year (leased, operated, held for lease, repair, or sale), (iii) remaining term of leases, (iv) projected use of equipment for next year (renew

lease, lease, retire, or sell), and (v) such other information relevant to the value or utilization of the equipment as the SPONSOR deems appropriate. The status report shall describe the method used or basis for valuation.

6. If ASSESSMENTS have been made during any period covered by any report required by paragraphs 2., 3., and 5. hereof, then such report shall contain a detailed statement of such ASSESSMENTS and the application of the proceeds derived from such ASSESSMENTS.
7. If any SPONSOR receives fees for services, it shall, within sixty days of the end of each quarter wherein such fees were received, send to each PARTICIPANT a detailed statement setting forth the services rendered, or to be rendered, by such SPONSOR and the amount of the fees received. This requirement may not be circumvented by lump-sum payments to management companies or other entities who then disburse the funds.
8. The SPONSOR shall undertake to make any of the reports required by paragraphs 1. through 7. available to the ADMINISTRATOR upon request.

*D. Access to Records.* Any PARTICIPANT and any designated representative thereof shall be permitted access to all records of the PROGRAM at all reasonable times, and may inspect and copy any of them. The limited partnership agreement, by-laws, or other PROGRAM agreement shall include the following provisions regarding access to the list of PARTICIPANTS:

1. An alphabetical list of the names, addresses, and business telephone numbers of the PARTICIPANTS of the PROGRAM along with the number of PROGRAM INTERESTS held by each of them (the "PARTICIPANT List") shall be maintained as a part of the books and records of the PROGRAM and shall be available for inspection by any PARTICIPANT or its designated agent at the home office of the Program upon the request of the PARTICIPANT;
2. The PARTICIPANT List shall be updated at least quarterly to reflect changes in the information contained therein;
3. A copy of the PARTICIPANT List shall be mailed to any PARTICIPANT requesting the PARTICIPANT List within ten days of the request. The copy of the PARTICIPANT List shall be printed in alphabetical order, on white paper, and in a readily readable type size (in no event smaller than 10-point type). A reasonable charge for copy work may be charged by the PROGRAM;
4. The purposes for which a PARTICIPANT may request a copy of the PARTICIPANT List include, without limitation, matters relating to PARTICIPANTS' voting rights under the PROGRAM agreement, and the exercise of PARTICIPANTS' rights under federal proxy laws; and

5. If the SPONSOR of the PROGRAM neglects or refuses to exhibit, produce, or mail a copy of the PARTICIPANT List as requested, the SPONSOR shall be liable to any PARTICIPANT requesting the list for the costs, including attorneys' fees, incurred by that PARTICIPANT for compelling the production of the PARTICIPANT List, and for actual damages suffered by any PARTICIPANT by reason of such refusal or neglect. It shall be a defense that the actual purpose and reason for the requests for inspection or for a copy of the PARTICIPANT List is to secure such list of PARTICIPANTS or other information for the purpose of selling such list or copies thereof, or of using the same for a commercial purpose other than in the interest of the applicant as a PARTICIPANT relative to the affairs of the PROGRAM. The SPONSOR may require the PARTICIPANT requesting the PARTICIPANT List to represent that the list is not requested for a commercial purpose unrelated to the PARTICIPANT'S interest in the PROGRAM. The remedies provided hereunder to PARTICIPANTS requesting copies of the PARTICIPANT List are in addition to, and shall not in any way limit, other remedies available to PARTICIPANTS under federal law, or the laws of any state.

*E. ASSESSMENTS and Defaults.*

1. ASSESSMENTS. In appropriate cases there may be a provision for voluntary assessability in SPECIFIED EQUIPMENT PROGRAMS, provided however, that the maximum amount for such voluntary ASSESSMENTS shall not exceed 100% of initial CAPITAL CONTRIBUTIONS. The ASSESSMENTS shall be made solely for or relating to equipment already acquired, when the SPONSOR has determined that the additional expenditures are allowed and in the best interests of the PROGRAM. Examples of expenditures which may be merited include expenditures for extraordinary repairs when such expenditures will not exceed the value of benefits to be derived from the equipment after repair or when anticipated CASH FLOW from equipment is not sufficient to pay taxes and/or special assessments imposed by governmental or quasi-governmental units.
2. Defaults. In the event of a default in the payment of ASSESSMENTS by PARTICIPANTS, their interests shall not be subject to forfeiture, but they may be subject to a reasonable penalty for failure to meet their commitments. This may take the form of reducing their proportionate interests in the PROGRAM, subordinating their interests to that of non-defaulting PARTICIPANTS, a forced sale complying with applicable procedures for notice and sale, the lending of the amount necessary to meet their commitment(s) by the other PARTICIPANTS or a fixing of the value of their interests by independent appraisal or other suitable formula with provision for a delayed payment to them for their interests for a reasonable period. A debt security issued for such interest(s) should not have a claim prior to that of the other PARTICIPANTS in the event of liquidation.

*F. Admission of PARTICIPANTS.* Admission of PARTICIPANTS to the PROGRAM shall be subject to the following:

1. Admission of Original PARTICIPANTS. Upon the original sale of PROGRAM INTERESTS, the purchasers should be admitted as PARTICIPANTS not later than 15 days after the release from impound of the purchaser's funds to the PROGRAM. Thereafter, purchasers should be admitted into the PROGRAM not later than the last day of the calendar month following the date their subscription was accepted by the PROGRAM. Subsequent subscriptions shall be accepted or rejected by the PROGRAM within 30 days of their receipt; if rejected, all subscription monies should be returned to the subscriber immediately.
2. Admission of Substituted PARTICIPANTS and Recognition of Assignees. The PROGRAM shall amend the PROGRAM agreement at least once each calendar quarter to effect the substitution of substituted PARTICIPANTS, although the SPONSOR may elect to do so more frequently.  
In the case of assignments where the assignee does not become a substituted PARTICIPANT, the PROGRAM shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and required documentation..
3. Except where deemed inappropriate by the ADMINISTRATOR, PERSONS holding PROGRAM INTERESTS by assignment from entities holding limited partnership interests in a PROGRAM for the purpose of assigning all or a portion of such interests to PERSONS investing in such PROGRAM (hereinafter the "Assignor") shall be expressly granted the same rights as if they were limited partners except as prohibited by applicable law, including but not limited to, the rights enumerated under Article VI of this Statement of Policy.  
The assignment agreement and PROSPECTUS shall provide that the Assignor's management shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the assignees, whether or not in the Assignor management's possession or control, and that the management of the Assignor shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the assignees. In addition, the agreement shall not permit the assignees to contract away the fiduciary duty owed to the assignees by the Assignor's management under the common law of agency.

G. *Redemption of PROGRAM INTERESTS.* Ordinarily, the PROGRAM and the SPONSOR are not obligated to redeem or repurchase any of the PROGRAM INTERESTS. However, the PROGRAM and the SPONSOR are not precluded from voluntarily repurchasing or redeeming the PROGRAM INTERESTS if such repurchase or redemption does not impair the capital or operations of the PROGRAM. A PROGRAM may provide for mandatory redemption rights under the following circumstances:

1. death or legal incapacity of the owner; or,
2. a substantial reduction in the owner's NET WORTH or income provided that (i) the PROGRAM has sufficient cash to make the purchase, (ii) the purchase will not be in

violation of applicable legal requirements and (iii) not more than 15% of the outstanding units are purchased in any year.

A penalty may be assessed on the redemption of the interest if the penalty accrues to the benefit of the PROGRAM. The SPONSOR is prohibited from receiving a fee on the redemption of PROGRAM INTERESTS by the PROGRAM.

COMMENT: This will not preclude the PROGRAM, the SPONSOR or the PARTICIPANTS from purchasing these interests at a reduced cost for their own account so long as the method for repurchase is fully disclosed in the PROSPECTUS and the PROGRAM agreement. This section applies to both voluntary and mandatory redemptions.

H. *Transferability of PROGRAM INTEREST.* Restrictions on assignment of limited partnership interests or a substitution of limited partners are generally disfavored and such restrictions will be allowed only to the extent necessary to preserve the tax status of the partnership or the characterization or treatment of income or loss. Any restriction must be affirmatively supported by an Opinion of Counsel. A charge may be imposed by the PROGRAM to cover its actual, necessary and reasonable administrative and filing expenses incurred in connection with a transfer. Such a charge shall be disclosed in the PROSPECTUS.

## **VII. DISCLOSURE AND MARKETING REQUIREMENTS.**

### *A. Sales Promotional Efforts.*

1. **Sales Literature.** Sales literature, sales presentations (including prepared presentations to prospective PARTICIPANTS at group meetings) and advertising used in the offer or sale of PROGRAM INTERESTS shall conform in all applicable respects to requirements of filing, disclosure and adequacy currently imposed on sales literature, sales presentations and advertising used in the sale of securities other than PROGRAM INTERESTS.
2. **Group Meetings.** All advertisements of and oral or written invitations to "seminars" or other group meetings at which PROGRAM INTERESTS are to be described, offered or sold shall clearly indicate that the purpose of such meetings is to offer such PROGRAM INTERESTS for sale, the minimum purchase price thereof, and the name of the SPONSOR, underwriter or selling agent. No cash, merchandise or other item of value shall be offered as an inducement to any prospective PARTICIPANTS to attend any such meeting. In connection with the offer or sale of PROGRAM INTERESTS, no general offer shall be made of "free" or "bargain price" trips to view equipment in which the PROGRAM has invested or intends to invest. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the ADMINISTRATOR not less than five business days prior to the use thereof. The foregoing restrictions shall not apply to meetings consisting only of representatives of securities broker-dealers.

B. *PROSPECTUS and Its Contents.*

1. *Prospectus.* A PROSPECTUS which is not part of a Registration Statement declared effective by the Securities and Exchange Commission pursuant to the Securities Act of 1933 shall generally conform to the disclosure requirements which would apply if the offering were so registered. The format and information requirements of Guide 5 promulgated by the Securities and Exchange Commission shall be followed, with appropriate adjustments made for the different business of the PROGRAM.
2. *Forecasts.* a. Use of Forecasts. The presentation of predicted future results of operations of equipment PROGRAMS shall be permitted but not required for SPECIFIED EQUIPMENT PROGRAMS and shall be prohibited for all other PROGRAMS. The covers of the PROSPECTUS must contain in bold face language one of the following statements:

(1) for SPECIFIED EQUIPMENT PROGRAMS: "FORECASTS ARE CONTAINED IN THIS PROSPECTUS (OFFERING CIRCULAR). ANY PREDICTIONS AND REPRESENTATIONS, WRITTEN OR ORAL, WHICH DO NOT CONFORM TO THOSE CONTAINED IN THE PROSPECTUS (OFFERING CIRCULAR) SHALL NOT BE PERMITTED."

(2) for all other PROGRAMS: "THE USE OF FORECASTS IN THIS OFFERING IS PROHIBITED. ANY REPRESENTATIONS TO THE CONTRARY AND ANY PREDICTIONS, WRITTEN OR ORAL, AS TO THE AMOUNT OR CERTAINTY OF ANY PRESENT OR FUTURE CASH BENEFIT OR TAX CONSEQUENCE WHICH MAY FLOW FROM AN INVESTMENT IN THIS PROGRAM IS NOT PERMITTED."

- b. Content of Forecasts. Forecasts for SPECIFIED EQUIPMENT PROGRAMS shall be included in the PROSPECTUS, offering circular or sales material of the PROGRAM only if they comply with the following requirements:

- (1) General. Forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Forecasts should be examined by an independent certified public accountant in accordance with the Guide for Prospective Financial Statements and the Statement on Standards for Accountant's Services on Prospective Financial Information as promulgated by the American Institute of Certified Public Accountants. The report of the independent certified public accountant must be included in the PROSPECTUS. No forecasts shall be permitted in any sales literature which do not appear in the PROSPECTUS or offering circular. If any forecasts are included in the sales literature, all forecasts must be presented.

COMMENT: If predicted future results of operations are used, they shall be prepared in the form of a forecast.

(2) Material Information. Forecasts shall include all the following information:

- (a) Annual predicted revenue by source;
- (b) Annual predicted expenses;
- (c) Debt obligation--annual payments for principal and interest, points and financing fees, shown as dollars, not percentages;
- (d) The required percentage of equipment on lease in order to meet debt service and all expenses;
- (e) Predicted annual CASH FLOW, stating forecasted percentage of equipment on lease;
- (f) Predicted annual depreciation and amortization with full description of methods to be used;
- (g) Predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results (assumed tax brackets may be used); and
- (h) Accounting policies--e.g., with respect to points, financing costs and depreciation.

c. Presentation.

- (1) Caveat. Forecasts shall prominently display a statement to the effect that they represent a mere prediction of future events based on assumptions which may or may not occur and should not be relied upon to indicate the actual results which will be obtained.
- (2) Explanatory Notes. Explanatory notes describing assumptions made and referring to risk factors should be integrated with tabular and numerical information.
- (3) Sale-leasebacks. When a sale-leaseback is employed, a statement that the seller is assuming the operating risk and consequently may have charged a higher price for the equipment must be included.

d. Additional Disclosures and Limitations.

- (1) Forecasts shall be for a period equivalent to the anticipated holding period for the equipment, or 5 years, whichever is shorter.
- (2) Adequate disclosure shall be made of the changing economic effects upon the PARTICIPANTS resulting principally from federal income tax consequences over the life of the PROGRAM equipment, e.g., substantial tax losses in early years followed by increasing amounts of taxable income in later years.
- (3) Forecasts shall disclose possible undesirable tax consequences of an early sale of the PROGRAM equipment (such as depreciation recapture or the failure to sell the equipment at a price which would



return sufficient cash to meet resulting tax liabilities of the PARTICIPANTS).

- (4) In computing the return to investors, no appreciation, so called "equity buildup", or any other benefits from unrealized gains or value shall be shown or included.
- (5) Forecasts of a resale occurrence shall be permitted.

## VIII. MISCELLANEOUS PROVISIONS.

A. *Fiduciary Duty.* The PROGRAM agreement shall provide that the SPONSOR shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the PROGRAM, whether or not in its immediate possession or control. The SPONSOR shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the PROGRAM.

In addition, the PROGRAM shall not permit the PARTICIPANT to contract away the fiduciary duty owed to the PARTICIPANT by the SPONSOR under the common law.

B. *Deferred Payments.* Arrangements for deferred payments on account of the purchase price of PROGRAM INTERESTS may be allowed when warranted by the investment objectives of the PROGRAM. Such arrangements shall be subject to the following conditions:

1. The period of deferred payments shall coincide with the anticipated cash needs of the PROGRAM;
2. Selling commissions paid upon deferred payments are collectible when payment is made on the note;
3. Deferred payments shall be evidenced by a promissory note of the investor. Such notes shall be with recourse and shall not be negotiable and shall be assignable only subject to defenses of the maker. Such notes shall not contain a provision authorizing a confession of judgment;
4. The PROGRAM shall not sell or assign the deferred obligation notes at a discount to meet financing needs of the PROGRAM;
5. In the event of a default in the payment of deferred payments by PARTICIPANTS, their interests may be subjected to a reasonable penalty, as set forth in Section VI.E.2. of these Guidelines.

C. *Reserves.* Provisions should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements and contingencies. Normally, not less than 1% of the offering proceeds will be considered adequate.

D. *Reinvestment of CASH AVAILABLE FOR DISTRIBUTION.* Reinvestment of CASH AVAILABLE FOR DISTRIBUTION will be allowed if:

1. The PROGRAM's structure requires that CASH AVAILABLE FOR DISTRIBUTION be reinvested for all PARTICIPANTS upon the same terms.

COMMENT: This prohibition is designed to prevent the creation of differing classes of limited partnership interests resulting from inequitable allocations of tax or economic benefits.

2. The cumulative return requirement in subsection IV.D shall be compounded daily. This policy should be contained in the PROSPECTUS.

E. *Reinvestment of Proceeds on Disposition of Equipment.* Reinvestment of proceeds resulting from the sale or refinancing of PROGRAM equipment may take place if sufficient cash will be distributed to pay state and federal income tax, if any, (assuming investors are in a specified tax bracket) created by the sale or refinancing of such equipment. This policy should be contained in the PROSPECTUS.

COMMENT: Funds reinvested pursuant to Subsections VIII.D. and E. are not considered to be "investments" in the PROGRAM for purposes of calculating CAPITAL CONTRIBUTIONS.

F. *Payments to Terminated Sponsors.* Upon the occurrence of a terminating event, the partnership may be required to pay to the terminated SPONSOR all amounts then accrued and owing to the terminated SPONSOR. Additionally, the partnership may terminate the SPONSOR'S interest in partnership income, losses, distributions, and capital by payment of an amount equal to the then present fair market value of the terminated SPONSOR'S interest determined by agreement of the terminated SPONSOR and the partnership, or, if they cannot agree, by arbitration in accordance with the then current rules of the American Arbitration Association. The expense of arbitration shall be borne equally by the terminated SPONSOR and the partnership.

The method of payment to the terminated SPONSOR must be fair and must protect the solvency and liquidity of the partnership. When the termination is voluntary, the method of payment will be presumed to be fair if it provides for a non-interest bearing unsecured promissory note with principal payable, if at all, from distributions which the terminated SPONSOR otherwise would have received under the partnership agreement had the SPONSOR not terminated. When the termination is involuntary, the method of payment will be presumed to be fair if it provides for an interest bearing promissory note maturing in not less than five years with equal installments each year.

G. *Provisions of PROGRAM Agreement.* The requirements and/or provisions of appropriate portions of the following sections shall be included in the PROGRAM agreement: II.D; IV.D; IV.E; IV.F; IV.G; V.A; V.B; V.C; V.D; V.E; V.F; V.G; V.H; V.I; V.J; V.K; V.M; V.O; V.P; V.Q; VI.A; VI.B; VI.C; VI.D; VI.E; VI.F; VI.G; VIII.A; VIII.B.4; VIII.C; VIII.D; VIII.E; VIII.F.