REPORT # 583

TAX SECTION

New York State Bar Association

Report on Issues Concerning the Definition of Publicly Traded Partnerships

by

The Committee on Partnerships

June 15, 1988

Table of Contents

TAX SECTION
New York State Bar Association

June 17, 1988

The Honorable O. Donaldson
Assistant Secretary of the
for Tax Policy
U. S. Treasury Department
1500 Pennsylvania Avenue, N.W.
Washington, D. C. 20220

The Honorable Lawrence B. Gibbs
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D. C. 20224

Publicly Traded Partnerships

Gentlemen:

Enclosed is a report making recommendations as to the definition of publicly traded. Partnerships ("PTPs") under Section 10211 of the Revenue Act of 1987 (the "1987 Act"). The Report was prepared by the Committee on Partnerships of the Tax Section of the New York State Bar Association and approved by the Tax Section Executive Committee. The principal draftsman of the Report was R. Donald Turlington.

Sections I and II of the Report provide an overview of Section 10211 of the 1987 Act and the legislative history of the definition of PTPs in Code Section 7704. Section III of the Report describes in some detail the most common systems or methods used by large partnerships to provide varying degrees of liquidity to their partners.

Beginning in Section IV, the Report proposes several fundamental rules that we believe should be included in any Treasury Regulations defining PTPs. We propose first that transfers of partnership interests which do not involve brokers or dealers (or their functional equivalent) be considered non-public trading. Second, where a broker or dealer (or the functional equivalent) is involved, such involvement should not be indicative of public trading unless the broker/dealer utilizes:

1. the facilities of a stock exchange,

2. an arrangement or system providing bid and ask quotations which affords the public the opportunity to buy and sell partnership interests in minimum quantities at quoted prices comparable to a secondary market, or

3. any other arrangement or system in which partnership interests are transferred on a regular and ongoing basis using bid and ask quotations where all material terms of the transfers other than price are set by rule or custom rather than negotiation between the parties.

In Section V of the Report we ask that Treasury or the Internal Revenue Service promulgate, on an expedited basis, the following three safe harbor guidelines:

1. Partnerships, the interests in which have been issued only in private placements, should not be considered PTPs so long as certain safeguards are met as to minimum investment size.

2. Partnerships maintaining a "matching" or "accommodation" system for prospective sellers and buyers (whether such systems are administered by the partnership itself, the general partner, or a third party) should not by reason thereof be subject to PTP status where (a) the system does not provide a seller with assurance that there will be a buyer available and (b) the seller cannot legally bind a prospective buyer for at least 30 days from the date the seller makes known his or her desire to sell.

3. Any partnership in which actual transfers of interests during a taxable year total less than five percent of the outstanding interests should not be subject to PTP status in that year.

Section VI of the Report discusses the most common types of redemption plans that may be used by partnerships to provide varying degrees of liquidity to their partners. In that regard, we suggest that partnerships maintaining open-end type redemption plans be classified as PTPs unless:

1. there is a meaningful limitation (i.e., not more than five percent of outstanding interests) on the volume of redemptions in any year,

2. the redemption price clearly does not reflect fair market value, or

3. individual redemptions may be consummated only after a substantial period of time has passed from the date the selling partner gives notice to the partnership of his or her desire to sell.

With respect to partnerships which maintain closed-end type redemption plans, there is no strong consensus on the Executive Committee for or against a per se rule exempting any partnership from PTP status where the only liquidity mechanism is a closed-end redemption plan. If no such per se rule is adopted by Treasury or the Internal Revenue Service, such a partnership should be classified as a PTP unless:

1. redemptions may be made only under extraordinary circumstances,

2. the redemption price clearly does not reflect fair market value,

3. the plan limits redemptions in any taxable year to five percent or less of the outstanding partnership interests, or

4. a substantial delay (60 or 90 days depending upon the timing of valuation) is imposed upon a partner wishing to have his or her partnership interest redeemed.

As final points, we urge that Treasury or the Internal Revenue Service promptly announce that any partnership in existence (or in registration with the Securities and Exchange Commission) prior to the effective date of Section 10211 of the 1987 Act which would be classified as a PTP as a result of a “matching”

or “accommodation” system or a redemption plan be considered an existing PTP for purposes of Code Section 7704 of Code Section 7704, and that partnerships maintaining such systems be permitted to negate PTP status retroactively by promptly conforming to any safe harbor guidelines promulgated by Treasury or the Internal Revenue Service.

Very truly yours,

Herbert L. Camp
Chair

Enclosure

Copies w/ encls. to Dennis E. Ross, Esq.
Deputy Assistant
Secretary
for Tax Policy
Dana L. Trier, Esq.
Tax Legislative Counsel
Ronald A. Pearlman, Esq.
Chief of Staff, Joint
Committee on
Taxation

TAX REPORT #583

NEW YORK STATE BAR ASSOCIATION

TAX SECTION

Report on Issues Concerning the Definition of Publicly Traded Partnerships

by

The Committee on Partnerships

June 15, 1988

June 17, 1988

NEW YORK STATE BAR ASSOCIATION

TAX SECTION

Report on Issues Concerning the Definition of Publicly Traded partnerships[1]

This report comments on issues concerning the definition of publicly traded partnerships ("PTPs") and makes suggestions for Treasury announcements or rulings that might be appropriate.

I. INTRODUCTION

A. Partnership Classification Tests Prior to the Enactment of the 1987 Tax Act.

Prior to the enactment of the Omnibus Budget Reconciliation Bill of 1987 (H.R. 3545) which contained the Revenue Act of 1987 (the "1987 Tax Act"), a partnership, as defined in Section 7701(a)(2)[2] and the Regulations thereunder,[3]

---

[1] This report was prepared by the Committee on Partnerships. The principal draftsman was R. Donald Turlington. Helpful comments were received from Herbert L. Camp, Mikel M. Rollyson, Steven C. Todrys, Charles M. Morgan III, Richard D'Avino and William L. Burke.

[2] Unless otherwise indicated, all "Section" or "§" references are to the Internal Revenue Code of 1986, as amended (the "Code"), and all "Treas. Reg. §" or "Regulations" references are to the Treasury Regulations promulgated under the Code.

[3] See Treas. Reg. §§ 301.7701-2 and -3; Larson v. Commissioner, 66 T.C. 159 (1976), acq. 1979-1 C.B. 1, and Zuckman v. United States, 524 F.2d 729 (Ct. Cl. 1975). Section 301.7701-2(a) of the Regulations, which distinguishes partnerships from associations taxable as corporations, provides that an unincorporated business entity is taxed as a corporation if the entity "more nearly" resembles a corporation than a partnership. The Regulations then enumerate the following four corporate characteristics:(1) continuity of life, (2) centralized

(footnote continued)

tax at the partnership level.[4] Rather, income and loss of the partnership was subject to tax at the partner level, and the partnership's deductions, losses and credits were taken into account at the partner level for tax purposes.[5] In addition, a partner's share of partnership income generally was determined without regard to whether he received any corresponding cash distributions.[6]

A corporation, by contrast, generally is subject to tax at the entity level. In addition, distributions with respect to corporate stock generally are subject to tax at the shareholder level.[7]

B. New Rules Imposed Under the 1987 Tax Act Governing Partnership Classification and Other Restrictions.

On December 22, 1987, President Reagan signed H.R. 3545, which contained the 1987 Tax Act. The 1987 Tax Act substantially modified prior law with respect to partnerships if interests in such partnerships are considered to be publicly traded. These legislative changes are summarized below.

(footnote continued from previous page)
(rather than a partnership) for federal income tax purposes only if it has more corporate than non corporate characteristics. In the context of limited partnerships, the effect of the Regulations, generally, is to classify them as partnerships if they lack any two of the foregoing four corporate characteristics.

[4] See § 701.

[5] See § 702(a).

[6] See § 704.

[7] See §§ 11, 301.

1. Taxation of a PTP at the Entity Level. First and most important, under new Section 7704, PTPs generally are treated as corporations. An exception exists, however, for PTPs that are engaged in certain natural resource, real estate, and investment- type activities ("passive-type" PTPs).[8]

[8] The 1987 Tax Act provides an exception from the corporate taxation of certain PTPs, 90% or more of whose gross income is, or is "deemed" to be, "qualifying income" (i.e., "passive-type" income) within the meaning of § 7704(d). Passive-type income, for purposes of this provision, generally includes interest (other than interest derived from a financial or insurance business), dividends and real property rents. Real property rents also include charges for services customarily furnished in connection with the rental of real property and rents attributable to personal property (i.e., furniture and fixtures) which is leased in connection w m real property, provided that the rent attributable to such.persona1 property does not exceed 15% of the total rent under such lease for the taxable year. Importantly, however, rent which is contingent on profits of the lessee is not included within the passive-type income category. (The House Ways and Means Committee Report (hereinafter cited as the "House Report" or "H.R. Rep.") excludes amounts contingent on income as well. See H.R. Rep. No. 391(II), 100th Cong., 1st Sess. at 1063.) Gain from the sale or disposition of real property, including real property primarily held for sale to customers, is also treated as passive for purposes of 5 7704, even though it may be attributable to an active trade or business under traditional income tax concepts. Similarly, income and gains from specified mineral or natural resource activities also are deemed to be passive-type income for purposes of § 7704(d). Specifically included as passive-type income within the mineral and natural resources category are income and gains from the exploration, development, mining or production, processing, refining, and generally, the transportation or marketing of any mineral or natural resource (including oil, gas, geothermal energy, fertilizer and timber). Finally, income and gains from certain commodity pools are also considered passive for purposes of § 7704. See House Conference Committee Report (hereinafter cited as the "Conference Report" or "Conf. Rep."), N.R. Rep. NO. 495, 100th Cong., 1st Sess. at 946.

Section 7704 is effective for taxable years beginning after December 31, 1987. A grandfather provision, however, exempts "existing partnerships" from corporate tax treatment until 1998. "Existing partnerships" include any partnership that (a) was publicly traded on December 17, 1987, or (b) filed a registration statement with the Securities and Exchange Commission ("SEC") on or before December 17, 1987 indicating that the partnership was to be a PTP, or (c) filed a statement with a state regulatory commission on or before December 17, 1987 seeking permission to restructure a business activity conducted by a corporation as a PTP.[9]

---

[9] The 1987 Tax Act provides, however, that a partnership is not treated as an existing partnership (and hence will be denied ten year grandfathering relief) if the partnership adds a substantial new line of business. See 1987 Tax Act at § 10211(c)(2)(A)(ii). For this purpose, a substantial new line of business does not include a line of business which was specifically described as a proposed business activity of the partnership in a registration statement filed on behalf of the partnership with the SEC on or before December 17, 1987 but in which the partnership had not been engaged on or before December 17, 1987. If an existing partnership drops a line of business, such action will not cause it to cease to be protected within the grandfather provision. Id. at 10211(C)(2)(B).

The Technical Corrections Bill of 1988 (H.R. 4333/S. 2238) (the "1988 Bill") provides a rule that coordinates the 90% passive-type income requirement with the 10-year grandfather rule for existing partnerships. Under the 1988 Bill, if an existing (i.e., grandfathered) PTP ceases to be treated as an existing partnership by reason of the addition of a substantial new line of business, but satisfies the 90% requirement (and the other requirements of § 7704), then such partnership is not thereupon reclassified as a corporation for tax purposes. See 1988 Bill at § 204(e). The 1988 Bill, in addition, clarifies the Treasury regulatory authority to implement relief from classification as a corporation in the event of an inadvertent failure to meet the 90% requirement. Id.

2. Restrictions on the Method by Which Income and Losses from a PTP are Utilized. The second legislative modification, embodied in new Section 469(k), provides that an investment in a PTP that is not otherwise treated as a corporation must be segregated for purposes of application of the passive activity loss rules. Consequently, taxable income from a PTP will be considered portfolio income rather than passive income and may not be offset by losses from any other PTPs or from the partner's other passive activities.[10] Likewise, losses from a PTP can not be used to offset other income, including portfolio income. This provision is effective retroactively for taxable years beginning after December 31, 1986.

3. Treatment of Income Geherated From a PTP as Unrelated Business Income for Tax-Exempt Entitles. The third modification imposed by the 1987 Tax Act is contained in new Section 512(c)(2). That rule now provides that a tax-exempt entity's share of the income of a PTP (that is not otherwise treated as a corporation) will be treated in its entirety as unrelated business income ("UBI"). As such, it will be subject to federal income tax, although a tax-exempt entity's share of the PTP's deductions are allowed in computing unrelated business taxable income.[11] This provision is effective with respect to interests in PTPs acquired by tax-exempt partners after December 17, 1987.

---

[10] Such income may be offset by losses from activities in which the taxpayer materially participates and should be offset by investment interest expense otherwise limited under § 163(d). See Senate Finance Committee Report (hereinafter cited as the "Senate Report" or "S. Rep.") S. Rep. No. 63, 100th Cong., 1st Sess. at 187.

[11] See § 512(c)(2)(B).

4. Congressional Request That Treasury Report on PTPs. In addition to the foregoing modifications of substantive law with respect to PTPs, the 1987 Tax Act directed the Secretary of the Treasury to submit a report on or before January 1, 1989 on the issue of treating publicly traded limited partnerships (and other partnerships which "significantly resemble" corporations) as corporations for federal income tax purposes. The report also is to address compliance and administrative issues relating to the tax treatment of PTPs and other large partnerships.[12]

[12] In connection with these compliance and administrative issues, Treasury is to examine the issues of imposing collection of tax and withholding of tax at the partnership level and to make recommendations as to appropriate means of simplifying and improving procedures for audits and assessments of PTPs and their partners. An interim report on the administrative and compliance issues was scheduled for May 1, 1988. See 1987 Tax Act at § 10215 and Conf. Rep. at 959.

II. DEFINITION OF A PTP

A. Introduction.

The cornerstone of the new Code provisions lies with ascertaining the meaning of the term "publicly traded partnership" used in Sections 469(k)(2) and 7704(b). In the 1987 Tax Act, Congress chose to distinguish corporations and partnerships based upon whether the interests therein are publicly traded.[13] Clearly, the definition of a "publicly traded partnership" is intended to include those partnerships generally referred to as "master limited partnerships" or "MLPs," the interests in which are traded on a recognized stock exchange or in the over-the-counter market.[14] Unfortunately, however, neither the Code nor the legislative history of the 1987 Tax Act provide much definitive or practical guidance with respect to the applicability of the PTP rules to literally thousands of partnerships that are not traded on an exchange or in the over-the-counter market. Consequently, a serious degree of uncertainty currently exists, not only for practitioners but for partnership sponsors, underwriters and investors as well.

---

[13] Congress, alternatively, could have chosen to distinguish partnerships from corporations based upon the number of investors in, or amount of assets in or net worth of, the entity. The practical result is that a PTP that does not qualify for special treatment under the passive-type income rules has a choice; it can voluntarily elect to be subject to a single layer of tax by foregoing liquidity for its partners or, alternatively, it can provide liquidity at the cost of a second level of tax on its income.

[14] Approximately 140 MLPs existed as of March, 1988. See Exhibit A attached.

The following report first summarizes the relevant Code provisions and the accompanying legislative history which purport to provide guidance as to what constitutes a PTP.[15] This summary also highlights several deficiencies and inconsistencies in the new Code provisions and legislative history which should be addressed by the Treasury or Internal Revenue Service ("IRS"). Secondly, the report provides a description of the principal markets in which partnership interests may be transferred, including the different types of redemption plans often utilized by partner-ships. This analysis should provide some insight into what partnerships should be treated as PTPs by virtue of the type of market or method by which partnership interests may be traded or transferred. Thirdly, the report proposes two general rules concerning certain types of transfers of partnership interests which involve only principals, or brokers or dealers acting with only limited authority. We believe that any regulations should make clear that these isolated transfers do not cause PTP status. Next, the report proposes several "safe harbors" that we believe should be promptly announced by the Treasury and the IRS to provide guidance concerning the definition of a PTP for purposes of the new provisions. Such expedited guidance also should provide a sound basis upon which more detailed guidance (through regulations or otherwise) could be issued to delineate further the parameters of the definition of a PTP. Finally, the report makes recommendations as to which types of partnership redemption plans should or should not cause PTP status.

---

[15] This report will focus only on the definition of a PTP, rather than addressing in a comprehensive manner the new rules (and the exceptions thereto) contained in §§ 7704, 469(k) and 512(c)(2).

To date, the only legal authorities that describe what constitutes a PTP are the relevant provisions of the Code and the legislative history accompanying the 1987 Tax Act, both of which are described below.

B. The Code Definition of a PTP.

Sections 469(k)(2) and 7704(b) define publicly traded partnerships as any partnerships the "interests of which are traded on an established securities market or are readily tradable on a secondary market (or the substantial equivalent thereof)." The Code provides no further guidance concerning the definition of a PTP.[16] In particular, the terms "secondary

---

[16] Other provisions of the Code and Regulations thereunder define the terms "readily tradable," "established securities market" and "publicly traded securities" for other purposes. For example, for purposes of the installment sale rules under § 45 3 an obligation is treated as "readily tradable" on an established securities market if it is regularly quoted by brokers or dealers making a market in such obligation or if steps are taken to create such market. An "established securities market" under § 453 includes (i) an exchange registered under the 19 34 Act, (ii) an exchange exempted from registration under the 19 34 Act because of its limited volume of transactions, and (iii) any over-the-counter market reflected by the existence of an interdealer quotation system. See Temp. Treas. Reg. § 15A.453-1(e)(4)(iv). Id.

Final Regulations were recently issued under § 170 providing certain rules for "publicly traded securities." See T.D. 8199. The rules relate to substantiation requirements applicable to persons claiming certain charitable contribution deductions. For this purpose, "publicly traded securities" mean securities within the meaning of § 165(g)(2) for which market quotations are readily available on an established securities market. Such is true of a security if (i) the security is listed on the New York Stock Exchange, or any city or regional exchange in which quotations are published on a daily basis, (ii) the security is regularly traded on the over-the-counter market for which quotations are published on a daily basis, or (iii) the security is a share of an open-end investment company for which quotations are published on a daily basis. See § 1.170A-13(c)(7)(xi). The Regulations, additionally, clarify that securities that are otherwise publicly traded are not considered to be publicly traded if the securities are subject to restrictions or the amount claimed as a deduction with respect to the contribution of such securities is different than the amount listed in market quotations that are readily available on an established securities market. See § 1.170A-13(c)(7)(xi)(C).

market" and "the substantial equivalent" of a secondary market are not defined in the Code. Accordingly, any further insight into the meaning of these terms must be gleaned from the legislative history that accompanied the 1987 Tax Act.

C. The Legislative History Concerning the Definition of a PTP.

Consistent with the definitional framework established in the Code, the relevant legislative history of the 1987 Tax Act describes a PTP in terms of two basic types of markets in which interests in such partnerships are traded. These are an "established securities market" and a "secondary market or the substantial equivalent" thereof. In the legislative history accompanying what became the 1987 Tax Act, both the House of Representatives and the Senate embellished upon these terms in the manner described below.

1. An Established Securities Market. According to the House Report and the Conference Report, an established securities market includes any national securities exchange registered under the Securities Exchange Act of 19 34 (the "19 34 Act") or exempted from registration because of the limited volume of transactions and any local exchange.[17] An established securities market also includes any over-the-counter market. An over-the-counter market is characterized by an interdealer quotation system which regularly disseminates quotations of obligations by identified brokers or dealers, by electronic means or otherwise.[18]

2. Secondary Market or the Substantial Equivalent Thereof. As previously mentioned, a PTP also includes a partnership whose interests are readily tradable on a secondary market or the substantial equivalent thereof. However, the terms "secondary market" and the "substantial equivalent thereof" are not defined in either of the new Code provisions. According to the Conference Report, it was intended that this test be applied to encompass within the definition of PTPs those partnerships the interests in which are not traded on established securities

---

17 See H.R. Rep. at 1070; Conf. Rep. at 947.

18 Id. See also Sen. Rep. at 187. The Senate Report described an "established securities market" as including the "national securities exchanges registered under the Securities Exchange Act of 1934", certain exchanges exempted from such registration, "any local exchange," and the "over the counter market . . . characterized by an interdealer quotation system which regularly disseminates quotations of obligations by identified brokers or dealers."

markets, but whose partners are nevertheless readily able to buy, sell or exchange their partnership interests in a manner that is comparable, economically, to trading on established securities markets.[19]

The Conference Report provides that a secondary market is generally indicated by the existence of a person standing ready to make a market in the interest. An interest is treated as readily tradable in a secondary market if the interest is regularly quoted by persons such as brokers or dealers who are making a market in the interests. Thus, for example, an interest is readily tradeable in a secondary market where the interest is traded on a market essentially equivalent to an over-the-counter market.[20]

The substantial equivalent of a secondary market exists where there is not an identifiable market maker but the holder of an interest has a readily available, regular and ongoing opportunity to sell or exchange his interest through a public means of obtaining or providing information of offers to buy, sell or exchange interests. Similarly, the substantial equivalent of a secondary market exists where prospective buyers and sellers have the opportunity to buy, sell or exchange interests in a time frame and with the regularity and continuity that the existence of a market maker would provide.[21]

a. Factors for Determining Whether an Interest is Readily Tradable on the Substantial Equivalent of a Secondary

---

[19] See Conf. Rep. at 947-48. The conferees, additionally, intend that substance rather than form determine whether a partnership is treated as publicly traded; whether public trading takes place on an established securities market or elsewhere is not determinative. The House Report provides that interests in partnerships are offered with the expectation that there will be a secondary market for such interests where the interests are marketed with representations that there is likely to be a ready market for their resale or other disposition or rights to income or other attributes thereof (or that the promoter or issuer intends to take steps so that such a market is created). On the other hand, if the partnership agreement, offering materials, or other marketing materials merely provide that the partnership may be listed on an exchange in the future at the discretion of the general partner, upon a vote of interest holders, or the like, then the partnership is not treated as publicly traded upon issue but will be treated as publicly traded when it becomes exchange-listed. See H.R. Rep. at 1070. See also Sen. Rep., supra, note 18.

[20] See Conf. Rep. at 948 (citing Temp. Treas. Reg. § 15a.453-1(e)(4)(iii)). See also H.R. Rep. at 1070.

[21] See Conf. Rep. at 948.

Market. The Conference Report states that, if partnership interests are traded on a market that is publicly available, but offers to buy or sell such interests are normally not accepted in a time frame comparable to that which would be available on a secondary market, then the interests are not treated as readily tradable on the substantial equivalent of a secondary market. For example, if partnership interests are quoted and traded on an irregular basis as a result of bid and asked prices listed on a computerized system, and such interests cannot normally be disposed of within the time that they could be disposed of on an over-the-counter market, then the interests are not considered as readily tradable on the substantial equivalent of a secondary market.[22]

In addition, the Conference Report states that partnership interests are not intended to be treated as readily tradable on a secondary market or the substantial equivalent thereof where there are only occasional accommodation trades of partnership interests. For example, where the general partner or the partnership occasionally purchases interests from other partners, not pursuant to a put or call right, or where the underwriter that handled the issuance of the partnership interests occasionally arranges such accommodation trades, then the interests are not considered as readily tradable on the substantial equivalent of a secondary market. Similarly, where the general partner provides information to its partners regarding such partners' desire to buy or sell interests to each other, or arranges such transfers between partners, without offering to buy or redeem interests or issue additional interests to such partners, a secondary market or the substantial equivalent of a secondary market is not created.[23]

The Conference Report further provides that the existence of a buy-sell agreement among the partners, without more, will not cause a partnership to be treated as publicly traded. Nor will the occasional and irregular repurchase or redemption by the partnership, or the acquisition by the general

---

[22] Id. The Conference Report language suggests that the extermination of whether a partnership is publicly traded depends upon whether the holder of an interest in the partnership can dispose of the interest in a time frame comparable to that which would be available if the partner held, and wished to dispose of, an interest in a partnership traded on an established securities exchange or on the over-the- counter market.

[23] Id. The House Report provides that a partner's ability to trade the interest, without more, will not cause the interest to be treated as readily tradeable, nor will occasional sales of interests in the partnership, the terms of which are not widely publicized, indicate the existence of a secondary market. See H.R. Rep. at 1070.

partner, of interests in the partnership cause the partnership to be considered as publicly traded under the provision. However, a regular plan of redemptions or repurchases, or similar acquisitions of interests in the partnership such that holders of interests have readily available, regular and ongoing opportunities to dispose of their interests, indicates that the interests are readily tradable on what is the substantial equivalent of a secondary market.[24]

b. Factors Which Indicate That Public Trading of Partnership Interests Exists. The Conference Report indicates that the complicity or participation, express or tacit, of the partnership or the general partner is relevant in determining whether there is public trading of its interests. Thus, for example, if the partnership acts to list its interests on an exchange, it is clearly participating in causing its interests to be publicly traded.[25]

Moreover, the Conference Report provides that a partnership is considered as participating in public trading of its interests where trading is in fact taking place, even though the partnership may not have taken explicit action to permit trading, if the partnership agreement imposes no meaningful limitation on a partner's ability to readily transfer interests in the partnership. For example, a provision in a partnership agreement giving the general partner discretion to refuse to consent to the transfer of an interest in the partnership or of rights to income or other attributes of an interest in the partnership does not, without more, prevent a partnership from being considered publicly traded. Similarly, the discretion of the general partner to refuse consent to a transfer if the transfer would cause a termination of the partnership for federal income tax purposes does not cause the partnership to be treated as not publicly traded. Likewise, if the general partner must consent to any transfer of an interest in the partnership, but the assignment of rights to income or other attributes of the partnership is not so limited, the consent requirement does not cause the partnership to be considered as not publicly traded.[26]

---

[24] See Conf. Rep. at 948-49. See also H.R. Rep. at 1070.

[25] See Conf. Rep. at 949.

[26] Id.

Conversely, the Conference Report states that if the partnership agreement provides either (i) that partnership interests may not be transferred and rights to partnership income or other attributes may not be assigned or (ii) that partners have only a restricted and limited right to transfer partnership interests or assign partnership income or other attributes, then occasional actual transfers of interests or assignments of rights generally will not cause the partnership to be treated as publicly traded. A partner's right to transfer an interest or assign rights is considered as restricted and limited, for this purpose, where the transfer of interests or assignment of rights is permitted only in limited circumstances, such as death or divorce of a partner, gift, certain types of transfers to related parties, or in the case of an occasional accommodation transfer by a partner.[27]

Finally, the Conference Report provides that if (i) interests in a partnership are not traded on an established securities market, (ii) the general partner and the partnership have the right to refuse to recognize trades in a secondary market or the substantial equivalent thereof, and (iii) they exercise that right by taking such actions as are necessary so that trades or assignments of rights are not in fact recognized either by the general partner, the partnership, the underwriter, or the depositary or any other agent of the partnership or general partner, then the partnership interests are not intended to be treated as publicly traded under the 1987 Tax Act.

The legislative history as summarized above is, in many instances, vague and ambiguous. In other instances it is internally inconsistant and seemingly contrary to the Code itself. Unfortunately, at the present time it is the only existing authority for construing the scope of the term “publicly traded partnership” in the context of unlisted partnership interests.[28] Therefore, until the Treasury promulgates Regulations or the IRS provides some other type of guidance, both existing partnerships and those which will be formed (other than MLPs) may necessarily be forced to implement or substantially revise their procedures for permitting transfers of interests without any assurance that such undertakings will permit them to avoid PTP status.

---

[27] See Conf. Rep. at 949. The conferees describe transfers to related parties as intra family transfers or transfers within an affiliated group where the ownership of the interests or rights is effectively unchanged. Id.

[28] See Conf. Rep. at 949-50.

III. DESCRIPTION OF THE MARKETS IN WHICH PARTNERSHIP INTERESTS ARE TRADED OR TRANSFERRED

As the legislative history of the 1987 Tax Act indicates, partnership interests may be traded or transferred on a variety of markets in many ways. Those markets and methods relevant to the definition of a PTP are more fully described below.

A. Public Trading Markets (or Primary Markets).

Some partnership interests (e.g., MLP interests) are very liquid and marketable in the same way as stock in a public corporation in that they are traded on national securities exchanges such as the New York and the American Stock Exchanges.[29] Others achieve similar liquidity by being traded on local securities exchanges such as the Pacific Coast, the Midwest and the Denver Stock Exchanges. These markets function as continuous auctions conducted by one or more “specialists” or “market makers.” The “specialist” or “market maker” facilitates bringing the buyer and the seller of securities together in a two-way process in which the market is determined by the highest bid, lowest offer. The specialist system is at the heart of the exchanges.

A specialist typically acts as both a broker and as a dealer or market maker. As a broker, the specialist effects transactions for the account of other exchange members and their customers in a security or group of securities in which he is registered as a specialist. As a dealer or market maker, the specialist effects transactions for his own account in such securities to meet his obligation to maintain a fair and orderly market in each security in which he is registered as a specialist. Accordingly, specialists are obligated by the exchanges to effect the continuous and virtually instantaneous buying and selling of securities based on “bid” and “asked” quotations using exchange or industry customs and settlement procedures. The stock exchange and industry standard for settlement of a securities trade requires that delivery of the security and payment thereof occur within five business days of the trade date (the “settlement date”). In a normal securities transaction through a specialist, if a security holder wants to sell, he or she may do so on an almost immediate basis if the

[29] Attached as Exhibit A is a list of MLPs that show the number of publicly traded units each had outstanding as of March 2, 1988, as well as each MLP's annual trading volume as a percentage of its publicly traded units.

holder is willing to accept the current "bid" price since price is the only issue to be settled.

All other terms are set by rule or custom. For example, an investor that desires to sell his exchange-listed MLP interest at its current fair market value would contact his broker. The broker would then immediately execute a market order for the best price currently available. It is at this time and date (the "trade date") that the investor and his broker establish the price and other sale terms constituting a binding agreement. An electronic order-processing system then transmits the order. Within seconds the order is entered, and the investor has disposed of his interest at the fair market value on the trade date. It is not until the settlement date, however, that the interest will be removed from his account and he receives the proceeds from the sale. Another feature of an organized exchange is the fact that a seller is guaranteed to receive performance at the settlement date, that is, the seller is protected by the system against the failure of the buyer to perform.

B. The Secondary Trading Market.

The secondary trading market generally is considered to refer to the over-the-counter market for securities. A segment of the over-the-counter market operates using National Daily Quotation Sheets, popularly known as "pink sheets" from the color of the paper utilized. These pink sheets are published each business day in Eastern, Midwestern and Pacific editions by the National Daily Quotations Bureau and are available to registered dealers only on a subscription basis. Subscribing dealers place quotations in the pink sheets for securities in which they make a market.[30] Usually the dealers state "bid" and "asked" prices, but they occasionally list securities on an offer-wanted, bid-wanted basis. The pink sheets are sometimes used by dealers desirous of selling a small block of a security. More often they are used by dealers making a primary market in a security.

Market makers are critical to the proper functioning and liquidity of the over-the-counter market. A market maker, on a continuous, regular and ongoing (i.e., a daily) basis, provides competitive "bid" and "asked" quotations, makes such quotations continually available to the public, stands ready to buy and sell

[30] Pink sheet securities generally are low-priced publicly traded securities.

the securities in which he makes a market and to do so at the quoted prices, and is required to transact trades on demand at certain minimum levels. The National Association of Securities Dealers Automated Quotation ("NASDAQ") System was organized to produce continuous competition among multiple market makers, creating a more efficient market.[31] in general, NASDAQ is a market made up of competing market makers, geographically dispersed, linked by an electronic inter-dealer quotation system which provides investors with the opportunity to transact their buy and sell orders quickly and at a low cost per transaction.

C. Means for Effecting Transfers of Partnership Interests.

Interests in most publicly registered partnerships are transferred on a strictly bid-wanted, ask-wanted basis. These limited bid-wanted, ask-wanted markets are characterized by the irregularity of listing and sales, by their non-public nature, by the absence of market makers, and by the necessity of establishing most, if not all, of the terms of sale (including entitlement to accrued but unpaid partnership distributions, mode and time of payment, manner and date of transfer) in a bargained-for transaction after the buyer and seller are matched. There are, at present, four common methods for transacting bid-wanted, ask- wanted purchases and sales of unlisted partnership interests as well as various types of partnership redemption plans which may provide varying degrees of liquidity to the holder of a partnership interest.

1. Buy/Sell List. A buy/sell list might be maintained by the general partner, whereby partners wanting to sell and parties wanting to buy interests in the partnership may request the general partner to include .their names on the list. Typically, no price is indicated, no cash is deposited into an escrow and no transfer documents are completed prior to the consummation of a sale. The lists are merely non-public sources of information. Prospective buyers and sellers must negotiate and then execute all of the terms of a sale.

---

[31] Currently, more than 4,500 issuers which meet the minimum financial and shareholder requirements of NASDAQ have their securities traded in the NASDAQ System.

2. Partnership Accommodation Services. This method is utilized by some partnership underwriters which provide services to their clients who invest in partnerships underwritten by that underwriter to effect a trade of a partnership interest. The service is designed to accommodate clients of the underwriter who desire to sell partnership interests which they have previously acquired (usually at the initial public offering) through the underwriter. These underwriting firms maintain what may be described as “electronic bulletin boards” or “matching services” to disseminate information respecting potential buyers and sellers to clients of the firm. These are strictly intra-dealer listings -- no one outside the firm's personnel or clientele is able to use the listing. Actual practices at these firms may vary, but in general they function as follows. Potential sellers of partnership securities complete transfer documents in advance. In the documents they indicate a price at which they are willing to sell. Upon completion of the documents, the prospective seller is listed in the “matching system”. The underwriter has absolutely no obligation to buy or sell partnership interests that its clients list for sale. A prospective buyer uses the “matching system” by contacting his or her broker at the firm. The buyer's broker then provides a listing of the various partnership securities listed for sale. A would-be buyer deposits cash into an account at the firm and completes all the necessary paperwork. Some firms will accept payment against delivery of the securities. Most require that buyers either deposit cash in advance or within two days of entering an agreement of sale. The buyer and seller must wait for the firm's transfer operations desk to send all completed paperwork to the appropriate state securities regulators for suitability review and to the general partner for approval before the transaction is legally binding and effective. A typical sale may take many months to consummate, given (i) the fact that there are often more sellers than buyers, (ii) the paperwork requirements summarized above, and (iii) the requirement of approval of the general partner and state securities regulators.

3. Transfers to Large Buyers. This method is employed where a few persons purchase partnership interests through relatively small registered broker/dealer firms. These purchasers (or the broker/dealer representing them) may purchase partnership interests through an underwriter as customers of the underwriter, via a general partner listing service or independent listing services, or directly from investors through private solicitations. Typically, when an interested seller is located, all of the material terms of sale must be negotiated. When completed, the sales documents are deposited into an escrow which closes only after state securities regulatory approval has been

obtained, good and marketable title to the securities has been verified, and general partner assent to the transaction has been received. These transactions commonly take several weeks to complete.

4. Third-Party Accommodation Services. The final method available for facilitating transfers of partnership interests is through an organization or third-party accommodation service.[32] This provides both printed and electronic information regarding potential sellers of partnership interests to its members.[33] A would-be seller "lists" his partnership interest with the organization at a price he is willing to accept. That "sell" listing is usually good for seven business days, if at the end of that time the interest remains unsold, the listing expires and the interest cannot be re-listed for several weeks. If a member wishes to purchase the offered partnership interest, he must inform the organization and state the price he is willing to pay. At the end of the listing period, the highest bidder, if there are multiple bids, will purchase the offered partnership interest if his bid is at least equal to the listed seller's asking price. If his bid is below the seller's asking price, the prospective seller has the right to determine whether to accept the lower price, wait the required period and re-list the interest, or not sell at all. If a buyer and seller agree on price and other relevant terms, the transfer procedures are commenced by sending all of the requisite paperwork to the representatives of both parties. When completed, the transfer paperwork is submitted to the general partner for review. The purchase price is deposited with the organization which releases it to the seller only after the general partner has consented to the transfer in writing. This process often takes several weeks.

---

[32] The National Partnership Exchange ("NAPEX") constitutes one, and perhaps the primary, accommodation service.

[33] Membership is available only to broker/dealers and registered representatives.

5. Partnership Redemption Plans. Many partnerships afford their investors some degree of liquidity through redemption plans. There are two major types of redemption plans with numerous possible variations within each type as to timing, circumstances and pricing.

Partnership redemption plans may be classified generally as either open-end or closed-end plans. An open-end redemption plan is quite analogous to an open-end mutual fund in that the partnership not only offers to buy back partnership interests from current partners but also regularly issues new partnership interests to other investors at roughly the same price. As a result, the partnership maintaining an open-end plan hopes to be self-perpetuating by, in effect, using proceeds from newly issued interests to fund payments to partners being redeemed out. In contrast, a partnership having a closed-end redemption plan does not issue new partnership interests on a regular basis. Instead, it must fund redemptions by sales of partnership assets or by borrowings. In either case, the ultimate result is a contraction or liquidation of the partnership itself.

Whether open-ended or closed ended, some redemption plans may afford partners the chance to sell out on almost a daily basis. Other plans may offer investors the opportunity to redeem only periodically (e.g., monthly, quarterly, semiannually or annually). Such plans may allow an unlimited number of redemptions during a year or they may place volume or dollar-amount restrictions on redemptions. Still other plans may permit redemptions by individual partners only in extraordinary circum-stances, typically events indicative of the partner's economic hardship, for example bankruptcy, divorce or death Both open-end and closed-end redemption plans may use several methods to determine the redemption price for interests in the partnership. Some partnerships attempt to discourage redemptions by imposing a penalty on partners who redeem within a certain period of time. Such a penalty may be imposed by paying only a fixed percentage of the investor's original capital contribution or by paying only a predetermined percentage of the estimated value of the partnership interests to be redeemed. Other partnerships pay estimated fair market value for redeemed interests with no penalty or forfeiture feature built into the price. Generally, partnerships only value interests for redemption periodically (e.g., quarterly, semi-annually or annually) based upon appraisals or formula computations utilizing partnership income or cash flow. Those partnerships holding marketable securities or commodities, however, are able to determine the value of redeemed interests on a current basis.

Redemption plans may also differ as to the date when the redeemed interest is valued. Some partnerships determine the redemption price based upon appraisals or calculations made prior to the date when the partner's redemption request is received so that a redeeming partner knows the price at the time of giving notice to the partnership. Other plans may value the interests to be redeemed at the time the notice of redemption is received where the partnership's assets are readily susceptible of valuation. Still other plans may set the redemption price (by appraisal, or formula) subsequent to receipt of notice from the investor -- usually at the time the redemption actually takes place.

D. Summary.

Due to the very large number of partnerships that utilize one of the liquidity mechanisms described above and the draconian penalties on their partners if such partnerships are considered PTPs, we believe that guidelines should ultimately take the form of Treasury Regulations. Thus, in the discussion that follows we have set forth a number of proposals concerning certain types of transfers or redemptions of partnership interests some of which we believe are indicative of PTP status and others which are not. Obviously, the drafting of detailed Regulations will require substantial time by Treasury and the IRS. The Tax Section will provide whatever assistance is requested in this regard. Pending promulgation of such Regulations, however, we believe that it is critical for Treasury or the IRS to promulgate expeditiously certain relatively simple safe harbor guidelines speaking to the specific issues discussed in Section V. Such safe harbors will reduce the degree of uncertainty now confronting partnerships which we believe were not intended to be swept into the definition of a PTP. We emphasize that our proposals should be considered merely safe harbors and nothing more, in other words, failure to meet the proposed safe harbors should not create any negative inference that the partnership in question is publicly traded under the general facts and circumstances test provided for in the 1987 Tax Act.

IV. GENERAL REGULATORY AND ADMINISTRATIVE PROPOSALS

It would seem clear by implication from the legislative history and from the workings of bid-wanted, ask-wanted transactions that a broker or dealer may be involved in the transfer of a partnership interest and yet such transfer may not occur on the "substantial equivalent" of a secondary market or that the interest may not be so "readily" tradable as to constitute a publicly traded interest. Accordingly, any Regulations to be promulgated should identify those types of transactions that may result in a partnership being deemed publicly traded and distinguish it from those which should not be so treated.

We submit the following two general rules concerning certain types of transfers of partnership interests which involve only principals, or "brokers or dealers" acting with only limited authority. A "broker" in this, context is an agent who, for a commission or other compensation, handles orders to buy and sell partnership interests. A "dealer" in this context is an entity that buys and sells partnership interests as a principal rather then as an agent.[34] The same entity may function, at different times, either as a broker or dealer.[35] we believe that the transactions described below are sufficiently circumscribed and are not of the character to give rise to the readily available, regular, continuous and public market for interests described in the legislative history. We therefore believe that they should be disregarded in determining PTP status.

---

[34] The dealer's profit or loss is the difference between the price paid and the price received for the same partnership interest.

[35] A broker or dealer in this context would also include an underwriter who offers a matching service and should include a general partner or partnership that, by acting as an intermediary, effectively could be equivalent to a matching service. Since the transfer of a partnership interest through a redemption plan could be carried out on a regular and ongoing basis through the general partner, such transfer should be considered in determining PTP status, notwithstanding no involvement by a traditional broker or dealer. See also discussion under "Partnership Redemption Plans," infra, for a detailed analysis of the transfer of a partnership interest through a redemption plan.

A. Transactions with No Broker/Dealer Involvement.

If no broker or dealer or equivalent party is employed in the transaction pursuant to which an interest in the partnership, or any interest in such an interest, is transferred, the transfer should be disregarded in determining whether the partnership interests are publicly traded.

Both the Senate Report and the Conference Report make clear that the venues in which partnership interests are publicly traded are characterized by the presence of brokers and dealers. The national and regional exchanges are open only to brokers and dealers. Additionally, a secondary market in an interest exists "if the interest is regularly quoted by brokers or dealers making a market in the interests."[36]

While a market may be substantially similar to the secondary market without the presence of a market maker, it is not so unless it provides the holder of a partnership interest "a readily available, regular and ongoing opportunity to sell or exchange his interest through a public means of obtaining or providing information of offers to buy, sell or exchange interests."[37] As the foregoing factual summary indicates, the only markets capable of providing such an opportunity are characterized by the presence of brokers and dealers.

In general, then, Regulations should provide that transactions concluded without the participation of brokers or dealers inherently do not give rise to public trading.

---

[36] Conf. Rep. at 948. See also Sen. Rep., supra, note 18.

[37] Conf. Rep. at 948 (emphasis added). See also text accompanying note 19, supra, for a more detailed description of the substantial equivalent of a secondary market.

B. Transactions Involving Brokers/Dealers with Only Limited Authority.

If a broker or a dealer is employed in any transaction pursuant to which an interest in the partnership is transferred, but no broker or dealer participating in the transaction (with respect to such transaction) uses the facilities of:

(a) any national securities exchange registered under the 19 34 Act;

(b) any securities exchange exempted from registration under the 19 34 Act;

(c) any regional or local securities exchange;

(d) any arrangement where one or more persons undertakes with respect to the partnership interest to:

(i) make available to the public competitive bid and offer quotations; and

(ii) stand ready to effect buy and sell transactions at the quoted prices; or

(e) any other arrangement:

(i) in which the partnership interest is quoted and traded on a regular and ongoing basis as a result of bid and asked prices; and

(ii) which does not necessitate further negotiation between the buyer and seller on material terms other than price prior to the existence of a binding agreement;[38]

then transfers consummated by such broker or dealer should be disregarded in determining whether the partnership interests are publicly traded.

[38] For example, depending on the circumstances material terms other than price may include (i) manner and time of payment, (ii) closing procedures with respect to the transaction (e.g., non-foreign affidavits, approval of state securities commissioners, responsibility for obtaining the approval of the general partner and escrow procedures), (iii) entitlement to partnership distributions accrued but unpaid as of the date of the sale, (iv) right to vote on partnership matters with respect to the interest after closing, or (v) representations and warranties as to title.

If the broker or dealer employs the facilities of a national or regional securities exchange to effect the transaction (as provided in paragraphs (a), (b) and (c) above), the interest is clearly publicly traded within the meaning of Section 7704.[39] We believe that the dominant economic characteristic of the secondary market is the presence of market makers (or their equivalent who provide information and, in most cases, buying power to give a secondary market near instant liquidity).[40] They, and they alone, give the secondary market the near-instant liquidity, regularity, continuity and public access Congress deemed essential to the existence of a public market for partnership interests.[41] Hence, subparagraph (i) and (ii) of paragraph (d) above set forth the attributes descriptive of a market maker. Any transaction conducted in a market pursuant to an arrangement where one or more persons is obligated to perform such functions would appear to be a secondary market as described in the legislative history. Thus, if trades are effected by a broker or dealer on such a market or through such an arrangement, the securities should be considered to be publicly traded.

Lastly, paragraph (e) above recognizes that without market makers a partnership could be publicly traded if the holder has

> a readily available, regular and ongoing opportunity to sell or exchange his interest through a public means of obtaining or providing information of offers to buy, sell or exchange interests ... in a time frame and with the regularity and continuity that the existence of a market maker would provide.[42]

---

[39] See §§ 469(k)(2)(A) and 7704(b)(1); See also Conf. Rep. at 947-48.

[40] See Conf. Rep. at 947-50.

[41] For example, substantially all of the MLPs shown on Exhibit A attached are traded on the New York or American Stock Exchanges which utilize specialists as market makers. This affords investors virtually unlimited liquidity evidenced by the fact that the annual trading volume for most MLPs was in excess of 30 percent of the total public interests outstanding. Few if any publicly registered, but unlisted, partnerships likely have transfers during a year even approaching 10 percent of their outstanding interests. Such partnership interests are not intended to be, and are not in fact, marketable in the same manner as MLP interests.

[42] Conf. Rep. at 947-50.

Such a market or arrangement is defined as the “substantial equivalent” of a secondary market. Paragraph (e) is intended to define a market or arrangement in which partnership interests are publicly traded by distinguishing it from an environment in which each trade is a separately bargained-for transaction occurring on an individualized and consequently irregular basis, the latter being an environment in which partnership interests should not be considered to be publicly traded.

It is our view that transfers which satisfy the terms of these general rules should not constitute public trading because the activities described in the rules do not give rise to that “ready availability,” “regularity,” or “marketability within a time frame” contemplated by Congress when it enacted Section 7704.

V. PROPOSED SAFE HARBORS

Recently, high ranking officials in the Treasury have acknowledged that immediate Treasury or IRS guidance is critical with respect to the scope of the definition of a "publicly traded partnership."[43] We agree. In that regard, we urge that such guidance be provided in the form of an Administrative Announcement, Revenue Ruling or Procedure to the effect that certain types of partnerships will not be considered "publicly traded" and that certain types of transfer systems and redemption plans will not be considered "public trading" if they come within one or more safe harbor rules.

We suggest that such safe harbor rules include the following:[44]

A. Private Placements.

We recommend that partnerships whose interests are issued in private placements (whether pursuant to Regulation D or its predecessor, Rule 146, or otherwise under the Securities Act of 1933 (the "1933 Act")) be exempted from the provisions of Sections 469(k), 512(c)(2) and 7704 whether liquidity is provided through a buy-sell list, a "matching service" or a redemption plan.[45] Such partnerships are by their nature not publicly traded

---

[43] Seminar by O. Donald Chapoton, Assistant Treasury Secretary for Tax Policy and Dennis E. Ross, Deputy Assistant Treasury Secretary for Tax Policy, Mid-Atlantic Tax Conference II (January 23, 1988). See Tax Notes Today (February 1, 1988). See also Seminar by Dana L. Trier, Tax Legislative Counsel United States Treasury Department, ABA Section of Taxation, Mini Program (May 14, 1988).

[44] These safe harbor proposals are similar to the proposals submitted to the Treasury by Mikel M. Rollyson, R. Donald Turlington and others in a letter dated March 3, 1988.

The safe harbor proposals should apply to any partnership, including a foreign partnership, that satisfies the particular standards established for such safe harbors.

[45] Alternatively, partnerships whose interests are not registered under the 19 34 Act should be exempted from the provisions of §§ 469(k), 512(c)(2) and 7704. The 1934 Act regulates the trading of partnership interests as distinguished from the 1933 Act which relates solely to the issuance of such interests. Since only partnerships which exceed certain numerical and financial limits are required to register under the 1934 Act, a partnership which has not attained sufficient size to require registration under the 1934 Act, and has not actually registered, should not be treated as publicly traded for federal income tax purposes since transfers of such partnership interests are severely restricted.

because of the stridentsuitability requirements for investors and the strict limitations on resale.

In general, partnership interests issued in private placements, which are exempted from the registration requirements of Section 5 of the 1933 Act, may be sold by the issuer only to purchasers who meet stringent suitability requirements.[46] Moreover, interests issued in private placements generally cannot be resold without registration under the 1933 Act or an exemption therefrom. The issuer is therefore required to take reasonable measures to ensure that the purchasers of the interests are not underwriters, including inquiry to determine if the purchaser is acquiring the interests for himself or for other persons, written disclosure to each purchaser prior to sale with respect to the limitations on resale, and placement of a legend on the document that evidences the interests describing the limitations on resale.

As would be expected, there is very little actual trading in interests issued in private placements. Moreover, no transfer can occur expeditiously, for significant documentation is needed on the suitability of the transferee and the permissibility of the transfer under the securities laws, including, in most cases, an opinion of the transferor's counsel stating that the proposed transfer is exempt from federal and state securities laws.

Even though many of the securities law restrictions on resale of such partnership interests may expire after three

---

[46] The suitability requirements are inapplicable only in certain circumstances to issuances with an offering price that does not exceed $500,000. In all other cases, when the offering price is $5 million or less, the issuer may sell interests to only 35 purchasers who do not meet the suitability requirements. When the offering price of the issue exceeds $5 million, the issuer must reasonably believe that each of the purchasers who do not meet the suitability requirements has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment.

years,[47] active markets simply do not develop in privately placed partnership interests. Nevertheless, if Treasury is unwilling to adopt a blanket exemption for such interests, we suggest an alternative safe harbor that relates to the initial offering price of the interest. It seems to us that it would be virtually impossible for heavy trading to develop in interests with a high offering price, so long as those interests are not subdivided for resale. Thus, an alternate safe harbor might be that a partnership is not to be publicly traded if (i) its interests were initially issued in a private placement, (ii) the initial offering price of the interests was at least $20,000, and (iii) the interests may not be subdivided into smaller units.

B. 30-Day Non-Binding Period.

In distinguishing PTPs from non-publicly traded partnerships, Congress stressed the time frame in which a prospective seller could transfer his or her interest in a partnership.[48] We believe that a critical issue is whether holders of unlisted partnership interests who have no legal assurance there will be a buyer can effect a binding sale within a time frame comparable to that which is available for exchange-traded interests. We suggest, therefore, that a safe harbor rule be established for partnership interests that are sold through a "matching service" which assures that no transfer can be consummated (i.e., become legally binding on the prospective buyer and seller") For a significant time period.[49] A similar non-binding period for more informal non-institutional trades, that is, partnership interests

---

47 Under Rule 144(k) promulgated under the 19 3 3 Act, most of the restrictions on transfers of restricted securities do not apply to transfers of restricted securities by persons unaffiliated with the issuer that have owned the securities for at least three years. However, it should be noted that the partnership agreements and/or subscription agreements for privately-placed partnership interests commonly contain significant 1933 Act-related transfer restrictions (such as a restriction limiting transfers only to persons meeting the 1933 Act suitability requirements) that continue to apply in these circumstances.

48 See Conf. Rep. at 948 and H.R. Rep. at 1070.

49 This safe harbor should not be applicable to a partnerships which also maintain an impermissible redemption plan. (See Section VI.).

not transferred through a matching-type service, should be established as well.[50]

We believe a 30-day non-binding period clearly would distinguish transfers of partnership interests in the typical "matching system" from the near instantaneous liquidity and certainty of sale afforded prospective sellers of partnership interests listed on an exchange or transferred in the over-the-counter market through a market maker.[51]

The non-binding period will assure that sales of partnership interests subject to such procedures will differ significantly from exchange trading which affords sellers willing to sell at the "market" or "bid" price the ability to dispose of securities almost instantaneously after the sell order is given. The assurance that no contract of sale will become binding through a "matching service" in fewer than 30 days should serve clearly to distinguish these interests from publicly traded interests.

We anticipate that persons maintaining "matching systems" may implement the 30-day non-binding period in different ways. The actual procedures employed should be irrelevant, however, provided that the non-binding period applies with respect to each sale effected through the procedures. For example, some firms may implement a non-binding period by not attempting to match sell offers with prospective buyers until a certain number of days after a sell order is received. Others may attempt to match sell requests as received but expressly give the prospective buyer and prospective seller the right to void the transfer for at least 30 days. Regardless of the specific

---

[50] "Private" transfers of partnership interests should not be required to comply with such a rule because they are effected neither through the partnership nor through any matching service or other type of non-institutional trading process. Because private transfers cannot be fully controlled by the partnership, they should be disregarded if meaningful safe harbors are to be established. See also discussion under "Transactions with No Broker/Dealer Involvement", supra, for a more detailed description of a private transfer of a partnership interest.

[51] See Exhibit A attached. Although we suggest a 30-day nonbinding period, the exact number of days established is less important than the prompt endorsement of the concept and the announcement by Treasury or the IRS of the time period deemed appropriate. We also note that there is substantial support and legal and economic justification for permitting a shorter non-binding period, such as 15 days. See Letter from American Bar Association, Task Force on Publicly Traded Partnerships (February 22, 1988).

procedures employed, the safe harbor should be available so long as neither the buyer nor the seller can be legally obligated to conclude the transaction until at least 30 days after the day on which the seller gives the matching service notice of his or her desire to sell the partnership interest.[52]

This safe harbor should be available regardless of whether the transfer is effected by the general partner of the partnership or by an underwriter or broker. These distinctions should be irrelevant because the safe harbor, which relates to, the time frame within which a prospective seller may be assured of effecting a binding sale of the partnership interest through a publicly available means, provides restrictions on liquidity in each instance that clearly distinguish transfers made through a "matching service" from exchange trading carried out through specialists and market makers. The 30-day non-binding period that we recommend as a safe harbor not only would be consistent with the new provisions on PTPs, as embellished by the Conference Report, but would be an administratively feasible approach which imposes economic risks on prospective sellers that will differ substantially from the risks taken by holders of exchange-traded interests.

Finally, we urge that any announcement of such a safe harbor rule by Treasury or the IRS make the protection of the 30-day non-binding rule applicable to partnership taxable years beginning after December 31, 1986 and that "matching systems" that are brought into compliance with this rule within a reasonable period from the date of the issuance of such guidelines be treated as having complied with them from January 1, 1987.

---

[52] In addition, a prospective seller who withdraws his or her name after being matched with a prospective buyer should be required to wait a substantial additional length of time (e.g., at least 30 days) from the date his or her request to sell is reactivated.

C. Annual Volume of Trading.

We believe that a third safe harbor should reference the volume of annual sales of interests in a partnership carried out through any organized matching or redemption system whether or not the liquidity is provided through a buy-sell list, a "matching system" or a redemption plan.[53] The fact that only a small percentage of outstanding interests is transferred each percentage of outstanding interests is transferred each year would be an easily administerable and objective indication that there is no readily available market for the interests and consequently that they do not have any significant liquidity.. In order to provide a meaningful safe harbor for existing partnerships (especially those organized prior to the 1987 Tax Act), we suggest the adoption of a guideline under which, if no more than 5% of the interests outstanding at the beginning of the taxable year of the partnership interests are transferred in that year through a public means or are redeemed, the partnership will not be treated as a PTP for that year.[54]

We believe that certain transfers which are inherently not public trades should be excluded from being counted to determine the safe harbor volume. These transfers should include transfers which are noncommercial in nature or where the beneficial ownership of the partnership interest does not significantly change. These types of transfers should include gifts, bequests, inheritances, transfers pursuant to a dissolution of a marriage, transfers to grantor trusts, transfers to or from corporations in connection with contributions of capital, redemptions, liquidations, or partial liquidations, transfers to or from partnerships and deemed sales of partnership

---

[53] See generally "Recommendations for Redemption Plans," at Section VI.., infra, for a more detailed description of redemption plans and for an alternative analysis exempting redemption plans, either because they do not provide an investor the opportunity to dispose of his partnership interest at its current fair market value or because that opportunity is not "regular" or in a "time frame" comparable to that available on the stock exchange or in a secondary market. Thus, such plans are not comparable economically to the stock exchange or a secondary market.

[54] It is our understanding that most publicly registered partnerships other than MLPs have annual trading volume less than 5%. Annual trading of units in most MLPs is 30-40% or higher. See Exhibit A attached.

interests under Section 751(b).[55] In addition, to mitigate the effect of large or block trades, we propose that such trades be excluded from being counted under the safe harbor volume.[56]

This volume safe harbor is critical, particularly for existing partnerships having redemption plans, that may not be able to implement a non-binding period restriction without amending their partnership agreements. Because an amendment restricting the liquidity of the partnership interests would affect the rights of the limited partners in a material respect, such an amendment could not be added to most partnership agreements without the consent of at least a majority of the limited partners. We believe that existing partnerships, the interests of which are not transferred frequently, should not be forced to go through the cumbersome, time-consuming and extremely expensive process of acquiring this consent.

D. Interaction of Safe Harbors.

We believe that the three safe harbors described above (as well as any others considered appropriate by Treasury and the IRS) should be mutually exclusive. A safe harbor which would incorporate both time and volume limitations would be difficult and costly to administer and could also create an added hardship for limited partners in a mismanaged limited partnership in that it would likely restrict the ability to sell an interest or to remove an unsatisfactory general partner. We believe that each safe harbor previously proposed would be adequate in its own right to ensure that transfers which occur in circumstances that are clearly not substantially equivalent to a secondary market are permitted while, at the same time, providing ease of administration of the 1987 Tax Act provisions governing PTPs.

---

[55] In the same spirit, it would seem that a transfer of a partnership interest which is a part sale and part gift should also be treated as a gift for the above purpose because such a transfer would be made with donative intent.

[56] Trades for this purpose might include all transfers of 5% or more of the outstanding partnership interests between a single seller and a single buyer. Additionally, the safe harbor volume cap should take into consideration "sponsor dominated partnerships," i.e., partnerships in which the sponsor retains a substantial percentage of the partnership interests. For example, if it is decided to exclude such sponsor-held interests from the denominator of the safe harbor fraction in determining whether the partnership meets the safe harbor volume, then the volume cap percentage should be increased to reflect the lower number of partnership interests that are registered and could be publicly traded. A sponsor-dominated partnership for this purpose should include any partnership in which interests representing at least 20% of the outstanding capital or profits are held by the general partner or its affiliates.

VI. RECOMMENDATIONS WITH RESPECT TO PARTNERSHIP REDEMPTION PLANS

A. Introduction.

The need for prompt administrative guidance with respect to redemption plans is critical because there are hundreds of publicly registered (but unlisted) partnerships having redemption plans that were organized prior to any indication from Congress that public trading would cause the adverse tax treatment provided in the 1987 Tax Act. Sponsors of these partnerships have asked practitioners whether the mere existence of such plans may result in publicly traded status under the language of the Conference Report. Needless to say, the Conference Report does not provide any clear and comprehensible tests for practitioners, Revenue Agents and the courts to use when determining whether publicly traded status exists. Standards are necessary as soon as possible for determining which types of redemption plans will be deemed to provide an investor with "a readily available, regular and ongoing opportunity to sell or exchange his interest" and whether such interests are tradeable in a "manner that is comparable, economically, to trading on established securities markets" or, alternatively, whether such interests can "normally be disposed of within the time that they could be disposed of on an over-the-counter market."[57]

B. Open-End Redemption Plans.

This type of redemption plan may, in certain situations, provide a partner with substantially the same economic and legal benefits and rights available through a conventional market-maker, i.e., (1) a regular and on-going certainty that a buyer will be available when a seller wants to sell, and (2) the price will be at, or a close approximation of, fair market value. In other words, a partnership maintaining an open-end redemption plan may be the equivalent of a market-maker.

Assuming that the private placement or volume safe harbors discussed previously are not available, we believe that a partnership with an open-end redemption plan should be considered a PTP unless: (1) the redemption price clearly does not provide

---

[57] Conf. Rep. at 948. See also text accompanying note 19, supra, for a complete discussion of the legislative history.

the economic equivalent of fair market value,[58] or (2) redemptions may take place only at extended intervals and then only if a redeeming partner has given ample notice. Unlike the situation where a partnership utilizes only a "matching service" which gives no assurance of a buyer, a redemption plan (particularly, if not contingent and unlimited in volume) assures a ready buyer. Thus, the time delay required in the case of a redemption plan should be longer than is required of a "matching service."[59]

As a final point, partnerships which filed a registration statement with the SEC prior to December 18, 1987 indicating that the partnership would have an impermissible open-end plan should be treated as an existing partnership under the grandfather provision of the 1987 Tax Act.[60]

---

[58] Such would be the case where the redemption price is arbitrarily set at a fraction of the investor's capital contribution in order to inhibit early redemptions or is at a substantial discount from fair market value as evidenced by contemporaneously issued partnership interests. As a bright line standard for defining a substantial discount, reference could be made to the Treasury Regulations at § 15A.453-1(e)(5)(ii), involving installment sales of property for non-traded debt securities which are convertible into publicly traded securities at the option the holder. There, if the securities are convertible only at a "substantial discount," installment treatment by the seller is permitted. A substantial discount for that purpose is considered to exist if at the time the convertible installment note is issued, the fair market value of the stock or obligation into which the note is convertible is less than 80 percent of the fair market value of the installment note (determined by taking into account all relevant factors, including proper discount to reflect the fact that the convertible obligation is not readily tradable in an established securities market).

[59] The actual time delay imposed should be dependent upon whether the redemption price is determined prior to, or contemporaneoulsy with, the partner's redemption notice (at least 90 days) or subsequent to such notice (no more than 60 days). (See Section VI. C., infra.)

[60] See 1987 Tax Act at § 10211(c)(2)(A)(ii), which requires that the registration statement filed before December 18, 1987 indicate that the partnership was to be a PTP. The disclosure in the prospectus of facts which cause PTP status under Treasury Regulations or rulings to be promulgated on the issue should satisfy this requirement.

Partnerships in existence prior to December 18, 1987 having open-end redemption plans did not have an adequate opportunity to properly restrict such plans prior to December 31, 1987 since the legislation was enacted on December 22, 1987. Accordingly, we believe that it is appropriate for Treasury (or the IRS) to exercise its authority and issue rulings or Regulations on a prospective basis with respect to existing redemption plans. See also text accompanying note 9, supra, for a detailed description of the grandfather provision.

C. Closed-End Redemption Plans.

Some have suggested that partnerships maintaining redemption plans which are closed-ended should, as a per se rule, be immune from PTP status.[61] This position is based upon two arguments. First, the partnership in this case is not analogous to a market-maker in that there are no third-party buyers for partnership interests redeemed as is the case with stock exchange or secondary market-traded securities and, to a major extent, interests in partnerships maintaining open-end redemption plans. Second, closed-end plan redemptions cause a contraction, and ultimately the possible liquidation, of the partnership itself.

There is no strong consensus among the Executive Committee for or against such a per se rule. The principal effect of such a rule would be that most partnerships maintaining redemption plans would not be subject to PTP status. On the other hand, there is no express indication in the legislative history that Congress intended such a rule.

In the event there is to be no per se rule exempting partnerships having closed-end redemption plans from PTP status, we suggest that the following guidelines be promulgated:

1. Extraordinary Event Redemption Plans. If a redemption plan only operates in certain events (e.g., the death, medical emergency, loss of primary employment, bankruptcy or insolvency of the partner), we believe that such a plan does not provide partners with the readily available, regular and ongoing ability to dispose of interests in the partnership that would be indicative of a secondary market.[62] Accordingly, we believe that

---

[61] See, for example, letter from Steven C. Frost, Esq., of Chapman and Cutler, 88 Tax Notes Today (88-53).

[62] In the case of a pension plan investor, a redemption plan would qualify for this exemption if a pension plan could redeem its interest in the partnership only if the foregoing events occur with respect to the plan participant and a distribution of funds from the plan is necessary as a result.

such a redemption plan should not result in publicly traded status, regardless of the number of redemptions which may occur.

2. Redemption Plans Using Penalty or Discount Pricing. Where it is clear that the redemption price is computed in an arbitrary and punitive manner or is at a substantial discount to fair market value, the mere existence of such a plan should not cause PTP status.[63] This should be the result since such pricing does not provide a partner the ability to sell an interest in a partnership "in a manner that is comparable, economically, to trading on established securities markets."[64]

3. Redemption Plans Using Fair Market Value Pricing. If (a) the redemption price is fair market value or fair market value less an insubstantial discount therefrom, or is based upon a formula intended to approximate fair market value, and (b) where the actual valuation is set prior to, or contemporaneously with, the partner's redemption notice to the partnership, then absent some exemption (such as a private placement or minimal volume -- see Section V. A. and C., supra), PTP status should result unless the partner is required to wait a substantial period of time after giving notice before the redemption is consummated and payment is received. In this regard, at least a 90-day delay may be appropriate. We believe such treatment is justified since the partner in this situation is assured of a buyer and is not subject to risk of loss after giving notice of his or her intent to sell.[65] The 90-day waiting period should negate any reasonable analogy to stock exchange or secondary market trading since the partner's right to sell would not be the "substantial equivalent" of a secondary market, the opportunities to sell would not be "regular," nor could the sale be completed "in a time frame" comparable to a stock exchange or the typical secondary market where sell orders are executed almost instantaneously, and, at least in the case of a stock exchange, the seller is protected by the system against a fail, and settlement is accomplished in five to seven days.

---

63 See note 58, supra, for a discussion of a substantial discount.

64 Conf. Rep. at 947-48.

65 Not only should there be a substantial time between the notification of a partner's desire to sell his partnership interest and the actual redemption, but any partner who withdraws his name from the redemption waiting list should be required to wait a substantial additional length of time (e.g., 90 days) from the date his or her redemption request is reactivated before the partnership interest may be redeemed.

In contrast, those redemption plans which are based upon the fair market value of the tendered interests at the actual date of redemption should be permitted so long as the time delay is significant and redemptions are permitted no more often than quarterly. In this regard, we believe 60 days would be appropriate since these plans leave the partner exposed to risk of loss after notice of redemption is given. Thus, such redemption plans are distinguishable from plans in which the partner is assured of the price at the time notice of redemption is given. On the other hand, the time delay required with post-notice redemption pricing should be longer than that required with a "matching system" (30 days under our recommendation) since the latter does not even assure a prospective seller that he or she will have a buyer, much less assure the seller of the price to be received.

4. Redemption Plans Having Value or Volume Limitations. We believe that a redemption plan does not afford a partner a readily available and ongoing opportunity to sell unless there is reasonable certainty of redemption. Therefore, a redemption plan placing meaningful restrictions on the partners' ability to liquidate their interests at any time should preclude PTP classification. For example, if a partnership limits redemptions to available cash flow and there generally is not enough cash flow so that a significant number of partners could redeem their interests in a short time if they choose to do so, there is no regular and ongoing opportunity to redeem interests for a significant number of partners. To avoid the burden and uncertainty of making a facts and circumstances determination in each case, however, we suggest that there be a rebuttable presumption of PTP status if the plan permits redemptions of more than 5% of the outstanding interests in any year.

Again, any partnership that filed a registration statement with the SEC prior to December 18, 1987 indicating that the partnership was to have a limited value or volume redemption plan, but which are not significant enough to preclude PTP status, should be treated as an existing partnership under the grandfather provision of the 1987 Tax Act.

D. Summary.

We believe that the rules set forth above will (a) enable partnership sponsors to safely structure transactions (and, if necessary, to amend existing redemption plans) in full compliance with the 1987 Tax Act, (b) avoid uncertainty of tax results for investors, (c) provide clear standards for the IRS and the courts to apply in assessing whether a partnership is to be classified as a PTP and (d) reduce the additional strain on the audit and judicial system that is likely to result without it.

EXHIBIT A

MASTER LIMITED PARTNERSHIPS
1987 Trading Volume

	NUMBER OF PUBLICLY TRADED UNITS	1987 AVERAGE DAILY UNIT VOLUME (A)	ANNUALIZED UNIT VOLUME (B)	ANNUAL TRADING VOLUME AS % OF OUTSTANDING PUBLIC UNITS
1 Polaris Industries Partners, L.P.	500,000	14,345	3,729,700	745.94%(25)
2 NVRyan, L.P.	3,534,000	58,146	15,117,960	427.79%
3 National Healthcorp, L.P.	800,000	5,584	1,451,840	181.48%
4 Borden Chemicals and Plastics Limited Partner	28,125,000	159,500	41,470,000	147.45%(6)
5 Southwest Realty	675,000	3,764	978,640	144.98%
6 Vista Organization Partnership	11,500,000	55,334	14,386,840	125.10%
7 Standard Pacific, L.P.	23,265,000	107,564	27,966,640	120.21%
8 Kaneb Energy Partners, Ltd.	3,203,000	14,785	3,844,100	120.02%
9 Prime Financial Partners-Class A	1,141,000	5,072	1,318,720	115.58%(26)
10 Oppenheimer Capital, L.P.	7,200,000	31,788	8,264,880	114.79%(21)
11 Reich & Tang, L.P.	2,499,000	10,593	2,754,180	110.21%(29)
12 Valero Natural Gas Partners, L.P.	9,478,000	39,329	10,225,540	107.89%(37)
13 Oe Laurentiis Film Partners	1,625,000	6,540	1,700,400	104.64%(9)
14 Universal Medical Buildings, L.P.- Common	19,760,000	77,300	20,098,000	101.71%
15 Belden & Blake Energy	863,000	3,303	858,780	99.51%
16 Uinchell's Donut Houses	5,000,000	19,003	4,940,780	98.82%(38)
17 Fine Homes International, L.P.	6,000,000	22,802	5,928,520	98.81%(14)
18 Emerald Homes, L.P.	3,900,000	13,913	3,617,380	92.75%(10)
19 Intelligent Systems Master,L.P.	8,538,000	29,365	7,634,900	89.42%
20 Boston Celtics, L.P.	2,862,000	9,551	2,483,260	86.77%
21 NRM Energy Company, L.P. (APU)	8,033,000	26,536	6,899,360	85.89%(20)
22 Buckeye Partners, L.P.	12,000,000	37,514	9,753,640	81.28%<7)
23 AIRCOA Hotel Partners	1,700,000	5,268	1,369,680	80.57%(1)
24 Mesa Limited Partnership	85,079,000	256,233	66,620,580	78.30%
25 Enserch Exploration Partners, Ltd.	12,914,000	37,614	9,779,640	75.73%
26 USA Cafes, L.P.	4,346,000	12,577	3,270,020	75.24%
27 Allstar Inns, L.P.	5,848,000	16,676	4,335,760	74.14%(2)
28 Freeport McMoRan Resource Partners, L.P.	19,487,000	55,049	14,312,740	73.45%
29 Petrolane Partners, L.P.	13,658,000	37,737	9,811,620	71.84%(23)
30 Freeport*McMoRan Energy Partners, Ltd.	20,442,000	56,000	14,560,000	71.23%
31 Transco Exploration Partners, Ltd	20,694,000	53,612	13,939,120	67.36%
32 Red Lion Inns	4,940,000	12,764	3,318,640	67.18%(28)
33 Forum Retirement Partners	5,150,000	13,241	3,442,660	66.85%(15)
34 Permian Partners, L.P.	16,650,000	42,230	10,979,800	65.94%(22)
35 Mesa Limited Partnership-Pref. A	89,359,000	225,621	58,661,460	65.65%
36 La Quinta Motor Inns, L.P.	3,975,000	10,034	2,608,840	65.63%
37 Burger King Investors Master, L.P.	4,635,000	11,516	2,994,160	64.60%
38 Diamond Shamrock Offshore Partners	9,846,000	24,433	6,352,580	64.52%
39 Gold Company of America	2,351,000	5,788	1,504,880	64.01%
40 Prime Motor Inns, L.P.	3,505,000	8,604	2,237,040	63.82%(27)
41 Dorchester Nugoton, Ltd.	5,372,000	12,813	3,331,380	62.01%
42 IP Timberlands, Ltd	7,300,000	17,342	4,508,920	61.77%
43 Falcon Cable Systems Company	4,001,000	9,495	2,468,700	61.70%(12)
44 UDC-Universal Development, L.P.	10,672,000	25,118	6,530,680	61.19%
45 Lear Petroleum Partners, L.P.	1,244,000	2,896	752,960	60.53%
46 Perkins Family Restaurants, L.P.	5,043,000	11,664	3,032,640	60.14%
47 Shopco laurel Centre, L.P.	4,660,000	10,652	2,769,520	59.43%(31)
48 Servicemaster L.P.	31,084,000	68,637	17,845,620	57.41%
49 Sahara Casino Partners, L.P.	6,200,000	13,614	3,539,640	57.09%(30)
50 Hauna Loa Macadamia Partners, L.P.	3,989,000	8,611	2,238,860	56.13%
51 Sun Distributors, L.P.	10,656,000	22,710	5,904,600	55.41%(34)
52 Maritrans Partners, L.P.	12,250,000	25,636	6,665,360	54.41%(18)
53 Cedar Fair, L.P.	18,533,000	38,364	9,974,640	53.82%(8)
54 Snyder Oil Partners, L.P.-Preferred	1,791,000	3,702	962,520	53.74%
55 Santa Fe Energy Partners, L.P.	5,780,000	11,658	3,031,080	52.44%
56 Sun Energy Parners, L.P.	8,008,000	16,031	4,168,060	52.05%
57 Union Exploration Partners	11,940,000	23,828	6,195,280	51.89%
58 Commonwealth Mortgage of America, L.P.	13,000,000	25,786	6,704,360	51.57%
59 NRM Energy Company, L.P.-Preferred	2,497,000	4,700	1,222,000	48.94%
60 Hotel 6, L.P.	6,000,000	11,290	2,935,400	48.92%
61 Saxon Oil Development Partners, L.P.	6,679,000	12,437	3,233,620	48.41%
62 Angel I Care Master Limited Partnership	3,550,000	6,559	1,705,340	48.04%
63 Jones Intecable Investors,L.P.	6,730,000	12,428	3,231,280	48.01%
64 U.S. Realty Partners	1,222,000	2,190	569,400	46.60%
65 Snyder Oil Partners, L.P.-Common	17,234,000	30,450	7,917,000	45.94%(32)
66 Newhall Investment Properties	3,321,000	5,679	1,476,540	44.46%
67 Entex Energy Development, Ltd. (E)	6,715,000	11,481	2,985,060	44.45%
68 Apsache Petroleum Company	46,903,000	80,148	20,838,480	44.43%
69 Cal Fed Income Partners, L.P.	11,000,000	18,480	4,804,800	43.68%
70 Air lease, Ltd.	3,269,000	5,386	1,400,360	42.84%
71 Consolidated Energy Partners, L.P.	2,109,000	3,326	864,760	41.00%

EXHIBIT A

MASTER LIMITED PARTNERSHIPS
1987 Trading Volume

	NUMBER OF PUBLICLY TRADED UNITS	1987 AVERAGE DAILY UNIT VOLUME (A)	ANNUALIZED UNIT VOLUME (B)	ANNUAL TRADING VOLUME AS % OF OUTSTANDING PUBLIC UNITS
72 FFP Partners, L.P.	2,386,000	3,588	932,880	39.10%(13)
73 EQK Green Acres, L.P.	9,260,000	13,790	3,585,400	38.72%
74 American Restaurant Partners, L.P.	800,000	1,168	303,680	37.96%(5)
75 Pickett Suite Motel Master, L.P.	3,085,000	4,483	1,165,580	37.78%(24)
76 Furr's/Bishop's Cafeterias, L.P.	11,000,000	15,739	4,092,140	37.20%(16)
77 CR1 Insured Mortgage Investments	9,100,000	12,101	3,146,260	34.57%
78 Newhall Land & Farming Company	19,097,000	25,260	6,567,600	34.39%
79 Devon Resource Investors	4,514,000	5,807	1,509,820	33.45%
80 Summit Tax Exempt Bond Fund, L.P.	7,906,000	10,076	2,619,760	33.14%(33)
81 Equitable Real Estate Shopping Centers	11,077,000	13,571	3,528,460	31.85%(11)
82 VMS Mortgage Investors, L.P.	7,629,000	9,049	2,352,740	30.84%
83 Family Group Broadcasting, L.P.	1,000,000	1,177	306,020	30.60%
84 American Real Estate Partners, L.P.	12,381,000	14,143	3,677,180	29.70%(4)
85 Thomson Mcknnon Asser Management, L.P.	3,300,000	3,755	976,300	29.58%(35)
86 Walker Energy Partners	8,412,000	9,567	2,487,420	29.57%
87 America First Tax Exempt Mortgage Fund	9,355,000	10,267	2,669,420	28.53%
88 America First Tax Exempt Mortgage Fund 2	4,787,000	5,113	1,329,380	27.77%
89 Graham McCormick Oil & Gas Partnership	13,861,000	14,669	3,813,940	27.52%
90 Angeles Finance Partners	1,051,000	1,000	260,000	24.74%
91 Samson Energy Co., L.P.	1,717,000	1,506	391,560	22.80%
92 Energy Development Partners, Ltd.	13,644,000	11,679	3,036,540	22.26%
93 American Insured Mortgage Investors Series	9,113,000	7,488	1,946,880	21.36%
94 The Marina, L.P.	495,000	389	101,140	20.43%
95 Kelly Oil & Gas Partners	5,987,000	4,674	1,215,240	20.30%
96 Damson Energy B	10,988,000	8,359	2,173,340	19.78%
97 Uinthrop Insured Mortgages II	3,868,000	2,922	759,720	19.64%
98 National Realty, L.P.	45,616,000	34,015	8,843,900	19.39%(19)
99 UOC Universal Development, L.P. Preference A	235,000	171	44,460	18.92%(36)
100 Newhall Ressources, Ltd.	3,314,000	2,403	624,780	18.85%
101 American Income Properties	2,000,000	1,387	360,620	18.03%(3)
102 Galaxy Cablevision, L.P.	2,150,000	1,428	371,280	17.27%(17)
103 Damson Energy * A	16,392,000	•0,640	2,766,400	16.88%
104 Gould Investors, L.P.	550,000	349	90,740	16.50%
105 NRM Energy Company, L.P.	30,979,000	19,284	5,013,840	16.18%
106 Ala Moanna Hawaiian Properties	16,729,000	10,081	2,621,060	15.67%
107 Convest Energy Partners, Ltd.	4,763,000	2,753	715,780	15.03%
108 OKC Limited Partnership	17,403,000	7,099	1,845,740	10.61%
109 Prime Financial Partners* Preferred	341,000	139	36,140	10.60%(26)
110 Royal Palm Beach Colony, L.P.	4,486,000	1,496	388,960	8.67%
111 Great American Partners	5,931,000	0	0	0.00%
112 Power Test Investors, L.P.	0	0	0	0.00%
113 American Insured Mortgage Investors Series 85	0	0	0	0.00%
114 Pope Resources	980,000	0	0	0.00%
115 American Insured Mortgage Investors Series 83	0	0	0	0.00%
116 Universal Medical Buildings, L.P.- Preferred	486	0	0	0.00%
117 Geodyne Resources, L.P.	0	27,752	7,215,520	0.00%
118 interstate General, L.P.	2,200,000	0	0	0.00%
119 Teeco Properties, L.P.	6,409,000	0	0	0.00%
120 Petroleum Investments, L.P.	10,143,000	0	0	0.00%
121 Angeles Mortgage Partners, Ltd.	2,830,000	0	0	0.00%
122 America First Federally Guaranteed Mortgage 2	9,572,000	0	0	0.00%
123 Timber Realization Co.	0	0	0	0.00%
124 Columbia Energy	0	0	0	0.00%
125 Equity Development Fund	0	0	0	0.00%
126 Parker & Parsley Development Partners, L.P.	3,286,000	0	0	0.00%
127 SSI Equity Associates	0	0	0	0.00%
128 VMS Mortgage Investors, L.P. II	9,395,000	0	0	0.00%
129 Retirement Living Tax*Exempt Mortgage Fund, L	1,264,000	0	0	0.00%
130 VMS Mortgage Investors, L.P. III	0	6,143	1,597,180	0.00%
131 Insured Income Properties	0	0	0	0.00%
132 Pan Petroleum Master Limited Partnership	1,220,000	0	0	0.00%
133 Fogelman Secured Equity, L.P.	0	0	0	0.00%
134 Western Gas Processors, Ltd. -	1,725,000	0	0	0.00%
135 Tenera, L.P.	8,699,000	0	0	0.00%
136 SCI Equity Associates	0	0	0	0.00%
137 Rayonier Timber lands, L.P.	5,060,000	0	0	0.00%
138 Damson Income Energy, L.P.	0	0	0	0.00%
139 Damson Institutional Energy, L.P.	0	0	0	0.00%

(A) Period: 1/1/87-12/31/87, see parital trading periods footnotes.
(B) The Annulized unit volume is based upon a 260 day year.

PARTIAL TRADING PERIODS:

(1) Partial year; information from 08/28/87*12/31/87
(2) Partial year; information from 04/27/87-12/31/87
(3) Partial year; information from 10/10/87-12/31/87
(4) Partial year; information from 08/23/87-12/31/87
(5) Partial year; information from 09/24/87-12/31/87
(6) Partial year; information from 12/20/87-12/31/87
(7) Partial year; information from 01/16/87-12/31/87
(8) Partial year; information from 05/23/87-12/31/87
(9) Partial year; information from 06/29/87-12/31/87
(10) Partial year; information from 03/09/87-12/31/87
(11) Partial year; information from 01/23/87-12/31/87
(12) Partial year; information from 01/23/87-12/31/87
(13) Partial year; information from 06/15/87-12/31/87
(14) Partial year; information from 07/18/87-12/31/87
(15) Partial year; information from 01/19/87-12/31/87
(16) Partial year; information from 10/02/87-12/31/87
(17) Partial year; information from 04/13/87-12/31/87
(18) Partial year; information from 05/07/87-12/31/87
(19) Partial year; information from 11/08/87-12/31/87
(20) Partial year; information from 04/19/87-12/31/87
(21) Partial year; information from 08/01/87-12/31/87
(22) Partial year; information from 07/05/87-12/31/87
(23) Partial year; information from 04/19/87-12/31/87
(24) Partial year; information from 08/15/87-12/31/87
(25) Partial year; information from 10/16/87-12/31/87
(26) Partial year; information from 07/24/87-12/31/87
(27) Partial year; information from 01/17/87-12/31/87
(28) Partial year; Information from 05/08/87-12/31/87
(29) Partial year; information from 06/21/87-12/31/87
(30) Partial year; information from 08/23/87-12/31/87
(31) Partial year; information from 05/09/87-12/31/87
(32) Partial year; information from 01/11/87-12/31/87
(33) Partial year; information from 02/20/87-12/31/87
(34) Partial year; information from 03/05/87-12/31/87
(35) Partial year; information from 12/19/87-12/31/87
(36) Partial year; information from 11/07/87-12/31/87
(37) Partial year; information from 04/18/87-12/31/87
(38) Partial year; information from 01/19/87*12/31/87
(39) Partial year; information from 03/12/87*12/31/87