

Regulations under both the New York State corporate franchise tax and the New York City general corporation tax, however, provide an exception to this general rule in the case of a “portfolio investment partnership,” which is defined, generally, as a partnership which meets the gross income requirements of Section 851(b)(2) of the Code. New York State (but not New York City) has adopted regulations that also include income and gains from commodity transactions described in Section 864(b)(2)(B)(iii) as qualifying gross income for this purpose. The Partnership’s qualification as such a portfolio investment partnership must be determined on an annual basis and, with respect to a taxable year, the Partnership may not qualify as a portfolio investment partnership. Therefore, a corporate limited partner may be treated as doing business in New York State and New York City as a result of its interest in the Partnership.

New York State imposes a quarterly withholding obligation on certain partnerships with respect to partners that are individual non-New York residents or corporations (other than “S” corporations). Accordingly, the Partnership may be required to withhold on the distributive shares of New York source partnership income allocable to such partners to the extent such income is not derived from trading in securities for the Partnership’s own account.

A trust or other unincorporated organization which by reason of its purposes or activities is exempt from Federal income tax is generally also exempt from New York State and New York City personal income tax. A nonstock corporation which is exempt from Federal income tax is generally presumed to be exempt from New York State corporate franchise tax and New York City general corporation tax. New York State imposes a tax with respect to such exempt entities on UBTI (including unrelated debt-financed income) at a rate which is currently equal to 9%. There is no New York City tax on the UBTI of an otherwise exempt entity.

Each prospective Partner should consult its tax adviser with regard to the New York State and New York City tax consequences of an investment in the Partnership.

### **OUTLINE OF PARTNERSHIP AGREEMENT**

The following outline summarizes the material provisions of the Partnership Agreement that may not be discussed elsewhere in this Memorandum. This outline is not definitive, and each prospective Limited Partner must carefully read the Partnership Agreement in its entirety.

**Limited Liability.** A Limited Partner (or former Limited Partner) will be liable for debts and obligations of the Partnership to the extent of its interest in the Partnership in the fiscal year (or a portion thereof) to which such debts and obligations are attributable. However, no Limited Partner (or former Limited Partner) will be obligated to make any additional contribution whatsoever to the Partnership, or have any liability for the repayment and discharge of the debts and obligations of the Partnership (apart from its interest in the Partnership), except that a Limited Partner (or former Limited Partner) may be required to make additional contributions or payments to meet the obligations of such Limited Partner (or former Limited Partner) under the terms of the Partnership Agreement (i) in respect of debts and obligations of the Partnership up to, but in no event in excess of, the aggregate amount of returns of capital and other amounts actually received by it from the Partnership during or after the fiscal year to which any debt or obligation is attributable; and (ii) as set forth in Sec. 5.05(f) of the Partnership Agreement in respect of taxes.