

(vii) Describe the fiduciary duties or other legal obligations of the representative to investors in each of the partnerships.

§ 229.910 (Item 910) Fairness of the transaction.

(a) State whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors and the reasons for such belief. Such discussion must address the fairness of the roll-up transaction to investors in each of the partnerships and as a whole. If the roll-up transaction may be completed with a combination of partnerships consisting of less than all partnerships, or with portions of partnerships, the belief stated must address each possible combination.

(b) Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this Item (§ 229.910) is based and, to the extent practicable, the weight assigned to each such factor. Such discussion should include an analysis of the extent, if any, to which such belief is based on the factors set forth in Instructions (2) and (3) to this Item (§ 229.910), paragraph (b)(1) of Item 909 of this subpart (§ 229.909(b)(1)) and Item 911 of this subpart (§ 229.911). This discussion also must:

(1) Compare the value of the consideration to be received in the roll-up transaction to the value of the consideration that would be received pursuant to each of the alternatives discussed in response to Item 908(b) of this subpart (§ 229.908(b)); and

(2) Describe any material differences among the partnerships (e.g., different types of assets or different investment objectives) relating to the fairness of the transaction.

(c) If any offer of the type described in Instruction (2)(viii) to this Item (§ 229.910) has been received, describe such offer and state the reason(s) for its rejection.

(d) Describe any factors known to the general partner that may affect materially the value of the consideration to be received by investors in the roll-up transaction, the values assigned to the partnerships for purposes of the comparisons to alternatives required by paragraph (b) of this Item (§ 229.910) and

the fairness of the transaction to investors.

(e) State whether the general partner's statements in response to paragraphs (a) and (b) of this Item (§ 229.910) are based, in whole or in part, on any report, opinion or appraisal described in response to Item 911 of this subpart (§ 229.911). If so, describe any material uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

Instructions to Item 910: (1) A statement that the general partner has no reasonable belief as to the fairness of the roll-up transaction to investors will not be considered sufficient disclosure in response to paragraph (a) of this Item (§ 229.910(a)).

(2) The factors which are important in determining the fairness of a roll-up transaction to investors and the weight, if any, which should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraph (b)(1) of Item 909 (§ 229.909(b)(1)) and whether the consideration offered to investors constitutes fair value in relation to:

- (i) Current market prices, if any;
- (ii) Historic market prices, if any;
- (iii) Net book value;
- (iv) Going concern value;
- (v) Liquidation value;

(vi) Purchases of limited partnership interests by the general partner or sponsor or their affiliates since the commencement of the partnership's second full fiscal year preceding the date of filing of the disclosure document for the roll-up transaction;

(vii) Any report, opinion, or appraisal described in Item 911 of this subpart (§ 229.911); and

(viii) Offers of which the general partner or sponsor is aware made during the preceding eighteen months for a merger, consolidation, or combination of any of the partnerships; an acquisition of any of the partnerships or a material amount of their assets; a tender offer for or other acquisition of securities of any class issued by any of the partnerships; or a change in control of any of the partnerships.

(3) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:

- (i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;

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(ii) The methods used to determine such consideration; and

(iii) The compensation to be paid to the sponsor in the future.

(4) Conclusory statements, such as “The roll-up transaction is fair to investors in relation to net book value, going concern value, liquidation value and future prospects of the partnership,” will not be considered sufficient disclosure in response to paragraph (b) of this Item (§ 229.910(b)).

(5) Consideration should be given to presenting the comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format. Financial and other information concerning the partnerships should be prepared based upon the most recent available information, such as, in the case of financial information, the periods covered by interim selected financial information included in the prospectus in accordance with Item 914 of this subpart (§ 229.914).

§ 229.911 (Item 911) Reports, opinions and appraisals.

(a)(1) *All material reports, opinions or appraisals.* State whether or not the general partner or sponsor has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party which is materially related to the roll-up transaction including, but not limited to, any such report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to investors in connection with the roll-up transaction or the fairness of such transaction to the general partner or investors.

(2) With respect to any report, opinion or appraisal described in paragraph (a)(1) of this Item (§ 229.911);

(i) Identify such outside party;

(ii) Briefly describe the qualifications of such outside party;

(iii) Describe the method of selection of such outside party;

(iv) Describe any material relationship between:

(A) The outside party or its affiliates; and

(B) The general partner, sponsor, the successor or any of their affiliates,

which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(v) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the general partner, sponsor or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid.

(vi) Furnish a summary concerning such report, opinion or appraisal which shall include, but not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the general partner, sponsor or its affiliates; and any limitation imposed by the general partner, sponsor or affiliate on the scope of the investigation. If any limitation was imposed by the general partner, sponsor or affiliate on the scope of the investigation, including, but not limited to, access to its personnel, premises, and relevant books and records, state the reasons therefor.

(vii) State whether any compensation paid to such outside party is contingent on the approval or completion of the roll-up transaction and, if so, the reasons for compensating such parties on a contingent basis.

(3) Furnish a statement to the effect that upon written request by an investor or his representative who has been so designated in writing, a copy of any such report, opinion or appraisal shall be transmitted promptly, without charge, by the general partner or sponsor. The statement also must include the name and address of the person to whom investors or their representatives should make their request.

(4) All reports, opinions or appraisals referred to in paragraph (a)(1) of this Item (§ 229.911) shall be filed as exhibits to the registration statement.

(5)(i) Describe any contacts in connection with the roll-up transaction between the sponsor or the general partner and any outside party with respect to the preparation by such party of an opinion concerning the fairness of the roll-up transaction, a valuation of a partnership or its assets, or any other report with respect to the roll-up transaction. No description is required, however, of contacts with respect to reports, opinions or appraisals filed as