

**CONFIDENTIAL**

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AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT

Lipco Partners, L.P.  
(a New York limited partnership)

Dated as of July 1, 1993

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Schedule I

AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT  
OF  
LIPCO PARTNERS, L.P.

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Lipco Partners, L.P. (the "Partnership") dated as of July 1, 1993, among Lipper & Company, L.P., a Delaware limited partnership, as the general partner ("Lipper & Co." or the "General Partner") and those Persons whose names and addresses are set forth on Schedule I hereto (the "Existing Limited Partners"; together with the Transferee Limited Partners and Additional Limited Partners referred to below, the "Limited Partners").

WHEREAS, the General Partner and the Existing Limited Partners are parties to an Agreement of Limited Partnership (the "Original Agreement"); and

WHEREAS, the parties desire to amend and restate the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I  
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"*Accounting Period*" means a Fiscal Quarter or any period of shorter duration from the day following the last day of the preceding Accounting Period until the first to occur of (a) the last day of a Fiscal Quarter, (b) the day immediately preceding the date on which an Additional Limited Partner is admitted to the Partnership pursuant to Section 9.2, (c) the day immediately preceding the effective date of an Additional Capital Contribution, and (d) the Termination Date.

"*Additional Capital Contribution*" means the amount of any additional capital contribution to the capital of the Partnership made by a Partner pursuant to Section 6.2.

"*Additional Limited Partner*" means any Person (other than an Existing Limited Partner) admitted as a limited partner of the Partnership pursuant to Section 9.2.

"*Admission Date*" means the effective date upon which a Limited Partner makes its Initial Capital Contribution to the Partnership.

"*Advisers Act*" means the Investment Advisers Act of 1940, as amended.

"*Affiliate*" means, with respect to any Partner, a Person that (a) directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Partner, (b) beneficially owns or holds of record 50% or more of the shares of any class of capital stock of such Partner, (c) is the trustee of a trust that is a Partner, if such trustee

has voting power with respect to the trust's affairs, (d) is the grantor of a revocable grantor trust that is a Partner, or (e) holds 50% or more of the beneficial interest in a trust that is a Partner. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of capital stock, by contract or otherwise.

"Allocation Date" means, with respect to each Limited Partner, the day preceding the first anniversary of the Admission Date of such Limited Partner, and thereafter each of the following dates: (i) each succeeding December 31; (ii) the effective date of such Limited Partner's complete withdrawal from the Partnership in accordance with Section 8.2; and (iii) the dissolution of the Partnership in accordance with Section 10.1.

"Allocation Period" means, with respect to a Limited Partner, (a) initially, the period commencing with such Limited Partner's Admission Date and ending on the first Allocation Date with respect to such Limited Partner and (b) thereafter, each succeeding period commencing with the day immediately following the previous Allocation Date and ending on the next succeeding Allocation Date.

"Business Day" means any day on which banking institutions in the state of New York are required to be open for business.

"Capital Account" means the Capital Account maintained for each Partner pursuant to Section 7.1 hereof.

"Capital Contribution" means the Initial Capital Contribution and any Additional Capital Contribution made by a Partner.

"Class A Capital Account" means the Capital Account of each Class A Limited Partner and the Capital Account of the General Partner.

"Class A Limited Partner" means each Person identified on Schedule I hereto as a Class A Limited Partner and each Additional Limited Partner or Transferee Limited Partner admitted to the Partnership as a Class A Limited Partner in accordance with Sections 9.1 or 9.2.

"Class A Net Losses," for any period, means any Net Losses attributable to the Class A Portfolio for such period.

"Class A Percentage" of any Class A Capital Account means the percentage determined by dividing the Opening Balance of such Capital Account at the time of determination by the aggregate Opening Balances of all Class A Capital Accounts.

"Class A Portfolio" shall mean an account or accounts maintained with one or more brokerage clearing houses and designated as the "Class A Portfolio" by the Partnership in accordance with Section 2.5.

"Class A Net Profits," for any period, means the Net Profits attributable to the Class A Portfolio for such period.

"*Class B Capital Account*" means the Capital Account of a Class B Limited Partner.

"*Class B Limited Partner*" means each Person identified on Schedule I hereto as a Class B Limited Partner and each Additional Limited Partner or Transferee Limited Partner admitted to the Partnership as a Class B Limited Partner in accordance with Section 9.1 or 9.2 hereof.

"*Class B Net Losses*," for any period, means any Net Losses attributable to the Class B Portfolio for such period.

"*Class B Percentage*" of any Class B Capital Account means the percentage determined by dividing the Opening Balance of such Capital Account at the time of determination by the aggregate Opening Balances of all Class B Capital Accounts.

"*Class B Portfolio*" shall mean an account or accounts maintained with one or more brokerage clearing houses and designated as the "Class B Portfolio" by the Partnership in accordance with Section 2.5.

"*Class B Net Profits*," for any period, means the Net Profits attributable to the Class B Portfolio for such period.

"*Code*" means the Internal Revenue Code of 1986, as the same may from time to time be amended, or any successor federal income tax statute, including all effective date and transition rules (whether or not codified).

"*Existing Limited Partners*" has the meaning set forth in the recitals to this Agreement.

"*Federal Funds Rate*" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York.

"*Fiscal Quarter*" means each successive three-month period ending on the last day of each March, June, September, and December in each Fiscal Year.

"*Fiscal Year*" means the fiscal year of the Partnership, which shall be the calendar year.

"*General Partner*" means Lipper & Company, L.P., a Delaware limited partnership, and any Person admitted as a substitute General Partner pursuant to Section 9.1 or Section 10.1(iii).

"*Incentive Compensation Fee*" means the Incentive Compensation Fee payable to the General Partner pursuant to Section 7.2.

"*Incentive Compensation Account*" shall mean an account established for the General Partner on the books of the Partnership to which all payments of the Incentive Compensation Fee shall be paid.

"*Initial Capital Contribution*" means the amount of capital contributed by a Limited Partner upon its admission to the Partnership in accordance with Section 6.1.

"*Interest*" of a Partner means its entire ownership interest in the Partnership, and shall be measured by the ratio between such Partner's Opening Balance at the time of determination and the aggregate Opening Balances of all Partners.

"*Limited Partners*" means the Class A Limited Partners and the Class B Limited Partners.

"*Liquidating Trustee*" means any Liquidating Trustee appointed pursuant to Section 10.2.

"*Managing Persons*" has the meaning set forth in Section 3.2.

The "*Market Value*" of a Position shall be determined as follows:

(a) Securities that are listed on a national securities exchange or quoted on the National Association of Securities Dealers Inc.'s National Market System shall be valued at their last sales price on the principal exchange on which such Securities are listed or quoted.

(b) Securities traded over-the-counter (but which are not traded or quoted as provided in clause (a) above) shall be valued between the last "bid" and "asked" price for such Security as determined by the General Partner in its reasonable discretion.

(c) All other Securities and other property shall be valued by the General Partner in its reasonable discretion.

(d) If the General Partner determines that the valuation of any Securities or other property in accordance with the terms of this Agreement does not fairly represent the value of such Securities or property, the General Partner shall value such Securities or other property in a manner which it reasonably chooses and shall set forth the basis of that valuation in writing in the records of the Partnership.

(e) The foregoing valuation methods may be changed by the General Partner if it determines in good faith that such change is advisable to reflect more accurately market conditions or activities. The basis of any such determination shall be set forth in the records of the Partnership.

"*Net Loss*" for any Accounting Period means the net operating loss of the Partnership for such Accounting Period (net of all Partnership expenses in accordance with Section 7.3), determined in accordance with generally accepted accounting principles, *provided* that Net Losses (i) shall include both realized and unrealized appreciation and depreciation with respect to all Positions (determined in accordance with the Market Value of such Positions) and (ii) shall be determined prior to payment of the Incentive Compensation Fee to the General Partner pursuant to Section 7.2.

"*Net Profits*" for any Accounting Period means the net operating income of the Partnership for such Accounting Period (net of all Partnership expenses in accordance with



Section 7.3), determined in accordance with generally accepted accounting principles, *provided* that Net Profits (i) shall include both realized and unrealized appreciation and depreciation with respect to all Positions (determined in accordance with the Market Value of such Positions) and (ii) shall be determined prior to payment of the Incentive Compensation Fee to the General Partner pursuant to Section 7.2.

"*Opening Balance*" means the balance of a Partner's Capital Account at the beginning of an Accounting Period or Allocation Period (as the context may require).

"*Partners*" means the General Partner and the Limited Partners.

"*Partnership*" has the meaning specified in the first paragraph hereof.

"*Partnership Law*" means the New York Revised Limited Partnership Act as in effect from time to time.

"*Person*" means and includes an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

"*Position*" means (a) the purchase of a Security or (b) the short sale of a Security.

"*Security*" means any "security" within the meaning of Section 2(1) of the Securities Act, including:

(a) any bond, debenture, note, preferred or preference stock, common stock, certificate of beneficial interest, warrant, right, option (including put and call options), instrument or evidence of indebtedness, trust receipt, voting trust certificate, general or limited partnership interest or government obligation; and

(b) any commodity, spot commodity, physical commodity or forward or future contract, including index futures, or any option with respect thereto.

"*Securities Act*" means the Securities Act of 1933, as amended, and any rules and regulations adopted pursuant thereto.

"*Tax-Exempt Partner*" means an organization described in section 501(a) of the Internal Revenue Code of 1986, as amended.

"*Termination Date*" means the effective date on which the Partnership is dissolved pursuant to Section 10.1 hereof.

"*Transferee Limited Partner*" means any Limited Partner admitted to the Partnership pursuant to Section 9.1.

ARTICLE 2  
THE PARTNERSHIP AND ITS BUSINESS

2.1 *Firm Name.* The name of the Partnership shall be "Lipco Partners, L.P.," but the General Partner may change the name of the Partnership at any time and from time to time upon notice to all of the Limited Partners. Following the dissolution of the Partnership pursuant to Article 10, all right and interest in and to the use of the name "Lipco Partners, L.P." and any variation thereof shall become the sole property of the General Partner, and the Limited Partners shall have no right and no interest in and to the use of any such name.

2.2 *Purposes.* The business of the Partnership shall be to engage in securities investment and arbitrage activities and, in connection therewith, to register as a broker-dealer with the Securities and Exchange Commission and one or more states, to become a member of one or more securities associations or self-regulatory organizations, to become a market-maker or specialist with respect to one or more classes of Securities, and to engage in any other activities, transactions or services as may be reasonably related to the foregoing.

2.3 *Compliance with Applicable Laws and Rules.* The Partnership shall not engage in any business or activity that is prohibited by or contrary to any applicable law or to the rules or regulations promulgated thereunder, or to the constitution or rules of any association or governmental body with jurisdiction over the Partnership. If any of the terms, conditions or other provisions of this Agreement shall be in conflict with any thereof, such terms, conditions or other provisions shall be deemed modified so as to conform therewith. Each Limited Partner will upon request furnish the General Partner with such information as may be necessary to enable the Partnership and the General Partner to comply with the rules of any governmental authority, securities association or exchange or self-regulatory organization to which the Partnership or the General Partner is subject.

2.4 *Principal Office.* The principal office of the Partnership shall be located at 101 Park Avenue, New York, New York, or any other or additional places of business that may be selected from time to time by the General Partner.

2.5 *Investment Portfolios.*

(a) *Maintenance of Portfolios.* The Partnership shall maintain two investment portfolios, the Class A Portfolio and the Class B Portfolio, which shall be maintained on the books and records of the Partnership as separate investment portfolios. Amounts in the Class A Portfolio and the Class B Portfolio shall be held at one or more brokerage clearing houses selected by the General Partner and maintained in the name of the Partnership. All amounts credited to the Class A Capital Accounts and the Class B Capital Accounts (including Capital Contributions and Net Profits that are reinvested pursuant to Section 8.1(a)) shall be invested separately in the Class A Portfolio and the Class B Portfolio, as the case may be. Withdrawals from a Class A Capital Account or a Class B Capital Account shall be charged against the Class A Portfolio or the Class B Portfolio, as the case may be.

(b) *Allocation of Net Profits and Net Losses; Expenses.* Net Profits and Net Losses attributable to the Class A Portfolio and the Class B Portfolio shall be separately calculated and

allocated to the Class A Portfolio and the Class B Portfolio, as the case may be, and credited to the Class A Capital Accounts and the Class B Capital Accounts in accordance with Article 7 hereof. For this purpose, Partnership expenses directly attributable to the Class A Portfolio or the Class B Portfolio shall be charged directly to such portfolio. All other Partnership expenses incurred during an Accounting Period shall be allocated to the Class A Portfolio and the Class B Portfolio as of the last day of such Accounting Period in accordance with the respective aggregate Opening Balances of the Class A Capital Accounts and the Class B Capital Accounts.

**ARTICLE 3  
MANAGEMENT OF THE PARTNERSHIP;  
POWERS OF GENERAL PARTNER**

3.1 *Management and Control.* The business and affairs of the Partnership shall be managed exclusively by the General Partner and, except as otherwise expressly provided herein, the General Partner shall have the exclusive right and power to manage, control and operate the business and affairs of the Partnership, and to do all things necessary or appropriate to carry on its business and purposes. The General Partner is hereby authorized to take any action of any kind and to do everything it deems necessary in accordance with the provisions of this Agreement to the fullest extent permitted by the Partnership Law. By way of illustration, but not of limitation, the authority, right and power of the General Partner shall include the authority, right and power:

(a) to purchase, sell, transfer, hold, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Securities, on margin or otherwise;

(b) to make temporary investments of the funds of the Partnership in all types of securities and related investment vehicles, including United States government and agency securities and other obligations, interest-bearing deposits in United States banks, certificates of deposit, and securities and other instruments issued by or on behalf of states, municipalities and other instrumentalities;

(c) to open, maintain, and close brokerage and bank accounts, and to draw checks or other orders for the payment of moneys;

(d) to take such actions as are necessary to maintain the Partnership's registration as a broker-dealer and as a member of one or more securities associations or self-regulatory organizations;

(e) to employ or retain as consultants such Persons as the General Partner shall deem advisable for the operation and management of the Partnership, including, without limitation, brokers, accountants, attorneys or other specialists, including such Persons or firms who may be Affiliates, partners, or employees of the General Partner;

(f) to assign the Partnership's property in trust for creditors or on the assignee's promise to pay the debts of the Partnership;

(g) to lend funds, Securities and other property of the Partnership either with or without security;

(h) to submit a Partnership claim or liability to arbitration or reference;

(i) to perform all other obligations provided elsewhere in this Agreement to be performed by the General Partner; and

(j) to enter into, make and perform all contracts, agreements and other undertakings and execute all other instruments of any kind or character that the General Partner may determine to be necessary, advisable or incidental to the carrying out of the foregoing objects and purposes, the execution thereof by the General Partner to be conclusive evidence of such determination;

*provided, however*, that not more than 25% of the Opening Balances of all Partners shall as of the first day of any Accounting Period be committed to any single Position.

3.2 *Limited Partners Shall Not Manage or Control.* The Limited Partners shall take no part in the management of the Partnership business, shall transact no business for the Partnership and shall have no power to act for or to bind the Partnership other than in a capacity as an agent, officer or employee of the Partnership or the General Partner. No Limited Partner shall have the power to vote to remove the General Partner. A Limited Partner may act as an agent, officer or employee of the Partnership or the General Partner, in which event such Limited Partner's duties and liabilities with respect to the business and interests of the Partnership shall be governed by its employment agreement or other arrangement with the Partnership or the General Partner.

3.3 *Managing Persons.* The General Partner may designate one or more Managing Persons of the Partnership, who shall be responsible for the day-to-day operations of the Partnership. Except as otherwise expressly provided herein, any actions that may be taken or exercised by the General Partner hereunder may be taken or exercised on behalf of the General Partner by any Managing Person or by such other Persons as may be authorized by the General Partner to act on behalf of the Partnership in any matter. The General Partner may remove and re-appoint any Managing Person at any time in its discretion.

#### ARTICLE 4 RIGHTS AND DUTIES OF PARTNERS

4.1 *Duties and Activities of the General Partner.* The General Partner agrees to devote such time and attention to the business of the Partnership as may be required for the efficient conduct thereof.

4.2 *Nonexclusivity.* Each Limited Partner hereby acknowledges that, in addition to acting as the General Partner, Lipper & Co. (i) offers investment banking services and advises institutional and individual clients with respect to portfolio management and investments in Securities, (ii) is the general partner of other limited partnerships that invest in Securities, and (iii) may in the future invest in Securities for its own account. Any Partner, whether the General Partner or a Limited Partner, and any Affiliate thereof, may engage in or possess an interest in

other business ventures of every nature and description, independently or with others, including but not limited to, investing in and participating in companies in which the Partnership shall have investments, offering investment banking services and advising individual and institutional clients with respect to portfolio management and investments in Securities, investing in Securities for its own account, and neither the Partnership nor any Partners thereof shall have any right in such independent ventures or to the information, income, profits or losses derived therefrom. The fact that a Partner, whether the General Partner or a Limited Partner, or an Affiliate thereof is employed by, or is directly or indirectly interested in or connected with any Person with which the Partnership transacts business shall not prohibit the General Partner from dealing with such Person, and neither the Partnership nor any Partners thereof, as such, shall have any rights in such Person, or to any information, income, profits or losses derived therefrom. Neither the General Partner nor any Affiliate, partner, employee or agent of the General Partner shall be obligated to present any particular investment opportunity to the Partnership.

#### 4.3 *Liability and Indemnification of General Partner.*

(a) *Liability.* To the extent permitted by law (including the Advisers Act), the General Partner, and the partners, employees, agents and Affiliates of the General Partner, shall not be liable, responsible or accountable in damages or otherwise to the Partnership or to any Partner for (a) any acts performed within the scope of the authority conferred on the General Partner by this Agreement, except for the negligence, malfeasance or violation of applicable law by the General Partner in carrying out its obligations under this Agreement, (b) the General Partner's failure or refusal to perform any acts, except those expressly required by or pursuant to the terms of this Agreement, (c) the General Partner's performance of, or omission to perform, any acts on advice of legal counsel, accountants, brokers or consultants to the Partnership selected with due care, or (d) the negligence, dishonesty or bad faith of any custodian, broker, dealer, underwriter, consultant or agent of the Partnership selected, engaged or retained by the General Partner with due care.

(b) *Indemnification.* The General Partner and its partners, employees, agents and Affiliates shall be protected and indemnified by the Partnership to the fullest extent legally permissible under and by virtue of the Partnership Law against all liabilities and losses suffered by any of them by virtue of the status of each such Person as a general partner of the Partnership or as a partner, employee, agent or Affiliate of the General Partner (including amounts paid in respect of judgments or fines or in settlement of litigation and expenses, including attorneys' fees, reasonably incurred by any of them in connection with any pending or threatened litigation or proceeding) with respect to any action or omission taken or suffered in good faith, other than liabilities and losses resulting from the negligence, malfeasance or violation of applicable law by the indemnified Person. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the General Partner (or such partner, employee, agent or Affiliate) did not act in good faith. The indemnification provided for herein shall be recoverable only out of the assets of the Partnership. Nothing in this Section 4.3 shall in any way constitute a waiver or limitation of any rights that any Partner may have under the federal securities laws.

4.4 *Liability of Limited Partners.* Except as specifically provided in Section 6.1 and Section 7.2(c) hereof, or as provided by applicable law, the Limited Partners shall not be obligated to make contributions to the capital of the Partnership.

#### ARTICLE 5 BOOKS AND RECORDS

5.1 *Books of Account.* The General Partner shall keep or cause to be kept true and complete books of account, including true and complete entries with respect to each Position. The accounts of the Partnership shall be kept in accordance with generally accepted accounting principles applicable to the Partnership, except as otherwise provided herein.

5.2 *Availability of Books of Account.* All of the books of account referred to in Section 5.1, together with an executed copy of this Agreement and a true copy of Schedule I hereto, shall at all times be maintained at the principal office of the Partnership and, upon reasonable notice to the General Partner, shall be open to inspection and examination by each of the Partners or their representatives during reasonable business hours in accordance with and subject to Section 106 of the Partnership Law.

5.3 *Periodic Reports and Statements.*

(a) *Annual Information.* As soon as practicable after the end of each Fiscal Year, the General Partner shall send to each Limited Partner a report, prepared in accordance with generally accepted accounting principles consistently applied, except as set forth in this Agreement, including: (i) a balance sheet of the Partnership, (ii) a statement indicating the Partnership's Net Profits or Net Losses for such Fiscal Year, (iii) a statement indicating (A) the Capital Account balance of such Limited Partner as of the beginning of such Fiscal Year, (B) any Additional Capital Contributions credited to such Limited Partner's Capital Account during such Fiscal Year, (C) the amount of Net Profits or Net Losses allocated to such Limited Partner's Capital Account for such Fiscal Year, (D) the amount of the Incentive Compensation Fee charged to the Capital Account of such Limited Partner for such Fiscal Year, (E) the withdrawals charged to such Limited Partner's Capital Account for such Fiscal Year and (F) such Limited Partner's Capital Account balance as of the end of such Fiscal Year. Items (i) and (ii) of such report shall be audited by the Partnership's independent certified public accountants.

(b) *Quarterly Information.* As soon as practicable after the end of each Fiscal Quarter, the General Partner shall send to each Partner such financial information in summary form and all other pertinent financial information with respect to the Partnership as the General Partner, in its sole discretion, deems appropriate.

#### ARTICLE 6 CAPITAL CONTRIBUTIONS

6.1 *Initial Capital Contributions.*

(a) *Initial Capital Contributions by Partners.* The General Partner and each Existing Limited Partner have made one or more Capital Contributions, including an Initial Capital

Contribution, in cash, to the Partnership in the amount set forth on Schedule I hereto. Each Person admitted as an Additional Limited Partner pursuant to Section 9.2 shall contribute an amount agreed to by the General Partner at the time of such Person's admission to the Partnership, in accordance with Section 9.2.

(b) *Payment.* A Limited Partner's Initial Capital Contribution shall be paid in cash (or other property acceptable to the General Partner) by wire transfer of immediately available funds, or such other means as are acceptable to the General Partner. If any Limited Partner shall default in its obligation to pay on a timely basis any outstanding amount of its Initial Capital Contribution, the General Partner, at any time not later than 10 days after giving written notice of such default, may take any action that it deems necessary to enforce such obligation, and the defaulting Limited Partner shall be responsible for and shall indemnify and hold harmless the Partnership from and against any and all damages, costs, liabilities and expenses, including attorneys' fees, arising from such default.

6.2 *Additional Capital Contributions.* With the consent of the General Partner in its sole discretion, a Limited Partner may make one or more Additional Capital Contributions to the capital of the Partnership, effective as of the first day of any month. The amount of any Additional Capital Contribution shall be an amount approved by the General Partner (and in any event greater than \$20,000). Any such Additional Capital Contribution shall be made in cash (or other property acceptable to the General Partner) by wire transfer of immediately available funds, or such other means as are acceptable to the General Partner. The General Partner may make Additional Capital Contributions to the Partnership, effective as of the first day of any month, in an amount greater than \$20,000.

6.3 *General Partner's Capital Contributions.* The General Partner shall at all times maintain a minimum Capital Account balance equal to the lesser of \$500,000 and 1% of the total positive Capital Account balances of the Partnership. The General Partner shall not be personally liable to any Limited Partner for the payment of any Capital Contribution of any Limited Partner, except for a Capital Contribution made by the General Partner as a Limited Partner.

ARTICLE 7  
CAPITAL ACCOUNTS; ALLOCATION  
AND DETERMINATION OF NET PROFITS  
AND NET LOSSES; INCENTIVE COMPENSATION FEE

7.1 *Capital Accounts.* The Partnership shall maintain on its books for each Partner a Capital Account, as follows:

(a) *Limited Partners.* Each Class A Limited Partner and Class B Limited Partner shall have one Capital Account (a Class A Capital Account or a Class B Capital Account, as the case may be). Each Capital Contribution made by a Limited Partner shall be credited to such Limited Partner's Capital Account. A Limited Partner's Capital Account shall be subject to the other credits and charges provided for in this Agreement.

(b) *General Partner.* The General Partner shall have one Capital Account, which shall be treated for all purposes hereunder as a Class A Capital Account. All Capital

Contributions by the General Partner (other than any Capital Contribution by the General Partner in its capacity as a Limited Partner) shall be credited to the Capital Account of the General Partner. The General Partner's Capital Account shall be subject to the other credits and charges provided for in this Agreement.

7.2 *Allocation of Net Profits and Net Losses; Incentive Compensation Fee.*

(a) *Allocation to All Partners.* Subject to paragraphs (b), (c) and (d) below, as of the last day of each Accounting Period:

(i) all Class A Net Profits or Class A Net Losses for such Accounting Period shall be allocated to the Capital Account of the General Partner and the Capital Account of each Class A Limited Partner in proportion to their respective Class A Percentages;

(ii) all Class B Net Profits or Class B Net Losses for such Accounting Period shall be allocated to the Capital Account of each Class B Limited Partner in proportion to their respective Class B Percentages; and

(iii) notwithstanding anything in this Agreement to the contrary, the General Partner or general partners (taken together if there is more than one), taking into account any Limited Partner Interests they may have, shall be allocated pursuant to this Section 7.2(a) at least one percent of each material item of Partnership income, gain, loss, deduction or credit for each Accounting Period. In the event that during any Accounting Period the aggregate Opening Balances of all Partners exceeds \$50 million, the minimum allocation for such Accounting Period shall instead be at least one percent divided by the ratio of total Capital Contributions to \$50 million, but in no event less than 0.2 percent. To the extent such minimum allocation exceeds the percentage of each material item of Partnership income, gain, loss, deduction or credit which would have been allocated to the General Partner (or general partners) but for the minimum allocation mandated hereby, such excess shall be credited to or charged to the Capital Accounts of the Limited Partners in proportion to each item of Partnership income, gain, loss, deduction or credit allocated to such Capital Accounts for such Accounting Period.

(b) *Incentive Compensation Fee.*

(i) *Payment.* Subject to clauses (ii) and (iii) below, as of each Allocation Date with respect to a Limited Partner, there shall be charged against the Capital Account of such Limited Partner, and credited to the Incentive Compensation Account of the General Partner, as a Partnership expense and not as a distribution of profits, an amount equal to 20% of the aggregate Net Profits (less any Net Losses), if any, allocated to such Limited Partner's Capital Account during the Allocation Period ending on such Allocation Date.

(ii) *Tax-Exempt Partners.* Notwithstanding clause (i) above, in the event that the aggregate Net Profits (less any Net Losses) allocated to the Capital Account of a Tax-Exempt Partner during an Allocation Period is 20% or less of the Opening Balance of such Capital Account at the beginning of such Allocation Period, then the amount of the Incentive Compensation Fee payable with respect to such Capital Account shall be 15% (rather than 20%) of the



Net Profits (less any Net Losses), if any, allocated to such Capital Account during the Allocation Period ending on such Allocation Date.

(iii) *Certain Withdrawals.* Subject to paragraph (c) below, if the Incentive Compensation Fee payable to the General Partner pursuant to clause (i) or (ii) above with respect to a Limited Partner would be payable over an Allocation Period of less than one year, then as of the Allocation Date ending on the last day of such Allocation Period:

(A) there shall be credited to such Limited Partner's Capital Account, and charged against the Incentive Compensation Account of the General Partner, the amount charged against the Capital Account of such Limited Partner pursuant to clause (i) or (ii) above for the preceding Allocation Period (i.e., the credits and charges with respect to such Capital Account for the prior Allocation Period shall be reversed);

(B) subject to clause (C) below, there shall be charged against such Limited Partner's Capital Account, and credited to the Incentive Compensation Account of the General Partner, an amount equal to 20% of the aggregate Net Profits (less any Net Losses), if any, allocated to such Capital Account from the first day of the preceding Allocation Period through the last day of such Allocation Period; and

(C) Notwithstanding the foregoing, if the Net Profits (less any Net Losses) to be allocated to the Capital Account of a Tax-Exempt Partner pursuant to clause (B) above is 20% or less of the Opening Balance of such Capital Account as of the beginning of the preceding Allocation Period, then the Incentive Compensation Fee payable to the General Partner pursuant to clause (B) above shall be 15% (rather than 20%) of the Net Profits (less any Net Losses), if any, allocated to such Capital Account during the period referred to in clause (B) above.

(c) *Readjustment; Additional Capital Contribution.*

(i) *Adjustment to Limited Partner's Account.* In the event that the amount to be allocated to the General Partner's Incentive Compensation Account pursuant to Section 7.2(b) with respect to a Limited Partner exceeds the amount remaining in such Limited Partner's Capital Account, then such Limited Partner shall, following a request by the General Partner, make an Additional Capital Contribution to the Partnership in the amount of the remaining deficiency, together with interest thereon at the Federal Funds Rate from the date of such allocation to and excluding the date of payment (the "Deficiency Amount"). The Deficiency Amount shall then be charged to such Limited Partner's Capital Account and credited to the General Partner's Incentive Compensation Account.

(ii) *Adjustment to General Partner's Account.* In the event that the amount to be charged against the General Partner's Incentive Compensation Account pursuant to Section 7.2(b)(ii)(A) exceeds the amount in the General Partner's Incentive Compensation Account, then the amount of such deficiency shall be charged against the General Partner's Capital Account, and if the balance of such Capital Account is insufficient, then the General Partner will make a contribution to the Incentive Compensation Account in the amount of such deficiency.

(d) *No Negative Balance.* Notwithstanding anything to the contrary in this Section 7.2, no Net Losses shall be allocated to the Capital Account of a Limited Partner if the effect thereof is to cause a negative balance in the Capital Account of such Limited Partner after (i) giving effect to all amounts distributed for the current Accounting Period, (ii) crediting thereto the appropriate portion of any Net Profits for such Accounting Period and (iii) adding back any Additional Capital Contribution required pursuant to Section 7.2(c) with respect to such Limited Partner. Any such Net Losses shall instead be allocated to the Capital Account of the General Partner, and, notwithstanding the other provisions of this Section 7.2, an equivalent amount of Net Profits subsequently allocable to such Limited Partner's Capital Account pursuant to Section 7.2(a) after application of Section 7.2(b) hereof shall instead be allocated to the Capital Account of the General Partner to counteract the effect of such reallocation as promptly as possible.

(e) *Transfer of Incentive Compensation Account.* All amounts in the General Partner's Incentive Compensation Account as of the last day of any Fiscal Quarter shall, unless withdrawn pursuant to Section 8.2, automatically be deemed contributed by the General Partner to the Partnership and credited to the General Partner's Capital Account; *provided, however,* that if the balance in the General Partner's Incentive Compensation Account is less than \$20,000, such amount shall instead be retained in the Incentive Compensation Account.

7.3 *Reimbursement for Partnership Expenses.* The Partnership shall reimburse the General Partner for the portion of its reasonable and customary operating overhead expenses attributable to the management of the Partnership as determined in good faith by the General Partner. The Partnership shall be responsible for the payment of, and shall reimburse the General Partner for, all other expenses incurred by the General Partner on behalf of the Partnership, including, without limitation, fees and expenses of legal counsel and independent certified public accountants, interest charges, dividends on shares sold, brokerage fees, commissions and taxes (other than taxes based on the net income of the General Partner).

7.4 *No Interest on Capital Accounts.* Except as expressly set forth in this Agreement, the Partnership shall not pay to any Partner, and no Partner shall be entitled to receive, interest on the amount of its Capital Account.

## ARTICLE 8 DISTRIBUTIONS AND WITHDRAWALS

### 8.1 *Reinvestment of Net Profits; No Return of Capital.*

(a) *Reinvestment of Net Profits.* Amounts allocated to the Capital Accounts of the Partners pursuant to Section 7.2 shall not be distributed, and unless withdrawn pursuant to Section 8.2 shall be automatically reinvested.

(b) *No Return of Capital.* No Partner shall have the right to demand the return of all or a portion of the amount in its Capital Account, except as otherwise specifically provided in Section 8.2 or Article 10 hereof. No Partner shall have the right to receive property other than cash in return for the amount of its Capital Account. No Limited Partner shall have priority over

any other Limited Partner either as to the return of the amount of its Capital Contributions or as to the allocation of Net Profits or Net Losses.

## 8.2 *Withdrawals.*

(a) *Voluntary Withdrawal.* A Limited Partner may withdraw all or a portion of the amount in its Capital Account, effective as of the last day of a Fiscal Quarter, upon at least 30 days' prior written notice to the General Partner. Any partial withdrawal from a Limited Partner's Capital Account shall be deemed a withdrawal (i) *first* of Net Profits allocated to such Limited Partner's Capital Account for the Accounting Period ending on the last day of such Fiscal Quarter, (ii) *second* of reinvested Net Profits, if any and (iii) *third* of such Limited Partner's Capital Contributions, according to the order in which they were made (*i.e.*, such Limited Partner's Initial Capital Contribution shall be deemed to be withdrawn prior to all other Capital Contributions). A Limited Partner may not withdraw less than all of the amount reflected in its Capital Account if, following such withdrawal, the amount remaining in such Limited Partner's Capital Account would be less than \$100,000. The General Partner may withdraw amounts from its Capital Account or Incentive Compensation Account in its discretion as of the last day of any Fiscal Quarter, subject to Section 6.3 hereof.

(b) *Required Withdrawal.* If the General Partner in its discretion deems it to be in the best interests of the Partnership to do so, it may require any Limited Partner to withdraw from the Partnership as of the last day of any Fiscal Quarter, upon 30 days' prior written notice to such Limited Partner. Effective upon such withdrawal, the Interest of such Limited Partner in the Partnership shall terminate. The General Partner need not assign any reason for requiring the withdrawal of a Partner. Any Limited Partner that is required to withdraw from the Partnership shall execute any and all documents and take any and all actions necessary to effect its withdrawal.

(c) *Distribution Upon Withdrawal.* Upon the withdrawal of a Partner pursuant to this Section 8.2, the General Partner shall, after making the charges and credits to such Partner's Capital Account for the Accounting Period ending on the last day of the Fiscal Quarter for which such withdrawal is effective, cause the Partnership to distribute to such Partner, within 20 days after the effective date of the withdrawal, at least 90% of the amount of the withdrawal, together with interest on the amount being distributed, calculated at the Federal Funds Rate from the last day of such Fiscal Quarter to and excluding the date of payment. The balance of such amount, together with interest on the amount being distributed, calculated at the Federal Funds Rate from the last day of such Fiscal Quarter to and excluding the date of payment, shall be distributed to such Partner within 50 days of the effective date of the withdrawal. Upon withdrawal of all of a Partner's Capital Account, such Partner shall cease to be a Partner in the Partnership, and shall cease to share in Net Profits and Net Losses, as of the last day of the Accounting Period which ends upon the effective date of such withdrawal.

(d) *Form of Distribution.* Any distribution made pursuant to this Agreement may be made in cash or, in the sole discretion of the General Partner, in the form of marketable Securities having a Market Value equal to the amount due, or partly in cash and partly in marketable Securities. Any such Securities to be distributed to a Partner shall be selected by the

General Partner in its sole discretion. Distributions of Securities to Partners may, in the sole discretion of the General Partner, be made on other than a pro rata basis.

(e) *Withholding Tax on Foreign Partners.* Any amounts paid by the Partnership pursuant to Section 1446 of the Code, or other applicable taxes required to be paid by the Partnership (whether withholding or otherwise), with respect to a foreign partner shall be treated as distributions made to such partner on the last day of the Partnership taxable year for which the amount was paid, or if earlier, the last day on which such Partner owned an interest in the Partnership during such year.

8.3 *Reserves; Restrictions on Distributions.* The General Partner may withhold or limit the amount of and distribution to a Partner pursuant to Section 8.2 for one or more of the following reasons:

(a) If upon any withdrawal pursuant to Section 8.2, the audited financial statements of the Partnership for the Fiscal Year in which such withdrawal is to be effective have not yet been completed, such distribution shall be made on the basis of unaudited financial statements, and the Partnership may withhold from such distribution a reasonable amount determined by the General Partner pending completion of such audited financial statements.

(b) The General Partner may withhold from any distribution to a Partner a reserve to pay for contingent liabilities arising from events occurring during the period of time in which a withdrawing Partner was a Partner of the Partnership.

(c) The General Partner may refuse to permit, or may postpone, withdrawals pursuant to this Article 8, upon the General Partner's determination that it is unable to effect such distribution in accordance with the terms of this Agreement or that it is required to retain any amount under applicable law or the rules of the Securities and Exchange Commission or any securities association or self-regulatory organization of which the Partnership is a member.

(d) Any distribution postponed or limited pursuant to this Section 8.3 shall be made as soon as practicable after the General Partner determines that such reserve is no longer required (or is required only in part), together with interest at the Federal Funds Rate from the effective date of withholding to and excluding the date of payment.

#### ARTICLE 9 TRANSFER OF PARTNERSHIP INTERESTS; ADMISSION OF NEW PARTNERS

##### 9.1 *Assignment of Partnership Interest.*

(a) No Limited Partner may sell, assign, pledge or otherwise encumber or dispose of all or any part of its Interest in the Partnership, except as of the first day of any Fiscal Quarter and with the prior written consent of the General Partner, which consent may be withheld in the sole discretion of the General Partner.

(b) The General Partner may not sell, assign, pledge or otherwise encumber or dispose of all or part of its Interest as general partner of the Partnership, without the prior written consent of all of the Limited Partners; *provided* that without the consent of the Limited Partners the General Partner may transfer its Interest and/or any other rights and obligations that it holds as general partner hereunder to an Affiliate of the General Partner.

(c) Any sale, assignment, pledge or other encumbrance or other disposition made other than in accordance with this Section 9.1 shall be null and void. Any transferee of all or any part of a Partner's Interest pursuant to this Section 9.1 shall be admitted to the Partnership as a Transferee Limited Partner or substitute General Partner, as the case may be, and shall, to the extent of such transfer, succeed to the Opening Balance, rights and obligations hereunder of the transferor. Any transferee of a Class A Limited Partner shall become a Class A Limited Partner. Any transferee of a Class B Limited Partner shall become a Class B Limited Partner. No assignment or transfer of all or any part of the Interest of a Limited Partner permitted to be made under this Agreement shall be binding upon the Partnership unless and until the assignee or transferee has complied with Section 9.3. In the event of a transfer by a Limited Partner of all or a portion of its Capital Account to an Affiliate of such Limited Partner pursuant to this Section 9.1, the Admission Date of the transferee Limited Partner shall be the original Admission Date of the transferor Limited Partner, as if such transfer had not occurred.

9.2 *Additional Limited Partners.* The General Partner, in its sole discretion, may admit any Person as an Additional Limited Partner of the Partnership (a) effective as of the first day of any Fiscal Quarter or (b) at such other times as the General Partner in its sole discretion may determine. No Person shall be admitted to the Partnership as a Limited Partner unless and until such Person (i) agrees to make an Initial Capital Contribution of at least \$10,000,000 (subject to the right of the General Partner to approve a lesser amount, not less than \$20,000) and (ii) such Person has complied with Section 9.3. The General Partner shall designate each Additional Limited Partner as a Class A Limited Partner or a Class B Limited Partner.

9.3 *Procedure for Admission.* As a condition to the admission to the Partnership of a Transferee Limited Partner pursuant to Section 9.1 or an Additional Limited Partner pursuant to Section 9.2, such Person shall execute and acknowledge such instruments, in form and substance satisfactory to the General Partner, as the General Partner may deem necessary or desirable to effectuate such admission and to confirm that the Person to be admitted to the Partnership has agreed to be bound by all of the covenants, terms and conditions of this Agreement, as the same may have been amended. Persons admitted to the Partnership as Partners in accordance with Section 9.1 or 9.2 shall become Partners of the Partnership upon the last to occur of (a) in the case of an Additional Limited Partner, their making their Initial Capital Contributions, (b) in the case of a Transferee Limited Partner, a copy of the assignment or instrument of transfer, duly executed by the assignor or transferor, having been delivered to the General Partner, and (c) in all cases, execution of the instruments referred to above and the approval of any Person whose approval may then be necessary; and they shall thereupon be included in the definition of Partners, and of General Partner or Limited Partners, as the case may be, and as parties to this Agreement, for all purposes of this Agreement.

9.4 *Subdivision of Partnership Interests.* Notwithstanding any provision of this Agreement, no Interest in the Partnership may be subdivided for resale into units smaller than a unit the initial offering price of which would have been at least \$20,000.

ARTICLE 10  
TERMINATION OF PARTNERSHIP;  
LIQUIDATION AND DISTRIBUTION OF ASSETS

10.1 *Dissolution.* The Partnership shall dissolve upon the earliest to occur of (i) September 30, 2099, (ii) written notice by the General Partner to the Limited Partners to dissolve the Partnership for any reason, (iii) the withdrawal or dissolution of the General Partner, or the occurrence of any other event that shall cause the General Partner to cease to be a general partner of the Partnership under the Partnership Law unless, in each case, within 30 days from the occurrence of such event, the remaining Partners whose Interests constitute a majority of the combined Interests (including the Interests, if any, which continue to be held by the General Partner and its Affiliates as a Limited Partner) of all remaining Partners act to admit a new general partner to the Partnership to succeed to the Interest of the General Partner, upon such terms and conditions as they shall agree upon, and elect to continue the Partnership's business in a reconstituted form, and (iv) the entry of a decree of judicial dissolution by a court of competent jurisdiction pursuant to Section 802 of the Partnership Law.

10.2 *Liquidation.*

(a) *Liquidation Trustee.* Upon the dissolution of the Partnership, the business of the Partnership shall be wound up and a Liquidating Trustee shall be appointed effective as of the Termination Date. The Liquidating Trustee (a) in the case of termination of the Partnership pursuant to clause (i) or (ii) of Section 10.1, shall be the General Partner and (b) in the case of a termination pursuant to clause (iii) or (iv) of Section 10.1, shall be a Person designated by the Limited Partners whose Interests constitute a majority of the combined Interests (including the Interest, if any, that continue to be held by the General Partner and its Affiliates as a Limited Partner) of all Limited Partners (or, if no such designation has been made within 30 days of the Termination Date, shall be a Person designated by the General Partner or its legal representative(s)).

(b) *Manner of Liquidation.* The Liquidating Trustee shall wind up the affairs of the Partnership and shall supervise the liquidation of the assets and property of the Partnership and, except as hereinafter provided, shall have full, complete and absolute discretion in the mode, method and manner of effecting such liquidation. The Liquidating Trustee shall cause to be prepared a statement setting forth the assets and liabilities of the Partnership as of the Termination Date, and such statement shall be furnished to all of the Partners. The liquidation of the Partnership shall proceed with reasonable diligence, but not so as to involve undue sacrifice to the Partners. The Liquidating Trustee shall use its best efforts to liquidate all Positions held by the Partnership which entail a risk of loss from market fluctuation in a rapid and orderly fashion, and in any event shall use its best efforts to complete the winding up of the Partnership's affairs within a period of 90 days following the Termination Date. Proceeds from the liquidation of Positions shall be invested only in short-term money market instruments or, in the discretion of the Liquidating Trustee, in cash or other cash equivalents. Upon winding up the affairs of the

Partnership, the Liquidating Trustee shall file a Certificate of Cancellation of the Partnership under the Partnership Law.

10.3 *Distribution to Partners Following Termination.* The Liquidating Trustee will distribute the proceeds of liquidation to the Partners in the following manner:

(a) Net Profits and Net Losses for the Accounting Period ending as of the Termination Date shall be allocated, and the Partners' Capital Accounts shall be credited or charged, as set forth in Article 7;

(b) Payment, or provision for payment, shall first be made of the expenses of liquidation and the debts and liabilities of the Partnership; and

(c) The Liquidating Trustee shall distribute the proceeds from sales and all other assets of the Partnership to the Partners in proportion to their respective Capital Accounts.

The foregoing notwithstanding, (i) if, after all allocations of Net Profits and Net Losses for the period following the Termination Date have been made (including any Net Profits or Net Losses taken into account pursuant to Section 10.4 hereof), the General Partner shall have a negative balance in its Capital Account, the General Partner shall, prior to any distribution to be made pursuant to paragraph (c) of this Section 10.3, pay to the Partnership the amount of such negative balance, and (ii) the Liquidating Trustee may withhold from any distribution to the Partners pursuant to this Section 10.3 a reserve determined in accordance with Section 8.3, which reserve, or any remainder thereof, together with any interest or other income earned thereon, shall be distributed to the Partners (in whole or, in the discretion of the Liquidating Trustee, from time to time in part) in accordance with the priorities established in this Section 10.3 (after taking into account all distributions made or scheduled to be made pursuant hereto on or before the date of such distribution) upon the Liquidating Trustee's determination that such reserve (or such remaining balance) is no longer required (or is required only in part). Any distribution made pursuant to this Section 10.3 may be made in cash or, in the sole discretion of the Liquidating Trustee, in the form of marketable Securities having a Market Value equal to the amount due, or partly in cash and partly in marketable Securities. Any such Securities to be distributed to a Partner shall be selected by the Liquidating Trustee in its sole discretion and, in the discretion of the Liquidating Trustee, may be distributed on other than a pro rata basis.

10.4 *Computation of Gain or Losses.* The amount by which the fair market value of any property to be distributed in kind to the Partners exceeds or is less than the basis of such property, to the extent not otherwise recognized to the Partnership, shall be taken into account in computing gain or loss of the Partnership for purposes of crediting or charging the Capital Accounts of, and distributing proceeds to, the Partners under this Article 10.

10.5 *Effect of Dissolution.* Upon dissolution of the Partnership, all obligations of the parties hereto will terminate, except as otherwise expressly provided herein.

ARTICLE 11  
CERTAIN TAX MATTERS

11.1 *Allocation of Income for Tax Purposes.* For federal income tax purposes, all items of deduction other than realized capital losses, and all items of income other than realized capital gains, shall be allocated for each Fiscal Year, as nearly as practicable, in accordance with the manner in which such items of deduction or income affected the amounts which were either charged or credited to the Capital Accounts of the Partners during such Fiscal Year. Capital gains and capital losses (short- and long-term, as the case may be) recognized in any Fiscal Year shall be allocated, as nearly as is practicable, in accordance with the manner in which the aggregate of the increase or decrease in the value of the Positions giving rise to such gains or losses was added to or deducted from the Capital Accounts of the Partners during such Fiscal Year and prior Fiscal Years.

11.2 *Partnership Tax Returns.* The General Partner shall prepare and file the informational tax returns for the Partnership with the appropriate authorities as soon as practicable after the close of each Fiscal Year of the Partnership. Each Partner shall be furnished appropriate information derived from the Partnership's income tax returns for such Fiscal Year to enable such Partner to prepare its income tax returns in accordance with the laws, rules and regulations then prevailing. The General Partner shall make, in its sole discretion, all elections under applicable provisions of the Code, including but not limited to any election pursuant to Section 754 of the Code, and shall timely file all such elections as made.

11.3 *Designation of Tax Matters Partner.* The General Partner is hereby designated as the "Tax Matters Partner" under Section 6231(a)(7) of the Code, to manage administrative tax proceedings conducted at the Partnership level by the Internal Revenue Service with respect to Partnership matters. The Tax Matters Partner is specifically directed and authorized to take whatever steps it, in its sole discretion, deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under Treasury regulations. Expenses of such administrative proceedings undertaken by the Tax Matters Partner shall be deemed Partnership expenses.

ARTICLE 12  
MISCELLANEOUS

12.1 *Further Assurances.* Each party to this Agreement agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by law or as, in the opinion of the General Partner, may be necessary or advisable to carry out the intents and purposes of this Agreement.

12.2 *Arbitration of Disputes.* All disputes and questions whatsoever between or among the parties to this agreement or their legal representatives that shall arise during the term of this Agreement or after the Termination Date with respect to the rights, obligations and remedies hereunder of such parties or legal representatives or with respect to the construction or application of this Agreement shall be submitted to arbitration before and in accordance with the rules of the



National Association of Securities Dealers, Inc. or, if such organization shall decline jurisdiction, to the American Arbitration Association for arbitration under its rules.

12.3 *Notices.* Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be effective (a) when transmitted by telecopy (with an acknowledgement of receipt) or personally delivered on a Business Day during normal business hours, (b) on the Business Day following the date of dispatch by overnight courier or (c) on the fifth Business Day following the date of mailing by registered or certified mail, return receipt requested, in each case addressed to the Partnership or the General Partner at the address of the General Partner set forth in Section 2.5, or to a Partner at the address shown on Schedule I hereto.

12.4 *Powers of Attorney.* Each Partner, including each Additional Limited Partner or Transferee Limited Partner, hereby irrevocably constitutes and appoints the General Partner (and, following the Termination Date, the Liquidating Trustee) its true and lawful attorneys-in-fact, and empowers and authorizes such attorneys, in its name, place and stead to make, execute, acknowledge, deliver, swear to, file and record in all necessary or appropriate places such documents as may be necessary or appropriate to carry out this Agreement, including but not limited to (a) any application, certificate, certification, report or similar instrument or document required to be submitted by or on behalf of the Partnership to any governmental or administrative agency, officer or body, to any securities exchange, board of trade, commodity exchange, clearing corporation or association or similar institution or to any other self-regulatory organization or trade association in furtherance of the Partnership business, (b) all certificates and other instruments (including counterparts of this Agreement), and any amendment thereof, which the General Partner deems appropriate to, qualify or continue the Partnership as a limited partnership (or a partnership in which the Limited Partners will have limited liability comparable to that provided by the Partnership Law) in the jurisdictions in which the Partnership may conduct business or in which such formation, qualification or continuation is, in the opinion of the General Partner, necessary or desirable to protect the limited liability of the Limited Partners, (c) all amendments to this Agreement adopted in accordance with the terms hereof and all instruments (including but not limited to amendments and restatements of the Certificate of Limited Partnership of the Partnership) which the General Partner deems appropriate to reflect a change or modification of the Partnership or the continuation of the Partnership in accordance with the terms of this Agreement, (d) all papers which may be deemed necessary or appropriate by the General Partner to effect the admission of an additional or successor Partner or the withdrawal of a Limited Partner, and (e) all conveyances and other instruments which the Liquidating Trustee deems appropriate to reflect the dissolution and termination of the Partnership. The appointment by all Partners of the General Partner and the Liquidating Trustee as attorneys-in-fact shall be deemed to be a power coupled with an interest, in recognition of the fact that each of the Partners under this Agreement will be relying upon the power of the General Partner and the Liquidating Trustee to act as contemplated by this Agreement in any filing and other action by it on behalf of the Partnership, and shall survive the bankruptcy, death, disability, or dissolution of any Partner hereby giving such power and the transfer or assignment of all or any part of the interest in the Partnership of such Partner; provided, however, that in the event of a permitted transfer by a Limited Partner of its Interest to a Transferee Limited Partner pursuant to Section 9.1, the foregoing power of attorney of a transferor Limited Partner shall survive such transfer only until

such time as the Transferee Limited Partner shall have been admitted to the Partnership as a Limited Partner pursuant to Section 9.1 hereof.

12.5 *Amendments.* Amendments may be made to this Agreement from time to time by the General Partner with the written consent of the Limited Partners whose Interests constitute a majority of the combined Interests (including the Interest, if any, held by the General Partner and its Affiliates as a Limited Partner) of all Limited Partners; *provided, however,* that without the consent of each Partner to be adversely affected by the amendment, this Agreement may not be amended so as to (i) convert a Limited Partner's Interest to that of a general partner; (ii) modify the limited liability of a Limited Partner; (iii) alter the allocations set forth in Article 7 hereof; or (iv) reduce the number or percentage in interest of Partners authorized to take any other action for which authorization of a specified number or percentage in interest of the Partners is required hereunder.

12.6 *Severability.* In the event that any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Without limiting the generality of the foregoing, each of the terms and conditions of this Agreement shall be subject to the provisions of the Advisers Act, and in the event that any provision of this Agreement shall conflict with or be inconsistent with the terms of the Advisers Act, then such provision shall be modified, construed or limited so as to eliminate such conflict or inconsistency.

12.7 *Headings and Captions.* All headings and captions contained in this Agreement and the table of contents hereto are inserted for convenience only and shall not be deemed a part of this Agreement.

12.8 *Variation of Pronouns.* All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person or entity may require.

12.9 *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

12.10 *Governing Law.* This Agreement shall be governed by the laws of the State of New York.

12.11 *Entire Agreement.* This Agreement supersedes all prior agreements among the parties with respect to the subject matter hereof and contains the entire agreement among the parties with respect to such subject matter.

12.12 *Waivers.* Subject to Section 12.5 or as otherwise expressly provided herein, this Agreement may not be amended, supplemented or discharged, and no provision hereof may be modified or waived, except expressly by an instrument in writing signed by all of the Partners. No waiver of any provision hereof by any party hereto shall be deemed a waiver by any other party nor shall any such waiver by any party be deemed a continuing waiver of any matter by

such party. No amendment, modification, supplement, discharge or waiver hereof or hereunder shall require the consent of any Person not a party to this Agreement.

12.13 *Legal Holidays.* Whenever the date for any payment (or the taking of any other action by the Partnership or any Partner) is not a Business Day, payment may be made (or such other action may be taken) on the next succeeding day that is a Business Day.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and agreed to be bound by the terms hereof.

General Partner:

LIPPER & COMPANY, L.P.

By:     /s/ Kenneth Lipper      
Kenneth Lipper  
President

Limited Partners<sup>27</sup>:

By: LIPPER & COMPANY, L.P.  
as Attorney in Fact for the Limited Partners  
pursuant to individual Subscription Agreements,  
the original copies of which are kept at the  
principal office of the Partnership

By: \_\_\_\_\_  
Kenneth Lipper  
President

<sup>27</sup> All Existing Limited Partners have executed a counterpart signature page to this Amended and Restated Limited Partnership Agreement. Copies of such counterparts are maintained at the principal office of the Partnership.

Schedule I

The names and addresses of the Limited Partners of the Partnership are available for inspection at the principal office of the Partnership.

This AMENDMENT NO. 1 (this "Amendment No. 1"), dated as of November 5, 1996, to the Amended and Restated Limited Partnership Agreement, dated as of July 1, 1993, (the "Partnership Agreement"), of Lipco Partners, L.P., a New York limited partnership (the "Partnership"), is made by and among Lipper & Company, L.P., a Delaware limited partnership (the "General Partner"), and the parties listed on Schedule I to the Partnership Agreement as limited partners (the "Limited Partners").

W I T N E S S E T H :

WHEREAS, the General Partner and the Limited Partners are parties to the Partnership Agreement;

WHEREAS, the General Partner desires to amend the Partnership Agreement pursuant to Section 2.1 thereof in the manner and as more fully set forth herein;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Amendment to the Partnership Agreement. The Partnership Agreement is hereby amended by deleting all references to "Lipco Partners, L.P." and substituting in lieu thereof "Lipper Convertibles, L.P."

2. Ratification and Confirmation of Partnership Agreement. Except as so modified pursuant to this Amendment No. 1, the Partnership Agreement is hereby ratified and confirmed in all respects.

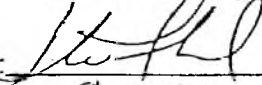
3. Effectiveness. This Amendment No. 1 shall be effective as of the date hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective as of the date first above written.

GENERAL PARTNER

LIPPER & COMPANY, L.P., as  
General Partner

By: *Lipper & Company, Inc., General Partner*

By: 

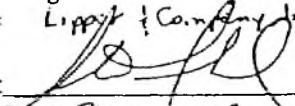
Name: Steven Finkel

Title: Executive Vice President

LIMITED PARTNERS

By: Lipper & Company, L.P., acting as  
attorney-in-fact for all the Limited  
Partners pursuant to powers of  
attorney heretofore or hereafter  
granted to the General Partner

By: *Lipper & Company, Inc., General Partner*

By: 

Name: Steven Finkel

Title: Executive Vice President

AMENDMENT  
TO  
AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT  
OF  
LIPPER CONVERTIBLES, L.P.

This AMENDMENT dated September 30, 1997 to the Amended and Restated Limited Partnership Agreement (the "Partnership Agreement") of Lipper Convertibles, L.P., a New York limited partnership (the "Partnership"), last amended on November 5, 1996, is entered into by the general and limited partners of the Partnership.

Whereas, Lipper & Company, L.P. and Lipper Holdings, LLC have entered into a Master Assignment dated September 30, 1997;

Whereas, pursuant to Section 9.1 of the Partnership Agreement, Lipper & Company, L.P. has transferred its entire general partner interest in the Partnership to Lipper Holdings, LLC, and Lipper Holdings, LLC has assumed the position and responsibilities of general partner of the Partnership;

Now therefore, the parties hereto hereby agree to amend the Partnership Agreement as follows:

1. All references in the Partnership Agreement to "Lipper & Company, L.P." or to the "General Partner" shall be references to Lipper Holdings, LLC.
2. This Amendment shall be effective as of September 30, 1997.
3. This Amendment shall be construed in accordance with the laws of the State of New York, without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the undersigned have executed this amendment as of the day first set forth above.

LIPPER & COMPANY, L.P.,  
as outgoing general partner

By: Lipper & Company, Inc.,  
its general partner

By: \_\_\_\_\_  
Name:  
Title:

LIPPER HOLDINGS, LLC,  
as incoming general partner

By: Lipper & Company, Inc.,  
its manager

By: \_\_\_\_\_  
Name:  
Title:

LIMITED PARTNERS

By: Lipper Holdings, LLC,  
as attorney-in-fact for  
the Limited Partners

By: Lipper & Company, Inc.,  
its manager

By: \_\_\_\_\_  
Name:  
Title:

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AMENDMENT NO. 3  
TO AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT  
OF LIPPER CONVERTIBLES, L.P.

This AMENDMENT NO. 3 ("Amendment No. 3"), dated as of January 1, 2001, to the Amended and Restated Limited Partnership Agreement, dated as of July 1, 1993, as amended November 5, 1996 and September 30, 1997 (the "Partnership Agreement"), of Lipper Convertibles, L.P., a New York limited partnership (the "Partnership"), is made by and among Lipper Holdings, LLC, a Delaware limited liability company (the "General Partner"), and the parties designated as limited partners in the records of the Partnership (the "Limited Partners").

WITNESSETH:

WHEREAS, the General Partner and the Limited Partners are parties to the Partnership Agreement; and

WHEREAS, the General Partner desires to amend the Partnership Agreement in the manner and as more fully set forth herein;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Definitions. All capitalized terms used herein not defined herein shall have the meanings assigned thereto in the Partnership Agreement.

2. Amendment to the Partnership Agreement. The Partnership Agreement is hereby amended as follows:

- a. The definition of "Allocation Date" in Article I shall be deleted in its entirety and replaced with the following:

"Allocation Date" means (i) with respect to each Limited Partner who was admitted to the Partnership effective prior to January 1, 2001, the day preceding the first anniversary of the Admission Date of such Limited Partner, and thereafter each of the following dates: (A) each December 31; (B) the effective date of such Limited Partner's complete withdrawal from the Partnership in accordance with Section 8.2; and (C) the dissolution of the Partnership in accordance with Section 10.1, and (ii) with respect to each Limited Partner who was admitted to the Partnership effective on or after January 1, 2001, each of the following dates: (A) each December 31; (B) the effective date of such Limited Partner's complete withdrawal from the Partnership in accordance with Section 8.2; and (C) the dissolution of the Partnership in accordance with Section 10.1."

- b. The definition of "Tax-Exempt Partner" in Article I shall be deleted in its entirety and replaced with the following:

"Tax-Exempt Partner" means an organization described in Section 501(a) of the Internal Revenue Code of 1986, as amended, provided that such organization was either (i) admitted to the Partnership effective prior to January 1, 2001 or (ii) admitted to Lipper Convertibles Series II, L.P. as a limited partner effective prior to January 1, 2001 and exchanged its limited partnership interest in Lipper Convertibles Series II, L.P. for an interest in the Partnership effective January 1, 2001."

- c. The first sentence of Section 7.2(b)(iii) shall be deleted in its entirety and replaced with the following:

"For any Person admitted as a Limited Partner of the Partnership effective prior to January 1, 2001, subject to paragraph (c) below, if the Incentive Compensation Fee payable to the General Partner pursuant to clause (i) or (ii) above with respect to a Limited Partner would be payable over an Allocation Period of less than one year, then as of the Allocation Date ending on the last day of such Allocation Period:"

- d. The following shall be added to the end of Section 7.2(b)(iii):

"Effective January 1, 2002, the provisions of this Section 7.2(b)(iii) shall be null and void and shall no longer be of any force or effect and the provisions of Section 7.2(b)(i) and 7.2(b)(ii), as applicable, shall govern with respect to all Limited Partners, regardless of when such Limited Partners were admitted to the Partnership."

- e. The following shall be added to the end of Section 12.5:

"Notwithstanding the foregoing, the General Partner may elect to add additional Classes of Interests in the Partnership without the written consent of the Limited Partners on terms substantially similar to the terms set forth herein for the Class A Interests, Class B Interests and Class C Interests, upon notice to all of the Limited Partners."

3. Ratification and Confirmation of Partnership Agreement. Except as so modified pursuant to this Amendment No. 3, the Partnership Agreement is hereby ratified and confirmed in all respects.

4. Effectiveness. This Amendment No. 3 shall be effective on the date it has been executed by the General Partner and Limited Partners having in excess of 50% of the Interests in the Partnership (determined on the basis of Capital Account balances).

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 3.

LIPPER HOLDINGS, LLC.  
as General Partner

By: \_\_\_\_\_  
Name: Abraham Biderman  
Title: Executive Vice President

LIMITED PARTNER

\_\_\_\_\_  
(please print name of limited partner)

By: \_\_\_\_\_  
Name:  
Title: