

EXHIBIT

“A”

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MERCATOR MOMENTUM FUND, L.P.

AMENDED AND RESTATED

Limited Partnership Agreement

Dated as of ~~July 17, 2006~~

AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

of

MERCATOR MOMENTUM FUND, L.P.

This Amended and Restated Agreement of Limited Partnership (the "Agreement") is dated as of July 17, 2006, and is entered into by and among M.A.G. Capital, LLC, a California limited liability company ("MAG"), as General Partner, and all the parties who from time-to-time have executed a counterpart of this Agreement to become limited partners (each of which is a "Limited Partner", and all of which are, collectively, the "Limited Partners").

ARTICLE I

DEFINITIONS

Section 1.1 "ACCOUNTING PERIOD" shall mean any period (a) commencing on (i) the first day of each Fiscal Quarter, (ii) each date of any Capital Contribution to the Partnership, and (iii) each date next following the date of any withdrawal from the Partnership, and (b) ending on the date immediately preceding the date of commencement of a new Accounting Period.

Section 1.2 "ACT" shall mean the California Revised Uniform Limited Partnership Act, as the same may be amended from time to time.

Section 1.3 "ADMINISTRATIVE EXPENSES" shall refer to the following administrative expenses of the General Partner: office rent, secretarial/administrative services, salaries, insurance, payroll taxes and travel and entertainment expenses (other than travel for research purposes related to the Partnership).

Section 1.4 "BUSINESS DAY" shall mean any day when the banks in the United States are open for business.

Section 1.5 "CAPITAL ACCOUNT" shall mean the account maintained for each Partner pursuant to Article V hereof.

Section 1.6 "CAPITAL CONTRIBUTIONS" shall mean, for a Partner, the sum of the fair market values of all of such Partner's contributions to the capital of the Partnership in accordance with this Agreement, with any Capital Contributions in the form of marketable Securities valued in accordance with Section 5.4(c).

Section 1.7 "CERTIFICATE" shall mean the certificate of limited partnership mandated by Section 17-201 of the Act filed with respect to the Partnership.

Section 1.8 "CODE" shall mean the Internal Revenue Code of 1986, as the same may be amended from time to time.

Section 1.9 "DIRECT COSTS" shall refer to costs directly incurred for the benefit of the Partnership and generally attributable to goods and services provided to the Partnership by parties other than the General Partner. Direct Costs shall include, but not be limited to, legal, audit and advisory expenses and other expenses such as commissions, securities processing charges, exchange fees, transfer taxes, research fees, interest on margin accounts and other indebtedness, borrowing charges on securities sold short, custodial fees, travel for research purposes, electronic and office equipment, supplies, telephone, printing, stationery, postage, courier services, publications, subscriptions, memberships, service contracts for quotation equipment and newswires, data processing, software and support, data services and data bases, consulting services and any other expenses related to the purchase, sale or transmittal of Partnership assets as shall be determined by the General Partner in its sole discretion. In addition, Direct Costs shall include any legal fees and costs (including settlement costs) arising in connection with any litigation or regulatory investigation instituted against the Partnership or the General Partner in its capacity as such.

Section 1.10 "DUE DILIGENCE FEES" shall have the meaning set forth in Section 3.3(c)(i).

Section 1.11 "EXCLUDED SECURITY" shall have the meaning set forth in Section 5.3.

Section 1.12 "FISCAL QUARTER" shall mean any one of the three-month periods commencing on the 1st day of January, April, June or October of each year.

Section 1.13 "FISCAL YEAR" shall mean the calendar year.

Section 1.14 "GENERAL PARTNER" shall refer to MAG and its successors, if any, and additional Persons, if any, admitted pursuant to this Agreement, as general partner of the Partnership.

Section 1.15 "INCENTIVE ALLOCATION" shall have the meaning set forth in Section 5.2(b).

Section 1.16 "LIQUIDATING SHARE" shall have the meaning set forth in Section 6.5(b).

Section 1.17 "LIQUIDATOR" shall have the meaning set forth in Section 8.1.

Section 1.18 "LOSS CARRYFORWARD" shall have the meaning set forth in Section 5.2(c).

Section 1.19 "MAG" shall mean M.A.G. Capital, LLC, a California limited liability company.

Section 1.20 "MAJORITY IN INTEREST OF THE LIMITED PARTNERS" shall mean Limited Partners owning fifty-one percent (51%) or more of the Partner's Interests of all the Limited Partners.

Section 1.21 "MANAGEMENT FEE" shall have the meaning set forth in Section 3.3(b).

Section 1.22 "NET INCOME" or "NET LOSS" shall have the meanings set forth in Section 5.4.

Section 1.23 "ORGANIZATION AND OFFERING COSTS" shall refer to legal, accounting and other costs of organizing the Partnership and the General Partner, and offering limited partnership interests in the Partnership, and any other initial organizational and offering expenses incurred by or on behalf of the Partnership and the General Partner, including charges of agents and depositories, duplicating, printing and mailing costs, filing fees, legal and accounting fees, taxes and other expenses incurred in connection with registering, qualifying or obtaining exemptions for the limited partnership interests under applicable Federal and state securities laws and incurred in connection with the compliance with investment adviser and general securities laws by the General Partner.

Section 1.24 "PARTNERS" shall mean collectively the General Partner and the Limited Partners. Reference to a "Partner" shall mean any one of the Partners.

Section 1.25 "PARTNERSHIP" shall mean the limited partnership contemplated hereby, as such partnership may be constituted from time to time.

Section 1.26 "PARTNER'S INTEREST" with respect to a particular Partner on a particular date shall mean the fraction obtained by dividing the value of such Partner's Capital Account at such date by the aggregate value of the Capital Accounts of all Partners at such date.

Section 1.27 "POST INVESTMENT ACTIVITY FEES" shall have the meaning set forth in Section 3.3(c)(ii).

Section 1.28 "PERSON" shall mean any individual, partnership, corporation, trust or other entity.

Section 1.29 "PRIOR ACCOUNTING PERIOD ITEMS" shall have the meaning set forth in Section 5.6.

Section 1.30 "SECURITIES" shall have the meaning set forth in Section 2.5.

Section 1.31 "UNRESTRICTED PARTNERS" shall have the meaning set forth in Section 5.3(b).

ARTICLE II

ORGANIZATION AND PURPOSE

Section 2.1 FORMATION AND TERM.

(a) The Partnership was formed as a limited partnership on February 1, 2002 pursuant to the provisions of the Act. The existence of the Partnership commenced upon

the filing with the Secretary of State of California of the Certificate in accordance with the provisions of the Act.

(b) The Partnership shall continue for a period of ten (10) years, unless earlier terminated by the General Partner, acting in its sole discretion.

Section 2.2 PARTNERSHIP NAME. The name of the Partnership is "Mercator Momentum Fund, L.P."

Section 2.3 OFFICES. The principal executive office of the General Partner shall be at 555 South Flower Street, Suite 4200, Los Angeles, California 90071, or at such other place as the General Partner may choose from time to time.

Section 2.4 CERTIFICATION. The parties to this Agreement shall from time to time execute or cause to be executed all such certificates and other documents and do or cause to be done all such filing, recording, publishing and other acts as may be deemed necessary or appropriate by the General Partner in order to comply with the requirements of law for the formation and operation of a limited partnership in California and for the operation of a limited partnership in all other jurisdictions where the Partnership shall conduct business.

Section 2.5 PARTNERSHIP PURPOSE. The purpose of the Partnership is to serve as a fund through which the assets of its Partners may be utilized in investing, holding and trading in securities, other financial instruments and rights and options relating thereto (collectively referred to herein as "Securities"). It is the current intention of the General Partner to invest and trade primarily in equity securities of U.S. publicly-traded companies.

Section 2.6 NUMBER OF PARTNERS. The Partnership shall not at any time have more than 100 Partners or such lesser number as may be required for the Partnership to be excepted from the definition of an "investment company" pursuant to Section 3(c)(1) of the Investment Company Act of 1940, as amended.

Section 2.7 CERTAIN RESTRICTIONS ON ACCEPTANCE OF LIMITED PARTNERS. The Partnership shall not admit any Person as a Limited Partner who is not a "qualified client", as such term is defined in the Investment Advisers Act of 1940 Rule 205-3(d).

ARTICLE III

MANAGEMENT OF THE PARTNERSHIP; POWERS AND DUTIES OF THE PARTNERS

Section 3.1 ACTIONS OF THE GENERAL PARTNER. The General Partner shall have the sole discretion to make investments on behalf of the Partnership and to exercise the powers set forth in Section 3.2. The General Partner may cause the Partnership to engage one or more investment managers to make such investments and exercise some or all of such powers. To the extent it deems necessary or appropriate, the General Partner may also appoint such agents of the General Partner as it deems necessary or convenient, and any such agents shall hold such offices and shall, under the direction of the General Partner, exercise such powers of the

General Partner in the management of the Partnership and perform such duties in connection therewith as shall be determined from time to time by the General Partner.

Section 3.2 POWERS OF THE GENERAL PARTNER. The General Partner, subject to the restrictions herein contained, shall have the power on behalf of the Partnership:

- (a) To purchase, hold and sell Securities of any sort and rights therein, on margin or otherwise;
- (b) To sell short Securities of any sort and rights therein, on margin or otherwise, and to cover such short sales;
- (c) To purchase, hold, sell and otherwise deal in foreign currencies and futures contracts relating thereto (and options thereon);
- (d) To purchase, hold, sell and otherwise deal in financial futures and futures contracts relating to stock indices (and options thereon);
- (e) To write, purchase, hold, sell and otherwise deal in put and call options and any combination thereof on stocks, bonds and stock market indices;
- (f) To invest, hold and trade in interest rate, currency and any other kind of swap investments;
- (g) To invest, hold and trade in securities and other financial instruments of privately held issuers or which otherwise may not have a public market;
- (h) To vote, give assent and otherwise to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Securities owned by or other assets of the Partnership;
- (i) To maintain margin accounts with brokers; to pledge Securities for loans, and, in connection with any such pledge, to effect borrowings from brokers, banks and other financial institutions;
- (j) To open, maintain and close bank accounts; to draw checks or other orders for the payment of money; to deposit the funds of the Partnership in the Partnership name in any bank or brokerage account; to deposit with a bank or brokerage firm any of the Securities, monies, documents and papers belonging to or relating to the Partnership and to register such Securities in "street name"; and to transfer funds and Securities from time to time among such brokerage firms and banks;
- (k) To employ or consult such Persons or firms as it deems advisable for the operation and management of the Partnership, including, without limitation, brokers, accountants or attorneys, and including Persons or firms who may be Limited Partners;
- (l) To incur all Direct Costs on behalf of the Partnership which it deems necessary or desirable;

(m) To cause the Partnership to reimburse the General Partner for all Organization and Offering Costs and/or Direct Costs paid by or on behalf of it;

(n) To purchase such policies of insurance as it deems reasonable, insuring the General Partner and the Partnership against liabilities that may arise out of the management or operation of the Partnership;

(o) To file documents, returns and reports with Federal and other taxing authorities, to make tax elections, including those under Section 754 of the Code, and to execute all instruments of any kind or character which it determines to be necessary or appropriate in connection with the operations of the Partnership, the execution thereof by it to be conclusive evidence of such determination;

(p) To institute, prosecute, defend, settle, compromise or otherwise adjust all claims (including, but not limited to, claims for taxes) and litigation arising out of the conduct of the affairs of the Partnership or in the enforcement of obligations due it, including all rights of appeal; and

(q) To enter into, make and perform any other contracts, agreements or other undertakings it may deem advisable in conducting the business of the Partnership, including but not limited to contracts, agreements or other undertakings with Persons or firms with which the General Partner or any other Partner is affiliated, and to act for and/or on behalf of the Partnership in all other matters.

Each of the Partners agrees that all determinations, decisions and actions made or taken by the General Partner shall be conclusive and absolutely binding upon the Partnership, the Partners and their respective successors, assigns, executors, heirs, administrators and legal representatives.

Section 3.3 INVESTMENT MANAGER: MANAGEMENT FEE.

(a) The Partnership shall engage the General Partner as the investment advisor to the Partnership pursuant to the Investment Management Agreement attached hereto as Annex 1, as such Investment Management Agreement may be amended from time to time. The General Partner may enter into any such amendment in its sole discretion.

(b) With respect to each Limited Partner's Capital Account, the Partnership will pay the General Partner (or any other Person designated by the General Partner) a quarterly Management Fee (the "Management Fee") in advance, equal to one and three-quarters percent (1-3/4%) per annum (0.4375% per quarter) of the amount of such Capital Account. Such fee will be calculated based on the value of such Capital Account at the beginning of each Fiscal Quarter, and will be calculated before any Incentive Allocation is made from such Capital Account. The Management Fee for a Fiscal Quarter will be charged on a pro rata basis to a Limited Partner's Capital Account during the period beginning upon the first Business Day of that Fiscal Quarter (or, for the Fiscal Quarter in which a Limited Partner is first admitted as a Partner, the date of acceptance of such Limited Partner's subscription) and ending upon the last Business Day of that Fiscal Quarter. The General Partner may, in its sole discretion, waive all or part of the Management Fee otherwise due with respect to any Limited Partner's Interest, by rebate

or otherwise. The Capital Accounts of the General Partner and of its members, officers, affiliates and/or employees as Limited Partners, if any, will not be subject to the Management Fee, unless otherwise agreed to by such members, officers, affiliates and/or employees.

(c) In addition to the Management Fee and any Incentive Allocation, the General Partner (or any Person designated by the General Partner) may receive additional compensation from various sources, including the following:

(i) **Due Diligence Fees.** The General Partner may receive a due diligence fee (the "Due Diligence Fee"), which fee will typically be paid in either cash or warrants to purchase common stock of the portfolio companies, in connection with the General Partner's analysis of a portfolio company on behalf of the Partnership;

(ii) **Fees for Possible Post Investment Activities.** The General Partner may receive compensation, in the form of cash or warrants to purchase common stock of the portfolio companies, in exchange for making itself available to perform post investment activities to assist the portfolio companies ("Post Investment Activity Fees").

The amount of Due Diligence Fees and Post Investment Activity Fees will vary, depending on the estimated amount of services to be provided by the General Partner. Any warrants received will typically be short term (generally 3-5 years) and will generally have an exercise price in excess of the market value of the underlying common stock at the time of receipt. The Due Diligence Fee and the Post Investment Activity Fees may be paid to the General Partner either directly from the portfolio companies or from the Partnership.

The Due Diligence Fee shall be shared between the General Partner and the Partnership such that thirty percent (30%) shall be allocated to the Partnership and seventy percent (70%) shall be allocated to the General Partner. The Post Investment Activity Fees shall be shared between the General Partner and the Partnership such that fifty percent (50%) shall be allocated to the Partnership and fifty percent (50%) shall be allocated to the General Partner.

Section 3.4 INDEPENDENT ACTIVITIES OF THE PARTNERS. The General Partner agrees to devote so much of its time and effort in connection with the operations of the Partnership as in its sole discretion it deems necessary for the management of the affairs of the Partnership. Nothing contained in this Section shall preclude any member or officer of the General Partner from conducting, participating in or receiving compensation in respect of any other endeavors, including any endeavor involving Securities. Without limiting the generality of the foregoing, the General Partner, any member, officer or employee of the General Partner, and any member, officer, employee or owner of any member of the General Partner, may act as an investment adviser or investment manager for others, may manage funds or capital for others, and may own interests in one or more investment funds, partnerships, securities firms or advisory firms. The fact that one or more of the Partners is directly or indirectly interested in or is an

officer or director or otherwise connected with any company with which the Partnership may have dealings or in the Securities of which the Partnership may invest, shall not preclude such dealings or investments or make them void or voidable. It is recognized that, in effecting transactions, it may not always be possible, or consistent with the investment objectives of the various Persons described above and of the Partnership, to take or liquidate the same investment positions at the same time(s) or at the same price(s).

Section 3.5 INVESTMENT OPPORTUNITIES. The General Partner and its members, officers, employees and affiliates shall not be obligated to present any particular investment opportunity to the Partnership, provided that the General Partner shall have acted in good faith in what it believed was in, or not inconsistent with, the best interests of the Partnership.

Section 3.6 CONFLICTS OF INTEREST. Each of the Limited Partners expressly acknowledges: (a) the provisions in the Investment Management Agreement relating to services to other clients and execution services; (b) that the General Partner and its members, officers, employees and affiliates may effect transactions, and may trade for their own account(s) in Securities and other assets in which the Partnership does or may invest; (c) that the General Partner and its members, officers, employees and affiliates may sell Securities to one another; (d) that such transactions and trading by the General Partner and/or its members, officers, employees and affiliates may create conflicts of interest between the General Partner and/or one or more of its members, officers, employees and affiliates, on one hand, and the Partnership and the Limited Partners, on the other; and (e) that the General Partner, and its members, officers, employees and affiliates when trading for their own account(s) are not required to cause or to permit the Partnership to participate in any such transactions. The General Partner will adopt operating procedures which, in its view, are reasonably designed to address the foregoing conflicts of interest, but each Limited Partner expressly acknowledges that there can be no assurance that such procedures will successfully resolve any such conflicts.

Section 3.7 LIMITED PARTNERS NOT TO BIND PARTNERSHIP. The Limited Partners shall take no part in the conduct or control of the Partnership business and shall have no authority or power to act for or bind the Partnership. The Limited Partners shall not hold themselves out as general partners or take any action on behalf of the Partnership or in any way commit the Partnership to any agreement or contract and shall have no right or authority to do any of the foregoing.

Section 3.8 PARTNERSHIP EXPENSES. The General Partner shall be authorized to incur all expenses on behalf of the Partnership which it deems necessary or desirable. The Partnership shall directly pay all Direct Costs and Organization and Offering Costs or shall reimburse the General Partner for all such costs. The General Partner shall bear all Administrative Expenses.

ARTICLE IV

CAPITAL CONTRIBUTIONS

Section 4.1 INITIAL CAPITAL CONTRIBUTIONS. Each Limited Partner shall, concurrently with becoming a Limited Partner, make a Capital Contribution in the amount set forth opposite his name on a counterpart to the signature page of this Agreement. On or prior to February 1, 2002, the General Partner shall make a Capital Contribution in the amount of \$25,000. All Capital Contributions shall be recorded on the books and records of the Partnership. Each Capital Contribution shall be made in cash; provided, however, that the General Partner, in its sole discretion, may approve Capital Contributions in the form of marketable Securities (and, in such event, the contributed Securities shall be valued in accordance with Section 5.4(c)).

Section 4.2 ADDITIONAL CAPITAL CONTRIBUTIONS.

(a) A Partner may, with the consent of the General Partner, make additional Capital Contributions to the Partnership in such amounts and at such times as determined by the General Partner in its sole discretion.

(b) The General Partner shall be unconditionally obligated to make a Capital Contribution immediately prior to the liquidation of the Partnership, within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g), in such additional amount, if any, so that the total amount of the General Partner's Capital Account is at least equal to the lesser of (i) any deficit balance in the General Partner's Capital Account immediately prior to such liquidation, but after the allocation of Net Income or Net Loss for such Accounting Period, or (ii) the excess, if any, of 1.01% of the aggregate Capital Accounts of the Limited Partners over the Capital Account of the General Partner immediately prior to such liquidation (and without regard to any Capital Contribution required pursuant to this Section 4.2(b)).

Section 4.3 PARTNERSHIP CAPITAL. The Capital Contributions of the Partners may be used for all purposes of the Partnership and as otherwise provided in this Agreement. In order to assure the continuing operations of the Partnership, no Partner shall be entitled to be paid interest on any Capital Contribution to the Partnership or to withdraw his Capital Contribution, or to receive any return of any portion of his Capital Contribution or to receive any distributions from the Partnership, except as otherwise provided herein.

Section 4.4 LIABILITY OF PARTNERS. The liability of the Limited Partners shall be limited as set forth in the Act and no Limited Partner shall be required to make any Capital Contribution to the Partnership except (a) the amount indicated in Section 4.1 and (b) the amounts described in Section 6.6.

ARTICLE V

CAPITAL ACCOUNTS AND ALLOCATIONS

Section 5.1 CAPITAL ACCOUNTS. Capital accounts (the "Capital Accounts") shall be maintained for each Partner in accordance with Section 5.4. The initial balance of all such Capital Accounts (prior to Capital Contributions) shall be zero.

Section 5.2 ALLOCATIONS.

(a) Except as otherwise provided in this Article V, the Net Income or Net Loss of the Partnership for each Accounting Period shall be determined and allocated as of the close of business on the last Business Day of such Accounting Period to the Partners as follows:

(i) Net Income (exclusive of Net Income attributable to Excluded Securities) and Net Loss (exclusive of Net Loss attributable to Excluded Securities) shall be allocated among the Partners in proportion to their respective Partner's Interests as of the first day of such Accounting Period; and

(ii) Net Income attributable to Excluded Securities and Net Loss attributable to Excluded Securities shall be allocated among the Unrestricted Partners in proportion to their respective Partner's Interests as of the first day of such Accounting Period;

provided, however, that such Net Income or Net Loss shall be so determined and allocated prior to the charge and payment of the Management Fee, which shall be determined and allocated as set forth in Section 3.3.

(b) As of the close of each Fiscal Year, an amount equal to twenty percent (20%) of the Net Increase Amount (as defined below), if any, with respect to each Limited Partner for that Fiscal Year shall be charged to the Capital Account of such Limited Partner and shall be credited to the General Partner's Capital Account (the "Incentive Allocation"). With respect to any Fiscal Year, "Net Increase Amount" refers to the amount by which (x) any Net Income (determined without regard to any charge for or payment of any Management Fee) credited with respect to such Fiscal Year to the Capital Account of a Limited Partner, less any Management Fee charged to such Limited Partner's Capital Account with respect to such Fiscal Year, exceeds (y) such Limited Partner's Loss Carryforward (as defined below), if any. Solely for purposes of this Section 5.2, a Fiscal Year shall be deemed to end (unless the General Partner otherwise determines) (i) at the end of a calendar year, (ii) as to any Limited Partner that withdraws funds pursuant to Section 6.2, at the close of business on the day immediately preceding the Withdrawal Date (as defined therein) (but only in respect of the funds withdrawn), (iii) as to any Limited Partner that is required by the General Partner to retire from the Partnership under Section 6.3, at the close of business on the Notice Date (as defined therein), (iv) as to any Limited Partner that transfers its Partner's Interest pursuant to Section 7.2, at the close of business on the day immediately preceding the transfer date,

and (v) as to all the Partners, at the close of business on the day the Partnership terminates. Net Income and Net Loss previously allocated as provided above shall not be reallocated as a result of subsequent Net Loss. The General Partner may, in its sole discretion, waive all or part of the Incentive Allocation otherwise due with respect to any Limited Partner.

(c) "Loss Carryforward" with respect to any Fiscal Year refers to the amount, if any, by which (x) the cumulative sum of the Net Loss charged to a Limited Partner's Capital Account with respect to all Fiscal Years beginning after the close of the most recent Fiscal Year, if any, with respect to which there was no Loss Carryforward at the end thereof exceeds (y) the cumulative sum of the Net Income credited to such Limited Partner's Capital Account with respect to all Fiscal Years (other than the Fiscal Year then ending) beginning after the close of the most recent Fiscal Year, if any, with respect to which there was no Loss Carryforward at the end thereof. Notwithstanding the foregoing, a Loss Carryforward shall be deemed to exist, for these purposes, as of the end of a Fiscal Year as to any Limited Partner that is allocated a greater amount of Net Loss than Net Income in such Fiscal Year even if no Loss Carryforward existed as to such Limited Partner at the commencement of such Fiscal Year. The amount of a Limited Partner's Loss Carryforward, if any, shall be (i) proportionally reduced to the extent a Limited Partner requests the withdrawal of less than his entire Capital Account pursuant to Section 6.2 and (ii) allocated proportionally between the transferor and the transferee in the event of a transfer of a Partner's Interest by a Limited Partner pursuant to Section 7.2 (based upon the proportionate part of the Partner's Interest transferred). For purposes of determining the amount of a Limited Partner's Loss Carryforward, a distribution by the Partnership to a Limited Partner shall be treated as a withdrawal.

Section 5.3 NEW ISSUE ALLOCATION. In the event the General Partner decides to cause the Partnership to invest in Securities which are a "new issue," as that term is defined in Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) ("Rule 2790") of the Conduct Rules of the National Association of Securities Dealers, Inc. (the "NASD"), such investment (an investment in an "Excluded Security") shall be made in accordance with the following provisions:

(a) any investment in an Excluded Security made in a particular Accounting Period shall be made in a special account (the "IPO Account");

(b) only those Partners who are not restricted persons under Rule 2790 ("Unrestricted Partners") shall have any beneficial interest in the IPO Account;

(c) each Unrestricted Partner shall have a beneficial interest in the IPO Account for any Accounting Period in proportion to its respective Partner's Interest as of the first day of such Accounting Period;

(d) funds required to make a particular investment shall be transferred to the IPO Account from the regular account of the Partnership. Excluded Securities shall be purchased in the IPO Account, held in the IPO Account and eventually sold from the IPO Account; if such Excluded Securities are sold from the IPO Account, the proceeds of the

sale shall be transferred from the IPO Account to the regular account of the Partnership; and

(e) the General Partner shall obtain from each Limited Partner, and each Limited Partner shall provide to the General Partner promptly upon request, a representation as to the Limited Partners eligibility to purchase Excluded Securities; provided, however, that the General Partner's determination as to whether a particular Limited Partner is a restricted person under Rule 2790 shall be final.

The General Partner reserves the right to modify the procedures set forth in this Section in such manner as the General Partner, in its sole discretion, determines may be necessary or appropriate to comply with applicable laws or the rules or interpretations of any regulatory agency or self-regulatory organization (including the NASD). In addition, the General Partner reserves the right to adopt procedures that would permit Limited Partners that are restricted persons within the meaning of Rule 2790 to have beneficial ownership of up to ten percent (10%) of an account owning Restricted Securities, as currently permitted under Rule 2790, or to dispense with the procedures set forth in this Section at any time when all of the Limited Partners are Unrestricted Partners.

Section 5.4 CREDITS AND CHARGES TO CAPITAL ACCOUNTS. The Capital Account of each Partner shall be credited and charged as follows:

(a) Such Capital Account shall be credited with (i) the amount of such Partner's Capital Contributions as of the date(s) of the Capital Contributions, (ii) the amount of Net Income allocated to such Partner pursuant to Section 5.2, (iii) in the case of the General Partner, the amounts of any Incentive Allocations credited to the General Partner pursuant to Section 5.2(b) or withdrawal fees credited pursuant to Section 6.5, and (iv) the amount of any credit to such Partner pursuant to and on the date specified in Section 5.6.

(b) Such Capital Account shall be charged with (i) the amount of cash or the fair market value of Securities distributed to or withdrawn by such Partner as of the date of such distribution or withdrawal, (ii) the amount of Net Loss allocated to such Partner pursuant to Section 5.2, (iii) in the case of each Limited Partner, the amounts of any Management Fee charged to such Limited Partner pursuant to Section 3.3, any Incentive Allocation charged to such Limited Partner pursuant to Section 5.2(b), and any withdrawal fee charged to such Limited Partner pursuant to Section 6.5, and (iv) the amount of any debit to such Partner pursuant to and on the date specified in Section 5.6.

(c) "Net Income" or "Net Loss" for any Accounting Period shall be determined on an accrual basis of accounting in accordance with generally accepted accounting principles consistently applied and further in accordance with the following:

(i) Net Income and Net Loss shall include realized and unrealized profits and losses with respect to all Securities positions. In computing such realized and unrealized profits and losses, profit and loss shall mean for each position held in a Security during any Accounting Period, the realized or

unrealized appreciation or depreciation, as the case may be, with respect to such position, determined by comparing the net proceeds from the closing of such position or the market value of such position at the end of such Accounting Period with (x) the cost of such position if established during such Accounting Period or (y), if such position was established during a prior Accounting Period, the market value of such position at the end of the last preceding Accounting Period.

(ii) The market value of positions in Securities shall be determined as follows: Securities which are listed on the New York Stock Exchange and are freely transferable shall be valued at their last sales price on the consolidated tape on the date of determination, or, if no sales occurred on such day, at the "bid" price or, if sold short, at the "asked" price on the consolidated tape at the close of business on such day. Securities which are listed on a national securities exchange other than the New York Stock Exchange and are freely transferable shall be valued at their last sales price on the date of determination on the exchange that constitutes the principal market for such Securities, or, if no sales occurred on such day, at the "bid" price or, if sold short, at the "asked" price on such exchange at the close of business on such day. Securities traded over-the-counter which are freely transferable shall be valued at the last sales price on the date of determination, or, if no sales occurred on such day, at the "bid" price at the close of business on such day or, if sold short, at the "asked" price at the close of business on such day based on the average "bid" or asked" price (as the case may be) of such number of quotations obtained by the General Partner as the General Partner determines to be reasonable (which may be a single quotation). Notwithstanding the foregoing, if the Securities to be valued constitute a "block" which, in the sole judgment of the General Partner, could not be liquidated in a reasonable time without depressing the market, such block shall be valued at fair market value by the General Partner, but not at a unit value in excess of the quoted unit market price for such Securities. The foregoing valuation procedures may be modified by the General Partner upon reasonable notice to the other Partners.

(iii) Except as provided below, all assets of the Partnership other than as described in Section 5.4(c)(ii) above shall be valued at fair value in a manner determined by the General Partner to be reasonable.

(iv) There shall be deducted in computing Net Income and Net Loss accrued expenses for accounting and legal services in respect of the particular Accounting Period (whether performed prior to, during or subsequent to such Accounting Period), provided that the Partnership shall amortize its Organization and Offering Costs over a 60-month period.

(d) The amount and timing of all distributions of cash, Securities or other property to the Partners shall be in the sole discretion of the General Partner. The General Partner may withhold taxes from and charge them to the Capital Account of any Partner, and pay the withholding taxes of any Partner, in each case to the extent required by the Code or any other applicable law.

(e) If a distribution of Securities is made, immediately prior to such distribution, the General Partner shall determine the fair market value of the Securities distributed and adjust the Capital Accounts of all Partners upwards or downwards to reflect the difference between the book value and the fair market value thereof, as if such gain or loss had been recognized upon an actual sale of such property and allocated pursuant to Section 5.2.

Section 5.5 TRANSFERS OF PARTNER'S INTEREST. In the event of a sale or assignment of a Partner's Interest, except to the extent that pursuant to a valid Treasury Department regulation a different method is required, the income, gains, losses, deductions and credits of the Partnership for the Fiscal Year in which such sale or assignment is recognized as provided in Article VII shall be allocated pro rata between the assignor and assignee of such Partner's Interest based on the periods of time during such Fiscal Year that such interest was owned by each, without regard to the periods during such Fiscal Year in which such income, losses, deductions and credits of the Partnership were actually realized; provided, however, that with respect to certain "cash basis items," including for this purpose, Partnership items of interest, taxes, payments for services, payments for the use of property and any other items designated as "cash basis items" under Section 706 of the Code and the Treasury regulations promulgated thereunder, such items shall be assigned to the appropriate period to which they are attributable by allocating such assigned portion based upon the interest owned by a Limited Partner during each such period.

Section 5.6 PRIOR ACCOUNTING PERIOD ITEMS. Anything herein to the contrary notwithstanding, with respect to any Accounting Period, any items of income, gain, loss, deduction or credit (including the elimination of all or any part of a reserve established in a prior Accounting Period) for such Accounting Period which are attributable to any Partnership matter or transaction occurring during a prior Accounting Period (such items of income, gain, loss, deduction or credit being referred to herein as "Prior Accounting Period Items") which in the aggregate exceed the lesser of (a) \$100,000 or (b) five percent of the aggregate Capital Accounts of all Partners at the beginning of such Accounting Period may, in the sole discretion of the General Partner, be allocated among the Partners (including Persons who have ceased to be Partners during or prior to such Accounting Period) in proportion to their respective Partner's Interests as of the first day of the prior Accounting Period with respect to which the prior Accounting Period Items arose (or, in the case of Prior Accounting Period Items relating to Excluded Securities, among the Unrestricted Partners having a beneficial interest in the Hot Issues Account relating to such Excluded Securities pursuant to Section 5.3). In the case of a Person who is a Partner during a current Accounting Period, the Prior Accounting Period Items arising during such current Accounting Period shall be considered an item of Net Income or Net Loss for such current Accounting Period for purposes of Section 5.2(b) and Section 5.2(c). In the case of a Person who is no longer a Partner during a current Accounting Period, the Prior Accounting Period Items arising during such current Accounting Period shall be considered an item of Net Income or Net Loss in the last Accounting Period in which such Person was a Partner for purposes of computing the allocation of such Prior Accounting Period Items between the Person who ceased to be a Partner and the General Partner.

ARTICLE VI

WITHDRAWALS

Section 6.1 GENERAL PARTNER'S RIGHT TO WITHDRAW. The General Partner shall have the right to withdraw all or any part of its Capital Account, including, but not limited to all or any part of the Incentive Allocation, at any time and from time to time, provided that in connection with a withdrawal by the General Partner of any amounts other than its Incentive Allocation, the General Partner shall give notice to the Limited Partners within a reasonable time after such withdrawal has been made. Notwithstanding the provisions of Section 6.2, any Limited Partner who is a member or portfolio manager of the General Partner, or who is a family member or affiliate of any such member or portfolio manager, shall have the right to withdraw all or any part of its Capital Account, at any time and from time to time upon notice to the General Partner and with notice to the other Limited Partners within a reasonable time after such withdrawal has been made. A Partner withdrawing his entire Capital Account shall be deemed to have retired (i.e., ceased to be a Partner) as of the date of such withdrawal.

Section 6.2 LIMITED PARTNERS' RIGHT TO WITHDRAW.

(a) Subject to the remaining provisions of this Article VI, no Limited Partner shall have the right to withdraw all or any part of its Capital Account early unless, in the case of hardship or other special circumstances, such withdrawal is allowed at the sole discretion of the General Partner. If such withdrawal is allowed (the "Withdrawal Date"), it shall be based on an estimate of the General Partner of the net asset value of the Partnership.

(b) A Limited Partner may exercise his rights of withdrawal as set forth in Section 6.2(a) only upon giving written notice of exercise to the General Partner at least ninety (90) days prior to the requested Withdrawal Date (unless the General Partner, in its sole discretion, approves a withdrawal on shorter notice). A Limited Partner's written notice of withdrawal shall specify the amount desired to be withdrawn; provided, however, that in no event (unless the General Partner, in its sole discretion, approves a withdrawal of a greater amount) may such amount requested to be withdrawn be greater than the aggregate amount of Capital Contributions by such Limited Partner during the period ending twelve (12) months prior to the Withdrawal Date and not previously withdrawn by such Limited Partner. A Partner withdrawing his entire Capital Account shall be deemed to have retired (i.e., ceased to be a Limited Partner) as of the Withdrawal Date.

Section 6.3 MANDATORY RETIREMENT. Subject to the remaining provisions of this Article VI, and except as otherwise provided in this Agreement, if the General Partner, in its sole discretion, deems it to be in the best interests of the Partnership, the General Partner may require any Limited Partner to retire from the Partnership on the last day of any Fiscal Quarter by giving such Limited Partner (or his legal representative) written notice of such required retirement at least twenty (20) days before the end of such Fiscal Quarter. Without limiting the foregoing, the General Partner, in its sole discretion, may require any Limited Partner to retire from the Partnership upon any date designated by the General Partner by giving such Limited

Partner (or his legal representative) written notice of such required retirement at least five (5) days before such designated retirement date, if (A) such Limited Partner (i) dies, (ii) becomes incapacitated or legally disabled or (iii) becomes "Insolvent," defined as: (a) making an assignment for the benefit of creditors; (b) filing a voluntary petition in bankruptcy; (c) being adjudged a bankrupt or insolvent, or having entered against it an order for relief in any bankruptcy or insolvency proceeding; (d) filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (e) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; (f) seeking, consenting to, or acquiescing in the appointment of a trustee, custodian, receiver or liquidator; or (g) having issued against its Partner's Interest a charging order without the removal thereof within thirty (30) days after issuance, or if (B) the General Partner, in its sole discretion, determines that the continued participation of such Limited Partner or his legal representative might (x) cause the Partnership to violate any law, rule or regulation, (y) adversely affect the Partnership's status for tax purposes or under the Investment Company Act of 1940, as amended, or any other securities law(s), or (z) adversely affect the status of the General Partner or any of its affiliates under, or might cause the General Partner or any of its affiliates to violate, the Investment Advisers Act of 1940, as amended, or any similar law, or any rule or regulation promulgated thereunder. A Limited Partner required to retire pursuant to this Section 6.3 shall be deemed to have retired on the date set forth in the written notice given by the General Partner of such required retirement (the "Notice Date").

Section 6.4 METHOD OF DISTRIBUTION. All payments of Capital Account withdrawals pursuant to this Article VI shall be made in cash or, in the sole discretion of the General Partner, in Securities selected by the General Partner or partly in cash and partly in Securities selected by the General Partner; provided, however, that a Limited Partner may not be distributed more than his pro rata share of any restricted Securities held by the Partnership. Notwithstanding the foregoing, it is the intention of the Partnership, in general, to make distributions to withdrawing Partners in cash.

Section 6.5 PAYMENTS UPON WITHDRAWAL, MANDATORY RETIREMENT, DEATH, INSOLVENCY, INCAPACITY OR LEGAL DISABILITY OF A LIMITED PARTNER.

(a) Within ninety (90) days after the Withdrawal Date or Notice Date, as the case may be, with respect to a Limited Partner (or, in the sole discretion of the General Partner, within sixty (60) days after the end of the Fiscal Year during which a Notice Date occurs with respect to a Limited Partner dies or becomes Insolvent, incapacitated or legally disabled), the Partnership shall pay or distribute to such Limited Partner (or to the legal representative of such Partner) the following amount: (i) as to a Limited Partner requesting withdrawal of his entire Capital Account pursuant to Section 6.2 or retiring pursuant to Section 6.3, an amount equal in value to no less than 90% of the estimated amount of the Liquidating Share (as defined below) of such Partner; or (ii) as to a Limited Partner requesting withdrawal of less than his entire Capital Account pursuant to Section 6.2, an amount (the "Withdrawal Amount" equal in value to the lesser of (A) 90% of the estimated amount of the Liquidating Share of such Partner (as defined below) or (B) the amount of the requested withdrawal.

(b) As used herein "Liquidating Share" refers to the value of a Limited Partner's Capital Account, determined in accordance with Section 5.4(c) hereof as of the close of business on the Withdrawal Date or Notice Date, as the case may be, less (i) such Limited Partner's pro rata share of all debts, obligations, and liabilities of the Partnership (whether fixed, accrued, or unmatured), (ii) such Limited Partner's pro rata share of any reserves for contingent liabilities or obligations established in the sole discretion of the General Partner, (iii) a withdrawal fee payable to the Partnership equal to the accounting costs incurred by the Partnership as a result of such withdrawal, as determined or reasonably estimated by the General Partner, and (iv) any applicable Incentive Allocation from such Limited Partner to the General Partner.

(c) Regardless of whether a Withdrawal Date or Notice Date is the last day of a Fiscal Year, the balance of a retiring Limited Partner's Capital Account (or the balance of a continuing Limited Partner's Withdrawal Amount) remaining undistributed after taking into account distributions pursuant to Section 6.5(a) above shall not be distributed until the General Partner has determined the Capital Accounts of the Partners as of the Withdrawal Date or the Notice Date, as the case may be, and the independent public accountants have completed the audit required by Section 11.2 for the Fiscal Year in which such Withdrawal Date or Notice Date occurs. Subject to the provisions of Section 6.5(d), promptly after such determination and receipt of the accountants' audit report, the Partnership shall distribute to the Limited Partner (or his representative) the amount of the excess, if any, of the Liquidating Share or Withdrawal Amount of such Limited Partner over the amount previously distributed pursuant to Section 6.5(a), or such Limited Partner (or his representative) shall pay to the Partnership the amount of the excess, if any, of the amount distributed under Section 6.5(a) over such Liquidating Share or Withdrawal Amount.

(d) Notwithstanding the foregoing: (1) there may be withheld from distribution to a Limited Partner (or his representative) pursuant to Section 6.5(c) such reasonable contingency reserve as may be determined by the General Partner in its sole discretion in respect of such Limited Partner's share of contingent liabilities from transactions or events occurring during such time as such Partner was a Partner in the Partnership. Upon the General Partner's determination that such reserve (or portion thereof) is not, or is no longer, required, the reserve (or such portion) shall be distributed to such Partner (or his representative); (2) if, as determined by the General Partner in its sole discretion, the Partnership is unable to liquidate Securities positions in an orderly manner without adverse economic consequences, or if the value of assets or liabilities of the Partnership cannot reasonably be determined, the General Partner may suspend distributions pursuant to Section 6.3 or Section 6.5 and/or may distribute all amounts to be distributed as soon as practicable, but later than the applicable sixty (60) day period set forth in Section 6.5(a) hereof.; (3) in addition, the General Partner may withhold all or any a portion of any withdrawal if necessary to comply with applicable regulatory requirements.

(e) All payments required to be made by the Partnership with respect to a Limited Partner's withdrawal of his entire Capital Account pursuant to Section 6.2 or a retiring Limited Partner pursuant to Section 6.3, or to the Partnership by such a Limited

Partner, shall include an amount for interest, to the extent permitted by applicable law, computed for the period beginning on the Withdrawal Date or the Notice Date, as the case may be, and ending on the date of such payment, at a rate equal to the rate the Partnership earns on its own cash balances with its principal broker. No payments by the Partnership with respect to a Limited Partner's requested withdrawal of less than his entire Capital Account pursuant to Section 6.2, or to the Partnership by such a Limited Partner, shall bear interest.

Section 6.6 LIABILITY OF A PERSON WHO HAS CEASED TO BE A PARTNER.

A Person who has ceased to be a Partner shall continue to be liable for his proportionate share of Prior Accounting Period Items as provided in Section 5.6 in excess of his share of the reserves established pursuant to Section 6.5 and such Person shall pay to the Partnership his share of such amounts promptly on demand; provided, however, that such amount shall not exceed his Capital Account at the time he ceased to be a Partner.

ARTICLE VII

TRANSFER OF PARTNERSHIP INTERESTS; ADMISSION OF NEW PARTNERS

Section 7.1 TRANSFER OF GENERAL PARTNER'S INTEREST.

(a) The General Partner shall not transfer, sell, assign, gift, pledge or otherwise encumber or dispose of ("Transfer") all or any part of its Partner's Interest without the prior consent of Limited Partners then holding two-thirds of the Partner's Interests of all the Limited Partners. Any Person to whom the General Partner transfers all of its Partner's Interest in accordance with this Article VII shall, simultaneously with such transfer, become the General Partner and shall continue the business of the Partnership, and no dissolution of the Partnership shall be effected thereby.

(b) Notwithstanding the foregoing, the Transfer by the General Partner of all or any portion of its Partner's Interest to a Person of which at least 50% of the voting Securities, membership or similar interests are owned, directly or indirectly, by (i) MAG or by any Person who succeeds to the business of MAG substantially as an entirety, or (ii) Persons who in the aggregate then own at least 50% of the membership interests in MAG shall be permitted and shall not be subject to the requirements of Section 7.1(a).

Section 7.2 TRANSFER OF INTEREST BY LIMITED PARTNERS. No Limited Partner shall Transfer all or any part of his Partner's Interest (including any beneficial interest therein) without (a) the prior written consent of the General Partner (which may be withheld in the General Partner's sole discretion), and (b) if requested by the General Partner, in its sole discretion, the receipt by the General Partner not less than 10 days prior to the date of any such proposed Transfer of a written opinion of responsible counsel (who may be counsel for the Partnership), satisfactory in form and substance to the General Partner, to the effect that such Transfer would not result in (x) a violation of the Securities Act or of any "Blue Sky" laws or other securities laws of any state of the United States applicable to the Partnership or to the interest to be transferred (y) the Partnership's being required to register, or seek an exemption from registration, as an investment company under the Investment Company Act of 1940, as

amended or (z) the termination of the Partnership for tax purposes. Such opinion of counsel shall also cover such other matters as the General Partner may reasonably request. Each Limited Partner that Transfers all or any part of his Partner's Interest shall pay all expenses, including attorneys' fees, incurred by the Partnership or the General Partner in connection with such transfer.

Section 7.3 DEATH OR LEGAL INCAPACITY OF LIMITED PARTNERS. In the event of the death or legal incapacity of a Limited Partner, the executor, administrator or legal representative of such Limited Partner shall succeed to the rights and obligations of such deceased or incompetent Partner, subject to the provisions of this Agreement, including but not limited to the provisions of Section 6.3 and Section 6.5. The Partnership shall not be dissolved or terminated by reason of the withdrawal, retirement, death, bankruptcy, incompetency, disability or admission of any Partner except as provided in Article VIII.

Section 7.4 ADMISSION OF PARTNERS. The General Partner may admit additional Limited Partners to the Partnership either on the first Business Day of any Fiscal Quarter or on any other date or dates selected by the General Partner. Upon the consent of the General Partner and a Majority in Interest of the Limited Partners, additional general partners may be admitted to the Partnership at any time.

Section 7.5 ADDITIONAL OR SUBSTITUTED PARTNERS BOUND. As a condition to its ownership of a Partner's Interest, any Person to be admitted as an additional Partner or to receive a Partner's Interest by a Transfer (a "New Partner") shall become a mere assignee unless such New Partner, in addition to satisfying all other requirements in this Article VII, shall execute and acknowledge such instruments, in form and substance reasonably satisfactory to the General Partner, as the General Partner may deem necessary or desirable to effectuate such admission to the Partnership or Transfer, as well as to confirm that the New Partner has agreed to be bound by all the covenants, terms and conditions of this Agreement, as the same may have been amended. A New Partner who is mere assignee and who does not become a Partner hereunder has no right to require any information or account of the Partnership transactions, to inspect the Partnership books or to vote on any of the matters as to which a Limited Partner would be entitled to vote pursuant to this Agreement and shall be entitled only to receive the allocations of Net Income, Net Loss and other items and share of cash distributions to which he is entitled.

ARTICLE VIII

DISSOLUTION OF PARTNERSHIP

Section 8.1 DISSOLUTION OF PARTNERSHIP.

(a) Except as provided in Section 7.1 hereof, the Partnership shall be dissolved (1) upon the resignation, dissolution or commencement of winding up of the General Partner, (2) upon the determination of the General Partner, in its sole discretion, to dissolve the Partnership, (3) in the event that the General Partner (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief in any

bankruptcy or insolvency proceeding, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of a nature described in (iv) above, or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, custodian, receiver or liquidator of the General Partner or of all or any substantial part of its properties, (4) upon the expiration of one hundred twenty (120) days after the commencement of any proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, (5) if (i) within ninety (90) days after the appointment without its consent or acquiescence of a trustee, custodian, receiver or liquidator of the General Partner or of all or any substantial part of its properties, the appointment is not vacated or stayed, or if (ii) within ninety (90) days after the expiration of any such stay, the appointment is not vacated, or (6) any other event occurs which under the Act causes the General Partner to cease to be a general partner of the Partnership, unless, in any such case, a Majority in Interest of the Limited Partners elects to continue the business of the Partnership and appoint, effective as of the event giving rise to such election, a new General Partner within ninety (90) days after such event. If a Majority in Interest of the Limited Partners so elects to continue the Partnership business, an appropriate amendment to the Partnership's Certificate of Limited Partnership shall be filed immediately after such election is made.

(b) Dissolution of the Partnership shall be effective on the day on which the event occurs giving rise to the dissolution, but the Partnership shall not terminate until the Partnership's Certificate of Limited Partnership has been canceled and the assets of the Partnership have been distributed as provided in Section 8.2 below.

(c) If the Partnership shall be dissolved for any reason, no further business shall be conducted except for the taking of such action as shall be necessary (i) for the preservation of Partnership assets, (ii) to conduct an accounting of the Partnership's assets, liabilities and operations to the date of dissolution, (iii) for the winding up of the affairs of the Partnership and (iv) for the distribution of its assets to the Partners pursuant to the provisions of Section 8.2. Upon such dissolution, the General Partner shall be the liquidator to wind up the affairs of the Partnership, except that if there shall be no General Partner, a Majority in Interest of the Limited Partners as of the date of dissolution of the Partnership may appoint one or more other liquidators. Such Person(s) (the "Liquidator") appointed as liquidator shall take all steps necessary or appropriate to wind up the affairs of the Partnership as promptly as practicable thereafter.

Section 8.2 PROCEDURE ON WINDING UP.

(a) Upon the winding up of the Partnership, a full account of the assets and liabilities of the Partnership shall be taken, the assets of the Partnership shall be liquidated to the extent determined by the Liquidator and the gains and losses allocated to the Partners in accordance with Article V hereof and the Partners' Capital Accounts adjusted accordingly, and the value of the remaining non-cash assets of the Partnership

and the Partnership's Net Income or Net Loss for the final Fiscal Year shall be determined and the Partners' Capital Accounts adjusted accordingly. As promptly as practicable, the assets of the Partnership shall be applied in the following order of priority:

(i) to the payment of all debts, taxes, obligations and liabilities of the Partnership, including the expenses of liquidation; and

(ii) to the payment to Partners of their remaining Capital Accounts in proportion to the amounts thereof with the effect of bringing such Capital Accounts to zero.

(b) In the winding up of the Partnership, the Liquidator may establish reserves in such amounts determined by the Liquidator and upon the determination by the Liquidator that such reserves are no longer appropriate, then the amount, if any, remaining in such reserves shall be distributed as provided in Section 8.2(a)(ii).

(c) Distributions to a Partner pursuant to Section 8.2(a)(ii) may be in installments and shall be made in cash or, at the discretion of the Liquidator, in Securities selected by the Liquidator, or partly in cash and partly in Securities selected by the Liquidator.

(d) Upon the winding up of the Partnership, the name of the Partnership and its goodwill shall not be appraised, sold or otherwise liquidated but shall remain the exclusive property of MAG.

(e) Within ninety (90) days after the completion of the winding up of the Partnership, the Liquidator shall cause to be prepared and forwarded to each Partner a final statement and report of the Partnership.

(f) A Liquidator other than the General Partner shall be entitled to reasonable compensation for his services in winding up the Partnership.

(g) A Limited Partner shall look solely to the assets of the Partnership for the return of his capital, and if Partnership assets remaining after the payment or discharge of the debts and liabilities of the Partnership are insufficient to return his capital, he shall have no recourse against the General Partner, any Limited Partner or any Liquidator, or any of their respective officers, directors, partners, members, employees or agents.

ARTICLE IX

INDEMNIFICATION OF GENERAL PARTNER

Section 9.1 EXCULPATION, INDEMNIFICATION AND CONTRIBUTION. The General Partner shall not be liable to the Partnership or to the Partners for (i) any act or omission performed or omitted by it, or for any costs, damages or liabilities arising therefrom, in the absence of willful misfeasance or bad faith by the General Partner, (ii) any tax liability imposed on the Partnership or any Limited Partner, or (iii) any losses due to the gross negligence of any

Partner, employee, broker or other agent of the Partnership (whether or not such Persons are directly employed by the General Partner). In the event that the General Partner becomes involved in any capacity in any action, proceeding or investigation in connection with any matter arising out of or in connection with the Partnership's business or affairs, the Partnership will periodically advance the General Partner for costs, expenses and charges incurred for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith, provided that the General Partner shall promptly repay to the Partnership the amount of any such advances not expended or if it shall ultimately be determined that the General Partner is not entitled to be indemnified by the Partnership in connection with such action, proceeding or investigation as provided in the exception contained in the next succeeding sentence. The Partnership will also indemnify the General Partner against any losses, claims, damages, liabilities or costs, including attorneys' and other professionals' fees and costs, to which the General Partner may become subject in connection with any matter arising out of or in connection with the Partnership's business or affairs (including but not limited to the General Partner's "soft dollar" practices described in the Confidential Private Placement Memorandum of the Partnership), except to the extent that any such loss, claim, damage, liability or cost results solely from the willful misfeasance or bad faith of the General Partner. Any Person entitled to indemnity under this Section 9.1 may consult with recognized, outside legal counsel selected by the Partnership, and any action or omission taken or suffered in good faith in reliance on and in accordance with the opinion or advice of such counsel shall be conclusive evidence that such action or omission did not constitute willful misfeasance or bad faith. Unless there is a specific finding of willful misfeasance or bad faith (or where such a finding is an essential element of a judgment or order), the termination of any action, suit or proceeding by judgment, order or settlement, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption for the purposes of this Section 9.1 that the Person in question engaged in willful misfeasance or bad faith. If for any reason (other than the willful misfeasance or bad faith of the General Partner), the foregoing indemnification is unavailable to the General Partner, or insufficient to hold it harmless, then the Partnership shall contribute to the amount paid or payable by the General Partner as a result of such loss, claim, damage, liability or cost in such proportion as is appropriate to reflect not only the relative benefits received by the Partnership on the one hand and the General Partner on the other hand but also the relative fault of the Partnership and the General Partner, as well as any relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Partnership under this Section 9.1 shall be in addition to any liability that the Partnership may otherwise have, shall extend upon the same terms and conditions to the officers, employees and members (if any) of the General Partner, shall include the costs, charges and expenses of establishing the right to reimbursement, indemnity and contribution hereunder and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Partnership, the General Partner and any such Persons. The reimbursement, indemnity and contribution obligations of the Partnership under this Section 9.1 shall be limited to the amount of the Partners' aggregate Capital Accounts. The foregoing provisions shall survive any termination of this Agreement.

ARTICLE X

ALLOCATION OF INCOME FOR TAX PURPOSES

Section 10.1 CAPITAL GAINS AND LOSSES. For Federal income tax purposes, the aggregate of all items of gain, loss, income and deduction recognized by the Partnership in any Accounting Period and arising from "qualified financial assets" as defined in Treasury Regulations §1.704-3(e)(3)(ii) shall be allocated to the Partners in a manner which reduces the disparity between the book Capital Account balances and the tax Capital Account balances of the individual Partners in the manner provided in Treasury Regulations §1.704-3(e)(3)(iv)(C), as long as the Partnership is qualified to use such method under such Regulations.

Section 10.2 ALL OTHER TERMS OF GAIN, LOSS, INCOME AND DEDUCTION. Except as may be specifically provided in this Agreement to the contrary, all items of Partnership income, gain, loss, deduction and credit not described in Section 10.1 recognized by the Partnership in any Accounting Period shall be allocated among the Partners for Federal income tax purposes in a manner as to reflect equitable amounts credited or debited to each Partner's Capital Account for such Accounting Period and which takes account of any variation between the adjusted basis of the asset for tax purposes and its market value as reflected in the Partner's Capital Account. Such allocations will be made pursuant to the principles of Section 704(c) of the Code and in conformity with Treasury Regulations §§1.704-1(b)(2)(iv)(f) and 1.704-1(b)(4)(i) or any successor provisions. If any Partnership deduction for Federal income tax purposes arises as a result of an Incentive Allocation, such deduction shall be allocated among the Partners in accordance with the readjustment of their Capital Accounts pursuant to Section 5.2(b).

Section 10.3 ALLOCATION OF CAPITAL GAINS TO RETIRING PARTNERS. Notwithstanding Section 10.2 above, in the event a Partner withdraws all of his Capital Account from the Partnership, the General Partner in its sole discretion may make a special allocation to said Partner for Federal income tax purposes of the net capital gains recognized by the Partnership in such a manner as will reduce the amount, if any, by which such Partner's Liquidating Share exceeds his Federal income tax basis in his Partner's Interest prior to such allocation.

Section 10.4 TAX CAPITAL ACCOUNTS IN GENERAL. It is intended that the Capital Accounts be maintained at all times in accordance with Section 704 of the Code and applicable Treasury regulations thereunder, and that the provisions of this Agreement relating to the Capital Accounts be interpreted in a manner consistent therewith. The General Partner is authorized to make appropriate amendments to the allocations of items pursuant to this Section if necessary in order to comply with Section 704 of the Code or applicable Treasury regulations thereunder. Notwithstanding anything else contained in this Agreement, if any Limited Partner has a deficit Capital Account for any Accounting Period as a result of an adjustment, allocation or distribution described in Treasury Regulations §1.704-1(b)(2)(ii)(d)(4) through (6), the Partnership's income and gain will be specially allocated to such Limited Partner in an amount and manner sufficient to eliminate such deficit as quickly as possible in accordance with Treasury Regulations §1.704-1(b)(2)(ii)(d).

Section 10.5 ADMINISTRATIVE MATTERS.

(a) Federal, state and local income (and other) tax returns shall be prepared and filed by or at the direction of the General Partner covering operations reportable by the Partnership. The General Partner shall also cause to be prepared and distributed to all Partners a Schedule K-1 or comparable statement of information after the end of each Fiscal Year.

(b) The General Partner shall be appointed the Tax Matters Partner of the Partnership and shall be empowered to resolve the appropriate tax treatment of Partnership items of income, deduction or credit and to serve as the primary liaison between the Internal Revenue Service and the Partnership and its Partners.

(c) Upon the transfer of all or part of a Partner's Interest, the death of an individual Partner, or the distribution of any Partnership property to any Partner, the Partnership, at the General Partner's option, may make any available election to cause the basis of the Partnership properties to be adjusted for Federal income tax purposes as provided by Sections 734, 743 and 754, respectively, of the Code; similar elections under provisions of state and local income tax laws may also be made at the General Partner's option.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.1 MAINTAINING BOOKS OF ACCOUNT. Proper and complete books of account shall be kept at all times and shall be open to inspection by any Partner or his accredited representative at reasonable times during office hours.

Section 11.2 AUDIT OF BOOKS. The books of account and records of the Partnership shall be audited as of the end of each Fiscal Year by independent certified public accountants designated from time to time by the General Partner. The General Partner shall use its best efforts to cause a copy of such audited financial statements to be delivered to each Limited Partner not later than 90 days after the close of the Fiscal Year.

Section 11.3 NOTICES. All notices provided for under this Agreement shall be in writing and shall be sufficient if sent by first-class mail to the last-known address of the party to whom such notice is to be given, provided, however, that unless the Partnership is notified to the contrary, notices to the Limited Partners will be mailed to the address(es) set forth for them in the subscription agreements pursuant to which they first invested in the Partnership.

Section 11.4 AMENDMENT OF AGREEMENT.

(a) This Agreement may be amended by the General Partner to admit additional Partners or in any manner that does not materially adversely affect any Limited Partner. This Agreement may also be amended by action taken by both (i) the General Partner and (ii) a Majority in Interest of the Limited Partners determined at the time of

the amendment, provided that such amendment does not discriminate among the Limited Partners.

(b) This Agreement may be amended by the General Partner without further notice to the Limited Partners so as to comply with any applicable rule, regulation or statute including, without limitation, the Commodities Exchange Act, as amended.

Section 11.5 FURTHER ASSURANCES. Each of the Limited Partners agrees hereafter to execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements and other documents and to take all such further action as may be required by law or deemed by the General Partner to be necessary or useful in furtherance of the Partnership's purposes and the objectives and intentions underlying this Agreement and not inconsistent with the terms hereof.

Section 11.6 POWER OF ATTORNEY. Each Partner does hereby constitute and appoint the General Partner and each officer of the General Partner as such Partner's true and lawful representative and attorney-in-fact, in such Partner's name, place and stead to:

(a) make, execute, sign and file a Certificate of Limited Partnership of the Partnership, any amendment thereof required by law or deemed advisable by the General Partner and all such other instruments, documents and certificates as may from time to time be required by the laws of the United States of America, the States of California and/or New York and any other state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement or continue the valid subsisting existence of the Partnership; and

(b) make, execute and sign all consents, approvals, waivers, certificates and other instruments, including without limitation amendments to this Agreement, that the General Partner deems appropriate or necessary to make, evidence, give, confirm or ratify any vote, consent, approval, waiver, agreement, or other action made or given by the Partners under this Agreement or consistent with the terms of this Agreement or to effectuate the terms or intent of this Agreement; provided, however, that when required by any provision of this Agreement which establishes that the consent or approval of Limited Partners is required to take any action, the General Partner may exercise the power of attorney made in this Section only if the necessary consent or approval by the Limited Partners is obtained.

The foregoing power of attorney is coupled with an interest and shall continue in full force and effect notwithstanding the subsequent death, incapacity, bankruptcy or dissolution of any Partner.

Section 11.7 CONSENT TO JURISDICTION. Each Partner:

(a) irrevocably submits to the nonexclusive jurisdiction of the federal and state courts of the State of California for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or in any way connected to the dealings of any Partner or the Partnership in connection with any of the above; and

(b) waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such proceeding brought in any of the above-named courts, any claim that such Partner is not subject personally to the jurisdiction of such court, that such Partner's property is exempt or immune from attachment or execution, that such proceeding is brought in an inconvenient forum, that the venue of such proceeding is improper, or that this Agreement or the subject matter hereof, may not be enforced in or by such court.

Section 11.8 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTNER WAIVES, AND COVENANTS THAT SUCH PARTNER WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH THE DEALINGS OF ANY PARTNER OR THE PARTNERSHIP IN CONNECTION WITH ANY OF THE ABOVE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE. The Partnership or any Partner may file an original counterpart or a copy of this Section 11.8 with any court as written evidence of the consent of the Partners to the waiver of their rights to trial by jury

Section 11.9 INVESTMENT REPRESENTATION. Each Limited Partner, by executing this Agreement, represents and warrants that he is an "accredited investor", as defined in Regulation D under the Securities Act, with a net worth of more than \$1,500,000; that he has acquired his Partner's Interest solely for his own account and for investment purposes and not with a view to the resale or distribution thereof; and that he is fully aware that, in agreeing to admit him as a Limited Partner, the General Partner and the Partnership are relying upon the truth and accuracy of this representation and warranty.

Section 11.10 NO BILL FOR PARTNERSHIP ACCOUNTING. Subject to mandatory provisions of law applicable to a Limited Partner and to circumstances involving a breach of this Agreement, each of the Partners covenants that it will not (except with the consent of the General Partner) file a bill for a partnership accounting of the Partnership.

Section 11.11 CAPTIONS AND CROSS-REFERENCES. The captions in this Agreement are for convenience only and shall not limit or define the text hereof. All cross-references in this Agreement, unless specifically directed to another agreement or document, refer to provisions in this Agreement, and shall not be deemed to be references to the overall transaction or to any other agreements or documents.

Section 11.12 GENDER AND NUMBER. As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine or the neuter and vice versa, as the context and the identity of the parties may require.

Section 11.13 SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to persons or

circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 11.14 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties relating to the Partnership. This Agreement supersedes any prior agreement or understanding among the parties and may not be modified or amended in any manner other than as set forth herein.

Section 11.15 GOVERNING LAW. ALL QUESTIONS WITH RESPECT TO THE CONSTRUCTION OF THIS AGREEMENT, AND THE RIGHTS AND LIABILITIES OF THE PARTIES, SHALL BE DETERMINED IN ACCORDANCE WITH THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA.

Section 11.16 BINDING EFFECT OF AGREEMENT. This Agreement, including Section 11.6 hereof, shall be binding on the successors, assigns, executors, heirs, administrators and legal representatives of each of the Partners.

Section 11.17 COUNTERPARTS. This Agreement may be executed in more than one counterpart with the same effect as if the Partners executing the several counterparts had all executed one counterpart.

Section 11.18 LEGAL REPRESENTATION. Each Limited Partner expressly acknowledges that the law firm of Sheppard, Mullin, Richter & Hampton LLP ("SMRH") has represented the General Partner in the preparation of this Agreement and related matters. Each limited partner further acknowledges and understands that at no time has SMRH represented any of the Limited Partners in the preparation of this Agreement or any matters related to the Fund.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date set forth next to their name.

GENERAL PARTNER:

M.A.G. CAPITAL, LLC

By: _____
David F. Firestone, Manager/President

Dated as of July 17, 2006

[See separate signature pages for Limited Partners]

[entity subscriber]

MERCATOR MOMENTUM FUND, L.P.

ADDITIONAL SIGNATURE PAGE
TO
AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

Dated as of _____, 2006

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the
_____ day of _____, 2006.

Name of Entity: _____

By: _____

Name: _____

Title: _____

Capital Contribution: \$ _____

[individual subscriber]

MERCATOR MOMENTUM FUND, L.P.

ADDITIONAL SIGNATURE PAGE
TO

AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

Dated as of _____, 2006

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the
_____ day of _____, 2006.

Name: _____

Capital Contribution: \$ _____

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.1 "ACCOUNTING PERIOD"	1
Section 1.2 "ACT"	1
Section 1.3 "ADMINISTRATIVE EXPENSES"	1
Section 1.4 "BUSINESS DAY"	1
Section 1.5 "CAPITAL ACCOUNT"	1
Section 1.6 "CAPITAL CONTRIBUTIONS"	1
Section 1.7 "CERTIFICATE"	1
Section 1.8 "CODE"	1
Section 1.9 "DIRECT COSTS"	2
Section 1.10 "DUE DILIGENCE FEES"	2
Section 1.11 "EXCLUDED SECURITY"	2
Section 1.12 "FISCAL QUARTER"	2
Section 1.13 "FISCAL YEAR"	2
Section 1.14 "GENERAL PARTNER"	2
Section 1.15 "INCENTIVE ALLOCATION"	2
Section 1.16 "LIQUIDATING SHARE"	2
Section 1.17 "LIQUIDATOR"	2
Section 1.18 "LOSS CARRYFORWARD"	2
Section 1.19 "MAG"	2
Section 1.20 "MAJORITY IN INTEREST OF THE LIMITED PARTNERS"	2
Section 1.21 "MANAGEMENT FEE"	3
Section 1.22 "NET INCOME" or "NET LOSS"	3
Section 1.23 "ORGANIZATION AND OFFERING COSTS"	3
Section 1.24 "PARTNERS"	3
Section 1.25 "PARTNERSHIP"	3
Section 1.26 "PARTNER'S INTEREST"	3
Section 1.27 "POST INVESTMENT ADVISORY FEES"	3
Section 1.28 "PERSON"	3
Section 1.29 "PRIOR ACCOUNTING PERIOD ITEMS"	3
Section 1.30 "SECURITIES"	3
Section 1.31 "UNRESTRICTED PARTNERS"	3
ARTICLE II ORGANIZATION AND PURPOSE	
Section 2.1 FORMATION AND TERM	3
Section 2.2 PARTNERSHIP NAME	4
Section 2.3 OFFICES	4
Section 2.4 CERTIFICATION	4
Section 2.5 PARTNERSHIP PURPOSE	4
Section 2.6 NUMBER OF PARTNERS	4
Section 2.7 CERTAIN RESTRICTIONS ON ACCEPTANCE OF LIMITED PARTNERS	4

ARTICLE III MANAGEMENT OF THE PARTNERSHIP; POWERS AND DUTIES OF THE PARTNERS4

Section 3.1 ACTIONS OF THE GENERAL PARTNER4

Section 3.2 POWERS OF THE GENERAL PARTNER.....5

Section 3.3 INVESTMENT MANAGER; MANAGEMENT FEE.....6

Section 3.4 INDEPENDENT ACTIVITIES OF THE PARTNERS7

Section 3.5 INVESTMENT OPPORTUNITIES8

Section 3.6 CONFLICTS OF INTEREST.....8

Section 3.7 LIMITED PARTNERS NOT TO BIND PARTNERSHIP8

Section 3.8 PARTNERSHIP EXPENSES.....8

ARTICLE IV CAPITAL CONTRIBUTIONS9

Section 4.1 INITIAL CAPITAL CONTRIBUTIONS.....9

Section 4.2 ADDITIONAL CAPITAL CONTRIBUTIONS.....9

Section 4.3 PARTNERSHIP CAPITAL.....9

Section 4.4 LIABILITY OF PARTNERS9

ARTICLE V CAPITAL ACCOUNTS AND ALLOCATIONS.....10

Section 5.1 CAPITAL ACCOUNTS10

Section 5.2 ALLOCATIONS.....10

Section 5.3 NEW ISSUE ALLOCATION.....11

Section 5.4 CREDITS AND CHARGES TO CAPITAL ACCOUNTS.....12

Section 5.5 TRANSFERS OF PARTNER'S INTEREST14

Section 5.6 PRIOR ACCOUNTING PERIOD ITEMS.....14

ARTICLE VI WITHDRAWALS15

Section 6.1 GENERAL PARTNER'S RIGHT TO WITHDRAW15

Section 6.2 LIMITED PARTNERS' RIGHT TO WITHDRAW15

Section 6.3 MANDATORY RETIREMENT15

Section 6.4 METHOD OF DISTRIBUTION16

Section 6.5 PAYMENTS UPON WITHDRAWAL, MANDATORY RETIREMENT, DEATH, INSOLVENCY, INCAPACITY OR LEGAL DISABILITY OF A LIMITED PARTNER16

Section 6.6 LIABILITY OF A PERSON WHO HAS CEASED TO BE A PARTNER18

ARTICLE VII TRANSFER OF PARTNERSHIP INTERESTS; ADMISSION OF NEW PARTNERS18

Section 7.1 TRANSFER OF GENERAL PARTNER'S INTEREST18

Section 7.2 TRANSFER OF INTEREST BY LIMITED PARTNERS.....18

Section 7.3 DEATH OR LEGAL INCAPACITY OF LIMITED PARTNERS19

Section 7.4 ADMISSION OF PARTNERS.....19

Section 7.5 ADDITIONAL OR SUBSTITUTED PARTNERS BOUND.....19

ARTICLE VIII DISSOLUTION OF PARTNERSHIP19

Section 8.1 DISSOLUTION OF PARTNERSHIP19

Section 8.2 PROCEDURE ON WINDING UP20

ARTICLE IX INDEMNIFICATION OF GENERAL PARTNER21
 Section 9.1 EXCULPATION, INDEMNIFICATION AND CONTRIBUTION21

ARTICLE X ALLOCATION OF INCOME FOR TAX PURPOSES23
 Section 10.1 CAPITAL GAINS AND LOSSES23
 Section 10.2 ALL OTHER TERMS OF GAIN, LOSS, INCOME AND DEDUCTION23
 Section 10.3 ALLOCATION OF CAPITAL GAINS TO RETIRING PARTNERS23
 Section 10.4 TAX CAPITAL ACCOUNTS IN GENERAL23
 Section 10.5 ADMINISTRATIVE MATTERS24

ARTICLE XI MISCELLANEOUS PROVISIONS24
 Section 11.1 MAINTAINING BOOKS OF ACCOUNT24
 Section 11.2 AUDIT OF BOOKS24
 Section 11.3 NOTICES24
 Section 11.4 AMENDMENT OF AGREEMENT24
 Section 11.5 FURTHER ASSURANCES25
 Section 11.6 POWER OF ATTORNEY25
 Section 11.7 CONSENT TO JURISDICTION. Each Partner25
 Section 11.8 WAIVER OF JURY TRIAL26
 Section 11.9 INVESTMENT REPRESENTATION26
 Section 11.10 NO BILL FOR PARTNERSHIP ACCOUNTING26
 Section 11.11 CAPTIONS AND CROSS-REFERENCES26
 Section 11.12 GENDER AND NUMBER26
 Section 11.13 SEVERABILITY26
 Section 11.14 ENTIRE AGREEMENT27
 Section 11.15 GOVERNING LAW27
 Section 11.16 BINDING EFFECT OF AGREEMENT27
 Section 11.17 COUNTERPARTS27
 Section 11.18 LEGAL REPRESENTATION27

2/7/05
PPM

**THIRD AMENDMENT TO
MERCATOR MOMENTUM FUND, L.P.
LIMITED PARTNERSHIP AGREEMENT**

THIS THIRD AMENDMENT TO MERCATOR MOMENTUM FUND, L.P. LIMITED PARTNERSHIP AGREEMENT (the "Amendment") is dated as of ~~October 13, 2004~~ and is entered into by and between Mercator Momentum Fund, L.P. (the "Fund"), Mercator Advisory Group, LLC, the Fund's General Partner, and the undersigned Limited Partner of the Fund with respect to that certain Mercator Momentum Fund, L.P. Limited Partnership Agreement dated February 1, 2002 (the "Limited Partnership Agreement").

1. Amendment of Limited Partnership Agreement.

a. The first sentence of Section 3.3 (b), is hereby amended in its entirety to read as follows: "With respect to each Limited Partner's Capital Account, the Partnership will pay the General Partner (or any other Person designated by the General Partner) a quarterly Management Fee (the "Management Fee") in advance, equal to one and one-half (1.75%) percent per annum (0.438% per quarter) of the amount of such Capital Account."

b. A new Section 3.3 (c) is hereby added to the Limited Partnership Agreement to read as follows: "In addition to the Management Fee and any Incentive Allocation, the General Partner may from time to time receive a due diligence fee paid by a third party in or with which the assets of the Partnership are invested (the "General Partner Due Diligence Fee"). The General Partner shall allocate twenty percent (20%) of any General Partner Due Diligence Fee it receives to the Partnership. In cases where the assets of the Partnership and other funds managed by the General Partner are invested in a third party, twenty percent (20%) of any General Partner Due Diligence Fee shall be allocated among the Partnership and the other funds on a pro rata basis. The General Partner may, in its discretion, waive all or part of the General Partner Due Diligence Fee otherwise due. "

c. The first sentence of Section 5.2 (b), is hereby amended in its entirety to read as follows: "As of the close of each Fiscal Quarter, an amount equal to twenty percent (20%) of the Net Increase Amount (as defined below), if any, with respect to each Limited Partner for that Fiscal Quarter shall be charged to the Capital Account of such Limited Partner and shall be credited to the General Partner's Capital Account (the "Incentive Allocation").

2. Confirmation of Limited Partnership Agreement. Except as expressly provided in this Amendment, the Limited Partnership Agreement shall remain in full force and effect and is hereby ratified and confirmed.

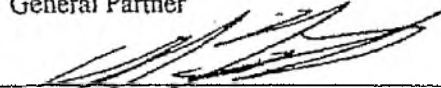
Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to Mercator Momentum Fund, LP Limited Partnership Agreement be executed as of the date first written above.

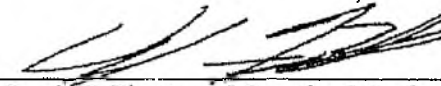
MERCATOR MOMENTUM FUND, L.P.

By: Mercator Advisory Group, LLC

Its: General Partner

By: 
David F. Firestone, Managing Member

MERCATOR ADVISORY GROUP, LLC

By: 
David F. Firestone, Managing Member

LIMITED PARTNER

By: _____

Print Name: _____

Title: (if other than an individual) _____

MERCATOR MOMENTUM FUND, L.P.

Limited Partnership Agreement

Dated as of February 1, 2002

TABLE OF CONTENTS

ARTICLE I	DEFINITIONS	1
Section 1.1	"ACCOUNTING PERIOD"	1
Section 1.2	"ACT"	1
Section 1.3	"ADMINISTRATIVE EXPENSES"	1
Section 1.4	"BUSINESS DAY"	1
Section 1.5	"CAPITAL ACCOUNT"	1
Section 1.6	"CAPITAL CONTRIBUTIONS"	1
Section 1.7	"CERTIFICATE"	1
Section 1.8	"CODE"	1
Section 1.9	"DIRECT COSTS"	2
Section 1.10	"EXCLUDED SECURITY"	2
Section 1.11	"FISCAL QUARTER"	2
Section 1.12	"FISCAL YEAR"	2
Section 1.13	"GENERAL PARTNER"	2
Section 1.14	"INCENTIVE ALLOCATION"	2
Section 1.15	"LIQUIDATING SHARE"	2
Section 1.16	"LIQUIDATOR"	2
Section 1.17	"LOSS CARRYFORWARD"	2
Section 1.18	"MANAGEMENT FEE"	2
Section 1.19	"NET INCOME" or "NET LOSS"	2
Section 1.20	"ORGANIZATION AND OFFERING COSTS"	2
Section 1.21	"PARTNERS"	3
Section 1.22	"PARTNERSHIP"	3
Section 1.23	"PARTNER'S INTEREST"	3
Section 1.24	"PERSON"	3
Section 1.25	"PRIOR ACCOUNTING PERIOD ITEMS"	3
Section 1.26	"SECURITIES"	3
Section 1.27	"UNRESTRICTED PARTNERS"	3
ARTICLE II	ORGANIZATION AND PURPOSE	3
Section 2.1	FORMATION AND TERM	3
Section 2.2	PARTNERSHIP NAME	3
Section 2.3	OFFICES	4
Section 2.4	CERTIFICATION	4
Section 2.5	PARTNERSHIP PURPOSE	4
Section 2.6	NUMBER OF PARTNERS	4
Section 2.7	CERTAIN RESTRICTIONS ON ACCEPTANCE OF LIMITED PARTNERS	4
ARTICLE III	MANAGEMENT OF THE PARTNERSHIP; POWERS AND DUTIES OF THE PARTNERS	4
Section 3.1	ACTIONS OF THE GENERAL PARTNER	4
Section 3.2	POWERS OF THE GENERAL PARTNER	5
Section 3.3	INVESTMENT MANAGER; MANAGEMENT FEE	6

Section 3.4	INDEPENDENT ACTIVITIES OF THE PARTNERS.....	7
Section 3.5	INVESTMENT OPPORTUNITIES.....	7
Section 3.6	CONFLICTS OF INTEREST.....	7
Section 3.7	LIMITED PARTNERS NOT TO BIND PARTNERSHIP.....	7
Section 3.8	PARTNERSHIP EXPENSES.....	8
ARTICLE IV	CAPITAL CONTRIBUTIONS.....	8
Section 4.1	INITIAL CAPITAL CONTRIBUTIONS.....	8
Section 4.2	ADDITIONAL CAPITAL CONTRIBUTIONS.....	8
Section 4.3	PARTNERSHIP CAPITAL.....	8
Section 4.4	LIABILITY OF PARTNERS.....	8
ARTICLE V	CAPITAL ACCOUNTS AND ALLOCATIONS.....	9
Section 5.1	CAPITAL ACCOUNTS.....	9
Section 5.2	ALLOCATIONS.....	9
Section 5.3	HOT ISSUES.....	10
Section 5.4	CREDITS AND CHARGES TO CAPITAL ACCOUNTS.....	11
Section 5.5	TRANSFERS OF PARTNER'S INTEREST.....	13
Section 5.6	PRIOR ACCOUNTING PERIOD ITEMS.....	13
ARTICLE VI	WITHDRAWALS.....	14
Section 6.1	GENERAL PARTNER'S RIGHT TO WITHDRAW.....	14
Section 6.2	LIMITED PARTNER'S RIGHT TO WITHDRAW.....	14
Section 6.3	MANDATORY RETIREMENT.....	14
Section 6.4	METHOD OF DISTRIBUTION.....	15
Section 6.5	PAYMENTS UPON WITHDRAWAL, MANDATORY RETIREMENT, DEATH, INSOLVENCY, INCAPACITY OR LEGAL DISABILITY OF A LIMITED PARTNER.....	15
Section 6.6	LIABILITY OF A PERSON WHO HAS CEASED TO BE A PARTNER.....	17
ARTICLE VII	TRANSFER OF PARTNERSHIP INTERESTS; ADMISSION OF NEW PARTNERS.....	17
Section 7.1	TRANSFER OF GENERAL PARTNER'S INTEREST.....	17
Section 7.2	TRANSFER OF INTEREST BY LIMITED PARTNERS.....	17
Section 7.3	DEATH OR INCAPACITY OF LIMITED PARTNERS.....	18
Section 7.4	ADMISSION OF PARTNERS.....	18
Section 7.5	ADDITIONAL OR SUBSTITUTED PARTNERS BOUND.....	18
ARTICLE VIII	DISSOLUTION OF PARTNERSHIP.....	18
Section 8.1	DISSOLUTION OF PARTNERSHIP.....	18
Section 8.2	PROCEDURE ON WINDING UP.....	19
ARTICLE IX	INDEMNIFICATION OF GENERAL PARTNER.....	20
Section 9.1	EXCULPATION, INDEMNIFICATION AND CONTRIBUTION.....	20

ARTICLE X	ALLOCATION OF INCOME FOR TAX PURPOSES.....	21
Section 10.1	CAPITAL GAINS AND LOSSES.....	21
Section 10.2	ALL OTHER TERMS OF GAIN, LOSS, INCOME AND DEDUCTION.....	22
Section 10.3	ALLOCATION OF CAPITAL GAINS TO RETIRING PARTNERS.....	22
Section 10.4	TAX CAPITAL ACCOUNTS IN GENERAL.....	22
Section 10.5	ADMINISTRATIVE MATTERS.....	22
ARTICLE XI	MISCELLANEOUS PROVISIONS.....	23
Section 11.1	MAINTAINING BOOKS OF ACCOUNT.....	23
Section 11.2	AUDIT OF BOOKS.....	23
Section 11.3	NOTICES.....	23
Section 11.4	AMENDMENT OF AGREEMENT.....	23
Section 11.5	FURTHER ASSURANCES.....	24
Section 11.6	POWER OF ATTORNEY.....	24
Section 11.7	CONSENT TO JURISDICTION.....	24
Section 11.8	WAIVER OF JURY TRIAL.....	25
Section 11.9	INVESTMENT REPRESENTATION.....	25
Section 11.10	NO BILL FOR PARTNERSHIP ACCOUNTING.....	25
Section 11.11	CAPTIONS AND CROSS-REFERENCES.....	25
Section 11.12	GENDER AND NUMBER.....	25
Section 11.13	SEVERABILITY.....	25
Section 11.14	ENTIRE AGREEMENT.....	26
Section 11.15	GOVERNING LAW.....	26
Section 11.16	BINDING EFFECT OF AGREEMENT.....	26
Section 11.17	COUNTERPARTS.....	26

LIMITED PARTNERSHIP AGREEMENT

of

MERCATOR MOMENTUM FUND, L.P.

This AGREEMENT OF LIMITED PARTNERSHIP (the "Agreement") is dated as of February 1, 2002, and is entered into by and among Mercator Advisory Group, LLC, a California limited liability company ("MAG"), as General Partner, and all the parties who from time-to-time have executed a counterpart of this Agreement to become limited partners (each of which is a "Limited Partner", and all of which are, collectively, the "Limited Partners").

ARTICLE I

DEFINITIONS

Section 1.1 "ACCOUNTING PERIOD" shall mean any period (a) commencing on (i) the first day of each Fiscal Year, (ii) each date of any Capital Contribution to the Partnership, and (iii) each date next following the date of any withdrawal from the Partnership, and (b) ending on the date immediately preceding the date of commencement of a new Accounting Period.

Section 1.2 "ACT" shall mean the California Revised Uniform Limited Partnership Act, as the same may be amended from time to time.

Section 1.3 "ADMINISTRATIVE EXPENSES" shall refer to the following administrative expenses of the General Partner: office rent, secretarial/administrative services, salaries, insurance, payroll taxes and travel and entertainment expenses (other than travel for research purposes related to the Partnership).

Section 1.4 "BUSINESS DAY" shall mean any day when the banks in the United States are open for business.

Section 1.5 "CAPITAL ACCOUNT" shall mean the account maintained for each Partner pursuant to Article V hereof.

Section 1.6 "CAPITAL CONTRIBUTIONS" shall mean, for a Partner, the sum of the fair market values of all of such Partner's contributions to the capital of the Partnership in accordance with this Agreement, with any Capital Contributions in the form of marketable Securities valued in accordance with Section 5.4(c).

Section 1.7 "CERTIFICATE" shall mean the certificate of limited partnership mandated by Section 17-201 of the Act filed with respect to the Partnership.

Section 1.8 "CODE" shall mean the Internal Revenue Code of 1986, as the same may be amended from time to time.

Section 1.9 "DIRECT COSTS" shall refer to costs directly incurred for the benefit of the Partnership and generally attributable to goods and services provided to the Partnership by parties other than the General Partner. Direct Costs shall include, but not be limited to, legal, audit and advisory expenses and other expenses such as commissions, securities processing charges, exchange fees, transfer taxes, research fees, interest on margin accounts and other indebtedness, borrowing charges on securities sold short, custodial fees, travel for research purposes, electronic and office equipment, supplies, telephone, printing, stationery, postage, courier services, publications, subscriptions, memberships, service contracts for quotation equipment and newswires, data processing, software and support, data services and data bases, consulting services and any other expenses related to the purchase, sale or transmittal of Partnership assets as shall be determined by the General Partner in its sole discretion. In addition, Direct Costs shall include any legal fees and costs (including settlement costs) arising in connection with any litigation or regulatory investigation instituted against the Partnership or the General Partner in its capacity as such.

Section 1.10 "EXCLUDED SECURITY" shall have the meaning set forth in Section 5.3.

Section 1.11 "FISCAL QUARTER" shall mean any one of the three-month periods commencing on the 1st day of January, April, July or October of each year.

Section 1.12 "FISCAL YEAR" shall mean the calendar year.

Section 1.13 "GENERAL PARTNER" shall refer to MAG and its successors, if any, and additional Persons, if any, admitted pursuant to this Agreement, as general partner of the Partnership.

Section 1.14 "INCENTIVE ALLOCATION" shall have the meaning set forth in Section 5.2(b).

Section 1.15 "LIQUIDATING SHARE" shall have the meaning set forth in Section 6.5(b).

Section 1.16 "LIQUIDATOR" shall have the meaning set forth in Section 8.1.

Section 1.17 "LOSS CARRYFORWARD" shall have the meaning set forth in Section 5.2(e).

Section 1.18 "MAG" shall mean Mercator Advisory Group, LLC, a California limited liability company.

Section 1.19 "MAJORITY IN INTEREST OF THE LIMITED PARTNERS" shall mean Limited Partners owning fifty-one percent (51%) or more of the Partner's Interests of all the Limited Partners.

Section 1.20 "MANAGEMENT FEE" shall have the meaning set forth in Section 3.3(b).

Section 1.21 "NET INCOME" or "NET LOSS" shall have the meanings set forth in Section 5.4.

Section 1.22 "ORGANIZATION AND OFFERING COSTS" shall refer to legal, accounting and other costs of organizing the Partnership and the General Partner, and offering limited partnership interests in the Partnership, and any other initial organizational and offering expenses incurred by or on behalf of the Partnership and the General Partner, including charges of agents and depositories, duplicating, printing and mailing costs, filing fees, legal and accounting fees, taxes and other expenses incurred in connection with registering, qualifying or obtaining exemptions for the limited partnership interests under applicable Federal and state securities laws and incurred in connection with the compliance with investment adviser and general securities laws by the General Partner.

Section 1.23 "PARTNERS" shall mean collectively the General Partner and the Limited Partners. Reference to a "Partner" shall mean any one of the Partners.

Section 1.24 "PARTNERSHIP" shall mean the limited partnership contemplated hereby, as such partnership may be constituted from time to time.

Section 1.25 "PARTNER'S INTEREST" with respect to a particular Partner on a particular date shall mean the fraction obtained by dividing the value of such Partner's Capital Account at such date by the aggregate value of the Capital Accounts of all Partners at such date.

Section 1.26 "PERSON" shall mean any individual, partnership, corporation, trust or other entity.

Section 1.27 "PRIOR ACCOUNTING PERIOD ITEMS" shall have the meaning set forth in Section 5.6.

Section 1.28 "SECURITIES" shall have the meaning set forth in Section 2.5.

Section 1.29 "UNRESTRICTED PARTNERS" shall have the meaning set forth in Section 5.3(b).

ARTICLE II

ORGANIZATION AND PURPOSE

Section 2.1 FORMATION AND TERM

(a) The Partnership was formed as a limited partnership on February 1, 2002 pursuant to the provisions of the Act. The existence of the Partnership commenced upon the filing with the Secretary of State of California of the Certificate in accordance with the provisions of the Act.

(b) The Partnership shall continue in perpetuity, unless earlier terminated by the General Partner, acting in its sole discretion.

Section 2.2 PARTNERSHIP NAME. The name of the Partnership is "Mercator Momentum Fund, L.P."

Section 2.3 OFFICES. The principal executive office of the General Partner shall be at 555 South Flower Street, Suite 4500, Los Angeles, CA 90071, or at such other place as the General Partner may choose from time to time.

Section 2.4 CERTIFICATION. The parties to this Agreement shall from time to time execute or cause to be executed all such certificates and other documents and do or cause to be done all such filing, recording, publishing and other acts as may be deemed necessary or appropriate by the General Partner in order to comply with the requirements of law for the formation and operation of a limited partnership in California and for the operation of a limited partnership in all other jurisdictions where the Partnership shall conduct business.

Section 2.5 PARTNERSHIP PURPOSE. The purpose of the Partnership is to serve as a fund through which the assets of its Partners may be utilized in investing, holding and trading in securities, other financial instruments and rights and options relating thereto (collectively referred to herein as "Securities"). It is the current intention of the General Partner to invest and trade primarily in equity securities of U.S. publicly-traded companies.

Section 2.6 NUMBER OF PARTNERS. The Partnership shall not at any time have more than 100 Partners or such lesser number as may be required for the Partnership to be excepted from the definition of an "investment company" pursuant to Section 3(c)(1) of the Investment Company Act of 1940, as amended.

Section 2.7 CERTAIN RESTRICTIONS ON ACCEPTANCE OF LIMITED PARTNERS.

(a) The Partnership shall not admit any Person as a Limited Partner who is not a "qualified client", as such term is defined in the Investment Advisers Act of 1940 Rule 205-3(d).

(b) The Partnership shall, at all times, ensure that less than 25% of the value of all Limited Partner's Interests are held by "benefit plan investors", as such term is used by the U.S. Department of Labor.

ARTICLE III

MANAGEMENT OF THE PARTNERSHIP; POWERS AND DUTIES OF THE PARTNERS

Section 3.1 ACTIONS OF THE GENERAL PARTNER. The General Partner shall have the sole discretion to make investments on behalf of the Partnership and to exercise the powers set forth in Section 3.2. The General Partner may cause the Partnership to engage one or more investment managers to make such investments and exercise some or all of such powers. To the extent it deems necessary or appropriate, the General Partner may also appoint such agents of the General Partner as it deems necessary or convenient, and any such agents shall hold

such offices and shall, under the direction of the General Partner, exercise such powers of the General Partner in the management of the Partnership and perform such duties in connection therewith as shall be determined from time to time by the General Partner.

Section 3.2 POWERS OF THE GENERAL PARTNER. The General Partner, subject to the restrictions herein contained, shall have the power on behalf of the Partnership:

- (a) To purchase, hold and sell Securities of any sort and rights therein, on margin or otherwise;
- (b) To sell short Securities of any sort and rights therein, on margin or otherwise, and to cover such short sales;
- (c) To write, purchase, hold, sell and otherwise deal in put and call options and any combination thereof on stocks, bonds and stock market indices;
- (d) To purchase, hold, sell and otherwise deal in financial futures and futures contracts relating to stock indices (and options thereon);
- (e) To purchase, hold, sell and otherwise deal in foreign currencies and futures contracts relating thereto (and options thereon);
- (f) To invest, hold and trade in interest rate, currency and any other kind of swap investments;
- (g) To invest, hold and trade in securities and other financial instruments of privately held issuers or which otherwise may not have a public market;
- (h) To vote, give assent and otherwise to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Securities owned by or other assets of the Partnership;
- (i) To maintain margin accounts with brokers; to pledge Securities for loans, and, in connection with any such pledge, to effect borrowings from brokers, banks and other financial institutions;
- (j) To open, maintain and close bank accounts; to draw checks or other orders for the payment of money; to deposit the funds of the Partnership in the Partnership name in any bank or brokerage account; to deposit with a bank or brokerage firm any of the Securities, monies, documents and papers belonging to or relating to the Partnership and to register such Securities in "street name"; and to transfer funds and Securities from time to time among such brokerage firms and banks;
- (k) To employ or consult such Persons or firms as it deems advisable for the operation and management of the Partnership, including, without limitation, brokers, accountants or attorneys, and including Persons or firms who may be Limited Partners;

(l) To incur all Direct Costs on behalf of the Partnership which it deems necessary or desirable;

(m) To cause the Partnership to reimburse the General Partner for all Organization and Offering Costs and/or Direct Costs paid by or on behalf of it;

(n) To purchase such policies of insurance as it deems reasonable, insuring the General Partner and the Partnership against liabilities that may arise out of the management or operation of the Partnership;

(o) To file documents, returns and reports with Federal and other taxing authorities, to make tax elections, including those under Section 754 of the Code, and to execute all instruments of any kind or character which it determines to be necessary or appropriate in connection with the operations of the Partnership, the execution thereof by it to be conclusive evidence of such determination;

(p) To institute, prosecute, defend, settle, compromise or otherwise adjust all claims (including, but not limited to, claims for taxes) and litigation arising out of the conduct of the affairs of the Partnership or in the enforcement of obligations due it, including all rights of appeal; and

(q) To enter into, make and perform any other contracts, agreements or other undertakings it may deem advisable in conducting the business of the Partnership, including but not limited to contracts, agreements or other undertakings with Persons or firms with which the General Partner or any other Partner is affiliated, and to act for and/or on behalf of the Partnership in all other matters.

Each of the Partners agrees that all determinations, decisions and actions made or taken by the General Partner shall be conclusive and absolutely binding upon the Partnership, the Partners and their respective successors, assigns, executors, heirs, administrators and legal representatives.

Section 3.3 INVESTMENT MANAGER: MANAGEMENT FEE.

(a) The Partnership shall engage the General Partner as the investment advisor to the Partnership pursuant to the Investment Management Agreement attached hereto as Annex 1, as such Investment Management Agreement may be amended from time to time. The General Partner may enter into any such amendment in its sole discretion.

(b) With respect to each Limited Partner's Capital Account, the Partnership will pay the General Partner (or any other Person designated by the General Partner) a quarterly Management Fee (the "Management Fee") in advance, equal to two percent (2%) per annum (0.5% per quarter) of the amount of such Capital Account. Such fee will be calculated based on the value of such Capital Account at the beginning of each Fiscal Quarter, and will be calculated before any Incentive Allocation is made from such Capital Account. The Management Fee for a Fiscal Quarter will be charged on a *pro rata* basis to a Limited Partner's Capital Account during the period beginning upon the first Business Day of that Fiscal Quarter (or, for the Fiscal Quarter in which a Limited Partner is first admitted as a Partner, the date of acceptance of such Limited Partner's subscription) and

ending upon the last Business Day of that Fiscal Quarter. The General Partner may, in its sole discretion, waive all or part of the Management Fee otherwise due with respect to any Limited Partner's Interest, by rebate or otherwise. The Capital Accounts of the General Partner and of its members, officers, affiliates and/or employees as Limited Partners, if any, will not be subject to the Management Fee, unless otherwise agreed to by such members, officers, affiliates and/or employees.

Section 3.4 INDEPENDENT ACTIVITIES OF THE PARTNERS. The General Partner agrees to devote so much of its time and effort in connection with the operations of the Partnership as in its sole discretion it deems necessary for the management of the affairs of the Partnership. Nothing contained in this Section shall preclude any member or officer of the General Partner from conducting, participating in or receiving compensation in respect of any other endeavors, including any endeavor involving Securities. Without limiting the generality of the foregoing, the General Partner, any member, officer or employee of the General Partner, and any member, officer, employee or owner of any member of the General Partner, may act as an investment adviser or investment manager for others, may manage funds or capital for others, and may own interests in one or more investment funds, partnerships, securities firms or advisory firms. The fact that one or more of the Partners is directly or indirectly interested in or is an officer or director or otherwise connected with any company with which the Partnership may have dealings or in the Securities of which the Partnership may invest, shall not preclude such dealings or investments or make them void or voidable. It is recognized that, in effecting transactions, it may not always be possible, or consistent with the investment objectives of the various Persons described above and of the Partnership, to take or liquidate the same investment positions at the same time(s) or at the same price(s).

Section 3.5 INVESTMENT OPPORTUNITIES. The General Partner and its members, officers, employees and affiliates shall not be obligated to present any particular investment opportunity to the Partnership, provided that the General Partner shall have acted in good faith in what it believed was in, or not inconsistent with, the best interests of the Partnership.

Section 3.6 CONFLICTS OF INTEREST. Each of the Limited Partners expressly acknowledges: (a) the provisions in the Investment Management Agreement relating to services to other clients and execution services; (b) that the General Partner and its members, officers, employees and affiliates may effect transactions, and may trade for their own account(s) in Securities and other assets in which the Partnership does or may invest; (c) that the General Partner and its members, officers, employees and affiliates may sell Securities to one another; (d) that such transactions and trading by the General Partner and/or its members, officers, employees and affiliates may create conflicts of interest between the General Partner and/or one or more of its members, officers, employees and affiliates, on one hand, and the Partnership and the Limited Partners, on the other; and (e) that the General Partner, and its members, officers, employees and affiliates when trading for their own account(s) are not required to cause or to permit the Partnership to participate in any such transactions. The General Partner will adopt operating procedures which, in its view, are reasonably designed to address the foregoing conflicts of interest, but each Limited Partner expressly acknowledges that there can be no assurance that such procedures will successfully resolve any such conflicts.

Section 3.7 LIMITED PARTNERS NOT TO BIND PARTNERSHIP. The Limited Partners shall take no part in the conduct or control of the Partnership business and shall have no authority or power to act for or bind the Partnership. The Limited Partners shall not hold themselves out as general partners or take any action on behalf of the Partnership or in any way commit the Partnership to any agreement or contract and shall have no right or authority to do any of the foregoing.

Section 3.8 PARTNERSHIP EXPENSES. The General Partner shall be authorized to incur all expenses on behalf of the Partnership which it deems necessary or desirable. The Partnership shall directly pay all Direct Costs and Administrative Expenses or shall reimburse the General Partner for all Direct Costs and Administrative Expenses.

ARTICLE IV

CAPITAL CONTRIBUTIONS

Section 4.1 INITIAL CAPITAL CONTRIBUTIONS. Each Limited Partner shall, concurrently with becoming a Limited Partner, make a Capital Contribution in the amount set forth opposite his name on a counterpart to the signature page of this Agreement. On or prior to February 1, 2002, the General Partner shall make a Capital Contribution in the amount of \$25,000. All Capital Contributions shall be recorded on the books and records of the Partnership. Each Capital Contribution shall be made in cash; provided, however, that the General Partner, in its sole discretion, may approve Capital Contributions in the form of marketable Securities (and, in such event, the contributed Securities shall be valued in accordance with Section 5.4(c)).

Section 4.2 ADDITIONAL CAPITAL CONTRIBUTIONS.

(a) A Partner may, with the consent of the General Partner, make additional Capital Contributions to the Partnership in such amounts and at such times as determined by the General Partner in its sole discretion.

(b) The General Partner shall be unconditionally obligated to make a Capital Contribution immediately prior to the liquidation of the Partnership, within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g), in such additional amount, if any, so that the total amount of the General Partner's Capital Account is at least equal to the lesser of (i) any deficit balance in the General Partner's Capital Account immediately prior to such liquidation, but after the allocation of Net Income or Net Loss for such Accounting Period, or (ii) the excess, if any, of 1.01% of the aggregate Capital Accounts of the Limited-Partners over the Capital Account of the General Partner immediately prior to such liquidation (and without regard to any Capital Contribution required pursuant to this Section 4.2(b)).

Section 4.3 PARTNERSHIP CAPITAL. The Capital Contributions of the Partners may be used for all purposes of the Partnership and as otherwise provided in this Agreement. In order to assure the continuing operations of the Partnership, no Partner shall be entitled to be paid interest on any Capital Contribution to the Partnership or to withdraw his Capital

Contribution, or to receive any return of any portion of his Capital Contribution or to receive any distributions from the Partnership, except as otherwise provided herein.

Section 4.4 LIABILITY OF PARTNERS. The liability of the Limited Partners shall be limited as set forth in the Act and no Limited Partner shall be required to make any Capital Contribution to the Partnership except (a) the amount indicated in Section 4.1 and (b) the amounts described in Section 6.6.

ARTICLE V

CAPITAL ACCOUNTS AND ALLOCATIONS

Section 5.1 CAPITAL ACCOUNTS. Capital accounts (the "Capital Accounts") shall be maintained for each Partner in accordance with Section 5.4. The initial balance of all such Capital Accounts (prior to Capital Contributions) shall be zero.

Section 5.2 ALLOCATIONS.

(a) Except as otherwise provided in this Article V, the Net Income or Net Loss of the Partnership for each Accounting Period shall be determined and allocated as of the close of business on the last Business Day of such Accounting Period to the Partners as follows:

(i) Net Income (exclusive of Net Income attributable to Excluded Securities) and Net Loss (exclusive of Net Loss attributable to Excluded Securities) shall be allocated among the Partners in proportion to their respective Partner's Interests as of the first day of such Accounting Period; and

(ii) Net Income attributable to Excluded Securities and Net Loss attributable to Excluded Securities shall be allocated among the Unrestricted Partners in proportion to their respective Partner's Interests as of the first day of such Accounting Period;

provided, however, that such Net Income or Net Loss shall be so determined and allocated prior to the charge and payment of the Management Fee, which shall be determined and allocated as set forth in Section 3.3.

(b) As of the close of each Fiscal Year, an amount equal to twenty percent (20%) of the Net Increase Amount (as defined below), if any, with respect to each Limited Partner for that Fiscal Year shall be charged to the Capital Account of such Limited Partner and shall be credited to the General Partner's Capital Account (the "Incentive Allocation"). With respect to any Fiscal Year, "Net Increase Amount" refers to the amount by which (x) any Net Income (determined without regard to any charge for or payment of any Management Fee) credited with respect to such Fiscal Year to the Capital Account of a Limited Partner, less any Management Fee charged to such Limited Partner's Capital Account with respect to such Fiscal Year, exceeds (y) such Limited Partner's Loss Carryforward (as defined below), if any. Solely for purposes of this

Section 5.2, a Fiscal Year shall be deemed to end (unless the General Partner otherwise determines) (i) at the end of a calendar year, (ii) as to any Limited Partner that withdraws funds pursuant to Section 6.2, at the close of business on the day immediately preceding the Withdrawal Date (as defined therein) (but only in respect of the funds withdrawn), (iii) as to any Limited Partner that is required by the General Partner to retire from the Partnership under Section 6.3, at the close of business on the Notice Date (as defined therein), (iv) as to any Limited Partner that transfers its Partner's Interest pursuant to Section 7.2, at the close of business on the day immediately preceding the transfer date, and (v) as to all the Partners, at the close of business on the day the Partnership terminates. Net Income and Net Loss previously allocated as provided above shall not be reallocated as a result of subsequent Net Loss. The General Partner may, in its sole discretion, waive all or part of the Incentive Allocation otherwise due with respect to any Limited Partner.

(c) "Loss Carryforward" with respect to any Fiscal Year refers to the amount, if any, by which (x) the cumulative sum of the Net Loss charged to a Limited Partner's Capital Account with respect to all Fiscal Years beginning after the close of the most recent Fiscal Year, if any, with respect to which there was no Loss Carryforward at the end thereof exceeds (y) the cumulative sum of the Net Income credited to such Limited Partner's Capital Account with respect to all Fiscal Years (other than the Fiscal Year then ending) beginning after the close of the most recent Fiscal Year, if any, with respect to which there was no Loss Carryforward at the end thereof. Notwithstanding the foregoing, a Loss Carryforward shall be deemed to exist, for these purposes, as of the end of a Fiscal Year as to any Limited Partner that is allocated a greater amount of Net Loss than Net Income in such Fiscal Year even if no Loss Carryforward existed as to such Limited Partner at the commencement of such Fiscal Year. The amount of a Limited Partner's Loss Carryforward, if any, shall be (i) proportionally reduced to the extent a Limited Partner requests the withdrawal of less than his entire Capital Account pursuant to Section 6.2 and (ii) allocated proportionally between the transferor and the transferee in the event of a transfer of a Partner's Interest by a Limited Partner pursuant to Section 7.2 (based upon the proportionate part of the Partner's Interest transferred). For purposes of determining the amount of a Limited Partner's Loss Carryforward, a distribution by the Partnership to a Limited Partner shall be treated as a withdrawal.

Section 5.3 HOT ISSUES. In the event the General Partner decides to cause the Partnership to invest in Securities which are the subject of a public distribution and which the General Partner, in its sole discretion, believes may become a "hot issue" as that term is defined in IM-2110-1 (the "Free-Riding Interpretation") of the Conduct Rules of the National Association of Securities Dealers, Inc. (the "NASD"), such investment (an investment in an "Excluded Security") shall be made in accordance with the following provisions:

(a) any investment in an Excluded Security made in a particular Accounting Period shall be made in a special account (the "Hot Issues Account");

(b) only those Partners who are not restricted persons under the Free-Riding Interpretation ("Unrestricted Partners") shall have any beneficial interest in the Hot Issues Account;

(c) each Unrestricted Partner shall have a beneficial interest in the Hot Issues Account for any Accounting Period in proportion to its respective Partner's Interest as of the first day of such Accounting Period;

(d) funds required to make a particular investment shall be transferred to the Hot Issues Account from the regular account of the Partnership. Excluded Securities shall be purchased in the Hot Issues Account, held in the Hot Issues Account and eventually sold from the Hot Issues Account; if such Excluded Securities are sold from the Hot Issues Account, the proceeds of the sale shall be transferred from the Hot Issues Account to the regular account of the Partnership; and

(e) the determination of the General Partner as to whether a particular Limited Partner is a restricted person under the Free-Riding Interpretation shall be final.

The General Partner reserves the right to modify the procedures set forth in this Section 5.3 in such manner as the General Partner, in its sole discretion, determines may be necessary or appropriate to comply with applicable laws or the rules or interpretations of any regulatory agency or self-regulatory organization (including the NASD). The General Partner further reserves the right to dispense with the procedures set forth in this Section 5.3 at any time when all of the Limited Partners are Unrestricted Partners.

Section 5.4 CREDITS AND CHARGES TO CAPITAL ACCOUNTS. The Capital Account of each Partner shall be credited and charged as follows:

(a) Such Capital Account shall be credited with (i) the amount of such Partner's Capital Contributions as of the date(s) of the Capital Contributions, (ii) the amount of Net Income allocated to such Partner pursuant to Section 5.2, (iii) in the case of the General Partner, the amounts of any Incentive Allocations credited to the General Partner pursuant to Section 5.2(b) or withdrawal fees credited pursuant to Section 6.5, and (iv) the amount of any credit to such Partner pursuant to and on the date specified in Section 5.6.

(b) Such Capital Account shall be charged with (i) the amount of cash or the fair market value of Securities distributed to or withdrawn by such Partner as of the date of such distribution or withdrawal, (ii) the amount of Net Loss allocated to such Partner pursuant to Section 5.2, (iii) in the case of each Limited Partner, the amounts of any Management Fee charged to such Limited Partner pursuant to Section 3.3, any Incentive Allocation charged to such Limited Partner pursuant to Section 5.2(b), and any withdrawal fee-charged to such Limited Partner pursuant to Section 6.5, and (iv) the amount of any debit to such Partner pursuant to and on the date specified in Section 5.6.

(c) "Net Income" or "Net Loss" for any Accounting Period shall be determined on an accrual basis of accounting in accordance with generally accepted accounting principles consistently applied and further in accordance with the following:

(i) Net Income and Net Loss shall include realized and unrealized profits and losses with respect to all Securities positions. In computing such realized and unrealized profits and losses, profit and loss shall mean for each

position held in a Security during any Accounting Period, the realized or unrealized appreciation or depreciation, as the case may be, with respect to such position, determined by comparing the net proceeds from the closing of such position or the market value of such position at the end of such Accounting Period with (x) the cost of such position if established during such Accounting Period or (y), if such position was established during a prior Accounting Period, the market value of such position at the end of the last preceding Accounting Period.

(ii) The market value of positions in Securities shall be determined as follows: Securities which are listed on the New York Stock Exchange and are freely transferable shall be valued at their last sales price on the consolidated tape on the date of determination, or, if no sales occurred on such day, at the "bid" price or, if sold short, at the "asked" price on the consolidated tape at the close of business on such day. Securities which are listed on a national securities exchange other than the New York Stock Exchange and are freely transferable shall be valued at their last sales price on the date of determination on the exchange that constitutes the principal market for such Securities, or, if no sales occurred on such day, at the "bid" price or, if sold short, at the "asked" price on such exchange at the close of business on such day. Securities traded over-the-counter which are freely transferable shall be valued at the last sales price on the date of determination, or, if no sales occurred on such day, at the "bid" price at the close of business on such day or, if sold short, at the "asked" price at the close of business on such day based on the average "bid" or asked" price (as the case may be) of such number of quotations obtained by the General Partner as the General Partner determines to be reasonable (which may be a single quotation). Notwithstanding the foregoing, if the Securities to be valued constitute a "block" which, in the sole judgment of the General Partner, could not be liquidated in a reasonable time without depressing the market, such block shall be valued at fair market value by the General Partner, but not at a unit value in excess of the quoted unit market price for such Securities. The foregoing valuation procedures may be modified by the General Partner upon reasonable notice to the other Partners.

(iii) Except as provided below, all assets of the Partnership other than as described in Section 5.4(c)(ii) above shall be valued in a manner determined by the General Partner to be reasonable.

(iv) There shall be deducted in computing Net Income and Net Loss accrued expenses for accounting and legal services in respect of the particular Accounting Period (whether performed prior to, during or subsequent to such Accounting Period), provided that the Partnership shall amortize its Organization and Offering Costs over a 60-month period.

(d) The amount and timing of all distributions of cash, Securities or other property to the Partners shall be in the sole discretion of the General Partner. The General Partner may withhold taxes from and charge them to the Capital Account of any Partner,

and pay the withholding taxes of any Partner, in each case to the extent required by the Code or any other applicable law.

(e) If a distribution of Securities is made, immediately prior to such distribution, the General Partner shall determine the fair market value of the Securities distributed and adjust the Capital Accounts of all Partners upwards or downwards to reflect the difference between the book value and the fair market value thereof, as if such gain or loss had been recognized upon an actual sale of such property and allocated pursuant to Section 5.2.

Section 5.5 TRANSFERS OF PARTNER'S INTEREST. In the event of a sale or assignment of a Partner's Interest, except to the extent that pursuant to a valid Treasury Department regulation a different method is required, the income, gains, losses, deductions and credits of the Partnership for the Fiscal Year in which such sale or assignment is recognized as provided in Article VII shall be allocated *pro rata* between the assignor and assignee of such Partner's Interest based on the periods of time during such Fiscal Year that such interest was owned by each, without regard to the periods during such Fiscal Year in which such income, losses, deductions and credits of the Partnership were actually realized; provided, however, that with respect to certain "cash basis items," including for this purpose, Partnership items of interest, taxes, payments for services, payments for the use of property and any other items designated as "cash basis items" under Section 706 of the Code and the Treasury regulations promulgated thereunder, such items shall be assigned to the appropriate period to which they are attributable by allocating such assigned portion based upon the interest owned by a Limited Partner during each such period.

Section 5.6 PRIOR ACCOUNTING PERIOD ITEMS. Anything herein to the contrary notwithstanding, with respect to any Accounting Period, any items of income, gain, loss, deduction or credit (including the elimination of all or any part of a reserve established in a prior Accounting Period) for such Accounting Period which are attributable to any Partnership matter or transaction occurring during a prior Accounting Period (such items of income, gain, loss, deduction or credit being referred to herein as "Prior Accounting Period Items") which in the aggregate exceed the lesser of (a) \$100,000 or (b) five percent of the aggregate Capital Accounts of all Partners at the beginning of such Accounting Period may, in the sole discretion of the General Partner, be allocated among the Partners (including Persons who have ceased to be Partners during or prior to such Accounting Period) in proportion to their respective Partner's Interests as of the first day of the prior Accounting Period with respect to which the prior Accounting Period Items arose (or, in the case of Prior Accounting Period Items relating to Excluded Securities, among the Unrestricted Partners having a beneficial interest in the Hot Issues Account relating to such Excluded Securities pursuant to Section 5.3). In the case of a Person who is a Partner during a current Accounting Period, the Prior Accounting Period Items arising during such current Accounting Period shall be considered an item of Net Income or Net Loss for such current Accounting Period for purposes of Section 5.2(b) and Section 5.2(c). In the case of a Person who is no longer a Partner during a current Accounting Period, the Prior Accounting Period Items arising during such current Accounting Period shall be considered an item of Net Income or Net Loss in the last Accounting Period in which such Person was a Partner for purposes of computing the allocation of such Prior Accounting Period Items between the Person who ceased to be a Partner and the General Partner.

ARTICLE VI

WITHDRAWALS

Section 6.1 GENERAL PARTNER'S RIGHT TO WITHDRAW. The General Partner shall have the right to withdraw all or any part of its Capital Account, including, but not limited to all or any part of the Incentive Allocation, at any time and from time to time with notice to the Limited Partners within a reasonable time after such withdrawal has been made. Notwithstanding the provisions of Section 6.2, any Limited Partner who is a member or portfolio manager of the General Partner, or who is a family member or affiliate of any such member or portfolio manager, shall have the right to withdraw all or any part of its Capital Account, at any time and from time to time upon notice to the General Partner and with notice to the other Limited Partners within a reasonable time after such withdrawal has been made. A Partner withdrawing his entire Capital Account shall be deemed to have retired (i.e., ceased to be a Partner) as of the date of such withdrawal.

Section 6.2 LIMITED PARTNERS' RIGHT TO WITHDRAW.

(a) Subject to the remaining provisions of this Article VI, and except as otherwise provided in this Agreement, each Limited Partner shall have the right to withdraw all or any part of its Capital Account, as of the first annual anniversary of making an initial Capital Contribution to the Partnership and as of every January 1st thereafter, or, if such day is not a Business Day, on the first Business Day following such date or at such other times as the General Partner determines in its sole discretion (the "Withdrawal Date").

(b) A Limited Partner may exercise his rights of withdrawal as set forth in Section 6.2(a) only upon giving written notice of exercise to the General Partner at least sixty (60) days prior to the requested Withdrawal Date (unless the General Partner, in its sole discretion, approves a withdrawal on shorter notice). A Limited Partner's written notice of withdrawal shall specify the amount desired to be withdrawn; provided, however, that in no event (unless the General Partner, in its sole discretion, approves a withdrawal of a greater amount) may such amount requested to be withdrawn be greater than the aggregate amount of Capital Contributions by such Limited Partner during the period ending twelve (12) months prior to the Withdrawal Date and not previously withdrawn by such Limited Partner. A Partner withdrawing his entire Capital Account shall be deemed to have retired (i.e., ceased to be a Limited Partner) as of the Withdrawal Date.

Section 6.3 MANDATORY RETIREMENT. Subject to the remaining provisions of this Article VI, and except as otherwise provided in this Agreement, if the General Partner, in its sole discretion, deems it to be in the best interests of the Partnership, the General Partner may require any Limited Partner to retire from the Partnership on the last day of any Fiscal Quarter by giving such Limited Partner (or his legal representative) written notice of such required retirement at least twenty (20) days before the end of such Fiscal Quarter. Without limiting the foregoing, the General Partner, in its sole discretion, may require any Limited Partner to retire from the Partnership upon any date designated by the General Partner by giving such Limited

Partner (or his legal representative) written notice of such required retirement at least five (5) days before such designated retirement date, if (A) such Limited Partner (i) dies, (ii) becomes incapacitated or legally disabled or (iii) becomes "Insolvent," defined as: (a) making an assignment for the benefit of creditors; (b) filing a voluntary petition in bankruptcy; (c) being adjudged a bankrupt or insolvent, or having entered against it an order for relief in any bankruptcy or insolvency proceeding; (d) filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (e) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; (f) seeking, consenting to, or acquiescing in the appointment of a trustee, custodian, receiver or liquidator; or (g) having issued against its Partner's Interest a charging order without the removal thereof within thirty (30) days after issuance, or if (B) the General Partner, in its sole discretion, determines that the continued participation of such Limited Partner or his legal representative might (x) cause the Partnership to violate any law, rule or regulation, (y) adversely affect the Partnership's status for tax purposes or under the Investment Company Act of 1940, as amended, or any other securities law(s), or (z) adversely affect the status of the General Partner or any of its affiliates under, or might cause the General Partner or any of its affiliates to violate, the Investment Advisers Act of 1940, as amended, or any similar law, or any rule or regulation promulgated thereunder. A Limited Partner required to retire pursuant to this Section 6.3 shall be deemed to have retired on the date set forth in the written notice given by the General Partner of such required retirement (the "Notice Date").

Section 6.4 METHOD OF DISTRIBUTION. All payments of Capital Account withdrawals pursuant to this Article VI shall be made in cash or, in the sole discretion of the General Partner, in Securities selected by the General Partner or partly in cash and partly in Securities selected by the General Partner; provided, however, that a Limited Partner may not be distributed more than his *pro rata* share of any restricted Securities held by the Partnership. Notwithstanding the foregoing, it is the intention of the Partnership, in general, to make distributions to withdrawing Partners in cash.

Section 6.5 PAYMENTS UPON WITHDRAWAL, MANDATORY RETIREMENT, DEATH, INSOLVENCY, INCAPACITY OR LEGAL DISABILITY OF A LIMITED PARTNER.

(a) Within sixty (60) days after the Withdrawal Date or Notice Date, as the case may be, with respect to a Limited Partner (or, in the sole discretion of the General Partner, within sixty (60) days after the end of the Fiscal Year during which a Notice Date occurs with respect to a Limited Partner dies or becomes Insolvent, incapacitated or legally disabled), the Partnership shall pay or distribute to such Limited Partner (or to the legal representative of such Partner) the following amount: (i) as to a Limited Partner requesting withdrawal of his entire Capital Account pursuant to Section 6.2 or retiring pursuant to Section 6.3, an amount equal in value to no less than 90% of the estimated amount of the Liquidating Share (as defined below) of such Partner; or (ii) as to a Limited Partner requesting withdrawal of less than his entire Capital Account pursuant to Section 6.2, an amount (the "Withdrawal Amount") equal in value to the lesser of (A) 90% of the estimated amount of the Liquidating Share of such Partner (as defined below) or (B) the amount of the requested withdrawal.

(b) As used herein "Liquidating Share" refers to the value of a Limited Partner's Capital Account, determined in accordance with Section 5.4(c) hereof as of the close of business on the Withdrawal Date or Notice Date, as the case may be, less (i) such Limited Partner's *pro rata* share of all debts, obligations, and liabilities of the Partnership (whether fixed, accrued, or unmatured), (ii) such Limited Partner's *pro rata* share of any reserves for contingent liabilities or obligations established in the sole discretion of the General Partner, (iii) a withdrawal fee payable to the Partnership equal to the accounting costs incurred by the Partnership as a result of such withdrawal, as determined or reasonably estimated by the General Partner, and (iv) any applicable Incentive Allocation from such Limited Partner to the General Partner.

(c) Regardless of whether a Withdrawal Date or Notice Date is the last day of a Fiscal Year, the balance of a retiring Limited Partner's Capital Account (or the balance of a continuing Limited Partner's Withdrawal Amount) remaining undistributed after taking into account distributions pursuant to Section 6.5(a) above shall not be distributed until the General Partner has determined the Capital Accounts of the Partners as of the Withdrawal Date or the Notice Date, as the case may be, and the independent public accountants have completed the audit required by Section 11.2 for the Fiscal Year in which such Withdrawal Date or Notice Date occurs. Subject to the provisions of Section 6.5(d), promptly after such determination and receipt of the accountants' audit report, the Partnership shall distribute to the Limited Partner (or his representative) the amount of the excess, if any, of the Liquidating Share or Withdrawal Amount of such Limited Partner over the amount previously distributed pursuant to Section 6.5(a), or such Limited Partner (or his representative) shall pay to the Partnership the amount of the excess, if any, of the amount distributed under Section 6.5(a) over such Liquidating Share or Withdrawal Amount.

(d) Notwithstanding the foregoing: (1) there may be withheld from distribution to a Limited Partner (or his representative) pursuant to Section 6.5(c) such reasonable contingency reserve as may be determined by the General Partner in its sole discretion in respect of such Limited Partner's share of contingent liabilities from transactions or events occurring during such time as such Partner was a Partner in the Partnership. Upon the General Partner's determination that such reserve (or portion thereof) is not, or is no longer, required, the reserve (or such portion) shall be distributed to such Partner (or his representative); (2) if, as determined by the General Partner in its sole discretion, the Partnership is unable to liquidate Securities positions in an orderly manner without adverse economic consequences, or if the value of assets or liabilities of the Partnership cannot reasonably be determined, the General Partner may suspend distributions pursuant to Section 6.3 or Section 6.5 and/or may distribute all amounts to be distributed as soon as practicable, but later than the applicable sixty (60) day period set forth in Section 6.5(a) hereof; (3) in addition, the General Partner may withhold all or any a portion of any withdrawal if necessary to comply with applicable regulatory requirements.

(e) All payments required to be made by the Partnership with respect to a Limited Partner's withdrawal of his entire Capital Account pursuant to Section 6.2 or a retiring Limited Partner pursuant to Section 6.3, or to the Partnership by such a Limited Partner, shall include an amount for interest, to the extent permitted by applicable law, computed

for the period beginning on the Withdrawal Date or the Notice Date, as the case may be, and ending on the date of such payment, at a rate equal to the rate the Partnership earns on its own cash balances with its principal broker. No payments by the Partnership with respect to a Limited Partner's requested withdrawal of less than his entire Capital Account pursuant to Section 6.2, or to the Partnership by such a Limited Partner, shall bear interest.

Section 6.6 LIABILITY OF A PERSON WHO HAS CEASED TO BE A PARTNER.
A Person who has ceased to be a Partner shall continue to be liable for his proportionate share of Prior Accounting Period Items as provided in Section 5.6 in excess of his share of the reserves established pursuant to Section 6.5 and such Person shall pay to the Partnership his share of such amounts promptly on demand; provided, however, that such amount shall not exceed his Capital Account at the time he ceased to be a Partner.

ARTICLE VII

TRANSFER OF PARTNERSHIP INTERESTS; ADMISSION OF NEW PARTNERS

Section 7.1 TRANSFER OF GENERAL PARTNER'S INTEREST.

(a) The General Partner shall not transfer, sell, assign, gift, pledge or otherwise encumber or dispose of ("Transfer") all or any part of its Partner's Interest without the prior consent of Limited Partners then holding two-thirds of the Partner's Interests of all the Limited Partners. Any Person to whom the General Partner transfers all of its Partner's Interest in accordance with this Article VII shall, simultaneously with such transfer, become the General Partner and shall continue the business of the Partnership, and no dissolution of the Partnership shall be effected thereby.

(b) Notwithstanding the foregoing, the Transfer by the General Partner of all or any portion of its Partner's Interest to a Person of which at least 50% of the voting Securities, membership or similar interests are owned, directly or indirectly, by (i) MAG or by any Person who succeeds to the business of MAG substantially as an entirety, or (ii) Persons who in the aggregate then own at least 50% of the membership interests in MAG shall be permitted and shall not be subject to the requirements of Section 7.1(a).

Section 7.2 TRANSFER OF INTEREST BY LIMITED PARTNERS. No Limited Partner shall Transfer all or any part of his Partner's Interest (including any beneficial interest therein) without (a) the prior written consent of the General Partner (which may be withheld in the General Partner's sole discretion), and (b) if requested by the General Partner, in its sole discretion, the receipt by the General Partner not less than 10 days prior to the date of any such proposed Transfer of a written opinion of responsible counsel (who may be counsel for the Partnership), satisfactory in form and substance to the General Partner, to the effect that such Transfer would not result in (x) a violation of the Securities Act or of any "Blue Sky" laws or other securities laws of any state of the United States applicable to the Partnership or to the interest to be transferred (y) the Partnership's being required to register, or seek an exemption from registration, as an investment company under the Investment Company Act of 1940, as

amended or (z) the termination of the Partnership for tax purposes. Such opinion of counsel shall also cover such other matters as the General Partner may reasonably request. Each Limited Partner that Transfers all or any part of his Partner's Interest shall pay all expenses, including attorneys' fees, incurred by the Partnership or the General Partner in connection with such transfer.

Section 7.3 DEATH OR LEGAL INCAPACITY OF LIMITED PARTNERS. In the event of the death or legal incapacity of a Limited Partner, the executor, administrator or legal representative of such Limited Partner shall succeed to the rights and obligations of such deceased or incompetent Partner, subject to the provisions of this Agreement, including but not limited to the provisions of Section 6.3 and Section 6.5. The Partnership shall not be dissolved or terminated by reason of the withdrawal, retirement, death, bankruptcy, incompetency, disability or admission of any Partner except as provided in Article VIII.

Section 7.4 ADMISSION OF PARTNERS. The General Partner may admit additional Limited Partners to the Partnership either on the first Business Day of any Fiscal Quarter or on any other date or dates selected by the General Partner. Upon the consent of the General Partner and a Majority in Interest of the Limited Partners, additional general partners may be admitted to the Partnership at any time.

Section 7.5 ADDITIONAL OR SUBSTITUTED PARTNERS BOUND. As a condition to its ownership of a Partner's Interest, any Person to be admitted as an additional Partner or to receive a Partner's Interest by a Transfer (a "New Partner") shall become a mere assignee unless such New Partner, in addition to satisfying all other requirements in this Article VII, shall execute and acknowledge such instruments, in form and substance reasonably satisfactory to the General Partner, as the General Partner may deem necessary or desirable to effectuate such admission to the Partnership or Transfer, as well as to confirm that the New Partner has agreed to be bound by all the covenants, terms and conditions of this Agreement, as the same may have been amended. A New Partner who is mere assignee and who does not become a Partner hereunder has no right to require any information or account of the Partnership transactions, to inspect the Partnership books or to vote on any of the matters as to which a Limited Partner would be entitled to vote pursuant to this Agreement and shall be entitled only to receive the allocations of Net Income, Net Loss and other items and share of cash distributions to which he is entitled.

ARTICLE VIII

DISSOLUTION OF PARTNERSHIP

Section 8.1 DISSOLUTION OF PARTNERSHIP

(a) Except as provided in Section 7.1 hereof, the Partnership shall be dissolved (1) upon the resignation, dissolution or commencement of winding up of the General Partner, (2) upon the determination of the General Partner, in its sole discretion, to dissolve the Partnership, (3) in the event that the General Partner (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief in any bankruptcy or

insolvency proceeding, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of a nature described in (iv) above, or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, custodian, receiver or liquidator of the General Partner or of all or any substantial part of its properties, (4) upon the expiration of one hundred twenty (120) days after the commencement of any proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, (5) if (i) within ninety (90) days after the appointment without its consent or acquiescence of a trustee, custodian, receiver or liquidator of the General Partner or of all or any substantial part of its properties, the appointment is not vacated or stayed, or if (ii) within ninety (90) days after the expiration of any such stay, the appointment is not vacated, or (6) any other event occurs which under the Act causes the General Partner to cease to be a general partner of the Partnership, unless, in any such case, a Majority in Interest of the Limited Partners elects to continue the business of the Partnership and appoint, effective as of the event giving rise to such election, a new General Partner within ninety (90) days after such event. If a Majority in Interest of the Limited Partners so elects to continue the Partnership business, an appropriate amendment to the Partnership's Certificate of Limited Partnership shall be filed immediately after such election is made.

(b) Dissolution of the Partnership shall be effective on the day on which the event occurs giving rise to the dissolution, but the Partnership shall not terminate until the Partnership's Certificate of Limited Partnership has been canceled and the assets of the Partnership have been distributed as provided in Section 8.2 below.

(c) If the Partnership shall be dissolved for any reason, no further business shall be conducted except for the taking of such action as shall be necessary (i) for the preservation of Partnership assets, (ii) to conduct an accounting of the Partnership's assets, liabilities and operations to the date of dissolution, (iii) for the winding up of the affairs of the Partnership and (iv) for the distribution of its assets to the Partners pursuant to the provisions of Section 8.2. Upon such dissolution, the General Partner shall be the liquidator to wind up the affairs of the Partnership, except that if there shall be no General Partner, a Majority in Interest of the Limited Partners as of the date of dissolution of the Partnership may appoint one or more other liquidators. Such Person(s) (the "Liquidator") appointed as liquidator shall take all steps necessary or appropriate to wind up the affairs of the Partnership as promptly as practicable thereafter.

Section 8.2 PROCEDURE ON WINDING UP.

(a) Upon the winding up of the Partnership, a full account of the assets and liabilities of the Partnership shall be taken, the assets of the Partnership shall be liquidated to the extent determined by the Liquidator and the gains and losses allocated to the Partners in accordance with Article V hereof and the Partners' Capital Accounts adjusted accordingly, and the value of the remaining non-cash assets of the Partnership

and the Partnership's Net Income or Net Loss for the final Fiscal Year shall be determined and the Partners' Capital Accounts adjusted accordingly. As promptly as practicable, the assets of the Partnership shall be applied in the following order of priority:

(i) to the payment of all debts, taxes, obligations and liabilities of the Partnership, including the expenses of liquidation; and

(ii) to the payment to Partners of their remaining Capital Accounts in proportion to the amounts thereof with the effect of bringing such Capital Accounts to zero.

(b) In the winding up of the Partnership, the Liquidator may establish reserves in such amounts determined by the Liquidator and upon the determination by the Liquidator that such reserves are no longer appropriate, then the amount, if any, remaining in such reserves shall be distributed as provided in Section 8.2(a)(ii).

(c) Distributions to a Partner pursuant to Section 8.2(a)(ii) may be in installments and shall be made in cash or, at the discretion of the Liquidator, in Securities selected by the Liquidator, or partly in cash and partly in Securities selected by the Liquidator.

(d) Upon the winding up of the Partnership, the name of the Partnership and its goodwill shall not be appraised, sold or otherwise liquidated but shall remain the exclusive property of MAG.

(e) Within ninety (90) days after the completion of the winding up of the Partnership, the Liquidator shall cause to be prepared and forwarded to each Partner a final statement and report of the Partnership.

(f) A Liquidator other than the General Partner shall be entitled to reasonable compensation for his services in winding up the Partnership.

(g) A Limited Partner shall look solely to the assets of the Partnership for the return of his capital, and if Partnership assets remaining after the payment or discharge of the debts and liabilities of the Partnership are insufficient to return his capital, he shall have no recourse against the General Partner, any Limited Partner or any Liquidator, or any of their respective officers, directors, partners, members, employees or agents.

ARTICLE IX

INDEMNIFICATION OF GENERAL PARTNER

Section 9.1 EXCULPATION, INDEMNIFICATION AND CONTRIBUTION. The General Partner shall not be liable to the Partnership or to the Partners for (i) any act or omission performed or omitted by it, or for any costs, damages or liabilities arising therefrom, in the absence of willful misfeasance or bad faith by the General Partner, (ii) any tax liability imposed on the Partnership or any Limited Partner, or (iii) any losses due to the gross negligence of any Partner, employee, broker or other agent of the Partnership (whether or not such Persons are

directly employed by the General Partner). In the event that the General Partner becomes involved in any capacity in any action, proceeding or investigation in connection with any matter arising out of or in connection with the Partnership's business or affairs, the Partnership will periodically advance the General Partner for costs, expenses and charges incurred for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith, provided that the General Partner shall promptly repay to the Partnership the amount of any such advances not expended or if it shall ultimately be determined that the General Partner is not entitled to be indemnified by the Partnership in connection with such action, proceeding or investigation as provided in the exception contained in the next succeeding sentence. The Partnership will also indemnify the General Partner against any losses, claims, damages, liabilities or costs, including attorneys' and other professionals' fees and costs, to which the General Partner may become subject in connection with any matter arising out of or in connection with the Partnership's business or affairs (including but not limited to the General Partner's "soft dollar" practices described in the Confidential Private Placement Memorandum of the Partnership), except to the extent that any such loss, claim, damage, liability or cost results solely from the willful misfeasance or bad faith of the General Partner. Any Person entitled to indemnity under this Section 9.1 may consult with recognized, outside legal counsel selected by the Partnership, and any action or omission taken or suffered in good faith in reliance on and in accordance with the opinion or advice of such counsel shall be conclusive evidence that such action or omission did not constitute willful misfeasance or bad faith. Unless there is a specific finding of willful misfeasance or bad faith (or where such a finding is an essential element of a judgment or order), the termination of any action, suit or proceeding by judgment, order or settlement, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption for the purposes of this Section 9.1 that the Person in question engaged in willful misfeasance or bad faith. If for any reason (other than the willful misfeasance or bad faith of the General Partner), the foregoing indemnification is unavailable to the General Partner, or insufficient to hold it harmless, then the Partnership shall contribute to the amount paid or payable by the General Partner as a result of such loss, claim, damage, liability or cost in such proportion as is appropriate to reflect not only the relative benefits received by the Partnership on the one hand and the General Partner on the other hand but also the relative fault of the Partnership and the General Partner, as well as any relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Partnership under this Section 9.1 shall be in addition to any liability that the Partnership may otherwise have, shall extend upon the same terms and conditions to the officers, employees and members (if any) of the General Partner, shall include the costs, charges and expenses of establishing the right to reimbursement, indemnity and contribution hereunder and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Partnership, the General Partner and any such Persons. The reimbursement, indemnity and contribution obligations of the Partnership under this Section 9.1 shall be limited to the amount of the Partners' aggregate Capital Accounts. The foregoing provisions shall survive any termination of this Agreement.

ARTICLE X

ALLOCATION OF INCOME FOR TAX PURPOSES

Section 10.1 CAPITAL GAINS AND LOSSES. For Federal income tax purposes, the aggregate of all items of gain, loss, income and deduction recognized by the Partnership in any Accounting Period and arising from "qualified financial assets" as defined in Treasury Regulations §1.704-3(e)(3)(ii) shall be allocated to the Partners in a manner which reduces the disparity between the book Capital Account balances and the tax Capital Account balances of the individual Partners in the manner provided in Treasury Regulations §1.704-3(e)(3)(iv)(C), as long as the Partnership is qualified to use such method under such Regulations.

Section 10.2 ALL OTHER TERMS OF GAIN, LOSS, INCOME AND DEDUCTION. Except as may be specifically provided in this Agreement to the contrary, all items of Partnership income, gain, loss, deduction and credit not described in Section 10.1 recognized by the Partnership in any Accounting Period shall be allocated among the Partners for Federal income tax purposes in a manner as to reflect equitable amounts credited or debited to each Partner's Capital Account for such Accounting Period and which takes account of any variation between the adjusted basis of the asset for tax purposes and its market value as reflected in the Partner's Capital Account. Such allocations will be made pursuant to the principles of Section 704(c) of the Code and in conformity with Treasury Regulations §§1.704-1(b)(2)(iv)(f) and 1.704-1(b)(4)(i) or any successor provisions. If any Partnership deduction for Federal income tax purposes arises as a result of an Incentive Allocation, such deduction shall be allocated among the Partners in accordance with the readjustment of their Capital Accounts pursuant to Section 5.2(b).

Section 10.3 ALLOCATION OF CAPITAL GAINS TO RETIRING PARTNERS. Notwithstanding Section 10.2 above, in the event a Partner withdraws all of his Capital Account from the Partnership, the General Partner in its sole discretion may make a special allocation to said Partner for Federal income tax purposes of the net capital gains recognized by the Partnership in such a manner as will reduce the amount, if any, by which such Partner's Liquidating Share exceeds his Federal income tax basis in his Partner's Interest prior to such allocation.

Section 10.4 TAX CAPITAL ACCOUNTS IN GENERAL. It is intended that the Capital Accounts be maintained at all times in accordance with Section 704 of the Code and applicable Treasury regulations thereunder, and that the provisions of this Agreement relating to the Capital Accounts be interpreted in a manner consistent therewith. The General Partner is authorized to make appropriate amendments to the allocations of items pursuant to this Section if necessary in order to comply with Section 704 of the Code or applicable Treasury regulations thereunder. Notwithstanding anything else contained in this Agreement, if any Limited Partner has a deficit Capital Account for any Accounting Period as a result of an adjustment, allocation or distribution described in Treasury Regulations §1.704-1(b)(2)(ii)(d)(4) through (6), the Partnership's income and gain will be specially allocated to such Limited Partner in an amount and manner sufficient to eliminate such deficit as quickly as possible in accordance with Treasury Regulations §1.704-1(b)(2)(ii)(d).

Section 10.5 ADMINISTRATIVE MATTERS.

(a) Federal, state and local income (and other) tax returns shall be prepared and filed by or at the direction of the General Partner covering operations reportable by the Partnership. The General Partner shall also cause to be prepared and distributed to all Partners a Schedule K-1 or comparable statement of information after the end of each Fiscal Year.

(b) The General Partner shall be appointed the Tax Matters Partner of the Partnership and shall be empowered to resolve the appropriate tax treatment of Partnership items of income, deduction or credit and to serve as the primary liaison between the Internal Revenue Service and the Partnership and its Partners.

(c) Upon the transfer of all or part of a Partner's Interest, the death of an individual Partner, or the distribution of any Partnership property to any Partner, the Partnership, at the General Partner's option, may make any available election to cause the basis of the Partnership properties to be adjusted for Federal income tax purposes as provided by Sections 734, 743 and 754, respectively, of the Code; similar elections under provisions of state and local income tax laws may also be made at the General Partner's option.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.1 MAINTAINING BOOKS OF ACCOUNT. Proper and complete books of account shall be kept at all times and shall be open to inspection by any Partner or his accredited representative at reasonable times during office hours.

Section 11.2 AUDIT OF BOOKS. The books of account and records of the Partnership shall be audited as of the end of each Fiscal Year by independent certified public accountants designated from time to time by the General Partner. The General Partner shall use its best efforts to cause a copy of such audited financial statements to be delivered to each Limited Partner not later than 90 days after the close of the Fiscal Year.

Section 11.3 NOTICES. All notices provided for under this Agreement shall be in writing and shall be sufficient if sent by first-class mail to the last-known address of the party to whom such notice is to be given, provided, however, that unless the Partnership is notified to the contrary, notices to the Limited Partners will be mailed to the address(es) set forth for them in the subscription agreements pursuant to which they first invested in the Partnership.

Section 11.4 AMENDMENT OF AGREEMENT.

(a) This Agreement may be amended by the General Partner to admit additional Partners or in any manner that does not materially adversely affect any Limited Partner. This Agreement may also be amended by action taken by both (i) the General Partner and (ii) a Majority in Interest of the Limited Partners determined at the time of the

amendment, provided that such amendment does not discriminate among the Limited Partners.

(b) This Agreement may be amended by the General Partner without further notice to the Limited Partners so as to comply with any applicable rule, regulation or statute including, without limitation, the Commodities Exchange Act, as amended.

Section 11.5 FURTHER ASSURANCES. Each of the Limited Partners agrees hereafter to execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements and other documents and to take all such further action as may be required by law or deemed by the General Partner to be necessary or useful in furtherance of the Partnership's purposes and the objectives and intentions underlying this Agreement and not inconsistent with the terms hereof.

Section 11.6 POWER OF ATTORNEY. Each Partner does hereby constitute and appoint the General Partner and each officer of the General Partner as such Partner's true and lawful representative and attorney-in-fact, in such Partner's name, place and stead to:

(a) make, execute, sign and file a Certificate of Limited Partnership of the Partnership, any amendment thereof required by law or deemed advisable by the General Partner and all such other instruments, documents and certificates as may from time to time be required by the laws of the United States of America, the States of California and/or New York and any other state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement or continue the valid subsisting existence of the Partnership; and

(b) make, execute and sign all consents, approvals, waivers, certificates and other instruments, including without limitation amendments to this Agreement, that the General Partner deems appropriate or necessary to make, evidence, give, confirm or ratify any vote, consent, approval, waiver, agreement, or other action made or given by the Partners under this Agreement or consistent with the terms of this Agreement or to effectuate the terms or intent of this Agreement; provided, however, that when required by any provision of this Agreement which establishes that the consent or approval of Limited Partners is required to take any action, the General Partner may exercise the power of attorney made in this Section only if the necessary consent or approval by the Limited Partners is obtained.

The foregoing power of attorney is coupled with an interest and shall continue in full force and effect notwithstanding the subsequent death, incapacity, bankruptcy or dissolution of any Partner.

Section 11.7 CONSENT TO JURISDICTION. Each Partner:

(a) irrevocably submits to the nonexclusive jurisdiction of the federal and state courts of the State of California for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or in any way connected to the dealings of any Partner or the Partnership in connection with any of the above; and

(b) waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such proceeding brought in any of the above-named courts, any claim that such Partner is not subject personally to the jurisdiction of such court, that such Partner's property is exempt or immune from attachment or execution, that such proceeding is brought in an inconvenient forum, that the venue of such proceeding is improper, or that this Agreement or the subject matter hereof, may not be enforced in or by such court.

Section 11.8 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTNER WAIVES, AND COVENANTS THAT SUCH PARTNER WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH THE DEALINGS OF ANY PARTNER OR THE PARTNERSHIP IN CONNECTION WITH ANY OF THE ABOVE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE. The Partnership or any Partner may file an original counterpart or a copy of this Section 11.8 with any court as written evidence of the consent of the Partners to the waiver of their rights to trial by jury

Section 11.9 INVESTMENT REPRESENTATION. Each Limited Partner, by executing this Agreement, represents and warrants that he is an "accredited investor", as defined in Regulation D under the Securities Act, with a net worth of more than \$1,500,000; that he has acquired his Partner's Interest solely for his own account and for investment purposes and not with a view to the resale or distribution thereof; and that he is fully aware that, in agreeing to admit him as a Limited Partner, the General Partner and the Partnership are relying upon the truth and accuracy of this representation and warranty.

Section 11.10 NO BILL FOR PARTNERSHIP ACCOUNTING. Subject to mandatory provisions of law applicable to a Limited Partner and to circumstances involving a breach of this Agreement, each of the Partners covenants that it will not (except with the consent of the General Partner) file a bill for a partnership accounting of the Partnership.

Section 11.11 CAPTIONS AND CROSS-REFERENCES. The captions in this Agreement are for convenience only and shall not limit or define the text hereof. All cross-references in this Agreement, unless specifically directed to another agreement or document, refer to provisions in this Agreement, and shall not be deemed to be references to the overall transaction or to any other agreements or documents.

Section 11.12 GENDER AND NUMBER. As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine or the neuter and vice versa, as the context and the identity of the parties may require.

Section 11.13 SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to persons or

circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 11.14 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties relating to the Partnership. This Agreement supersedes any prior agreement or understanding among the parties and may not be modified or amended in any manner other than as set forth herein.

Section 11.15 GOVERNING LAW. ALL QUESTIONS WITH RESPECT TO THE CONSTRUCTION OF THIS AGREEMENT, AND THE RIGHTS AND LIABILITIES OF THE PARTIES, SHALL BE DETERMINED IN ACCORDANCE WITH THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA.

Section 11.16 BINDING EFFECT OF AGREEMENT. This Agreement, including Section 11.6 hereof, shall be binding on the successors, assigns, executors, heirs, administrators and legal representatives of each of the Partners.

Section 11.17 COUNTERPARTS. This Agreement may be executed in more than one counterpart with the same effect as if the Partners executing the several counterparts had all executed one counterpart.

Section 11.18 LEGAL REPRESENTATION. Each Limited Partner expressly acknowledges that the law firm of Sheppard, Mullin, Richter & Hampton LLP ("SMRH") has represented the General Partner in the preparation of this Agreement and related matters. Each limited partner further acknowledges and understands that at no time has SMRH represented either the Fund or any of the Limited Partners in the preparation of this Agreement or any matters related to the Fund.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date set forth next to their name.

GENERAL PARTNER:

MERCATOR ADVISORY GROUP, LLC

By: _____
David F. Firestone, Manager/President

Dated as of February 1, 2002

[See separate signature pages for Limited Partners]

[entity subscriber]

MERCATOR MOMENTUM FUND, L.P.

ADDITIONAL SIGNATURE PAGE
TO
LIMITED PARTNERSHIP AGREEMENT
Dated as of February 1, 2002

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the _____ day of _____, 2002.

Name of Entity: _____

By: _____

Name: _____

Title: _____

Capital Contribution: \$ _____

[individual subscriber]

MERCATOR MOMENTUM FUND, L.P.
ADDITIONAL SIGNATURE PAGE
TO
LIMITED PARTNERSHIP AGREEMENT
Dated as of February 1, 2002

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the
_____ day of _____, 2002.

Name:

Capital Contribution: \$ _____

ANNEX 1 to
Limited Partnership Agreement

[Please see attached form of Investment Management Agreement.]

**FIRST AMENDMENT TO
MERCATOR MOMENTUM FUND, L.P.
LIMITED PARTNERSHIP AGREEMENT**

THIS FIRST AMENDMENT TO MERCATOR MOMENTUM FUND, L.P. LIMITED PARTNERSHIP AGREEMENT (the "Amendment") is dated as of December 30, 2002 and is entered into by and between Mercator Momentum Fund, L.P. and Mercator Advisory Group, L.L.C. with respect to that certain Mercator Momentum Fund, L.P. Limited Partnership Agreement dated February 1, 2002 (the "Limited Partnership Agreement").

1. Amendment of Limited Partnership Agreement.

a. Section 2.1(b) of the Limited Partnership Agreement is hereby amended in its entirety to read as follows:

"The Partnership shall continue for a period of ten (10) years, unless earlier terminated by the General Partner, acting in its sole discretion."

b. The first sentence of Section 5.2(b) of the Limited Partnership Agreement is hereby amended in its entirety to read as follows:

"As of the close of each Fiscal Year, an amount equal to twenty percent (20%) of the amount, if any, by which the Net Increase Amount (as defined below), if any, for that Fiscal Year exceeds a five percent (5%) return on the amount in the Capital Account of each Limited Partner from time to time during the year shall be charged to the Capital Account of such Limited Partner and shall be credited to the General Partner's Capital Account (the "Incentive Allocation")."

c. Section 5.4(c)(iii) of the Limited Partnership Agreement is hereby amended in its entirety to read as follows:

"(iii) Except as provided below, all assets of the Partnership other than as described in Section 5.4(c)(ii) above shall be valued at fair value in a manner determined by the General Partner to be reasonable."

2. Confirmation of Limited Partnership Agreement. Except as expressly provided in this Amendment, the Limited Partnership Agreement shall remain in full force and effect and is hereby ratified and confirmed.

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


MERCATOR MOMENTUM FUND, L.P.

By: Mercator Advisory Group, LLC, its General Partner

By: 

David F. Firestone, Manager

MERCATOR ADVISORY GROUP, LLC

By: 

David F. Firestone, Manager