7. The Partnerships will be conceived and organized by persons who will be investing in the Partnerships, either directly or indirectly, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities. Applicant asserts that the requested exemptions are necessary or relevant to the operations of the Partnerships as an investment program uniquely adapted to the needs of the Eligible Employees.

## **Applicant's Conditions**

Applicant agrees that the requested order shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 (the "Section 17 Transactions") will be effected only if the General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the partners and do not involve overreaching of the Partnership or its partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the partners, the Partnership's organizational documents, and the Partnership's reports to its partners. In addition, the General Partner will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the SEC and its staff.3

2. In connection with the Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated persons of such a person, promoter, or principal underwriter.

3. As a condition to the relief requested from section 17(d) and rule 17d–1, the General partner will not invest the funds of any Partnership in any Investment in which a "Co-Investor," as defined below, has or proposed to acquire the same class of securities of the same issuer, where the

Investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" means ML&Co. and any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) a subsidiary of ML&Co., or other company controlled by ML&Co. or its subsidiaries; (c) an officer or director of a subsidiary of ML&Co., or other company controlled by ML&Co. or its subsidiaries; (d) companies, partnerships, or other investment vehicles offered, sponsored, or managed by a member of the ML Group; (e) any entity with respect to which ML&Co. or its subsidiaries or controlled entities provides management, investment management, or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including, without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (f) a company in which an officer or director of the General Partner acts as officer, director, or General Partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect whollyowned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); or (d) when the investment is comprised of securities that are national market

system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–2(T) thereunder.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the partners, and each annual report of such Partnership required by the terms of the applicable partnership agreement to be sent to the partners, and agree that all such records will be subject to examination by the SEC and its staff.<sup>4</sup>

5. The General Partner will send to each Limited Partner who had an interest in the Partnership at any time during the fiscal year then ended partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make an appraisal or have an appraisal made of all of the assets of the Partnership as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the General Partner and deemed qualified by the General Partner to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets, and liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the General Partner may revise the appraisal as it, in its good faith and sole discretion, deems appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his or her federal and state income tax returns and a report of the investment activities of the Partnership during such a year.

6. In any case where purchases or sales are made from or to an entity affiliated with a partnership by reason of a 5% or more investment in such entity by a director, officer, or employee of ML&Co. or any of its affiliates, any

<sup>&</sup>lt;sup>3</sup> Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

<sup>&</sup>lt;sup>4</sup>Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.