a secondary market or the substantial equivalent thereof is based on all the facts and circumstances. In addition, the final regulations eliminate the separate definitions of a secondary market and the substantial equivalent thereof. This distinction is relevant in the proposed regulations because several of the safe harbors apply only to the substantial equivalent of a secondary market. As discussed below, this distinction is eliminated in the safe harbors. As a result, the separate definitions of a secondary market and the substantial equivalent thereof are no longer necessary, and they are combined into one definition in the final regulations.

The proposed regulations provide that the transfer of an interest in a partnership is taken into account for purposes of section 7704(b) only if the partnership recognizes the transfer of the interest or the interest is redeemed by the partnership. The preamble to the proposed regulations explains that this provision is intended to prevent a partnership from becoming publicly traded without the knowledge or participation of the partnership. Several commentators requested a clarification of this provision because the definition of a secondary market requires only that the interests be readily tradable, thereby creating some concern that the partnership could be publicly traded even if there were no actual transfer of an interest in the partnership.

The final regulations address this concern by providing more explicitly that interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof unless (i) the partnership participates in the establishment of the market or the inclusion of its interests thereon, or (ii) the partnership recognizes transfers made on that market. This rule also applies to an established securities market that consists of an interdealer quotation system that regularly disseminates firm buy or sell quotations. These modifications will prevent a partnership from being publicly traded without the participation or consent of the partnership. This rule is not extended to established securities markets that consist of the exchanges described in the regulation because these exchanges list interests in the partnership only with the knowledge and participation of the partnership. In addition, the final regulations provide that transfers not recognized by the partnership are treated as private transfers and therefore do not count for purposes of the two-percent and 10percent limitations in the safe harbors described below.

#### Safe Harbors

Several commentators requested clarification that, as in Notice 88-75, the failure of a partnership to satisfy the safe harbors does not establish or give rise to a presumption that the partnership was publicly traded. In response, the final regulations clarify that the fact that a partnership does not qualify for a safe harbor or that a transfer of an interest in the partnership is not within a safe harbor is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof. Thus, these transfers are examined under the general facts and circumstances test in the regulations.

## **Private Transfers**

Several commentators requested that the definition of a block transfer be expanded to include transfers by a partner or any person related to the partner within the meaning of section 267(b) or section 707(b)(1). The commentators noted that interests in a partnership are often held by related persons and that, while the related group as a whole may hold more than a two-percent interest in the partnership, no individual partner in the group might hold more than a two-percent interest. This comment is adopted in the final regulations.

One commentator also suggested that the exception for transfers at death be clarified to include transfers from an estate or a testamentary trust. This comment is adopted in the final regulations.

Another commentator suggested that the exception for transfers by one or more partners of interests representing more than 50 percent of the total interests be expanded to include transfers of less than 50 percent. This comment is not adopted in the final regulations. The exception is provided to allow acquisition of control of a partnership without raising a concern that the transfers pursuant to the acquisition would result in the partnership being publicly traded. The exception is, however, amended by reducing the required amount to 50 percent or more of the interests in partnership capital and profits to coordinate the exception with section 708(b)(1)(B) terminations.

# Redemption and Repurchase Agreements

Several commentators suggested that redemptions by an investment partnership for the net asset value of the redeemed interest should not be treated as a transfer for purposes of section 7704(b) because these transfers do not involve a third party broker or a commission or mark-up. This comment is not adopted in the final regulations. The redemption of a partnership interest combined with the issuance of an interest to a new partner can result in the creation of a secondary market or the substantial equivalent thereof within the meaning of section 7704(b), even if no third party or commission is present.

### Qualified Matching Service

The proposed regulations provide that, to qualify as a matching service, the selling partner cannot enter into a binding agreement to sell an interest until the 15th calendar day after the date information regarding the offering is made available to potential buyers and the closing cannot occur until the 30th calendar day after the date the selling partner can enter into a binding agreement. One commentator suggested a reduction in these fixed time periods. This comment is not adopted in the final regulations. The time periods are necessary to ensure that the matching service does not rise to the level of a secondary market or the substantial equivalent thereof.

Several commentators raised various concerns about the provisions in the proposed regulations requiring subscribers to make certain representations and the provisions preventing the operator of the matching service from quoting certain prices and buying or selling interests for itself or on behalf of others. These provisions are deleted in the final regulations because the requirements for a matching service already provide that the service cannot list quotes that commit any person to buy or sell an interest. This modification, however, does not affect the general rule that a secondary market may exist if anyone, including the operator of a matching service, quotes prices at which it stands ready to buy or sell partnership interests.

### **Private Placements**

The proposed regulations generally provide that interests in a partnership are not readily tradable on the substantial equivalent of a secondary market if (i) all interests in the partnership were issued in a transaction not required to be registered under the Securities Act of 1933; (ii) the partnership does not have more than 500 partners or the initial offering price of each unit was at least \$20,000; and (iii) if the partnership has more than 50 partners, no more than 10 percent of the total interests in capital or profits are transferred during the year. Several