

to apply the "democracy" standards currently set forth at Article VII, Section B, Subdivisions 2 and 3 of the Guidelines in determining whether to permit registration of an offering of public limited partnership interests in a business development company.

6. The Guidelines at Article VII contain certain "democracy" provisions, entitled Rights and Obligations of Participants. Section B thereof currently reads in part:

Voting Rights of Limited Partners. To the extent permitted by the law of the state of formation, the PROGRAM agreement [*i.e.*, the limited partnership agreement] shall provide that a majority of the outstanding PROGRAM INTERESTS [*i.e.*, limited partnership interests] may, without necessity for concurrence by the general partner, vote to: ... (2) remove the general partner(s), (3) elect a new general partner(s)

At the date of offer and sale of the Interests in the Existing Partnerships, the substance of the Guidelines provision was the same, although the actual language read as follows:

Voting Rights of Limited Partners. To the extent the law of the state in question is not inconsistent, the limited partnership agreement must provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the SPONSOR, vote to: ... (3) remove the SPONSOR and elect a new SPONSOR

7. Although state securities administrators are permitted, if provided with sufficient justification, to waive strict compliance with the Guidelines as to any particular offering, such waiver is difficult to obtain in practice on "democracy" issues which are of particular concern to state securities administrators. I believe that if the Equitable Capital Partners I Partnerships did not provide the "democracy" rights required by Guidelines Section VII.B.2 and 3, the offering of the Interests in the Equitable Capital Partners I Partnerships could not have been registered in a number of important states. In fact, compliance with the "democracy" rights which were

then set forth at Guidelines Section VII.B.3 was specifically raised as an issue by some states in connection with registration of the Interests in the Equitable Capital Partners I Partnerships. Similarly, I believe that if the Equitable Capital Partners II Partnerships do not provide the "democracy" rights required by Guidelines Section VII.B.2 and 3, a number of important states will not register the offering of the Interests in the New Partnerships.

8. Section 11 of the respective Partnership Agreements of the Partnerships permit a majority in interest of the Limited Partners to vote (1) to admit or remove a General Partner and (2) to approve or disapprove the admission of a successor managing General Partner. I believe that these limited partnership agreement provisions are in accordance with and will satisfy Guidelines Section VII.B.2 and 3.

I declare, certify and state, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.



Ellen Lieberman
Ellen Lieberman

Executed on June 1, 1990.

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*NOT ADMITTED IN NEW YORK

August 10, 1990

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

EQUITABLE CAPITAL MANAGEMENT CORPORATION
Request for a Declaratory Ruling
Concerning Sections 310(b)(3) and (4) of
the Communications Act of 1934

Dear Sirs:

By letter, dated June 1, 1990, on behalf of Equitable Capital Management Corporation, in its capacity as managing general partner of each of Equitable Capital Partners, L.P., Equitable Capital Partners (Retirement Fund), L.P., Equitable Capital Partners II, L.P. and Equitable Capital Partners (Retirement Fund) II, L.P. (the "Applicants"), we submitted for filing with the Federal Communications Commission (the "Commission") Applicants' Request for a Declaratory Ruling Concerning Sections 310(b)(3) and (4) of the Communications Act of 1934 ("Request for Declaratory Ruling"). The Request for Declaratory Ruling included, as Exhibit A, a communication from the staff of the Division of Investment Management of the Securities and Exchange Commission ("SEC") addressed to the undersigned in response to a request by certain of

August 10, 1990

the Applicants for exemptive relief from provisions of the Investment Company Act of 1940, as amended.

In our previous letter (a copy of which is attached for your convenience), Applicants requested that Exhibit A to the Request for Declaratory Ruling be kept confidential and not be made available to the public pursuant to 47 C.F.R. 0.459 of the Commission's rules, based on our understanding that such communications from the SEC staff were regarded as nonpublic by the SEC. Since the date of our earlier request for confidentiality, we have had further discussions with the SEC staff in order to clarify our understanding of the SEC's policies with regard to the confidentiality of such communications. The SEC staff confirmed our understanding that such communications are not made part of the SEC's public reference files. We were informed, however, that unless such communications respond to a submission to the SEC deemed by the SEC staff to have been made in confidence or to be confidential at the instance of the person who filed such request, they may be made public in accordance with specific requests for information pursuant to the Freedom of Information Act ("FOIA"). See 17 C.F.R. 200.80(b)(4)(i).

It is our understanding that 47 C.F.R. 0.459(c) of the Commission's rules requires that requests for confidential treatment be supported by an affirmative showing that such confidential treatment is consistent with FOIA. We understand that to mean that confidential treatment would be likely to be granted under FOIA. Based on our present understanding that Exhibit A of the Request for Declaratory Ruling would likely not be regarded as nonpublic by the SEC under FOIA, Applicants hereby respectfully withdraw their request that Exhibit A of the Request for Declaratory Ruling be kept confidential and not be made available to the public. Therefore, Exhibit A should be placed in the public file for this matter. We trust that this will enable the Commission to commence the notice process for the Request for Declaratory Ruling.

Please telephone the undersigned at (202) 383-3058 if we may be of assistance in answering any questions

Federal Communications
Commission

-3-

August 10, 1990

that may arise in connection with the matters addressed in
this letter.

Very truly yours,
Marcia L. MacHarg
Marcia L. MacHarg

cc: Ms. Jane Hinckley
Policy and Rules Division
Mass Media Bureau

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JUN 1 1990

Federal Communications Commission
Office of the SecretaryDIVISION OF
INVESTMENT MANAGEMENTUNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 22, 1990

Marcia L. MacHarg, Esq.
Debevoise & Plimpton
555 13th Street, N.W.
Washington, D.C. 20004

Re: Equitable Capital Partners, II L.P., et al.;
File No. 812-7402

Dear Ms. MacHarg:

This letter concerns the above-referenced request for relief from Sections 2(a)(19) and 2(a)(3)(D) of the Investment Company Act of 1940. We have the following comments:

2. Applicants state (on p. 18) that the Partnership Agreements may be amended to contain provisions restricting the ability of non-U.S. Limited Partners to take actions relating to the operation of media companies. Applicants represent that such provisions will not detract from the Act's requirements. Please state the basis for this conclusion, and describe the expected restrictions.

3. The Division is attempting to standardize the conditions to which we believe a business development company ("BDC") should agree to receive an order pursuant to Section 6(c) of the Act. Because we are seeking to establish uniform conditions in this area, the Division will support the relief only if applicants agree to replace the conditions stated in your application with the following conditions. Please do not change the wording of a condition unless you believe a change is important. Please discuss any change from the suggested language and revise the representations made in the application where appropriate so that they are consistent with the suggested conditions.

a. The General Partners, except the Managing General Partner, will be natural persons. A majority of the General Partners will not be interested persons of the Partnership.

Marcia L. MacHarg, Esq.
February 22, 1990
Page 2

b. The Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on directors or general partners of a BDC. The Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on directors and general partners who are not interested persons of a BDC.

c. The Partnership Agreement will provide that the Managing General Partner will not resign or withdraw unless a successor managing general partner has been appointed in accordance with the Partnership Agreement and the provisions of Sections 15(a), 15(c), and 15(f) of the Act.

d. The Limited Partners of the Partnership will be afforded all of the voting rights required by the Act. The Partnership will obtain an opinion of counsel that the voting rights provided to the Limited Partners do not subject the Limited Partners to liability as general partners under Delaware law. If a Limited Partner transfers his interest in the Partnership in a manner which is effective under the Partnership Agreement, the General Partners will promptly take all necessary actions to insure that such transferee or successor becomes a substituted Limited Partner.

e. The Partnership will obtain an opinion of counsel that the distributions and allocations provided for in the Partnership Agreement are permissible under Section 205 of the Advisers Act and under Section 15(a) of the Act. Except to the extent that the Partnership Agreement allocates income, gain, and loss pro-rata to all partners in proportion to their capital contributions, the Managing General Partner and all other investment advisers to the Partnership will not receive or be allocated any portion of capital gains or capital appreciation if, as a result, cumulative allocations or payments of capital gains or capital appreciation to such persons would exceed twenty percent of cumulative realized capital gains, net of realized capital losses and unrealized capital depreciation.

f. The Partnership will obtain an opinion of counsel that the current structure of the Partnership will entitle it to be taxed as a partnership for federal income tax purposes.

g. If, under the Partnership Agreement, the Partnership is or becomes authorized to make in-kind distributions of portfolio securities to its Partners, no such in-kind distributions will be made until such time as the Partnership has obtained a no-action letter from the staff of the SEC or, alternatively, has obtained an order pursuant to Section 206A of the Advisers Act permitting such distribution.

Marcia L. MacHarg, Esq.
February 22, 1990
Page 3

Please respond to these comments by filing an amendment to the application, and submit two courtesy copies of the amendment and proposed notice marked to show changes. Please identify each change in the application made in response to these comments in the cover letter accompanying the amendment. If you believe that no change is necessary in response to a comments, state the basis for such opinion in the cover letter.

The application will be placed on inactive status if no amendment is filed within 60 days of your receipt of this letter. An amendment filed after an application becomes inactive does not receive priority over previously filed applications. See Investment Company Act Release No. 14492 (Apr. 30, 1985).

Please call me at (202) 272-2847 if you have any questions.

Sincerely,

Bibb L. Strench

Bibb L. Strench
Staff Attorney

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BLS
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**AMENDED AND RESTATED AGREEMENT OF
LIMITED PARTNERSHIP**

OF

[EQUITABLE CAPITAL PARTNERS, L.P.]

[EQUITABLE CAPITAL PARTNERS (RETIREMENT FUND), L.P.]

Dated as of October 13, 1988

**AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
[EQUITABLE CAPITAL PARTNERS, L.P.]
[EQUITABLE CAPITAL PARTNERS (RETIREMENT FUND), L.P.]**

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AMENDED AND RESTATED AGREEMENT OF

LIMITED PARTNERSHIP

OF

[EQUITABLE CAPITAL PARTNERS, L.P.]

[EQUITABLE CAPITAL PARTNERS (RETIREMENT FUND), L.P.]

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP dated as of October 13, 1988 of [EQUITABLE CAPITAL PARTNERS, L.P.] [EQUITABLE CAPITAL PARTNERS (RETIREMENT FUND), L.P.] among EQUITABLE CAPITAL MANAGEMENT CORPORATION, a Delaware corporation, as Managing General Partner, Robert W. Lear and Robert F. Shapiro, as Independent General Partners, James P. Pappas, as the Initial Limited Partner, and those Persons hereinafter admitted as and listed in the books and records of the Partnership as Additional Limited Partners and Substituted Limited Partners.

WHEREAS, the Partnership has heretofore been formed as a limited partnership under the Delaware Revised Uniform Limited Partnership Act pursuant to a Certificate of Limited Partnership dated as of January 27, 1988, and filed in the office of the Secretary of State of the State of Delaware on February 2, 1988, as amended and restated through the date hereof; and

WHEREAS, the parties hereto desire to provide for the governance of the Partnership and to set forth in detail their respective rights and duties relating to the Partnership and to amend and restate in its entirety the existing Agreement of Limited Partnership of the Partnership to so provide;

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

ARTICLE ONE

DEFINED TERMS

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings

specified in this Article One. The singular shall include the plural and the masculine gender shall include the feminine, the neuter and vice versa, as the context requires.

"Accountants" means Deloitte Haskins & Sells or such other nationally recognized firm of independent certified public accountants as shall be engaged from time to time by the Independent General Partners for the Partnership.

"Acquisition Expenses" means (1) to the extent, if any, not borne by a third party or the Investment Adviser, the Partnership's pro rata share of any legal fees and any fees of business consultants, appraisers and accountants, investment banking fees and similar fees incurred in connection with the purchase or proposed purchase of any Enhanced Yield Investment and (2) to the extent, if any, not borne by a third party or the Investment Adviser, any other legal fees or expenses, the cost of any credit reports or appraisals, or miscellaneous expenses (including travel and communications expenses) borne by the Partnership in connection with selection, evaluation, and acquisition by the Partnership of any Enhanced Yield Investment, or any unreimbursed organization fees of the Partnership.

"Acquisition Fee" means, to the extent, if any, not borne by a third party or the Investment Adviser, any fee or commission paid by or on behalf of the Partnership in connection with the selection, evaluation, investigation, negotiation or acquisition of any proposed or acquired Enhanced Yield Investment, as the case may be.

"Act" means the Delaware Revised Uniform Limited Partnership Act (6 Del. C. Section 17-101, et seq.), as amended from time to time, and any successor to such Act.

"Additional Acquisition" means (1) an Enhanced Yield Investment made out of Available Capital Proceeds directly or indirectly resulting from the Sale of an Enhanced Yield Investment or (2) a Follow-on Investment.

"Additional Limited Partner" means any Person admitted to the Partnership pursuant to Section 3.3 and shown as a Limited Partner on the books and records of the Partnership.

"Advisers Act" means the Investment Advisers Act of 1940 and the rules and regulations thereunder, as amended from time to time.

"Affiliate" means, when used with reference to a specified Person, an "affiliated person", as defined in the 1940 Act, of such Person.

"Agreement" means this Amended and Restated Agreement of Limited Partnership, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

"Available Capital" means, as of any date of determination, (1) [the sum of (a)] the aggregate Net Capital Contributions of the Partners [and (b) the aggregate amount of Outstanding Debt on such date], (2) minus the sum of (a) cumulative amount of Returns of Capital previously distributed to Partners and (b) realized losses from Investments.

"Available Capital Proceeds" has the meaning given in Section 4.2A.

"Available Cash from Investments" means, with respect to any period selected by the Partnership for accounting purposes, the excess of cash receipts of the Partnership (other than Capital Contributions, or the proceeds of any Capital Transaction or Compensatory Payments) during such period over the sum of the following: (1) the amount of cash (except cash withdrawn from reserves therefor) disbursed in such period in order to obtain cash receipts (other than Capital Contributions, the proceeds of any Capital Transaction or Compensatory Payments) including, but not limited to, the Fund Administration Fee, and extraordinary legal and related expenses, (2) payments of principal of and interest on loans to the Partnership, (3) the amount of cash (except cash withdrawn from reserves therefor) disbursed in such period to pay other costs and expenses incident to the ownership and operation of Enhanced Yield Investments or the operation and management of the Partnership including, but not limited to, the Investment Advisory Fee and (4) payments actually made or amounts actually allocated during such period to reserves to pay taxes, insurance, debt service and/or other costs, expenses and liabilities of the type described in clauses (1) through (3) of this definition and for the payment of which the General Partners believe

cash from the operations of the Partnership might not be available when such payments are required to be made.

"Booked-up Expenses" has the meaning given in Section 4A.2.

"Bridge Investment" means an interim debt investment which is approved as a "Bridge Investment" by the Independent General Partners and which at the time of such approval the Investment Adviser expects to be refinanced by the issuer thereof with permanent financing.

"Capital Account" means, with respect to any Partner, such Partner's Capital Contribution (1) increased as of the last day of each Fiscal Year of the Partnership by such Partner's allocable share of Partnership Profit for such Fiscal Year, (2) decreased as of such date by (a) the amount of cash distributed to such Partner during such Fiscal Year and (b) such Partner's allocable share of the Partnership Loss for such Fiscal Year, and (3) as otherwise increased or decreased as provided in Article Four-A or in accordance with the tax accounting principles set forth in Treasury Regulation 1.704-1(b)(2)(iv).

"Capital Contribution" means, at any specified time, the total amount of money contributed to the Partnership (including any payment made pursuant to an MGP Note) by all the Partners or any class of Partners or any one Partner, as the case may be (or the predecessor holders of the Interest of such Partners or Partner), reduced in the case of the Partners or any one Partner, as the case may be, by the amount of any funds distributed to the Partners or such Partner, as the case may be, pursuant to Section 3.4 or 3.5C. to, but not including, such specified time.

"Capital Transaction" means any Sale [or Refinancing].

"Carrying Value" has the meaning given in Section 4A.2.D.

"Certificate" means the Certificate of Limited Partnership as originally filed with the Secretary of State of the State of Delaware pursuant to the Act, and as amended, modified, supplemented or restated from time to time, as the context requires.

"Closing" means a closing of the sale of Interests in the Partnership.

"Code" means the Internal Revenue Code of 1986, as amended (or any corresponding provision of succeeding law).

"Coinvestment" means an Enhanced Yield Investment in securities of a Portfolio Company, which securities are purchased in the same transaction by the Other Partnership, the Investment Adviser or any Equitable Affiliate.

"Compensatory Payment" as of any time of determination means the lesser of (1) the cumulative amount by which the Available Capital Proceeds related to the Sales of Enhanced Yield Investments then or theretofore made are less than the Partnership's cost of such Enhanced Yield Investments, and (2) the excess, if any, of cumulative MGP Distributions then or theretofore made over the cumulative amounts of payments then or theretofore made as Compensatory Payments pursuant to Sections 4.1B(2)(a) and 4.2B(2)(b).

"Consent" means the prior written approval of a Person, given as provided in Section 11.1, or the affirmative vote of approval of such Person at a meeting called and held pursuant to Section 11.2, as the case may be, to do the act or thing for which the approval is solicited, or the act of granting such approval, as the context may require.

"Deemed Distribution Amount" means, as of any determination date for the allocation of Profits and Losses, with respect to any Partner, the amount that such Partner would receive as a distribution (reduced by the amount of any distributions then scheduled to be made to such Partner) if all Partnership assets were sold as of such date for an amount equal to the Carrying Value of such assets and the proceeds applied in accordance with Sections 4.1 and 4.2 assuming (i) that no reserves described in Section 4.2A(1)(a)(iv) are required other than reserves for which the Partnership has claimed or is currently entitled to claim a federal income tax deduction or loss and (ii) that any Deferred Distribution Amount is distributed to the Limited Partners. The Deemed Distribution Amount of the Partners shall be determined taking into account the outstanding principal amount of any MGP

Notes to be contributed to the capital of the Partnership upon liquidation.

"Deemed Sales Commissions" means sales commissions waived (i) with respect to sales of Units to the Managing General Partner, the Fund Administrator, any Affiliate of either, any director, officer, employee or agent of any of the foregoing or any employee benefit plan of any for the foregoing or (ii) with respect to volume discounts for sales of Units.

"Deferred Distribution Amount" means, at any specified time, the sum of the amounts of distributions then or theretofore payable to the Managing General Partner which have been deferred pursuant to Section 4.1.C, clause (ii) of Section 4.2.B(2)(d), clause (ii) of Section 4.2.B(2)(e) or Section 4.2.C.

"Distributable Capital Proceeds" has the meaning given in Section 4.2A.

"Distributable Cash From Investments" means, with respect to any period selected by the Partnership for accounting purposes, the sum of (1) the excess of the sum of Available Cash from Investments for such period and amounts withdrawn from reserves and no longer necessary to be so maintained in such reserves over amounts of Available Cash from Investments actually applied during such period to Additional Acquisitions, or to the payment of Acquisition Fees, Acquisition Expenses, [Financing Fees and/or Financing Expenses] in connection therewith, or to the creation and maintenance of reserves therefor and (2) the amount of Compensatory Payments made by the Managing General Partner to the Partnership during such period. For the purpose of calculating the amount of withdrawals from reserves to be included in clause (1) above, such amount shall only include funds the source of which at the time added to reserves had been from amounts which would have been included in Available Cash from Investments had they not been added to reserves, and when making such determination, the funds last added to reserves shall be the first withdrawn.

"Enhanced Yield Distribution" means any distribution made pursuant to Section 4.1B(2) or 4.2B(2).

"Enhanced Yield Investment" means a Mezzanine

Investment, Other Investment, Bridge Investment or Follow-on Investment.

"Equitable Affiliate" means Equitable Capital, Equitable Life, any subsidiary of Equitable Life, the Equitable Deal Flow Fund, L.P., a Delaware limited partnership and any funds with investment objectives similar to the Partnership (other than the Other Partnership) that may be sponsored or organized by Equitable Capital and any Equitable Capital advisory accounts with investment objectives similar to the Partnership.

"Equitable Life" means The Equitable Life Assurance Society of the United States, a New York mutual life insurance company.

"Exempt Investment" means an investment in cash items, Government Securities (as such term is used in Section 2(a)(16) of the 1940 Act) or other high quality debt securities maturing within one year of the time of the investment by the Partnership in such security.

"Federal Tax Allowance" means, in connection with a determination of the amount of Distributable Cash from Investments pursuant to Section 4.1 or Distributable Capital Proceeds pursuant to Section 4.2 for any fiscal period of the Partnership, an amount equal to the highest Federal income tax rate applicable (including any surcharges thereon) to individual taxpayers multiplied by the Partners' shares of Partnership taxable income for such period (assuming that (1) there have not been any material changes subsequent to the date of the original execution of this Agreement in the Federal income tax laws, (2) such Partners have been Partners since the closing of the sale of their units of limited partnership interest pursuant to the Registration Statement and (3) such Partners are not subject to the alternative minimum tax).

"Final Closing" means the last Closing pursuant to the Prospectus.

["Financing" means any borrowing incurred or made to finance the Partnership's purchase of any Enhanced Yield Investment, or any component thereof.]

["Financing Expenses" means, to the extent, if any, not borne by a Portfolio Company or by the Investment

Adviser, any legal fees and expenses, the cost of any credit reports or appraisals, recording and filing fees or miscellaneous expenses borne by the Partnership in connection with the negotiation and documentation of Partnership borrowings.]

["Financing Fee" means any fee or commission borne by the Partnership and paid to any other Person for placing or arranging any Financing, but does not include Financing Expenses.]

"Fiscal Year" means the calendar year.

"Follow-on Investment" means an Investment (other than a Temporary Investment) in the securities of a Portfolio Company in which the Partnership holds immediately prior thereto a Mezzanine or Other Investment and which investment has been approved by the Independent General Partners, or has been determined by the Independent General Partners to meet the Guidelines.

"Foreign Partner" means a Limited Partner organized by Equitable Capital as a corporation, trust or partnership under the laws of a foreign state, the securities of which Limited Partner are offered exclusively to investors who are neither residents of the United States of America, its territories or possessions nor who are citizens thereof.

"Fund Administrator" means ML Fund Administrators Inc., a Delaware corporation and an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc., or any successor thereto or fund administrator under any agreement described in Section 5.2B(4).

"General Partners" means the Independent General Partners and the Managing General Partner and/or any other Person that becomes a successor or additional General Partner of the Partnership as provided herein, in such Person's capacity as a general partner of the Partnership.

"Gross Capital Contributions represented by an Investment" means as to any Temporary Investment or Enhanced Yield Investment, as the context requires, at any specified time, an amount computed as follows:

$$GCC I = NCCI \times CCE$$

such specified percentage, respectively, of the aggregate Capital Contributions of all Limited Partners.

"Interim Investment Period" means the 24-month period beginning on the date of effectiveness of the Registration Statement under the Securities Act of 1933, as amended.

"Investment" means a Temporary Investment or an Enhanced Yield Investment, as the context requires.

"Investment Adviser" means Equitable Capital Management Corporation, a Delaware corporation, in its capacity as investment adviser to the Partnership pursuant to an investment advisory agreement referred to in Section 5.2, or any successor thereto.

"Investment Advisory Fee" has the meaning given it in Section 5.3A(4).

"Investment Period" means the 36-month period beginning on the date of the Final Closing.

"Limited Partner" means any Person who is a limited partner of the Partnership as shown on the books and records of the Partnership (whether an Additional Limited Partner or a Substituted Limited Partner) at the time of reference thereto in such Person's capacity as a limited partner of the Partnership.

"Liquidation Profits or Losses" means all Profits or Losses realized by the Partnership from and after the first day of the fiscal year which includes the date of dissolution pursuant to Section 9.1.

"Managed Company" means any Portfolio Company to which the Partnership or the Managing General Partner "makes available significant managerial assistance" as such term is defined in Section 2(a)(47) of the 1940 Act.

"Managing General Partner" means Equitable Capital Management Corporation, a Delaware corporation, the business address of which is 1285 Avenue of the Americas, New York, New York 10019, in its capacity as, and/or any other Person which becomes Managing General Partner of the Partnership as provided herein, in such Person's capacity as managing general partner of the Partnership.

"Mezzanine Investment" means an investment in connection with a leveraged buyout, leveraged acquisition or leveraged recapitalization consisting primarily of subordinated debt and/or preferred stock which may be combined with an equity participation and/or combined with an interest in senior debt and which has been approved by the Independent General Partners or has been determined by the Independent General Partners to meet the Guidelines.

"MGP Distributions" means the incentive distributions provided for in Sections 4.1B(2)(c) and (d) and 4.2B(2)(d) and (e).

"MGP Note" has the meaning set forth in Section 3.1D.

"Net Capital Contribution" means, with respect to any class of Partners, the aggregate amount of such Partners' Capital Contributions reduced by the amount of Organization and Offering Expenses charged to such Partners' Capital Accounts.

"Net Capital Contributions represented by an Investment" means as to any Temporary Investment or Enhanced Yield Investment, as the context requires, at any specified time, an amount computed as follows:

$$\begin{aligned} \text{NCCI} &= \text{TCI} [x \text{ EP}] \\ \text{Where: NCCI} &= \text{Net Capital Contributions represented by an Investment} \\ \text{TCI} &= \text{Total Cost to the Fund of Investment} \\ \text{[EP} &= \text{Equity Percentage} \\ &= \frac{\text{Available Capital} \\ &\quad \text{[-Outstanding Debt]}}{\text{Available Capital}} \end{aligned}$$

provided that to the extent an Investment is purchased with Available Cash from Investments, Distributable Cash from Investments or Available Capital Proceeds, the TCI of such Investment shall only include the portion of the cost of such Investment paid from the NCCI realized by the Partnership and reinvested in such Investment.

"Net Profit" means the excess of cumulative Profits over cumulative Losses.

"1940 Act" means the Investment Company Act of 1940 and the rules and regulations thereunder, as amended by the Small Business Investment Incentive Act of 1980, and as amended from time to time.

"Non-Managed Company" means any Portfolio Company which is not a Managed Company.

"Notification" means a writing, containing the information required by this Agreement to be communicated to any Person, sent as provided in Section 13.3.

"Operating Cash Expenses" means, with respect to any period selected by the Partnership for accounting purposes, those items of operating cash expenditures of the Partnership set forth in clauses (1)-(4) of the definition of "Available Cash from Investments".

"Organization and Offering Expenses" means the amount of selling commissions, actual marketing and sales expenses reimbursed by the Partnership and organization and offering expenses, including, but not limited to, amounts expended for accounting, legal, printing and clerical expenses of the Partnership, registration and filing fees of any kind and mailing and courier expenses, paid by the Partnership in connection with the sale of Units to the Additional Limited Partners.

"Other Investment" means an investment by the Partnership, other than a Mezzanine Investment, in a Portfolio Company which has been approved by the Independent General Partners or has been determined by the Independent General Partners to meet the Guidelines.

"Other Partnership" means [Equitable Capital Partners, L.P.] [Equitable Capital Partners (Retirement Fund), L.P.], a Delaware limited partnership.

["Outstanding Debt" means, as of any date of determination, the aggregate principal amount of any borrowings by the Partnership outstanding at such time.]

"Partner" means any General Partner or Limited Partner.

"Partnership" means the limited partnership formed and continued by and governed under and pursuant to