

### § 229.903

### 17 CFR Ch. II (4-1-10 Edition)

document pursuant to Item 910 of this subpart (§ 229.910). If there are material differences between the fairness analysis for the partnership and for the other partnerships, such differences shall be described briefly in the supplement.

(4) A brief, narrative description of the method of calculating the value of the partnership and allocating interests in the successor to the partnership, and a table showing such calculation and allocation. Such table shall include the following information (or other information of a comparable character necessary to a thorough understanding of the calculation and allocation):

(i) The appraised value of each separately appraised significant asset (as defined in Item 911(c)(5) of this subpart (§ 229.911(c)(5)) held by the partnership, or, if appraisals have not been obtained for each significant asset, the value assigned for purposes of the valuation of the partnership to each significant asset for which an appraisal has not been obtained;

(ii) The dollar amount of any mortgages or other similar liabilities to which each of such assets is subject;

(iii) Cash and cash equivalent assets held by the partnership;

(iv) Other assets held by the partnership;

(v) Other liabilities of the partnership;

(vi) The value assigned to the partnership;

(vii) The value assigned to the partnership per interest held by investors in the partnership (on an equivalent interest basis, such as per \$1,000 original investment);

(viii) The aggregate number of interests in the successor to be allocated to the partnership and the percentage of the total interests of the successor;

(ix) The number of interests in the successor to be allocated to investors in the partnership for each interest held by such investors (on an equivalent interest basis, such as per \$1,000 original investment); and

(x) The value assigned to the general partner's interest in the partnership, and the number of interests in the successor or other consideration to be allocated in the roll-up transaction to

the general partner for such general partnership interest or otherwise as compensation or reimbursement for claims against or interests in the partnership, such as foregone fees, unearned fees and for fees to be earned on the sale or refinancing of an asset.

(5) The amounts of compensation paid, and cash distributions made, to the general partner and its affiliates by the partnership for the last three fiscal years and the most recently completed interim period and the amounts that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period. If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(6) Cash distributions made to investors during each of the last five fiscal years and most recently completed interim period, identifying any such distributions which represent a return of capital.

(7) An appropriate cross reference to selected financial information concerning the partnership and the pro forma financial statements included in the principal disclosure document in response to Item 914(b)(2) of this subpart (§ 229.914(b)(2)).

#### § 229.903 (Item 903) Summary.

(a) Provide in the forepart of the disclosure document a clear, concise and comprehensible summary of the roll-up transaction.

(b) The summary required by paragraph (a) of this Item (§ 229.903) shall include a summary description of each of the following items, as well as any other material terms or consequences of the roll-up transaction necessary to an understanding of such transaction:

(1) Each material risk and effect on investors, including, but not limited to:

(i) Changes in the business plan, voting rights, cash distribution policies, form of ownership interest or management compensation;

(ii) The general partner's conflicts of interest in connection with the roll-up transaction and in connection with the successor's future operations; and

(iii) The likelihood that securities received by investors in the roll-up transaction will trade at prices substantially below the value assigned to such securities in the roll-up transaction and/or the value of the successor's assets;

(2) The material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor to investors in the partnerships;

(3) Whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in each partnership, including a brief discussion of the bases for such belief;

(4) Any opinion from an outside party concerning the fairness of the roll-up transaction, including whether the opinion addresses the fairness of all possible combinations of partnerships or portions of partnerships, and contacts with any outside party concerning fairness opinions, valuations or reports in connection with the roll-up transaction required to be disclosed pursuant to Item 911(a)(5) of this subpart (§ 229.911(a)(5));

(5) The background of and reasons for the roll-up transaction, as well as alternatives to the roll-up transaction described in response to Item 908(b) of this subpart (§ 229.908(b));

(6) Rights of investors to exercise dissenters' or appraisal rights or similar rights and to obtain a list of investors in the partnership in which the investor holds an interest; and

(7) If any affiliates of the general partner or the sponsor may participate in the business of the successor or receive compensation from the successor, an organizational chart showing the relationships between the general partner, the sponsor and their affiliates.

*Instruction to Item 903.* The description of the material risks and effects of the roll-up transaction required by paragraph (b)(1) of this Item (§ 229.903) must be presented prominently in the forepart of the summary.

**§ 229.904 (Item 904) Risk factors and other considerations.**

(a) Immediately following the summary required by Item 903 of this subpart (§ 229.903), describe in reasonable detail each material risk and effect of the roll-up transaction on investors in each partnership, including, but not limited to:

(1) The potential risks, adverse effects and benefits of the roll-up transaction for investors and for the general partner, including those which result from each matter described in response to Item 905 of this subpart (§ 229.905), with appropriate cross references to the comparative information required by Item 905;

(2) The material risks arising from an investment in the successor; and

(3) The likelihood that securities of the successor received by investors in the roll-up transaction will trade in the securities markets at a price substantially below the value assigned to such securities in the roll-up transaction and/or the value of the assets of the successor, and the effects on investors of such a trading market discount.

(b) Quantify each risk or effect to the extent practicable.

(c) State whether any of such risks or effects may be different for investors in any partnership and, if so, identify such partnership(s) and describe such difference(s).

*Instruction to Item 904.* The requirement to quantify the effects of the roll-up transaction shall include, but not be limited to:

(i) If cost savings resulting from combined administration of the partnerships is identified as a potential benefit of the roll-up transaction, the amount of cost savings and a comparison of such amount to the costs of the roll-up transaction; and

(ii) If there may be a material conflict of interest of the sponsor or general partner arising from its receipt of payments or other consideration as a result of the roll-up transaction, the amount of such payments and other consideration to be obtained in the roll-up transaction and a comparison of such amounts to the amounts to which the sponsor or general partner would be entitled without the roll-up transaction.

**§ 229.905 (Item 905) comparative information.**

(a)(1) Describe the voting and other rights of investors in the successor