§ 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 under the successor’s governing instruments and under applicable law. Compare such rights to the voting and other rights of investors in each partnership subject to the transaction under the partnerships’ governing instruments and under applicable law. Describe the effects of the change(s) in such rights.

(2) Describe the duties owed by the general partner of the successor to investors in the successor under the successor’s governing instruments and under applicable law. Compare such duties to the duties owed by the general partner of each partnership to investors in the partnership under the partnership’s governing instruments and under applicable law. Describe the effects of the change(s) in such duties.

(b)(1) Describe each item of compensation (including reimbursement of expenses) payable by the successor after the roll-up transaction to the general partner and its affiliates or to any affiliate of the successor. Compare such compensation to the compensation currently payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in compensation arrangements.

(2) Describe each instance in which cash or other distributions may be made by the successor to the general partner and its affiliates or to any affiliate of the successor. Compare such distributions to the distributions currently paid or payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in distribution arrangements. If distributions similar to those currently paid or payable by any partnership to the general partner or its affiliates will not be made by the successor, state whether or not other compensation arrangements with the successor described in response to paragraph (b)(1) of this Item (§ 229.905) (e.g., incentive fees payable upon sale of a property) will, in effect, replace such distributions.

(3) Provide a table demonstrating the changes in such compensation and distributions setting forth among other things:
   (i) The actual amounts of compensation and distributions, separately identified, paid by the partnerships on a
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combined basis to the general partner
and its affiliates for the partnerships’
last three fiscal years and most re-
cently ended interim periods; and
(ii) The amounts of compensation
and distributions that would have been
paid if the compensation and distribu-
tions structure to be in effect after the
roll-up transaction had been in effect
during such period.
(4) 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 from that shown
in the table provided in response to
paragraph (b)(3)(ii) of this Item
(§ 229.905) (e.g., if properties will be sold
or purchased after the roll-up trans-
action 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 suc-
cessor.
(5) Describe the material conflicts
that may arise between the interests of
the sponsor or general partner and the
interests of investors in the successor
as a result of the compensation and
distribution arrangements described in
response to paragraphs (b)(1) and (2) of
this Item (§ 229.905) and describe any
steps that will be taken to resolve any
such conflicts.
(c) Describe any provisions in the
governing instruments of the successor
and any policies of the general partner
of the successor relating to distribu-
tions to investors of cash from oper-
ations, proceeds from the sale, financ-
ing or refinancing of assets, and any
other distributions. Compare such pro-
visions and policies to those of each of
the partnerships. Describe the effects of
any change(s) in such provisions or
policies.
(d)(1) Describe each material invest-
ment policy of the successor, including,
without limitation, policies with re-
spect to borrowings by the successor.
Compare such investment policies to
the investment policies of each of the
partnerships. Describe the effects of
any change(s) in such policies.
(2) Describe any plans of the general
partner, sponsor or of any person who
will be an affiliate of the successor
with respect to:
(i) A sale of any material assets of
the partnerships;
(ii) A purchase of any material as-
sets; and
(iii) Borrowings.
(3)(i) State whether or not specific
assets have been identified for sale, fi-
nancing, refinancing or purchase fol-
lowing the roll-up transaction.
(ii) If specific assets have been so
identified, describe the assets and the
proposed transaction.
(e) Describe any other similar terms
or policies of the successor that are
material to an investment in the suc-
cessor. Compare any such terms or
policies to those of each of the partners-
ships. Describe the effects of any
change(s) in such terms or policies.
Instructions to Item 905: (1) The informa-
tion provided in response to this Item (§ 229.905)
should be illustrated in tables or other read-
ibly understandable formats, which should be
included together with the disclosures re-
quired by this Item.
(2) The information required by this Item
(§ 229.905) shall be set forth in appropriate
separate sections of the principal disclosure
document.
§ 229.906 (Item 906) Allocation of roll-
up consideration.
(a) Describe in reasonable detail the
method used to allocate interests in
the successor to investors in the part-
nerships and the reasons why such
method was used.
(b) Provide a table showing the cal-
culation of the valuation of each part-
nership and the allocation of interests
in the successor to investors. Such
table shall include for each partnership
the following information (or other in-
f ormation of a comparable character
necessary to an understanding of the
calculation and allocation):
(1) The value assigned to each signific-
ant category of assets of the partner-
ship and the total value assigned to the
partnership;
(2) The total value assigned to all
partnerships;
(3) The aggregate amount of interests
in the successor to be allocated to each
partnership and the percentage of the
total amount of all such interests rep-
resented thereby; and