

Each Fund will be organized and operated through the Fund's organizing and governing documents (*i.e.*, Fund Agreements, as defined in Section III(c) above) such as a partnership agreement, subscription agreements, and other agreements or documents that govern the rights and responsibilities of each party in the Fund. The Fund will generally target equity or debt real estate investments or non-real estate investments. The investments may include, but will not be limited to, the following:

- (i) operating company ventures, both public and private;
- (ii) the acquisition and development of office, retail, industrial, multi-family, single family, parking garage, corporate real estate assets, and other types of real estate assets;
- (iii) the acquisition of interests in real estate or the acquisition of interests in public or private real estate investment trusts and corporations, limited partnerships and limited liability companies whose primary assets will be commercial real estate; or
- (iv) the acquisition of publicly-traded or privately-traded debt or equity securities of issuers whose primary assets are real estate.

Although it is contemplated that the Funds will generally target real estate investments exclusively or in combination with non-real estate investments, some Funds may not target any real estate-related investments.<sup>4</sup>

4. Investors; Covered Plans. The investors in the Fund (Investor(s)) may generally include, but not be limited to, private or public corporations,

investment programs in order to determine whether the requirements of the Department's regulations will be met.

<sup>4</sup> The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act will apply to a Covered Plan fiduciary's decision to invest in a Fund. Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular investment strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular investment must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment involved, including the plan's potential exposure to losses and the role a particular investment plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a-1).

educational institutions, charitable trusts or foundations, tax-exempt trusts or other tax-exempt organizations, governmental employee benefit plans, insurance company general accounts, private individuals or trusts, and other private or public persons, entities, or associations. Such Investors will include "plans" subject to the provisions of the Act and the Code, including Covered Plans. The term "Covered Plan" means a "plan" that meets the requirements of section II(C) and (D). Any reference to a Covered Plan should be deemed, where appropriate, to include a reference to the Covered Plan's fiduciary, representative, agent or investment vehicle, such as a trust, through which the plan's assets are invested in the Fund. An Investor may invest directly in a Fund or indirectly, such as an investment through a special purpose vehicle, an intermediate limited partnership, an insurance company separate account, or otherwise. In some instances, these entities may contain "plan assets" subject to the Act as a result of investments made by Covered Plans. For purposes of this proposed exemption, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including the Bank) or a Fund, as applicable, if: (i) The fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund;<sup>5</sup> (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) the fiduciary is not a corporation or partnership in which a person affiliated with the Fund or a Lender, as appropriate, is an officer, director, partner, or employee.

5. Lenders; Agent. In each transaction, the Bank will arrange the Credit Facility. For each Credit Facility, there will be one or more Lenders. The Bank will either be the sole Lender for the Credit Facility or will serve as the administrative agent (*i.e.*, the Agent) under the Credit Facility, acting for the benefit of a group of Lenders that participate in the Credit Facility. In any event, one or more of the Lenders, including the Bank, may be a party in

<sup>5</sup> For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term "Fund" shall be deemed, as appropriate, to include the governing entity of the Fund or a member of the governing body of the Fund, as appropriate, *e.g.* a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation.

interest with respect to one or more of the Covered Plans invested in the Fund.

6. Credit Facility. The "Credit Facility" refers to an arrangement entered into by and among: (i) A Fund or Funds, as borrower(s); (ii) the Bank, as agent or the sole Lender; and/or (iii) the Lenders. Under this arrangement, the Fund may be provided credit through direct or indirect borrowings, letters of credit and similar forms of credit arrangements. Generally, the Fund Agreements will permit the Fund to incur indebtedness (typically, for a term of three to seven years) for the acquisition of investments and for working capital purposes. For purposes of the transactions described herein, such indebtedness will include the Credit Facility. The Credit Facility will allow the Fund to consummate investments quickly without having to finalize the debt/equity structure for an investment or arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Investors and the Fund.

The Fund will be able to use its credit under the Credit Facility by direct or indirect borrowings, by requesting that letters of credit be issued, by other similar forms of credit arrangements, or a combination of any of the foregoing. All Lenders will participate on a pro rata basis with respect to all loans, letters of credit, or other credit arrangements. All loans, letters of credit, and other credit arrangements will be issued to the Fund or an entity in which the Fund owns a direct or indirect interest (Qualified Borrower),<sup>6</sup> and not to any individual Investor. All payments of principal and interest made by the Fund or a Qualified Borrower will be allocated pro rata among all Lenders.

The Credit Facility will have a stated maturity date and, until such time, only interest will be payable on the facility. Generally, at the maturity date, the entire unpaid principal balance of, plus any accrued but unpaid interest on, the debt under the Credit Facility will be due and payable, unless the facility is extended. Whether or not an extension of the facility is requested, the manner of repayment of the debt will be generally a combination of Capital Calls on the Investors, proceeds from mortgage financings, and proceeds from liquidation of investments. The Fund will not typically make a lump-sum Capital Call on the day the debt is due.

<sup>6</sup> The Bank represents that Qualified Borrowers will be entities the indebtedness of which may be guaranteed by the Fund. When extensions of credit are made to a Qualified Borrower, the Fund will provide a guaranty agreement to the Lenders, under the terms of the Credit Facility.