ORBIMED ADVISORS LLC
Form SC 13D
February 24, 2004

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D
Under the Securities Exchange Act of 1934

Biocryst Pharmaceuticals, Inc.
(Name of Issuer)

Common Stock
(Title of Class of Securities)

09058V103
(CUSIP Number)

Samuel D. Isaly
OrbiMed Advisors LLC
OrbiMed Capital II LLC
767 Third Avenue
New York, NY 10017
Telephone: (212) 739-6400

(Name, Address and Telephone Number of
Person Authorized to Receive Notices and
Communications)

Copy to:

Paul S. Schreiber, Esq.
Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000

February 17, 2004
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f), or 13d-1(g), check the following box [ ].

Check the following box if a fee is being paid with this Statement [ ].

CUSIP No. 068750V102

(1) Name of Reporting Person
S.S. or I.R.S. Identification No. of Above Person

Samuel D. Isaly

(2) Check the Appropriate Box if a Member of a Group (See Instructions)

☐ (a)

☐ (b)

(3) SEC Use Only

(4) Source of Funds (See Instructions) AF

(5) Check if Disclosure of Legal Proceedings is Required Pursuant to Item 2(d) or 2(e).

☐

(6) Citizenship or Place of Organization United States

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
	(8)	Shared Voting Power	1,666,667
	(9)	Sole Dispositive Power	
	(10)	Shared Dispositive Power	1,666,667

(11) Aggregate Amount Beneficially Owned by Each Reporting Person 1,666,667

(12) Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
☐

(13) Percent of Class Represented by Amount in Row (11) 7.82%

(14) Type of Reporting Person (See Instructions) IN

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CUSIP No. 068750V102

(1) Name of Reporting Person
S.S. or I.R.S. Identification No. of Above Person

OrbiMed Advisors LLC

(2) Check the Appropriate Box if a Member of a Group (See Instructions)

_ (a)
|_|

_ (b)
|_|

(3) SEC Use Only

(4) Source of Funds (See Instructions) AF

(5) Check if Disclosure of Legal Proceedings is Required Pursuant to Item 2(d) or 2(e).

_
|_|

(6) Citizenship or Place of Organization Delaware

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power
	(8)	Shared Voting Power 137,878
	(9)	Sole Dispositive Power
	(10)	Shared Dispositive Power 137,878

(11) Aggregate Amount Beneficially Owned by Each Reporting Person 137,878

(12) Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) _ |_|

(13) Percent of Class Represented by Amount in Row (11) 0.65%

(14) Type of Reporting Person (See Instructions) IA

CUSIP No. 068750V102

(1) Name of Reporting Person
S.S. or I.R.S. Identification No. of Above Person

OrbiMed Capital LLC

(2) Check the Appropriate Box if a Member of a Group (See Instructions)

_ |_| (a)

_ |_| (b)

(3) SEC Use Only

(4) Source of Funds (See Instructions) AF

(5) Check if Disclosure of Legal Proceedings is Required Pursuant to Item 2(d) or 2(e).
_ |_|

(6) Citizenship or Place of Organization Delaware

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	
	(8)	Shared Voting Power	1,528,819

	(9)	Sole Dispositive Power
	(10)	Shared Dispositive Power 1,528,819

(11)	Aggregate Amount Beneficially Owned by Each Reporting Person	1,528,819
(12)	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)	_ |_|
(13)	Percent of Class Represented by Amount in Row (11)	7.17%
(14)	Type of Reporting Person (See Instructions)	CO

Item 1. Security and Issuer.

The class of equity securities to which this Statement on Schedule 13D relates is the Common Stock (the "Shares"), of Biocryst Pharmaceuticals, Inc. (the "Issuer"), with its principal executive offices located at 2190 Parkway Lake Drive, Birmingham, Alabama, 35244.

Item 2. Identity and Background.

(a) This statement is being filed by Samuel D. Isaly, an individual ("Isaly"), and by OrbiMed Advisors LLC and OrbiMed Capital II LLC, limited liability companies organized under the laws of Delaware.

(b)-(c) OrbiMed Advisors LLC is a registered investment adviser under the Investment Advisers Act of 1940, as amended that acts as investment adviser or general partner to certain clients which hold Shares of the Issuer, as more particularly described in Item 6 below. OrbiMed Advisors LLC has its principal offices at 767 Third Avenue, 30th Floor, New York, NY 10017.

OrbiMed Capital II LLC is a registered investment advisor under the Investment Advisers Act of 1940, as amended that acts as investment adviser or general partner to certain limited partnerships as more particularly described in Item 6 below. OrbiMed Capital II LLC has its principal offices at 767 Third Avenue, 30th Floor, New York, NY 10017.

Isaly, a natural person, owns a controlling interest in OrbiMed Advisors LLC and OrbiMed Capital II LLC.

The directors and executive officers of OrbiMed Advisors LLC and OrbiMed Capital II LLC are set forth on Schedules I and II, attached hereto. Schedules I and II set forth the following information with respect to each such person:

(i) name;

(ii) business address (or residence address where indicated);

(iii) present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted; and

(iv) citizenship.

(d)-(e) During the last five years, neither the Reporting Persons nor any Person named in Schedules I through IV have been (i) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) Isaly is a citizen of the United States.

Item 3. Source and Amount of Funds or Other Consideration.

On February 17, 2004, pursuant to the authority of OrbiMed Advisors LLC and OrbiMed Capital II LLC under their respective investment advisory contracts and limited partnership or limited liability company agreements with or relating to Caduceus Private Investments II, LP, Caduceus Private Investments II (QP), LP and UBS Juniper Crossover Fund, L.L.C. as more particularly referred to in Item 6 below caused these clients to purchase, in the aggregate, 1,666,667 Shares of Biocryst Pharmaceuticals, Inc. (the "February 2004 Purchase of Shares"), and as a result of their common control and mutual affiliation, the Reporting Persons were the beneficial owners of approximately 7.82% of the outstanding Shares of the Issuer.

None of the Reporting Persons have acquired or disposed of any additional Shares of the Issuer since the February 2004 Purchase of Shares.

Item 4. Purpose of Transaction.

As described more fully in Item 3 above, this statement relates

to the acquisition of Shares by the Reporting Persons. The Shares acquired by the Reporting Persons have been acquired for the purpose of making an investment in the Issuer and not with the present intention of acquiring control of the Issuer's business on behalf of their respective advisory clients.

The Reporting Persons have been granted the right to nominate a representative to the Board of Directors (the "Board") of the Issuer, and expect exercised that right in the future by the nomination of a representative to the Board.

The Reporting Persons from time to time intend to review their investment in the Issuer on the basis of various factors, including the Issuer's business, financial condition, results of operations and prospects, general economic and industry conditions, the securities markets in general and those for the Issuer's Shares in particular, as well as other developments and other investment opportunities. Based upon such review, the Reporting Persons will take such actions in the future as the Reporting Persons may deem appropriate in light of the circumstances existing from time to time. If the Reporting Persons believe that further investment in the Issuer is attractive, whether because of the market price of the Issuer's Shares or otherwise, they may acquire shares of common stock or other securities of the Issuer either in the open market or in privately negotiated transactions. Similarly, depending on market and other factors, the Reporting Persons may determine to dispose of some or all of the Shares currently owned by the Reporting Persons or otherwise acquired by the Reporting Persons either in the open market or in privately negotiated transactions.

Except as set forth above, the Reporting Persons have not formulated any plans or proposals which relate to or would result in: (a) the acquisition by any person of additional securities of the Issuer or the disposition of securities of the Issuer, (b) an extraordinary corporate transaction involving the Issuer or any of its subsidiaries, (c) a sale or transfer of a material amount of the assets of the Issuer or any of its subsidiaries, (d) any change in the present board of directors or management of the Issuer, (e) any material change in the Issuer's capitalization or

dividend policy, (f) any other material change in the Issuer's business or corporate structure, (g) any change in the Issuer's charter or bylaws or other or instrument corresponding thereto or other action which may impede the acquisition of control of the Issuer by any person, (h) causing a class of the Issuer's securities to be deregistered or delisted, (i) a class of equity securities of the Issuer becoming eligible for termination of registration or (j) any action similar to any of those enumerated above.

Item 5. Interest in Securities of the Issuer.

(a)-(b) As of this date of this filing, Samuel D. Isaly, OrbiMed Advisors LLC and OrbiMed Capital II LLC may be deemed directly or indirectly, including by reason of their mutual affiliation, to be the beneficial owners of 1,666,667 Shares. Based upon information contained in the most recent available filing by the Issuer with the SEC, such Shares constitute approximately 7.82% of the issued and outstanding Shares. As described above in Item 2, Isaly owns, pursuant to the terms of the limited liability company agreement of each of OrbiMed Advisors LLC and OrbiMed Capital II LLC, a controlling interest in the outstanding limited liability company interests of such entity. As a result,

Samuel D. Isaly, OrbiMed Advisors LLC and OrbiMed Capital II LLC share power to direct the vote and to direct the disposition of 1,666,667 Shares.

(c) Except as disclosed in Item 3, the Reporting Persons have not effected any transaction in the Shares during the past 60 days.

(d) Not applicable.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

In addition to the relationships between the Reporting Persons described in Item 5, OrbiMed Capital II LLC is the general partner of Caduceus Private Investments II, LP ("Caduceus II") and Caduceus Private Investments II (QP), LP ("Caduceus II (QP)"), private equity funds, pursuant to the terms of the limited partnership agreement of each. OrbiMed Advisors LLC, through a joint venture with UBS Fund Advisor, L.L.C. entitled UBS Juniper Management, LLC, acts as investment manager of Juniper, a registered investment company, pursuant to the terms of the UBS Juniper Crossover Fund, L.L.C. investment advisory agreement. Pursuant to these agreements and relationships, OrbiMed Advisors LLC and OrbiMed Capital II LLC have discretionary investment management authority with respect to the assets of Caduceus II, Caduceus II (QP) and Juniper. Such authority includes the power to vote and otherwise dispose of securities purchased by Caduceus II, Caduceus II (QP) and Juniper, including the total 1,666,667 Shares of the Issuer held by Caduceus II, Caduceus II (QP) and Juniper. As noted above under Item 4, the Reporting Persons, as a group, have their representative on the Board of the Issuer and accordingly the Reporting Persons may have the ability to effect and influence control of the Issuer.

Other than the agreements and the relationships mentioned above, to the best knowledge of the Reporting Persons, there are no contracts, arrangements, understandings or

relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any persons with respect to any securities of the Issuer, including, but not limited to, transfer or voting of any of the Shares, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving of withholding of proxies.

Item 7. Material to Be Filed as Exhibits.

Exhibit	Description
A.	Amended and Restated Limited Partnership Agreement of Caduceus Private Investments II, LP.

B. Amended and Restated Limited Partnership Agreement of Caduceus Private Investments II (QP), LP.

C. Investment Advisory Agreement between UBS Juniper Management, L.L.C. and UBS Juniper Crossover Fund, L.L.C.

D. Joint Filing Agreement among Samuel D. Isaly, OrbiMed Advisors LLC and OrbiMed Capital II LLC.

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

February __, 2004

SAMUEL D. ISALY

By: /s/ Samuel D. Isaly

Name: Samuel D. Isaly

ORBIMED ADVISORS LLC

By: /s/ Samuel D. Isaly

Name: Samuel D. Isaly
Title: Managing Member

ORBIMED CAPITAL II LLC

By: /s/ Samuel D. Isaly

Name: Samuel D. Isaly
Title: Managing Member

Schedule I

The name and present principal occupation of each of the executive officers and directors of OrbiMed Advisors LLC are set forth below. Unless otherwise noted, each of these persons are United States citizens and have as their business address 767 Third Avenue, New York, NY 10017.

Name	Position with Reporting Person	Principal Occu
Samuel D. Isaly	Managing Partner	Partner OrbiMed Adviso
Michael Sheffery	Partner	Partner OrbiMed Adviso
Carl L. Gordon	Partner	Partner OrbiMed Adviso
Sven Borho German and Swedish Citizen	Partner	Partner OrbiMed Adviso
Eric A. Bittelman	Chief Financial Officer	Chief Financia OrbiMed Adviso

Schedule II

The name and present principal occupation of each of the executive officers and directors of OrbiMed Capital II LLC are set forth below. Unless otherwise noted, each of these persons are United States citizens and have as their business address 767 Third Avenue, New York, NY 10017.

Name	Position with Reporting Person	Principal Occu
Samuel D. Isaly	Managing Partner	Partner OrbiMed Capita
Michael Sheffery	Partner	Partner OrbiMed Capita
Carl L. Gordon	Partner	Partner OrbiMed Capita
Sven Borho German and Swedish Citizen	Partner	Partner OrbiMed Capita
Eric A. Bittelman	Chief Financial Officer	Chief Financia OrbiMed Capita

EXHIBIT INDEX

Exhibit	Description
A.	Limited Partnership Agreement of Caduceus Private Investments II, LP.
B.	Limited Partnership Agreement of Caduceus Private Investments II (QP), LP.
C.	Investment Advisory Agreement between UBS Juniper Management, LLC and UBS Juniper Crossover Fund, LLC.
D.	Joint Filing Agreement among Samuel D. Isaly, OrbiMed Advisors LLC and OrbiMed Capital, LLC.

THE PARTNERSHIP INTERESTS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY STATE OR FOREIGN JURISDICTION AND MAY NOT BE SOLD OR TRANSFERRED WITHOUT COMPLIANCE WITH APPLICABLE FEDERAL, STATE OR FOREIGN SECURITIES LAWS. IN ADDITION, TRANSFER OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS RESTRICTED AS PROVIDED IN THIS AGREEMENT.

AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

OF

CADUCEUS PRIVATE INVESTMENTS II, LP

Originally dated as of December 20, 2002
Amended and Restated as of September 19, 2003

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AMENDED AND RESTATED

LIMITED PARTNERSHIP AGREEMENT

OF

CADUCEUS PRIVATE INVESTMENTS II, LP

WHEREAS, the undersigned have previously agreed to form and did form, a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act pursuant to the terms and provisions of a Limited Partnership Agreement dated as of December 20, 2002 (herein called the "Original Agreement"); and

WHEREAS, the General Partner and the Required Partners hereby desire to amend and restate the Original Agreement as of the date hereof as set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Capitalized terms used herein without definition have the following meanings:

"Additional GP Cash Contribution" means the amount of any Capital Contribution that the General Partner has made in cash pursuant to Section 5.02, reduced by the portion of such Capital Contribution that the General Partner was required to satisfy in cash as set forth in the definition of "Capital Commitment."

"Advisers Act" means the Investment Advisers Act of 1940, as amended from time to time.

"Advisory Committee" means the advisory committee of the Partnership described in Section 3.01(c).

"Affiliate" means, with respect to any Person, any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Amended and Restated Limited Partnership Agreement, as amended from time to time.

"Base Reduction Date" means the date that is the earlier of (i) the Full Investment Date

and (ii) the date on which any Competing Fund organized in accordance with Section 2.09 makes its first investment in a portfolio company.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

"Capital Account" has the meaning set forth in Section 6.07.

"Capital Commitment" means, with respect to any Limited Partner at any time, the amount specified as such Limited Partner's capital commitment at the time such Limited Partner was admitted to the Partnership (as adjusted pursuant to Sections 2.07 and 5.05), which amount shall be set forth on the books and records of the Partnership; provided that unless otherwise permitted by the General Partner the minimum Capital Commitment shall be $5 million per Limited Partner. With respect to the General Partner, Capital Commitment means 3% of the aggregate Capital Commitments of the Limited Partners subject to the Management Fee. The General Partner's Capital Commitment when drawn shall be satisfied in the form of cash or, to the extent such Capital Commitment of the General Partner exceeds 1% of the aggregate Capital Commitments subject to the Management Fee, such Capital Commitment may be satisfied as provided for in Section 5.02 by use of the Credit Amount.

"Capital Contribution" means any cash contribution or other payment made by such Partner pursuant to Article V or a Parallel Capital Contribution, it being understood that a Partner's Capital Contribution (including with respect to Expenses) may not exceed a Partner's Capital Commitment.

"Carried Interest" has the meaning set forth in Section 6.02(a)(4).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Co-Investment" means any investment outside the Partnership pursuant to Section 4.02.

"Commitment Percentage" means, with respect to any Partner at any time, the percentage derived by (i) dividing such Partner's Capital Commitment at such time by the aggregate amount of all Partner's Capital Commitments (except as otherwise provided herein) at such time and (ii) multiplying such quotient by 100.

"Credit Amount" means, at any time, the aggregate amount that has accrued at or prior to such time as follows: (i) for each of the three 12-month periods following the initial Drawdown Date (which date has not yet occurred as of the date this Agreement has been amended and restated), an amount equal to one-half of one percent (0.5%) of the aggregate Capital Commitments subject to the Management Fee (or, from and after the Base Reduction Date, of the aggregate invested capital of Limited Partners subject to the Management Fee), and (ii) for each of the two immediately succeeding 12-month periods following the aforementioned 36- month period, an amount equal to one-quarter of one percent (0.25%) of the aggregate Capital Commitments subject to the Management Fee (or, from and after the Base Reduction Date, of the aggregate invested capital of Limited Partners subject to the Management Fee), it being understood that the foregoing shall be calculated and determined pro rata quarterly in advance.

"Default" means, except as otherwise provided in Section 4.05(e), the failure of a Partner to make all or a portion of its required Capital Contribution on the applicable Drawdown Date or, in the case of any ERISA Partner or Early Funding Partner, on the date such ERISA Partner or Early Funding Partner is required to make such Capital Contribution pursuant to Section 5.04(a).

"Defaulting Partner" means, at any time, each Partner who, at or prior to such time, has committed a Default that has become an Event of Default.

"Delaware Act" means the Delaware Revised Uniform Limited Partnership Act, as amended from time to time.

"Direct Investment" has the meaning set forth in Section 4.05(a).

"Distribution Date" means, with respect to any distribution pursuant to Article VI or Article IX, the date of such distribution.

"Drawdown" means a drawdown by the Partnership of cash contributions from one or more Partners pursuant to a Drawdown Notice.

"Drawdown Amount" means the aggregate cash contributions and other payments to be made on any date by the Partners pursuant to Article V.

"Drawdown Date" has the meaning set forth in Section 5.02(b).

"Drawdown Notice" has the meaning set forth in Section 5.02(a).

"Early Funding Partner" means any Limited Partner that, on or prior to the date hereof, advises the General Partner in writing that it desires not to receive any loan pursuant to Section 5.04(a).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Partner" means any Limited Partner that is a "benefit plan investor" within the meaning of the U.S. Department of Labor "plan asset" regulations, 29 CFR 2510.3-101(f)(2).

"Event of Default" means, except as otherwise provided in Section 4.05(e), any Default that shall not have been (i) cured by the Partner who committed such Default within ten Business Days after the occurrence of such Default or (ii) waived by the General Partner on such terms as determined by the General Partner in its discretion (unless the Partner who committed such Default is the General Partner or an Affiliate of the General Partner, in which case the General Partner shall not waive such Default) before such Default has otherwise become an Event of Default pursuant to clause (i) hereof.

"Expense" means any Partnership Expense or Parallel Investment Expense or other applicable expense described in this Agreement.

"Excused Partner" means, with respect to any Investment, any Partner who is excused pursuant to Section 5.06 from making all or a portion of its Capital Contribution that would otherwise be required in respect of such Investment.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to JP

Morgan Chase & Co. on such day on such transactions.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"Final Closing Date" means the earlier of (i) the date on which subscriptions for the maximum Offering Amount of Partnership Interests and partnership interests in the QP Fund are accepted by the General Partner and (ii) September 20, 2003.

"Follow-on Investment" means any further Partnership Investment or Parallel Investment in securities of any Person in which a Partnership Investment or Parallel Investment has previously been made.

"Full Investment Date" means the earliest to occur of (i) the fifth anniversary of the Final Closing Date, (ii) the day on which the Remaining Capital Commitments are reduced to zero or cancelled pursuant to this Agreement and (iii) the day on which the "Full Investment Date" occurs under the QP Fund Agreement; provided that the Full Investment Date may be extended beyond (i), (ii) and (iii) with the written consent of the Required Partners.

"General Partner" means, at any time, OrbiMed Capital II LLC, a Delaware limited liability company, or any other Person who, at such time, serves as the general partner of the Partnership, in its capacity as general partner of the Partnership.

"Indemnified Person" means the General Partner, the Management Company, any Affiliate of the General Partner or the Management Company, and any director, officer, stockholder, partner, member, employee, agent (including any placement agent retained by the General Partner in connection with the offering of Partnership Interests and partnership interests in the QP Fund) or representative of the General Partner, the Management Company or such Affiliate, including without limitation any officers of the Partnership, and any members of the Advisory Committee.

"Initial Closing Date" means December 20, 2002.

"Investment" means any Partnership Investment or Parallel Investment.

"Investment Company Act" means the Investment Company Act of 1940, as amended

from time to time.

"Investment Percentage" of any Partner means, with respect to any Investment, the percentage derived by (i) dividing the Capital Contributions made by such Partner in respect of such Investment by the aggregate Capital Contributions made by all Partners (except as otherwise provided herein) in respect of such Investment and (ii) multiplying such quotient by 100.

"Key Person Event" means at any time prior to the Full Investment Date any two of Samuel D. Isaly, Michael B. Sheffery, Carl Gordon or Sven Borho ceasing to be actively involved in the affairs of the Partnership and the QP Fund through the General Partner or OrbiMed Advisors LLC and its Affiliates as a group.

"Limited Partners" means the Partners other than the General Partner, each in its capacity as a limited partner of the Partnership. For purposes of the Delaware Act, the Limited Partners shall constitute a single class or group

of limited partners.

"Management Company" means the Person engaged pursuant to Section 3.01(b) to monitor the Partnership Investments and provide administrative and financial services to the Partnership.

"Management Fee" has the meaning set forth in Section 3.01(b).

"Non-U.S. Investor" means a Limited Partner that is not a U.S. person for U.S. federal income tax purposes.

"Offering Amount" means a minimum amount of $50 million and a maximum amount of $300 million of subscribed Partnership Interests and partnership interests in the QP Fund from qualified investors and accepted by the General Partner; provided that the General Partner may increase the maximum amount of subscriptions hereunder and in the QP Fund to an amount determined in the sole discretion of the General Partner.

"Offering Memorandum" means the Offering Memorandum relating to Partnership Interests and partnership interests in the QP Fund, as supplemented or amended to the date hereof (it being understood and agreed that the Offering Memorandum is hereby deemed supplemented and amended by the terms of this Agreement, and in the event of any inconsistencies between the Offering Memorandum and the terms of this Agreement, the terms of this Agreement shall control).

"Organizational Expenses" means all reasonable expenses of organizing the Partnership and the General Partner and all reasonable expenses incurred by the Partnership or the General Partner in connection with (i) the marketing and private placement of the Partnership Interests in the Partnership, (ii) the registration, qualification or exemption of the Partnership under any applicable federal, state or foreign laws and (iii) the preparation of this Agreement; provided that in no event shall Organizational Expenses exceed $500,000.

"Out-of-Pocket Expenses" means out-of-pocket expenses incurred by the Partnership, any Partnership Investment Vehicle or Parallel Investment Vehicle or the General Partner (other than Professional Expenses), including without limitation printing costs, travel expenses and brokerage and custodial fees and expenses.

"Parallel Capital Contribution" means, with respect to any Partner, cash contribution or other payment in respect of any Parallel Investment or Parallel Investment Expense made by such Partner pursuant to Article V.

"Parallel Investment" means an investment or series of investments in or with respect to any entity's securities or assets, other than through the Partnership, that is contemplated by this Agreement (other than any Co-Investment) and that is, in the sole judgment of the General Partner, at the time the opportunity arises to make such investment or series of investments, an appropriate investment outside the Partnership for one or more Partners; provided that such entity is not a partnership or a limited liability company (other than a partnership or limited liability company that is solely a vehicle for investing in securities that are eligible to be acquired outside the Partnership by any Partner as a Parallel Investment).

"Parallel Investment Expenses" means (i) all unreimbursed Professional Expenses and Out-of-Pocket Expenses incurred in connection with identifying, evaluating, structuring, negotiating, obtaining regulatory approval for, monitoring and preparing exit strategies for Parallel Investments; (ii) all

unreimbursed Professional Expenses and Out-of-Pocket Expenses incurred in connection with the acquisition, holding, refinancing, pledging, sale or proposed refinancing, pledging or sale of all or any portion of any Parallel Investment; (iii) all expenses with respect to the formation, operation or administration of any Parallel Investment Vehicle (or, in the absence of any Parallel Investment Vehicle, any expenses comparable to the foregoing) and (iv) all investment fees pursuant to any Parallel Investment terms that correspond to Section 5.03.

"Parallel Investment Ownership Interest" means, at any time and with respect to any Partner that is a Participating Partner with respect to any Parallel Investment, (i) in the case of a Parallel Investment owned directly by such Partner at such time, such Partner's ownership interest in such Parallel Investment, and (ii) in the case of a Parallel Investment owned indirectly by such Partner at such time through a Parallel Investment Vehicle, such Partner's ownership interest in such Parallel Investment Vehicle. 6

"Parallel Investment Vehicle" means any entity formed for the purpose of making any Parallel Investment in accordance with Section 4.04.

"Participating Partner" means, with respect to any Investment, any Partner who has made a Capital Contribution in respect of such Investment.

"Partners" means the General Partner and each Limited Partner admitted in accordance with Section 2.06 and any additional Limited Partners admitted in accordance with Section 2.07.

"Partnership" means Caduceus Private Investments II, LP, the Delaware limited

partnership governed by this Agreement.

"Partnership Expenses" has the meaning set forth in Section 3.04(a).

"Partnership Interests" means the partnership interests in the Partnership.

"Partnership Investment" means an investment or series of investments by the Partnership in or with respect to any entity's securities or assets that is, in the sole judgment of the General Partner at the time the opportunity arises to make such investment or series of investments, an appropriate investment for the Partnership; provided that such entity is not a partnership or limited liability company (other than a partnership or limited liability company that is solely a vehicle for investing in securities that are eligible to be acquired by the Partnership as a Partnership Investment). Each Direct Investment shall be deemed to be a Partnership Investment for all purposes of this Agreement.

"Partnership Investment Expense" means any expenses incurred in connection with consummating investment transactions that are attributable to a specific investment.

"Partnership Investment Vehicle" means any entity wholly owned by the Partnership formed for the purpose of making any Partnership Investment in accordance with Section 4.01.

"Partnership Investment Vehicle Expenses" means all expenses with respect to the formation, operation or administration of any Partnership Investment Vehicle.

"Person" means any individual, company, corporation, trust, limited liability company, partnership, or other entity.

"Prime Rate" means the rate of interest publicly announced by JP Morgan Chase & Co. in New York City from time to time as its prime rate.

"Proceeds" means, with respect to any Investment, any cash and non-cash proceeds received from any sale, exchange, extinguishments, cancellation, termination, lapse, transfer or other disposition of securities or other assets constituting all or any portion of such Investment (except, in the discretion of the General Partner, any securities that are received pursuant to a recapitalization or reorganization of any entity in which an Investment has been made) and any dividends, interest or other income received in connection with such Investment (x) less any Expenses incurred in connection with the receipt of such proceeds or income and (y) plus the amount of any withholding or other tax imposed with respect to any Participating Partner's participation in such Investment.

"Professional Expenses" means the expenses incurred by the Partnership, any Partnership Investment Vehicle or Parallel Investment Vehicle or the General Partner in respect of the fees and expenses of auditors, attorneys, tax advisors and consultants (but excluding consulting fees paid to the General Partner or its Affiliates for services intended to be covered by the Management Fee or activities of the General Partner required to be performed pursuant to its obligations hereunder).

"Proposed Partnership Investment" means any Partnership Investment that the Partnership has committed to make.

"Proposed Parallel Investment" means any Parallel Investment that the General Partner or any Parallel Investment Vehicle has committed to make or cause to be made.

"QP Conduit" means one of two special purpose vehicles set up to invest directly in the QP Fund.

"QP Fund" means Caduceus Private Investments II (QP), LP, a Delaware limited partnership formed to make investments in parallel with the Partnership and whose investors shall be "qualified purchasers" (as defined in the Investment Company Act) in compliance with Section 3(c)(7) of the Investment Company Act.

"QP Fund Agreement" means the Limited Partnership Agreement of the QP Fund, as amended from time to time.

"QP Fund Investment" means a "Partnership Investment" as defined in the QP Fund Agreement.

"QP Partner" means a limited partner in the QP Fund (other than the QP Conduits) and an indirect investor in the QP Fund holding interests in a QP Conduit.

"Remaining Capital Commitment" means, with respect to any Partner at any time, the excess, if any, of (i) such Partner's Capital Commitment at such time over (ii) such Partner's aggregate Capital Contributions made prior to such time.

"Remaining Commitment Percentage" means, with respect to any Partner

at any time, the percentage derived by (i) dividing such Partner's Remaining Capital Commitment at such time by the aggregate amount of all Partner's Remaining Capital Commitments (except as otherwise provided herein) at such time and (ii) multiplying such quotient by 100.

"Required Partners" means at any time Limited Partners and QP Partners (other than Limited Partners who are the General Partner, the Management Company, their Affiliates or respective employees, and Defaulting Partners and defaulting QP Partners) having at least a majority of, collectively and not voting as separate classes, the aggregate amount of all Partners' Capital Commitments and QP Partners' capital commitments (other than Capital Commitments or capital commitments, as the case may be, of the General Partner, the Management Company, such Affiliates and employees, Defaulting Partners or defaulting QP Partners).

"Scientific Advisory Board" means the scientific advisory board described in Section 3.01(d).

"Special Allocation" has the meaning set forth in Section 6.09(d).

"Special Distributions" has the meaning set forth in Section 6.02(e).

"Special Expense Distribution" has the meaning set forth in Section 6.05.

"Special Limited Partner" means any Limited Partner (or group of Limited Partners that are, in the reasonable determination of the General Partner, Affiliates of one another) (i) whose Capital Commitment to the Partnership is in the amount of $10 million or more or (ii) who in the judgment of the General Partner is capable of providing unique business opportunities to particular portfolio companies.

"Special Tax Distribution" has the meaning set forth in Section 6.02(c).

"Substituted Partner" has the meaning set forth in Section 11.02.

"Transfer" has the meaning set forth in Section 10.01.

"Tax-Exempt Investor" means a Limited Partner that is a U.S. person for U.S. federal income tax purposes and that is generally exempt from U.S. federal income tax.

"Triggering Event" means with respect to any Person, the criminal conviction or admission by consent (including a plea of no contest or consent to an injunction or order prohibiting future violations of the securities laws by the Securities and Exchange Commission or other regulatory body) of such Person to a violation of the federal securities laws or applicable state law, or of any rule or regulation promulgated thereunder, or of any criminal statute involving a material breach of fiduciary duty; or the commission by such Person of an action, or the omission by such Person to take an action, if such commission or omission constitutes bad faith, gross negligence, willful misconduct, fraud or willful or reckless disregard for such Person's duties to the Partnership or the Limited Partners; or a material and ongoing breach of this Agreement by such Person.

"Unused Credit Amount" means, at any time, the Credit Amount at such time, reduced by the sum of (i) the aggregate amount of such Credit Amount that

has theretofore been applied, under Section 5.02, to satisfy the obligation of the General Partner to make Capital Contributions and (ii) without duplication of the foregoing, the aggregate amount of Credit Amount with respect to which Special Distributions have been made to the General Partner under Section 6.02(e).

"U.S. Investor" means a Limited Partner that is a U.S. person for U.S. federal income tax purposes.

ARTICLE II

GENERAL PROVISIONS

SECTION 2.01. Name. The name of the Partnership is Caduceus Private Investments II, LP.

SECTION 2.02. Office; Registered Agent. (a) The Partnership has and shall maintain a registered office in Delaware at, and the name and address of the Partnership's registered agent in Delaware is, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware, USA. (b) The business address of the General Partner shall be OrbiMed Capital II LLC, 767 Third Avenue, 30th Floor, New York, New York, 10017, USA, or such other place as the General Partner shall specify by notice to all the Partners.

SECTION 2.03. Purposes of the Partnership. (a) The purposes of the Partnership are (i) to identify potential Partnership Investments, (ii) to acquire, hold and dispose of Partnership Investments, (iii) pending utilization or disbursement of funds, to invest such funds in accordance with the terms of this Agreement and (iv) to do everything necessary or desirable for the accomplishment of the above purposes or the furtherance of any of the powers herein set forth and to do every other act and thing incident thereto or connected therewith.

(b) The Partnership shall make Investments only in health care and health-care related businesses with a particular focus on entities engaged in drug discovery and development, medical devices and medical diagnostics, and technology to facilitate the foregoing; provided that the Partnership may hold cash in money market funds and other short-term cash investments and may engage in hedging techniques using derivatives with respect to foreign currency risk, interest rate risk, and hedging gains with respect to Investments.

(c) The Partnership, and the General Partner on behalf of the Partnership, may enter into and perform a subscription agreement with each Limited Partner and any agreements to induce any Person to purchase interests in the Partnership and any documents contemplated thereby or related thereto and any amendments thereto, without any further act, vote or approval of any Person, including any Partner, notwithstanding any other provision of this Agreement. The General Partner is hereby authorized to enter into the documents described in the preceding sentence on behalf of the Partnership, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into other documents on behalf of the Partnership.

SECTION 2.04. Liability of the Limited Partners Generally. Except as otherwise provided in this Agreement or the Delaware Act, no Limited Partner (or former Limited Partner) shall be obligated to make any contribution of capital to the Partnership or have any liability for the debts and obligations of the Partnership.

SECTION 2.05. Fiscal Year. The fiscal year of the Partnership for financial statements and United States federal income tax purposes shall end on December 31st (or such other date as may be required by law).

SECTION 2.06. Admission of Limited Partners. On the Initial Closing Date, each Person whose subscription for a Partnership Interest in the Partnership has been accepted by the General Partner shall, upon execution and delivery of a counterpart of this Agreement, become a Limited Partner and shall be shown as such on the books and records of the Partnership.

SECTION 2.07. Additional Limited Partners. (a) At any time during the period

commencing on the Initial Closing Date and ending on the Final Closing Date, the General Partner may at its discretion cause the Partnership to admit additional Limited Partners or allow any Limited Partner to increase its original Capital Commitment. Upon the execution and delivery of a counterpart of this Agreement, each such additional Limited Partner shall become a Limited Partner of the Partnership and shall be shown as such on the books and records of the Partnership. Neither the admission of any additional Limited Partner to the Partnership nor the increase in the original Capital Commitment of any existing Limited Partner pursuant to this Section 2.07 shall require the approval of any Limited Partners existing immediately prior to such admission or increase.

(b) Additional Limited Partners admitted to the Partnership on any Closing Date other than the Initial Closing Date (and to the extent of any increase in their Capital Commitments on any such Closing Date, Limited Partners so increasing their Capital Commitments) shall make Capital Contributions for their pro rata share (on a combined basis with all Partners and QP Partners) of the Capital Contributions previously made by Partners for any Partnership Investments still held by the Partnership and the capital contributions previously made by the QP Partners for QP Fund Investments still held by the QP Fund at the time of their admission and for drawn but uninvested Capital Contributions and Partnership Expenses and Management Fees and analogous amounts under the QP Fund Agreement plus interest at the Prime Rate on such amounts from the date of each such contribution (or the initial Drawdown Date, in the case of Management Fees) to the date of the subsequent closing, and will share in any subsequent distributions and allocations of items of income, gain, loss or expense of the Partnership that are attributable to any such Investment. Amounts so contributed may result in dilution to existing Partners with respect to Partnership Investments made prior to such contribution (and a portion of such contribution shall be paid to the Management Company in the case of Management Fees) or be applied to purchase QP Fund Investments such that the Partnership, on the one hand, and the QP Fund, on the other hand, will each hold a share of such investments, pro rata in the same proportion that the aggregate Capital Commitments bear to the aggregate capital commitments of the QP Fund. The purchase by the Partnership of such QP Fund Investments from the QP Fund shall be made at the QP Fund's cost in such QP Fund Investments plus an interest component on such amount equal to the Prime Rate. The interest component provided for above shall not be treated as income of the Partnership and shall be allocated to the existing Partners outside the Partnership by the General Partner.

(c) No additional Limited Partner or Substituted Partner shall be admitted to the Partnership, and no existing Limited Partner shall be allowed to increase its original Capital Commitment, unless the admission of such Limited Partner or the increase of such Capital Commitment (i) would not, in the judgment of the General Partner, jeopardize the status of the Partnership as a

partnership for United States federal income tax purposes, cause a dissolution of the Partnership under the Delaware Act or for United States federal income tax purposes, cause the Partnership's assets to be deemed to be "plan assets" for purposes of ERISA, cause the Partnership to be deemed to be an "investment company" for purposes of the Investment Company Act, cause the General Partner to be in violation of the Advisers Act, or cause the Partnership or any of its affiliates to be in violation of the Securities Act of 1933, as amended, and (ii) would not, in the judgment of the General Partner, violate, or cause the Partnership to violate, any other applicable law or regulation.

(d) Each Partner understands and agrees that the QP Fund Agreement will contain a provision analogous to this Section 2.07 enabling the QP Fund to admit additional QP Partners and to permit existing QP Partners to increase their capital commitments to the QP Fund, in each case on or prior to the Final Closing Date.

SECTION 2.08. Number of Partners; Tax Treatment. The Partnership will have no more than 100 beneficial owners, in compliance with the exemption from registration as an "investment company" provided by Section 3(c)(1) of the Investment Company Act. It is the intention of the Partners that the Partnership be treated as a partnership for U.S. federal, state and local income tax purposes. Notwithstanding anything to the contrary in this Agreement, neither the General Partner nor any Limited Partner shall take any action inconsistent with such treatment, including the filing of any election to treat the Partnership as a corporation for U.S. federal, state or local income tax purposes

SECTION 2.09. Competing Funds. Without the consent of the Required Partners, neither the General Partner nor its Affiliates shall close any other pooled investment fund (other than the QP Fund or a Parallel Investment Vehicle or funds existing or demonstrably contemplated on the date hereof) which has as its primary investment objective privately negotiated equity investments that are substantially similar to the types of investments to be made by the Partnership (any such fund being referred to hereinafter as a "Competing Fund"), until the earlier of (i) the time at which at least 70% of the aggregate Capital Commitments and the capital commitments of the QP Fund have been committed to or invested in, called for contribution for investment in, or reserved by the General Partner for Follow-on Investments with respect to, Investments, or follow-on investments with respect to investments by the QP Fund, and/or paid or reserved for payment of past or accrued Management Fees and Partnership Expenses (or analogous amounts with respect to the QP Fund) and (ii) the Full Investment Date. Until the Full Investment Date, a Competing Fund permitted by the preceding sentence shall co-invest alongside the Partnership (and the QP Fund and any Parallel Investment Vehicle) only on the same terms and conditions in all material respects; provided that such Competing Fund shall not co-invest in respect of a Follow-On Investment unless (x) such Competing Fund shall have previously co-invested in respect of the initial Investment that gave rise to such Follow-On Investment or (y) the Partnership has insufficient remaining capital to complete such Follow-On Investment.

SECTION 2.10. Management Limited Partner. CPI Capital Services Inc. (the "Management Limited Partner"), in its capacity as Limited Partner of the Partnership, shall be vested with and shall, under the general supervision of the General Partner and with the General Partner's written consent with respect to each action or decision, have the right to act or cause the taking or refraining from the taking of any action, including by proposing, approving, consenting or disapproving, by voting or otherwise, with respect to the following matters:

(1) the sale, exchange, lease, mortgage, assignment, pledge or other transfer of, or granting of a security interest in, any asset or assets of the Partnership;

(2) the incurrence, renewal, refinancing or payment or other discharge of

indebtedness by the Partnership;

(3) the making of other determinations in connection with or concerning investments of the Partnership, including investments in property, whether real, personal or mixed.

Notwithstanding the foregoing rights of the Management Limited Partner, nothing in this Section 2.10 shall be construed to limit in any way the authority of the General Partner to act alone in taking any action or making any decision on behalf of the Partnership or to require the participation, approval or consent of the Management Limited Partner with respect to any such decision.

ARTICLE III

MANAGEMENT, ADMINISTRATION AND OPERATIONS OF THE PARTNERSHIP

SECTION 3.01. (a) Management Generally. The management and control of the Partnership shall be vested exclusively in the General Partner, provided that certain administrative duties may be delegated by the General Partner as provided in paragraph (b) to this Section 3.01 and as provided in paragraphs (c) and (d) to this Section 3.01. The Limited Partners shall have no part in the management or control of the Partnership, shall exercise no influence over the management or policies of the Partnership and shall have no authority or right to act on behalf of or bind the Partnership in connection with any matter; provided that the General Partner shall consult with the Advisory Committee on certain matters from time to time as provided herein.

(b) Administrative Services. The Partnership may retain the services of one or more entities to render various administrative services to the Partnership and may pay reasonable and customary compensation for such services as follows. The Partnership may retain an Affiliate of the General Partner to provide such administrative services. The General Partner shall engage OrbiMed Advisors LLC, a Delaware limited liability company and an Affiliate of the General Partner, as its Management Company to manage the business of the Partnership and provide the foregoing administrative services for a per annum fee equal to:

(i) during the first 36 months following the initial Drawdown Date (the "36- Month Mark"), (A) on or prior to the Base Reduction Date, 1.5% of the aggregate Capital Commitments of all Limited Partners that are not Affiliates or employees of the General Partner (the "Non-GP Affiliate Limited Partners") on the first day of the relevant fiscal quarter and (B) after the Base Reduction Date, 1.0% of the aggregate remaining invested capital (as reduced by the cost basis of all Investments that have been sold or otherwise disposed of by the Partnership (other than those reinvested as permitted by Section 6.11(a)) of all Non-GP Affiliate Limited Partners on the first day of the relevant fiscal quarter;

(ii) during the 24-month period immediately succeeding the 36-Month Mark (the "Succeeding 24-Month Mark"), (A) if the Base Reduction Date has not occurred, on or prior to the Base Reduction Date, 1.75% of the aggregate Capital Commitments of all Non-GP Affiliate Limited Partners on the first day of the relevant fiscal quarter and (B) after the Base Reduction Date, 1.25% of the aggregate remaining invested capital (as reduced by the cost basis of all Investments that have been sold or otherwise disposed of by the Partnership (other than those reinvested as permitted by Section 6.11(a)) of all Non-GP Affiliate Limited Partners on the first day of the relevant fiscal quarter; and

(iii) thereafter (A) if the Base Reduction Date has not occurred, on or prior to the Base Reduction Date, 2% of the aggregate Capital Commitments of all Non- GP Affiliate Limited Partners on the first day of the relevant fiscal quarter, and (B) after the Base Reduction Date, 1.5% of the aggregate remaining invested capital (as reduced by the cost basis of all Investments that have been sold or otherwise disposed of by the Partnership (other than those reinvested as permitted by Section 6.11(a)) of all Non-GP Affiliate Limited Partners on the first day of the relevant fiscal quarter;

to be paid by the Partnership quarterly, in advance (the "Management Fee"). All cash director's fees, breakup fees, commitment fees, monitoring fees and success fees received by the General Partner or the Management Company from portfolio companies constituting Investments (or, with respect to breakup fees, companies constituting prospective Investments), and travel expenses of the Management Company incurred with respect to monitoring Investments, shall be offset against the Management Fee accruing after such receipt for incurrence (appropriately pro rated between the Partnership and the QP Fund in proportion to their respective investment percentages in the applicable portfolio company); provided that (x) in no event shall the Management Fee be reduced below zero and (y) no offset of the Management Fee shall be made with respect to reimbursements paid to the General Partner, the Management Company, or their respective Affiliates or employees for out-of-pocket expenses incurred on behalf or with respect to portfolio companies. The Management Company will be responsible for monitoring Investments and funding all ordinary administrative and overhead expenses of the Partnership and its staff. Non-cash fees received by the General Partner or the Management Company from portfolio companies constituting Investments shall be allocated and assigned by the General Partner to the Partnership and the QP Fund and any other affiliated investment vehicle in proportion to such entity's investment in such portfolio company.

(c) Advisory Committee. The Partnership's Advisory Committee, which will also serve as the advisory committee for the QP Fund, will consist of no less than three and no more than seven representatives of the Limited Partners and limited partners of the QP Fund, to be appointed by the General Partner. The Advisory Committee will advise the General Partner on certain matters related to the Partnership and will have final approval on issues involving any actual or potential conflicts of interest between the General Partner, the Management Company and the Partnership. In addition the Advisory Committee will periodically receive from the Management Company proposed valuations of fund investments and may request to review such valuations and to take the actions provided for in Section 6.03(b). Notwithstanding anything to the contrary contained in this Agreement, a member of the Advisory Committee shall not

constitute a general partner of the Partnership. Notwithstanding anything to the contrary

contained in this Agreement, none of the actions taken by the Advisory Committee, any member of the Advisory Committee or the Limited Partners hereunder shall constitute participation in the control of the business of the Partnership within the meaning of the Delaware Act. Actions of the Advisory Committee shall be on the basis of majority voting, with each member of the Advisory Committee having one vote. The Partners acknowledge that each member of the Advisory Committee represents the applicable Limited Partner appointing such member and may act in the best interests of such Limited Partner.

(d) Scientific Advisory Board. The General Partner shall consult from time to time with the Scientific Advisory Board, which will also serve as the scientific advisory board for the QP Fund, made up of individuals experienced in the areas in which the Partnership intends to concentrate its investments. The General Partner shall decide upon the size and selection process for the Scientific Advisory Board members. Members of the Scientific Advisory Board shall be consulted individually from time to time on areas within their scientific expertise and shall meet periodically as a group, when necessary, to discuss areas of potential interest to the Partnership. Fees of the Scientific Advisory Board shall be paid by the Management Company out of the Management Fee. At any time, the General Partner may remove such Scientific Advisory Board members from their position(s) on the Scientific Advisory Board.

SECTION 3.02. Authority of the General Partner. The General Partner shall have the power on behalf and in the name of the Partnership to carry out any and all of the objectives and purposes of the Partnership and to perform all acts which it may, in its discretion, deem necessary, desirable or convenient, including without limitation, the power to:

(a) identify investment opportunities for the Partnership;

(b) acquire, hold, manage, own, sell, transfer, convey, assign, exchange, pledge or otherwise dispose of any investment made or held by the Partnership;

(c) open, maintain and close accounts with banks, brokerage firms or other financial institutions, deposit and withdraw funds in the name of the Partnership and draw checks or other orders for the payment of moneys;

(d) enter into, and take any action under, any contract, agreement or other instrument as the General Partner shall determine to be necessary or desirable to further the purposes of the Partnership, including, without limitation, granting or refraining from granting any waivers, consents and approvals with respect to any of the foregoing and any matters incident thereto and entering into side-letters and agreements with certain Limited Partners;

(e) bring and defend actions and proceedings at law or in equity and before any governmental, administrative or other regulatory agency, body or commission;

(f) employ, on behalf and at the expense of the Partnership, and dismiss from such employment any and all attorneys, accountants, consultants, appraisers or custodians of the assets of the Partnership or other agents or employees (who may

be designated as officers with titles), on such terms and for such compensation as the General Partner may determine, whether or not such Person may be, or also be otherwise employed by, any Affiliate of the General Partner;

(g) make all elections, investigations, evaluations and decisions, including the voting of securities held by the Partnership, binding the Partnership thereby, that may in the judgment of the General Partner be necessary or desirable for the acquisition, management or disposition of investments by the Partnership;

(h) enter into and perform any agency cross transaction in which any Affiliate of the General Partner acts as broker for both the Partnership and a party on the other side of the transaction or any agency transaction in which the Partnership is a principal and in which any Affiliate of the General Partner acts as broker for a party on the other side of the transaction (it being understood that the General Partner shall disclose any such transaction and its terms to the Advisory Committee);

(i) incur expenses and other obligations on behalf of the Partnership in accordance with this Agreement, and, to the extent that funds of the Partnership are available for such purpose, pay all such expenses and obligations;

(j) contribute funds to the Partnership in accordance with Section 3.06;

(k) establish reserves in accordance with Sections 5.02(a), 6.03(d) and 9.04(b) for contingencies and for any other Partnership purpose;

(l) in its discretion, form Partnership Investment Vehicles and permit Partners to make Parallel Investments outside the Partnership and Direct Investments; and

(m) act for and on behalf of the Partnership in all matters incidental to the foregoing.

SECTION 3.03. Other Authority. The General Partner agrees to use its best efforts (subject to the exceptions noted below) to operate the Partnership in such a way that (i) the Partnership will not be deemed to be an "investment company" for purposes of the Investment Company Act, (ii) none of the Partnership's assets will be deemed to be "plan assets" for purposes of ERISA, (iii) the Partnership will not generate any "unrelated business taxable income" as defined in Section 512(a)(1) of the Code (provided that it is understood that any offsets against the Management Fee and any fees received by the Partnership attributable to services performed by the General Partner or the Management Company for portfolio companies may give rise to "unrelated business taxable income"), (iv) Limited Partners will not, as a consequence of an investment in the Partnership, be treated as engaged in a trade or business in the United States or realize any income that is treated as effectively connected with the conduct of a trade or business in the United States, within the meaning of Section 864(c) or Section 897(a) of the Code (provided that it is understood that any offsets against the Management Fee and any fees received by the Partnership attributable to services performed by the General Partner or the Management Company for portfolio companies may give rise to such "effectively

connected income"), and (v) the General Partner will be in compliance with the Advisers Act. Subject to the foregoing and to Section 3.14, the General Partner is hereby authorized to take any action (including making structural, operating or other changes in the Partnership, making structural or other changes in any Investment, amending this Agreement in any manner that would otherwise require only the approval of the Required Partners pursuant to Section 12.01(a), canceling in whole or in part the Remaining Capital Commitment of any Partner, requiring the sale in whole or in part of any Partner's interest in the Partnership or any Parallel Investment Ownership interest of such Partner, or dissolving the Partnership) it has determined in good faith to be necessary in order for (a) the Partnership not to be in violation of the Investment Company Act or any other material law, regulation or guideline applicable to the Partnership, (b) the Partnership's assets not to be deemed "plan assets" for purposes of ERISA, (c) except as set forth in the immediately preceding sentence, the Partnership will not generate any "unrelated business taxable income," as defined in Section 512(a)(1) of the Code, (d) except as set forth in the immediately preceding sentence, Non-U.S. Investors will not, as a consequence of an investment in the Partnership, be treated as engaged in a trade or business in the United States or realize any income that is treated as effectively connected with the conduct of a trade or business in the United States, within the meaning of Section 864(c) of the Code, and (e) the General Partner not to be in violation of the Advisers Act or any other material law, regulation or guideline applicable to the General Partner or any other material law, regulation or guideline applicable to the Partnership, any of its Affiliates or any Partner. Prior to taking any action pursuant to this Section 3.03 or, if such prior notice is not reasonably practicable, after taking such action, the General Partner shall provide notice thereof to any Partner affected by such action, but such action shall not require the approval of any Partner. The General Partner shall use commercially reasonable efforts to effect any action pursuant to this Section 3.03 on a pro rata basis with respect to similarly situated Limited Partners.

SECTION 3.04. Expenses. (a) Subject to Sections 3.06 and 5.03, the Partnership shall be responsible for and shall pay all Partnership Expenses. All Partnership Expenses shall be paid out of funds of the Partnership determined by the General Partner to be available for such purpose. The aggregate expenses of the Partnership and the QP Fund shall generally be pro rated by the General Partner in its reasonable discretion and in accordance with each entity's aggregate capital commitments. As used herein, the term "Partnership Expenses" means all expenses or obligations of the Partnership or otherwise incurred by the General Partner in connection with this Agreement (other than the obligation of the Partnership to make or pay for any Partnership Investments), including without limitation:

(i) all Organizational Expenses and ongoing administrative expenses of the Partnership, certain of which the Partnership intends to amortize over a period of 60 months;

(ii) all ongoing Professional Expenses for services rendered to or in connection with the Partnership or in connection with this Agreement;

(iii) all unreimbursed Out-of-Pocket Expenses incurred in connection with Partnership activities;

(iv) all unreimbursed Professional Expenses and Out-of-Pocket Expenses (including Partnership Investment Vehicle Expenses) incurred in connection with the acquisition, holding,

refinancing, pledging, sale or proposed refinancing, pledging or sale of all or any portion of any Investment and costs and expenses of researching, conducting due diligence on and otherwise maintaining the Investments (including travel expenses, provided that travel expenses incurred in connection with monitoring investments shall reduce the Management Fee) and costs and expenses associated with the retention of consulting specialists by the General Partner to assist it in the analysis, purchase and sale of Investments;

(v) all expenses incurred in connection with any litigation or other proceeding involving the Partnership (including the cost of any investigation and preparation) and the amount of any judgment or settlement paid in connection therewith;

(vi) all expenses for indemnity or contribution payable by the Partnership to any Person, whether payable under Article VIII or otherwise and whether payable in connection with any litigation involving the Partnership or otherwise;

(vii) all unreimbursed expenses incurred in connection with the collection of amounts due to the Partnership from any Person;

(viii) all expenses incurred in respect of any taxes imposed on the Partnership or in connection with tax proceedings that are characterized as Partnership Expenses pursuant to Section 3.11;

(ix) all expenses incurred in connection with the preparation of amendments to this Agreement;

(x) all Partnership Investment Expenses;

(xi) the Management Fee; and

(xii) all expenses incurred in connection with the dissolution and liquidation of the Partnership.

Notwithstanding the foregoing, the Participating Partners in respect of any Partnership Investment for which a Partnership Investment Vehicle is formed shall be responsible for and shall pay all Partnership Investment Vehicle Expenses with respect to such Partnership Investment Vehicle to the extent of their respective Capital Commitments, and the other Partners shall be deemed to have a Capital Commitment equal to zero for purposes of funding such Partnership Investment Vehicle Expenses.

(b) The Participating Partners in respect of any Parallel Investment shall be responsible for and shall pay all Parallel Investment Expenses related to such Parallel Investment to the extent of their respective Capital Commitments, and the other Partners shall be deemed to have a Capital Commitment equal to zero for purposes of funding such Parallel Investment Expenses. If the General Partner determines, in its discretion, that any Expense relates to both a Partnership Investment and one or more Parallel Investments, the General Partner shall allocate such Expense among the Partnership and the applicable Parallel Investment Vehicles (or, in the case of a Parallel Investment without a Parallel Investment Vehicle, the Participating Partner or Participating Partners in respect of such Parallel Investment), pro rata in proportion to the aggregate Capital Contributions made with respect to such Partnership Investment and each such Parallel Investment.

The General Partner and the Limited Partners acknowledge and agree that to the extent permitted by law (i) no Parallel Investment Expense shall be incurred for the benefit of or borne by the Partnership, (ii) no Parallel Investment Expense shall constitute or be deemed to be a Partnership Expense for any purpose and (iii) no creditor whose claims arise in connection with any Parallel Investment shall have any recourse or claim against the Partnership or any Partnership Investment or be entitled reasonably to rely on the existence of the Partnership or any Partnership Investment in extending credit with respect to such Parallel Investment. Without limiting the generality of the foregoing, to the extent permitted by law (x) no Parallel Investment Expense shall be set forth on the books and records of the Partnership or, except as otherwise required by law, listed on the tax returns to be filed by the Partnership and (y) the Partnership shall not use any of its funds to pay or otherwise satisfy any Parallel Investment Expense.

SECTION 3.05. Restriction on Borrowings. The Partnership shall not (i) incur any indebtedness for borrowed money, (ii) guarantee the obligations of any Person or (iii) otherwise become contingently liable with respect to any indebtedness of any Person.

SECTION 3.06. Certain Contributions by the General Partner. The General Partner may, in its discretion, pay any Partnership Expense (or portion thereof) that the General Partner is otherwise entitled to require the Partners to fund pursuant to this Agreement, and such payment shall be treated as a cash contribution by the General Partner and credited to its Capital Account pursuant to Section 6.08(a). If the General Partner makes cash contributions to the Partnership pursuant to this Section 3.06, the General Partner shall have the option to require the Partners to fund, in accordance with Section 5.02(b), a Special Expense Distribution to the General Partner on any subsequent Drawdown Date on which the Partners are required to make Capital Contributions in respect of Investments.

SECTION 3.07. Transactions with Affiliates. In addition to transactions specifically contemplated by this Agreement, the General Partner, when acting in its capacity as General Partner of the Partnership, is hereby authorized to purchase property or obtain services from, to sell property or provide services to, or otherwise to deal with the General Partner (acting in a capacity other than its capacity as General Partner of the Partnership), any Affiliate of the General Partner, any Partner, any Person in which a Partnership Investment has been, or is proposed to be, made, or any Affiliate of any of the foregoing Persons; provided that, in connection with any such dealing (other than those specifically contemplated by the immediately

succeeding sentence of this Section 3.07) between the Partnership and the General Partner (acting in a capacity other than its capacity as General Partner of the Partnership), any Affiliate of the General Partner, or any Partner, such dealing shall be on terms no less favorable to the Partnership than the terms that would be obtained on an arm's-length basis and the General Partner shall disclose the arrangements of such dealing to the Advisory Committee. In connection with any services performed by any Affiliate of the General Partner for the Partnership, such Affiliate shall be entitled to be compensated by the Partnership for such services, and the amount of such compensation shall be determined by the General Partner in its discretion; provided that (x) such compensation at any time shall not exceed the amount such Affiliate would customarily receive from third parties as compensation at such time for the performance of similar services and (y) such services shall not be rendered for additional compensation if already covered by the Management Fee or if such

services are of a type of activity required to be performed by the General Partner pursuant to its obligations hereunder. Each Partner acknowledges and agrees that the purchase or sale of property, the performance of such services, the borrowing of such funds, other dealings, or the receipt of such compensation may give rise to conflicts of interest between the Partnership and the Partners, on the one hand, and the General Partner or such Affiliate, on the other hand.

SECTION 3.08. Other Activities, Conflicts of Interest. (a) Each Partner (1) represents and warrants that such Partner has carefully reviewed and understood the information contained in the Offering Memorandum and (2) acknowledges and agrees that the General Partner or any of its Affiliates may engage in any of the activities of the type or character described in the Offering Memorandum under the caption "Certain Risk Factors and Conflicts of Interest", or elsewhere therein, whether or not such activities have or could have an effect on the Partnership's affairs or on any Investment. Without limiting the generality of any of the foregoing, each Partner acknowledges and agrees that:

(i) the General Partner, any of its Affiliates and any officer or employee of any such Person shall be required to devote only such time to the affairs of the Partnership as the General Partner determines in its discretion may be necessary to manage and operate the Partnership, and any such Person, to the extent not otherwise directed by the General Partner (but subject to Section 4.03), shall be free to serve any other Person or enterprise in any capacity that it may deem appropriate in its discretion; and

(ii) Affiliates of the General Partner shall have the right to perform consulting services for, and to receive compensation from, any Person in which an Investment has been, or is proposed to be, made; provided that such services shall not be rendered for additional compensation if already covered by the Management Fee or if such services are of a type of activity required to be performed by the General Partner pursuant to its obligations hereunder. In addition, such Affiliates shall have the right to purchase property (including securities) from, to sell property or lend funds to, or otherwise to deal with, any Person in which an Investment has been, or is proposed to be, made. Employees of the General Partner and its Affiliates may also receive cash and equity compensation in connection with serving as directors of portfolio companies. Each Partner further acknowledges and agrees that the performance of such services, the purchase or sale of such property, the lending of such funds, other dealings, or the receipt of such fees may give rise to conflicts of interest between the Partnership and the Partners, on the one hand, and Affiliates of the General Partner, on the other hand, and that any such fees or other

compensation will not be shared with the Partnership or any Partner.

(b) Unless otherwise expressly provided herein, whenever a conflict of interest exists or arises between the General Partner, any of its Affiliates, or a Limited Partner, on the one hand, and the Partnership or, in the case of the General Partner or its Affiliates, any Limited Partner, on the other hand, the General Partner shall, promptly after becoming aware of such conflict of interest, disclose such conflict of interest to the Advisory Committee, together with information reasonably necessary to enable the Advisory Committee to evaluate such conflict of interest, and the Advisory Committee shall resolve such conflict of interest in its reasonable discretion after consultation with the General Partner.

SECTION 3.09. Books and Records; Accounting Method. (a) The General

Partner shall keep or cause to be kept at the address of the General Partner (or at such other place as the General Partner shall advise the other Partners) full and accurate books and records of the Partnership. Subject to Sections 3.10(a) and 3.10(b), such books and records shall be available, upon five Business Days' notice to the General Partner, for inspection and copying at reasonable times during business hours by each Limited Partner or its duly authorized agents or representatives for a purpose reasonably related to such Limited Partner's interest in the Partnership. Each Limited Partner agrees that such books and records contain confidential information relating to the Partnership and its affairs.

(b) The Partnership's books of account shall be kept on the same basis followed by the Partnership for United States federal income tax purposes.

SECTION 3.10. Confidentiality. (a) Each Partner, other than the General Partner, agrees to keep confidential, and not to disclose to any Person, any matter relating to the Partnership and its affairs, including the identities of the other Partners and the beneficial owners of the related Partnership Interests and any matter related to any Investment (other than disclosure to such Partner's employees, agents, advisors, or representatives responsible for matters relating to the Partnership and who need to know such information in order to perform such responsibilities (each such Person being hereinafter referred to as an "Authorized Representative") or the other Limited Partners); provided that such Partner or any of its Authorized Representatives may make such disclosure to the extent that (i) the information being disclosed is otherwise generally available to the public, (ii) such disclosure is requested by any governmental body, agency, official or authority having jurisdiction over such Partner or (iii) such disclosure, in the written opinion of legal counsel of such Partner or Authorized Representative, is otherwise required by law. Prior to making any disclosure described in clause (iii) of this Section 3.10(a), each Partner shall notify the General Partner of such disclosure and deliver to the General Partner a copy of the opinion referred to in such clause (iii). Prior to any disclosure to any Authorized Representative, each Limited Partner shall advise such Authorized Representative of the obligations set forth in this Section 3.10(a) and obtain the agreement of such Person to be bound by the terms of such obligations. Notwithstanding any other provision of this Agreement, any Partner (and each of its employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and any Partnership Investment or Parallel Investment, provided that the foregoing does not constitute an authorization to disclose information identifying the Partnership, the Partners, or

any parties to Partnership Investments or Parallel Investments or (except to the extent relating to such tax structure or tax treatment) any nonpublic commercial or financial information.

(b) The General Partner may, to the maximum extent permitted by applicable law, keep confidential from any Limited Partner any information (including information requested by such Limited Partner pursuant to Section 3.09) the disclosure of which (i) the Partnership, any Partnership Investment Vehicle or Parallel Investment Vehicle or the General Partner is required to keep confidential by law or by the terms of any agreement entered into in good faith in connection with any proposed Investment or (ii) the General Partner reasonably believes may have an adverse effect on (x) the ability to consummate any proposed Investment or any transaction directly or indirectly related to, or giving rise to, such Investment, (y) the Partnership or any Partnership Investment Vehicle or Parallel Investment Vehicle or (z) any entity in which an

Investment has been, or is proposed to be, made. If information is withheld from any Limited Partner pursuant to this Section 3.10(b), the General Partner shall provide such information to such Limited Partner after the circumstances described in the preceding sentence are no longer continuing.

SECTION 3.11. Partnership Tax Returns. (a) The General Partner shall cause to be prepared and timely filed all tax returns required to be filed for the Partnership. The General Partner may, in its discretion, make, or refrain from making, any income or other tax elections for the Partnership that it deems necessary or advisable, including an election pursuant to Section 754 of the Code.

(b) The General Partner is hereby designated as the Partnership's "Tax Matters Partner" under Section 6231(a)(7) of the Code. The General Partner is specifically directed and authorized to take whatever steps the General Partner, in its discretion, deems necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under Treasury regulations. Any Limited Partner shall have the right to participate in any administrative proceedings relating to the determination of Partnership items at the Partnership level. Expenses of such administrative proceedings undertaken by the Tax Matters Partner shall be Partnership Expenses. Each Limited Partner who elects to participate in such proceedings shall be responsible for any expenses incurred by such Limited Partner in connection with such participation. The cost of any resulting audits or adjustments of a Partner's tax return shall be borne solely by the affected Partner.

(c) The General Partner shall, at the sole cost and expense of the affected Limited Partner, use commercially reasonable efforts to (i) provide each Limited Partner with such assistance as such Limited Partner may reasonably request in connection with any tax filing requirements arising in any jurisdiction other than the Limited Partner's jurisdiction of residence for tax purposes and relating to income derived by the Limited Partner from the Partnership, any Parallel Investment or any Parallel Investment Vehicle and (ii) assist the Limited Partners in obtaining any tax refunds or other tax benefits from any such jurisdiction, arising in connection with any Partnership Investment or Parallel Investment.

SECTION 3.12. Annual Meeting. The General Partner shall call a meeting of the

Partners on an annual basis by giving notice of such meeting to each Partner not less than 30 days prior to such meeting. Such notice shall specify the time and place of such meeting.

SECTION 3.13. Reliance by Third Parties. Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

SECTION 3.14. ERISA. The General Partner agrees to use its best efforts to operate the Partnership in such a way that none of the Partnership's assets would be deemed to be "plan assets" for purposes of ERISA by causing the Partnership to qualify as a "venture capital operating company" for purposes of ERISA. If, despite such efforts, the General Partner becomes aware or is notified that the Partnership's assets may be deemed to be such plan assets, and reputable counsel to the General Partner issues a legal opinion to the General Partner confirming that the foregoing is reasonably likely, then the General Partner may take any action authorized under Section 3.03, including without

limitation canceling in whole or in part the ERISA Partners' respective Remaining Capital Commitments or requiring the sale in whole or in part of the ERISA Partners respective Partnership Interests in the Partnership, without the approval of any ERISA Partner; provided that such cancellation, sale or other action shall be imposed on all ERISA Partners pro rata in accordance with their respective Commitment Percentages (calculated without giving effect to the Capital Commitment of any Partner that is not an ERISA Partner).

ARTICLE IV

INVESTMENTS AND INVESTMENT OPPORTUNITIES

SECTION 4.01. Investments Generally. The assets of the Partnership shall, to the extent not required for the payment of expenses or otherwise necessary for the conduct of the Partnership's business (as determined by the General Partner in its discretion), and subject to Sections 2.03(b), 3.03 and 5.07, be invested in such Partnership Investments as the General Partner shall determine in its discretion. In the discretion of the General Partner, Partnership Investments shall be made either directly by the Partnership or indirectly through one or more Partnership Investment Vehicles, or shall be made as Direct Investments; provided, that at the time any Investment is made the General Partner may not, without the consent of the Required Partners, (i) allocate more than 15% of the aggregate Capital Commitments in any one Partnership Investment, (ii) allocate more than 25% of the aggregate Capital Commitments in non-United States entities, or (iii) allocate more than 33% (or up to 50% with the consent of the Advisory Committee) of the aggregate Capital Commitments in publicly traded securities; provided, however, that the General Partner may exceed the foregoing percentages without the consent of the Required Partners for a period of one year from the date of such Investment in the event the General Partner intends to syndicate such Investment in order to comply with the foregoing percentages following such syndication so long as in no event shall any Investment be allocated more than 25% of the aggregate Capital Commitments (including any amounts intended for syndication), and any such deviation from the foregoing 15% limitation with respect to the aggregate Capital Commitments shall be with respect to no more than one Investment at a time.

Subject to and in accordance with Section 4.04, the General Partner may, in its discretion, permit certain Partners (other than an ERISA Partner) to make Parallel Capital Contributions outside the Partnership in such Parallel Investments as the General Partner shall determine in its discretion. In the discretion of the General Partner, Parallel Investments shall be made either directly by the Participating Partners in respect of such Parallel Investments or indirectly through one or more Parallel Investment Vehicles.

Notwithstanding the foregoing, the Partnership shall not make any Investment in connection with a tender offer for outstanding securities of any Person that is the subject, directly or indirectly, of such Investment if the Board of Directors (or other analogous body) of such Person recommends in such Person's Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9, as amended or supplemented, that security holders not tender securities pursuant to such offer. It is further understood that the Partnership will not make Investments of a type or character inconsistent with the investments described in the Offering Memorandum.

SECTION 4.02. Co-Investments. If, in connection with one or more proposed Investments arising from a single investment opportunity and subject to Section 4.03, the General Partner determines, in its discretion, that there are

additional securities available for investment by the Eligible Partners (as hereinafter defined) outside the Partnership and other than through Parallel Investments, the General Partner may, in its discretion, offer such Eligible Partners an opportunity to make a Co-Investment in such additional securities (the "Excess Amount"). Such securities may be offered to Eligible Partners by the issuer of such securities or a third party. Each Eligible Partner will be offered an opportunity to make a Co-Investment in such securities in an amount equal to the product of (i) such Eligible Partner's Commitment Percentage (calculated without giving effect to the Capital Commitment of any Partner who is not an Eligible Partner) times (ii) the Excess Amount. If any Eligible Partner declines to invest in all or any portion of its share of the Excess Amount, such uncommitted amount will first be offered to any other Eligible Partner who has agreed to invest in its share of the Excess Amount and concurrently advised the General Partner of its willingness to make a Co-Investment in excess of such share, and the General Partner shall allocate such uncommitted amount among all such other Eligible Partners on a basis the General Partner determines in its discretion is, under the circumstances, equitable and practicable. Notwithstanding the foregoing, the General Partner shall be free to offer any uncommitted amount (in addition to any securities not offered to Eligible Partners) to the other Partners (including the General Partner), or to any other Person, which may include any Affiliates of the General Partner, funds advised by the General Partner or its Affiliates, or any director, officer, employee or agent of the General Partner or any of its Affiliates. For the avoidance of doubt, the General Partner shall not receive any Carried Interest in respect of Co-Investments made by Eligible Partners.

The term "Eligible Partner" means, with respect to any proposed Co-Investment, all Special Limited Partners except (i) any Defaulting Partner and (ii) any Partner who is an Excused Partner with respect to any related Investment. Any Co-Investment shall be in the same securities and at the same cost as are applicable to any one or more of the related Investments; provided that:

(a) such Co-Investment shall be subject to (A) the payment of a ratable portion of any

expenses incurred by the General Partner or any of its Affiliates in connection with the making of such Co-Investment and (B) arrangements that would restrict the voting and transfer of the subject securities (provided that if voting or transfer restrictions are imposed, such arrangements would not permit the Partnership (in the case of any Partnership Investment in the same securities) or any Participating Partner (in the case of any Parallel Investment in the same securities) to sell all or any portion of such investment unless the Eligible Partners are given an opportunity to sell on a pro rata basis their Co-Investment on terms no less favorable than those applicable to the Partnership or such Participating Partner, as the case may be);

(b) the General Partner and any Eligible Partner may agree to structure such Co- Investment so as (A) to utilize an investment vehicle (through which the General Partner (or, at the discretion of the General Partner, an Affiliate of the General Partner) and such Eligible Partner would make their investments) or (B) to offer to such Eligible Partner the opportunity to make a Co-Investment in securities which are different from those securities offered to other Eligible Partners, in each case only to the extent necessary in order for neither the General Partner nor any of its Affiliates to be a "fiduciary" within the meaning of ERISA or an "investment adviser" within the meaning of the Advisers Act of any Eligible Partner in connection with such Co-Investment; and

(c) in the case of any Eligible Partner who is subject to Part 4 of Subtitle B of Title I of ERISA, such Eligible Partner will not be permitted to participate in such Co-Investment unless such Eligible Partner acknowledges in writing that neither the General Partner nor any of its Affiliates is a "fiduciary" within the meaning of ERISA of such Eligible Partner in connection with such Co-Investment.

Any amounts invested by any Partner pursuant to this Section 4.02 shall not be accounted for as Capital Contributions and shall in no way affect the Capital Account or Remaining Capital Commitment of any Partner hereunder.

SECTION 4.03. Suitability of Investments. The General Partner shall determine in good faith whether any investment offered or available to the Partnership is an appropriate investment for the Partnership to make (or to permit the Partners to make) as one or more Investments and, if so, the aggregate size of such Investment or Investments (which may be less than the total amount offered to the Partnership).

SECTION 4.04. Structuring of Investments; Parallel Investments. (a) In structuring any investment opportunity, the General Partner may, in its discretion but solely to comply with regulatory requirements or tax laws (including without limitation possible tax efficiencies available to certain Limited Partners) after such consultation with Partners as the General Partner, in its discretion, deems appropriate, structure such investment opportunity (i) as one or more Partnership Investments or (ii) in part as one or more Partnership Investments and in part as one or more Parallel Investments. In addition, the General Partner may permit different groups of Partners to make Capital Contributions with respect to different Investments arising from a single investment opportunity; provided that (i) no ERISA Partner shall be permitted or required to make a Capital Contribution with respect to any Parallel Investment and (ii) no other Partner who advises the General Partner that it desires not to participate in a Parallel Investment shall be required to make a Capital Contribution with respect to such Parallel Investment. The General Partner shall use reasonable efforts to ensure that Participating Partners invest pro rata based on

their relative Capital Commitments in such Parallel Investments.

(b) If any single investment opportunity is structured as more than one Investment and the General Partner permits different groups of Partners to make Capital Contributions with respect to different Investments arising from such investment opportunity:

(i) the securities comprising any Investment arising from such investment opportunity shall be the same as the securities comprising each other Investment arising from such investment opportunity;

(ii) subject to Section 5.02(b), it is understood that each Partner shall be required, with respect to one or more Investments arising from such investment opportunity, to make an aggregate Capital Contribution equal to the product of (x) such Partner's Remaining Commitment Percentage times (y) the aggregate amount of all Investments arising from such investment opportunity;

(iii) any Partner that makes an aggregate Capital Contribution in accordance with clause (ii) of this Section 4.04(b) with respect to one or more Investments arising from such investment opportunity shall

be deemed to have a Remaining Capital Commitment equal to zero for purposes of all other Investments to be made by the Partnership arising from such investment opportunity; and

(iv) other than upon dissolution of the Partnership, securities comprising all or any portion of any Investment arising from such investment opportunity shall not be directly or indirectly sold, exchanged, transferred or otherwise disposed of, or Proceeds in respect thereof distributed, unless securities comprising all or an equivalent portion, as the case may be, of each other Investment arising from such investment opportunity are directly or indirectly disposed of, or Proceeds in respect thereof distributed, at or about the same time, for equivalent consideration and otherwise on substantially similar terms. For purposes of this Section 4.04(b), the securities comprising any Investment shall be the securities issued by the ultimate Person in which the Investment has been made, without regard to the securities, if any, issued by any Partnership Investment Vehicle or Parallel Investment Vehicle.

(c) The General Partner and the Partners acknowledge and agree that each Parallel Investment constitutes an Investment (but not a Partnership Investment) for purposes of certain provisions of this Agreement. Without limiting the generality of the foregoing, it is understood that the terms of each Parallel Investment applicable to the acquisition, management and disposition of such Parallel Investment shall be set forth in an agreement or agreements between the General Partner and the Participating Partners in respect of such Parallel Investment, and shall be substantially similar to those contained in this Agreement with respect to Partnership Investments (including, mutatis mutandis, the provisions of Section 5.03 with respect to investment fees and the provisions of Article VI with respect to the determination of the amount that the General Partner is entitled to receive, as a share of income, profit or gain or otherwise, from any Participating Partner in respect of such Parallel Investment based upon the performance of such Parallel Investment). The terms of the agreement or agreements referred to in the

immediately preceding sentence shall apply only to the particular Parallel Investment or Parallel Investments covered by such agreement or agreements.

(d) Notwithstanding anything in this Agreement to the contrary, including the provisions of Section 4.04(c), the General Partner and the Partners acknowledge and agree that to the extent permitted by law (i) each Parallel Investment shall be made for the sole benefit and use of the Participating Partners in respect of such Parallel Investment (and not made for the benefit or use of the Partnership), (ii) no Parallel Investment shall constitute or be deemed to be an asset of the Partnership for any purpose and (iii) no creditor of the Partnership shall have any recourse or claim against any Parallel Investment or be entitled reasonably to rely on the existence of any Parallel investment in extending credit to the Partnership. Without limiting the generality of the foregoing, to the extent permitted by law (x) no Parallel Investment shall be set forth on the books and records of the Partnership or, except as otherwise required by law, listed on the tax returns to be filed by the Partnership and (y) the Partnership shall not use any of its funds to acquire or otherwise make any Parallel Investment.

(e) Each Limited Partner does hereby constitute and appoint the General Partner as its true and lawful representative and attorney-in-fact, in its name, place and stead to make, execute and sign any agreement or instrument that is necessary or desirable in connection with establishing the terms of or

otherwise structuring any Parallel Investment in which such Limited Partner elects to participate in accordance with this Section 4.04, including without limitation any agreement or instrument required for the formation of any Parallel Investment Vehicle; provided that in no event shall the power of attorney granted hereby be exercised so as to adversely modify or affect the limited liability of such Limited Partner. The power of attorney granted hereby is coupled with an interest and shall (i) survive and not be affected by the subsequent death, incapacity, disability, dissolution, termination or bankruptcy of the Limited Partner granting the same or the transfer of all or any portion of such Limited Partner's interest in the Partnership, and (ii) extend to such Limited Partner's successors, assigns and legal representatives.

SECTION 4.05. Direct Investments. (a) Generally. It is understood that the General Partner may, in its discretion after such consultation with Partners as the General Partner in its discretion deems appropriate, structure any Investment as a direct acquisition by one or more Partners (other than (i) ERISA Partners and (ii) other Partners who advise the General Partner that they desire not to participate in such direct acquisition) of the securities comprising such Investment outside the Partnership, but treat such investment as a Partnership Investment, and not as a Parallel Investment, for all purposes of this Agreement. Each such Investment so treated is hereinafter referred to as a "Direct Investment". Without limiting the generality of the foregoing, each Direct Investment shall be reflected as a Partnership Investment on the books and records of the Partnership. Capital Contributions in respect of such Direct Investment shall be reflected in the Capital Account of each Participating Partner and Proceeds and items of income and gain. Loss, deduction and credit attributable to such Direct Investment shall be subject to the distribution and allocation provisions of Article VI.

(b) Appoi