

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

July 13, 1973

TO: All NASD Members and Interested Persons
RE: SEC Release on NASD Proposed Tax Shelter Rules

On July 2, 1973, the Securities and Exchange Commission in Securities Exchange Act Release No. 10260 announced its request for public comment on a proposed regulatory program established by the NASD which would govern the distribution of tax sheltered programs offered by its members. Because of its growing concern over the lack of adequate regulation in the tax shelter area, on May 9, 1972, the Association published for comment proposed regulations which reflected nearly two years of work and study in this area. Prior to and since the release of these proposals, the Association has worked with other regulatory authorities, both state and federal, and certain national trade organizations, to assure that the rules are not inconsistent with the regulations proposed by the other regulatory organizations and that they are constructed in a manner which would not be adverse to the industry but would still protect the public interest to the maximum extent possible.

As a result of the May 9, 1972 publication, an extensive number of comments were received and the original proposals have been modified in many respects as a result thereof. As modified, the proposals have been submitted informally to the Commission for its review and comment. A copy of the modified proposed regulations is submitted herewith for your consideration and comment. The proposed regulations, to be adopted pursuant to a proposed new Article III, Section 33 of the Association's Rules of Fair Practice are referred to and summarized in the SEC release. At the end of each section where changes have been made from the May 9, 1972 draft a summary thereof is included.

The Commission's release requested those persons desiring to comment on the specifics of the proposals to do so, but more importantly it asked that consideration be given to certain basic policy issues raised in the release which are as follows:

1. Whether the NASD, in its exercise of its broad authority under the Exchange Act over the conduct of its members, would be engaged in the type of issuer-oriented regulation inconsistent with the intent of the 1933 Act.
2. In view of the increasing involvement by NASD members in the sponsoring of these programs, whether it would be deemed appropriate for the NASD to enact its rules limiting their applicability to member affiliated issuers.
3. Should the regulation of issuers of these programs be achieved through a comprehensive federal regulatory program rather than NASD rule making.

In view of the extreme importance of the questions raised in this release and its ultimate effect on the NASD's involvement in this area, it is strongly urged that all members and their counsel secure copies of the release and respond to the request for comments. All comments are to be submitted in duplicate to the Office of the Secretary, Securities and Exchange Commission, prior to August 15, 1973.

Additional copies of this release may be obtained by writing Mrs. Sally McNitt of the Association's Corporate Financing Department at a cost of \$1.00 per copy.

Very truly yours,



Frank J. Wilson
Senior Vice President
Regulation

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TAX SHELTERED PROGRAMS PROPOSED ARTICLE III, SECTION 33 OF THE RULES OF FAIR PRACTICE

- (a) A member or a person associated with a member shall not underwrite or participate in any way in the distribution to the public of units of a tax sheltered program, or sponsor a tax sheltered program, the provisions of which are inconsistent with rules, regulations and procedures prescribing standards of fairness and reasonableness in respect thereto adopted by the Board of Governors pursuant to the authorization granted in paragraph (b) hereof.
- (b) The Board of Governors is authorized, for the purpose of preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, providing safeguards against unreasonable profits or unreasonable rates of commissions or other charges, and for the protection of investors and the public interest, to adopt rules, regulations and procedures prescribing standards of fairness and reasonableness for tax sheltered programs relating to:
- (1) the underwriting or other terms and conditions concerning, directly or indirectly, the distribution of units of such programs to the public, including all elements of compensation in connection therewith, among other factors;
 - (2) the terms and conditions concerning the operation, structure and management of such programs including, but not limited to:
 - a. the rights of participants in such programs;
 - b. conflicts or potential conflicts of interest of sponsors thereof, or others;
 - c. the financial condition of sponsors of such programs;
 - d. all elements of sponsor's compensation including, but not limited to, working interests, net profit interests, promotional interests, program management fees, overriding royalty interests, sharing arrangements, interests in program revenues, and overriding interests of all

other kinds, general and administrative expenses and organization and offering expenses;

- e. the minimum unit value which may be offered and the minimum subscription amount per investor;
- f. the retention and/or exchange of units of the program held by participants;
- g. the assessments, mandatory, optional, or otherwise, to be made on participants in a program in addition to the unit price;
- h. the reinvestment of revenues derived from the operation of a program;
- i. the duty of the program to render operational and financial reports to participants;
- j. the liquidation of units in a program; and
- k. any other terms, conditions or arrangements relating to the operation of the program which the Board of Governors determines is required for the protection of investors and the public interest;

- (3) the standards of suitability for investment in such programs by investors;
- (4) the content and filing with the Association of advertising and sales literature to be used in connection with the distribution of tax sheltered programs, and
- (5) the definitions of words commonly used in connection with such programs including words used in this section unless they are otherwise defined herein.

- (c) The rules, regulations and procedures authorized by paragraph (b) hereof shall be incorporated into Appendix B to be attached to and made a part of these Rules of Fair Practice. The Board of Governors shall have the power to adopt, alter, amend, supplement or modify the provisions of Appendix B from time to time without recourse to the membership for approval, as would otherwise be required by Article VII of the By-Laws, and Appendix B shall become effective as the Board of Governors may prescribe unless disapproved by the Securities and Exchange Commission.

(d) For the purposes of this section, the following terms shall have the stated meanings:

- (1) SPONSOR -- a person or a member of the immediate family of a person who acts as a general partner, manager or management company of a tax sheltered program including an affiliate of, or a person associated with, a sponsor, except as otherwise provided.
- (2) TAX SHELTERED PROGRAM (PROGRAM) -- a program which provides for flow-through tax benefits regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate syndications, citrus grove developments, cattle programs and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; provided that a program may be composed of one or more legal entities or programs but when used throughout this Appendix the term shall mean each of the separate entities or programs making up the overall program or the overall program itself, whichever is necessary to give effect to the statement made. Excluded from this definition are real estate investment trusts, tax qualified pension and profit-sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and mutual funds registered pursuant to the Investment Company Act of 1940.

Summary of Changes in Proposed Section 33

The only two changes to Section 33 are in the definitions of "Sponsor" and "Tax Sheltered Program" contained in subsection (d)(1) and (2). These definitions have been altered in the same manner as those definitions have been altered in proposed Appendix B and are discussed therein.

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PROPOSED APPENDIX B TO ARTICLE III, SECTION 33 OF THE RULES OF FAIR PRACTICE

Section 1 -- DEFINITIONS

The following words shall have the stated meanings whenever used in this Appendix or in a prospectus utilized for the purpose of offering a tax sheltered program to the public:

- (a) ACQUISITION FEE -- the total of all fees and commissions paid by any party in connection with the acquisition of property by a program. Included in the computation of such fees or commissions shall be any real estate commission, acquisition fee, development fee, selection fee, construction fee, guaranteed payment, non-recurring management fee, or any fee of a similar nature. Excluded from the computation of such fees and commissions shall be such items as legal expenses, independent appraisals, settlement costs, and title insurance.
- (b) ADJACENT ACREAGE -- producing or non-producing leases located within four spacing units of any well site or located within the boundaries of the same prospect, whichever is larger.
- (c) AFFILIATE -- any person or a member of the immediate family of any person:
 - (1) that controls, is controlled by or is under common control with the other person;
 - (2) that directly or indirectly owns, controls or holds with power to vote ten per centum (10%) or more of the outstanding voting securities of the other person;
 - (3) that directly or indirectly owns, controls or holds with power to vote ten per centum (10%) or more of the outstanding voting securities; or
 - (4) that is an officer, director or employee of an affiliate.

provided, however, that one tax sheltered program shall not be considered an affiliate of another tax sheltered program.

- (d) APPRAISAL -- a written opinion of the value of property prepared by a qualified independent appraiser of the type of property which is the subject of the appraisal.
- (e) ASSESSMENTS -- additional amounts of capital which a participant may be called upon to furnish beyond his subscription amount. Assessments may be mandatory or optional.
- (f) AUDITED FINANCIAL STATEMENTS -- financial statements of a program including the balance sheet, the profit and loss statement, and cash flow and source and application of revenues statement which have been attested to by an independent certified public accountant.
- (g) CAPITAL CONTRIBUTION -- the gross amount of investment in a program by a participant, or all participants, as the case may be.
- (h) CASH LIQUIDATION VALUE -- the amount, based upon an evaluation made by a qualified independent appraiser and computed in accordance with a formula or in accordance with terms contained in the prospectus, which will be paid for an interest in a program upon exercise by the participant of his right to receive such value.
- (i) CASH AVAILABLE FOR DISTRIBUTION -- cash flow less amount set aside for restoration or creation of reserves.
- (j) CASH FLOW -- program cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.
- (k) COST -- the sum of the price paid by the seller for property plus all costs and expenses, if any, reasonably and properly allocable to the property in accordance with generally accepted accounting principles, except, in the case of oil and gas programs the costs of drilling wells which are not commercial producers.
- (l) DISTRIBUTABLE CASH FLOW -- the net cash available from any source, including operations, sales or refinancing, distributed to participants or distributable at the option of participants.

- (m) FAIR MARKET NET WORTH -- the difference between total fair market value of assets and total liabilities including, in the case of an oil and gas program sponsor, the present value of reserves of oil, gas and other minerals as determined by an appraisal by a qualified independent appraiser.
- (n) GENERAL AND ADMINISTRATIVE EXPENSE -- all costs and expenses incurred by the sponsor in connection with administering a program, including salaries paid by the sponsor, which costs and expenses are not directly allocable to the operations of the program.
- (o) GUARANTEED LEASE -- an arrangement whereby the lessee of a property makes an agreement or has the right to lease the property from the buyer pursuant to terms and conditions which are non-renegotiable for a reasonable length of time.
- (p) IMMEDIATE FAMILY -- parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, children, or any relative to whose support the member, or person associated with the member contributes directly or indirectly.
- (q) INTANGIBLE DRILLING COSTS -- any expenditures incurred by an oil and gas program in drilling and completing wells which are generally allowed as current expense items pursuant to the appropriate provisions of the Internal Revenue Code.
- (r) MANAGEMENT FEE -- a fee paid to the sponsor of a program for management and administration of the program.
- (s) MINIMUM SUBSCRIPTION AMOUNT -- the minimum amount to which a person must initially subscribe in order to be a participant in a program.
- (t) NET PROCEEDS -- the total gross proceeds received from an offering less organization and offering expenses incident thereto.
- (u) NET PROFITS INTEREST -- that interest in net profits from a property or program, without any liability for losses, which becomes payable after receipt by the participants in a program of net profits equal to certain specified expenditures.
- (v) NET OPERATING PROFITS INTEREST -- a special class of net profits interest which means an interest in net profits from the commencement of production without regard for expenditures for leasehold, exploration or development.

- (w) OIL AND GAS PROGRAM -- a tax sheltered program which has for its purpose oil and gas exploration, development or production.
- (x) OPERATING EXPENSES -- expenses of an oil and gas program incurred in the operation of a producing lease, including general and administrative expenses, field and district expenses, direct out-of-pocket expenses for labor, materials and supplies, and that share of taxes and transportation charges not borne by overriding royalty interests.
- (y) OPERATOR -- a person designated to supervise and manage the exploration, drilling, production and leasehold operations of an oil and gas program or a portion thereof.
- (z) ORGANIZATION AND OFFERING EXPENSES -- those expenses charged directly to the program which are incurred in preparing a tax sheltered program for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker/dealers in connection with the distribution of the program.
- (aa) OVERRIDING ROYALTY INTEREST -- an interest in oil and gas produced or in the proceeds from the sale of oil and gas, free of operating expenses but subject in some cases to production taxes and transportation charges.
- (bb) PARTICIPANT -- the purchaser of an interest in a tax sheltered program.
- (cc) PAYOUT -- that point at which the gross revenues from production attributable to a program equal the sum of all costs. As used herein, costs shall include expenditures for leasehold, exploration, development, operation and overhead but do not include depletion, depreciation or income taxes.
- (dd) PERSON -- any natural person, partnership, corporation, association or other legal entity.
- (ee) PERSON ASSOCIATED WITH A SPONSOR -- any person or member of the immediate family of any person who is employed in any capacity by a sponsor, who is contractually obligated to the sponsor or to whom the sponsor is contractually obligated, or who is, directly or indirectly, controlling or controlled by such sponsor; provided, however, that independent contractors such as attorneys and accountants shall not be deemed to be persons associated with a sponsor.

- (ff) PRINCIPAL OR PRIME TENANT -- a person, or group of related persons, who is the largest single occupant of a piece of real property and who occupies more than 25% of the aggregate square footage thereof.
- (gg) PROPERTY MANAGEMENT FEE -- the fee paid to a sponsor or others for day-to-day professional property management services in connection with a real estate program's real property projects.
- (hh) PROSPECT -- an area geographically defined by the sponsor of an oil and gas program in which the program owns an interest in one or more oil and gas leases and which is reasonably anticipated by the sponsor to have possibilities for the production of oil and gas.
- (ii) PROSPECTUS -- shall have the meaning given to that term by Section 2(10) of the Securities Act of 1933, including a preliminary prospectus; provided, however, that such term as used herein shall also include an offering circular as described in Rule 256 of the General Rules and Regulations under the Securities Act of 1933 or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.
- (jj) QUALIFIED INDEPENDENT APPRAISER -- a person, including a qualified petroleum engineer and a qualified independent real estate appraiser, who holds himself out as an appraiser of a particular type of property and who:
 - (1) is licensed or registered to practice his profession with the appropriate professional body, if any, and within the state of his business activity, if such is required, and is recognized by others in his area of professional activity as being qualified to appraise the type of property in respect to which he holds himself out; and
 - (2) is totally independent in that:
 - a. he has no present interest or contemplated future interest, either legal or beneficial, in the property appraised;
 - b. he has no interest in the proposed transaction for acquisition of the property by the program or in the parties to such transaction;

- c. his employment and compensation are not contingent upon any value found by him or upon anything other than the delivery of his report for a predetermined fee; and
- d. he is not an affiliate of a sponsor or an officer, director or employee of a sponsor or an affiliate thereof.

(kk) QUALIFIED INDEPENDENT PETROLEUM ENGINEER -- a person who holds himself out as an evaluator of producing petroleum properties and who:

- (1) is licensed to practice petroleum engineering in the state of his professional activity, if such is required and whose competence and professional standing in matters of the evaluation of oil and gas properties and petroleum reserves are generally recognized by banks and other financial institutions; and
- (2) is totally independent in that:
 - a. he has no present interest or contemplated future interest, either legal or beneficial, in the property appraised;
 - b. he has no interest in the proposed transaction for acquisition of the property by the program or in the parties to such transaction;
 - c. his employment and compensation are not contingent upon any value found by him or upon anything other than the delivery of his report for a predetermined fee; and
 - d. he is not an affiliate of a sponsor or an officer, director, or employee of a sponsor or an affiliate thereof.

(ll) QUALIFIED INDEPENDENT REAL ESTATE APPRAISER -- a person who holds himself out as an appraiser of real property and who:

- (1) is registered with a recognized national real estate appraisal board and within the state of his professional activity, if such is required; and

(2) is totally independent in that:

- a. he has no present interest or contemplated future interest, either legal or beneficial, in the property appraised;
- b. he has no interest in the proposed transaction for acquisition of the property by the program or in the parties to such transaction;
- c. his employment and compensation are not contingent upon any value found by him or upon anything other than the delivery of his report for a predetermined fee; and
- d. he is not an affiliate of a sponsor or an officer, director or employee of a sponsor or an affiliate thereof.

(mm) REAL ESTATE PROGRAM -- a tax sheltered program which has for its purpose the expenditure of a determinable sum of money for the acquisition or operation of real property.

(nn) REGISTRATION STATEMENT -- shall have the meaning given to that term by Section 2(8) of the Securities Act of 1933; provided, however, that such term as used herein shall also include a notification on Form 1A filed with the Securities and Exchange Commission pursuant to the provisions of Rule 255 of the General Rules and Regulations under the Securities Act of 1933 and, in the case of an intrastate offering, any document, by whatever name known, initiating the registration or similar process by whatever name known for an issue of securities which is required to be filed by the laws or regulations of any state.

(oo) REVERSIONARY INTEREST -- an interest in a program the benefits of which accrue in the future upon the occurrence of some event.

(pp) SALES LITERATURE -- any communication (including radio, television and slide presentations, photographs, recordings and illustrations) used to supplement a prospectus; provided, however, such shall not mean:

- (1) any communication complying with Section 2(10)(b) of the Securities Act of 1933 or a comparable provision of a state statute,

- (2) letters of transmittal which do no more than refer to the enclosed prospectus and sales literature, and
 - (3) periodic reports required by Section 9 hereof supplied by issuers to members and current participants in the program, provided that said reports are used in no way as sales literature and do not contain an expressed or implied offer to sell a security.
- (qq) SHARING ARRANGEMENT -- an interest in a program granted to the sponsor for his services at a lower cost than that charged participants.
- (rr) SPACING UNIT -- that area or distance between wells specified in an order of a regulatory body which establishes the number and location of wells over an oil and gas reservoir as a conservation measure.
- (ss) SPONSOR -- a person or a member of the immediate family of a person who acts as a general partner, manager or management company of a tax sheltered program including an affiliate of, or a person associated with, a sponsor, except as otherwise provided.
- (tt) SUBORDINATED INTEREST -- one which is junior to the rights of participants until such time as they have received cumulative distributed cash in an amount at least equal to their capital contribution.
- (uu) SUBSCRIPTION AMOUNT -- the total dollar amount for which a participant in a tax sheltered program has subscribed for his participation in the program.
- (vv) TANGIBLE DRILLING COSTS -- costs of lease acquisitions and drilling and completing wells which are generally accepted as capital expenditures pursuant to the provisions of the Internal Revenue Code.
- (ww) TAXABLE INCOME -- a person's estimated income subject to federal, state and local taxation at ordinary rates and reported as "taxable income" on the person's federal income tax return without taking into consideration tax sheltered program investments.
- (xx) TAX BRACKET -- the maximum rate at which a portion of a person's taxable income would be taxed. Unless otherwise indicated, the term "tax bracket" refers to the sum of rates for federal, state, and local taxes.

- (yy) TAX SHELTERED PROGRAM (PROGRAM) -- a program which provides for flow-through tax benefits regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate syndications, citrus grove developments, cattle programs and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; provided that a program may be composed of one or more legal entities or programs but when used throughout this Appendix the term shall mean each of the separate entities or programs making up the overall program or the overall program itself, whichever is necessary to give effect to the statement made. Excluded from this definition are real estate investment trusts, tax qualified pension and profit-sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and mutual funds registered pursuant to the Investment Company Act of 1940.
- (zz) UNSPECIFIED PROPERTY PROGRAM -- a program which, at the time the registration statement becomes effective, does not have 75% or more of the net proceeds of the total dollar amount of the offering allocable to specific purposes or, in the case of a real estate program, allocable to the purchase or construction of specific properties. Reserves shall be included in unspecified 25%.
- (aaa) WORKING INTEREST -- an operating interest entitling the holder to a share of production under an oil and gas lease which carries with it the obligation to bear a corresponding share of all costs associated with the production of income.

Proposed Appendix B

Summary of Changes in Section 1 -- DEFINITIONS

A brief introduction has been added to this section to make clear that the definitions contained therein shall be applicable not only when they are used in Appendix B but also when they are used in a prospectus used for offering a program to the public. This is occasioned because of the inconsistent use of similar terms in many prospectuses.

1(a) ACQUISITION FEE -- A new definition of "acquisition fee" has been inserted as a result of the revision of restrictions on fees charged in connection with a program's acquisition of property. This definition incorporates virtually all types of real estate commissions or fees, except transfer costs, and brings them under the ceiling specified in Section 7 (a)(6).

1(c) AFFILIATE -- This definition has been expanded to include members of the immediate family of the persons otherwise specified in the definition.

1(e) ASSESSMENTS -- A technical change substituting the word "amount" for "commitment" has been made in this definition.

BLIND POOL -- This designation has been changed to "Unspecified Property Program" and, as amended, appears at paragraph 1(zz).

1(i) CASH AVAILABLE FOR DISTRIBUTION -- This term has been added in order to comply with the changes in the sharing arrangements as set forth in Section 7(c)(5)1. It was felt that this definition was needed in order to eliminate any inconsistencies from program to program.

1(j) CASH FLOW -- This term has been added to clarify what is included in cash flow as it is used in the definition of (i) Cash Available for Distribution and elsewhere in the Rules.

CARRIED INTEREST - SHARING ARRANGEMENT -- This term has been redesignated "Sharing Arrangement" and appears at paragraph 1(qq).

1(k) COST -- This definition has been included in view of the extensive use of the term in the Rule. The proposed definition follows generally accepted accounting principles. Thus, in the case of oil and gas programs it properly excludes costs of drilling dry wells.

1(1) DISTRIBUTABLE CASH FLOW -- This definition has been clarified with the source of cash flow being specified.

1(m) FAIR MARKET NET WORTH -- "Net Worth" has been redesignated "Fair Market Net Worth" and the definition has been substantially altered to permit assets to be valued at their fair market value in determining net worth. Oil and gas program sponsors would also be permitted to include the present value of reserves of oil and gas in calculating net worth.

FEDERAL TAX BRACKET -- This term has been changed to "Tax Bracket" and, as amended, appears at paragraph 1(xx).

1(n) GENERAL AND ADMINISTRATIVE EXPENSES -- This definition has been modified by the insertion of clarifying language.

1(p) IMMEDIATE FAMILY -- This definition has been taken from the Free-Riding and Withholding Interpretation and has been inserted in view of references to "immediate family" in the definitions of "affiliate" and "sponsor".

1(s) MINIMUM SUBSCRIPTION COMMITMENT -- This term has been redesignated "Minimum Subscription Amount" to avoid any possible conflict with the Federal Reserve Board's position that Regulation T applies to periodic payment tax sheltered programs and therefore prohibits such. The Federal Reserve Board, however, has allowed a program to sell interests on a periodic payment basis so long as there is no contractual commitment to meet such payments. It is contemplated that "Minimum Subscription Amount" includes the subsequent payments for which there is no contractual commitment whereas the term "Minimum Subscription Commitment" would apply only to the initial payment and would therefore be inappropriate.

1(t) NET PROCEEDS -- This is a new definition and has been inserted in view of the extensive use of the term in the Rule.

1(u) NET PROFITS INTEREST -- This term has been modified to more properly express the original intent.

NET WORTH -- This term has been redesignated "Fair Market Net Worth" and appears at paragraph 1(m).

1(w) OIL AND GAS PROGRAM -- This is an important change in that the definition has been altered to include oil and gas "income" programs, i.e., programs formed for the purpose of acquiring and managing producing oil or gas properties. At the time the original definition of Oil and Gas Program was drafted, it was believed that income programs

did not constitute a great enough proportion of the industry to subject them to the regulations being proposed. Subsequently, however, these programs have proliferated and are now of sufficient number to conclude that they should be regulated along with all other types of oil and gas programs.

1(z) ORGANIZATION AND OFFERING EXPENSES -- This definition has been modified to clarify that the term only refers to expenses of this nature charged directly to the program.

1(cc) PAYOUT -- This term has been clarified deleting "proceeds" and substituting "gross revenues" and deleting references to particular wells, leases or prospects. This more properly expresses the intent since "proceeds" could be construed to be "net" revenues.

1(ee) PERSON ASSOCIATED WITH A SPONSOR -- Members of the immediate family of persons otherwise specified in this definition have been included therein and a proviso has been added clarifying that independent contractors such as attorneys and accountants are not to be deemed to be persons associated with a sponsor.

1(mm) REAL ESTATE PROGRAM -- This definition has been modified to include programs formed to operate real property. The language which is stricken was intended to cover such but it is cumbersome and not necessary.

1(oo) REVERSIONARY INTEREST -- This term has been modified to delete any reference to payout since it is not necessary, adds nothing to the definition and could cause confusion.

1(pp) SALES LITERATURE -- This definition has been modified to include all correspondence, whether written or otherwise, but specifically exempt communications of a tombstone nature if they comply with appropriate statutory provisions, and to clarify the exceptions for periodic reports to current participants in an existing program.

1(qq) SHARING ARRANGEMENT -- This definition has been made more general so as to apply to all tax sheltered programs and to delete any reference to the usual form of sharing arrangement, i.e. limited partnership interests, since it does not necessarily have to be such. (This definition is a modified definition of that previously carried in paragraph 1(h) entitled "Carried Interest - Sharing Arrangement".)

1(ss) SPONSOR -- This term has been broadened to include members of the immediate family of persons otherwise designated in the definition.

An exception has been provided because certain sections in the Appendix utilize the term "Sponsor" in the context of a more restrictive meaning.

1(uu) SUBSCRIPTION AMOUNT -- This term has been changed from "Subscription Commitment" for reasons similar to that discussed above in connection with "Minimum Subscription Amount".

1(ww) TAXABLE INCOME -- This definition has been changed to make clear that the references to a person's income mean his income prior to his investment in a tax sheltered program or programs.

1(xx) TAX BRACKET -- This definition replaces "Federal Tax Bracket" formerly at paragraph 1(k). It would add a new provision clearly stating that any reference to tax bracket includes the sum of the rates for federal, state and local income taxes.

1(yy) TAX SHELTERED PROGRAM -- This important definition has been modified so as to delete the requirement that flow-through tax benefits of a program be "a material factor". This is a significant change and makes clear that the regulations being proposed are intended to apply to all programs with flow-through tax benefits regardless of materiality. It also has been broadened to specifically exempt certain other types of tax sheltered investments which were not intended to be included.

1(zz) UNSPECIFIED PROPERTY PROGRAM -- This new term replaces "Blind Pool" which formerly appeared at paragraph 1(f). The new definition is more descriptive. It also has been modified to require that a program have at least 75 percent rather than 60 percent of its net proceeds allocable to specific purposes to avoid being classified as an unspecified property program. A clarification for the handling of reserves has been added.

Section 2 -- GENERAL REQUIREMENTS AND REQUIREMENTS
CONCERNING SUBSCRIPTIONS, ASSESSMENTS,
REINVESTMENT OF REVENUE AND LIQUIDATIONS

A member or person associated with a member shall not underwrite or participate in the distribution to the public of a tax sheltered program:

General

- (a) while acting as its sponsor unless it has expertise appropriate to the program of not less than four (4) years unless such expertise is directly or readily available to it within its corporate complex, under contract or otherwise and unless there is a full and complete disclosure of the details of that expertise in the prospectus;
- (b) unless the sponsor or sponsors of the program have a combined fair market net worth at least equal to the the greater of \$50,000, or the lesser of \$1,000,000 or five percent of the total capital contributions made by the holders of program participations issued by all programs of which such persons are a sponsor organized during the twelve (12) month period immediately preceeding the offering date of the program; provided, however, that for purposes of this subsection the term "sponsor" shall not include members of the immediate family of, affiliates of, or persons associated with a sponsor except to the extent that such persons are guarantors of obligations entered into by the sponsor in its capacity as sponsor of the program in question;
- (c) if, in the case of an oil and gas program, it does not require:
 - (1) as a prerequisite to the activation thereof minimum public sales in the amount of no less than \$250,000 per program (except those registered pursuant to the provisions of Regulation B under the Securities Act of 1933);
 - (2) that until that sum has been raised all money received shall be placed in an escrow account specifically designated for that purpose; and
 - (3) that if the amount is not raised the capital contribution of all participants, including sales commissions paid, shall be returned to them promptly following termination of the offering period which period shall not be unreasonably extended.

- (d) if, excepting an oil and gas program, it does not:
 - (1) contain a provision preventing the activation of the program unless a stated minimum amount of money has been raised which shall be sufficient, after funding all of the organization and offering expenses and giving due consideration to the fixed obligations of the program, to effect the objectives thereof without changing the nature of the investment called for by the general terms of the program;
 - (2) require that until the stated minimum amount of money has been raised all money received shall be placed in an escrow account specifically designated for that purpose; and
 - (3) require that if the stated minimum amount of money is not raised, the capital contribution of all participants, including sales commissions paid, shall be returned to them promptly following termination of the offering period which period shall not be unreasonably extended.
- (e)
 - (1) if the program does not meet the requirements of the Internal Revenue Code which enable participants to obtain tax benefits as described in the prospectus and such cannot be demonstrated by a tax ruling or an opinion in respect to such requirements by independent tax counsel; or
 - (2) if such a tax ruling or opinion has not been received;
 - a. the program does not provide for a right of withdrawal from the program and the return of the capital contribution including commissions of all participants in the event a tax ruling or opinion is subsequently received which does not state in substance that the program will enable participants to obtain the tax benefits as described in the prospectus; and
 - b. the program does not require that all funds received will be placed in an escrow account and not used until a tax ruling or opinion has been received which states in substance that the program will enable participants to obtain the tax benefits described in the prospectus and shall be returned upon receipt of a ruling or opinion which fails to so state.

Subscriptions

- (f) unless, in the case of an oil and gas program, its terms require that the minimum subscription, whether as a result of a direct purchase or an assignment, except by gift or operation of law, shall be not less than \$5,000, or such higher amount as required by state or local law;
- (g) unless its terms require that all subscriptions be fully paid for within a twelve (12) month period following the date of the commencement of the program or as otherwise required to conform with applicable federal credit regulations; however, a period of deferred payment in excess of the twelve months may be granted in certain types of offerings, i. e., farming, real estate development, among others, where the nature of the investment and development of the product demands a longer period provided, however, the period of payment shall coincide with the anticipated cash needs of the program;
- (h) unless it prohibits deferred payment plans in an unspecified property program;
- (i) if interest or other similar charges are assessed against a participant for purchasing units on an installment basis;

Assessments

- (j) if sales commissions on assessments on units are not prohibited and if the possibility of assessments being levied is not fully disclosed in the prospectus with a statement as to the maximum amount the units may be assessed and whether such are mandatory;
- (k) if it provides for levying of assessments in an unspecified property program;
- (l) if levying of assessments is allowed in real estate programs other than to the extent necessary to meet discrepancies in partnership obligations, including default;
- (m) if, in the case of mandatory assessments, they are in excess of 15% of the original amount of the participant's capital contribution;

- (n) if, when the penalties are to be imposed upon participants for failure to meet mandatory assessments, the penalty;
 - (1) is not fair and reasonable;
 - (2) is not disclosed in the prospectus;
 - (3) accrues to the benefit of the sponsor rather than the program; or
 - (4) if it causes a forfeiture or a significant dilution of a participant's capital contribution in an amount in excess of 300 per cent of the amount of the unpaid assessment;
- (o) if a participant's interest is forfeited or penalized by failure to pay an optional assessment;
- (p) if a failure on the part of a participant to meet an assessment in the case of an oil and gas program is to result in a forfeiture by him of a right to participate in future optional development wells and such is not disclosed in the prospectus;

Reinvestment of Distributable Cash Flow

- (q) if, when the reinvestment of a program's distributable cash flow into a subsequent program is provided for, such reinvestment is not optional to the investor who shall, pursuant to the terms of the program being offered, prior to his election, be provided with complete information on the amount of money to which he is entitled and a copy of a prospectus relating to the subsequent program in which reinvestment is contemplated;

Liquidation of Program Interests

- (r) if the program permits a sponsor to transfer or sell his program interest therein without requiring that an offer comparable in all respects simultaneously be made to all participants and a reasonable period of time be given to them to transfer or sell their interests;
- (s) if the program permits:
 - (1) the purchase by it of the program interests of any other program with the same sponsor; or
 - (2) the repurchase by it of its participants' interests in a manner or in an amount which is not in the best interests of the program;

provided, however, this shall not be construed so as to prevent the sponsor of a program from purchasing and reselling such interests on a non-exclusive basis;

- (t) unless, when the liquidation of participants' interests in a program are provided for, cash liquidation values are required to be computed on the basis of an appraisal of the program's properties made within the preceding twelve (12) months by a qualified independent appraiser pursuant to a formula or in accordance with terms clearly spelled out in the prospectus; provided, however, if there has been a material change in value subsequent to the last appraisal a new appraisal must be made prior to any liquidation;

Business Transacted

- (u) if the program contemplates transacting business with any person in an amount aggregating at least twenty (20) percent of the total dollar value of the participants' interest therein unless that fact is disclosed in the prospectus; and
- (v) if the details in respect to subparagraphs (a) through (r) hereof are not fully disclosed in the prospectus.

Summary of Changes in Section 2 --

GENERAL REQUIREMENTS AND REQUIREMENTS CONCERNING
SUBSCRIPTIONS, ASSESSMENTS, REINVESTMENTS OF REVENUE
AND LIQUIDATIONS

Language has been added to the introduction of this section, as well as to introductory paragraphs of Sections 3, 4, 5, 6, 7 and 8, to clarify that the provisions apply only to public offerings.

General

2(a) -- The requirement that a sponsor have at least five years expertise "in the industry represented by the program" has been changed to "appropriate to the program". The length of time has been changed to four (4) years to conform with state regulations. An additional requirement that details of the expertise be set forth in the prospectus has been added.

2(b) -- The net worth requirements for a sponsor of a program have been modified from 10 percent of the total value of programs, public or private, sponsored during the current year or \$100,000, whichever is greater, to the requirement that the sponsor have a net worth equal to the greater of \$50,000 or the lesser of \$1,000,000 or five percent of the contributions by participants in all programs sponsored in the year preceding the offering date of the program. This would represent a liberalization of the earlier provision but it is believed, on the basis of comments received, that the liberalized requirements are appropriate yet high enough to accomplish the intent of providing a measure of protection for investors against the financial unsoundness of a sponsor. A proviso has also been added to this provision to prevent the inclusion of the net worth of an affiliate, person associated with the sponsor, or members of the immediate families thereof in calculating compliance with the requirements of this section, unless such persons are guarantors of obligations entered into by the sponsor in his capacity as sponsor of the program in question.

2(c)(3) -- The requirement that an oil and gas program which does not raise \$250,000 must return the money to the investors has been made more specific by requiring such return promptly after termination of the offering period. It also specifies that the offering period shall not be unreasonably extended.

2(d)(3) -- A modification similar to that in c(3) above has been added which relates to all programs other than oil and gas programs.

2(e)(1) -- The references to tax rulings and opinions have been modified so as to remove the characterization of such opinions and rulings as "favorable" or "unfavorable". Instead, a ruling or opinion would be required to state that the program will enable participants to obtain the tax benefits as described in the prospectus. Language referring to such rulings and opinions as "favorable" or "unfavorable" does not seem appropriate.

2(f) -- This subsection has been split into two, (f) and (g). Subsection (f) retains the requirement as to oil and gas programs that the minimum subscription amount must be \$5,000. Subsection (g) would extend to all programs the provisions of previous subsection (f) relating only to oil and gas programs and requiring all subscriptions be fully paid within a 12 month period unless the nature of program investment warrants a longer period as explained in the definition.

2(k) -- This subsection has been added to disallow the levying of assessments in an unspecified property program. The argument has been made that the investor should not be assessed for additional funds when he has no knowledge of the purpose of the funds and that the program should take this into account when purchasing properties.

2(n) -- This subsection on assessments has been changed so as to apply the penalty provisions thereof only to mandatory assessments. Previously it would have applied to mandatory and non-mandatory assessments. It does not appear appropriate to permit the imposition of a penalty upon a person because he refuses to meet an assessment in respect to which he has no obligation. A provision has also been added specifying a ceiling on the dilution which may be suffered against a participant's capital contribution because of failure to pay a mandatory assessment. This ceiling is placed at 300% of the amount of an unpaid assessment.

2(o) -- An additional provision has been inserted specifying that a program may not provide for the forfeiture or penalization of a participant's existing interest for failure to pay an optional assessment. It obviously would be appropriate, however, to prevent the participant's participation in that portion of the program's activities resulting from the assessment.

2(r) -- The prohibition on the sale by a sponsor of his interest in a program without an offer comparable in all respects having simultaneously been made to all participants has been clarified to specify that the prohibition applies to his "program interests", i.e. his limited partnership interests, and the prohibition has been expanded to include transfer as well as sale.

2(s) -- This subsection originally, in paragraph (1), prohibited a program from purchasing an "interest" in any other program. This has been clarified to refer only to "program interests" as opposed to purchasing an interest in properties. This was the original intent. This paragraph has also been substantially changed, however, with the addition of a provision which makes the prohibition applicable only to the purchase of program interests in programs "with the same sponsor". The original language would have prevented such purchases as to all programs. Thus, it would have prevented a sponsor from using a program to invest in other programs under a "fund-of-funds" concept. It was believed that the investor made an investment decision based upon the program in which he invested only and that his funds therefore should not be used for investment in other funds. The program in which the subsequent purchase is made could have an entirely different objective than the first program in which the investor made his purchase. The Board of Governors has now changed its position on this provision and believes such purchases not to be improper as long as appropriate disclosures are made that such will be done. It believes, however, that a sponsor should not be permitted to "bail out" other programs sponsored by it; hence, the prohibition on such investments in a commonly sponsored program. The provision of this paragraph which permits a sponsor to purchase such interests has been clarified so as to enable him to purchase and resell such interests as long as such is done on a basis which also permits the participant to sell his interests to parties other than the sponsor.

Section 3 -- RIGHTS OF PARTICIPANTS

A member or person associated with a member shall not underwrite or participate in the distribution to the public of a tax sheltered program which, unless such conflicts with any federal law or law of the state pursuant to which the program has been organized:

- (a) does not permit its participants the right by a majority vote:
 - (1) to remove the sponsor;
 - (2) to amend the partnership or other agreement organizing the program entity;
 - (3) to dissolve the partnership or other entity formed to carry out the purposes of the program, and/or
 - (4) to approve or disapprove the sale of all or substantially all of the assets of the program.

- (b) does not:
 - (1) provide for the termination of all contracts between the program and the sponsor without penalty on 60 days' notice in writing;
 - (2) require the sponsor upon the written request of 10% of the outstanding program interests to cause a vote to be taken on any of the matters referred to in subparagraphs (a) and (b) hereof.

- (c) imposes any restrictions on the assignment of a participant's program interests; provided, however, such shall not be construed to prohibit a requirement for approval by a sponsor of the transfer of a participant's interests;

- (d) does not grant the right to every participant in the program to obtain a complete list of names and addresses of, and interests held by, all participants in the program, upon written request to the sponsor and payment of the cost of reproduction thereof, for any proper purpose; and

- (e) does not prevent the amendment of the partnership or other agreement establishing the program entity in any material respect affecting the rights or interests of the participants unless notice is previously given to all participants and, if 10% or more of the participants object, by the affirmative vote of not less than a majority of the outstanding number of program interests.

Summary of Changes in Section 3 -- RIGHTS OF PARTICIPANTS

Although numerous comments were received on this section it has been left largely unchanged. The introductory paragraph has been altered to specify that these provisions apply to public offerings. The reference to possible conflict with state law has been clarified in an effort to indicate that it is intended to refer to court decisions as well as to statutes. The words "federal law" have also been added in view of the probability of future changes in laws which could cause conflict, i.e., IRS-SEC. It was felt that the use of the term "law" might be construed to mean statutory law only. A new provision in this section, subsection (d), would permit a program to charge a participant who requests a list of all other participants the cost of reproducing such list.

Section 4 -- CONFLICTS OF INTEREST

- (a) A member or person associated with a member shall not underwrite or participate in the distribution to the public of units of a tax sheltered program which does not fully disclose all potential conflicts of interest in the prospectus and does not by its terms, in addition, conform to the following standards concerning conflicts of interest. Thus, if the program permits:
- (1) the acquisition by the program of property owned by the sponsor thereof, except as otherwise provided herein, such acquisition by the program shall be at a lesser of cost to the sponsor or fair market value as determined by an appraisal made by a qualified independent appraiser; provided, however, such an acquisition may be at a price greater than cost if all details in respect thereto, including the profit to the sponsor, are fully disclosed to program participants and to subsequent program subscribers, the acquisition is at no more than fair market value as determined by an appraisal made by a qualified independent appraiser, and
 - a. the sponsor has owned the property for at least a period of one year prior to the formation of the program, or
 - b. a material change in the value of the property has occurred since the acquisition thereof by the sponsor.
 - (2) the acquisition by an oil and gas program of nonproducing acreage owned by the sponsor thereof, such acquisition shall be at the sponsor's cost unless the sponsor has reason to believe that the cost is either materially in excess of, or materially lower than, fair market value. Where property is acquired at a price other than cost the sponsor shall base the price on the opinion of a qualified independent appraiser and shall disclose all details in respect to the acquisition, including the profit to the sponsor, to program participants and to subsequent program subscribers.
 - (3) the purchase of property owned by an oil and gas program by the sponsor thereof, such purchase shall be made at fair market value as determined by a qualified independent

appraiser unless the sponsor has reasonable grounds to believe the cost is materially higher than fair market value, in which case the purchase shall be made for a price not less than cost.

- (4) the sale of services, other than those provided for hereafter in Section 7, or the sale or lease of supplies, equipment, furnishings or other property of any kind except as otherwise provided herein to the program by its sponsor, the program must require that
 - a. the fees and prices to be charged for such services, supplies, equipment, furnishings or other property shall not exceed those customarily charged for such in the same or in a comparable geographical location by persons dealing at arms'-length and having no affiliation with the recipient; provided, however, that if there exists no basis for comparing such fees and prices or if the sponsor is not independently and as an on-going business activity actively engaged in the business of rendering such services or selling such supplies, equipment, furnishings or other property, they shall not exceed cost.
- (5) the sponsor of an oil and gas program to sell or transfer property to the program, the program must also provide that the sponsor shall not retain therein any interest or rights of any kind whatsoever except those rights created by virtue of the sponsor's status as sponsor of the program as long as those rights are fully disclosed in the prospectus, unless the sponsor is required to participate with the program in the development of the property on a cost basis proportionate to its retained interest in the property;
- (6) the sponsor of a real estate program to provide development or construction of a property for the program in accordance with the terms of the program, the program shall require that:
 - a. such be done only on a firm contract basis at a price not to exceed the appraised value of the property when completed, including the total cost of the property as determined by a qualified independent real estate appraiser at the time of the commitment for such services, and

- b. if any developing or construction contracting is to be supplied by the sponsor after formation of the program, such shall be done in accordance with those provisions set forth under subparagraph (4) of this section.

Impermissible Conflicts Of Interest

- (b) The following situations are considered impermissible conflicts of interest, thus, a member or person associated with a member shall not underwrite or participate in the distribution of a tax sheltered program which permits:
 - (1) in the case of a real estate program, a sponsor to be the principal or prime tenant on property owned by the program. Such shall not apply to guaranteed lease back arrangements where the terms of such are considered to be fair and reasonable and no more favorable to the tenant than those offered other persons;
 - (2) the rendering by the sponsor of professional services, such as the certifying of financial statements or legal opinions in connection with the organization and registration of the program, or the payment of fees for such services to the sponsor, except for services which may be offered in connection with the day-to-day management of the program such as legal, accounting and recordkeeping services, leasing agreements and settlement arrangements, among others;
 - (3) sales or exchanges of properties or any interest therein between programs with the same sponsor; provided, however, that such sales or exchanges may be made in the case of oil and gas programs where the sales or exchanges are of non-producing exploratory acreage, are at cost or, if there is reason to believe there has been a material change in value, at fair market value as determined by a qualified independent appraiser, and are between programs whose compensation arrangements with the common sponsor are substantially comparable; provided further that this subparagraph shall not apply to transactions among oil programs by which property is transferred from one to another in exchange for the transferee's obligation to conduct drilling activities on the property transferred or to joint ventures among such oil programs, provided that the compensation arrangement of the manager and each affiliated person in each such oil program is the same, or is reasonably calculated to be, the same.

- (4) the sponsor of a program, except as otherwise provided herein, to retain any interest or rights of any kind whatsoever in property sold or transferred to the program, or, in the case of an oil and gas program, in any adjacent acreage to property so sold or transferred, or, in the case of other programs, in the general area of such property, except such shall not be considered impermissible in the case of a real estate program if such is fully disclosed in the prospectus including the disclosure of any potential benefits to the sponsor or any conflicts of interest which could result from any type of service or supplies rendered to such properties by the sponsor;
- (5) the sale to the program by the sponsor of an unspecified property program of any services including development and construction contracting or any property owned by it unless any such property is specifically designated and detailed information concerning any such service and each specified property is disclosed in the prospectus;
- (6) the sale to the sponsor by the program of any property except as provided in subsection 4(a)(3) hereof;
- (7) directly or indirectly, a commission or fee to a sponsor in connection with the reinvestment of the proceeds of the resale, exchange, or refinancing of program property;
- (8) a sponsor to have an exclusive right to sell or exclusive employment to sell property for the program; or
- (9) loans to be made by the program to the sponsor or affiliate.

Other Conflicts Of Interest

- (c) All conflicts of interest not specifically permitted by, nor conforming to, the provisions of this Section 4 shall be considered impermissible conflicts of interest and members or persons associated with members shall not underwrite or participate in the distribution of units in a program which contain such unless justification therefor, taking into consideration standards of fairness and reasonableness to participants, can be demonstrated to the Association.

Summary of Changes in Section 4 -- CONFLICTS OF INTEREST

4(a) -- The introductory paragraph to this section has been modified to clarify that this section is applicable only to public offerings.

4(a)(1) -- A new provision has been inserted replacing old subsections 4(a)(1), (2), and (3) which establishes different criteria that must be met by a sponsor when selling property owned by it to a program sponsored by it. The old standard made distinctions between property acquired prior to formation of the program and property acquired after formation of the program as well as distinctions between oil and gas programs and other programs. Under the original proposal, a sponsor wishing to sell property owned by it to a program other than an oil and gas program had to sell such property at the fair market value if the property was acquired prior to the formation of the program. In the case of an oil and gas program, such property would have been required to be sold at cost or fair market value if such was believed to be different than cost. Property acquired after formation of a program would have been required to be sold at the lesser of cost or fair market value. Under the new proposal, except for a limited exception made for oil and gas programs, any property owned by the sponsor to be acquired by a program must be transferred at the lesser of cost or fair market value. A provision for an exception to these standards is included which allows the transfer of such property at a price greater than cost if all the details of the transaction, including the profit to the sponsor, are fully disclosed, the acquisition is at no more than fair market value, and the sponsor has owned the property for at least one year or there has been a material change in the value of the property. It was believed that the revised standard here would be more reasonable in that it is much more uniform and more workable.

4(a)(2) -- This new provision deals with the acquisition by an oil and gas program of non-producing acreage owned by the sponsor and provides that such acquisition shall be at cost unless the sponsor has reason to believe that the cost is materially different than fair market value, in which case the acquisition may be at a price determined by an independent appraiser if the details of the transaction are disclosed. This provision, as well as subsection 4(a)(3), has been inserted at the suggestion of the Oil Investment Institute, which believed these changes were necessary to recognize problems peculiar to oil and gas programs.

4(a)(3) -- This new provision deals with the purchase by a sponsor of property owned by an oil and gas program and provides that such purchase shall be at fair market value determined by an appraiser unless the sponsor has grounds to believe that the cost is materially higher than fair market value in which case the purchase shall be at a price not less than cost. This subsection contains the only exception to the prohibition in subsection 4(b)(6) against a sponsor's purchase of property from a program.

4(a)(4) -- The standards to be utilized in establishing the price at which services may be sold by a sponsor to a program as set forth in this subsection have been changed in some respects. The requirement that fees charged for services, supplies, equipment, and furnishings shall not exceed those customarily charged for such items in the same or a comparable location by persons dealing at arm's-length has not been changed. The original requirement that a sponsor be engaged in the business of providing such services or, if not in such business, provide such services at cost or less than cost if necessary to make the fees comparable to those charged by others engaged in an on-going business has been replaced with a proviso which states that if there exists no basis for comparing fees or if the sponsor is not engaged in an on-going business of providing such services, such services shall be provided at not more than cost. These changes were made in the belief that the new standards were easier to apply but still provided sufficient protection.

4(b)(2) -- Minor language changes have been made to this provision dealing with the sponsor's furnishing of professional services to clarify the intent that sponsors be permitted to provide in-house legal counsel for programs.

4(b)(3) -- This subsection has been changed to delete an exception from the prohibition on sales or exchanges of properties between programs with the same sponsor. The original proposal permitted such exchanges if the properties were surplus and were transferred at the lesser of cost or fair market value. As the subsection now reads, such sales and exchanges of properties are prohibited except in the case of oil and gas programs where such sales and exchanges may be made of non-producing exploratory acreage if made at cost or fair market value and if made between programs whose compensation arrangements with the common sponsor are substantially comparable. A provision is included exempting "farm out" arrangements from the effect of this subsection. It was the general opinion that in most instances a sale or exchange of properties between programs works to the detriment of one of the programs. It was felt however, that legitimate reasons exist for permitting such sales or exchanges of certain types of properties under certain circumstances between oil and gas programs.

4(b)(5) -- Language has been added to this provision to clarify the original intent that the sponsor of a "blind pool", now designated an "unspecified property program", may not sell any services or any property to a program unless such property is designated and detailed information concerning the property or service is disclosed in the prospectus.

4(b)(6) -- This new subsection introduces a flat prohibition against the sale to the sponsor of any property owned by the program except as provided in subsection 4(a)(3) for oil and gas programs. The Board felt such a

prohibition was necessary since the lack of arm's-length bargaining in such transactions can only work against the best interests of program participants .

4(b)(7) -- This subsection introduces a flat prohibition against a sponsor receiving any commissions or fees from any source in connection with the reinvesting of profits from resale, exchange, or refinancing of program properties. This has been added in view of the concern over the sponsor's potential to churn properties, which may not be in the best interests of the program, in order to receive additional commissions or compensation .

4(b)(8) -- This subsection has been added to prohibit a sponsor from having exclusive buy or sale agreements for the program properties in order to obtain the commissions. It is the argument that by maintaining an exclusive agreement, the sponsor may be inclined to make transactions more frequently than desirable in order to obtain commissions and that it may not be able to make the best buy or sale agreement for the program .

4(b)(9) -- This subsection prohibits loans to be made by the program to the sponsor or affiliate. It is the belief that it is not the intent of the various programs to be organized to make monies available to the sponsor for use in its related businesses. Likewise, sponsors are obligated to have some financial stability in order to transact the business of and with the program .

Section 5 -- SUITABILITY

- (a) A member or person associated with a member shall not underwrite or participate in the distribution to the public of units of a tax sheltered program unless standards of suitability have been established by the program for participants therein and such standards are fully disclosed in the prospectus and are not inconsistent with the provisions of paragraph (b) of this section.

- (b) In the sale, solicitation or recommendation of the purchase of a tax sheltered program to a customer, a member or person associated with a member shall:
 - (1) inform the customer of all pertinent facts relating to the liquidity and marketability of the program, or lack thereof, the tax aspects of the program during the term of the investment and the tax consequences upon dissolution of the program;
 - (2) be assured on the basis of information obtained that the customer, after giving effect to all of his tax sheltered investments, is reasonably anticipated to be in a tax bracket appropriate to enable him to obtain the tax benefit described in the prospectus; provided, however, that in the case of an oil and gas program, other than a program formed to acquire producing properties, the customer shall be reasonably anticipated to be in at least a 50% tax bracket prior to giving effect to all of his tax sheltered investments;
 - (3) be assured that the customer has a fair market net worth sufficient to sustain the risk inherent in the program, including loss of investment and loss of liquidity of investment and that his subscription to all tax sheltered programs bears a reasonable relationship to his fair market net worth;
 - (4) have reasonable grounds for believing that the purchase of the program is suitable for the customer on the basis of information furnished by him concerning his investment objectives, financial situation and needs and any other information known by such member or person associated therewith; and

- (5) maintain in the files of the member the basis for and reasons upon which the determination of suitability was reached as to that customer.
- (c) In any instance in which a determination of suitability is made without the provisions of paragraphs (a) and (b) hereof being entirely satisfied.
- (1) the burden of proving justification for the determination shall be upon the member or person associated therewith making it; and
 - (2) the member or person associated therewith who makes such a determination shall document in writing the basis therefor with particular reference to its departure from the standards specified in paragraphs (a) and (b) and retain such documentation in the files of the member.
- (d) Notwithstanding the provisions of paragraphs (a) through (c) hereof, a member shall in no event execute a transaction involving a unit of a tax sheltered program without first receiving specific authority from the customer to do so.

Summary of Changes in Section 5 -- SUITABILITY

This section has been substantially revised as a result of the great number of comments received which questioned the specificity of the original proposal especially with respect to other than oil and gas programs. The revision substitutes general standards for specific numerical amounts in several instances.

5(a) -- A technical amendment has been made in this subsection to clarify that these standards are applicable only to public offerings. It has been further revised so as to specifically require that standards of suitability be established by all tax sheltered programs and that such standards be fully disclosed in the prospectus. It would also be required to comply with the standards of subsection 5(b). The new provision thus leaves to each program the establishment of its own suitability standards rather than arbitrary specific standards being imposed by the Association.

5(b) -- The scope of this subsection has been broadened in that the introduction now specifies that the following requirements shall apply in the sale, solicitation or recommendation of tax sheltered programs instead of only to their recommendation.

5(b)(2) -- This subsection originally required that tax sheltered programs could not be recommended to customers unless they were in a 50 percent federal tax bracket. The 50 percent requirement has been eliminated as to all but oil and gas programs. The subsection would now require, as to all but oil and gas programs, that a member be assured a customer is in a tax bracket appropriate to allow him to take advantage of the tax benefits described in the prospectus of the program. As to oil and gas programs, other than "income" programs which do not require such a high suitability standard, a customer must be reasonably anticipated by the member to be in at least a 50 percent tax bracket prior to giving effect to all of his tax sheltered investments. The 50 percent requirement previously related to federal tax bracket but it now relates to the aggregated federal, state and local income tax bracket. Also, the 50 percent tax bracket would now be applicable prior to giving effect to tax sheltered investments, whereas previously it would have been required after giving effect to all tax sheltered investments. The new provision would thus enable a person to reduce his tax bracket below the 50 percent level by investing in tax sheltered programs.

5(b)(3) -- This provision requiring a customer to have a net worth of at least \$50,000 to invest in tax sheltered programs has been deleted. Substituted therefor is a requirement that a customer have a fair market net worth, as defined, sufficient to sustain the risk inherent in a tax sheltered program and that his net worth bear a reasonable relationship to his subscription to all tax sheltered programs.

5(b)(4) -- A change in this subsection would require that a member have reasonable grounds for believing that the purchase of a program is suitable for the customer. Previously that requirement related only to the recommendation by the member.

5(d) -- This subsection is a new provision. It has been added to clarify that in no instance may a member execute a transaction in a tax sheltered program without receiving specific customer authority to do so.

Section 6 -- ORGANIZATION AND OFFERING EXPENSES

- (a) A member or a person associated with a member shall not underwrite or participate in the distribution to the public of units of a tax sheltered program if:
- (1) organization and offering expenses are not fair and reasonable, taking into consideration all relevant factors;
 - (2) organization and offering expenses exceed fifteen (15) percent of the dollar amount of the cash receipts of the offering;
 - (3) sales commissions of any kind from whatever source are not fair and reasonable taking into consideration the size of the program being offered;
 - (4) commissions or other compensation are being paid or awarded either directly or indirectly to any person engaged by a potential investor for investment advice as an inducement to such advisor to advise the purchaser of interests in a particular program, unless such person is a registered broker/dealer or other properly licensed person for selling program interests;
 - (5) all organization and offering expenses of every kind and description, direct or indirect, are not fully disclosed in the prospectus; and
 - (6) the program provides for compensation to be paid to members or persons associated with members for sales of program units, or for services of any kind rendered in connection with the distribution thereof, in a form other than cash if of an indeterminate nature, such as, but not necessarily limited to the following: a percentage of the management fee, a profit sharing arrangement, brokerage commissions, an overriding royalty interest, a net profits interests, a percentage of revenues, a reversionary interest, a working interest, or other similar incentive items.
- (b) Miscellaneous items of compensation to underwriters or dealers, such as, but not necessarily limited to, underwriters expenses, rights of first refusal, consulting fees and all other items of compensation of any kind or description paid by the program directly or indirectly shall be taken into consideration in computing the amount of sales commissions to determine compliance with the provisions of paragraph (a)(3) hereof.

- (c) For purposes of this Section, warrants, options or stock in a sponsor which are determined to have been received in connection with the offering shall be prohibited. For purposes of determining what is in connection with an offering and what factors are utilized in computing compensation derived from incentive items received prior to the filing of an offering with the Association, the guidelines set forth in the Interpretation of the Board of Governors With Respect to Review of Corporate Financing shall govern so far as applicable.

Summary of Changes in Section 6 -- ORGANIZATION AND OFFERING EXPENSES

6(a) -- This subsection has been revised to clarify that its provisions are applicable only to public offerings.

6(a)(1) -- This new provision has been inserted to make a general "fair and reasonable" test applicable to all organization and offering expenses. It was believed the addition of such was necessary to cover any situation not specifically dealt with in the other subsections here.

6(a)(2) -- The major change to this subsection changes the permissible amount of organization and offering expenses from 12 1/2 percent of the dollar amount of cash receipts of the offering to 15 percent of such receipts. It was felt that the higher percentage, while still sufficiently restrictive, was legitimately necessary for some offerings, notably those of smaller aggregate dollar amounts. The provision has been further altered by the exclusion of management fees in the first year of operation from the computation of organization and offering expenses for purposes of computing the percentage set forth in this section. The Board of Governors believed that management fees were not sufficiently related to organization and offering expenses to be included in the computation of such.

6(a)(3) -- Language has been added to this subsection clarifying that sales commissions from all sources, including the program sponsor, will be taken into consideration to determine compliance with the "fair and reasonable" standard. This change has been made in an effort to deal with the problem of sponsors paying extra commissions out of their own funds, as opposed to the program's, in an effort to encourage sales. Language has also been added to clarify that both the size and type of program will be taken into consideration in determining what is fair and reasonable so far as sales commissions are concerned.

6(a)(4) -- This new provision has been inserted to cover situations where a sponsor or participating broker/dealer has awarded to any person commissions for offering investment advice to potential investors where such individual is not a properly licensed securities person. It was often found that this type of transaction was occurring without any disclosure as to the nature of the transaction. Also, it should be noted that this in part reflects the Association's position under Article III, Section 24 of the Rules of Fair Practice dealing with the members splitting commissions with nonregistered individuals.

6(a)(6) -- This new subsection, which reflects no material change, in part incorporates provisions under former Section 8 dealing with compensation to brokers in forms other than cash.

6(b) -- Minor language changes have been made to this provision dealing with miscellaneous items of compensation to clarify that it is applicable to dealers as well as underwriters and that compensation paid both directly and indirectly by the program will be taken into consideration in determining compliance with this section. This change was made to make the applicability of this provision as broad as possible. A misstatement has also been corrected, resulting in "organization and offering expenses" being changed to "sales commissions."

6(c) -- This new subsection also incorporates some of the provisions of former Section 8 dealing with compensation to broker/dealers in forms other than cash. This subsection now reflects that warrants, options or stock in the sponsor determined to be received in connection with the offering shall be prohibited. A clarifying provision which has been inserted indicating that the guidelines under the Interpretation of the Board of Governors With Respect to Review of Corporate Financing will be applied to incentives received by the broker/dealer prior to the filing of an offering in order to determine compliance with this provision. It was felt this guide was necessary to place members on notice as to the standards being applied in this area.

Section 7 -- SPONSOR'S COMPENSATION

General

- (a) A member or a person associated with a member shall not underwrite or participate in the distribution to the public of units of a tax sheltered program:
- (1) which provides for compensation to the sponsor which is unfair or unreasonable taking into consideration all relevant factors;
 - (2) which does not have in its prospectus a summary of all compensation, direct or indirect, to be paid to the sponsor in one section so entitled with a clear reference to other locations in the prospectus where more detail in respect to the various items of compensation may be found;
 - (3) unless it prohibits the payment of a fee upon the dissolution of the program in any manner inconsistent with the sponsor's sharing arrangement,
 - (4) unless it requires that any interest and fees earned on funds held for the sole account of the program shall be payable only to it;
 - (5) unless it prohibits the payment of a real estate acquisition fee in an amount exceeding the lesser of:
 - a. the real estate commission customarily charged in arms'-length transactions by others rendering similar services as an ongoing business activity in the same geographical location and for comparable property; or
 - b. an amount equal to 18 percent of the gross proceeds of the offering;

provided, however, that the total purchase price of the property, including all acquisition fees whether paid by the seller or the program, shall not exceed fair market value.

- (6) which provides for payment of a real estate brokerage commission or similar fee to be paid to the sponsor on the resale of the property by the program if the commission or fee is in excess of fifty percent (50%) of the standard real estate commission and is not subordinated to a return of 100% of the capital contribution of the investor plus an amount equal to 6% of the capital contribution per annum on a cumulative basis, less the sum of prior distributions to the investor;
- (7) unless it prohibits the payment of more than one standard real estate fee or other commission for the acquisition or sale of program properties in any transaction in which the sponsor is a participating broker;
- (8) unless it prohibits the payment of real estate acquisition fees, brokerage fees, or other commissions or fees of a similar nature to the sponsor except for services actually rendered by a sponsor licensed as a real estate broker or agent and engaged in the ongoing business of offering similar services to others; and
- (9) unless it requires in the case of an unspecified property program that the management fee shall be drawn only from the operating income of the program's property investments.

Oil And Gas Programs

- (b) In addition to the provisions of paragraph (a) hereof, a member or person associated with a member shall not underwrite or participate in the distribution to the public of units of an oil and gas program:
 - (1) in which the sponsor has an overriding royalty interest or any other interest free from the burden of operating expenses unless otherwise specifically provided for herein;
 - (2) which provides for compensation inconsistent with the following standards which shall serve as a guide for the levels and methods of sponsors' compensation which will be considered fair and reasonable under paragraph (a)(1) hereof:
 - a. up to 33-1/3% working interest or net profits interest in a lease which becomes payable after receipt by the participants of net profits equal to

their capital contribution to a property or program provided there is no overriding royalty interest reserved by the sponsor;

- b. a 1/16 overriding royalty interest convertible after receipt by the participants of net profits equal to their capital contribution to a property or program into a working interest or a net profits interest not in excess of 25%;
- c. a 1/16 overriding royalty interest in addition to a working interest or net profits interest, which becomes payable after receipt by the participants of net profits equal to their capital contribution to a property or program not in excess of 20%;
- d. under a cost sharing arrangement by which the participant bears all of the cost of exploration and the sponsor bears substantially all of the costs of development, a reversionary interest to the sponsor of not more than 40%, which becomes payable after receipt by the participants of net profits equal to their capital contribution to a property or program and application of all revenue from development wells to accomplish payout of cost of development wells provided no interest on development funds advanced by the sponsor is charged to participants or to the program;
- e. a pro rata interest in the revenue from each well or prospect which is proportional to the portion of prospect or well costs, including costs of lease acquisition, borne by the sponsor. In any program in which the sponsor's interest is based upon an estimated percentage of prospect or well costs to be borne by the sponsor, and taking into account all relevant factors, an interest in program revenues not in excess of 50%; or
- f. an overriding royalty interest of a sponsor not in excess of 3/32, as long as royalty payments in any year for any lease do not exceed the net operating profits from the lease; and

- (3) which provides for the payment of general and administrative expenses by the program to the sponsor which:
 - a. are not chargeable to the program at cost on a fully audited basis;
 - b. are in an amount in excess of 10% of the proceeds of the offering in the first year of operation; and
 - c. are not, in each subsequent year of operation, fair and reasonable or are in excess of the general and administrative expenses in the first year of operation.

Real Estate Programs

- (c) In addition to the provisions of paragraph (a) hereof, a member or person associated with a member shall not participate in the distribution to the public of units of a real estate program unless:
 - (1) it prohibits leasing fees or similar types of compensation from being paid by the program to the sponsor on properties leased to the sponsor;
 - (2) it requires that mortgage placement fees to be paid to the sponsor for the arranging and financing of a property for the program be limited to no more than one fee for the financing of the same property during the property's life in the program provided, however, that fees received separately for the services of securing both a construction loan and a permanent mortgage on a property shall be deemed one fee;
 - (3) it requires that property management fees to be paid to the sponsor be for services actually rendered at a rate based on a percentage of the cash receipts during the period of operation and at a price no higher than those customarily charged for similar services in the same geographical location on a similar property by a nonaffiliated person who engages in the business of property management as an ongoing business activity;
 - (4) it limits general and administrative fees to be paid to a sponsor :
 - a. on a fixed fee basis, to an amount not in excess of one-half of one percent of the gross assets of the program or two and one-half percent of the equity of the program, whichever is the lesser; or

- b. on other than a fixed fee basis and where the general and administrative costs are charged directly to the program, to an amount which is consistent with that normally charged for administration of a similar type program which charges must in any event be fair and reasonable taking into consideration all relevant circumstances; provided, however, that the total amount so computed shall not exceed the amount which is permitted by subparagraph (a) hereof.
- (5) it limits the amount of any sharing arrangement, promotional interest or similar type of compensation to be paid to the sponsor for promotional services to no more than the following:
- a. an amount equal to 25% of the undistributed amount remaining after payment to the investors of an amount at least equal to 100% of their original capital contributions; or
 - b. an interest equal to:
 - 1. 10% of the cash available for distribution; and
 - 2. 15% of distributions to investors from the proceeds of the sale or refinancing of properties after payment to investors of an amount at least equal to 100% of their original capital contributions, plus an amount equal to 6% of the capital contribution per annum on a cumulative basis, less the sum of prior distributions to the investor.
- (d) The burden of demonstrating justification for levels and methods of sponsor's compensation other than those listed in paragraphs (a), (b) and (c) hereof shall be upon the person proposing such. In any event, such other levels or methods shall be comparable or equitably equivalent to those listed in paragraphs (a), (b) and (c) and shall not be unfair or unreasonable taking into account all relevant factors and shall not include levels or methods of compensation prohibited by those paragraphs.
- (e) Income to a sponsor from any interest held as a participant in a program shall not be included in computing sponsor compensation for purposes of this section.

Summary of Changes in Section 7 -- SPONSOR'S COMPENSATION

7(a) -- The language of this subsection has been modified to clarify that its provisions are applicable only to public offerings.

7(a)(3) -- The language of this subsection, which deals with the payment of fees in connection with the dissolution of a program, has been altered to clarify the prohibition on compensation to the sponsor so as to include any fee paid by the program in connection with its dissolution if the fee is in any manner inconsistent with the sponsor's sharing arrangement. This change is largely for purposes of clarification.

Former 7(a)(6) -- The subsection formerly designated 7(a)(6) has been deleted since it is no longer necessary in view of the outright prohibition on the sale of property by the program to the sponsor, with certain very limited exceptions, which have been inserted at subsection 4(b)(6).

7(a)(5) -- This subsection has been changed very substantially as a result of numerous comments received from the real estate industry. The subsection originally prohibited a payment of real estate brokerage commissions or fees to a sponsor in connection with the purchase of any properties by a program. It was originally thought that such a prohibition was necessary to properly protect program participants from being overcharged by the sponsor. It was also felt that the public interest would be better served by requiring sponsors to recover costs otherwise covered by real estate commissions by other fees spread over the life of a property or obtained upon its disposition. As revised, however, the subsection permits payment of real estate brokerage commissions and fees but places certain restrictions upon them. Specifically, a program must prohibit the payment of an "acquisition fee" any greater than the lesser of (a) the customary real estate commission charged by others rendering similar services in the same area, or (b) 18 percent of the gross proceeds of the offering. A proviso is also included which prohibits the total purchase price, including all commissions paid both by the seller and the program, from exceeding fair market value. The term "acquisition fee" has been defined to include virtually any fee paid by any party in connection with a program's acquisition of property. These changes were made in the belief that it is necessary for a sponsor to be compensated on a short-term basis for its acquisition services.

7(a)(6) -- This provision which continues to allow the receipt of brokerage commissions by a sponsor has been altered to limit the amount of these brokerage commissions to 50 percent of the standard real estate commission. As in the original proposal this subsection requires that such commissions and fees be subordinated to the program's cash distribution to its participants in an amount equal to 100 percent of their capital contributions. A provision has been added which would require that the investor also receive an amount equal to 6 percent of his capital contribution per annum on a cumulative basis.

Fees to third party brokers would not be subject to the subordination. The modification in this subsection should be viewed in relation to the modification to subsection 7(a)(5). As these were originally proposed, subsection 7(a)(5) would have prohibited the payment of a real estate brokerage commission to the sponsor in connection with the program's purchase of property, and subsection 7(a)(6) would have permitted the payment of such commissions on a program's sale of property.

7(a)(8) -- The provisions originally contained in the subsection designated 7(a)(10) have been slightly revised and incorporated into new subsection 7(a)(8). This subsection prohibits the payment of any real estate acquisition fees, brokerage fees or other commissions except for services actually rendered by a sponsor that is licensed as a real estate broker or agent and that is engaged in the ongoing business of offering similar services to others. It was felt this provision was necessary to prevent any illegitimate flow of program funds to a sponsor.

7(a)(9) -- This subsection has been modified to delete the reference to "blind pool" and substitute the term "unspecified property program". As revised this subsection requires that the management fee for an unspecified property program be drawn from the operating income of the program's property investments. The original proposal required such fees to be drawn from operating income of the property and not from investments other than those properties specified in the prospectus. Since a major characteristic of an unspecified property program is that property is not specified in the prospectus, the original provision was unworkable.

7(b) -- Language has been added here to indicate that this subsection applies only to public offerings.

7(b)(2)a., b., c., d. -- The term "payout" has been deleted from these paragraphs as a result of the change in the definition of that term. Language has been inserted in these provisions which incorporates the definition of payout as originally used here. The definition used here substitutes for "payout" reference to a period of time when the participants have received net profits equal to their capital contributions to a program or property. It was felt this change was necessary to avoid confusion over use of the term "payout".

7(c) -- Language has been added making this subsection applicable only to public offerings in line with similar changes made throughout the proposals.

7(c)(2) -- This subsection has been modified to reflect that mortgage placement fees can continue to be paid to the sponsor; however, as previously proposed, these fees will no longer be required to be subordinated to a return of the investor's capital contribution. Former subsection 7(c)(3) has been in-

corporated into this subsection to reflect that fees received for securing both a construction loan and a permanent mortgage on a property shall be deemed to be one fee and that no more than one fee may be paid in connection with the financing of a particular property .

7(c)(5) -- This subsection, which was formerly 7(c)(6), reflects an expansion of what was previously only a 25 percent limitation on any sharing arrangement on a fully subordinated basis. The new provision would allow the sponsor two alternatives of receiving his compensation. The first would be on the basis of a 25 percent sharing arrangement fully subordinated to payment to investors of an amount at least equal to 100 percent of their capital contributions. The second would allow the sponsor to receive an interest equal to 10 percent of the cash available for distribution, unsubordinated, and a 15 percent sharing arrangement subordinated to a return to investors of an amount at least equal to 100 percent of their capital contributions, plus an amount equal to 6 percent of the capital contribution per annum on a cumulative basis. This change has been made in order to permit a sponsor to choose either not to receive any cash in the day to day progress of the program until after the investor has received a return of his investment or to share in the cash flow and limit its sharing arrangement to a lesser percentage on a fully subordinated basis .

7(e) -- This new provision has been inserted to clarify that income received by a sponsor as a result of an interest held as a participant in a program will not be included in computing sponsor's compensation for purposes of Section 7. This provision was believed necessary to clarify the intent on this question .

Section 8 -- PERIODIC REPORTS

A member or a person associated with a member shall not underwrite or participate in the distribution to the public of units in a tax sheltered program unless:

- (a) quarterly operations reports are required by the terms of the program to be sent to all participants:
 - (1) in the case of an oil and gas program, during the drilling phase of operations disclosing in reasonable detail the progress of drilling operations, the amount of production, if any, the receipt and disbursement of revenue and any other relevant information; and
 - (2) in the case of all other programs, commencing with the first full quarterly period after the activation of the program disclosing in detail the progress of the program, the receipt and disbursement of revenue and any other relevant information;
- (b) the sponsor is required by the terms of the program to send to each participant within 75 days after the close of each fiscal year audited financial statements and tax information to the extent required for the proper preparation of his income tax return;
- (c) in the case of an oil and gas program, the sponsor is required by the terms of the program to send to each participant within 90 days after the end of the second year of the program, and at least annually thereafter, a report of projected cash flow by years from proven reserves as determined by an appraisal made by a qualified independent petroleum engineer; and
- (d)
 - (1) when a sponsor is permitted by the terms of the program to sell services, supplies, equipment, furnishings or other property to the program, or if a program contemplates transacting business with any person in a material amount, the terms of the program require the audited financial statements referred to in paragraph (b) above to detail the terms of such arrangements and state the gross expenditures by the program to each such person in connection with such activity; and
 - (2) gross receipts by such persons from all prior programs are disclosed in the prospectus of the current program.

Summary of Changes in former Section 8 --

COMPENSATION IN FORMS OTHER THAN CASH TO BROKER/DEALERS
DISTRIBUTING UNITS IN A PROGRAM

The provisions of the originally proposed Section 8 have now been incorporated into Section 6 in an effort to obtain a more logical sequence of sections.

Summary of Changes in Section 8 (former Section 9) -- PERIODIC REPORTS

The introductory paragraph to this section has been clarified to indicate that it is applicable only to public offerings.

8(b) -- This subsection has been modified to reflect that participants are to receive audited financial statements and tax information within 75 days after the close of each fiscal year instead of 90 days as former subsection 9(b) required. It is believed that the 90 day period does not allow the investor sufficient time between receipt of this information and the deadline in which to file his tax return to compile the information properly.

8(e)(1) -- This subsection, which requires that details of arrangements between a sponsor and any person with which the sponsor transacts a large amount of business be set forth in periodic reports, has been revised to substitute "a material amount" for a standard of 20 percent of the dollar value of the participants' interests in the program as a determining factor in requiring disclosure. It was believed this change would make the provision more reasonable and flexible in its application.

Section 9 -- SALES LITERATURE

(a) General

- (1) No member or person associated with a member shall use any sales literature in connection with the offer or sale of a tax sheltered program which has not been filed with the Association's Advertising Department prior to use.
- (2) No member or person associated with a member shall use any sales literature in connection with the offer or sale of a tax sheltered program which is misleading, which contains an untrue statement of a material fact or which omits to state a material fact necessary in order to make a statement made, in light of the circumstances of its use, not misleading.
- (3) No member or person associated with a member shall make any oral statement or presentation which, if made in writing, would not conform to the standards outlined herein.

(b) Required Content

Sales literature will be considered materially misleading if it fails to contain the data specified hereafter in subparagraphs (1) through (8). If a sales kit or other integrated grouping of sales material is used collectively, such data may be contained in one or more pieces of sales literature except that the statement required by subparagraph (7) shall be included in each separate piece of sales literature.

- (1) a clear, concise statement outlining the general nature of the program being offered including a clear and accurate statement describing the program's proposed activities, including estimates of the percentages of proceeds to be applied to each of the proposed activities;
- (2) a statement of the relevant factors of suitability for purchase of a tax sheltered program as contained in Section 5 above, or in the alternative, a clear reference to the location of such information in the prospectus;

- (3) a clear and accurate statement fully disclosing the amount, method, form and percentage of sales charge to the investor, the management fee and any revenue sharing arrangement contained in the program, or in the alternative, a clear reference to the location of such information in the prospectus;
- (4) a statement fully describing the assessments, if any, required of participants in the program: the purpose of the assessment, if such is an optional assessment, and the penalty, if any, which the participant would incur if he did not meet the call, or in the alternative, a clear reference to the location of such information in the prospectus;
- (5) a clear and accurate statement describing the liquidity and marketability of the program or the lack thereof;
- (6) a clear and accurate statement of the tax aspects during the term of the investment and the tax consequences at dissolution or liquidation of the program or upon the sale of a material percentage of the assets of the program, or upon the sale of an interest in the program, or in the alternative, a clear reference to the location of such information in the prospectus;
- (7) a statement that sales literature cannot be distributed to the public unless preceded or accompanied by a current prospectus; and
- (8) a clear and accurate statement describing the four or more years of expertise possessed by or available to the sponsor as required by Section 2(a), hereof, or in the alternative a clear reference to the location of such information in the prospectus.

(c) Prohibited Content

Sales literature shall be considered materially misleading if such literature:

- (1) contains hypothetical projections of income or other benefits to be received from a program except as provided hereafter in paragraphs (d) and (e), or, in the case of programs other than oil and gas and real estate programs, upon a fair and reasonable basis, or represents or implies an assurance that the investor will receive a specific, stable, continuous, dependable, or liberal return, or rate of return, unless such

is guaranteed and there is reasonable assurance that the guarantor will be able to meet the obligation of such guarantee;

- (2) represents or implies an assurance that an investor's capital will increase or will be preserved or protected against loss in value, unless such is guaranteed by the terms of the program and there is reasonable assurance that the guarantor will be able to meet the obligation of such guarantee;
- (3) discusses or portrays in any way the appreciation or profit potential of the investment without explaining the potential risks of such investment;
- (4) makes extravagant claims regarding management ability, experience or competency;
- (5) makes any reference to registration or regulation of the securities being offered, or to the issuer, underwriter or sponsor thereof, under federal or state securities laws which could, or in any way does, constitute or imply endorsement or approval by a regulatory body;
- (6) makes any reference to the National Association of Securities Dealers, Inc. which could, or in any way does, constitute or imply endorsement or approval of the securities, the issuer, the underwriter, or the sponsor by the Association;
- (7) contains any statistical statement, table, graph, chart, or illustration without disclosing the source of the information;
- (8) contains any statement or claim of tax benefits resulting from an investment in the program without a clear statement as to the basis for such;
- (9) contains any comparison, or reference to the similarities of, an investment in the program with an investment in another non-affiliated program, whether similar in nature or not, or a comparison of the performance of the program with performance of any industry or property (e.g., real estate in general or the oil and gas industry), or a comparison with an investment in other securities, including investment company shares;

- (10) contains or refers to any statement of financial condition of an affiliate of a management or sponsoring organization unless such affiliate has direct financial responsibility for, or is the sponsor of, the program being offered, provided that, as used in this subsection "sponsor" shall not refer to an affiliate, associated person, or member of a sponsor's immediate family, or

- (11) contains any reference to or illustration of the possible effects of an exchange of program interests for the securities of any corporation whether based on a hypothetical projection or an assumed exchange utilizing past market performance of the security. Factual data stated in terms of date, name of security and exchange terms, only, based on an actual exchange of interests in a program of the same sponsor for securities identical to those designated by the exchange provisions of the current program may be included. The provisions of this subparagraph (11) shall not be construed to prohibit the presentation of factual data regarding prior exchanges if such data is presented as part of an analysis of the results of prior programs in a manner consistent with the provisions of paragraphs (d)(2) and (e)(2) hereof, even if the program currently being offered has no exchange provisions.

(d) Oil And Gas Programs

In addition to the provisions of paragraphs (a) through (c) hereof, sales literature designed to promote the sale of oil and gas programs shall conform to the provisions of this paragraph.

- (1) If a hypothetical illustration of the tax benefits of an oil and gas program is used, it shall conform to the following standards:
 - a. Illustration of Effects of Intangible Drilling Costs Deduction -- an illustration of the effects of the intangible drilling costs deduction on an investment in an oil and gas program must:
 - 1. be based on an assumed investment of \$10,000; provided, however, illustrations based upon the total value of the program or the minimum subscription commitment may also but shall not be required to be shown. The illustrations may give

effect to future assessments but they must, in any event, be structured so that the total investment illustrated is \$10,000, or such other amount as is used in the additional illustrations. Programs with minimum investments higher than \$10,000 must clearly state in the illustration based on \$10,000 that that figure has been used for clarity of illustration only and that an investment below the program's minimum is not possible. Programs with minimum investments lower than \$10,000 may, if an illustration based upon the lower amount is not also used, refer to their actual minimums but an illustration based upon \$10,000 must still be used;

2. reflect in both percentage and dollar figures, the "estimated deductible expenses" (intangible drilling costs, costs of abandoned acreage and general and administrative expenses);
3. reflect the "tax savings" to the participant based on an assumed participant's federal income tax bracket of 50% which must be clearly stated in the illustration;
4. reflect the "net cost" to the investor (total investment minus "tax savings");
5. reflect the investor's "adjusted federal tax basis" (total investment less estimated deductible expenses);
6. illustrate the items listed in 1. through 5. above in the same order, and using the same terminology, as they appear above;
7. contain an explanatory statement which:
 - (a) states that the illustration is hypothetical;
 - (b) includes a description of the estimated deductible expenses;
 - (c) states the period over which the deduction would occur;

- (d) states the source from which the estimated percentage deduction was obtained, that the percentage may vary and is not guaranteed, and
- (e) refers to the location in the prospectus where more complete information regarding the estimated deductible expenses may be found.

(Schedule 1 hereto is provided as a guide to members in preparing an illustration which conforms to the above requirements.)

- b. Illustration of Effects of Depletion Allowance -- an illustration of the effects of the depletion allowance and/or depreciation on the taxability of income distributed to a participant from an oil and gas program must:
 - 1. be based on one dollar (\$1.00) of "gross income";
 - 2. reflect a reasonable level of "operating expenses";
 - 3. reflect the "net income";
 - 4. reflect any "depreciation" which would be passed on to participants;
 - 5. reflect the "tax depletion allowance" in both percentage and dollar figures;
 - 6. reflect the "taxable income" to the investor;
 - 7. illustrate the items listed in 1. through 6. above in the same order, and using the same terminology, as they appear above, and
 - 8. contain an explanatory statement which:
 - (a) states that the illustration is hypothetical;
 - (b) includes descriptions of depreciation and the depletion allowance (specifically stating that the depletion allowance deduction is limited to 50% of net income);

- (c) includes a brief explanation of the calculation of the depletion allowance in the example, and
- (d) refers to the location in the prospectus where more complete information regarding depreciation allowance may be found.

(Schedule 2 hereto is provided as a guide to members in preparing an illustration which conforms to the above requirements.)

- c. If an illustration of either the intangible drilling costs deduction or the depletion allowance is made, an illustration of both must be made.
- (2) If an analysis of the results of previously offered programs is used, it shall conform to the following standards:
- a. General -- All such analyses must:
 - 1. be limited to the results of programs issuing interests registered under the Securities Act of 1933;
 - 2. present the results in terms of cash liquidation value and distributable cash flow and include an analysis of the results on the basis of both cash liquidation value and distributable cash flow if an analysis on the basis of either is included, unless the program has no liquidation provision; provided that the computation of such results must take into consideration the value of any stock exchange for program interests;
 - 3. include the results of all programs offered within the previous ten year period if the results of any program are included. The results of programs offered more than ten years prior to the date of the analysis may be included if the results of all such earlier programs are also included;
 - 4. include only estimates of cash liquidation values and distributable cash flow which are based upon at least annual appraisals of oil and gas reserves made by a qualified independent petroleum engineer, whose identity is disclosed in the illustration;

5. include distributable cash flow estimates which must be based on proven reserves, whether producing or nonproducing, plus appraised value of other assets, less liabilities, and actual cash liquidation values, as of the date of the illustration, calculated in accordance with a formula or in accordance with terms contained in the prospectus;
6. be based on an assumed total investment of \$10,000 which must give effect to and illustrate actual assessments made for each program; provided, however, illustrations based upon the total value of the program or the minimum subscription commitment may also but shall not be required to be shown. Programs with minimum investments higher than \$10,000 must clearly state in the illustration based on \$10,000 that that figure has been used for clarity of illustration only and that an investment below the program's minimum is not possible. Programs with minimum investments lower than \$10,000 may, if an illustration based upon the lower amount is not also used, refer to their actual minimums but an illustration based upon \$10,000 must still be used;
7. be updated at least annually based on the appraisals required by subparagraph 4. above. More frequent revisions are permitted if based upon interim evaluations by a qualified petroleum engineer whose identity is disclosed in the illustration;
8. contain a prominent legend stating that the analysis is related solely to the results of previously offered programs and that it should not be construed as a representation that similar results will be achieved by any future program;
9. include the following items presented in the same order and utilizing the same terminology as appears below:
 - (a) "Initial Investment"
 - (b) "Assessments"
 - (c) "Total Investment"

- (d) "Cumulative Deductible Expenses"
- (e) "Adjusted Federal Tax Basis"
- (f) "Tax Savings"
- (g) "Net Cost"

b. Analysis of Previously Offered Program Based on Cash Liquidation Value -- An analysis of the results of previously offered programs based on cash liquidation value must also include the following items presented in the same order and utilizing the same terminology as appears below:

1. "Cash Liquidation Value"
2. "Adjusted Federal Tax Basis"
3. "Taxable Gain"
4. "Capital Gains Tax"
5. "Net Proceeds After Tax"
6. "Net Cost" (Total Investment less Tax Savings)
7. "After Tax Cash Gain (Loss)"

c. Analysis of Previously Offered Program Based on Distributable Cash Flow -- An analysis of the results of previously offered programs based on distributable cash flow must also include the following items presented in the same order and utilizing the same terminology as appears below:

1. "Total Net Income Paid To Investor"
2. "Depreciation"
3. "Depletion Allowance"
4. "Taxable Net Income Received"
5. "Federal Income Tax"

6. "Net Income After Taxes"
7. "After Tax Cash Flow"
8. "Latest Three Months Net Income Paid To Investor"
9. "Estimated Net Future Income To Be Paid To Investor Over Next Ten Years (Or Remaining Life Of The Program, Whichever Is Less)"
10. "Estimated Net Future Income To Be Paid To Investor Over Remaining Life Of The Program"

(Schedule 3 hereto is provided as a guide to members in preparing analysis which conforms to the above requirements.)

(e) Real Estate Programs

In addition to the provisions of paragraphs (a) through (c) hereof, sales literature designed to promote the sale of real estate programs shall conform to the provisions of this paragraph.

- (1) If a hypothetical illustration of possible future benefits of a real estate program is used, it shall:
 - a. be based on an assumed \$10,000 investment; provided, however, illustrations based upon the total value of the program or the minimum subscription commitment may also but shall not be required to be shown;
 - b. project data on a year by year basis for at least ten (10) years from the date of the offering;
 - c. reflect at least all of the following statements and items presented in the same order and utilizing the same terminology;
 1. Distributable Cash Flow Statement
 - (a) "Gross Income"
 - (b) "Less Operating Expenses"
 - (c) "Net Operating Income (Loss)" (When a program guarantees a specific return by

reason of a net lease, the actual return guaranteed shall be substituted for Net Operating Income.)

- (d) "Less Debt Service Payment" (Principal and Interest reflected separately)
- (e) "Cash Generated By Program"
- (f) "Sponsor's Share" (Fixed Fee and Variable Fee reflected separately)
- (g) "Cash Available For Distribution To Participants"

(Schedule 4 hereto is provided as an example of an illustration which meets the above requirements.)

2. Tax Statement

- (a) "Gross Income"
- (b) "Deductible Items" (Includes operating expenses, sponsor's fixed fee, interest, and type and length of depreciation)
- (c) "Taxable Income (Loss)"
- (d) "Sponsor's Variable Participation"
- (e) "Participant's Taxable Income (Loss)"
- (f) "Tax Savings (Taxes Payable) -- 50% Federal Tax Bracket" (Tax savings in tax bracket other than 50% may be shown in addition to the 50% bracket)

(Schedule 5 hereto is provided as an example of an illustration which meets the above requirements.)

3. Combined Cash Flow And Tax Statement

- (a) "Cash Available For Distribution To Participants"
- (b) "Tax Savings (Taxes Payable) -- 50%

Federal Tax Bracket" (Tax savings in brackets other than 50% may be shown in addition to the 50% bracket)

(c) "After Tax Benefits (Liabilities)"

(Schedule 6 hereto is provided as an example of an illustration which meets the above requirements.)

- d. base gross income, operating expenses and net operating income figures on the following:
 - 1. when a program holds or will hold known income producing properties, the actual results of such properties for the calendar year immediately preceding the offering, adjusted for any known changes, shall be explained in the income or expenses sections;
 - 2. when a program intends to build and develop one or more specific income producing projects, estimates used shall be based on rentals, occupancy rates, expenses, and other pertinent information from data on existing comparable projects in the immediate geographical area. In order to develop figures required to be in the table, the maximum cost of the project, loan commitment and the price of the land must be known;
- e. base "Less Debt Service Payment" figures on the terms of the mortgage or mortgages which will actually be in effect for each property;
- f. base "Depreciation" figures on the actual method to be utilized for the property or properties held;
- g. contain a statement that the illustration is hypothetical and that the results indicated are not guaranteed; and
- h. contain footnotes or other explanations of the data used, including explanations of the basis for the estimates, the dates, and the calculation of all the data, if appropriate.

- (2) If an analysis of the results of previously offered programs is used, it shall conform to the provisions of subparagraphs a., c., d., e., f. and h. of paragraph (1) of this section and, in addition, it shall:
- a. show the results of all programs of a similar nature which have been publicly offered by the same sponsor within the preceding ten year period. The results of programs offered more than ten years prior to the date of the analysis may be included if the results of all such earlier programs are included;
 - b. provide data on a year by year basis for at least the last ten calendar years of each program or the life of any program which has been in existence less than ten years. Data for periods longer than ten years may be shown only for the entire life of the program;
 - c. not be used subsequent to 120 days from the end of the last full calendar year unless data for the last full calendar year is included;
 - d. include in the "Distributable Cash Flow Statement" required by subparagraph c. of paragraph (1) of this section additional data reflecting the "Actual Cash Distributions" to participants in the program; and
 - e. contain a statement that the results shown should not be construed as a representation that similar results will be achieved by any other program.

SCHEDULE I

Hypothetical
Illustration of Tax Treatment of
a \$10,000 Investment in an Oil and Gas Program

Initial Investment	\$ 7,000	
Assessments	<u>3,000</u>	
Total Investment	\$10,000	
Estimated Deductible Expenses (70%)		(\$ 7,000)
Tax Savings (based on participant's federal income tax bracket of 50%)	<u>(\$ 3,500)</u>	<u> </u>
Net Cost	\$ 6,500	
Adjusted Federal Tax Basis		\$ 3,000

This illustration is hypothetical and should not be construed as a guarantee of the amount or percentage of expenses which will be deductible. The estimated deductible expenses illustrated represent costs associated with drilling which are deductible under federal income tax law, such as intangible drilling expenses, acquisition expenses of abandoned acreage and overhead expenses. The above illustration reflects an investor's net cost in "after-tax" dollars, assuming a 70% expense write-off in the first year of the program; however, actual deductible expenses may be more or less than 70% depending on drilling results. It is estimated by tax counsel that deductible expenses in the year 1971 will approximate 70% to 80% of the initial investment. The illustration does not give effect to possible taxable income to the participant which would reduce the tax benefits illustrated. Please refer to page ____ of the prospectus for further information.

SCHEDULE 2

Hypothetical
Illustration of the Tax Treatment of
Cash Flow in an Oil and Gas Program
on a per \$1.00 Basis

Gross Income		\$1.00
Operating Expenses		<u>(.25)</u>
Net Income		.75
Depreciation	.10	
Tax Depletion Allowance (22% of gross income)	<u>.22</u>	<u>(.32)</u>
Taxable Income		\$.43
<u>Net After Tax</u>		<u>\$.535</u>

In this example, of \$.75 net income, \$.32 is tax free due to the depletion allowance and depreciation, leaving \$.43 taxable. If this amount were received by a participant in the 50% bracket, he would be taxed \$.215, leaving \$.215 net available to the participant out of taxable income, which, combined with the \$.32 tax free amount, results in a total net to the participant of \$.535 per \$1.00 gross income to the program.

This illustration is hypothetical and should not be construed as a guarantee that there will be income from the program or that there will be any specific level of income or expenses. The illustration is designed to show the advantages of the tax shelter provided by the depletion allowance and depreciation on the income earned by the program, if any. Since oil and gas are "depletable assets". i.e., eventually the supply will be completely exhausted by production, the federal income tax law permits, as an allowance for depletion, 22% of gross income (but not more than 50% of net income) to be earned tax free. This allowance commences when commercial production of a well begins and continues for the life of the well. Please refer to page ____ of the prospectus for further information.

SCHEDULE 3

ANALYSIS OF XYZ EXPLORATION CO., INC. PROGRAMS RETURN
TO PARTICIPANTS IN 50% FEDERAL TAX BRACKET AS OF _____

This is an analysis of the results of previously offered programs and should not be construed as a representation that these or similar results will be achieved by any future program.

Analysis Of A \$10,000 Investment In Each Program, Assuming A 50% Federal Income Tax Bracket:	1961 Program	1962 Program	1963 Program	1964 Program	1966 Program	1967 Program	1969 Program	1970 Program	Total All Programs
Initial Investment	\$ 7,000								
Assessments	<u>3,000</u>								
TOTAL INVESTMENT	\$10,000								
Cumulative Deductible Expenses (a)	<u>(7,000)</u>								
Adjusted Federal Tax Basis	<u>3,000</u>								
Tax Savings	<u>3,500</u>								
NET COST (Total Investment less Tax Savings)	<u>\$ 6,500</u>								

(a) Total of actual deductible expenses incurred since inception of program. (Actual deductible expenses for the first year of each program may also be reflected as a part of this footnote.)

Cash Liquidating Value

Cash Liquidation Value (b)	\$ 7,000*
Adjusted Federal Tax Basis	<u>(3,000)*</u>
Taxable Gain	<u>\$ 4,000*</u>

Capital Gains Tax (based on an assumed liquidation by a taxpayer paying a capital gains rate of 25%)

NET PROCEEDS AFTER TAX	<u>(1,000)*</u>
NET COST	\$ 6,000*
AFTER TAX CASH GAIN (LOSS)	<u>\$ (500)*</u>

Cash Flow

TOTAL NET INCOME PAID TO PARTICIPANT	\$ 8,000
Depreciation	(2,240)
Depletion Allowance **	<u>(2,347)</u>
TAXABLE NET INCOME RECEIVED	<u>\$ 3,413</u>
Federal Income Tax (50% Federal Income Tax Bracket)	1,706
NET INCOME AFTER TAXES (exclusive of tax-free income)	<u>\$ 1,707</u>

(b) Based on appraisals of oil and gas reserves made by _____, a qualified independent petroleum engineer.

*Where program interests have been exchanged for stock, these lines would be blank, footnoted to an explanation of the terms of the exchange; where some program interests have been exchanged and others remain outstanding, two columns would be required, showing the alternative results. Any data on an exchange of stock must conform to the requirements of Section 10(d)(2).

**Assuming gross income of \$10,667, and operating expenses of 25 percent, depletion allowance would be as shown.

AFTER TAX CASH FLOW (Depreciation and
Depletion Allowance plus Net Income after
Taxes)

Latest Three Months Net Income Paid
to Participant \$ 6,000

Estimated Net Future Income to be Paid
to Participant over Next 10 Yrs. (or
Remaining Life of Program, whichever
is less) (b) \$ 500*

Estimated Net Future Income to be Paid to
Participant over Remaining Life of
Program (b) \$10,000*

\$15,000*

36 -
SCHEDULE 4

XYZ REAL ESTATE PROGRAM

The following three statements are hypothetical illustrations which, although based on information which is believed to be reasonably reliable at this time, are not guaranteed to represent the exact results which will be achieved by the program.

	<u>1971*</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Gross Income	\$5,000										
Less Operating Expenses	<u>2,000</u>										
Net Operating Income	\$3,000										
Less Debt Service Payment											
Principal	\$ 400										
Interest	<u>1,800</u>										
Cash Generated by Program	\$ 800										
Sponsors Share (Management Fee)											
Fixed Fee	\$ 40										
Variable Fee	<u>40</u>										
Cash Available for distribution to Participants (Distributable Cash Flow)											\$ 720

SCHEDULE 6

COMBINED CASH FLOW AND TAX STATEMENT

1971* 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981

Cash Available for	
Distribution to Participants	
(Distributable Cash Flow)	\$ 720
Tax Savings (Payable) 50% Bracket	<u>399</u>
After Tax Benefits (Liabilities)	\$1,119

The data provided in these statements is based on an assumed investment of \$10,000 by a participant in the 50% federal income tax bracket and assumes that _____ year mortgage loans equal to _____% of the current market value of the properties are obtained and that the interest on such loans will be at _____%. The depreciation illustrated is the _____ method which will ordinarily result in the property being completely depreciated within _____ years.

The properties to be purchased by the program are existing, income-producing apartment buildings, therefore, the statements are based on the actual operating results (gross rental income and operating expenses) of these properties for the calendar year 1970 adjusted for an anticipated rise in real estate taxes during the next year. No significant changes in the levels of rentals or expenses are anticipated in the near future, however, such changes could occur at any time.

The "Gross Income" data shown assumes a vacancy factor of _____%. Breakeven occupancy factor is _____%. The "Operating Expenses" data includes property management fees, real estate taxes and all other operating expenses, including \$ _____ as a reserve for replacement of certain items of personal property, such as refrigerators, dishwashers, etc.

The management fee is based on a fixed fee of \$40 per unit per year plus 5% of the cash generated by the program and 5% of the net profits or losses.

*For purposes of illustration, it is assumed that the program is in operation for its full calendar year 1971.

Summary of Changes in Section 9 (former Section 10) -- SALES LITERATURE

9(a)(1) -- This new provision has been inserted to require the filing of any sales literature with the Association for comment prior to its use by any member. Through oversight, no filing requirement was included in the original proposal, although it was the committee's intent that sales literature be filed. This subsection simply corrects the oversight.

9(b)(6) -- This subsection requiring a statement of the tax aspects of an investment and the tax consequences at liquidation of a program has been expanded to also require a statement of the tax consequences of the sale of a material percentage of the assets of the program or the sale by an individual of his interests in a program. It is believed these latter events could result in equally important tax consequences and should therefore be subjected to equal disclosure requirements.

9(b)(8) -- A new provision has been added here requiring a statement describing the four or more years of expertise required to be possessed by or available to a sponsor by subsection 2(a). This disclosure requirement was added in connection with the revision in the standards of expertise required by Section 2.

9(c)(1) -- The language of this subsection has been clarified to indicate that programs other than oil and gas and real estate programs must comply with standards of fairness and reasonableness. While oil and gas and real estate programs constitute the bulk of tax shelter offerings filed with the Association, there is an ever-growing number of other types of programs. It is impossible to draw specific standards for sales literature for each such program, but it has been the intent throughout to subject the sales literature for such programs to the longstanding "fair and reasonable" standard. This language clearly states that intent.

9(c)(10) -- This subsection prohibits reference to the financial condition of affiliates unless such affiliates have financial responsibility for the program. A proviso has been added to restrict the use of the term "sponsor" in this paragraph so that the financial condition of affiliates, associated persons or members of the immediate family cannot be relied upon by the sponsor except as provided.

9(d)(2)(a)2. -- This paragraph dealing with presentation of results of cash liquidation value and distributable cash flow has been altered to take into consideration the results of an exchange of program interests for stock. Since such arrangements are not uncommon in some tax sheltered programs, it was believed necessary to require that cash liquidation value computations be presented both for interests not exchanged and for those converted to stock.

9(d)(2)(a)5. -- This paragraph dealing with the presentation of distributable cash flow estimates has been altered to provide that such estimates must be based on proven reserves, both producing and non-producing, plus the appraised value of other assets, less liabilities. It was determined that the original proposal that such be based on "proven producing properties" was not properly framed for application to the oil and gas industry. It was, therefore, felt that new and more specific language should be substituted.

Summary of Changes in SCHEDULE 2 -- This schedule, which presents an illustration of cash flow, has been altered to be entitled so as to make specific reference to an oil and gas program in order to make its contents readily obvious. An additional line entitled "net after tax" has also been added to bring an additional set of calculations from the text into the illustration and thereby make the illustration more complete.

Summary of Changes in SCHEDULE 3 -- Certain changes in the calculations have been made here to accurately reflect computations. Language explaining the basis upon which the depletion allowance figure shown was calculated is also inserted. This was believed necessary to clarify the derivation of the figures shown.

Summary of Changes in SCHEDULE 4 -- The term "exact" has been deleted from the explanatory language of this schedule in order to avoid any unintended implication that the results shown are exact or that even any similar results will be achieved.

Notice to Members: 73-51

NOT AVAILABLE AT THIS TIME

Notice to Members: 73-52

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Notice to Members: 73-59

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Notice to Members: 73-60

NOT AVAILABLE AT THIS TIME

Notice to Members: 73-61

NOT AVAILABLE AT THIS TIME