

**WESTCLIFF CAPITAL MANAGEMENT, LLC**  
**Part 2A of Form ADV: Firm Brochure**

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**This brochure provides information about the qualifications and business practices of Westcliff Capital Management, LLC. If you have any questions about the contents of this brochure, please contact us at the number or email address given above. The information in this brochure has not been approved or verified by the Securities and Exchange Commission ("SEC") or by any state securities authority.**

**Additional Information about Westcliff Capital Management, LLC is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov)**

## **MATERIAL CHANGES**

The following is merely a summary of certain changes reflected in the attached Part 2A since the last annual update of Part 2A, filed in March 2011. Westcliff Capital Management, LLC (“WCM” or “we”) launched a new private investment fund in 2011 pursuing an investment objective different than previously formed investment funds. Aspects of the Fund’s terms and activities are described in various sections of the attached Part 2A. We do not consider the introduction or management of that new fund material to any investor in any of the other funds we manage: we have not materially changed our policies or practices (other than investment activities), nor does the new fund present new conflicts of interest.

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## **ADVISORY BUSINESS**

Westcliff Capital Management, LLC (“WCM” or “we”) began operations on April 19, 1993 as Westcliff Capital Management, a California Corporation and became Westcliff Capital Management, LLC, a California Limited Liability Company on October 10, 1996. We provide discretionary investment advisory services to private investment funds and certain institutional clients. The private investment funds (collectively, the “Funds”) consist of (i) several limited partnerships, of which we or an affiliated entity are the sole general partner (collectively, the “Partnership Funds”) and (ii) a non-U.S. company (the “Offshore Fund”). The Partnership Funds include a non-U.S. partnership that serves as a “master” fund through which two other Funds conduct their investment activities. Westcliff Alternative Management, LLC, a commonly owned and controlled entity (“WAM”) is the general partner of three Partnership Funds (the “WAM Partnerships”), WCM Cayman, Ltd., a wholly-owned subsidiary of WCM (“WCM Cayman”), is the general partner of the non-U.S. Partnership Funds, including the master fund, and WCM is the general partner of the other Partnership Funds,

As trustee of the Spencer/Gould Family Trust, Richard S. Spencer III is WCM’s and WAM’s principal owner. In his capacity as trustee of that trust, and as WCM’s Chief Executive Officer, Mr. Spencer controls WCM and WAM.

The Funds have broad investment mandates. The Funds invest in securities, sell securities short, engage in short-term trading, and may invest and trade in options, other derivatives and other instruments.

We have full discretion to manage each Fund’s assets pursuant to the objectives specified in the materials by which the Fund offers or offered its ownership interests to investors. We, WAM, or WCM Cayman, as general partner, have determined those objectives for the Funds. The Offshore Fund’s board of directors has the authority to revise that Fund’s investment objectives, but only subject to our approval. Our agreements with most of the Funds impose no limits on the types of securities or other instruments in which the Funds may invest, the types of positions they may take, the concentration of their investments by sector, industry, fund, country, class or otherwise, the amount of leverage they may employ or the number or nature of short positions they may take. The WAM Partnerships’ agreements of limited partnership broadly authorize investments related to these Funds’ purposes of investing in a wide array of energy-related opportunities. The Funds’ investors do not have the right to specify, restrict, or influence their Funds’ investment objectives or any investment or trading decisions.

Our separate account clients grant us discretion and a limited power of attorney to manage their accounts pursuant to investment objectives and guidelines prescribed in their investment management agreements. Those objectives and guidelines are in some cases substantially the same as the objectives and guidelines of a Fund. They include, in some cases, limitations on investment in particular types of securities.

We do not participate in wrap fee programs.

As of December 31, 2011, the aggregate net asset value of accounts we manage was \$ 129,100,000. We manage no assets on a nondiscretionary basis.

## **FEES AND COMPENSATION**

**Funds.** Each Fund pays us a “management fee” generally calculated at a rate of 1.5% *per annum* (or, as to the WAM Partnerships, 2% *per annum*) of the balance of each investor’s capital account or, as to the Offshore Fund, the value of the shares held by each investor of that Fund. The Funds pay this fee quarterly based on the net asset value of investors’ investments as of the relevant quarterly measurement time. Some Funds pay this fee in advance, some in arrears. The Funds pay a prorated fee for capital contributed as of a date other than the first day of a quarter.

We also generally receive from each Partnership of which WCM is the general partner a performance-based special allocation of net profit (a “*Performance Allocation*”) equal to 20% of the net profit (including both realized and unrealized gains and losses) that would otherwise be allocated to each investor, but only to the extent net profits exceed any cumulative losses that have not previously been recovered (a “*high water mark*”). However, as to one Partnership Fund, which seeks current income, the Performance Allocation is 10% of net profits in excess of a specified “hurdle” return, and certain investors in another of the Partnership Funds are not subject to a Performance Allocation but instead are charged only an annual asset-based fee or an annual asset-based allocation of profit..

WCM Cayman receives a Performance Allocation as to the Cayman Feeder Funds indirectly, through their respective investments in the master fund. As to one of those Feeder Funds the Performance Allocation is at the 20% rate as described above and as to the other the Performance Allocation is 25% of net profits in excess of a specified “hurdle” return.

As to the WAM Partnerships, WAM is generally entitled to a Performance Allocation equal to 20% of net profit allocated to each investor up to the amount of net profit that constitutes a cumulative 50% annualized rate of return and 40% of net profit allocated to each investor in excess of that rate of return, also subject to a high water mark procedure and to a “clawback” procedure upon the relevant Fund’s termination.

Performance Allocations are generally made on an annual basis. If an investor were to withdraw capital or redeem shares as of a time other than as of the end of a calendar year, we (or the relevant affiliated) would receive a partial Performance Allocation as of the time of that withdrawal or redemption, in proportion to the reduction in that investor’s investment caused by the withdrawal or redemption. The WAM Partnerships do not permit periodic withdrawals, and the Performance Allocations they make are subject to reduction or reversal in some circumstances upon the relevant Partnership’s dissolution and winding up.

Fees paid by Funds and Performance Allocations are not generally negotiable, but our agreements with the Funds give us the authority to vary them for particular investors.

The Funds pay our fees directly from their assets that we manage. Performance Allocations take the form of increases in the value of our or our affiliates’ general partner interest in those Funds.

**Separate Accounts.** For managing a Separate Account, we generally receive an annual fee equal to 1% *per annum* of the net asset value of the Separate Account, payable as of the beginning or as of the end of each calendar quarter (depending on the relevant investment management agreement). As to one Separate Account, Westcliff receives an annual fee of 0.25% *per annum* of the net asset value of that Account and a performance fee equal to 25% of the increase in the net asset value of

that Separate Account in excess of a “hurdle” rate of return, calculated and paid annually. The fees a Separate Account client pays Westcliff are negotiated on a client-by-client basis.

***Other Fees and Expenses.*** Each Fund pays all the expenses of its administration and operation, including those for: brokerage commissions and other transaction-related services (see “Brokerage Practices” below); bookkeeping, accounting, auditing and other professional fees and expenses; legal; research and due diligence; governmental fees and taxes; telephone; reporting; governance; preparation, duplication and distribution to investors and prospective investors of offering documents, annual reports and other financial information; and similar ongoing operational expenses. Each Fund bore certain costs in connection with its organization and the initial offering and sale of ownership interests in it and continues to bear the costs of its ongoing offering of those ownership interests.

We may advance costs described above for a Fund and the Fund must reimburse us.

Separate account clients bear expenses of their investment and trading activities, including brokerage commissions and other transaction-related costs. They also bear their own custodial costs.

We provide office personnel and space required for the performance of our services for the Funds. The Funds do not reimburse us for doing so (except to the extent of our fees and incentive allocations).

The Funds do not currently pay custodial fees directly. Their assets are held by “prime brokers” as custodians. The Funds may be considered to pay for custodial services indirectly through: payments to the prime brokers of commissions and other transaction costs; payments of financing charges related to margin borrowings and stock loans; and the prime brokers’ ability to earn money on certain balances the Funds maintain with them (subject to laws and regulations governing their activities).

***Prepayment of Fees.*** Some of the Funds pay management fees quarterly in advance. Investors in Funds other than the WAM Partnerships are generally allowed to withdraw capital as of the end of a calendar quarter, at which time there generally will be no prepaid fees. We are not required to refund any portion of our management fee to a Fund if that Fund allows an investor to withdraw as of a time other than a calendar quarter-end.

***Other Compensation.*** We do not and our personnel do not accept compensation for the sale of securities or other investment products.

### **PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

Each Fund allocates to us, WAM or WCM Cayman, as general partner, a portion of the appreciation in value of investors’ investments, as described above in “Fees and Compensation.”

Some of our Separate Account clients pay us only asset-based fees. See “Fees and Compensation.” The potential to receive performance-based compensation from some accounts (Funds) could create an incentive for us to favor those accounts over accounts that do not pay such compensation. For accounts that have the same investment objectives, subject to exceptions based on such factors as specific (limited) restrictions imposed by separate account clients and on differing cash-flow needs at particular times, we generally effect transactions in the same proportions and at the same

time. See “Brokerage Practices.” We believe this effectively prevents favoring some accounts over others.

## **TYPES OF CLIENTS**

We provide investment advice to the Funds and to separate accounts, generally owned by institutions, professional investors, or large companies. The Funds are privately-offered investment funds that are not regulated under the U.S. Investment Company Act of 1940, as amended (the “Investment Company Act”) because of Section 3(c)(1) or Section 3(c)(7) of that act. Each Fund imposes minimum investor qualification standards and minimum investment requirements.

## **METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

### ***Methods and Strategies, Generally***

We primarily manage accounts and Funds in two broad categories: (i) those that invest and trade primarily in publicly traded securities (“*Public Market Accounts*”); and (ii) those that pursue specialized “venture-style” investing, focusing on investments in venture-stage and startup companies, privately-placed projects, and special situations, all particularly focused on businesses related to energy (“*Venture-Style Accounts*”). In 2011 we began managing a Fund that seeks current interest or dividend income (the “*Yield Fund*”).

*Public Market Accounts.* In our public-markets Funds and accounts, we seek to identify companies that are experiencing a sustainable change in their operating profitability above or below what is expected by the market. We believe that: companies reporting earnings higher than expected (“earnings surprises”) tend to appreciate as securities analysts and investors raise their forecasts of future profits; and if the expectations of a company remain low and the company continues to provide earnings surprises, its stock will continue to appreciate until a new equilibrium has been reached, fully discounting the new information. We analyze the fundamentals of companies reporting earnings surprises, seeking to identify companies that have had substantial changes in their business operations that are not yet recognized by the market and to buy stocks of companies that are in the early stages of a higher trend in profitability. Similarly we try to identify and sell short stock of companies we believe are in the early stages of a lower trend in profitability. In some accounts we buy stocks on margin. Public Market Accounts may also engage in short-term trading, including day trading, in response to earnings surprises, estimate revisions or dramatic short-term price changes, or other factors, may trade in options or other derivatives, and may engage in hedging or opportunistic opportunities using exchange traded funds (“*ETFs*”) and index-related instruments, among other techniques.

*Venture-style Accounts.* These currently consist of the three WAM Partnerships, which invest in specialized energy-related opportunities, including private, development stage companies. WAM is the general partner of these Funds.

*Yield Fund.* This Fund seeks to generate high current interest or dividend income, primarily through buying and holding shares of a small number of closed-end investment companies that invest primarily in high yield bonds or in convertible securities or equity securities that have a high dividend yield.

***INVESTING IN SECURITIES INVOLVES A RISK OF LOSS THAT CLIENTS AND INVESTORS SHOULD BE  
PREPARED TO BEAR.***

***Material Risks of Our Strategies***

The following summarizes *some* of the material risks associated with our investment activities. It does not attempt to describe all of the risks associated with those activities; no summary can be complete.

***Public Market Accounts.***

*Investment Selection; Reliance on Mr. Spencer.* We believe the primary risk of our investment strategy relates to investment selection – the risk that our techniques may result in selections of securities or positions that, at least over certain periods, decline in value or do not appreciate as much as alternative investment opportunities. Our investment advice depends on the judgment and analysis of Mr. Spencer. Should Mr. Spencer terminate his relationship with us, die or become otherwise incapacitated for any extended period, the Funds’ investments could suffer.

*General Economic and Market Conditions.* The success of a Fund’s investments may be affected by global, national and local economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, developments in governmental regulation and national and international political circumstances. These factors may affect the success of the businesses in which a Fund’s portfolio companies are engaged as well as the markets for the securities a Fund holds. Unexpected volatility or illiquidity could impair a Fund’s profitability or result in losses.

*Small Capitalization Stocks.* We invest a significant portion of each account’s assets in stocks of companies with relatively small market capitalizations. The capitalization range of portfolio companies varies among Funds and accounts based on investment objectives, but small-capitalization stocks are a meaningful part of all portfolios. These stocks can involve higher risks than stocks of larger companies. For example, prices of small-capitalization and even some medium-capitalization stocks are often more volatile than prices of large-capitalization stocks and the risk of bankruptcy or insolvency of many smaller companies (with the attendant losses to investors) may be higher than for larger, “blue-chip” companies. In addition, thin trading in some small-capitalization stocks may make an investment in those stocks less liquid.

*Short Selling.* We may sell securities short as a regular part of our investing activities. In a short sale, the client sells securities it does not own, in the hope that the market price will decline and that the client will be able to buy replacement securities later at a lower price. To accomplish this, the account borrows the securities from a broker or other third party. It “closes” the position by “returning” the security (buying a replacement security on behalf of the lender). The obligation to replace the borrowed securities does not typically have a specified “maturity” date and the lender generally may require replacement of the securities whenever it chooses. A short sale theoretically involves the risk of unlimited loss: the price at which the short seller must buy “replacement” securities could increase without limit. As collateral for its replacement obligation, an account is generally required to leave the proceeds of its short sales with the broker that effected the transactions. Lenders of securities in short sales generally have broad discretion to call for additional collateral or to cause a short-seller to “buy in” or “close” some or all of its short positions. That could happen at a time and on terms that are adverse to the short-seller.



*Concentration of Investments.* While we generally attempt to spread capital among a number of investments, at times accounts may hold a relatively small number of positions, each representing a relatively large portion of the account's capital. Accounts may at times have a relatively large portion of their capital exposed to a particular industry or market sector. Losses in one or more large positions, or a downturn in an industry or market sector in which an account is concentrated could materially adversely affect the account's performance in a particular period and, in the case of Funds, could have a materially adverse effect on a Fund's overall financial condition.

*Substantial Positions in Portfolio Companies.* Accounts may from time to time acquire positions in the securities of particular companies that, by themselves or when combined with positions held in other investment funds and accounts we manage, comprise a substantial percentage of those companies' outstanding securities. We and/or particular Funds or accounts may be required to file with the SEC and/or other regulatory authorities reports of beneficial ownership of securities. In these cases, it may be difficult to liquidate or reduce positions in these securities, preventing accounts from realizing profit or avoiding loss. In addition, there may be other circumstances under which the aggregate holdings of a security by accounts we manage, or our involvement with the issuer of that security, limit our ability to liquidate or reduce clients' positions. We may at times attempt to influence management of a particular company or exercise control of a company.

*Board Representation; Inside Information.* From time to time, we may obtain representation on the boards of directors, governing groups or other committees of companies in which we invest client accounts. Representation on a board or committee of a company would increase the possibility that we and the Funds will be deemed affiliates of the company and may restrict trading of investments in the company. In addition, as a result of these positions, we may receive or be deemed to receive inside information concerning certain companies. Our possession of inside information would restrict our ability to buy or sell securities of the companies as to which we have information, perhaps for substantial periods of time. This may prevent clients from realizing profit or avoiding loss or may otherwise adversely affect investment activities.

*Limited Liquidity of Some Investments.* We may invest in securities that, while they are publicly traded, are relatively illiquid. That may be because a security is thinly traded or because our clients' combined position in a security is large in relation to the overall market for the security. Our clients may own securities that are relatively liquid when acquired but that become illiquid after we invest. We may not be able to liquidate illiquid securities positions for clients if the need were to arise; rapid sales of such securities could depress the market value of those securities, reducing profits, or increasing losses, in the positions. Public Market Accounts may make some investments in securities for which there is no ready market, or in securities that may not be immediately resold.

*Use of Leverage.* We may leverage clients' investment positions by borrowing funds from securities brokers or dealers, banks, or others, and may also use derivatives for leverage. Leverage increases both the possibilities for profit and the risk of loss. Borrowings are usually from securities brokers and dealers (primarily the account's Prime Broker—see "Brokerage Practices") and are typically secured by the borrowing account's securities and other assets. Lenders generally have broad discretion to demand increases in the collateral that secures an account's obligations, and if the account is unable to provide additional collateral, the lender could liquidate assets in the account to satisfy the outstanding obligations. Liquidation in that manner could have extremely adverse consequences, including sales at disadvantageous times and prices and the acceleration of tax consequences.

*Options.* Among the derivatives in which we may invest or trade client accounts are options on specific securities and options on securities indices. We may cause accounts to buy or sell (write) both call options and put options, and when we write options we may do so on a “covered” or an “uncovered” basis. For some accounts we have specified limits on uncovered option writing. Options transactions may be part of a hedging tactic (*i.e.*, offsetting the risk involved in another securities position), a form of leverage (providing the right to benefit from price movements in a large number of securities or other assets with a small commitment of capital), or an attempt to obtain profits through premiums received on options written. These activities involve risks that can be large.

*Hedging, Generally.* Hedging strategies in general are usually intended to limit or reduce investment risk, but they can also be expected to involve transaction costs and may inherently limit or reduce the potential for profit.

*Non-U.S. Investments.* We may invest client accounts in securities of non-U.S. companies and/or securities denominated in currencies other than U.S. dollars. These include securities issued by companies in, and traded in, so-called “emerging markets.” Non-U.S. investing, and investing in emerging markets in particular, involves risks not typically associated with investing in securities in the U.S. Here are some of the more significant among those risks.

- *Characteristics of Non-U.S. Securities Markets.* Non-U.S. stock markets generally are not as developed or efficient as, and may be more volatile than, U.S. markets. In particular, there is generally less government supervision and regulation of non-U.S. exchanges, brokers and listed companies than there is in the United States. Further, as compared with trading volumes in U.S. markets, trading volumes in non-U.S. markets are usually lower and therefore are characterized by less liquidity and more rapid and erratic price fluctuations. Commissions for trades on non-U.S. stock exchanges are generally higher than negotiated commissions on U.S. exchanges, and custody expenses are generally higher as well. Settlement practices for transactions in non-U.S. markets may involve delays beyond periods customary in the United States, and the Fund may be required to borrow funds or securities to satisfy its obligations arising out of other transactions. In addition, there could be more “failed settlements,” which can result in losses to the Fund.

- *Less Company Information and Regulation.* Generally, there is less publicly available information about non-U.S. companies than there is about U.S. companies. This may make it more difficult for us to keep informed of corporate action that may affect the price of a particular security. Further, many countries lack uniform accounting, auditing and financial reporting standards, practices and requirements. These factors can make it difficult to analyze and compare the performance of non-U.S. companies.

- *Currency Fluctuation.* Investments may be denominated in non-U.S. currencies. A change in value of any such currency against the U.S. dollar will cause a corresponding change in the U.S. dollar value of client investments that are denominated in that currency. Those changes may affect income and profitability. Certain countries maintain the value of their currencies at artificially high levels relative to the value of the U.S. dollar. This practice may result in sudden and large adjustments in a currency’s value, potentially resulting in losses to foreign investors, such as the Fund. The Fund may enter into currency hedging transactions to attempt to reduce its currency exposure. These techniques may reduce but will not eliminate the risk of loss due to unfavorable currency fluctuations, and they may limit any potential gain that might result from favorable currency fluctuations. Certain countries restrict conversion of their currency into foreign

currencies, including the dollar, and for some currencies, there is no significant foreign exchange market.

- *Restrictions on Investment and Repatriation.* Certain countries impose restrictions and controls regarding investment by foreigners. Among other things, they may require that proposed investments be preapproved by regulatory authorities or impose limits on the amount or types of securities that may be held by foreigners or on the types of companies in which foreigners may invest. These restrictions may at times limit or preclude the Fund's investments in certain countries and may increase the Fund's costs and expenses. Foreign investors may, in some cases, be permitted to invest indirectly in certain countries through investment funds that have been specifically authorized for that purpose. However, because those countries grant only a limited number of authorizations, units or shares in most of the authorized investment funds may at times trade at a substantial premium over the value of their underlying assets. There can be no certainty that these premiums will be maintained, and if the restrictions on direct foreign investment in the relevant country were significantly liberalized, premiums might be reduced, eliminated altogether or turned into a discount. In addition, certain countries impose restrictions and controls on the repatriation of investment income and capital.

- *Political and Economic Instability.* Many non-U.S. economies are less stable than the U.S. economy, due to, among other things, volatile internal political environments, less stable monetary systems and/or external political risks. Some governments participate in their economies in ways that can have a significant effect on securities prices, such as through ownership of private companies or the enactment of certain regulations. The economies of certain countries depend heavily on international trade and can be adversely affected by the enactment of trade barriers or changes in the economic conditions of their trading partners. In some countries, especially developing or emerging countries, political or diplomatic developments could lead to programs that would adversely affect investments by U.S. persons, such as confiscatory taxation or expropriation.

### ***Venture-Style Accounts.***

Our Venture-Style accounts are the three WAM Partnerships, which focus primarily on privately-placed securities of development stage companies and on investments in energy-related projects, as well as specialty investments in selected public companies. They focus on the energy sector, including alternative and unconventional energy sources. In addition to being subject to many of the risks described above, they are subject to the following, among other, special risks.

- *Development Stage Companies.* These accounts invest in start-up companies that are developing new technologies and/or pursuing exploration and development of energy resources. Development stage companies face a high risk of failure due to, among other things, the potential that their technologies will not be as effective as hoped, that the market for their products will not develop, that they may face competition from larger, more established companies with greater resources, and that they may be unable to raise adequate capital to pursue their plans.

- *Regulation of Natural Resource and Energy-Related Companies.* These accounts may invest in, among other things, extraction and mining operations, power generating facilities and utilities. Each of these types of activities is subject to many federal, local, and foreign laws and regulations, including: environmental regulation; utility regulation, including rate regulation; and the Public Utility Holding Company Act.

- *Intellectual Property Issues.* Companies in which we invest these accounts may have a limited number of products or technologies, each of which depends on protection of intellectual property rights to retain their value. These companies may face uncertainties and costs in obtaining patent or other protection for their technologies and could face risks that others might claim their products or technology infringe existing rights.

- *Concentration.* These accounts hold a relatively small number of investments and are particularly subject to the “Concentration of Investments” risk described above.

- *Illiquidity of Investments.* These accounts invest in securities for which there is no established market and must hold those securities for extended periods.

### ***Yield Fund***

In addition to the risks described above as to our public market funds, the Yield Fund faces the following types of risks.

- *Closed-end Bond Funds.* This Fund trades primarily in registered closed-end “Junk” bond funds, generally publicly traded. Because these funds do not permit redemptions, discrepancies frequently develop between their net asset value and market value. The Fund may also invest in Closed-end Municipal Bond Funds.

- *Interest Rate Risk.* All fixed income securities are susceptible to fluctuations in interest rates. If interest rates rise, market prices of existing bonds will decline, despite the lack of change in both the coupon rate and maturity. Long-term bonds are generally more susceptible to this than shorter-term bonds.

- *Call Risk.* Many fixed income securities, including in particular municipal bonds, carry “call” provisions that allow the issuer to redeem the security before its stated maturity date. Some municipal bonds, including housing bonds and certificates of participation, may be callable at any time regardless of the stated call features. Exercise of call rights could affect the value of the Fund’s holdings, both through closed-end funds and directly.

- *Credit and Default Risk.* Credit risk is the risk that the issuer will default or be unable to make required principal or interest payments. There is always a risk of default in any bond investment.

- *Debt Securities Market.* The Fund’s performance will rely heavily on events in the markets for debt securities and municipal securities in particular. The market values of debt instruments, particularly non-investment grade debt, may be more volatile than the values of other investments and, during periods of economic uncertainty and change, the market price of these investments may decrease significantly. Debt instruments, particularly non-investment grade instruments, may be less liquid than equities.

- *Concentration.* The Fund will not be as diversified as many other investment funds. It generally will focus its investments on a relatively small number of closed-end fund positions, each representing a relatively large portion of the Fund’s capital. The Partnership Agreement does not limit the amount of capital the Fund may commit to any single investment, industry or sector.

### **DISCIPLINARY INFORMATION**

We have not been involved in any legal or disciplinary events since our inception that would be material to a client's evaluation of our company or our personnel.

### **OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

Neither we nor any of our employees are registered, or have an application pending to register as a broker-dealer or registered representative of a broker-dealer, futures commission merchant, or commodity pool operator. WAM and WCM act as general partner of certain of the Funds we manage. Neither we nor any of our employees have any relationships or arrangements with other financial service companies that pose material conflicts of interest.

### **CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

We and/or our employees may buy or sell for our/their own accounts certain types of securities that we do not deem appropriate to buy or sell for client accounts. As a general matter, we and/or our members, managers, officers, partners, or employees ("employees") may not personally invest in securities of the same classes as are purchased for clients, and we and they may not own securities of issuers whose securities are subsequently purchased for clients. We and our employees are permitted to trade in securities held (or to be held) by client accounts only in unusual circumstances such as: (i) the sale of any such security that a new employee holds at the commencement of his or her employment, (ii) the sale of any such security we or employees hold before we begin purchasing the security for a client account, and (iii) the receipt or exercise of options by an employee in connection with his or her service as a director of certain companies in which we have made investments on behalf of clients. This limited trading is governed by a Code of Ethics and Conduct that describes the standards of business conduct we require of our employees and establishes procedures intended to prevent us, our employees and certain relatives from inappropriately benefiting from our relationships with clients.

The Code provides, among other things, that (i) clients' interests come before WCM's or employees' interests; (ii) employees must avoid any actual or potential conflicts between their or our interests and the clients' interests; (iii) employees must not take inappropriate advantage of our or their positions of trust with and responsibility to clients; and (iv) we and our employees must comply with all applicable securities laws. It requires employees to report securities holdings and transactions and includes procedures for and restrictions on employee trading intended to prevent employees from benefiting from, or appearing to benefit from, any price movement that may be caused by client transactions. These procedures include, among other things, requirements that employees obtain clearance before they buy or sell any security (other than certain government securities, mutual funds, and certain other types of securities that we do not believe create a potential for conflicts of interest) and prohibitions of certain transactions when an employee knows that we are contemplating effecting similar transactions in client accounts. It also contains restrictions on and procedures to prevent inappropriate trading while in possession of material nonpublic information (including information about our trading activity for clients).

Except as described below in "Brokerage Practices" regarding aggregating securities transactions, if a security were to be purchased or sold for Funds or other clients and for us or our employees on the same day, either the clients and we or our employees would pay or receive the same price, or the clients would receive the more favorable price.

We and/or our owners and employees have significant ownership interest in some of the Funds. To the extent those Funds invest or trade in the same securities as other accounts in which we and/or our owners and employees do not have an interest, we could have an incentive to favor the Funds in which we have that interest. We generally treat those Funds as we do other clients. We believe our procedures for allocating investment and transaction opportunities and for aggregating transaction orders effectively prevent unfair treatment of clients.

We will provide a copy of our Code of Ethics to clients and prospective clients, and to Fund investors and prospective investors, upon request.

### **BROKERAGE PRACTICES**

The Funds and client accounts spends substantial amounts on brokerage commissions and other expenses for transactions in their portfolios. We have complete discretion to decide who will execute transactions and how much each Fund will pay them. Some brokers (and others involved in portfolio transactions) provide us with information, services and other products beyond pure transaction execution. As a result, we face conflicts of interest in exercising our discretion.

#### ***Types of Transactions and Transacting Parties***

We may hire brokers to execute transactions as the Fund's agent. When we do so, the client pays a commission at a rate that is fully disclosed. Electronic crossing networks ("ECNs") are generally brokers who charge commissions for trades a Fund effects through them. Their commission rates are generally lower than other brokers.'

We may also cause clients to trade directly with a dealer who buys or sells a security for its own account — as a principal. Historically market makers in over-the-counter stocks have traded this way, as have bond dealers. When an account trades in this manner, the dealer generally does not charge a commission, but instead receives its compensation as part of the transaction price — as a markup or markdown. The amount of profit a dealer receives on a principal transaction is less apparent than a commission. We refer to brokers, dealers, ECNs and other transacting parties as "*Transacting Parties*."

#### ***Selection Criteria, Generally***

In choosing Transacting Parties, we seek "best execution" of the client's securities transactions. However, what constitutes "best execution" and determining how to achieve it are inherently uncertain. In evaluating whether a Transacting Party will provide best execution, we consider a range of factors. These include, among others, historical net prices (after markups, markdowns or other transaction-related compensation) on other transactions; the execution, clearance and settlement and error correction capabilities of the Transacting Party generally and in connection with securities of the type and in the amounts to be bought or sold; the Transacting Party's reliability and financial stability; the size of the transaction; the availability of securities to borrow for short sales; the market for the security; and the nature, quantity and quality of research and other services and products provided by the Transacting Party. We are not required to select the Transacting Party that charges the lowest transaction cost; a Fund may at times pay more than the lowest transaction cost available in order to obtain for itself and/or us services and products other than the execution of securities transactions.

## ***“Soft Dollars”***

Selecting a Transacting Party in recognition of the provision of services or products other than transaction execution is known as paying for those services or products with “soft dollars.” A federal statute, Section 28(e) of the Securities Exchange Act of 1934, as amended, recognizes the potential conflict of interest involved in the use by an investment manager of soft dollars generated by securities transactions to pay for various expenses but provides a safe harbor from breach of fiduciary duty claims if certain conditions and requirements are met. Under the safe harbor, soft dollars may be used to acquire “research” and “brokerage” services and products for which a Fund would not otherwise be required to pay. Services or products generally constitute “research” under Section 28(e) if they constitute advice, analyses or reports any of which express reasoning or knowledge as to the value of or investing in or trading securities, or as to issuers, industries, economic factors and trends, portfolio strategy or performance, but only to the extent we use them for lawful and appropriate assistance in making investment decisions for a Fund and our other clients. “Brokerage” services and products are those used to effect portfolio transactions or for functions that are incidental to effecting those transactions (such as clearance, settlement or short-term custody related to effecting clearing or settling transactions) or regulatorily required in connection with transactions. Section 28(e) only protects commissions or commission equivalents on transactions in securities; markups and markdowns on many principal transactions, commissions paid to futures commission merchants on transactions in futures contracts, and compensation from transactions in swaps or other derivative instruments are not protected.

Using soft dollars to pay for services and products other than research and brokerage is not protected by the safe harbor, but does not necessarily constitute a violation of any law or fiduciary duty. Similarly, use of non-commission soft dollars or otherwise failing to satisfy procedural elements of the Section 28(e) safe harbor are not protected but are not necessarily prohibited.

*Conflict of Interest.* Because services and products we may receive from Transacting Parties may benefit us, our interests in allocating a client’s securities transactional business may conflict with the client’s. For example, we may have an incentive, in order to induce brokers and dealers to provide us with services or benefits to, among other things, cause a client to: (i) pay higher commissions and other compensation than it would otherwise pay broker-dealers that do not provide soft dollar services or products; (ii) place more trades than would be optimal for the account’s investment strategy; (iii) use broker-dealers that do not obtain for a client the best possible price on portfolio transactions; and (iv) use (and pay) broker-dealers in effect to act as intermediaries with other broker-dealers who actually execute transactions. The extent of the conflicts of interest depends on the nature and uses of the services and products acquired with soft dollars. We may or may not use one client’s soft dollars to pay for services and products from which another client benefits.

*“Research and Brokerage.”* The types of “research” we may receive from Transacting Parties include: reports on or other information about particular companies or industries; economic surveys and analyses; recommendations as to specific securities; financial and industry publications; portfolio evaluation services; financial database software and services; computerized news, pricing and statistical services; analytical software; proxy analysis services and systems (to the extent used to assist in making investment decisions), quotation services; and other products or services that may enhance our investment decision-making. “Brokerage” services and products (beyond typical execution services) may include: computer systems and facilities (including hardware) used for such things as communicating orders and settlement related information electronically to executing Transacting Parties and the account’s prime broker or custodian, post-

trade matching of trade information, communicating allocation instructions, and other clearance and settlement functions. We may use client soft dollars for “mixed use” products and services—products and services that are used in part for research or brokerage purposes and in part for other purposes. Even where our use of soft dollars to acquire research and brokerage services and products is protected by Section 28(e), we will have a conflict of interest in connection with that use because we might otherwise have to pay cash for those services and products and we may have an incentive to use Transacting Parties who provide those services and products more than we otherwise would.

*Fund Expenses.* A Fund may use brokerage commissions, markups and markdowns, and other transaction-related compensation to pay the Fund’s prime broker for recordkeeping, custodial and related services provided to the Fund. Generally, the Fund, and not we, would otherwise be obligated to bear all of these expenses. We therefore do not believe we would have a significant conflict of interest in selecting a Transacting Party in recognition of that party’s payment of them.

*Procedures.* Transacting Parties from which we obtain soft dollar services or products generally establish “credits” based on past transactional business (including markups and markdowns on principal transactions, such as transactions with market-makers for Nasdaq securities), which may be used to pay or reimburse us for specified expenses. In some cases the process is less formal; a Transacting Party simply may suggest a level of future business that would fully compensate the broker or dealer for services or products it provides. An account’s actual transactional business with a Transacting Party may be less than the suggested level but may exceed that level, and credits established may exceed the amounts used to acquire services and products. This may be in part because investment activities generate aggregate commissions in excess of the levels of future business suggested by all Transacting Parties who provide services and products. And it may be in part because those Transacting Parties may also provide superior execution and may therefore be most appropriate for particular transactions.

The above procedures are generally consistent with the requirements of Section 28(e) when the products or services acquired constitute research and/or brokerage. However, Section 28(e)’s safe harbor is not available where transactions are effected on a principal basis, as most transactions with market-makers in over-the-counter securities are, with a markup or markdown paid to the Transacting Party.

### ***Referrals of Investors and Advisory Clients.***

In selecting a Transacting Party, we may consider the Transacting Party’s referrals of investors to a Fund or clients to us, or the potential for future referrals. To the extent we would otherwise be obligated to pay for “finding” services, we have a conflict of interest in considering those services when selecting a Transacting Party. We also face a conflict because we benefit from increases in our overall assets under management.

### ***Cross Transactions***

We may (but are not obligated to) cause accounts to effect “cross” transactions with each other (*i.e.*, buy and sell securities from and to each other), subject to applicable law or regulation. We may do so if we believe that the cross transaction will be beneficial to both parties.



### ***Aggregation of Orders***

We may combine Funds' and clients' orders. When we do, we will generally allocate the purchases or proceeds arising out of those transactions (and the related transaction expenses) on an average price basis among the various participants. We believe combining orders in this way will, over time, be advantageous to all participants. However, the average price could be less advantageous to any particular account than if the account had been the only one effecting the transaction or had completed its transaction before the other participants.

We may place orders for the same security for accounts at different times and in different relative amounts due to, among other things, differences in investment objectives, cash availability, size of order and practicability of participating in "block" transactions. The level of participation by any account in the same security may also be dependent upon other factors relating to the suitability of the security for the particular account. We have adopted policies and procedures intended to ensure that our trading allocations are fair to all clients over time.

### ***Directed Brokerage; Prime Brokerage***

We do not have any "directed brokerage" arrangements with our clients. While not "directed brokerage," Funds may pay a portion of their own costs using soft dollars. In particular, each Fund obtains custodial, clearing and related services through what is known as a "prime brokerage" arrangement. By using brokerage firms for these functions Funds avoid paying custodial fees that banks charge other institutional investors. Prime Brokers are compensated through brokerage commissions, interest on credit balances, margin borrowings, and stock loans. A Fund might be thought of as "directing" us to place transactions with a Prime Broker in order to pay for the custodial, clearing and related services the Fund obtains from the Prime Broker.

A Prime Broker may provide services to us and/or our affiliates, distinct from the custodial, lending and related services the Prime Broker provides a Fund and other clients. These services may include, among other things, information technology, website hosting, portfolio management software license and support service, consulting services with respect to various aspects of our business and introducing us to prospective advisory clients and prospective investors in the Fund and other investment funds we manage. They may be provided at lower than the market price for similar services or for no charge. A Prime Broker may also enter into financial transactions with us or our affiliates, and these transactions may be on terms more favorable than the terms available with other counterparties. These transactions might include lending money to us or our affiliates or investing in funds managed by us. To the extent we or our affiliates receive services from a Prime Broker at lower than market prices, or enter into transactions on terms better than terms available in the market, or collect fees from investments by a Prime Broker into Funds managed by us, because we are responsible for selecting the Prime Broker or negotiating the rates of compensation paid to the Prime Broker by the Fund, conflicts may exist between our interests and the Fund's. We may have an incentive to cause a Fund to accept less favorable pricing for prime brokerage services (including interest and similar charges on margin borrowings and short positions) than might be available otherwise or to continue to use a Prime Broker when a Fund would not otherwise do so. We believe the compensation a Fund pays the Prime Brokers is reasonable and competitive with rates charged by other prime brokers for services of comparable quality.

## **REVIEW OF ACCOUNTS**

Mr. Spencer and other members of our investment management team review all client accounts on at least a weekly basis. They review fundamental developments relating to companies whose securities are held in client accounts as those developments occur. In doing so, they pay particular attention to earnings announcements, announcements relating to management earnings, forecasts, and changes in analysts' earnings forecasts.

We do not provide formal reports to the Funds. Each Fund prepares annual financial statements that it causes to be audited by an independent certified public accounting firm and provides those statements to its investors for the year. The Funds also provide investors with Forms K-1 to enable investors to prepare their income tax returns. We provide quarterly letters to Fund investors, except for the WAM Partnerships, and to Separate Account clients along with their quarterly partners capital statement or portfolio appraisal.

## **CLIENT REFERRALS AND OTHER COMPENSATION**

Other than as discussed above in "Brokerage Practices," we do not receive economic benefits from non-clients in connection with the provision of investment advice to clients and we do not compensate others for client referrals.

## **CUSTODY**

Under a rule under the Investment Advisers Act, because we, WAM, or WCM act as general partner of various Partnership Funds we are considered to have "custody" of those Funds' assets, even though an independent custodian (the Prime Broker) actually holds those assets. That Rule generally requires investment advisers that have custody of their clients' assets to cause certain account statements detailing holdings and transactions to be sent to clients and impose certain other obligations. However, advisers to investment funds like the Partnership Funds need not comply with those requirements if, among other things, the Partnership Funds provide investors with audited financial statements by a specified time each year and those financial statements meet certain requirements. We satisfy those conditions and therefore are not subject to reporting and other obligations.

## **INVESTMENT DISCRETION**

Our agreements with the Funds grant us complete discretion to manage the Funds' investment portfolios, generally without any specific limitations, although the WAM Partnerships' agreements provide that those Funds' purposes are to invest in opportunities related to enumerated types of activities and other aspects of energy production and distribution. Our investment management agreements with other clients grant us discretion and limited powers of attorney. See the description above in "Advisory Business" and "Methods of Analysis, Investment Strategies and Risk of Loss."

## **VOTING CLIENT SECURITIES**

The Funds' Agreements of Limited Partnership grant us the authority to vote the securities held by the Funds and investment management agreements with other clients typically do the same. None of the Funds or any investor in the Funds may direct us to vote in any particular way on any particular matter.

We have retained a proxy voting consultant to provide research and recommendations on proxy voting issues and to vote proxies for each account, in accordance with the policies described below. Through that consultant we will vote all proxies on behalf of each account over which we have voting authority generally based on the consultant's determination of the best interests of that account. In determining whether a proposal serves the best interests of an account, we have instructed our consultant to consider a number of factors, including the economic effect of the proposal on shareholder value, the threat posed by the proposal to existing rights of shareholders, the dilution of existing shares that would result from the proposal, the effect of the proposal on management or director accountability to shareholders, and, if the proposal is a shareholder initiative, whether it wastes time and resources of the company or reflects the grievance of one individual. We have instructed our consultant to abstain from voting proxies when it believes it is appropriate.

We attempt to identify conflicts of interest that may arise in the proxy decision making process. If a material conflict of interest over proxy voting arises between us and a client (other than a Fund), and we determine that our proxy voting policy does not adequately address the conflict of interest, we will notify the client of the conflict and ask that the client consent to our intended response to the proxy solicitation. If the client consents to our intended response or fails to respond to the notice within a reasonable period of time specified in the notice, we, through our consultant, will vote the proxy as described in the notice. If the client objects to our intended response, we, through our consultant, will vote the proxy as directed by the client. We will not submit conflict questions of this type to investors in the Funds.

A client or any investor in a Fund for which we provide investment advisory services may obtain a copy of our proxy voting policy and a record of votes we have cast on behalf of that client or the relevant Fund by contacting us.

#### **FINANCIAL INFORMATION**

We have never filed for bankruptcy and are not aware of any financial condition that is expected to affect our ability to manage client accounts.