

Derby and Company, Inc.

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Derby and Company, Inc.

Brochure

Dated 03/31/2012

Contact: Jonathan Derby, Chief Compliance Officer

7 Wells Avenue

Newton, Massachusetts 02459

www.derbyco.com

This brochure provides information about the qualifications and business practices of Derby and Company, Inc. (the “Registrant”). If you have any questions about the contents of this brochure, please contact us at (617) 527-0033 or Jderby@derbyco.com. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

Additional information about Derby and Company, Inc. also is available on the SEC’s website at www.adviserinfo.sec.gov.

References herein to Derby and Company, Inc. as a “registered investment adviser” or any reference to being “registered” does not imply a certain level of skill or training.

Item 2 Material Changes

There have been no material changes made to Registrant's disclosure statement since last year's Annual Amendment filing on 03/31/2011. The investment held by DCM Real Estate Partners II, LLC has been distributed to the partners and DCM Real Estate Partners II, LLC was closed.

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Item 4 **Advisory Business**

- A. Derby and Company, Inc. (the “Registrant”) is a corporation formed on January 7, 1987 in the Commonwealth of Massachusetts. The Registrant became registered as an Investment Adviser Firm in July 1987. The Registrant is owned by Jonathan Derby and Mark Derby. Mark Derby is the Registrant’s President.
- B. As discussed below, the Registrant offers to its clients (individuals, business entities, trusts, estates, pension and profit sharing plans and charitable organizations, etc.) investment advisory services. The Registrant does not hold itself out as providing financial planning and related consulting services.

INVESTMENT ADVISORY SERVICES

The client can determine to engage the Registrant to provide discretionary investment advisory services on a *fee-only* basis. The Registrant’s annual investment advisory fee is based upon a percentage (%) of the market value of the assets placed under the Registrant’s management and typically recomputed at the end of each calendar year. Such investment advisory fee will be at an annual rate of 1.00% for all securities, except for fixed income securities, which shall be at an annual rate of 0.50%. Notwithstanding the fee structure in the *Investment Advisory Agreement*, Registrant generally charges reduced fees at certain breakpoints as follows:

All Securities Other Than Fixed Income Securities

Market Value of Portfolio	Annual Fee %
First \$3,000,000	1.00%
Next \$2,000,000	0.75%
Next \$2,000,000	0.50%
Over \$7,000,000	0.25%

Fixed Income Securities

Market Value of Portfolio	Annual Fee %
First \$3,000,000	0.50%
Over\$3,000,000	0.25%

RETIREMENT CONSULTING

The Registrant also provides non-discretionary pension consulting services, pursuant to which it assists sponsors of self-directed retirement plans with the selection and/or monitoring of investment options (generally open-end mutual funds) from which plan participants shall choose in self-directing the investments for their individual plan retirement accounts. In addition, to the extent requested by the plan sponsor, the Registrant shall also provide participant education designed to assist participants in identifying the appropriate investment strategy for their retirement plan accounts. The terms and conditions of the engagement shall generally be set forth in a *Retirement Plan Consulting Agreement* between the Registrant and the plan sponsor.

MISCELLANEOUS

Limited Consulting/Implementation Services. Although the Registrant does not hold itself out as providing financial planning, estate planning or accounting services, to the extent specifically requested by the client, the Registrant *may* provide limited consultation services to its investment management clients on investment and non-investment related matters, such as estate planning, tax planning, insurance, etc. Registrant shall not receive any separate or additional fee for any such consultation services. Neither the Registrant, nor any of its representatives, serves as an attorney, accountant, or licensed insurance agent, and no portion of the Registrant's services should be construed as same. To the extent requested by a client, the Registrant may recommend the services of other professionals for certain non-investment implementation purposes (i.e. attorneys, accountants, insurance, etc.). The client is under no obligation to engage the services of any such recommended professional. The client retains absolute discretion over all such implementation decisions and is free to accept or reject any recommendation from the Registrant. **Please Note:** If the client engages any such recommended professional, and a dispute arises thereafter relative to such engagement, the client agrees to seek recourse exclusively from and against the engaged professional. **Please Also Note:** Although certain of Registrant's Principals, in their separate individual capacities, may be licensed as Certified Public Accountants and/or attorneys, none of such individuals provide accounting or legal services to any of the Registrant's clients, and no corresponding accountant-client or attorney-client relationship is established. **Please Also Note:** It remains the client's responsibility to promptly notify the Registrant if there is ever any change in his/her/its financial situation or investment objectives for the purpose of reviewing/evaluating/revising Registrant's previous recommendations and/or services.

Please Note: Conflict of Interest. In the event that Registrant is requested to recommend an Investment Platform for a retirement plan client, a conflict of interest shall arise if any such Investment Platform provides direct or indirect monetary assistance to Registrant in its separate capacity as a Third Party Administrator, including assistance based upon total assets introduced to the Investment Platform. Registrant currently maintains such an arrangement with at least one firm John Hancock, and may maintain such a relationship with others in the future. To the extent the client determines to use any Platform that provides assistance to the Registrant, all such assistance is generally used by Registrant to defer otherwise necessary administrative fee increases to the retirement plan client. No client is under any obligation use the services of any Investment Platform recommended by the Registrant. The Registrant's Chief Compliance Officer, Jonathan Derby, remains available to address any questions regarding this conflict of interest.

401K Plan Consulting. Registrant advises clients with respect to mutual fund choices for their 401(k) plans. In some, but not all cases, the participants in the plans have the right to allocate their interests among the mutual funds chosen by Registrant and in other cases Registrant makes the allocation. In some cases the employer pays Registrant's fee and in others it is paid pro rata by the plan participants.

Private Investment Funds. The Registrant may recommend that certain of its clients consider an investment in affiliated and unaffiliated private investment funds. The Registrant may recommend that certain of its qualified clients consider an investment in the DCM Income Opportunities Partnership, L.P. and the DCM Global Strategies

Partnership, L.P. (collectively referred to as the “*Funds*”). Registrant is also the manager of the DCM Real Estate Partners, LLC, DCM Real Estate Partners III, LLC and DCM Real Estate Partners IV, LLC, DCM Real Estate Partners V, LLC, DCM Real Estate Partners V QP, LLC (collectively referred to as the “*Real Estate Companies*”). Derby Capital Management, LLC, a Massachusetts limited liability company and an affiliate of Registrant, serves as the *Funds* general partner (the “General Partner”). Derby Capital Management, LLC is owned by Mark Derby and Jonathan Derby, who also together wholly own Registrant. Each *Fund* is managed in accordance with the objectives and policies set forth in the *Funds* offering documents and pursuant to the terms of the investment management agreement between Registrant and each *Fund*. The Registrant does not have, nor will it exercise, any have discretionary authority to place any client assets in the *Funds* or *Real Estate Companies*. The Registrant does not receive any additional revenue (fee income, etc.) from the *Funds*, other than its standard percentage (%) of assets under management fee. The *Funds* charges no incentive fee. All client investors receive an annual audited *Fund* financial statement. Registrant’s clients are under absolutely no obligation to consider or make an investment in a private investment fund(s) Registrant or its related persons invest alongside clients of the *Funds* and/or *Real Estate Companies*. In addition, Registrant is paid an investment management fee or an administration fee by these entities, as the case may. At this time, though, the investments selected by Registrant for each of the *Funds* and the *Real Estate Companies*, will not compete for the same dollars and thus, not affect any investment allocations of marketable securities made for non-private investment fund clients. Although Registrant will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the *Funds* and the *Real Estate Companies*, it otherwise is not restricted in the nature to timing of investments for the *Funds* and *Real Estate Companies* and other non-private investment fund clients. Although certain investments of the *Funds* and *Real Estate Companies* may have to be held for a substantial period of time before they can be liquidated or sold to the greatest advantage or, in some cases, at all, which may appear to have a positive impact on Registrant’s fee, such may be the nature of the investment and the extent of the illiquid nature of the investment is fully disclosed in the offering documents. The investments may include private securities that may be subject to substantial restrictions on transferability and for which there may be no available market.

Please Note: Private investment funds generally involve various risk factors, including, but not limited to, potential for complete loss of principal, liquidity constraints and lack of transparency, a complete discussion of which is set forth in each fund’s offering documents, which will be provided to each client for review and consideration. Unlike other liquid investments that a client may maintain, private investment funds do not provide daily liquidity or pricing. Each prospective client investor will be required to complete a Subscription Agreement, pursuant to which the client shall establish that he/she is qualified for investment in the fund, and acknowledges and accepts the various risk factors that are associated with such an investment.

Please Also Note: Valuation. In the event that the Registrant references private investment funds owned by the client on any supplemental account reports prepared by the Registrant, the value(s) for all such private investment funds shall reflect either the initial purchase and/or the most recent valuation provided by the fund sponsor. If the valuation reflects the

initial purchase price (and/or a value as of a previous date), the current value(s) (to the extent ascertainable) could be significantly more or less than the original purchase price.

Please Note: Non-Discretionary Service Limitations. Clients that determine to engage the Registrant on a non-discretionary investment advisory basis must be willing to accept that the Registrant cannot effect any account transactions without obtaining prior verbal consent to any such transaction(s) from the client. Thus, in the event of a market correction during which the client is unavailable, the Registrant will be unable to effect any account transactions (as it would for its discretionary clients) without first obtaining the client's verbal consent.

Please Note: Cash Positions. At any specific point in time, depending upon perceived or anticipated market conditions/events (there being no guarantee that such anticipated market conditions/events will occur), the Registrant *may* maintain cash positions for defensive purposes. All cash positions (money markets, etc) shall be included as part of assets under management for purposes of calculating the Registrant's advisory fee. The Registrant's Chief Compliance Officer, Jonathan Derby, remains available to address any questions that a client or prospective client may have regarding the above fee billing practice.

Tradeaway Fees. When beneficial to the client, certain transactions, though typically only those involving fixed-income securities, may be effected through broker-dealers with whom the Registrant and/or the client have entered into arrangements for prime brokerage clearing services, in which event, the client generally will incur both the transaction fee charged by the executing broker-dealer and a "tradeaway" fee charged by the account custodian.

Trade Error Policy. Registrant shall reimburse accounts for losses resulting from the Registrant's trade errors, but shall not credit accounts for such errors resulting in market gains. The gains and losses are reconciled within the Registrant's custodian firm account and Registrant retains the net gains and losses.

Client Obligations. In performing its services, Registrant shall not be required to verify any information received from the client or from the client's other professionals, and is expressly authorized to rely thereon. Moreover, each client is advised that it remains his/her/its responsibility to promptly notify the Registrant if there is ever any change in his/her/its financial situation or investment objectives for the purpose of reviewing/evaluating/revising Registrant's previous recommendations and/or services.

Disclosure Statement. A copy of the Registrant's written Brochure as set forth on Part 2A of Form ADV shall be provided to each client prior to, or contemporaneously with, the execution of the *Investment Advisory Agreement*.

- C. The Registrant shall provide investment advisory services specific to the needs of each client. Prior to providing investment advisory services, an investment adviser representative will ascertain each client's investment objective(s). Thereafter, the Registrant shall allocate and/or recommend that the client allocate investment assets consistent with the designated investment objective(s). The client may, at anytime, impose reasonable restrictions, in writing, on the Registrant's services.
- D. The Registrant does not participate in a wrap fee program.
- E. As of December 31, 2011, the Registrant had \$396,916,798 in assets under management on a discretionary basis and \$63,323,442 in assets under management on a non-discretionary basis.

Item 5 Fees and Compensation

- A. The client can determine to engage the Registrant to provide discretionary investment advisory services on a *fee-only* basis.

INVESTMENT ADVISORY SERVICES

If a client determines to engage the Registrant to provide discretionary investment advisory services on a *fee-only* basis, the Registrant's annual investment advisory fee shall be based upon a percentage (%) of the market value and type of assets placed under the Registrant's management. Such investment advisory fee will be at an annual rate of 1.00% for all securities, except for fixed income securities, which shall be at an annual rate of 0.50%. Notwithstanding the fee structure in the *Investment Advisory Agreement*, Registrant generally charges reduced fees at certain breakpoints as follows:

All Securities Other Than Fixed Income Securities

Market Value of Portfolio	Annual Fee %
First \$3,000,000	1.00%
Next \$2,000,000	0.75%
Next \$2,000,000	0.50%
Over \$7,000,000	0.25%

Fixed Income Securities

Market Value of Portfolio	Annual Fee %
First \$3,000,000	0.50%
Over \$3,000,000	0.25%

DCM INCOME OPPORTUNITIES PARTNERSHIP, L.P. AND THE DCM GLOBAL STRATEGIES PARTNERSHIP, L.P. (THE "FUND(S)")

On the first day of each calendar quarter, Registrant is due a quarterly management fee (the "*Management Fee*") from each Fund generally equal to 0.25% (1.0% annualized) of the Funds net asset value as of the end of the prior quarter. To the extent the General Partner accepts an initial investment of less than \$250,000 or permits an investor in the Fund to make a partial withdrawal from its capital account that cause such investors capital account to be less than \$250,000, such investor may nonetheless be charged the *Management Fee* based on a minimum investment of \$250,000.

In consideration of the *Management Fee*, Registrant will bear certain administrative expenses of the *Funds*, and provide to the *Funds* office space and utilities, news and computer equipment and services, and secretarial, clerical and other personnel. The *Management Fees* may be more or less than Registrant's cost of supplying such facilities and services.

A limited partner in the *Fund* that is permitted to withdraw from such *Fund* on a date other than the end of a calendar quarter may be charged a pro-rata portion of the *Management Fee* paid or due with respect to such quarter. Each limited partner admitted to the *Fund* other than on the first day of a calendar quarter is subject to a pro rata portion of the *Management Fee* based upon the portion of the quarter for which it is a limited partner.

Registrant may waive or reduce the *Management Fee* with respect to the capital account of certain limited partners, including affiliates of Registrant.

DCM REAL ESTATE PARTNERS, LLC, DCM REAL ESTATE PARTNERS III, LLC, DCM REAL ESTATE PARTNERS IV, LLC, DCM REAL ESTATE PARTNERS V, LLC, AND DCM REAL ESTATE PARTNERS V QP, LLC,. (COLLECTIVELY REFERRED TO AS THE “*REAL ESTATE COMPANIES*”) There is no investment management fee charged. An administration fee is charged as follows:

DCM Real Estate, LLC: Generally 0.1875% charged in arrears quarterly on the capital contributed.

DCM Real Estate III, LLC: Generally, 0.25% charged in arrears quarterly on the net asset value of each member’s capital account.

DCM Real Estate IV, LLC: Generally, 0.25% charged in arrears quarterly on the capital contributed.

DCM Real Estate V, LLC: Generally, 0.25% charged in arrears quarterly on the net asset value of each member’s capital account.

DCM Real Estate V QP, LLC: Generally, 0.25% charged in arrears quarterly on the net asset value of each member’s capital account.

* All fees paid to Registrant for investment advisory or administration services in connection with the *Funds* and the *Real Estate Companies* are separate and distinct from the fees and expenses charged by the underlying hedge funds, private investment funds, private partnerships, and the like (hereinafter referred to as “Underlying Investment”), to their investors or partners. These fees and expenses are described in each Underlying Investment’s offering documents. These fees and expenses may generally include a management fee, an incentive fee, and other operating expenses. If a client satisfies certain SEC requirements of qualification, a client may have, and in some cases may still, invest in a one of these Underlying Investments directly, without the services of Registrant. In that case, the client would not receive the services provided by Registrant which are designed, among other things, to assist the client in determining which Underlying Investment are most appropriate to achieving the stated purpose of the *Fund* or the *Real Estate Company*, as the case may be.

Registrant may waive or reduce the administration fee with respect to the account of certain members of the *Real Estate Companies limited*, including affiliates of Registrant.

B. Clients may elect to have the Registrant’s advisory fees deducted from their custodial account. Both Registrant’s *Investment Advisory Agreement* and the custodial/clearing agreement may authorize the custodian to debit the account for the amount of the Registrant’s investment advisory fee and to directly remit that management fee to the Registrant in compliance with regulatory procedures. In the limited event that the Registrant bills the client directly, payment is due upon receipt of the Registrant’s invoice. Unless otherwise stated in this *Brochure*, the Registrant shall deduct fees and/or bill clients quarterly in arrears, based upon the market value of the assets on the

last business day of the previous year. In the case of new account, for the first calendar year or portion thereof, as the case may be, fees will be charged quarterly in arrears based upon the value of the account at the end of the initial calendar quarter.

C. As discussed below, unless the client directs otherwise or an individual client's circumstances require, the Registrant may often recommend that Pershing LLC ("*Pershing*") serve as the broker-dealer/custodian for client investment management assets. Broker-dealers such as *Pershing* charge brokerage commissions and/or transaction fees for effecting certain securities transactions (i.e. transaction fees are charged for certain no-load mutual funds, commissions are charged for individual equity and fixed income securities transactions). In addition to Registrant's investment management fee, brokerage commissions and/or transaction fees, clients will also incur, relative to all mutual fund and exchange traded fund purchases, charges imposed at the fund level (e.g. management fees and other fund expenses). When beneficial to the client, individual fixed income and/or equity transactions may be effected through broker-dealers with whom Registrant and/or the client have entered into arrangements for prime brokerage clearing services, including effecting certain client transactions through *Pershing*, or other various SEC registered and FINRA member broker-dealers (in which event, the client shall incur both the transaction fee charged by the executing broker-dealer and a "tradeaway" fee charged by *Pershing*).

D. Unless otherwise stated in this *Brochure*, the Registrant shall deduct fees and/or bill clients quarterly in arrears, based upon the market value of the assets on the last business day of the previous year. In the case of new account, for the first calendar year or portion thereof, as the case may be, fees will be charged quarterly in arrears based upon the value of the account at the end of the initial calendar quarter. The Registrant generally requires an annual minimum fee of \$2,500 and a minimum dollar value of assets equal to \$500,000 as a condition of starting a new account for investment advisory services. The Registrant, in its sole discretion, may charge a lesser investment management fee and/or waive or reduce its minimum asset requirement based upon certain criteria (i.e. anticipated future earning capacity, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.).

*The minimum investment in the DCM Income Opportunity Partnership, L.P. is now \$500,000 and DCM Global Strategies Partnership, L.P. is \$250,000. The minimum investment in DCM Real Estate, LLC is \$50,000, DCM Real Estate III, LLC is \$250,000, DCM Real Estate IV, LLC is \$150,000, DCM Real Estate V, LLC is \$50,000 and DCM Real Estate V QP, LLC is \$50,000 each subject to waiver by the General Partner, the Managing Member, or Registrant, as the case may be. Each limited partner of these investments must be an accredited investor, as defined in Rule 501(a) under the Securities Act of 1933, as amended. Investors in the *Funds* and *Real Estate Companies* will be required to make certain representations and warranties in a subscription agreement in connection with their investments, some of which relate to the investors sophistication and its ability to bear the risk of loss of their entire investment in the applicable *Fund* or *Real Estate Company*.

The *Investment Advisory Agreement* between the Registrant and the client will continue in effect until terminated by either party by written notice in accordance with the terms of the *Investment Advisory Agreement*. Upon termination, a pro-rated portion of the earned but unpaid advanced advisory fee shall be due.

E. Neither the Registrant, nor its representatives accept compensation from the sale of securities or other investment products.

Item 6 Performance-Based Fees and Side-by-Side Management

Neither the Registrant nor any supervised person of the Registrant accepts performance-based fees.

Item 7 Types of Clients

The Registrant's clients shall generally include individuals, business entities, trusts, estates, pension and profit sharing plans and charitable organizations. The Registrant generally requires an annual minimum fee of \$2,500 and a minimum dollar value of assets equal to \$500,000 as a condition of starting a new account for investment advisory services. . The Registrant, in its sole discretion, may charge a lesser investment management fee and/or waive or reduce its minimum asset requirement based upon certain criteria (i.e. anticipated future earning capacity, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.).

Item 8 Methods of Analysis, Investment Strategies and Risk of Loss

A. The Registrant shall utilize the following methods of security analysis:

- Fundamental - (analysis performed on historical and present data, with the goal of making financial forecasts)
- Derby will select portfolio managers of the private investment funds on the basis of various criteria, generally including, among other things, an analysis of: the portfolio managers performance during various time periods and market cycles; the portfolio managers reputation, experience and training; its articulation of, and adherence to, its investment philosophy; prudent use of leverage; the presence of risk management discipline; interviews of the management team; and whether the portfolio manager has a substantial personal investment in the investment program. Not all these factors, however, will be considered with respect to each portfolio manager and other criteria may be considered.

The Registrant shall utilize the following investment strategies when implementing investment advice given to clients:

- Long Term Purchases (securities held at least a year)
- Short Term Purchases (securities sold within a year)

Please Note: Investment Risk. Different types of investments involve varying degrees of risk, and it should not be assumed that future performance of any specific investment or investment strategy (including the investments and/or investment strategies recommended or undertaken by the Registrant) will be profitable or equal any specific performance level(s).

B. The Registrant's methods of analysis and investment strategies do not present any significant or unusual risks.

However, every method of analysis has its own inherent risks. To perform an accurate market analysis the Registrant must have access to current/new market information. The Registrant has no control over the dissemination rate of market information; therefore, unbeknownst to the Registrant, certain analyses may be compiled with outdated market information, severely limiting the value of the Registrant's analysis. Furthermore, an accurate market analysis can only produce a forecast of the direction of market values. There can be no assurances that a forecasted change in market value will materialize into actionable and/or profitable investment opportunities.

The Registrant's primary investment strategies - Long Term Purchases and Short Term Purchases - are fundamental investment strategies. However, every investment strategy has its own inherent risks and limitations. For example, longer term investment strategies require a longer investment time period to allow for the strategy to potentially develop. Shorter term investment strategies require a shorter investment time period to potentially develop but, as a result of more frequent trading, may incur higher transactional costs when compared to a longer term investment strategy.

C. Currently, the Registrant primarily allocates client investment assets among U.S. Treasury and Agency Bonds, Corporate Bonds and Preferred Stocks, closed, open-end, and exchange traded funds, on a discretionary and non-discretionary basis and affiliated and non-affiliated private investment funds on a non-discretionary basis in accordance with the client's designated investment objective(s).

Please note the following relative to Registrant's affiliated private investment funds:

DCM Income Opportunity Partnership, L.P.

Pursuant to the DCM Income Opportunity Partnership, L.P.'s offering documents, Registrant may invest the Fund's assets in other private investments funds that invest in event driven strategies, involves investments in companies undergoing significant corporate transactions or structural transformations. Event-driven strategies generally seek to profit from events such as a change in an issuers corporate or capital structure, a debt repayment obligation or a management transition. Examples include merger arbitrage (sometimes called risk arbitrage), distressed investing, special situation strategies, and private placement strategies. Registrant may also invest the Fund's assets in real estate, either directly or through other private investment funds.

DCM Global Strategies, L.P.

Pursuant to the DCM Global Strategies, L.P.'s offering documents, Registrant may invest the Fund's assets in other private investment funds that pursue an absolute return strategy via a variety of sub-strategies, generally without limitation.

DCM Real Estate Partners, LLC, and DCM Real Estate Partners IV, LLC

In general, pursuant to each DCM Real Estate Partners' (other than DCM Real Estate Partners III, LLC and DCM Real Estate Partners V, LLC and DCM Real Estate Partners V QP, LLC) offering documents, the purposes of each company shall be to carry on lawful business or activity, directly or indirectly, including without limitation (a) the acquisition, disposition, leasing, management and operation of real estate and personal property appurtenant thereto, and to engage in any other activities necessary,

customary, convenient or incident to the forgoing.

DCM Real Estate Partners III, LLC

In general, pursuant to the DCM Real Estate Partners III, LLC's offering documents, the purposes of the Company shall be to invest in Apollo Real Estate Finance Corporation, Charles River Realty Fund 1, LP and carry on any lawful business or activity, directly or indirectly, including without limitation the acquisition, disposition, leasing, management and operation of real estate and personal property appurtenant thereto, and to engage in any other activities necessary, customary, convenient or incident to the foregoing.

DCM Real Estate Partners V, LLC and DCM Real Estate Partners V QP, LLC

In general, pursuant to the DCM Real Estate Partners V, LLC's offering documents, the purposes of the Company shall be to invest in Kayne Anderson Real Estate Partners II, LP and Kayne Anderson Real Estate Partners II (QP), LP and carry on any lawful business or activity, directly or indirectly, including without limitation the acquisition, disposition, leasing, management and operation of real estate and personal property appurtenant thereto, and to engage in any other activities necessary, customary, convenient or incident to the foregoing.

*Subject to the investment objectives and strategies described in the above private investment funds' (the "*Funds*") offering documents, Registrant has the discretionary authority to invest and reinvest the assets of the *Funds* as it sees fit. Accordingly, Registrant may invest on behalf of the *Funds* in certain types of securities and instruments other than those listed above, including, without limitation, restricted securities purchased in private placements, high yield fixed income securities (commonly referred to as junk bonds), stock option or index transactions, and other derivative instruments.

Item 9 Disciplinary Information

The Registrant has not been the subject of any disciplinary actions.

Item 10 Other Financial Industry Activities and Affiliations

- A. Neither the Registrant, nor its representatives, are registered or have an application pending to register, as a broker-dealer or a registered representative of a broker-dealer.
- B. Neither the Registrant, nor its representatives, are registered or have an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or a representative of the foregoing.
- C.
 - 2. Private Investment Funds. As disclosed in Item 4.B. above, the Registrant may recommend that certain of its clients consider an investment in affiliated and unaffiliated private investment funds. The Registrant may recommend that certain of its qualified clients consider an investment in the DCM Income Opportunities Partnership, L.P. and the DCM Global Strategies Partnership, L.P. (collectively referred to as the "*Funds*"). Registrant is also the manager of the DCM Real Estate

Partners, LLC, DCM Real Estate Partners III, LLC, DCM Real Estate Partners IV, LLC, DCM Real Estate Partners V, LLC and DCM Real Estate Partners V QP, LLC (collectively referred to as the “*Real Estate Companies*”). Derby Capital Management, LLC, a Delaware limited liability company and an affiliate of Registrant, serves as the *Funds* general partner (the “General Partner”). Derby Capital Management, LLC is owned by Mark Derby and Jonathan Derby, who also together wholly own Registrant. Each *Fund* is managed in accordance with the objectives and policies set forth in the *Funds* offering documents and pursuant to the terms of the investment management agreement between Registrant and each *Fund*. The Registrant does not have, nor will it exercise, any have discretionary authority to place any client assets in the *Funds* or *Real Estate Companies*. The Registrant does not receive any additional revenue (fee income, etc.) from the *Funds*, other than its standard percentage (%) of assets under management fee. The *Funds* charges no incentive fee. All client investors receive an annual audited *Fund* financial statement. Registrant’s clients are under absolutely no obligation to consider or make an investment in a private investment fund(s).

Registrant or its related persons invest alongside clients of the *Funds* and/or *Real Estate Companies*. In addition, Registrant is paid an investment management fee or an administration fee by these entities, as the case may. At this time, though, the investments selected by Registrant for each of the *Funds* and the *Real Estate Companies*, will not compete for the same dollars and thus, not affect any investment allocations of marketable securities made for non-private investment fund clients. Although Registrant will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the *Funds* and the *Real Estate Companies*, it otherwise is not restricted in the nature to timing of investments for the *Funds* and *Real Estate Companies* and other non-private investment fund clients. Although certain investments of the *Funds* and *Real Estate Companies* may have to be held for a substantial period of time before they can be liquidated or sold to the greatest advantage or, in some cases, at all, which may appear to have a positive impact on Registrant’s fee, such may be the nature of the investment and the extent of the illiquid nature of the investment is fully disclosed in the offering documents. The investments may include private securities that may be subject to substantial restrictions on transferability and for which there may be no available market.

Please Note: Private investment funds generally involve various risk factors, including, but not limited to, potential for complete loss of principal, liquidity constraints and lack of transparency, a complete discussion of which is set forth in each fund’s offering documents, which will be provided to each client for review and consideration. Unlike other liquid investments that a client may maintain, private investment funds do not provide daily liquidity or pricing. Each prospective client investor will be required to complete a Subscription Agreement, pursuant to which the client shall establish that he/she is qualified for investment in the fund, and acknowledges and accepts the various risk factors that are associated with such an investment.

Please Also Note: Valuation. In the event that the Registrant references private investment funds owned by the client on any supplemental account reports prepared by the Registrant, the value(s) for all such private investment funds shall reflect either the initial purchase and/or the most recent valuation provided by the fund sponsor. If the valuation reflects the initial purchase price (and/or a value as of a previous date), the current value(s) (to the extent ascertainable) could be significantly more or less than the original purchase price.

Please Also Note: Because the Registrant's and/or Registrant's affiliates can earn compensation from *Funds* and/or *Real Estate Companies* that may exceed the fee that the Registrant would earn under its standard "assets under management" fee schedule referenced at Item 4.B above, the recommendation that a client become a *Funds* and/or *Real Estate Companies* investor presents a conflict of interest. No client is under any obligation to become a *Funds* and/or *Real Estate Companies* investor. The Registrant's Chief Compliance Officer, Jonathan Derby, remains available to address any questions regarding this conflict of interest.

- D. The Registrant does not receive, directly or indirectly, compensation from investment advisors that it recommends or selects for its clients.

Item 11 Code of Ethics, Participation or Interest in Client Transactions and Personal Trading

- A. The Registrant maintains an investment policy relative to personal securities transactions. This investment policy is part of Registrant's overall Code of Ethics, which serves to establish a standard of business conduct for all of Registrant's Representatives that is based upon fundamental principles of openness, integrity, honesty and trust, a copy of which is available upon request.

In accordance with Section 204A of the Investment Advisers Act of 1940, the Registrant also maintains and enforces written policies reasonably designed to prevent the misuse of material non-public information by the Registrant or any person associated with the Registrant.

- B. As disclosed above, the Registrant may recommend that certain of its clients consider an investment in affiliated and unaffiliated private investment funds. The Registrant may recommend that certain of its qualified clients consider an investment in the DCM Income Opportunities Partnership, L.P. and the DCM Global Strategies Partnership, L.P. (collectively referred to as the "*Funds*"). Registrant is also the manager of the DCM Real Estate Partners, LLC, DCM Real Estate Partners III, LLC, DCM Real Estate Partners IV, LLC, DCM Real Estate Partners V, LLC and DCM Real Estate Partners V QP, LLC (collectively referred to as the "*Real Estate Companies*"). Derby Capital Management, LLC, a Delaware limited liability company and an affiliate of Registrant, serves as the *Funds* general partner (the "General Partner"). Derby Capital Management, LLC is owned by Mark Derby and Jonathan Derby, who also together wholly own Registrant. Each *Fund* is managed in accordance with the objectives and policies set forth in the *Funds* offering documents and pursuant to the terms of the investment management agreement between Registrant and each *Fund*. The Registrant does not have, nor will it exercise, any have discretionary authority to place any client assets in the *Funds* or *Real Estate Companies*. The Registrant does not receive any additional revenue (fee income, etc.) from the *Funds*, other than its standard percentage (%) of assets under management fee. The *Funds* charges no incentive fee. All client investors receive an annual audited *Fund* financial statement. Registrant's clients are under absolutely no obligation to consider or make an investment in a private investment fund(s).

Registrant or its related persons invest alongside clients of the *Funds* and/or *Real Estate Companies*.

Please Note: Because the Registrant's and/or Registrant's affiliates can earn

compensation from *Funds* and/or *Real Estate Companies* that may exceed the fee that the Registrant would earn under its standard “assets under management” fee schedule referenced at Item 4.B above, the recommendation that a client become a *Funds* and/or *Real Estate Companies* investor presents a conflict of interest. No client is under any obligation to become a *Funds* and/or *Real Estate Companies* investor. The Registrant’s Chief Compliance Officer, Jonathan Derby, remains available to address any questions regarding this conflict of interest.

- C. The Registrant and/or representatives of the Registrant *may* buy or sell securities that are also recommended to clients. This practice may create a situation where the Registrant and/or representatives of the Registrant are in a position to materially benefit from the sale or purchase of those securities. Therefore, this situation creates a potential conflict of interest. Practices such as “scalping” (i.e., a practice whereby the owner of shares of a security recommends that security for investment and then immediately sells it at a profit upon the rise in the market price which follows the recommendation) could take place if the Registrant did not have adequate policies in place to detect such activities. In addition, this requirement can help detect insider trading, “front-running” (i.e., personal trades executed prior to those of the Registrant’s clients) and other potentially abusive practices.

The Registrant has a personal securities transaction policy in place to monitor the personal securities transactions and securities holdings of each of the Registrant’s “Access Persons”. The Registrant’s securities transaction policy requires that an Access Person of the Registrant must provide the Chief Compliance Officer or his/her designee with a written report of their current securities holdings within ten (10) days after becoming an Access Person. Additionally, each Access Person must provide the Chief Compliance Officer or his/her designee with a written report of the Access Person’s current securities holdings at least once each twelve (12) month period thereafter on a date the Registrant selects; provided, however that at any time that the Registrant has only one Access Person, he or she shall not be required to submit any securities report described above.

- D. The Registrant and/or representatives of the Registrant *may* buy or sell securities, at or around the same time as those securities are recommended to clients. This practice creates a situation where the Registrant and/or representatives of the Registrant are in a position to materially benefit from the sale or purchase of those securities. Therefore, this situation creates a potential conflict of interest. As indicated above in Item 11.C, the Registrant has a personal securities transaction policy in place to monitor the personal securities transaction and securities holdings of each of Registrant’s Access Persons.

Item 12 Brokerage Practices

A. In the event that the client requests that the Registrant recommend a broker-dealer/custodian for execution and/or custodial services (exclusive of those clients that may direct the Registrant to use a specific broker-dealer/custodian), Registrant generally recommends that investment management accounts be maintained at *Pershing*. Prior to engaging Registrant to provide investment management services, the client will be required to enter into a formal *Investment Advisory Agreement* with Registrant setting forth the terms and conditions under which Registrant shall manage the client’s assets, and a separate custodial/clearing agreement with each designated broker-dealer/custodian. Factors that the Registrant considers in recommending *Pershing* (or any other brokerdealer/custodian to clients) include historical relationship with the Registrant, financial strength, reputation, execution capabilities, pricing, research, and service. Although the commissions and/or transaction fees paid by Registrant’s clients shall comply with the Registrant’s duty to obtain best execution, a client may pay a commission that is higher than another qualified broker-dealer might

charge to effect the same transaction where the Registrant determines, in good faith, that the commission/transaction fee is reasonable in relation to the value of the brokerage and research services received. In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of a broker-dealer's services, including the value of research provided, execution capability, commission rates, and responsiveness. Accordingly, although Registrant will seek competitive rates, it may not necessarily obtain the lowest possible commission rates for client account transactions. The brokerage commissions or transaction fees charged by the designated broker-dealer/custodian are exclusive of, and in addition to, Registrant's investment management fee. The Registrant's best execution responsibility is qualified if securities that it purchases for client accounts are mutual funds that trade at net asset value as determined at the daily market close.

1. Research and Additional Benefits

Although not a material consideration when determining whether to recommend that a client utilize the services of a particular broker-dealer/custodian, Registrant may receive from *Pershing* (or another broker-dealer/custodian) without cost (and/or at a discount) support services and/or products, certain of which assist the Registrant to better monitor and service client accounts maintained at such institutions. Included within the support services that may be obtained by the Registrant may be investment-related research, pricing information and market data, software and other technology that provide access to client account data, compliance and/or practice management-related publications, discounted or gratis consulting services, discounted and/or gratis attendance at conferences, meetings, and other educational and/or social events, marketing support, computer hardware and/or software and/or other products used by Registrant in furtherance of its investment advisory business operations.

As indicated above, certain of the support services and/or products that *may* be received may assist the Registrant in managing and administering client accounts. Others do not directly provide such assistance, but rather assist the Registrant to manage and further develop its business enterprise.

Registrant's clients do not pay more for investment transactions effected and/or assets maintained at *Pershing* as a result of this arrangement. There is no corresponding commitment made by the Registrant to *Pershing* or any other entity to invest any specific amount or percentage of client assets in any specific mutual funds, securities or other investment products as result of the above arrangement.

The Registrant's Chief Compliance Officer, Jonathan Derby, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding perceived conflict of interest such arrangement may create.

2. The Registrant does not receive referrals from broker-dealers.
3. The Registrant does not generally accept directed brokerage arrangements (when a client requires that account transactions be effected through a specific broker-dealer). In such client directed arrangements, the client will negotiate terms and arrangements for their account with that broker-dealer, and Registrant will not seek better execution services or prices from other broker-dealers or be able to "batch" the client's

transactions for execution through other broker-dealers with orders for other accounts managed by Registrant. As a result, client may pay higher commissions or other transaction costs or greater spreads, or receive less favorable net prices, on transactions for the account than would otherwise be the case.

Please Note: In the event that the client directs Registrant to effect securities transactions for the client's accounts through a specific broker-dealer, the client correspondingly acknowledges that such direction may cause the accounts to incur higher commissions or transaction costs than the accounts would otherwise incur had the client determined to effect account transactions through alternative clearing arrangements that may be available through Registrant.

The Registrant's Chief Compliance Officer, Jonathan Derby, remains available to address any questions that a client or prospective client may have regarding the above arrangement.

B. To the extent that the Registrant provides investment management services to its clients, the transactions for each client account generally will be effected independently, unless the Registrant decides to purchase or sell the same securities for several clients at approximately the same time. The Registrant may (but is not obligated to) combine or "bunch" such orders to obtain best execution, to negotiate more favorable commission rates or to allocate equitably among the Registrant's clients differences in prices and commissions or other transaction costs that might have been obtained had such orders been placed independently. Under this procedure, transactions will be averaged as to price and will be allocated among clients in proportion to the purchase and sale orders placed for each client account on any given day. The Registrant shall not receive any additional compensation or remuneration as a result of such aggregation.

Item 13 Review of Accounts

- A. For those clients to whom Registrant provides investment supervisory services, account reviews are conducted on an ongoing basis by the Registrant's Principals and representatives. All investment supervisory clients are advised that it remains their responsibility to advise the Registrant of any changes in their investment objectives and/or financial situation. All clients (in person or via telephone) are encouraged to review financial planning issues (to the extent applicable), investment objectives and account performance with the Registrant on an annual basis.
- B. The Registrant *may* conduct account reviews on an other than periodic basis upon the occurrence of a triggering event, such as a change in client investment objectives and/or financial situation, market corrections and client request.
- C. Clients are provided, at least quarterly, with written transaction confirmation notices and regular written summary account statements directly from the broker-dealer/custodian and/or program sponsor for the client accounts. The Registrant may also provide a written periodic report summarizing account activity and performance.

Item 14 Client Referrals and Other Compensation

- A. As referenced in Item 12.A.1 above, the Registrant may receive an indirect economic benefit from *Pershing*. The Registrant, without cost (and/or at a discount), may receive support services and/or products from *Pershing*.

Registrant's clients do not pay more for investment transactions effected and/or assets maintained at *Pershing* as a result of this arrangement. There is no corresponding commitment made by the Registrant to *Pershing* or any other any entity to invest any specific amount or percentage of client assets in any specific mutual funds, securities or other investment products as result of the above arrangement.

The Registrant's Chief Compliance Officer, Jonathan Derby, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding perceived conflict of interest any such arrangement may create.

- B. If a client is introduced to the Registrant by either an unaffiliated or an affiliated solicitor, Registrant *may* pay that solicitor a referral fee in accordance with the requirements of Rule 206(4)-3 of the Investment Advisers Act of 1940, and any corresponding state securities law requirements. Any such referral fee shall be paid solely from the Registrant's investment management fee, and shall not result in any additional charge to the client. If the client is introduced to the Registrant by an unaffiliated solicitor, the solicitor, at the time of the solicitation, shall disclose the nature of his/her/its solicitor relationship, and shall provide each prospective client with a copy of the Registrant's written Brochure with a copy of the written disclosure statement from the solicitor to the client disclosing the terms of the solicitation arrangement between the Registrant and the solicitor, including the compensation to be received by the solicitor from the Registrant.

Item 15 Custody

The Registrant shall have the ability to have its advisory fee for each client debited by the custodian on a quarterly basis. Clients are provided, at least quarterly, with written transaction confirmation notices and regular written summary account statements directly from the broker-dealer/custodian and/or program sponsor for the client accounts. The Registrant may also provide a written periodic report summarizing account activity and performance.

Please Note: To the extent that the Registrant provides clients with periodic account statements or reports, the client is urged to compare any statement or report provided by the Registrant with the account statements received from the account custodian. Please Also Note: The account custodian does not verify the accuracy of the Registrant's advisory fee calculation.

Item 16 Investment Discretion

The client can determine to engage the Registrant to provide investment advisory services on a discretionary basis. Prior to the Registrant assuming discretionary authority over a client's account, the client shall be required to execute an *Investment Advisory Agreement*, naming the Registrant as the client's attorney and agent in fact, granting the Registrant full authority to buy, sell, or otherwise effect investment

transactions involving the assets in the client's name found in the discretionary account.

Clients who engage the Registrant on a discretionary basis may, at anytime, impose restrictions, in writing, on the Registrant's discretionary authority. (i.e. limit the types/amounts of particular securities purchased for their account, exclude the ability to purchase securities with an inverse relationship to the market, limit or proscribe the Registrant's use of margin, etc).

Item 17 Voting Client Securities

- A. Except for a very few legacy accounts, and assets that are allocated to separate account managers (for which proxy voting is generally retained by the designated manager), clients maintain exclusive responsibility for: (1) directing the manner in which proxies solicited by issuers of securities beneficially owned by the client shall be voted, and (2) making all elections relative to any mergers, acquisitions, tender offers, bankruptcy proceedings or other type events pertaining to the client's investment assets.
- B. Clients will receive their proxies or other solicitations directly from their custodian. Clients may contact the Registrant to discuss any questions they may have with a particular solicitation.

Item 18 Financial Information

- A. The Registrant does not solicit fees of more than \$1,200, per client, six months or more in advance.
- B. The Registrant is unaware of any financial condition that is reasonably likely to impair its ability to meet its contractual commitments relating to its discretionary authority over certain client accounts.
- C. The Registrant has not been the subject of a bankruptcy petition.

ANY QUESTIONS: The Registrant's Chief Compliance Officer, Jonathan Derby, remains available to address any questions that a client or prospective client may have regarding the above disclosures and arrangements.