

# **GREEN & SMITH INVESTMENT MANAGEMENT L.L.C.**

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This brochure provides information about the qualifications and business practices of Green & Smith Investment Management L.L.C. If you have any questions about the contents of this brochure, please contact us at (914) 741-5600 or [operations@mergerfund.com](mailto:operations@mergerfund.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. Registration as an investment adviser does not imply a certain level of skill or training.

Additional information about Green & Smith Investment Management L.L.C. also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## **ITEM 2 – MATERIAL CHANGES**

This brochure is a new document prepared according to the United State Securities and Exchange Commission’s new requirements and rules. This brochure is materially different in structure from our prior disclosure document and requires certain new information that our previous brochure did not require.

In the future, this Item 2 will contain a summary of any material changes since the last annual update of our brochure.

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#### **ITEM 4 - ADVISORY BUSINESS**

Green & Smith Investment Management L.L.C. (“Green & Smith”), 100 Summit Lake Drive, Valhalla, New York 10595, an investment adviser since 1996, provides investment advice as the general partner of Hudson Valley Partners, L.P., a Delaware limited partnership (“HVP”), investment adviser to The Merger Fund Ltd., a Cayman Islands exempt company (“LTD”), and the manager of GS Master Trust, a Bermuda trust (the “Master Fund”), a master-feeder structure in which HVP and LTD act as feeders to the Master Fund (HVP, LTD and the Master Fund are collectively referred to as the “Funds”). The Master Fund engages in merger arbitrage.

Roy Behren and Michael T. Shannon, Co-Managers of Green & Smith, and Frederick W. Green, a member, are Green & Smith’s principal owners.

Merger arbitrage is a highly specialized investment approach designed to profit from the successful completion of proposed mergers, takeovers, tender offers, leveraged buyouts, liquidations and other types of corporate reorganizations.

Green & Smith tailors its advisory services to the specific investment objectives, policies and restrictions of each Fund set forth in the relevant offering circular, placing memorandum, limited partnership agreement, investment management agreement and other governing documents pertaining to each Fund.

As of December 31, 2011, Green & Smith managed \$94,898,120 in client assets on a discretionary basis and did not manage any client assets on a non-discretionary basis.

## ITEM 5 - FEES AND COMPENSATION

Green & Smith is the general partner of HVP pursuant to an Agreement of Limited Partnership of HVP, dated as of August 1, 2009, by and between Green & Smith and HVP's limited partners (the "Partnership Agreement"). The Partnership Agreement provides that HVP will pay to Green & Smith a cash fee (the "Management Fee"), accrued and calculated monthly and payable in arrears as of the last day of each calendar quarter. Each such quarterly payment of the Management Fee shall be equal to the sum of the Management Fee calculated for each month in such calendar quarter, which monthly calculation shall be equal to one-twelfth (1/12) of one percent (1.0%) of the net asset value of HVP as of the first day of each of the three months included in such calendar quarter. In addition, Green & Smith is entitled to an incentive fee, which is an amount, paid annually, equal to 20% of the net profits of HVP, if any, during each fiscal year. If the net asset value of HVP at the end of a fiscal year is lower than the net asset value at the end of any prior fiscal year, no incentive fee is paid to Green & Smith.

Green & Smith is the investment adviser to LTD pursuant to an Investment Advisory Agreement, dated as of January 12, 1996, by and between Green & Smith and LTD (the "Advisory Agreement"). The Advisory Agreement provides that Green & Smith receives from LTD a management fee, which is payable quarterly in arrears and is accrued and calculated monthly (as of the last business day of each month) at an annual rate of 1.0% of the monthly net asset value of LTD. In addition, Green & Smith is entitled to an incentive fee, which is an amount, accrued monthly and paid annually, equal to 20% of the net profits of LTD, if any, during each fiscal year. If the net asset value per share of LTD at the end of a fiscal year is lower than the net asset value per share at the end of any prior fiscal year, no incentive fee is paid to Green & Smith.

Green & Smith is the manager of the Master Fund, a master-feeder structure which consists of HVP and LTD, pursuant to a Management Agreement, dated as of May 31, 2005, by and between Green & Smith and Winchester Global Trust Company Limited, a Bermuda corporation ("Winchester"), as trustee of the Master Fund (the "Management Agreement"). Green & Smith does not charge any fee to the Master Fund for its services under the Management Agreement or under the Agreement and Declaration of Trust among HVP, LTD and Winchester, dated as of May 31, 2005.

Green & Smith's fees are negotiated and fixed at the time that each Fund is formed.

Green & Smith deducts fees from clients' assets quarterly in arrears in the case of the HVP and LTD's management fees and annually in the case of HVP and LTD's incentive fees.

HVP, LTD and the Master Fund pay all other expenses related to their respective operations, including legal and accounting fees, custodial fees, interest on borrowed funds, transfer taxes, brokerage commissions, finder's fees with respect to borrowed securities, fees and expenses for consulting, research and statistical services and any extraordinary expenses such as litigation expenses. See Item 12 - Brokerage Practices below. As an investor in the Master Fund, each of HVP and LTD is also responsible for its pro rata share of the expenses of the Master Fund. There is no duplication of investment management fees, prime broker fees or administration fees as to the extent that such fees are charged at the Master Fund level they are

not charged at the HVP or LTD level and to the extent that such fees are charged at the HVP or LTD level they are not charged at the Master Fund level.

## **ITEM 6 - PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

As discussed above under Item 5 - Fees and Compensation, Green & Smith charges performance-based fees.

Green & Smith is an affiliate of Westchester Capital Management, LLC, a registered investment adviser (“WCM”). WCM is the investment adviser to The Merger Fund and The Merger Fund VL, sub-adviser to the Dunham Monthly Distribution Fund (“Dunham”), a separate series of shares of Dunham Funds, and sub-adviser to the Westchester Merger Arbitrage UCITS Fund, a sub-fund of Merrill Lynch Investment Solutions, an umbrella investment company with variable share capital incorporated in the Grand Duchy of Luxembourg (the “UCITS Fund”).

WCM charges The Merger Fund and The Merger Fund VL asset-based fees. WCM charges Dunham a performance-based fulcrum fee composed of an annual base rate based on Dunham’s average daily net assets, plus or minus a performance fee depending on WCM’s performance over a rolling 12-month period measured against a designated benchmark. WCM charges the UCITS Fund a management fee and a performance fee. WCM may enter into other sub-advisory agreements from time-to-time.

Roy Behren, Co-Manager and a member of Green & Smith, is Co-President of WCM, Co-President, Treasurer and a Trustee of The Merger Fund and Co-President and Treasurer of The Merger Fund VL. Michael T. Shannon, Co-Manager and a member of Green & Smith, is Co-President of WCM, Co-President of The Merger Fund and Co-President and a Trustee of The Merger Fund VL.

The fact that Green & Smith’s portfolio managers manage both accounts that are charged a performance-based fee and accounts that are charged an asset-based fee creates the potential for a conflict of interest, since receipt of a portion of any profits realized by Green & Smith’s accounts could, in theory, create an incentive to favor such accounts. However, Green & Smith does not believe that Mr. Behren’s and Mr. Shannon’s overlapping responsibilities or the various elements of their compensation present any material conflict of interest, for the following reasons: (i) The Merger Fund, The Merger Fund VL, Dunham, the UCITS Fund and the Funds all engage in merger arbitrage and are managed in a similar fashion; (ii) Green & Smith and WCM follow strict and detailed written allocation procedures designed to allocate securities purchases and sales among The Merger Fund, The Merger Fund VL, Dunham, the UCITS Fund and the Funds in a fair and equitable manner; and (iii) all allocations and fair-value pricing reports are subject to review by Green & Smith and WCM’s Chief Compliance Officer.

## **ITEM 7 - TYPES OF CLIENTS**

Green & Smith provides investment advice to unregistered investment companies.

The minimum purchase price of a limited partnership interest in HVP is \$500,000. Green & Smith reserves the right to accept a subscription of less than \$500,000.

Each investor in HVP must meet the criteria for being a “qualified purchaser” under the Investment Company Act of 1940.

Each investor in LTD generally must subscribe for a minimum of \$500,000 worth of redeemable shares of LTD. An existing shareholder subscribing for additional shares must subscribe for a minimum of \$100,000 worth of shares. LTD’s Directors reserve the right to waive or change these minimums at any time subject to an absolute minimum initial subscription of \$100,000, as required by the Irish Stock Exchange.

Each investor in LTD must not be a U.S. Person, as defined in Regulation S under the Securities Act of 1933, other than a Permitted U.S. Person, which means a U.S. Person, other than a registered investment company, that is subject to the United States Employee Retirement Income Security Act of 1974, as amended (ERISA), or is a tax-exempt trust described in Section 401(a) of the United States Internal Revenue Code of 1986, as amended, an Individual Retirement Account (IRA), or is otherwise exempt from payment of U.S. Federal income tax. Each investor in LTD additionally must represent and warrant to LTD that, among other things, he is able to acquire Shares without violating applicable laws and that he is a sophisticated investor as defined by the Irish Stock Exchange.



## **ITEM 8 - METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

Merger arbitrage is a highly specialized investment approach designed to profit from the successful completion of proposed mergers, takeovers, tender offers, leveraged buyouts, liquidations and other types of corporate reorganizations. In deciding whether and to what extent to invest in any given reorganization, Green & Smith typically reviews numerous factors which affect the probability and timing of the deal's completion. Such considerations include the motivations of the parties to the transaction, whether a definitive plan of reorganization had been agreed to, the conditions under which the agreement may be terminated, Wall Street reaction to the deal, and the number and nature of the regulatory approvals required. The analysis of hostile takeover attempts involves other considerations, such as the extent and likely effectiveness of the defensive measures available to the target company. Green & Smith frequently makes use of fundamental analysis in evaluating arbitrage situations but rarely employs technical analysis. Given the nature of merger arbitrage, Green & Smith places little emphasis on attempting to forecast the direction of the stock market.

In the course of its arbitrage research, Green & Smith reviews various financial publications, company reports and press releases; filings made with the Securities and Exchange Commission and other government agencies; and Wall Street research reports. Green & Smith also seeks information and opinions regarding pending reorganizations from corporate officers, securities analysts, regulatory officials, investment bankers, lawyers, accountants, consultants, commercial bankers and other arbitrageurs.

Green & Smith employs a variety of strategies depending upon the nature of the reorganizations selected for investment. The most common arbitrage activity involves purchasing the shares of an announced acquisition target at a discount to their expected value upon completion of the proposed transaction. The size of the discount and the length of time required to consummate the reorganization determine the rate of return on the investment. Positions are held for relatively short periods of time averaging less than six months. Green & Smith generally limits its investments in more speculative "pre-deal" situations and, when appropriate, uses short sales and derivatives to hedge its positions. Portfolios are diversified to the greatest extent practicable, and leverage is sometimes employed to enhance returns.

Investing in securities involves risk of loss that clients should be prepared to bear.

The principal risk associated with the Funds' merger-arbitrage investment strategy is that certain of the proposed reorganizations in which a Fund invests may be renegotiated or terminated, in which case losses may be realized.

The Funds are permitted to hold both long and short positions in foreign securities. Investments in foreign companies involved in pending mergers, takeovers and other corporate reorganizations may entail political, cultural, regulatory, legal and tax risks different from those associated with comparable transactions in the United States. If securities are denominated in a foreign currency, there is a risk that the value in U.S. dollars of the foreign securities held by the Funds that are not U.S. dollar-denominated may be affected favorably or unfavorably by changes in exchange rates and exchange-control regulations, and the Funds may incur costs in connection

with conversions between various currencies. Also, in conjunction with their investments in foreign securities, the Funds will normally attempt but are not required to hedge their exposure to foreign currencies. Such hedging activities involve additional expenses and, in the case of reorganizations that are terminated, the risk of loss when the currency hedge is unwound. There is no assurance that any such hedging techniques will be successful. In conjunction with their investments in foreign securities, the Funds may employ equity swap contracts and other derivatives.

Merger arbitrage portfolios may have higher turnover rates than portfolios of typical long-only funds. This may result in increased transaction costs to the Funds, which could impact the Funds' performance.

## **ITEM 9 - DISCIPLINARY INFORMATION**

We are required to disclose all material facts regarding legal or disciplinary events that would be material to your evaluation of Green & Smith's advisory business or the integrity of Green & Smith's management. Green & Smith does not have any legal or disciplinary events to report.

## **ITEM 10 - OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

As described above under *Item 6 - Performance-based Fees and Side-by-Side Management*, Green & Smith is an affiliate of WCM, a registered investment adviser which is the investment adviser or sub-adviser to registered investment companies, and the Co-Managers of Green & Smith are officers and/or trustees of WCM, The Merger Fund and The Merger Fund VL, which creates the potential for a conflict of interest, which is addressed as described under *Item 6 - Performance-based Fees and Side-by-Side Management*.

## **ITEM 11 - CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

Green & Smith has adopted a Code of Ethics and will provide a copy of the Code of Ethics to any client or prospective client upon request. The Code of Ethics is designed to reinforce fiduciary principles that govern the conduct of Green & Smith and its personnel. The Code of Ethics contains provisions that are believed to be reasonably necessary to eliminate the possibility of any fraudulent or other prohibited conduct. The Code of Ethics covers a wide range of issues, including general fiduciary principles, conflicts of interest, insider trading, personal securities transactions, gifts, confidentiality, certification of compliance and sanctions.

Green & Smith's access persons are permitted to purchase or sell publicly traded securities which may also be owned or recommended to be owned or sold by the Funds, The Merger Fund, The Merger Fund VL, Dunham and the UCITS Fund. However, Green & Smith's access persons historically have not done so. Further, Green & Smith's access persons are not permitted to engage in personal trading except as permitted by Green & Smith's Code of Ethics. Any such transaction for the account of an access person will be entered into only if the transaction is consistent with Green & Smith's fiduciary duties to the Funds and Green & Smith's Code of Ethics. All persons deemed to be access persons of Green & Smith are subject to the provisions of the Code of Ethics regarding personal securities transactions and trading while in the possession of inside information and may only enter into such transactions subject to the Code of Ethics. The Code of Ethics is designed to prevent conflicts of interest and violations of law by persons subject to its provisions.

Green & Smith is the general partner of HVP and the investment advisor to LTD, in which Green & Smith clients are solicited to invest. As managers and members of the general partner of HVP and investors in the Funds, Green & Smith's related persons have indirect financial interests in the securities owned by the Funds.

## **ITEM 12 - BROKERAGE PRACTICES**

In selecting a broker-dealer to execute any given transaction, Green & Smith will take the following into consideration: the best net price available; the reliability, integrity and financial condition of the broker-dealer; the size and complexity of the order; the broker-dealer's order flow in the security to be traded; the broker-dealer's willingness to commit capital to facilitate the transaction; Green & Smith's soft-dollar arrangements for third-party research; and the value of the expected contribution of the broker-dealer to the investment performance of HVP or LTD on a continuing basis.

Green & Smith may cause the Funds to pay commissions higher than those charged by other broker-dealers in return for soft dollar benefits if Green & Smith determines in good faith that such commissions are reasonable in relation to the value of brokerage, research and other services provided to the Funds.

In allocating portfolio brokerage, Green & Smith and WCM may select broker-dealers who also provide brokerage, research and other services to other accounts over which Green & Smith or WCM exercises investment discretion. Green & Smith and WCM use soft dollar benefits to service all of its clients' accounts. Although Green & Smith and WCM seek to allocate soft dollar benefits to client accounts proportionately to the soft dollar credits the accounts generate, some of the services received as the result of Fund transactions may primarily benefit accounts other than HVP or LTD, while services received as the result of portfolio transactions effected on behalf of those other accounts may primarily benefit HVP or LTD.

Green & Smith may receive research or other products or services other than execution from a broker-dealer or third party in connection with client securities transactions. These are known as "soft dollar" benefits. When Green & Smith uses client brokerage commissions to obtain research or other products or services, Green & Smith receives a benefit because it does not have to produce or pay for the research, products or services. Green & Smith may have an incentive to select or recommend a broker-dealer based on Green & Smith's interest in receiving the research or other products or services, rather than on Green & Smith's clients' interest in receiving most favorable execution.

Some research or other products or services received from a broker-dealer or third party may be only partially eligible for soft dollar payments (a "mixed-use" product or service). In these cases, Green & Smith makes a reasonable allocation of the cost between that portion which is eligible and that portion which is ineligible. The eligible portion may be paid for with soft dollars and the ineligible portion will be paid for with Green & Smith's own funds (hard dollars). This allocation decision may present a conflict of interest to Green & Smith because it is deciding how much it will pay out of its own pocket. Green & Smith keeps records concerning allocations so as to enable Green & Smith to make a good faith determination of the reasonableness of commissions in relation to the value of brokerage and research services.

To address potential conflicts of interest that soft dollar benefits create, Green & Smith's Chief Compliance Officer meets at least quarterly with management to review the performance of each selected broker-dealer, the services being provided by the broker-dealer and the fees being paid for those services to ensure that Green & Smith is satisfying its obligations under its

policy. Green & Smith's Chief Compliance Officer keeps a written record that each such meeting occurred.

WCM is the investment adviser or sub-adviser to registered investment companies and therefore is required to comply with rules under the Investment Company Act of 1940. Both WCM and Green & Smith follow policies and procedures, pursuant to the Investment Company Act, for compensating a broker-dealer or directing portfolio securities transactions to a broker-dealer.

During Green & Smith's last fiscal year, Green & Smith and WCM acquired research services permitted under Section 28(e) of the Securities Exchange Act of 1934 with client brokerage commissions.

When selecting a broker-dealer to execute a given transaction, broker-dealers with which Green & Smith maintains a soft dollar relationship are subject to the same best execution review described above.

When HVP or LTD and the other accounts over which Green & Smith or WCM exercises investment discretion are engaged in the simultaneous purchase or sale of the same securities, Green & Smith may aggregate the orders. Green & Smith believes that such bunching facilitates the timely and efficient execution of trades. Moreover, Green & Smith may be able to execute bunched orders at more favorable prices than would be realized when effecting a number of individual, sequential purchase or sale transactions. As a result of the practice of bunching orders, however, Green & Smith and WCM often must allocate purchases and sales of securities among different client accounts following the execution of a bunched purchase or sale order. Shares are allocated among the various accounts pro rata or in some other equitable manner consistent with the investment objectives and risk profile of each account.

### **ITEM 13 - REVIEW OF ACCOUNTS**

Merger arbitrage is a highly focused, dynamic type of investing which requires careful and continuous analysis of all events surrounding a pending corporate reorganization. Arbitrage positions generally are reviewed on a daily basis and the holdings of Green & Smith's clients are adjusted accordingly. These accounts are managed by Roy Behren, Co-President and Treasurer of Green & Smith, and Michael T. Shannon, Co-President of Green & Smith.

As described in HVP's Amended and Restated Agreement of Limited Partnership, Green & Smith provides HVP's limited partners with written unaudited quarterly reports, written audited annual financial statements and a Schedule K-1.

As described in LTD's Placing Memorandum, Green & Smith provides LTD's shareholders with written audited financial statements of LTD, including its annual report, and written unaudited interim reports. A shareholder of LTD may request additional information which Green & Smith in its discretion may or may not provide.

Pursuant to the applicable investment management agreement which Green & Smith may enter into from time to time, Green & Smith may provide written monthly fact sheets, quarterly letters and annual reports to its clients, which may include a report of current positions, valuations, prices and transactions; commentary; a statement of total assets; and performance.



#### **ITEM 14 - CLIENT REFERRALS AND OTHER COMPENSATION**

Green & Smith may from time to time enter into arrangements whereby it compensates consultants for recommending prospective clients to Green & Smith. These arrangements may provide that the consultants receive a fee based on a certain percentage of the investment advisory fee received by Green & Smith from these referred clients. The consultants are not officers, directors, managers, members or employees of Green & Smith and do not have a relationship with Green & Smith other than pursuant to the arrangements. The consultants do not render any investment advice to Green & Smith or its clients. Clients solicited by the consultants are not charged any amount in addition to the fees that Green & Smith customarily may charge. Any and all cash payments made to the consultants are structured to comply with Rule 206(4)-3 of the Investment Advisers Act of 1940.

## **ITEM 15 - CUSTODY**

Green & Smith does not have custody of client funds or securities (other than its ability to deduct its investment advisory fees directly from clients' accounts). To the extent a client receives account statements from a broker-dealer, bank or other qualified custodian, the client should carefully review those statements.

## **ITEM 16 - INVESTMENT DISCRETION**

Green & Smith has discretionary authority to manage securities accounts on behalf of clients. As a general policy, Green & Smith does not allow clients to place limitations on this authority. Prior to assuming discretion in managing clients' assets, Green & Smith enters into an investment management agreement, limited partnership agreement or other agreement that explains the scope of this authority.

## **ITEM 17 - VOTING CLIENT SECURITIES**

Green & Smith has authority to vote client securities. Green & Smith has adopted Proxy and Corporate-Action Voting Policies and Procedures that govern the voting of proxies for securities held by the Funds. Clients cannot direct Green & Smith's vote in a particular solicitation. Green & Smith has full authority to vote proxies or act with respect to other shareholder actions on behalf of the Funds. Green & Smith's primary consideration in voting proxies is the best interest of the Funds. The proxy-voting procedures address the resolution of potential conflicts of interest and circumstances under which Green & Smith will limit its role in voting proxies. Where a proxy proposal raises a material conflict between Green & Smith's interests and HVP or LTD's interests, Green & Smith will resolve the conflict by following the policy guidelines.

The proxy-voting guidelines describe Green & Smith's general position on proposals. Green & Smith will generally vote against any management proposal that clearly has the effect of restricting the ability of shareholders to realize the full potential value of their investment. Routine proposals that do not change the structure, bylaws or operations of the corporation to the detriment of the shareholders will normally be approved. Green & Smith will review certain issues on a case-by-case basis based on the financial interest of HVP and LTD.

When securities are out on loan, they are transferred into the borrower's name and are voted by the borrower, in its discretion. However, if Green & Smith has knowledge that an event will occur having a material effect on HVP or LTD's investment in a loaned security, Green & Smith will seek to have the loan called in time to vote the proxy or Green & Smith will enter into an arrangement which ensures that the proxies for such material events may be voted as HVP or LTD desires.

Information regarding how Green & Smith voted proxies and a copy of Green & Smith's Proxy and Corporate-Action Voting Policies and Procedures are available upon request by calling (914) 741-5600 or sending an e-mail to [operations@mergerfund.com](mailto:operations@mergerfund.com).

## **ITEM 18 - FINANCIAL INFORMATION**

No financial condition is reasonably likely to impair Green & Smith's ability to meet contractual commitments to clients.