

## **PART 2A OF FORM ADV: FIRM BROCHURE**

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**This brochure provides information about the qualifications and business practices of KS Management Corp. (the “Adviser”). If you have any questions about the contents of this brochure, please contact us at 212.764.3500 and/or [compliance@ksmanagement.com](mailto:compliance@ksmanagement.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority.**

**Additional information about the Adviser also is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

**The Adviser is registered as an investment adviser with the SEC under the U.S. Investment Advisers Act of 1940, as amended (the “Advisers Act”). SEC registration does not imply a certain level of skill or training.**

## **ITEM 2 – MATERIAL CHANGES**

This is the first annual amendment to the Adviser's brochure which was originally filed on March 31, 2011. In addition to certain clarifying amendments that have been made to the brochure, the following is a material change since the Adviser submitted the initial filing of its brochure on March 31, 2011:

- On December 23, 2011, the Adviser filed an interim amendment to the firm's brochure, to reflect that effective December 31, 2011 Michael Jemal was designated as the Chief Compliance Officer of the Adviser.

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## ITEM 4 – ADVISORY BUSINESS

### *General Description of Advisory Firm*

KS Management Corp. (the “Adviser”) is an investment adviser with its principal place of business in New York, NY. The Adviser was founded in September 1989 and became a SEC-registered investment adviser on January 13, 2006. The Adviser provides discretionary investment advisory services to its clients, currently the following private investment funds:

- A Delaware limited partnership (the “Domestic Fund”);
- An international business company organized under the laws of the British Virgin Islands that serves as a feeder fund (the “Offshore Fund”); and
- An international business company organized under the laws of the British Virgin Islands that serves as the master fund to the Offshore Fund (the “Master Fund” and together with the Domestic Fund and the Offshore Fund, the “Funds”).

The Offshore Fund pursues its investment objective using the master-feeder structure as described above, whereby the Offshore Fund will invest substantially all of its assets in the Master Fund.

An affiliate of the Adviser, KS Capital, L.L.C. (the “General Partner”), is the general partner to the Domestic Fund. The General Partner also holds “Allocation Shares” of the Master Fund, whereby it is entitled to receive its incentive compensation described in Item 5 as a profits allocation from the Master Fund. Each fiscal year (or other relevant period), the applicable percentage of the net profits attributable to each Offshore Fund investor at the Master Fund level will be reallocated to the Allocation Shares.

Jack R. Swain and Michael C. Kempner are the principal owners of the Adviser.

### *Description of Advisory Services (including any specializations)*

The Adviser provides advisory services on a discretionary basis to its clients, which include pooled investment vehicles intended for sophisticated investors and institutional investors. The Adviser seeks to meet its clients’ investment objectives to achieve maximum capital appreciation (rather than current income) through investments primarily in two areas: distressed securities and risk arbitrage. The Adviser invests its clients’ assets in distressed securities (i.e., securities of companies that are experiencing financial or operating difficulties where the Adviser believes that a disparity exists between market price and realizable value). The Adviser also invests its clients’ assets in risk arbitrage investments which are in securities of companies that are the object of tender offers, merger proposals, recapitalizations, restructurings, leveraged buyouts or other corporate reorganizations where the Adviser believes that a disparity exists between the value to be received upon successful consummation of the reorganization and the current market price.

The Adviser invests its clients’ assets primarily in corporate bonds, bank debt, and equities, but the Adviser will evaluate investment opportunities throughout a company’s capital structure. When it is deemed appropriate by the Adviser, its clients may utilize leverage, engage in short selling, and buy and sell options principally as a hedging tool. Derivatives, commodities, and currencies may be utilized in special situations, but are not the Adviser’s focus. The Adviser is not subject to absolute restrictions with respect to its investment program.

### *Availability of Tailored Services for Individual Clients*

The Adviser neither tailors its advisory services to the individual needs of its clients, nor accepts client-imposed investment restrictions. Although not currently anticipated, the Adviser may establish separately managed account(s) (“Managed Account(s)”) where the Adviser may tailor its investment objectives to those of a specific large or strategic investor and/or may be subject to different terms and/or fees than those of the Funds. Such investment objectives, fee arrangements and terms would be individually negotiated, and it should be noted that any such Managed Account relationships would be subject to significant account minimums.

### ***Client Assets Under Management***

As of December 31, 2011, the Adviser manages \$332,104,728 of regulatory client assets on a discretionary basis. The Adviser does not currently manage any client assets on a non-discretionary basis.

## **ITEM 5 – FEES AND COMPENSATION**

### ***Advisory Fees and Compensation***

Set forth below are summaries of how the Adviser is compensated for its advisory services to the Funds. It should be noted that detailed disclosure about the fees and other expenses applicable to an investment in the Funds is provided in the relevant Fund's confidential private placement memoranda, including any supplements, which are provided to prospective Fund investors. Those operative documents should be carefully reviewed prior to making an investment in the Funds.

#### **Asset Based Compensation: Management Fees**

The Adviser is entitled to a quarterly fee (the "Management Fee" in the case of the Domestic Fund and the "Fixed Fee" in the case of the Offshore Fund, together referred to herein as the "Management Fee"). The Management Fee is 1.50% per annum of the respective Fund's net asset value as of the first day of each quarter, calculated before any accrued Incentive Allocation (as defined below). The Management Fee is calculated and paid quarterly in advance. The Management Fee will be adjusted for any contributions and withdrawals/redemptions made during the quarter.

The Management Fee will generally be paid within ten days after the first day of such quarter. To the extent there is a Management Fee charged at the Offshore Fund level, no Management Fee will be charged by the Master Fund.

#### **Performance-Based Compensation: Incentive Allocation**

Each Fund is charged an annual performance-based incentive allocation (the "Incentive Allocation"), which ranges from 15% to 20% of the respective Fund's net profits as of the end of the Fund's fiscal year, subject to a standard loss carryforward (or "high water mark") provision. Under the high water mark provision, generally no Incentive Allocation will be paid by an investor until any net loss previously allocated to such investor's capital account or shares, as applicable, has been offset by subsequent net profits. The Incentive Allocation is calculated and charged at the end of each fiscal year. The Incentive Allocation will also be charged in the event of an investor withdrawal/redemption, but only with respect to the withdrawn/redeemed amount. The General Partner may, in its sole discretion, elect to delay the deduction of the Incentive Allocation of partial withdrawals from the Domestic Fund until the end of the fiscal year.

Specifically, in the case of the Offshore Fund, the General Partner will receive the Incentive Allocation at the Master Fund level through its Allocation Shares.

The Adviser or its affiliates, in their sole discretion, may waive or reduce the Management Fee and/or the Incentive Allocation with respect to investors who are members or affiliates of the Adviser, or relatives of such persons, and for certain large or strategic investors.

The Funds have and may enter into other agreements in the future ("Side Letters") with certain investors in the Funds whereby certain investors, including principals, employees or affiliates of the Adviser, relatives of such persons, or certain strategic investors, will be subject to terms and conditions that may be more advantageous to such investors than those set forth in each Fund's respective offering memorandum. For example, such terms and conditions may provide for a reduction in fees or withdrawal/redemption penalties to be paid, or certain other requirements of liquidity and reporting transparency.

### ***Payment of Fees***

The Adviser deducts fees from client accounts quarterly.

### ***Other Fees and Expenses***

In addition to the fees described above, clients may also bear additional expenses as provided by each client's governing documents. Those may include fund legal expenses, audit and accounting expenses (including third party accounting services); organizational expenses; administrator fees and expenses; investment expenses such as commissions, research fees and expenses (including Bloomberg and similar subscriptions and data services) as well as other analytical systems; interest on margin accounts and other indebtedness; borrowing charges on securities sold short; custodial fees; bank service fees; fund-related insurance costs (including D&O insurance costs); and any other expenses related to the purchase, sale or transmittal of fund assets.

As the Offshore Fund will invest substantially all of its assets in the Master Fund, the Offshore Fund (and any other vehicle that would invest in the Master Fund) indirectly bears the expenses of the Master Fund pro rata based on its interest in the Master Fund; provided, however, that the organization expenses and any annual registration fees and other regulatory fees of the Master Fund will be borne by the Adviser. With the exception of the Management Fee, it is anticipated that virtually all expenses will be incurred at the Master Fund level.

Clients will also be responsible for the costs and expenses resulting from trade errors, except for any trade error caused by the Adviser or its affiliates as a result of gross negligence, willful misconduct or as otherwise provided by federal securities laws. Refer to Item 16 for further information. Clients will also incur brokerage and other transaction costs and may be deemed to be paying for research and other services with "soft" or commission dollars. Refer to Item 12 for further information.

### ***Prepayment of Fees and Refunds***

As noted above, the Management Fees are generally charged quarterly in advance as of the first day of the quarter. It is highly unlikely that withdrawals/redemptions would be allowed in a manner that would warrant a refund.

Please refer to the relevant confidential private offering memorandum, explanatory memorandum and other governing documents for a complete understanding of each Fund's terms, fees and expenses.

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

As described in Item 5, the General Partner receives performance-based compensation from the Adviser's clients.

It should be noted that the possibility that the General Partner could receive performance-based compensation creates a potential conflict of interest in that it may create an incentive for the Adviser to make investments that are riskier or more speculative than would be the case in the absence of such form of compensation. Since the performance-based fees are calculated on a basis that includes unrealized appreciation of clients' assets, such allocation may be greater than if it were based solely on realized gains.

When the Adviser and its investment personnel manage more than one client account a potential exists for one client account to be favored over another client account. The Adviser and its investment personnel have a greater incentive to favor client accounts that pay the Adviser (and indirectly the portfolio manager) higher fees. As of the date of this brochure, each client is subject to a performance-based fee. Please refer to item 16 for a discussion of the Adviser's allocation policies.

## ITEM 7 – TYPES OF CLIENTS

The Adviser provides discretionary investment advisory services to pooled investment vehicles operating as private investment funds. With respect to any client that is a pooled investment vehicle, any initial and additional subscription minimums are disclosed in the offering memorandum for the pooled investment vehicle.

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

### *Methods of Analysis and Investment Strategies*

#### Investment Strategy:

On behalf of its clients, the Adviser pursues a value oriented, event-driven approach to investing, specializing in U.S. distressed and risk arbitrage investments. The Adviser uses its experience in bankruptcies, restructurings, mergers and reorganizations to take advantage of disparities that often exist between market prices and realizable value. The Adviser believes that the nature of these situations, where outcomes are determined by specific events and catalysts, may provide attractive returns with low correlation to broader equity and debt markets. No guarantee or representation is made that client investment objectives will be achieved.

*Distressed:* A significant portion of client capital will be invested in distressed securities, which are securities of companies that are experiencing financial or operating difficulties and are often addressing these difficulties through a debt restructuring, Chapter XI reorganization or liquidation. The subject companies of distressed securities may be involved in various stages of bankruptcy. The difficulties of the subject companies may have resulted from poor operating results, catastrophic events or excessive leverage. The Adviser's distressed strategy also involves investing in securities where the Adviser believes the risk of bankruptcy is overstated and the return achievable by investing in such a security compensates for that risk. The Adviser believes that a disparity often exists between the market price of distressed securities and their realizable value.

*Risk Arbitrage:* The Adviser's arbitrage investments are in securities of companies that are the targets of cash tender offers, stock-for-stock merger proposals, hostile takeovers or other corporate reorganizations where a disparity exists between the market price of the security and the value to be received upon successful consummation of the reorganization. For example, the Adviser recommends investments in securities subject to a cash tender offer that are typically purchased at a spread to the cash value per share that the acquiring company is offering to pay the target company's shareholders. After the announcement of a definitive tender offer, this spread will fluctuate according to the likelihood that the cash tender offer will be successfully completed. Similarly, in exchange offers or merger proposals where the shares of an acquiring corporation comprise part or all of the consideration to be received by the target company's shareholders, the target company's securities will trade at a discount to the value reflected in the acquiring company's shares per the terms of the merger agreement. The Adviser initiates arbitrage positions in target securities where it feels the return from earning this discount, or "spread", compensates it for the risk that tender offer or share exchange will not be completed.

#### Methods of Analysis:

The Adviser uses in-depth fundamental analysis. The Adviser uses a disciplined bottom-up investment process seeking to minimize downside risk and maximize risk adjusted returns. A rigorous and systematic approach is used to identify and evaluate investments.

Among other things, the Adviser analyzes the following sources: financial newspapers and magazines, inspections of corporate activities, corporate rating services, third party research materials, annual reports, prospectuses, filings with the SEC, company press releases and inquiries with company management.

The Adviser's investment program may be deemed speculative and is not intended as a complete investment program. The program is designed only for experienced and sophisticated persons who are able to bear the risk of substantial impairment or total loss of their investment.

Please also refer to the discussion in Item 4.

***Material Risks (Including Significant, or Unusual Risks) Relating to Investment Strategies***

Risk Arbitrage Risk: When the Adviser determines that it is probable that a transaction will be consummated, it may advise client accounts to purchase securities at prices often only slightly below the anticipated value to be paid or exchanged for such securities in the merger, exchange offer or cash tender offer (and substantially above the prices at which such securities traded immediately prior to the announcement of the merger, exchange offer or cash tender offer). If the proposed merger, exchange offer or cash tender offer appears likely not to be consummated, in fact is not consummated or is delayed, the market price of the security usually will decline resulting in a loss. In addition, where a security to be issued in a merger or exchange offer has been sold short in the expectation that the short position will be covered by delivery of such security when issued, failure of the merger or exchange offer to be consummated may force the client to cover its short position in the market at a higher price than its short sale, with a resulting loss. In addition, the Adviser may determine that the offer price for a security which is the subject of a tender offer is likely to be increased, either by the original or another bidder. In those circumstances, clients may purchase securities at a price above the price offered, and such purchases will be subject to the risk that, contrary to the Adviser's expectations, the offer price will not be increased.

Special Situations and Distressed Situation Risk: The Adviser may recommend that clients invest in companies involved in (or the target of) acquisition attempts or tender offers or in companies involved in or undergoing work-outs, liquidations, spin-offs, reorganizations, bankruptcies or other catalytic changes or similar transactions. In any investment opportunity involving any such type of special situation, there exists the risk that the contemplated transaction either will be unsuccessful, take considerable time or will result in a loss. Because there is substantial uncertainty concerning the outcome of transactions involving financially troubled companies in which the clients may invest, there is a potential risk of loss of their entire investment in such companies.

Short Selling Risk: Short sales can, in certain circumstances, substantially increase the impact of adverse price movements on the client's portfolio. A short sale involves the risk of a theoretically unlimited increase in the market price of the particular investment sold short, which could result in an inability to cover the short position and a theoretically unlimited loss. There is the risk that the securities borrowed by clients in connection with a short sale must be returned to the securities lender on short notice. If a request for return of borrowed securities occurs at a time when other short sellers of the security are receiving similar requests, a "short squeeze" can occur, and the client may be compelled to replace borrowed securities previously sold short with purchases on the open market at the most disadvantageous time, possibly at prices significantly in excess of the proceeds received in originally selling the securities short.

Interest Rate Risks: Generally, the value of fixed-income securities changes inversely with changes in interest rates. As interest rates rise, the market value of fixed-income securities tends to decrease. Conversely, as interest rates fall, the market value of fixed-income securities tends to increase. This risk is greater for long-term securities than for short-term securities.

Leverage: The Adviser's investment program may utilize leverage which involves the borrowing of funds from brokerage firms, banks and other institutions in order to be able to increase the amount of capital available for marketable securities investments. Performance may be more volatile if a client's account employs leverage.

Lack of Diversification: Client accounts may not be as diversified among a wide range of types of securities as other investment vehicles. Accordingly, client accounts may be subject to more rapid change in value than would be the case if the Adviser were required to maintain a wider diversification among types of securities and other instruments.

***Risks Associated With Types of Securities that are Primarily Recommended (Including Significant, or Unusual Risks)***

Nature of Investments: The Adviser will have broad discretion in making investments for its client accounts. Investments will generally consist of equity and debt securities and other assets that may be affected by business, financial market or legal uncertainties. There can be no assurance that the Adviser will correctly evaluate the nature and magnitude of the various factors that could affect the value of and return on investments. Prices of investments may be volatile, and a variety of factors that are inherently difficult to predict, such as domestic or international economic and political developments, may significantly affect the results of the Adviser's activities and the value of its clients investments.

Investment in fixed-income and debt securities such as bonds and notes subject a client's portfolio to the risk that the value of these securities overall will decline because of rising interest rates. Similarly, portfolios that hold such securities are subject to the risk that the portfolio's income will decline because of falling interest rates. Investments in these types of securities will also be subject to the credit risk created when a debt issuer fails to pay interest and principal in a timely manner, or when negative perceptions of the issuer's ability to make such payments cause the price of that debt to decline.

Distressed Securities: Investments in unrated or low grade debt securities of distressed companies are subject to greater risk of loss of principal and interest than higher-rated debt securities. Also, securities of distressed companies are generally more likely to become worthless than the securities of more financially stable companies.

Risk Arbitrage Securities: A merger, other restructuring, tender, or exchange offer proposed at the time the Adviser invests in risk arbitrage securities may not be completed on the terms or within the time frame contemplated, resulting in losses.

Options: The purchase or sale of an option involves the payment or receipt of a premium by the investor and the corresponding right or obligation, as the case may be, to either purchase or sell the underlying security, baskets of securities, commodity or other instrument for a specific price at a certain time or during a certain period. Purchasing options involves the risk that the underlying instrument will not change price in the manner expected, so that the investor loses the premium paid. Selling options, on the other hand, involves potentially greater risk because the investor is exposed to the extent of the actual price movement in the underlying security (which could result in a potentially unlimited loss) rather than only the loss of the premium payment received. Over-the-counter options also involve counterparty solvency risk.

Non-U.S. Securities: Investing in securities of non-U.S. companies which are generally denominated in non-U.S. currencies and utilization of options on non-U.S. securities involves certain considerations comprising both risks and opportunities not typically associated with investing in securities of United States companies. These considerations include changes in exchange rates and exchange control regulations, political and social instability, expropriation, imposition of foreign taxes, less liquid markets and less available information than is generally the case in the United States, higher transaction costs, foreign government restrictions, less government supervision of exchanges, brokers and issuers, greater risks associated with counterparties and settlement, difficulty in enforcing contractual obligations, lack of uniform accounting and auditing standards and greater price volatility.

Derivatives: Although the Adviser currently does not intend to engage in significant derivatives trading, it is noted that derivatives, swaps and certain options and other custom derivative or synthetic instruments are subject to the risk of nonperformance by the counterparty to such instrument, including risks relating to the financial soundness and creditworthiness of the counterparty.

Illiquid Instruments: Certain instruments may have no readily available market or third-party pricing. Reduced liquidity may have an adverse impact on market price and the Adviser's ability to sell particular securities when necessary to meet liquidity needs or in response to a specific economic event, such as the deterioration of creditworthiness of an issuer. Reduced liquidity in the secondary market for certain securities may also make it more difficult for the Adviser to obtain market quotations based on actual trades for the purpose of valuing the client's portfolio.

Issuer-Specific Changes: Changes in the financial condition of an issuer or counterparty, changes in specific economic or political conditions that affect a particular type of security or issuer, and changes in general economic or political conditions can increase the risk of default by an issuer or counterparty, which can affect a security's or instrument's value. The value of securities of smaller, less well-known issuers can be more volatile than that of larger issuers. Smaller issuers can have more limited product lines, markets, or financial resources.

**Please refer to the relevant confidential private offering memorandum, explanatory memorandum and other governing documents for a complete understanding of a Fund's investment strategies and material risks. The information contained herein is a summary only and is qualified in its entirety by such documents.**

## **ITEM 9 – DISCIPLINARY INFORMATION**

This Item is not applicable.

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

The Adviser serves as the investment manager to its clients, the Funds. The Adviser or its employees may also invest in the General Partner, or directly into the Funds. It should be noted that investments in the Funds made by such parties may not be subject to the Management Fees or Incentive Allocation described in Item 5 above. Further, investments in the Funds made by such parties may have more frequent liquidity terms than those of outside, unaffiliated investors. As previously noted, KS Capital, L.L.C. is the general partner to the Domestic Fund and holds the Master Fund's Allocation Shares.

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

### ***Code of Ethics***

The Adviser's Code of Ethics (the "Code") is designed to meet the requirements of Rule 204A-1 of the Investment Advisers Act of 1940, as amended (the "Advisers Act"). The Code applies to the Adviser's access persons (which term includes all of the Adviser's employees) and sets forth a standard of business conduct that takes into account the Adviser's status as a fiduciary and requires access persons to place the interests of its clients above their own interests. The Code requires access persons to comply with applicable federal securities laws. Further, access persons are required to promptly bring violations of the Code to the attention of Michael Jemal, the Adviser's Chief Compliance Officer. All access persons are provided with a copy of the Code and are required to acknowledge receipt of the Code upon hire on at least an annual basis and generally on an annual basis thereafter.

The Code also sets forth certain reporting and pre-clearance requirements with respect to personal trading by access persons. The Adviser's access persons must provide the Chief Compliance Officer with a list of their personal accounts and an initial holdings report within 10 days of becoming an access person (generally, upon hire). In addition, the Adviser's access persons must provide annual holdings reports and quarterly transaction reports in accordance with Rule 204A-1. Clients or prospective clients may obtain a copy of the Adviser's Code by contacting the Chief Compliance Officer at 212.764.3500.

***Client Transactions in Securities where Adviser has a Material Financial Interest***

As previously noted, the Adviser serves as the investment manager to the Funds and an affiliate of the Adviser, KS Capital, L.L.C., is the general partner to the Domestic Fund and holds the Master Fund's Allocation Shares. The Adviser, its employees or their related persons may also invest directly in the Domestic Fund and/or the Offshore Fund. It should be noted that investments in the Funds made by such parties may not be subject to the Management Fees or Incentive Allocation described in Item 5 above. Further, the Adviser's related persons have more frequent liquidity terms than those of outside, unaffiliated investors. The fact that the Adviser, the General Partner, its employees or their related persons have a financial ownership interest in the Funds creates a potential conflict in that it could cause the Adviser to make different investment decisions than if they did not have such a financial ownership interest. The Adviser (or its affiliates) has a material financial interest with respect to fees paid for its investment advisory services. Management Fees are payable without regard to the overall success or income earned by the Funds and therefore may create an incentive on the part of the Adviser to raise or otherwise increase assets under management to a higher level than would be the case if the Adviser were receiving a lower or no Management Fee. Performance-based fees may create an incentive for the Adviser to make investments that are riskier or more speculative than in the absence of such performance-based compensation. Disclosure as to how performance-based compensation is charged and the risks associated with such performance-based compensation is provided prior to making an investment.

It should also be noted that the Adviser and its affiliates may give advice and recommend the purchase or sale of securities and other financial instruments, or buy or sell such securities, and instruments for their own accounts or that of other clients, which advice or instruments may differ from advice given to, or instruments recommended or bought or sold for, the Funds, even though their investment objectives may be the same or similar.

***Investing in Securities Recommended to Clients***

Access persons of the Adviser may sell or otherwise invest in securities that the Adviser also recommends to clients. The Adviser seeks to monitor the potential conflicts of interests within the firm as it relates to access persons' personal trading (including investments in the Funds). Each such transaction by an access person is strictly required to be made in accordance with the Adviser's Code. In this regard, access persons are subject to pre-clearance and periodic reporting requirements of their holdings and securities transactions under the firm's Code. Specifically, access persons are generally prohibited from personal trading in reportable securities, subject to very limited exceptions. Further, access persons must obtain the pre-clearance from the Chief Compliance Officer before engaging in the following transactions: (i) legacy positions; (ii) limited offerings; and (iii) IPOs. Access persons' personal transaction reports are reviewed to make sure each access person is conducting his or her personal securities transactions in a manner that is consistent with the Code.

***Conflicts of Interest Created by Contemporaneous Trading***

Please also refer to: (i) Item 12 for a description of the Adviser's aggregation and allocation policies; and (ii) Item 16 for a description of cross transactions.

## ITEM 12 – BROKERAGE PRACTICES

### ***Factors Considered in Selecting or Recommending Broker-Dealers for Client Transactions***

The Adviser (or its affiliates) is solely responsible for selecting the brokers used in each transaction for client accounts and for negotiating the fees to be paid to the broker in connection with such transactions. The Adviser recognizes its duty to obtain “best execution.” Consistent with such duty, in determining best execution, the Adviser may take into account the full range and quality of a broker’s services such as brokerage, research and other services. Therefore, the Adviser may not necessarily negotiate “execution only” commission rates and may “pay up” for research and other services provided by the broker through the commission rate (“soft dollars”). The Adviser does not select brokers solely on the basis of lowest possible commission costs, but by the best qualitative execution. In situations where multiple counterparties can execute a given transaction, the Adviser will seek to obtain best execution for client accounts, taking into account the following factors:

- the financial stability and reputation of brokerage firms;
- the brokerage and research provided by such brokers;
- the ability to effect prompt and reliable executions at favorable prices; and
- the operational efficiency with which transactions are effected.

### ***Research and Other Soft Dollar Benefits***

While the primary consideration in allocating portfolio transactions to brokers will be to obtain favorable prices and efficient executions, the Adviser does not have an obligation to, and does not always seek to, obtain the lowest commission rate. Commission rates are generally negotiable and thus selecting brokers on the basis of considerations that are not limited to the applicable commission rates may result in higher transaction costs than would otherwise be obtainable.

Using brokerage commissions to obtain research or other products or services can provide the Adviser with a benefit because the firm does not have to produce or pay for research, products or services. Accordingly, in such cases, clients can be viewed as paying for research and other services with “soft” or commission dollars. The Adviser has an incentive to select a broker-dealer based on its interest in receiving the research, rather than on a client’s interest in receiving most favorable execution.

Research obtained by the use of commissions arising from certain of its client accounts’ portfolio transactions may be used by the Adviser in its other investment activities and for other clients and thus clients may not necessarily, in any particular instance, be the direct beneficiary of the research or brokerage services provided.

Section 28(e) of the 1934 Act provides a “safe harbor” to investment managers who use commission dollars generated by their advised accounts to obtain investment research and brokerage services that provide lawful and appropriate assistance to the manager in the performance of investment decision-making responsibilities. Research services within Section 28(e) may include, but are not limited to, research reports (including market research); certain financial newsletters and trade journals; software providing analysis of securities portfolios; corporate governance research and rating services; attendance at certain seminars and conferences; discussions with research analysts; meetings with corporate executives; consultants’ advice on portfolio strategy; data services (including services providing market data, company financial data and economic data); advice from broker-dealers on order execution; and certain proxy services. Brokerage services within Section 28(e) may include, but are not limited to, services related to the execution, clearing and settlement of securities transactions and functions incidental thereto (i.e., connectivity services between an adviser and a broker-dealer and other relevant parties such as custodians); trading software operated by a broker-dealer to route orders; software that provides trade analytics and trading strategies; software used to transmit orders; clearance and settlement in connection with a trade; electronic communication of allocation instructions; routing settlement instructions; post trade matching of trade information; and services required by the SEC or a self regulatory organization such as comparison services, electronic confirms or trade affirmations.

The Adviser is authorized to use commission dollars to pay for any service that would be a Fund expense (as described in Item 5), some of which may be outside the parameters of Section 28(e). However, as of the date of this Brochure, the Adviser does not use or intend to use any commissions for expenses that would fall outside the parameters of Section 28(e).

Specifically, over the last fiscal year, among other things, the Adviser received the following with soft dollars:

- Research services including research reports (including market research), meetings with corporate executives, corporate governance research and rating services, attendance at seminars and conferences, discussions with research analysts and advice from broker-dealers on order execution.
- Brokerage services including services related to the execution, clearing and settlement of securities transactions and functions incidental thereto; trading software operated by a broker-dealer to route orders or software used to transmit orders.

The Adviser periodically and systematically evaluates the execution performance of broker-dealers to ensure that the services provided by the executing counterparties are the best available and to fully satisfy all “best execution” requirements. The Chief Compliance Officer and a majority of employees who regularly interact with brokers contribute to the review.

#### ***Brokerage for Client Referrals***

From time to time, the Adviser may receive client referrals or participate in capital introduction programs arranged by broker-dealers, including broker-dealers that serve as prime brokers to the Funds or recommend the Funds as an investment to their clients. The Adviser may place Fund portfolio transactions with broker-dealers who have made such recommendations or provided capital introduction opportunities, if the Adviser determines that it is otherwise consistent with seeking best execution. Consistent with best execution, in no event will the Adviser select a broker-dealer as a means of remuneration for recommending the Adviser or any other product managed by the Adviser (or an affiliate) or affording the Adviser with the opportunity to participate in capital introduction programs.

#### ***Directed Brokerage***

The Adviser does not have directed brokerage arrangements.

#### ***Order Aggregation***

When appropriate, the Adviser may, but is not required to, aggregate client orders to achieve more efficient execution or to provide for equitable treatment among accounts. Clients participating in aggregated trades will be allocated securities based on the average price achieved for such trades. From the standpoint of the Funds, simultaneous identical portfolio transactions for the Funds and other clients may tend to decrease the prices received, and increase the prices required to be paid, by the Funds for its portfolio sales and purchases.

To the extent a particular investment is suitable for both of the Funds and other clients, such investments will be allocated between the Funds and the other clients pro rata based on assets under management or in some other manner which the Adviser determines is fair and equitable under the circumstances to all clients, including the Funds. Where less than the maximum desired number of shares of a particular security to be purchased is available at a favorable price, the shares purchased will be allocated among the Funds and the other clients in an equitable manner as determined by the Adviser.

## **ITEM 13 – REVIEW OF ACCOUNTS**

### ***Frequency and Nature of Review***

Each client account is reviewed by Jack R. Swain, the Chief Investment Officer of the Adviser, generally on a daily basis, but no less frequently than on a bi-weekly basis, to determine whether securities positions should be maintained in view of current market conditions. Matters reviewed include specific securities held, liquidity, risk and leverage levels, allocation between strategies and asset classes and the performance of each Fund account. At least quarterly, Mr. Swain and/or the Chief Compliance Officer or their designees review positions between client accounts and rebalance as necessary.

Further, the Chief Compliance Officer or his designee periodically reviews trading to ensure consistency with applicable laws and regulations.

### ***Factors Prompting a Non-Periodic Review of Accounts***

As per above, Mr. Swain generally reviews accounts daily as required by economic and market conditions.

### ***Content and Frequency of Regular Account Reports***

Clients will receive written annual audited financial statements, a quarterly newsletter and monthly unaudited reports of Fund performance. The Funds' administrator also provides unaudited monthly capital account statements.

As previously noted, the Funds may enter into Side Letters with certain of their investors that may provide for different reporting than is described in the Funds' offering documents.

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

### ***Economic Benefits Received from Non-Clients for Providing Services to Clients***

The Adviser receives certain research or other products or services from broker-dealers through "soft-dollar" arrangements. These "soft-dollar" arrangements create an incentive for the Adviser to select or recommend broker-dealers based on the Adviser's interest in receiving the research or other products or services and may result in the selection of a broker-dealer on the basis of considerations that are not limited to the lowest commission rates and may result in higher transaction costs than would otherwise be obtainable by the Adviser on behalf of its clients. Please see Item 12 for further information on the Adviser's "soft-dollar" practices, including the Adviser's procedures for addressing conflicts of interest that arise from such practices.

### ***Compensation to Non-Supervised Persons for Client Referrals***

The Adviser makes cash payments to third-party solicitors for investor referrals into clients' accounts, provided that, to the extent required, each such solicitor has entered into a written agreement with the Adviser pursuant to which the solicitor will provide each prospective investor with a copy of the Adviser's Form ADV Part 2, and a disclosure document setting forth the terms of the solicitation arrangement, including the nature of the relationship between the solicitor and Adviser and any fees to be paid to the solicitor, among other things. Where applicable, cash payments for investor solicitations will be structured to comply fully with the requirements of Rule 206(4)-3 under the Advisers Act and related SEC staff interpretations.

## **ITEM 15 – CUSTODY**

This item is not applicable.

## **ITEM 16 – INVESTMENT DISCRETION**

The Adviser provides investment advisory services on a discretionary basis to clients.

Prior to assuming full discretion in managing a client's assets, the Adviser enters into an investment management agreement or other agreement that sets forth the scope of the Adviser's discretion.

The Adviser has the authority to determine (i) the securities to be purchased and sold for the client accounts (subject to restrictions on its activities set forth in the applicable investment management agreement) (ii) the amount of securities to be purchased or sold for the client account. Because of the differences in tax status of clients and other criteria, there may be differences among clients in invested positions and securities held. The Adviser's operations personnel provide allocations to the Adviser's investment team describing the allocation of securities to (or from) the client accounts for each trade/order submitted. The Adviser may consider the following factors, among others, in allocating securities among clients (i) client risk profiles; (ii) tax status and restrictions placed on a client's portfolio by the client or by applicable law; (iii) size of the client's account and existing positions; (iv) nature and liquidity of the security to be allocated; (v) size of available position; (vi) current market conditions; and (vii) account liquidity, account requirements for liquidity and timing of cash flows. Although it is the Adviser's policy to allocate investment opportunities to client accounts on a pro rata basis (based on the value of the assets in each participating account relative to value of the assets of all participating accounts), these factors may lead the Adviser to allocate securities to client accounts in varying amounts.

The Adviser may effect cross transactions between discretionary client accounts, including the Funds. Cross transactions enable the Adviser to effect a trade between two accounts for the same security at a set price, thereby saving commission costs for both accounts and possibly avoiding an unfavorable price movement that may be created through entrance into the market. Cross transactions include rebalancing transactions that are undertaken so that, after withdrawals/redemptions or contributions have occurred, the portfolio compositions of client accounts remain substantially similar. The Adviser has a potentially conflicting division of loyalties and responsibilities regarding both parties to cross transactions.

If it appears that a trade error has occurred, the Adviser will review the relevant facts and circumstances to determine an appropriate course of action. To the extent that trade errors and breaches of investment guidelines and restrictions occur, the Adviser's error correction procedure is to ensure that clients are treated fairly. The Adviser has discretion to resolve a particular error in any appropriate manner that is consistent with the above stated policy. In the event that a client account incurs a trade error as a result of the Adviser's gross negligence, willful misconduct or violation of applicable laws, trade errors will be corrected by the Adviser as soon as practicable, in a manner such that the client incurs no loss. Trade errors that result other than by breach of the standard of care above are borne by the client account.

## **ITEM 17 – VOTING CLIENT SECURITIES**

The Adviser retains proxy-voting authority for securities purchased for its clients. The Adviser has appointed an independent third party proxy voting agent (the “Proxy Agent”) to provide the Adviser with research on proxies and to facilitate the electronic voting of proxies.

The Adviser has instructed the Proxy Agent to vote proxies in accordance with the Proxy Agent’s recommendation unless otherwise instructed by the Adviser. However, if the Adviser determines that it is in the best interests of its clients for the Adviser to vote a proxy in a manner other than as recommended by the Proxy Agent, or if the Proxy Agent is unable to complete/provide its research regarding a security on a timely basis, then the Adviser will vote the proxy in accordance with the Adviser’s policies and procedures.

If the Adviser is directing the vote of a proxy, the Chief Compliance Officer will be alert to conflicts that may exist between the Adviser and its clients. If the Chief Compliance Officer determines that a material conflict of interest exists, the Adviser will determine whether voting in accordance with its set voting guidelines is in the best interests of the Fund. In the absence of a conflict of interest, the Adviser generally will vote in favor of routine corporate housekeeping proposals, including the election of directors (where no corporate governance issues are implicated), the selection of auditors, and increases in or reclassification of common stock. Similarly, in the absence of a conflict of interest, the Adviser generally will vote against proposals that make it more difficult to replace members of the issuer’s board of directors, including proposals to stagger the board, cause management to be overrepresented on the board, introduce cumulative voting or unequal voting rights, and create supermajority voting.

It should be noted that if a conflict of interest is identified, the Adviser may disclose the conflict to the affected client and, except in the case of any clients that are subject to the Employee Retirement Income Security Act of 1974, as amended, give the client the opportunity to vote their proxies themselves.

If you have any questions about the Adviser’s proxy voting policy, its proxy record-keeping procedures or if you would like detailed information about how proxies are actually voted, please call the Chief Compliance Officer at 212.764.3500.

## **ITEM 18 – FINANCIAL INFORMATION**

This Item is not applicable.