

**ITEM 1  
COVER PAGE**

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

**EMPYREAN CAPITAL PARTNERS, LP**

March 30, 2012

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*This brochure (this "Brochure") provides information about the qualifications and business practices of Empyrean Capital Partners, LP ("Empyrean"). If you have any questions about the contents of this Brochure, please contact us at (310) 843-3000 or [IR@empyrean.com](mailto:IR@empyrean.com). The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (the "SEC") or by any state securities authority.*

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

*Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.*

## **ITEM 2**

### **MATERIAL CHANGES**

Pursuant to the rules promulgated under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), Empyrean is required to identify and discuss any material changes made to its brochure since the last annual update. There are no material changes to report. If Empyrean makes any material changes to this Brochure, this section will be revised to include a summary of such changes.

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## ITEM 4 ADVISORY BUSINESS

### A. General Description of Advisory Firm.

Empyrean commenced operations in 2004. Michael Price and Amos Meron, as limited partners of Empyrean and as the managing members of the general partner of Empyrean, Empyrean Capital, LLC, a Delaware limited liability company (the "Empyrean General Partner"), are the principal owners of Empyrean and control Empyrean.

### B. Description of Advisory Services

Empyrean serves as the investment adviser with discretionary trading authority to private pooled investment vehicles, the securities of which are offered to investors on a private placement basis (each, a "Fund" and collectively, the "Funds" or "Clients"). The Funds include (1) Empyrean Capital Overseas Fund, Ltd., a Cayman Islands exempted company (the "Offshore Fund"), (2) Empyrean Capital Overseas ERISA Fund, Ltd., a Cayman Islands exempted company (the "ERISA Fund"), (3) Empyrean Capital Overseas Master Fund, Ltd., a Cayman Islands exempted company (the "Master Fund") and (4) Empyrean Capital Fund, LP, a Delaware limited partnership (the "Domestic Fund"). The Offshore Fund and the ERISA Fund invest all of their investable assets through a "master-feeder" structure in the Master Fund. The Domestic Fund invests directly as a "stand alone" fund.

This brochure does not constitute an offer to sell or solicitation of an offer to buy any securities.

### C. Availability of Customized Services for Individual Clients

Empyrean has full discretionary authority with respect to investment decisions, and its advice is given in accordance with the investment objectives and guidelines as set forth in its Clients' respective offering memoranda. Empyrean tailors its advisory services to the specific needs of its Clients as agreed to in its investment management agreements.

### D. Wrap Fee Programs

Empyrean does not offer or participate in wrap fee programs.

### E. Assets Under Management

Empyrean manages, and has discretionary authority over \$2.265 billion in assets.

## **ITEM 5**

### **FEES AND COMPENSATION**

#### **A. Advisory Fees and Compensation.**

The fees applicable to each Fund are set forth in detail in each of the Fund's respective offering documents. A brief summary of those fees is provided below.

##### **1. The Domestic Fund:**

With respect to the Domestic Fund, Empyrean generally is paid quarterly in advance a management fee of 0.50% (2.0% annualized) of the beginning value of each capital account (depending on the class of interests) of the limited partners of the Domestic Fund.

At the end of the Domestic Fund's fiscal year, the general partner of the Domestic Fund, an affiliate of Empyrean, generally receives incentive allocations from the Domestic Fund of 20% of the net capital appreciation (depending on the class of interests) of the Domestic Fund. Net capital appreciation generally includes both realized gains and losses and unrealized appreciation and depreciation of securities held in the Domestic Fund's portfolio. Generally, any net capital depreciation in a fiscal year allocated to any limited partner of the Domestic Fund is carried forward so that no incentive allocation is charged to such limited partner unless the losses have been recouped, subject to certain adjustments. A portion of the Domestic Fund's capital may be invested in assets or securities that either lack a readily assessable market value or should be held until the resolution of a special event or circumstance (each, a "Special Investment"). Each Special Investment will be maintained in a special investment account until its realization, or the determination by Empyrean, in its discretion, that such investment need not be treated as a Special Investment anymore (such determination, a "deemed realization" of such Special Investment). Special Investments are not subject to any incentive allocations until such Special Investment is realized or "deemed realized." Such Special Investments are usually subject to the management fees described above and are generally valued at cost for the period that they are maintained in a special investment account.

The general partner reserves the right to waive or impose different fees or otherwise modify the fee arrangements of an existing limited partner with the consent of such limited partner. Certain classes of interests are subject to reduced fees. In addition, the Domestic Fund reserves the right to impose different fees on future limited partners.

##### **2. The Offshore Fund:**

With respect to the Offshore Fund, Empyrean generally is paid quarterly in advance a management fee of 0.50% (2.0% annualized) of the net asset value ("NAV") of each class of shares (depending on the share class) of the Offshore Fund.

At the end of the Offshore Fund's fiscal year, Empyrean generally receives incentive fees from the Offshore Fund of 20% of the net realized and unrealized appreciation in the NAV of each series of shares (depending on the share class) of the Offshore Fund. An incentive fee will only be paid with respect to the net realized and unrealized appreciation in the NAV of a series of shares in excess of the "Prior High NAV" of such series of shares. The Prior High NAV of a series of shares is the NAV of that series immediately after the

determination of a year-end incentive fee with respect to such series. The Prior High NAV of a series will be reduced pro rata for interim-year redemptions of shares of such series and exchanges for Class S Shares. A portion of the Offshore Fund may be invested in assets or securities that either lack a readily assessable market value or should be held until the resolution of a Special Investment. Each Special Investment will be represented by a series of Class S Shares until its realization or the determination by Empyrean, in its discretion, that such investment need not be treated as a Special Investment anymore (such determination, a "deemed realization" of such Special Investment). The Class S Shares will not be subject to any incentive fees until a gain is realized or "deemed realized." The Class S Shares will usually be subject to the management fees described above and are generally valued at cost for period that they are maintained as a Special Investment.

The Board of Directors of the Offshore Fund reserve the right to waive or impose different fees or otherwise modify the fee arrangements of an existing shareholder with the consent of such shareholder. Certain classes of shares are subject to reduced fees. In addition, the Offshore Fund reserves the right to impose different fees on future shareholders.

### 3. The ERISA Fund:

With respect to the ERISA Fund, Empyrean generally is paid quarterly in advance a management fee of 0.50% (2.0% annualized) of the net asset value ("NAV") of each class of shares of the ERISA Fund.

At the end of the ERISA Fund's fiscal year, Empyrean receives incentive fees from the ERISA Fund of 20% of the net realized and unrealized appreciation in the NAV of each series of shares of the ERISA Fund. An incentive fee will only be paid with respect to the net realized and unrealized appreciation in the NAV of a series of shares in excess of the "Prior High NAV" of such series of shares. The Prior High NAV of a series of shares is the NAV of that series immediately after the determination of a year-end incentive fee with respect to such series. The Prior High NAV of a series will be reduced pro rata for interim-year redemptions of shares of such series and exchanges for Class S Shares. A portion of the ERISA Fund may be invested in assets or securities that either lack a readily assessable market value or should be held until the resolution of a Special Investment. Each Special Investment will be represented by a series of Class S Shares until its realization or the determination by Empyrean, in its discretion, that such investment need not be treated as a Special Investment anymore (such determination, a "deemed realization" of such Special Investment). The Class S Shares will not be subject to any incentive fees until a gain is realized or "deemed realized." The Class S Shares will usually be subject to the management fees described above and are generally valued at cost for period that they are maintained as a Special Investment.

The Board of Directors of the ERISA Fund reserve the right to waive or impose different fees or otherwise modify the fee arrangements of an existing shareholder with the consent of such shareholder. In addition, the ERISA Fund reserves the right to impose different fees on future shareholders.

B. Payment of Fees

Fees and compensation paid to Empyrean by the Funds are generally deducted from the assets of such Funds. As discussed above, the management fees are generally deducted on a quarterly basis and the performance compensation is generally deducted on an annual basis.

C. Additional Fees and Expenses

The Funds bear their own expenses, including, without limitation, investment related expenses (e.g., brokerage commissions, interest on margin accounts and other indebtedness, borrowing charges on securities sold short, custodial fees, clearing and settlement charges, interest expense and investment-related travel and lodging expenses); research-related expenses, including, without limitation, news and quotation equipment and services; administrator fees; legal expenses; professional fees (including, without limitation, expenses of consultants and experts); auditing and tax preparation expenses; costs of printing and mailing reports and notices; organizational expenses; expenses relating to obtaining insurance for members of the board of directors; management fees; incentive fees; corporate licensing fees and other professional fees; bank service fees; withholding and transfer fees; entity-level taxes; other expenses related to the purchase, sale or transmittal of Fund assets; and extraordinary expenses and other similar expenses related to each Fund. To the extent that expenses are borne by a Fund are paid by Empyrean, the Fund will reimburse Empyrean for such expenses.

The Offshore Fund and the ERISA Fund also bear their pro rata share of the Master Fund's expenses.

D. Prepayment of Fees

Please see response to Item 5.A above.

E. Additional Compensation and Conflicts of Interest

Neither Empyrean nor any of its supervised persons accepts compensation (e.g., brokerage commissions) for the sale of securities or other investment products.

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

Empyrean accepts performance-based fees from every Client. As a result, Empyrean does not face the conflicts of interest that may arise when an investment adviser accepts performance-based fees from some clients, but not from other clients.



**ITEM 7**  
**TYPES OF CLIENTS**

As noted above, Empyrean provides investment advice to private pooled investment vehicles that are offered to investors on a private placement basis.

## **ITEM 8**

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

#### **A. Methods of Analysis and Investment Strategy:**

Empyrean seeks to purchase or sell short securities and other financial instruments for the Domestic Fund and the Master Fund. This strategy may be implemented through the purchase or sale of an issuer's securities or derivative and volatility instruments related to such securities in a single trade or a series of trades which involve multiple instruments in order to achieve the targeted net exposure.

Empyrean seeks to limit downside exposure through the purchase of securities or instruments at discounts to intrinsic value or otherwise limit risk through favorable structural, contractual, collateral or valuation characteristics. Generally, Empyrean seeks to reduce market exposure through a variety of credit, equity and volatility hedging techniques.

The Domestic Fund and the Master Fund invest, both long and short, in a variety of public and private primary and secondary market securities, instruments and obligations. Instruments may include, but are not limited to, trade claims, revolving and term loan credit facilities, public and private debt obligations, public and private convertible debt and convertible preferred stock, public and private common stock, real estate related assets, futures, options, warrants and derivative instruments. Generally, the Domestic Fund and the Master Fund will invest in these securities and instruments on a passive basis, although occasionally, the Domestic Fund and the Master Fund will assume a more active role.

Empyrean employs a fully integrated, multi-disciplinary investment approach to event-oriented and relative value investing. Its approach integrates credit, equity, volatility and event expertise in a single platform. The Domestic Fund and the Master Fund each maintain a single investment portfolio with no pre-determined asset allocation targets or securities biases. Instead, Empyrean seeks to identify companies undergoing transforming events and, after comprehensive analyses, invest in the most attractive securities and instruments regardless of asset class. The investment process is applied to the entirety of an issuer's capital structure including its derivative and volatility instruments.

Empyrean's investment process consists of (i) opportunity identification; (ii) investment research; (iii) investment selection; and (iv) risk management. Opportunities are identified across asset classes and securities through Empyrean's deep presence and multi-product expertise within a variety of financial markets. Empyrean's research process is characterized by a rigorous fundamental, "bottom-up" approach which combines comprehensive cash flow, valuation, volatility and event analyses in order to identify and quantify (i) disparities between intrinsic value and market value; (ii) the potential distribution of event outcomes and their impact on securities' valuation; and (iii) upside potential versus downside risk. Empyrean's fundamental research includes a thorough evaluation of a variety of aspects of an issuer and its securities including, but not limited to, its (i) industry position; (ii) business position; (iii) cash flow, financial position and accounting; (iv) valuation; (v) legal and financial structure; and (vi) management and stakeholders. The investment selection process involves a risk-weighted evaluation of instruments within an issuer's capital structure and a comparison across alternative investment opportunities. Empyrean's risk management process is intended to balance a "bottom-up" approach to security selection by applying

portfolio-level risk filters, guidelines and limits and employing a variety of risk management tools. Empyrean also systematically applies instrument-specific, sector-specific and portfolio-level hedging techniques in an effort to reduce market exposure.

Empyrean pursues its approach to event-oriented and relative value investing by maintaining portfolios for the Domestic Fund and the Master Fund which are diversified by industry, issuer, asset class and security. In addition, Empyrean maintains low to moderate leverage and maintains guidelines with respect to private and less liquid investments.

B. Material, Significant, or Unusual Risks Relating to Investment Strategies:

The following risk factors do not purport to be a complete list or explanation of the risks involved in an investment in the Funds advised by Empyrean. These risk factors only include those risks Empyrean believes to be material, significant or unusual and relate to particular investment strategies or methods of analysis employed by Empyrean.

Securities Believed To Be Undervalued or Incorrectly Valued. Securities that Empyrean believes are fundamentally undervalued or incorrectly valued may not ultimately be valued in the capital markets at prices and/or within the time frame Empyrean anticipates. In such event, the Funds, may incur a substantial loss.

Relative Value Strategies. Relative value investment strategies generally use spread trades consisting of a long position in one security offset by a short position in another. Such offsetting positions are meant to neutralize or reduce risk. The portfolio profits if Empyrean's relative valuation leads to a rise in the value of the long position(s) and/or a decline in the value of the short position(s).

The success of the Domestic Fund's and the Master Fund's relative value investment strategy depends on Empyrean's ability to identify and exploit perceived inefficiencies in the pricing of securities, financial products, or markets. Identification and exploitation of such discrepancies involve uncertainty. There can be no assurance that Empyrean will be able to locate investment opportunities or to exploit pricing inefficiencies in the securities markets. Mispricings, even if correctly identified, may not be corrected by the market, at least within a timeframe over which it is feasible for the Domestic Fund and the Master Fund to maintain a position. Even pure arbitrage positions can result in significant losses if the Domestic Fund and the Master Fund are not able to maintain both sides of the position until expiration/maturity. A reduction in the pricing inefficiency of the markets in which the Domestic Fund and the Master Fund seeks to invest will reduce the scope for the Domestic Fund's and the Master Fund's investment strategies. In the event that the perceived mispricings underlying the Domestic Fund's and the Master Fund's positions were to fail to converge toward, or were to diverge further from, relationships expected by Empyrean, the Domestic Fund and the Master Fund may incur losses. Even if the Domestic Fund's and the Master Fund's relative value investment strategy is successful, it may result in high portfolio turnover and, consequently, high transaction costs.

Convertible Arbitrage. Convertible arbitrage strategies involve investing in convertible securities that appear incorrectly valued relative to their theoretical value. The strategy consists of the purchase (or short sale) of a convertible security coupled with the short sale (or purchase) of the underlying security for which the convertible security can be

exchanged to exploit price differentials. Emphyrean may seek to hedge out the risk inherent in the stock; the remaining risk may or may not be hedged.

Convertible arbitrage strategies generally involve spreads between two or more positions. To the extent the price relationships between such positions remain constant, no gain or loss on the position will occur. Such positions do, however, entail a substantial risk that the price differential could change unfavorably, causing a loss to the spread position. Substantial risks also are involved in borrowing and lending against such investments. The prices of these investments can be volatile, market movements are difficult to predict, and financing sources and related interest and exchange rates are subject to rapid change. Certain corporate securities may be subordinated (and thus exposed to the first level of default risk) or otherwise subject to substantial credit risks.

Merger Arbitrage. Merger or "risk" arbitrage strategies attempt to exploit merger activity to capture (or sell short) the spread between current market values of securities and their values after successful completion of a merger, restructuring or similar corporate transaction. Merger arbitrage investments often incur significant losses when anticipated merger or acquisition transactions are not consummated. The consummation of mergers, tender offers and exchange offers can be prevented or delayed by a variety of factors, including: (i) regulatory and antitrust restrictions; (ii) political factors; (iii) industry weakness; (iv) stock-specific events; and (v) failed financings. Merger arbitrage positions also are subject to the risk of overall market movements. To the extent that a general increase or decline in equity values affects the stocks involved in a merger arbitrage position differently, the position may be exposed to loss. Merger arbitrage strategies also depend for success on the overall volume of merger activity, which historically has been cyclical in nature.

Capital Structure Arbitrage. The success of this strategy will depend on the ability of Emphyrean to identify and exploit the relationships between movements in different securities within an issuer's capital structure (including, bank debt, convertible and non-convertible senior and subordinated debt and preferred and common stock). Identification and exploitation of these opportunities involve uncertainty. There can be no assurance that Emphyrean will be able to locate investment opportunities or to correctly exploit price discrepancies. A reduction in the pricing inefficiency of the markets in which the Domestic Fund and Master Fund will seek to invest will reduce the scope for the Domestic Fund's and the Master Fund's investment strategies. In the event that the perceived mispricings underlying the Domestic Fund's and the Master Fund's positions fail to materialize, these investment strategies could be unsuccessful or result in losses.

Short-term Market Considerations. Emphyrean's trading decisions may be made on the basis of short-term market considerations. Therefore, the portfolio turnover rate could result in significant trading-related expenses for our Clients.

Diversification Policies. Emphyrean may concentrate investments in particular industries or companies. The investment risk of a portfolio that is concentrated in particular industries or companies is greater than if the portfolio is invested in a more diversified manner among various industries or companies.

Leverage; Interest Rates; Margin. Emphyrean may utilize substantial leverage in its investment program, thereby maximizing its investment positions by borrowing funds

to the fullest possible extent permitted by applicable regulations. As a result, the possibilities of profit and loss are increased. Borrowing money to take positions provides Emphyrean with the advantages of leverage, but exposes it to greater market risks and higher current expenses. Any gain in the value of positions taken with borrowed money or income earned from these positions that exceeds interest paid on the amount borrowed would cause the Domestic Fund's and the Master Fund's assets to increase faster than would otherwise be the case. Conversely, any decline in the value of the positions taken would cause the Domestic Fund's and the Master Fund's assets to decrease faster than would otherwise be the case.

Leverage may take the form of trading on margin, investing in derivative instruments that are inherently leveraged, and entering into other forms of direct or indirect borrowings. The amount of leverage or borrowings which Emphyrean may cause the Domestic Fund and the Master Fund to have outstanding at any time may therefore be large in relation to their capital. Consequently, the level of interest rates generally, and the rates at which the Domestic Fund and the Master Fund can borrow in particular, will affect the operating results of the Domestic Fund and the Master Fund.

In general, the Domestic Fund's and the Master Fund's use of short-term margin borrowings may result in certain additional risks to the Funds. For example, should the securities pledged to brokers to secure the Domestic Fund's and the Master Fund's margin accounts decline in value, the Domestic Fund and the Master Fund could be subject to a "margin call," pursuant to which the Domestic Fund and the Master Fund must either deposit additional funds with the broker or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden precipitous drop in the value of the Domestic Fund's and the Master Fund's assets, the Domestic Fund and the Master Fund might not be able to liquidate assets quickly enough to pay off their margin debt.

In the futures markets, margin deposits typically range between 1% and 15% of the value of the futures contracts purchased or sold. In the forward, equity, currency and certain other derivative markets, margin deposits may be even lower or may not be required at all. Such low margin deposits are indicative of the fact that any trading in these markets typically is accompanied by a high degree of leverage. Low margin deposits mean that a relatively small adverse price movement in a futures or forward contract may result in immediate and substantial losses to the investor. For example, if at the time of purchase 10% of the price of a futures contract is deposited as margin, a 10% decrease in the price of the futures contract would, if the contract is then closed out, result in a total loss of the margin deposit before any deduction for the brokerage commission. Thus, like other leveraged investments, any purchase or sale of a futures, forward or other commodity contract may result in losses in excess of the amount invested.

When the Domestic Fund and the Master Fund purchase an option in the United States, there is no margin requirement because the option premium is paid for in full. The premiums for certain options traded on foreign exchanges may be paid for on margin. When the Domestic Fund and the Master Fund sell an option on a futures contract, it may be required to deposit margin in an amount that may be determined by the margin requirement established for the futures contract underlying the option and, in addition, an amount substantially equal to the current premium for the option. The margin requirements imposed on the writing of options, although adjusted to reflect the probability that out-of-the-money options will not be exercised, can in fact be higher than those imposed in dealing in the futures markets directly. Whether any margin deposit will be required for over-the-counter

options and other over-the-counter instruments, such as equity or currency forwards, swaps and certain other derivative instruments, will depend on the credit determinations and specific agreements of the parties to the transaction, which are individually negotiated.

There is no restriction on the amount of leverage that the Domestic Fund and the Master Fund may utilize. The cumulative effect of the use of leverage with respect to any investment in a market that moves adversely to such investments could result in a substantial loss which would be greater than if the investments were not leveraged.

Short Selling. Short selling involves selling securities which are not owned by the short seller, and borrowing them for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the seller to profit from a decline in market price to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. The extent to which the Domestic Fund and the Master Fund engage in short sales will depend upon Empyrean's investment strategy and opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to the Domestic Fund and the Master Fund of buying those securities to cover the short position. There can be no assurance that the Domestic Fund and the Master Fund will be able to maintain the ability to borrow securities sold short. In such cases, the Domestic Fund and the Master Fund can be "bought in" (i.e., forced to repurchase securities in the open market to return to the lender). There also can be no assurance that the securities necessary to cover a short position will be available for purchase at or near prices quoted in the market. Purchasing securities to close out a short position can itself cause the price of the securities to rise further, thereby exacerbating the loss.

Hedging Transactions. The Domestic Fund and the Master Fund may utilize securities both for investment purposes and for risk management purposes in order to (i) protect against possible changes in the market value of the Domestic Fund's and the Master Fund's investment portfolios resulting from fluctuations in the markets and changes in interest rates; (ii) protect the Domestic Fund's and the Master Fund's unrealized gains in the value of their investment portfolios; (iii) facilitate the sale of any securities; (iv) enhance or preserve returns, spreads or gains on any security in the Domestic Fund's and the Master Fund's portfolios; (v) hedge against a directional trade; (vi) hedge the interest rate, credit or currency exchange rate on any of the Domestic Fund's and the Master Fund's securities; (vii) protect against any increase in the price of any securities the Domestic Fund and the Master Fund anticipate purchasing at a later date; or (viii) act for any other reason that Empyrean deems appropriate. The Domestic Fund and the Master Fund will not be required to hedge any particular risk in connection with a particular transaction or its portfolio generally. While the Domestic Fund and the Master Fund may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Domestic Fund and the Master Fund than if it had not engaged in any such hedging transaction. Moreover, the portfolios will always be exposed to certain risks that may not be hedged.

C. Risks Associated With Particular Types of Securities:

Risks Associated with Investments in High-Yield Securities. The Domestic Fund and the Master Fund may invest in high-yield securities. Such securities are generally not exchange traded and, as a result, these instruments may trade in a smaller secondary market than exchange-traded bonds. In addition, the Domestic Fund and the Master Fund

may invest in bonds of issuers that do not have publicly traded equity securities, making it more difficult to hedge the risks associated with such investments. High-yield securities that are below investment grade or unrated face ongoing uncertainties and exposure to adverse business, financial or economic conditions that could lead to the issuer's inability to meet timely interest and principal payments. The market values of certain lower-rated and unrated debt securities tend to reflect individual corporate developments to a greater extent than do higher-rated securities, which react primarily to fluctuations in the general level of interest rates, and tend to be more sensitive to economic conditions than are higher-rated securities. Companies that issue such securities are often highly leveraged and may not have available to them more traditional methods of financing. It is possible that a major economic recession could disrupt severely the market for such securities and may have an adverse impact on the value of such securities. In addition, it is possible that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default of such securities.

Call Options. The Domestic Fund and the Master Fund may incur risks associated with the sale and purchase of call options. The seller (writer) of a call option which is covered (*i.e.*, the writer holds the underlying security) assumes the risk of a decline in the market price of the underlying security below the purchase price of the underlying security less the premium received, and gives up the opportunity for gain on the underlying security above the exercise price of the option. The seller of an uncovered call option assumes the risk of a theoretically unlimited increase in the market price of the underlying security above the exercise price of the option. The securities necessary to satisfy the exercise of an uncovered call option may be unavailable for purchase, except at much higher prices, thereby reducing or eliminating the value of the premium. Purchasing securities to cover the exercise of an uncovered call option can cause the price of the securities to increase, thereby exacerbating the loss. The buyer of a call option assumes the risk of losing its entire premium investment in the call option.

Put Options. The Domestic Fund and the Master Fund may incur risks associated with the sale and purchase of put options. The seller (writer) of a put option which is covered (*i.e.*, the writer has a short position in the underlying security) assumes the risk of an increase in the market price of the underlying security above the sales price (in establishing the short position) of the underlying security plus the premium received, and gives up the opportunity for gain on the underlying security if the market price falls below the exercise price of the option. The seller of an uncovered put option assumes the risk of a decline in the market price of the underlying security below the exercise price of the option. The buyer of a put option assumes the risk of losing its entire investment in the put option.

Stock Index Options. The Domestic Fund and the Master Fund may also purchase and sell indices as well as call and put options on indices, whether or not stock indices listed on securities exchanges or traded in the over-the-counter market. An index or index option fluctuates with changes in the market values of the stocks included in the index. Because the value of an index or index option depends upon movements in the level of the index rather than the price of a particular instrument, whether the Domestic Fund and the Master Fund will realize gains or losses from the purchase or writing of options on indices depends upon movements in the level of instrument prices in the instrument market generally or, in the case of certain indices, in an industry or market segment, rather than movements in the price of particular instruments.

Highly Volatile Markets; FX Risk. Price movements of forwards, futures, derivative contracts and other securities in which the Domestic Fund's and the Master Fund's assets may be invested can be highly volatile and are influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. In addition, governments from time to time intervene in certain markets, directly and by regulation, particularly in currencies, futures and options. Such intervention is often intended to directly influence prices and may, together with other factors, cause some or all of these markets to move rapidly in the same direction. The effect of such intervention is often heightened by a group of governments acting in concert. The Domestic Fund and the Master Fund may make certain speculative investments in currencies which we believe to be undervalued; however, there are no assurances that the currencies purchased will in fact be undervalued. In addition, the Domestic Fund and the Master Fund may be required to hold such currencies for a substantial period of time before realizing their anticipated value. During this period, a portion of the Domestic Fund's and the Master Fund's assets will be committed to the currencies purchased, thus possibly preventing the Domestic Fund and the Master Fund from investing in other opportunities.

Commodity Futures Contracts. The Domestic Fund and the Master Fund may trade in commodity futures contracts (and options on futures). Trading in commodity interests may involve substantial risks. The low margin or premiums normally required in such trading may provide a large amount of leverage, and a relatively small change in the price of a security or contract can produce a disproportionately larger profit or loss. There is no assurance that a liquid secondary market will exist for commodity futures contracts or options purchased or sold, and the Domestic Fund and the Master Fund may be required to maintain a position until exercise or expiration, which could result in losses.

Futures positions may be illiquid because, for example, most U.S. commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as "daily price fluctuation limits" or "daily limits." Once the price of a contract for a particular future has increased or decreased by an amount equal to the daily limit, positions in the future can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. Futures contract prices on various commodities or financial instruments occasionally have moved the daily limit for several consecutive days with little or no trading. Similar occurrences could prevent the Domestic Fund and the Master Fund from promptly liquidating unfavorable positions and subject the Domestic Fund and the Master Fund to substantial losses. In addition, the Domestic Fund and the Master Fund may not be able to execute futures contract trades at favorable prices if trading volume in such contracts is low. It is also possible that an exchange or the CFTC may suspend trading in a particular contract, order immediate liquidation and settlement of a particular contract or order that trading in a particular contract be conducted for liquidation only. In addition, the CFTC and various exchanges impose speculative position limits on the number of positions that may be held in particular commodities. Trading in commodity futures contracts and options are highly specialized activities that may entail greater than ordinary investment or trading risks.

The price of stock index futures contracts may not correlate perfectly with the movement in the underlying stock index because of certain market distortions. First, all participants in the futures market are subject to margin deposit and maintenance requirements. Rather than meeting additional margin deposit requirements, investors may



close futures contracts through offsetting transactions that would distort the normal relationship between the index and futures markets. Secondly, from the point of view of speculators, the deposit requirements in the futures market are less onerous than margin requirements in the securities market. Therefore, increased participation by speculators in the futures market also may cause temporary price distortions. Successful use of stock index futures contracts by the Domestic Fund and the Master Fund are subject to our ability to correctly predict movements in the direction of the market.

Swap Agreements. The Domestic Fund and the Master Fund may enter into swap agreements and options on swap agreements ("swaptions"). These agreements can be individually negotiated and structured to include exposure to a variety of different types of investments, asset classes or market factors. The Domestic Fund and the Master Fund, for instance, may enter into swap agreements with respect to interest rates, credit defaults, currencies, securities, indexes of securities and other assets or other measures of risk or return. Depending on their structure, swap agreements may increase or decrease the Domestic Fund's and the Master Fund's exposure to, for example, equity securities, long-term or short-term interest rates, foreign currency values, credit spreads or other factors. Swap agreements can take many different forms and are known by a variety of names. The Domestic Fund and the Master Fund are not limited to any particular form of swap agreement if consistent with the Funds' investment objective.

Whether the Domestic Fund's and the Master Fund's use of swap agreements or swaptions will be successful will depend on our ability to select appropriate transactions for the Domestic Fund and the Master Fund. Swap transactions may be highly illiquid and may increase or decrease the volatility of the Domestic Fund's and the Master Fund's portfolio. Moreover, the Funds bear the risk of loss of the amount expected to be received under a swap agreement in the event of the default or insolvency of its counterparty. The Funds will also bear the risk of loss related to swap agreements, for example, for breaches of such agreements or the failure of the Domestic Fund and the Master Fund to post or maintain required collateral. Many swap markets are relatively new and still developing. It is possible that developments in the swap markets, including potential government regulation, could adversely affect the Domestic Fund's and the Master Fund's ability to terminate existing swap transactions or to realize amounts to be received under such transactions.

Credit Default Swaps. The Domestic Fund and the Master Fund may invest in credit default swaps. Credit default swaps can be used to implement our view that a particular credit, or group of credits, will experience credit improvement or deterioration. In the case of expected credit improvement, the Domestic Fund and the Master Fund may sell credit default protection in which it receives a premium to take on the risk. In such an instance, the obligation of the Domestic Fund and the Master Fund to make payments upon the occurrence of a credit event creates leveraged exposure to the credit risk of the referenced entity. The Domestic Fund and the Master Fund may also buy credit default protection with respect to a referenced entity if, in our judgment, there is a high likelihood of credit deterioration. In such instance, the Domestic Fund and the Master Fund will pay a premium regardless of whether there is a credit event. The credit default swap market in high-yield securities is comparatively new and rapidly evolving compared to the credit default swap market for more seasoned and liquid investment-grade securities, creating the risk that the newer markets will be less liquid, and making it potentially more difficult to exit or enter into a particular transaction.

Investments in Distressed Securities. The Domestic Fund and the Master Fund may invest in "below investment grade" securities and obligations of domestic and non-U.S. issuers in weak financial condition, experiencing poor operating results, having substantial capital needs or negative net worth, facing special competitive or product obsolescence problems, including companies involved in bankruptcy or other reorganization and liquidation proceedings. These securities may be particularly risky investments although they also may offer the potential for correspondingly high returns. Among the risks inherent in investments in troubled entities is the fact that it frequently may be difficult to obtain information as to the true condition of such issuers. Such investments also may be adversely affected by laws relating to, among other things, fraudulent transfers and other voidable transfers or payments, lender liability and the bankruptcy court's power to disallow, reduce, subordinate or disenfranchise particular claims. Such companies' securities may be considered speculative, and the ability of such companies to pay their debts on schedule could be affected by adverse interest rate movements, changes in the general economic climate, economic factors affecting a particular industry, or specific developments within such companies. In addition, there is no minimum credit standard that is a prerequisite to the Domestic Fund's and the Master Fund's investment in any instrument, and a significant portion of the obligations and preferred stock in which the Domestic Fund and the Master Fund invest may be less than investment grade. Any one or all of the issuers of the securities in which the Domestic Fund and the Master Fund may invest may be unsuccessful or not show any return for a considerable period of time. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There is no assurance that Empyrean will correctly evaluate the value of the assets collateralizing the Domestic Fund's and the Master Fund's loans or the prospects for a successful reorganization or similar action. In any reorganization or liquidation proceeding relating to a company in which the Domestic Fund and the Master Fund invest, the Domestic Fund and the Master Fund may lose their entire investment, may be required to accept cash or securities with a value less than the Domestic Fund's and the Master Fund's original investment and/or may be required to accept payment over an extended period of time. Under such circumstances, the returns generated from the Domestic Fund's and the Master Fund's investments may not compensate the Domestic Fund and the Master Fund adequately for the risks assumed.

In liquidation (both in and out of bankruptcy) and other forms of corporate reorganization, there exists the risk that the reorganization either will be unsuccessful (due to, for example, failure to obtain requisite approvals), will be delayed (for example, until various liabilities, actual or contingent, have been satisfied) or will result in a distribution of cash or a new security the value of which will be less than the purchase price to the Domestic Fund and the Master Fund of the security in respect to which such distribution was made.

In certain transactions, the Domestic Fund and the Master Fund may not be "hedged" against market fluctuations, or, in liquidation situations, may not accurately value the assets of the company being liquidated. This can result in losses, even if the proposed transaction is consummated.

Bank Loans. The Domestic Fund's and the Master Fund's investment program may include investments in significant amounts of bank loans and participations. These obligations are subject to unique risks, including: (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws; (ii) so-called lender-liability claims by the issuer of the obligations; (iii) environmental liabilities

that may arise with respect to collateral securing the obligations; and (iv) limitations on the ability of the Domestic Fund and the Master Fund to directly enforce its rights with respect to participations. In analyzing each bank loan, Empyrean compares the relative significance of the risks against the expected benefits of the investment. Successful claims by third parties arising from these and other risks will be borne by the Funds.

As secondary market trading volumes increase, new loans are frequently adopting standardized documentation to facilitate loan trading which may improve market liquidity. There can be no assurance, however, that future levels of supply and demand in loan trading will provide an adequate degree of liquidity or that the current level of liquidity will continue. Because of the provision to holders of such loans of confidential information relating to the borrower, the unique and customized nature of the loan agreement, and the private syndication of the loan, loans are not as easily purchased or sold as a publicly traded security, and historically the trading volume in the loan market has been small relative to the high yield debt market.

General Real Estate Risks. Real estate investments generally will be subject to the risks incident to the ownership and operation of real estate and/or risks incident to the making of nonrecourse mortgage loans secured by real estate, including (i) risks associated with both the domestic and international general economic climate; (ii) local real estate conditions; (iii) risks due to dependence on cash flow; (iv) risks and operating problems arising out of the absence of certain construction materials; (v) changes in supply of, or demand for, competing properties in an area (as a result, for instance, of over-building); (vi) the financial condition of tenants, buyers and sellers of properties; (vii) changes in availability of debt financing; (viii) energy and supply shortages; (ix) changes in the tax, real estate, environmental and zoning laws and regulations; (x) various uninsured or uninsurable risks; (xi) natural disasters; and (xii) the ability of the Funds or third-party borrowers to manage the real properties. With respect to investments in the form of real property owned by the Domestic Fund and the Master Fund, the Domestic Fund and the Master Fund will incur the burdens of ownership of real property, which include the paying of expenses and taxes, maintaining such property and any improvements thereon, and ultimately disposing of such property. With respect to investments in equity or debt securities, the Domestic Fund and the Master Fund will in large part be dependent on the ability of third parties to successfully operate the underlying real estate assets. In addition, the Domestic Fund and the Master Fund may invest in mortgage loans that are structured so that all or a substantial portion of the principal will not be paid until maturity, which increases the risk of default at that time. The Domestic Fund's and the Master Fund's investment strategy, which may frequently involve the acquisition of distressed or underperforming assets in a leveraged capital structure, will involve a high degree of legal and financial risk, and there can be no assurance that the Domestic Fund's and the Master Fund's rate of return objectives will be realized or that there will be any return of capital. There is no assurance that there will be ready market for resale of investments because investments in real estate generally are not liquid.

Counterparty Risk. Empyrean expects to establish relationships to obtain financing, derivative intermediation and prime brokerage services that permit the Domestic Fund and the Master Fund to trade in any variety of markets or asset classes over time; however, there can be no assurance that Empyrean will be able to maintain such relationships or establish such relationships. An inability to establish or maintain such relationships would limit the Domestic Fund's and the Master Fund's trading activities could create losses,

preclude the Domestic Fund and the Master Fund from engaging in certain transactions, financing, derivative intermediation and prime brokerage services and prevent the Domestic Fund and the Master Fund from trading at optimal rates and terms. Moreover, a disruption in the financing, derivative intermediation and prime brokerage services provided by any such relationships before Empyrean establishes additional relationships could have a significant impact on the Domestic Fund's and the Master Fund's business due to the Domestic Fund's and the Master Fund's reliance on such counterparties.

Most of the markets in which Empyrean may effect transactions are not "exchange-based", including "over-the-counter" or "interdealer" markets. The participants in such markets are typically not subject to the credit evaluation and regulatory oversight to which members of "exchange-based" markets are subject. The lack of evaluation and oversight of over-the-counter markets exposes the Domestic Fund and the Master Fund to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not bona fide) or because of a credit or liquidity problem, thus causing the Funds to suffer a loss. Such "counterparty risk" is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where Empyrean has concentrated its transactions with a single or small group of counterparties. Generally, Empyrean will not be restricted from dealing with any particular counterparties. Empyrean's evaluation of the creditworthiness of their counterparties may not prove sufficient. The lack of a complete and "foolproof" evaluation of the financial capabilities of Empyrean's counterparties and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Funds.

Other Derivative Instruments. The Domestic Fund and the Master Fund may take advantage of opportunities with respect to certain other derivative instruments that are not presently contemplated for use or that are currently not available, but that may be developed, to the extent such opportunities are both consistent with the investment objective of the Domestic Fund and the Master Fund and legally permissible. Special risks may apply to instruments that are invested in by the Domestic Fund and the Master Fund in the future that cannot be determined at this time or until such instruments are developed or invested in by the Domestic Fund and the Master Fund. Certain swaps, options and other derivative instruments may be subject to various types of risks, including market risk, liquidity risk, the risk of non-performance by the counterparty, including risks relating to the financial soundness and creditworthiness of the counterparty, legal risk and operations risk.

Non-U.S. Investments. The Domestic Fund and the Master Fund may invest in securities of non-U.S. companies and countries and in non-U.S. currencies. Investing in the securities of such companies and countries involves certain considerations not usually associated with investing in securities of U.S. companies or the U.S. Government, including political and economic considerations, such as greater risks of expropriation and nationalization, confiscatory taxation, the potential difficulty of repatriating funds, general social, political and economic instability and adverse diplomatic developments; the possibility of imposition of withholding or other taxes on dividends, interest, capital gain, other income or gross sale proceeds; the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict the Domestic Fund's and the Master Fund's investment opportunities. In addition, accounting and financial reporting standards that prevail in foreign countries generally are not equivalent to United States

standards and, consequently, less information is available to investors in companies located in such countries than is available to investors in companies located in the United States. Moreover, an issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other. There is also less regulation, generally, of the securities markets in foreign countries than there is in the United States.

Currencies. Empyrean may invest a portion of the Domestic Fund's and the Master Fund's assets in non-U.S. currencies, or in instruments denominated in non-U.S. currencies, the prices of which are determined with reference to currencies other than the U.S. dollar. Empyrean, however, values its securities and other assets in U.S. dollars. Empyrean may or may not seek to hedge all or any portion of its foreign currency exposure. To the extent the Domestic Fund's and the Master Fund's investments are not hedged, the value of the Domestic Fund's and the Master Fund's assets will fluctuate with U.S. dollar exchange rates as well as the price changes of the Domestic Fund's and the Master Fund's investments in the various local markets and currencies. Thus, an increase in the value of the U.S. dollar compared to the other currencies in which the Domestic Fund and the Master Fund make its investments will reduce the effect of increases and magnify the effect of decreases in the value of the Domestic Fund's and the Master Fund's positions in their local markets. Conversely, a decrease in the value of the U.S. dollar will have the opposite effect on the Domestic Fund's and the Master Fund's non-U.S. dollar securities. The Domestic Fund and the Master Fund also may utilize options and forward contracts to hedge against currency fluctuations, but there can be no assurance that such hedging transactions will be effective, and such techniques entail additional risks.

Forward Contracts. The Domestic Fund and the Master Fund may enter into over-the-counter forward contracts for the trading of certain futures interests, such as currencies and interest rates, through U.S. and non-U.S. national or local banks and currency and rates dealers. A forward contract is a contractual obligation to buy or sell a specified quantity of a security or commodity at or before a specified date in the future at a specified price and, therefore, is similar to a futures contract. Banks and dealers act as principals in such markets. Banking authorities generally do not regulate trading in forward contracts. The principals who deal in the forward contract market are not required to continue to make markets in such contracts. There have been periods during which certain participants in forward markets have refused to quote prices for forward contracts or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. The imposition of credit controls or price risk limitations by governmental authorities may limit such forward trading to less than that which the Domestic Fund and the Master Fund would otherwise recommend, to the possible detriment of the Domestic Fund and the Master Fund. In its forward trading, the Domestic Fund and the Master Fund will be subject to the risk of the failure of, or the inability or refusal to perform with respect to its forward contracts by, the principals with which the Domestic Fund and the Master Fund trades. The Domestic Fund's and the Master Fund's assets on deposit with such principals will also generally not be protected by the same segregation requirements imposed on certain regulated brokers in respect of customer funds on deposit with them. Empyrean may order trades for the Domestic Fund and the Master Fund in such markets through agents. Accordingly, the insolvency or bankruptcy of such parties could also subject the Domestic Fund and the Master Fund to the risk of loss.

Illiquid Portfolio Investments. The Domestic Fund and the Master Fund may invest in securities that are subject to legal or other restrictions on transfer or for which no liquid market exists. The market prices, if any, for such securities tend to be volatile and the Domestic Fund and the Master Fund may not be able to sell them when it desires to do so or to realize what it perceives to be their fair value in the event of a sale. In addition, the Domestic Fund and the Master Fund may be contractually prohibited from disposing of certain illiquid securities for a specified period of time. Accordingly, the Domestic Fund and the Master Fund may be forced to sell their more liquid positions at a disadvantageous time, resulting in a greater percentage of the portfolio consisting of illiquid securities. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over the counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale.

**ITEM 9**  
**DISCIPLINARY INFORMATION**

There are no legal or disciplinary events that are material to a Client's or prospective Client's evaluation of Empyrean's advisory business or the integrity of Empyrean's management.

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

A. Broker-Dealer Registration Status

Empyrean and its management persons are not registered as broker-dealers and do not have any application pending to register with the SEC as a broker-dealer or registered representative of a broker-dealer.

B. Futures Commission Merchant, Commodity Pool Operator or Commodity Trading Adviser Registration Status

Empyrean and its management persons are not registered as, and do not have any application to register as, futures commission merchants, commodity pool operators, commodity trading advisors or associated persons of the foregoing entities.

C. Material Relationships or Arrangements with Industry Participants

Empyrean, its affiliates and its personnel serve as investment advisers to multiple Clients. Empyrean, its affiliates and its personnel will devote as much time to the activities of each Fund as they deem necessary and appropriate and the amount of time devoted to different Funds may vary.

In addition, Empyrean may give advice or take action with respect to the investments of one or more Funds that may not be given or taken with respect to other Funds with similar investment programs, objectives, and strategies. Accordingly, Funds' accounts with similar strategies may not hold the same securities or instruments or achieve the same performance. Empyrean also may advise Funds with conflicting programs, objectives or strategies. These activities also may adversely affect the prices and availability of other securities or instruments held by or potentially considered for one or more Funds. Finally, Empyrean and its personnel may have conflicts in allocating their time and services among the Funds. Empyrean will devote as much time to each Fund as Empyrean deems appropriate to perform its duties in accordance with its management agreements.

A principal or employee of Empyrean or a related person may, from time to time, serve as a director with respect to companies, the securities of which are purchased on behalf of Clients. In the event Empyrean or a related person (i) obtains material non-public information in such capacity with respect to any such company or (ii) is subject to trading restrictions pursuant to the internal policies of Empyrean. Empyrean may be prohibited from engaging in transactions with respect to the securities or instruments of such company, which prohibition may have an adverse effect on Clients of Empyrean.

D. Material Conflicts of Interest Relating to Other Investment Advisers

Empyrean does not recommend or select other investment advisers for its clients.



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

A. Code of Ethics

Empyrean strives to adhere to the highest industry standards of conduct based on principles of professionalism, integrity, honesty and trust. In seeking to meet these standards, Empyrean has adopted a Code of Ethics (the "Code"). The Code incorporates the following general principles that all employees are expected to uphold: employees must at all times place the interests of Clients first; all personal securities transactions must be conducted in a manner consistent with the Code and any actual or potential conflicts of interest or any abuse of an employee's position of trust and responsibility must be avoided; employees must not take any inappropriate advantage of their positions; information concerning the identity of securities and financial circumstances of the Funds, including the Funds' investors, must be kept confidential; and independence in the investment decision-making process must be maintained at all times. The Code also places restrictions on personal trades by employees, including that they disclose their personal securities holdings and transactions to Empyrean on a periodic basis, and requires that employees preclear certain types of personal securities transactions. Clients and investors in the Funds may request a copy of the Code by contacting Empyrean at the address or telephone number listed on the first page of this document.

B. Securities that the Investment Adviser or a Related Person Has a Material Financial Interest

1. Cross Transactions

Subject to applicable restrictions under Empyrean's policies and procedures, Empyrean may effect rebalancing or internal cross transactions between the Domestic Fund and the Master Fund. In such cases, one Fund will purchase securities held by another fund. Empyrean endeavors to effect these transactions based on a fair, current independent market price and consistent with our valuation procedures. Such cross transactions generally will be made without brokerage commissions being charged. When effecting cross transactions between the Domestic Fund and the Master Fund, Empyrean and its personnel may have an ownership interest in the Domestic Fund and/or the Master Fund and will have potentially conflicting division of loyalties and responsibilities with respect to each participating Client.

2. Principal Transactions

To the extent that a cross transaction may be viewed as principal transactions due to the ownership interest in a client by Empyrean or its personnel, Empyrean will comply with the requirements of Section 206(3) of the Advisers Act, including that Empyrean will notify the Fund (or an independent representative of the Fund) in writing of the transaction and obtain the consent of the Fund (or an independent representative of the Fund) and any such transactions will be considered on behalf of investors in such a client and approved or disapproved by (i) an advisory board comprised of representatives of such investors or (ii) a committee consisting of one or more persons selected by Empyrean (or its affiliate), and any valuation approved by such a committee will be determined by an independent third party that has appropriate experience in providing such valuations.

C. Investing in Securities that Empyrean or a Related Person Recommends to Clients

Empyrean's partners, officers and employees may from time to time make personal investments in securities or instruments in which Empyrean may invest the Domestic Fund's and the Master Fund's assets. Empyrean's personnel may buy, sell, or hold securities or other instruments for their own accounts while entering into different investment decisions for the Domestic Fund or Master Fund. Empyrean's Code of Ethics places restrictions on personal trades by employees, including disclosure of holdings and transactions to Empyrean, as well as pre-clearance of certain types of personal trades. In addition, Empyrean's personnel may also invest in eligible Funds of its or their choosing and are not required to invest in all Funds. It is expected that, if such investments are made, the size of these investments will change over time.

Empyrean and its affiliates may invest on behalf of themselves in securities and other instruments that would be appropriate for, held by, or may fall within the investment guidelines of the Funds. Empyrean and its affiliates may give advice or take action for their own accounts that may differ from, conflict with or be adverse to advice given or action taken for the Funds. These activities may adversely affect the prices and availability of other securities or instruments held by or potentially considered for the Domestic Fund or the Master Fund. Potential conflicts also may arise due to the fact that Empyrean's affiliates may have investments in some Funds but not in others or may have different levels of investments in the various Funds, and because the Funds may pay different levels of fees to Empyrean.

Empyrean and its affiliates may also have ongoing relationships with companies whose securities are in or are being considered for the Domestic Fund and the Master Fund. From time to time, Empyrean may acquire securities or other financial instruments of an issuer for one fund which are senior or junior to securities or financial instruments of the same issuer that are held by, or acquired for, another fund (e.g., one fund may acquire senior debt while another fund may acquire subordinated debt). Empyrean recognizes that conflicts may arise under such circumstances and will endeavor to treat all Funds fairly and equitably.

D. Conflicts of Interest Created by Contemporaneous Trading

It is the policy of Empyrean to allocate investment opportunities for the Domestic Fund and the Master Fund fairly and equitably, to the extent possible, over a period of time. Empyrean, however, will have no obligation to purchase, sell or exchange any security or financial instrument for one fund which Empyrean may purchase, sell or exchange for another fund if Empyrean believes in good faith at the time the investment decision is made that such transaction or investment would be unsuitable, impractical or undesirable for a particular Fund.

Empyrean or a related person generally makes investment decisions among the Funds on a pro rata basis in proportion to the relative value of the eligible net assets of each Fund in proportion to the relative value of the eligible net assets of each Fund, or on a pro rata basis in proportion to the actual position size held by each Fund. Additional factors that Empyrean may take into account include, among others, the nature and size of the proportion of a securities issue likely to be available to Empyrean or the nature and size of the proposed sale; the investment objectives and restrictions on the Funds; the relative size and cash

availability of the applicable strategy within a Fund; the ability to borrow and the cost of borrowed funds; tax consequences; legal restrictions, including those that may arise in foreign jurisdictions; the liquidity of the investment relative to the need of each Fund; the degree of specialization of a Fund relative to the investment offered; the relative historical participation of a Fund in the investment; the difficulty of liquidating an investment for more than one Fund; the possibility that an allocation may result in a small or odd lot; new funds with a substantial amount of investable cash; and other factors consider relevant.

If Empyrean determines that the purchase or sale of the same security is in the best interest of more than one Funds, Empyrean may, but is not obligated to, aggregate orders in order to reduce transaction costs to the extent permitted by applicable law. When an aggregated order is filled through multiple trades at different prices on the same day, each participating Fund will receive the average price with transaction costs allocated pro rata based on the size of each Fund's participation in the order (or allocation in the event of a partial fill) as determined by Empyrean. In the event of a partial fill, allocations generally will be made pro rata based on the initial order, but may be modified on a basis that Empyrean deems to be appropriate, including, for example, in order to avoid odd lots or de minimis allocations.

## ITEM 12 BROKERAGE PRACTICES

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

In selecting an appropriate broker-dealer to effect a Client trade, Empyrean seeks to obtain best execution, taking into consideration the price of a security offered by the broker-dealer, as well as a broker-dealer's full range and quality of their services including, among other things, their facilities, capital introduction services, reliability and financial responsibility, execution capability, commission rates, responsiveness to Empyrean, brokerage and research services provided to Empyrean (e.g., research ideas, analysis, and investment strategies), special execution and block positioning capabilities, clearance, and settlement and custodial services. If Empyrean decides, based on the factors set forth above, to execute over-the-counter ("OTC") transactions on an agency basis through Electronic Communications Networks ("ECNs"), it will also consider the following factors when choosing to use one ECN over another: the ease of use, the flexibility of the ECN compared to other ECNs, and the level of care and attention that will be given to smaller orders. Empyrean maintains policies and procedures to review the quality of executions, including periodic reviews by its investment professionals.

Accordingly, commission rates (or dealer markups and markdowns) charged to the Funds by brokers and dealers may be higher than those charged by other brokers and dealers who may not offer the same services. Empyrean has no obligations to seek the lowest commission costs on spreads. Empyrean maintains policies to review the quality of execution, including periodic reviews by its investment professionals.

#### 1. Research and Other Soft Dollar Benefits:

From time to time, Empyrean may pay a broker-dealer commissions (or markups or markdowns with respect to certain types of riskless principal transaction) for effecting the Domestic Fund and the Master Fund transactions in excess of that which another broker-dealer might have charged for effecting the transaction in recognition of the value of the brokerage and research services provided by the broker-dealer. Empyrean may have an incentive to select a broker-dealer based on its interest in receiving brokerage and research services from that broker-dealer. Empyrean will effect such transactions, and receive such brokerage and research services, only to the extent that they fall within the safe harbor provided by Section 28(e) of the Securities Exchange Act of 1934, as amended. Empyrean benefits from such transactions as it receives valuable brokerage and research services that it would otherwise have to pay for. Empyrean believes it is important to its investment decision-making processes to have access to the independent research provided by broker-dealers in this manner.

In the last year, research services provided by broker-dealers has included information on the economy, industries, groups of securities, individual companies, statistical information, accounting and tax law interpretations, political developments, legal developments affecting portfolio securities, technical market action, pricing and appraisal services, credit analysis, risk measurement analysis, performance analysis, and analysis of corporate responsibility issues. Such research services are received primarily in the form of

written reports, telephone contacts, and personal meetings with security analysts. In addition, such research services may be provided in the form of access to various computer-generated data, computer hardware and software, and meetings arranged with corporate and industry spokespersons, economists, academicians, and government representatives. In some cases, research services are generated by third parties but are provided to Empyrean by or through broker-dealers.

Also, consistent with Section 28(e), research products or services obtained with "soft dollars" generated by one or more funds may be used by Empyrean to service one or more other Clients. Empyrean does not seek to allocate soft dollar benefits to Client accounts in proportion to the soft dollar credits the Client accounts generate. Where a product or service obtained with soft dollars provides both research and non-research assistance to Empyrean (i.e., a "mixed use" item), Empyrean will make a good faith allocation of the cost which may be paid for with soft dollars. In making good faith allocations of costs between administrative benefits and research and brokerage services, a conflict of interest may exist by reason of Empyrean's allocation of the costs of such benefits and services between those that primarily benefit Empyrean and those that primarily benefit the Funds.

At least annually, Empyrean considers the amount and nature of research and research services provided by broker-dealers, as well as the extent to which such services are relied upon, and attempts to allocate a portion of the brokerage business of its Clients on the basis of that consideration. Broker-dealers sometimes suggest a level of business they would like to receive in return for the various products and services they provide. Actual brokerage business received by any broker-dealer may be less than the suggested allocation, but can (and often does) exceed the suggested level, because total brokerage is allocated on the basis of all of the considerations described above. In no case will Empyrean make binding commitments as to the level of brokerage commissions it will allocate to a broker-dealer, nor will it commit to pay cash if any informal targets are not met. A broker-dealer is not excluded from receiving business because it has not been identified as providing research products or services.

## 2. Brokerage for Client Referrals

Neither Empyrean nor any related person receives client referrals from any broker-dealer or third party. However, as discussed above, subject to best execution, Empyrean may consider, among other things, capital introduction and marketing assistance with respect to investors in the Funds in selecting or recommending broker-dealers for the Funds.

Empyrean has entered into agreements on behalf of the Domestic Fund and the Master Fund with certain brokers-dealers that act as prime brokers on behalf of the Domestic Fund and the Master Fund. From time to time, Empyrean's personnel may speak at conferences and programs for potential investors interested in investing in hedge funds which are sponsored by those prime brokers. These conferences and programs may be a means by which Empyrean can be introduced to potential investors. Currently, neither Empyrean, the Domestic Fund nor the Master Fund compensate prime brokers for organizing such "capital introduction" events or for any investments ultimately made by prospective investors attending such events (although either may do so in the future). While such events and other services provided by a prime broker may influence Empyrean in deciding whether to use such

prime broker in connection with brokerage, financing and other activities of the Domestic Fund and the Master Fund, Empyrean will not commit to allocate a particular amount of brokerage to a broker-dealer in any such situation.

3. Directed Brokerage

Empyrean does not recommend, request or require that a client direct the Empyrean to execute transactions through a specified broker-dealer.

B. Order Aggregation

In managing the Funds' portfolios, Empyrean will generally aggregate trades, subject to best execution. Aggregation, or "bunching," describes a procedure whereby an investment adviser combines the orders of two or more clients into a single order for the purpose of obtaining better prices and lower execution costs. Aggregation opportunities for Empyrean generally arise when more than one Fund is capable of purchasing or selling a particular security based on investment objectives, available cash and other factors. Empyrean is not required to aggregate trades, but it must disclose its policies and procedures, including, if applicable, the consequences of not aggregating trades. Empyrean may aggregate client orders when doing so will result in a better overall price for Fund trades.

Empyrean will determine the proper allocation of aggregated trades based on each Fund's net assets. If the aggregated order is filled to its entirety, it will be allotted among the Funds in accordance with such ratios. In addition, when Empyrean encounters investment opportunities which are appropriate for more than one Fund or when an aggregated order is only partially filled, Empyrean will allocate the investment opportunity or a partially filled order will be allocated pro rata in proportion to the size of the order placed for each Fund to the extent practicable.

**ITEM 13**  
**REVIEW OF ACCOUNTS**

A. Frequency and Nature of Review of Client Accounts or Financial Plans

Empyrean performs various daily, weekly, monthly, quarterly and periodic reviews of each Client's portfolios. Such reviews are conducted by Empyrean's Chief Investment Officer, Portfolio Managers, and research analysts.

B. Factors Prompting Review of Client Accounts Other than a Periodic Review

A review of a Client account may also be triggered by any unusual activity or special circumstances.

C. Content and Frequency of Account Reports to Clients

Investors in the Domestic Fund, the Offshore Fund and the ERISA Fund receive quarterly reports from Empyrean documenting the performance of their Fund, along with a commentary by Empyrean, although Empyrean may provide certain investors with information on a more frequent and detailed basis if agreed to by Empyrean. In addition, Empyrean issues investors tax reports and audited financial statements concerning their respective Funds within 90 days of the end of the Fund's fiscal year or as soon thereafter as is reasonably possible.

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

Empyrean does not receive economic benefits from non-Clients for providing investment advice and other advisory services. Neither Empyrean nor any related person directly or indirectly compensates any person who is not a supervised person, including placement agents, for Client referrals.



## **ITEM 15 CUSTODY**

Empyrean is deemed to have custody of Client funds and securities because it has the authority to obtain Client funds or securities, for example, by deducting advisory fees from a Client's account or otherwise withdrawing funds from a Client's account. Account statements related to the Clients are sent by qualified custodians to Empyrean.

Empyrean is subject to Rule 206(4)-2 under the Advisers Act (the "Custody Rule"). However, it is not required to comply (or is deemed to have complied) with certain requirements of the Custody Rule with respect to each Fund because it complies with the provisions of the so-called "Pooled Vehicle Annual Audit Exception", which, among other things, requires that each Fund be subject to audit at least annually by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and requires that each Fund distribute its audited financial statements to all investors within 90 days of the end of its fiscal year or as soon thereafter as is reasonably possible.

**ITEM 16**  
**INVESTMENT DISCRETION**

Empyrean serves as the investment adviser with discretionary trading authority to each Fund.

Empyrean's investment decisions and advice with respect to each Fund are subject to each Fund's investment objectives and guidelines, as set forth in its offering documents.

Empyrean entered into an investment management agreement, or similar agreement, with each Fund, pursuant to which Empyrean or an affiliate of Empyrean was granted discretionary trading authority.

## **ITEM 17**

### **VOTING CLIENT SECURITIES**

#### Policies and Procedures Relating to Voting Client Securities

The Securities and Exchange Commission adopted Rule 206(4)-6 under the Investment Advisers Act of 1940, as amended, which requires registered investment advisers that exercise voting authority over Client securities to implement proxy voting policies. In compliance with such rules, Empyrean has adopted proxy voting policies and procedures (the "Policies"). The general policy is to vote proxy proposals, amendments, consents or resolutions relating to Client securities, including interests in private investment funds, if any (collectively, "proxies"), in a manner that serves the best interests of the Funds, as determined by Empyrean in its discretion, taking into account the following factors: (i) the impact on the value of the investments; (ii) the anticipated associated costs and benefits; (iii) the continued or increased availability of portfolio information; and (iv) industry and business practices. In limited circumstances, Empyrean may refrain from voting proxies where it believes that voting would be inappropriate taking into consideration the cost of voting the proxy and the anticipated benefit to the Funds. Conflicts of interest may arise between the Clients' interests and Empyrean's interests. If Empyrean determines it may have a conflict when voting proxies, Empyrean will vote in accordance with its Policies. A copy of the Policies and the proxy voting record relating to a Client may be obtained by contacting Empyrean.

**ITEM 18**  
**FINANCIAL INFORMATION**

Empyrean is not required to include a balance sheet for its most recent fiscal year, is not aware of any financial condition reasonably likely to impair its ability to meet contractual commitments to Clients, and has not been the subject of a bankruptcy petition at any time during the past ten years.