

# Mistral Capital Management, LLC

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This brochure provides information about the qualifications and business practices of Mistral Capital Management, LLC. If you have any questions about the content of this brochure, please contact William Phoenix, our chief compliance officer (“**CCO**”) at (212) 616-9610 or by e-mail at [wphoenix@mistralequity.com](mailto:wphoenix@mistralequity.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.

Registration of an investment adviser does not imply that Mistral or any of our principals or employees possesses a particular level of skill or training in the investment advisory business or any other business.

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

**Item 2: Material Changes**

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Because this is our first brochure, we have no material changes in prior filings to report.

**Item 3: Table of Contents**

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#### Item 4: Advisory Business

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Founded in 2007, Mistral Capital Management, LLC ("**Mistral**," "**we**," "**us**," "**our**," or the "**Firm**"), is a Delaware limited liability company that provides discretionary investment advisory services and management services to the following private equity pooled investment vehicles:

- Mistral Equity Partners, LP (Delaware)
- Mistral Equity Partner QP, LP (Delaware)
- MEP Co-Invest, LLC (Delaware)

(collectively, the "**Funds**" or "**Clients**"). In managing the Funds, we make privately-negotiated, structured investments in consumer products and services, retailing and advertising, telecommunications and other consumer-focused businesses.

The limited partners in the Funds are the "**Investors**." Mistral Equity GP, LLC is the "**General Partner**" of Mistral Equity Partners, LP and Mistral Equity Partners QP, LP. Andrew Heyer is the "**Managing Member**" of Mistral, the General Partner, and MEP Co-Invest, LLC. JP Morgan Worldwide Securities Services is the "**Fund Administrator**."

The Funds are managed in accordance with each Fund's investment objectives, strategies, restrictions and guidelines. Each Fund is managed only in accordance with its own characteristics. Information about each Fund can be found in its offering documents, including each Fund's confidential private placement memorandum (the "**CPPM**").

As of December 31, 2011, the Firm's regulatory assets under management were approximately US\$257,700,000.

#### Item 5: Fees and Compensation

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We are generally compensated for our advisory services to the Funds based on a percentage of assets under management and performance-based amounts.

##### **Management Fee**

Until the commitment period for a Fund has terminated, a Fund generally pays us an annual advisory fee ("**Management Fee**") equal to 2.0% of the total capital commitments (regardless of whether such capital has been invested) of the Investors in the applicable Fund. Following the end of the commitment period of a Fund, the Management Fee of such Fund is equal to 2.0% of the net invested capital of the Investors in the applicable Fund.

We may waive or reduce the Management Fee as to all or any of the Investors in a Fund or agree with an investor to waive or alter the Management Fee as to that investor. The Management Fee charged by certain of the Funds may be reduced by all or a portion of any origination, transaction, break-up or similar fees that we may receive as described in the CPPM of the applicable Fund.

There can be no assurance as to when capital will be invested or that the entire capital commitment of an investor will be invested by each Fund.

**Carried Interest**

For certain of the Funds that we advise we are also apportioned carried interest distributions from such Funds (“**Carried Interest**”) based on the net cash proceeds attributable to the Fund’s investments. In our discretion, we may waive or reduce the Carried Interest as to all or any of the Investors in a Fund or agree with an investor to waive or alter the Carried Interest as to that investor.

The Carried Interest can vary for each Fund but is typically 20.0% of the profits earned by a Fund. Investors and prospective investors should refer to each Fund’s CPPM for additional or supplementary information regarding the Funds as well as the fees paid by each Fund.

Lower fees for comparable services may be available from other sources. The expenses of a Fund, including the Management Fee and Carried Interest, may constitute a higher percentage of average net assets than would be found in other investment vehicles not managed by Mistral.

**Payment Method**

Generally, the Management Fee is payable semi-annually in advance from drawdowns of the Investors’ unfunded capital commitments, provided that, to the extent of subsequent distributions, such amounts will be added back to unfunded Capital Commitments and may be recalled by the Fund. The Management Fee is pro-rated for any period that is less than six months.

The Carried Interest for each Fund generally is paid out as a distribution of the net cash proceeds attributable to dispositions of portfolio investments of the Fund. Upon termination of a Fund, the General Partner will be required to return to the Fund distributions of Carried Interest previously received to the extent that they exceed the amounts that should have been distributed to the General Partner as Carried Interest pursuant to “Distributions” above applied on an aggregate basis covering all transactions of the Fund.

**Expenses***Organizational Expenses*

Subject to any expense limitations that may be described in the CPPM a particular Fund, each Fund will bear all legal and other expenses incurred in the formation of the Fund and the offering of Interests in the Fund (other than any placement fees). Organizational expenses in excess of this amount, and any placement fees, will be paid by the Fund but borne by the Firm through a 100% offset against the Management Fee.

*Operating Expenses*

We will bear the ordinary day-to-day expenses incidental to the operation of a Fund. The Funds will bear all out-of-pocket expenses, such as travel, fees and expenses of lenders, investors, consultants, attorneys, accountants, administrators, advisors and other related expenses associated with the sourcing and investigating of all transactions whether or not consummated, monitoring portfolio investments, ongoing administration of portfolio investments and fees and expenses of the Fund’s Management Board (as defined below). In a completed transaction, the portfolio company will generally (but not necessarily) be responsible for the fees and expenses of its lenders, investors, consultants, attorneys,

accountants and advisors and other costs associated with consummating the transaction, including out-of-pocket travel expenses.

The Funds will bear such day-to-day expenses as taxes, fees of auditors, accountants, administrators and counsel, expenses of the Advisory Committee, expenses of annual meetings, insurance, and litigation, and, subject to the approval of the Advisory Committee, any extraordinary expense.

#### *Sales Compensation*

We will not receive sales commissions in connection with sales of interests in the Funds.

### **Item 6: Performance-Based Fees and Side-By-Side Management**

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As described above, we receive performance-based compensation in the form of Carried Interest distributions from certain of the Funds that we manage. For a discussion of our Carried Interest and performance-based compensation received from the Funds, please refer to Item 5 above. Compensation based on performance will only be charged in accordance with the provisions of Rule 205-3 under the Investment Advisers Act of 1940, as amended (“**Advisers Act**”).

Performance-based compensation may create an incentive for Mistral to make investments that are riskier than it would otherwise make.

In the event that some Funds charge higher performance-based compensation than others, a conflict may arise. In such a situation, we may have an incentive to treat some Funds preferentially as compared to others because those Funds pay higher performance-based compensation.

We have adopted a policy to allocate portfolio transactions and investment opportunities across multiple Funds on a fair and equitable basis over time. In an attempt to mitigate conflicts of interest, any investment opportunity that is suitable for more than one Fund may be allocated among the Funds as we reasonably determine in good faith based on various factors, including the Fund’s investment strategy, available capital, and investment restrictions and guidelines.

### **Item 7: Types of Clients**

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We deem the Funds to be our clients. Investors in the Funds may include a variety of institutional investors and high net worth individuals satisfying the exceptions and exemptions under which each Fund operates. We require prospective investors to make representations concerning their financial sophistication and ability to bear the risk of loss of their entire investment.

The minimum initial investment in a Fund is generally \$500,000; however, lesser amounts may be accepted in our sole discretion. In our sole discretion, we may accept capital contributions from new and existing investors at any time. Generally, the limited partnership agreement has restrictions on raising successor funds until existing funds are sufficiently invested. Our Investors must be “accredited investors” under Regulation D of the Securities Act of 1933 (the “**Securities Act**”), as amended, be able to enter into a performance fee arrangement under the Advisers Act (i.e., qualified clients under Rule 205-3 of the Advisers Act) and, for certain Funds, be “qualified purchasers” under Section

2(a)(51)(A) of the Investment Company Act of 1940, as amended. We require our Fund Investors to make representations concerning their financial sophistication and ability to bear the risk of their entire investment in a Fund.

## **Item 8: Methods of Analysis, Investment Strategies and Risk of Loss**

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### **Methods of Analysis and Investment Strategies**

We are a private investment advisory firm focused exclusively on investing capital utilizing the industry expertise of a number of seasoned industry executives, all of whom will both advise the Fund and be significant limited partners (the “**Management Board**”). The members of our Management Board together possess a wide range of experience and contacts in industries related to the investment objectives of the Funds including, among others, consumer products, services, retailing, and advertising. The Management Board members are not investment professionals and are not employees or otherwise affiliated with the Firm.

We will seek to generate long-term capital appreciation by investing in equity securities, or other securities providing equity-like returns, in companies benefiting from a wide range of demographic trends. Our senior investment professionals have a long and substantial history of identifying investment opportunities that are enhanced by dramatic changes in consumer demand caused by demographic and consumer psychographic changes. [Our resources and abilities are complemented by our strategic partnership with a member of the Schottenstein Family of Companies (the “**Strategic Partner**”), a leading owner and operator of retail, financial services and real estate companies.]

#### *Research-Based Focus*

The Fund’s investment thesis is based on the powerful economic impact of changing demographic trends within the population and the fundamental changes in consumer preferences that affect demand for consumer products, services and media. Our investment professionals have a long and substantial history of identifying investment opportunities that are enhanced by dramatic changes in consumer demand caused by demographic change. In the past, these changes have included such broad themes as the growth, geographic dispersion and assimilation of the Hispanic population, the aging of the baby boomer generation, and the segmentation of the female shopper through niche targeting of specific retailing and restaurant concepts. Similarly, consumer psychographics (lifestyle concerns that affect spending patterns) provide substantial momentum to easily identifiable investment opportunities. In the past, this has led to successful investments in natural and organic food manufacturing, and specialty media reflective of the changing manner in which consumers are exposed to advertising. In all of these cases, empirical data was readily available that showed the substantial momentum each of these opportunities would enjoy over the ensuing years. Also, in each case through networking and primary research a number of entry points or investment opportunities were evaluated and considered prior to the ultimate decision to invest. It is our view that the benefit of demographic momentum and an understanding of consumer trends substantially mitigate the risks inherent in growth investing.

#### *Opportunity Flow*

We will seek to identify companies with unique market positions and secular growth opportunities. A key component to the success of this strategy is to identify situations, or “entry points” for capitalizing on the particular target opportunity. In this regard, we believe that our network of relationships with companies, entrepreneurs and managers provides us

with a distinct competitive advantage. Beyond our own continuous “flow” of situations, we expect that the Management Board members will direct investment opportunities to the Fund based on their own relationships, industry contacts or knowledge of companies that, while they are compelling opportunities, are inappropriate for their existing company or are too large to pursue as individuals. We believe that the Management Board will have an incentive to present investment opportunities to the Funds given the Management Board members’ significant equity participation through both the General Partner and the Funds.

#### *Selecting the Best Companies From Among Opportunities*

We will seek to acquire companies in our targeted sectors that are proven and successful, not start-ups or unproven concepts. However, it has been our experience that many companies offer the opportunity for rapid and substantial value enhancement through the modest modification of their plan. Mr. Heyer historically has been successful in targeting companies with leading market shares, rapid growth, high free cash flows, high operating margins, and high barriers to entry.

Mistral’s targeted investment philosophy is based on the following principles:

- Through a focused emphasis on researching, analyzing, monitoring and anticipating changes in demographics and consumer preferences, our Funds target consumer-related businesses with significant growth opportunities that show resilience to adverse changes in economic conditions. We constantly survey and monitor shifts in demographics, spending patterns and lifestyle trends to seek out compelling investment opportunities.
- Through a combination of 25 years of experience, industry prominence and focused research, we expect that most of our Funds’ investments will be completed through negotiated, non-auction opportunities. This will afford us enhanced access, better due diligence information and occasionally better pricing than would otherwise be the case.
- Our investment professionals are highly experienced in the financial markets, which will provide our Funds with optimally designed investment structures, as well as reasoned and timely exits.

Our Funds will generate their returns through buying growth at a reasonable price, assisting portfolio company management in accomplishing that growth, and then executing the timely exit from their investments. The Funds generally will seek to invest in leveraged acquisitions, build-ups, recapitalizations, restructurings, and pre-IPO growth financings. The Fund expects to invest primarily in North American companies with enterprise values between \$50 million and \$200 million. A typical investment is expected to be between \$10 million and \$40 million per transaction.

#### **Risk of Loss Factors**

Investing in securities involves risk of loss that investors should be prepared to bear. Investors should consider the following factors before investing in any of our Funds. The following list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in a Fund. Prospective investors are urged to consult their professional advisers and review the legal documents for the particular Fund before deciding to invest in one of our Funds.



*Dependence on Key Personnel*

The success of our Funds depends in substantial part on the skill and expertise of the Managing Member and our other investment professionals. There can be no assurance that the Managing Member or our other employees will continue to be employed by the Firm throughout the life of a Fund. The loss of key personnel could have a material adverse effect on a Fund.

*Illiquidity of Investments*

An investment in one of our Funds requires a long-term commitment, with no certainty of return. There most likely will be little or no near-term cash flow available to the Limited Partners. Many of our Funds' investments will be highly illiquid, and there can be no assurance that a Fund will be able to realize on such investments in a timely manner. Consequently, dispositions of such investments could require a lengthy time period or could result in distributions in kind to the Limited Partners. Additionally, a Fund typically will acquire securities that cannot be sold except pursuant to a registration statement filed under the Securities Act or in a private placement or other transaction exempt from registration under the Securities Act and that complies with any applicable state and non-U.S. securities laws.

*Nature of Investments*

The securities in which our Funds will invest generally will be the most junior in what typically will be a complex capital structure, and thus subject to the greatest risk of loss. Certain of the Fund's investments may be in businesses with little or no operating history. Certain of the Fund's investments may be in businesses with high levels of debt or may be investments in leveraged buyouts; leveraged buyouts by their nature require companies to undertake a high ratio of fixed charges to available income. Leveraged investments are inherently more sensitive to declines in revenues and to increases in expenses. Since the Fund may only make a limited number of investments, and since the Fund's investments generally will involve a high degree of risk, poor performance by a few of the investments could materially impact the total returns to our Investors.

*Operating and Financial Risks of Portfolio Companies*

Companies in which our Funds invest could deteriorate as a result of, among other factors, an adverse development in their business, a change in the competitive environment, or an economic down-turn. As a result, companies which the Fund expected to be stable may operate, or expect to operate, at a loss or have significant variations in operating results, may require substantial additional capital to support their operations or to maintain their competitive position, or may otherwise have a weak financial condition or be experiencing financial distress.

*Unspecified Investments*

Investors in our funds must rely upon our ability to identify, structure and implement investments consistent with a Fund's investment objectives and policies. We may be unable to find a sufficient number of attractive opportunities to meet a Fund's investment objectives. The success of our Funds will depend on the ability of the General Partner to identify suitable investments, to negotiate and arrange the closing of appropriate transactions and to arrange the timely disposition of portfolio investments.

*Leverage*

The use of leverage magnifies both the favorable and unfavorable effects on equity values of companies in which our Funds will invest. Most of the companies in which our Funds will invest are likely to have or will acquire highly leveraged capital structures. The highly leveraged capital structures of such companies will increase the exposure of these companies to adverse economic factors such as rising interest rates, reduced cash flows, fluctuations in exchange rates, inflation, downturns in the economy or deterioration in the condition of the company or its industry.

**Item 9: Disciplinary Information**

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We have not been subject to any disciplinary action, whether criminal, civil or administrative (including regulatory) in any jurisdiction. Likewise, no persons involved in the management of the Firm have been subject to such action.

**Item 10: Other Financial Industry Activities and Affiliations**

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The General Partner is a related person of Mistral's.

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

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***Participation or Interest in Client Transactions***

Mistral or its related persons may engage in securities transactions with certain Fund Investors or may recommend investments in portfolio companies in which the Firm or a related person has a beneficial or financial interest. Such transactions may include co-investment opportunities in portfolio companies which are offered to some but not all Fund Investors, and/or our advisory personnel or employees. Key personnel of the Firm generally will also be invested directly or indirectly in the Funds offered to outside investors, subject to applicable law, and the performance-based compensation and/or management fees payable by such vehicle may be separately negotiated by us. In addition, our assets may be invested in securities of portfolio companies in which one or more other Funds hold positions.

Any investment opportunity that is suitable for more than one Fund may be allocated among the Funds as we reasonably determine in good faith based on various factors, including the Fund's investment strategy, available capital, and investment restrictions and guidelines. Mistral employees generally are not permitted to co-invest in Fund portfolio investments, and may only participate in portfolio investments through the Fund or through employee co-investment vehicles that invest in parallel in each portfolio investment of the Fund.

We will disclose these potential conflicts of interest to Investors and prospective investors in the CPPM of each Fund. These materials are delivered to prospective investors prior to their investment and such prospective investors are given the opportunity to ask questions and seek answers regarding, among other things, potential conflicts involving the Firm, its affiliates, or the executive officers of the foregoing. We have instituted procedures designed to ensure that any affiliated transactions are at arms' length. For instance, in cases of principal transactions involving a Fund and Mistral or a related person, approval by the

investment advisory committee or Investors, as set forth in the Fund's CPPM, may be required as a condition to such a transaction.

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

Mistral has adopted a Code of Ethics (the "**Code**") pursuant to Rule 204A-1 of the Advisers Act describing our high standard of business conduct and fiduciary duty to our Clients and an "**Employee Investment Policy**" for all of our employees. Our Code includes policies and procedures addressing our employee's: (i) receipt and provision of gifts and entertainment; (ii) political contributions; and (iii) outside business activities including, in each case, limitations and reporting requirements. All of our employees must acknowledge the terms of the Code and the Employee Investment Policy annually, or as amended. We will provide a copy of our Code and Employee Investment Policy to any Client or prospective client upon request.

### ***Personal Trading***

In order to ensure that personal trades by our employees are executed in a manner consistent with our fiduciary obligations to our Clients, we implemented our written Employee Investment Policy that establishes various procedures with respect to securities transactions in accounts in which any employee has any beneficial interest or exercises effective influence or control (including accounts held by immediate family members sharing the same household, as well as accounts over which an employee influences or controls investment decisions (a "**Covered Account**"). We maintain of a list of sensitive securities for our use when conducting reviews of an employee's securities transactions (the "**Restricted List**"). Covered Accounts are prohibited from trading a security on which an employee trading prohibition has been posted on the Restricted List. Covered Accounts also are prohibited from acquiring securities in an IPO. In addition, Covered Accounts must obtain pre-approval from the CCO before engaging in any outside business activities or private placements.

All employees must direct their brokers to send duplicate copies of trade confirmations and brokerage statements to the CCO. These records are used to monitor compliance with the foregoing policies. This policy does not apply to money market funds, certificates of deposit or open-ended mutual funds.

### ***Insider Trading Policies and Procedures***

We maintain insider trading policies and procedures that are designed to prevent the misuse of material, non-public information. Our insider trading policy is contained in our written Supervisory Procedures and Compliance Manual ("**Compliance Manual**"). Among other things, such policies and procedures include restricting trading in securities in which employees may possess non-public information and monitoring and reviewing trading for the account of the Firm and our employees. On a periodic basis, our employees are required to certify to their compliance with our Compliance Manual, including our insider trading policies.

### ***Privacy Policy***

We are committed to maintaining the confidentiality, integrity and security of our Investor's and prospective investor's personal information. It is our policy to collect only information necessary or relevant to our management business and use only legitimate means to collect such information. We do not disclose any non-public personal information about our Investors or former Investors to anyone except for servicing and processing transactions

and as required by law. We restrict access to non-public personal information about our Investors to those employees with a legitimate business need for the information. We maintain security practices including physical, electronic, and procedural safeguards in order to guard our Investor's and prospective investor's non-public personal information.

Upon request, we will provide Investors and prospective clients and investors with a copy of our privacy policy.

## **Item 12: Brokerage Practices**

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As an adviser to private equity funds, we do not generally make investments in securities listed on national exchanges. While we primarily make investments directly with private issuers, there may be situations where we place a trade(s) through a broker, particularly if there has been a liquidity event in a portfolio holding. In such circumstances, we will seek "best execution" in light of the circumstances involved in transactions. In selecting a broker for any transaction, we may consider a number of factors, including, for example, broker's reputation, net price or spread, reputation, financial strength and stability, market access, efficiency of execution and error resolution, and the size of the transaction. We will not be obligated to obtain the lowest commission or best net price for a client on any particular transaction.

We will monitor transaction results as orders are executed to evaluate the quality of execution provided by the various brokers and dealers that we use in order to determine that commission rates are competitive and otherwise to evaluate the reasonableness of the commission rates paid to those brokers and dealers in light of all the factors described above. We do not have any formal or informal soft dollar arrangements nor do we receive any soft dollar benefits from any broker, dealer or other counterparty. Additionally, we do not permit clients to direct brokerage to any particular broker.

## **Item 13: Review of Accounts**

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### *Review of Accounts*

We review the Fund's portfolios on a continual basis. We utilize a defined periodic portfolio monitoring system that entails monthly, quarterly and annual reviews of financial and operational performance, emerging risks and opportunities, key sector developments and budget and strategic plan expectations. In addition, other than the periodic reviews described above, a review of the Funds may be triggered by any significant unexpected event, which may include market or liquidity events.

### *Client Reports*

In addition to receiving periodic reports from Mistral, such as quarterly unaudited financial statements, each investor will receive the Fund's audited financial statements within 120 days of such Fund's fiscal year end.

**Item 14: Client Referrals and Other Compensation**

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*Compensation by Non-Clients*

The General Partner and its affiliates may receive certain fees from portfolio companies in connection with the purchase, monitoring or disposition of investments or in connection with unconsummated transactions (e.g., transaction, directors', consulting, management, investment banking, advisory, closing, topping, break-up and other similar fees). A portion of these amounts, net of related expenses, will be credited against the management fees payable to us by a particular Fund.

*Compensation for Client Referrals*

This item is not applicable.

**Item 15: Custody**

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We do not provide custodial services to the Funds or our Investors. In addition, we will not maintain physical possession or custody of the funds or securities of any Fund. The Funds and investor assets are held with broker-dealers or banks that are deemed "qualified custodians" which are selected by the Firm.

Because we have access to the Funds' cash or securities as part of our normal investment and operating functions, we are deemed to have custody under the Advisers Act. To ensure compliance with Rule 206(4)-2 under the Advisers Act, we will be required to provide all Investors with audited financial statements for the Fund they are invested in within 120 days of such Fund's fiscal year end. In addition, the audited financial statements must be prepared by an independent accounting firm that is registered with and subject to review by the Public Company Account Oversight Board, in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"). Investors and prospective investors should carefully review the audited financial statements of the Funds.

**Item 16: Investment Discretion**

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Subject to any investment restrictions set forth in the CPPM of a Fund, we have discretionary authority to make the following determinations without obtaining the consent of any Fund or Investor before the transactions are effected:

- the securities that are to be bought or sold;
- the total amount of the securities to be bought or sold;
- the brokers, investment banks or placement agents through which securities are to be bought or sold; and
- the commissions, fees or other rates at which securities transactions for a Fund or Account are effected.

Our discretionary authority is derived from our authority as the investment manager of each Fund and pursuant to an investment management agreement entered into by Mistral and the Fund.

**Item 17: Voting Client Securities**

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***Proxy Voting***

Although infrequent, when necessary we will vote proxies/corporate actions of companies in which the Funds invest in. The proxies/corporate actions are reviewed and analyzed by the Portfolio Managers. Prior to voting, we will make a determination, in our opinion, as to what vote is in the best interest of the Funds. We will maintain a written record of the proxy/corporate action vote on each occasion that a vote is required.

Upon request, we will provide our Clients with a copy of our proxy voting policies and procedures and/or a record of all proxy votes cast by the Funds.

**Item 18: Financial Information**

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We require prepayment of more than \$1,200 in fees per client six months in advance and are therefore required to include with this filing a copy of our balance sheet for our most recent fiscal year prepared in accordance with GAAP, audited by an independent public accountant, and accompanied by a note stating the principles used to prepare it, the basis of securities included, and any other explanations required for clarity. Our audited balance sheet for our most recent fiscal has not yet been received. Upon receipt of our audited balance sheet, we will promptly file an amendment to our Form ADV to comply with this requirement.

We are not aware of any financial condition that is reasonably likely to impair our ability to meet our contractual obligations to our clients.