

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

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This brochure provides information about the qualifications and business practices of Green & Smith Investment Management L.L.C. If you have any questions about the contents of this brochure, please contact us at (914) 741-5600 or [operations@mergerfund.com](mailto:operations@mergerfund.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority. Registration as an investment adviser does not imply a certain level of skill or training.

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

## **ITEM 2 – MATERIAL CHANGES**

Since the last update of our brochure dated January 30, 2012, we have (i) revised the discussion regarding G&S's allocation procedures to reflect amendments made to those procedures, (ii) revised the discussion of the methods of analysis, strategies and the risk of loss and (iii) made certain non-material changes.

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## **ITEM 4 - ADVISORY BUSINESS**

Green & Smith Investment Management L.L.C. (“G&S”), 100 Summit Lake Drive, Valhalla, New York 10595, an investment adviser since 1996, provides investment advice as the general partner of Hudson Valley Partners, L.P., a Delaware limited partnership (“HVP”), investment adviser to The Merger Fund Ltd., a Cayman Islands exempt company (“LTD”), and the manager of GS Master Trust, a Bermuda trust (the “Master Fund”), a master-feeder structure in which HVP and LTD act as feeders into the Master Fund (HVP, LTD and the Master Fund are collectively referred to as the “Funds”). The Funds engage in merger arbitrage. Merger arbitrage is an investment approach designed to profit from the successful completion of proposed mergers, takeovers, tender offers, leveraged buyouts, liquidations and other types of corporate reorganizations.

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

G&S tailors its advisory services to the specific investment objectives, policies and restrictions of each Fund set forth in the relevant offering circular, placing memorandum, limited partnership agreement, investment management agreement and other governing documents pertaining to each Fund (collectively, the “Fund Documents”). Investment advice is provided in respect of each Fund, and not individually to investors in the Funds. Each Fund is subject to the investment restrictions described, if applicable, in its Fund Documents.

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

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

As of December 31, 2012, G&S managed \$86,629,286 in client assets on a discretionary basis and did not manage any client assets on a non-discretionary basis.

## **ITEM 5 - FEES AND COMPENSATION**

G&S is the general partner of HVP pursuant to an Agreement of Limited Partnership of HVP, dated as of August 1, 2009, by and between G&S and HVP’s limited partners (the “Partnership Agreement”). The Partnership Agreement provides that HVP will pay to G&S a cash fee (the “Management Fee”), accrued and calculated monthly and payable in arrears as of the last day of each calendar quarter. Each such quarterly payment of the Management Fee shall be equal to the sum of the Management Fee calculated for each month in such calendar quarter,

which monthly calculation shall be equal to one-twelfth (1/12) of one percent (1.0%) of the net asset value of HVP calculated as set forth in the Fund Documents. In addition, G&S is entitled to an incentive allocation, which is an amount, allocated annually, equal to 20% of the net profits of HVP, if any, during each fiscal year (subject to recoupment of each applicable limited partner's prior cumulative net loss).

G&S is the investment adviser to LTD pursuant to an Investment Advisory Agreement, dated as of January 12, 1996, by and between G&S and LTD (the "Advisory Agreement"). The Advisory Agreement provides that G&S receives from LTD a management fee, which is payable quarterly in arrears and is accrued and calculated monthly (as of the last business day of each month) at an annual rate of 1.0% of the net asset value of LTD calculated as set forth in the Fund Documents. In addition, G&S is entitled to an incentive fee, which is an amount, accrued monthly and paid annually, equal to 20% of the net profits of LTD, if any, during each fiscal year (subject to recoupment of each applicable shareholder's prior cumulative net loss).

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

G&S's fees are generally negotiated and fixed at the time that each Fund is formed.

G&S deducts management fees from clients' assets quarterly in arrears in respect of both HVP and LTD, and receives an incentive allocation or fee directly from clients' assets annually, in respect of both HVP and LTD.

HVP, LTD and the Master Fund pay all other expenses related to their respective operations, including legal and accounting fees, custodial fees, interest on borrowed funds, transfer taxes, brokerage commissions, finder's fees with respect to borrowed securities, fees and expenses for consulting, research and statistical services and any extraordinary expenses such as litigation expenses. *See Item 12 - Brokerage Practices below.* As an investor in the Master Fund, each of HVP and LTD is also responsible for its pro rata share of the expenses of the Master Fund. There is no duplication of investment management fees, prime broker fees or administration fees as to the extent that such fees are charged at the Master Fund level they are not charged at the HVP or LTD level and to the extent that such fees are charged at the HVP or LTD level they are not charged at the Master Fund level.

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

As discussed above under Item 5 - Fees and Compensation, G&S charges performance-based allocations and fees. Specifically, G&S is entitled to an incentive allocation in respect of HVP and an incentive fee in respect of LTD, each of which is an amount, accrued monthly and paid annually, equal to a fixed percentage (set forth in the applicable Fund Documents) of the net

profits of the applicable Fund, if any, during each fiscal year (subject to recoupment of each applicable investor's prior cumulative net loss).

In addition, G&S's affiliate, WCM, charges Dunham a performance-based fulcrum fee composed of an annual base rate based on Dunham's average daily net assets, plus or minus a performance fee depending on WCM's performance over a rolling 12-month period measured against a designated benchmark. WCM charges the UCITS Fund a management fee and a performance-based fee. WCM may enter into other sub-advisory agreements from time-to-time.

The fact that G&S's portfolio managers manage both accounts that are charged performance-based compensation and accounts that are charged an asset-based fee (and may manage accounts subject to different levels of performance-based compensation) creates the potential for a conflict of interest, since receipt of a portion of any profits realized by G&S-advised and WCM-advised accounts could, in theory, create an incentive to favor such accounts (*e.g.*, by allocating to them the most favorable investment opportunities or by allocating more resources and time to managing such accounts). However, G&S believes that any conflicts of interest are mitigated, at least in part, for the following reasons: (i) The Merger Fund, The Merger Fund VL, Dunham, the UCITS Fund and the Funds all engage in merger arbitrage and are managed in a similar fashion; (ii) G&S and WCM follow written allocation procedures designed to allocate securities purchases and sales among The Merger Fund, The Merger Fund VL, Dunham, the UCITS Fund and the Funds in a fair and equitable manner over time; and (iii) all allocations and fair-value pricing reports are subject to review by G&S's and WCM's Chief Compliance Officer.

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

G&S provides investment advice to pooled investment vehicles. The minimum purchase price of a limited partnership interest in HVP is \$500,000. However, G&S reserves the right to accept a subscription of less than \$500,000. All investors in HVP must be "qualified purchasers" within the meaning of the Investment Company Act of 1940, as amended.

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

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

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

In pursuing their merger arbitrage strategy, the Funds may invest a substantial portion of their total assets in companies which are involved in publicly announced mergers, takeovers, tender offers, leveraged buyouts, spin-offs, liquidations and other corporate reorganizations. Merger arbitrage is an investment approach generally designed to profit from the successful completion of such transactions. Although a variety of strategies may be employed depending upon the nature of the reorganizations selected for investment, the most common merger-arbitrage activity involves purchasing the shares of an announced acquisition target at a discount to their expected value upon completion of the acquisition. The size of this discount, known as the arbitrage “spread,” generally determines a Fund’s potential profit on any given investment.

In conjunction with investment in an acquisition target or other investment, the Funds may employ a variety of hedging strategies to protect against issuer-related risk or other risks, including selling short the securities of the company that proposes to acquire the acquisition target and/or the purchase and sale of put and call options. The Funds may enter into derivative transactions and other instruments of any kind for hedging purposes, duration or volatility management purposes, or otherwise to gain, or reduce, long or short exposure to one or more asset classes or issuers. For example, G&S may seek to hedge a Fund’s portfolio against a decline in the value of its portfolio securities or a decline in the market generally by purchasing put options.

In pursuing the Fund’s investment objective and strategies, the Funds may invest in U.S. and foreign securities without limit. The Funds may engage in active trading and may invest a portion of their assets to seek short-term capital appreciation

Investing in securities involves risk of loss that clients should be prepared to bear. Many factors may affect the Funds’ net asset value and/or performance, including the following:

A principal risk associated with the Funds’ merger-arbitrage investment strategy is that certain of the proposed reorganizations in which a Fund invests may be renegotiated or terminated, in which case losses may be realized. If G&S determines that a proposed acquisition or other corporate reorganization is likely to be consummated, the Funds may purchase the target company’s securities at prices often only slightly below the value expected to be paid or exchanged for such securities upon completion of the reorganization (and often substantially above the prices at which such securities traded immediately prior to the announcement of the proposed transaction). If the reorganization appears unlikely to be consummated or in fact is not consummated or is delayed, the market price of the target’s securities may decline sharply. Similarly, if the Funds have sold short the acquirer’s securities in anticipation of covering the short position by delivery of identical securities received in the exchange, the failure of the transaction to be consummated may force the Funds to cover their short positions in the open market at a price higher than that at which it sold short, with a resulting loss. In addition, if the Funds purchase the target’s securities at prices above the offer price because G&S determines that the offer is likely to be increased or a different and higher offer made, such purchases may be subject to a greater degree of risk.

If, in a transaction in which the Funds have sold the target's securities short (often at prices significantly below the announced offer price for such securities) based on a determination that the transaction is unlikely to be consummated, and the transaction, in fact, is consummated at the announced price or higher, the Funds may suffer substantial losses if it is forced to cover the short position in the open market at a higher price. In addition, there can be no assurance that securities necessary to cover a short position will be available for purchase or that securities will be available to be borrowed at reasonable costs.

In the past, the SEC has adopted interim rules requiring reporting of all short positions above a certain *de minimis* threshold and has adopted rules requiring monthly public disclosure. In addition, other jurisdictions in which G&S may trade have adopted reporting rules for short sales and short positions. If a Fund's short positions or its strategy become generally known, it could have a significant effect on G&S's ability to implement its investment strategies for such Fund. In particular, it would make it more likely that other investors could cause a "short squeeze" in the securities held short by a Fund forcing a Fund to cover its positions at a loss. In addition, if other investors engaged in copycat behavior by taking positions in the same issuers as a Fund, the cost of borrowing securities to sell short could increase drastically and the availability of such securities to such Fund could decrease drastically. Such events could make G&S unable to execute its investment strategy. The SEC has recently adopted restrictions on the short sales of securities that fall more than ten percent in a given day (referred to as the "circuit breaker" or "modified uptick" rule). Such events and these and other restrictions on G&S's ability to engage in short sales could make G&S unable to execute its investment strategy and cause losses to a Fund.

The SEC and regulatory authorities in other jurisdictions may adopt (and in certain cases, have adopted) bans on short sales of certain securities in response to recent market events. Bans on short selling may make it impossible for G&S to execute certain investment strategies on behalf of a Fund and may have a material adverse effect on its ability to achieve its investment objective and generate returns.

### Investments in Foreign Securities

The Funds are permitted to hold both long and short positions in foreign securities. Investments in foreign companies involved in pending mergers, takeovers and other corporate reorganizations may entail political, cultural, regulatory, legal and tax risks different from those associated with comparable transactions in the United States. If securities are denominated in a foreign currency, there is a risk that the value in U.S. dollars of the foreign securities held by the Funds that are not U.S. dollar-denominated may be affected favorably or unfavorably by changes in exchange rates and exchange-control regulations, and the Funds may incur costs in connection with conversions between various currencies. Also, in conjunction with their investments in foreign securities, the Funds may hedge their exposure to foreign currencies. Such hedging activities involve additional expenses and, in the case of reorganizations that are terminated, the risk of loss when the currency hedge is unwound. There is no assurance that any such hedging techniques will be successful. In conjunction with their investments in foreign securities, the Funds may employ equity swap contracts and other derivatives.



### Portfolio Turnover

Merger arbitrage portfolios may have higher turnover rates than portfolios of typical long-only funds. This may result in increased transaction costs to the Funds, which could impact the Funds' performance. The sale of portfolio securities also may result in the recognition of capital gain, which will be taxable to the Funds' shareholders, or loss.

### Concentration of Investments

The Funds are not limited in the amount of capital which may be committed to any one investment. Although G&S will seek to diversify the Funds' capital among a number of investments deemed attractive, the Funds may at certain times hold a few, relatively large (in relation to its capital) securities positions, with the result that a loss in any such position could have a material adverse impact on the Funds' capital.

### Dependence on G&S.

There can be no assurance that the Funds will achieve their investment objectives. Although G&S's investment professionals have participated in the management of other investment funds and accounts, the past performance of such other investment funds and accounts cannot be relied upon as an indicator of a Fund's own success. Investors must rely upon the ability of G&S and its investment professionals in identifying and implementing investments consistent with each Fund's investment objective and policies. A Fund's investment performance depends largely on the skill of key personnel of G&S. If key personnel were to leave G&S, it might not be able to find equally desirable replacements and the performance of the Funds could, as a result, be adversely affected.

### Recent Financial Market Fluctuations.

General fluctuations in the market prices of securities and economic conditions generally, particularly of the type experienced since 2008, may reduce the availability of attractive investment opportunities for a Fund and may affect such Fund's ability to make investments and the value of the investments held by such Fund. Instability in the securities markets and economic conditions generally may also increase the risks inherent in a Fund's investments. The public securities markets have seen increased volatility and the ability of companies to obtain financing for ongoing operations or expansions may be severely hampered by the tightening of the credit markets and the ongoing financial turmoil and uncertainty created by legislative inaction. It is unclear what the repercussions of this market turmoil may be. Moreover, it remains unknown whether governmental measures undertaken in response to such turmoil (whether regulatory or financial in nature) will have a positive or negative effect on market conditions. There can be no assurance that the market will, in the future, become more liquid than it is at present and it may well continue to be volatile for the foreseeable future. The ability to realize investments in an effective manner depends not only on companies in the investment portfolio of a Fund and their historical results and prospects, but also on political, market and economic conditions at the time of such realizations. The trading market, if any, for the securities of any company in the investment portfolio of a Fund may not be sufficiently liquid to enable a Fund to sell these securities when G&S believes it is most advantageous to do so, or without adversely

affecting the stock price. Continued or renewed volatility in the financial sector may have an adverse material effect on the ability of a Fund to buy, sell and partially dispose of a company in its investment portfolio. A Fund may be adversely affected to the extent that it seeks to dispose of any of its portfolio investments into an illiquid or volatile market, and a Fund may find itself unable to dispose of investments at prices that G&S believes reflect the fair value of such investments. The duration and ultimate effect of current market conditions and whether such conditions may worsen cannot be predicted. The ability of companies in the investment portfolio to refinance debt securities may depend on their ability to sell new securities in the public high yield debt market or otherwise.

### Derivatives Risk

The Funds may invest in derivatives, which are financial contracts whose value depends on, or is derived from, the value of underlying assets, reference rates or indices. Derivatives include futures, non-U.S. currency contracts, swap contracts, reverse repurchase agreements and other over-the-counter (“OTC”) contracts. Derivatives may relate to securities, interest rates, currencies or currency exchange rates, inflation rates, commodities and indices. The use of derivatives involves risks that are in addition to, and potentially greater than, the risks of investing directly in securities and other more traditional assets. In particular, the Funds’ use of OTC derivatives exposes it to the risk that the counterparties will be unable or unwilling to make timely settlement payments or otherwise honor their obligations. An OTC derivatives contract typically can be closed only with the consent of the other party to the contract. If the counterparty defaults, the Funds will have contractual remedies but may not be able to enforce them. Because the contract for each OTC derivative is individually negotiated, the counterparty may interpret contractual terms (e.g., the definition of default) differently than the Funds, and if it does, the Funds may decide not to pursue its claims against the counterparty to avoid incurring the cost and unpredictability of legal proceedings.

The Funds may invest in derivatives that (i) do not require the counterparty to post collateral (e.g., non-U.S. currency forwards), (ii) require collateral but that do not provide for the Funds’ security interests in it to be perfected, (iii) require a significant upfront deposit by the Funds unrelated to the derivative’s intrinsic value, or (iv) do not require that collateral be regularly marked-to-market. When a counterparty’s obligations are not fully secured by collateral, the Funds run the risk of having limited recourse if the counterparty defaults. Even when obligations are required by contract to be collateralized, there is usually a lag between the day the collateral is called for and the day the Funds receive it. The Funds may invest in derivatives with a limited number of counterparties, and events affecting the creditworthiness of any of those counterparties may have a pronounced effect on the Funds. Derivatives risk is particularly acute in environments (like those of 2008) in which financial services firms are exposed to systemic risks of the type evidenced by the insolvency of Lehman Brothers and subsequent market disruptions. In addition, during those periods, the Funds may have a greater need for cash to provide collateral for large swings in its mark-to-market obligations under the derivatives used by the Funds. Derivatives also present other risks described, including market risk, liquidity risk, leverage risk (described below), currency risk, credit risk and counterparty risk. The Funds’ use of derivatives may not be effective or have the desired results. Moreover, suitable derivatives will not be available in all circumstances.

### Leverage Risk

The Funds may borrow against their securities positions and employ leverage. The profitability of the Funds will depend in part upon their ability to obtain such loans at prevailing interest rates, and to the extent that margin rules become more restrictive or financial institutions less willing to lend against securities positions, the results of the Funds may be adversely affected. When the Funds increase their investment positions by borrowing, the possibilities for profit and the risk of loss will also be increased. The amount of borrowings which the Funds may have outstanding at any time may be large in relation to its capital. In addition, the level of interest rates generally, and the rates at which the Funds can borrow in particular, will affect the operating results of the Funds. Fluctuations in the market value of the Funds' portfolio can therefore have a disproportionately large effect in relation to the capital of the Funds.

## **ITEM 9 - DISCIPLINARY INFORMATION**

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

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

As described above under *Item 6 - Performance-based Fees and Side-by-Side Management*, WCM, an affiliate of G&S, is a registered investment adviser which serves as investment adviser or sub-adviser to registered investment companies. The Co-Managers of G&S are officers and/or trustees of WCM, The Merger Fund and The Merger Fund VL. G&S considers this relationship material to its business. This relationship creates the potential for a conflict of interest; this potential conflict and the manner in which it is addressed are discussed under *Item 6 - Performance-based Fees and Side-by-Side Management* and *Item 11- Code of Ethics, Participation or Interest in Client Transactions and Personal Trading*.

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

### Code of Ethics

G&S has adopted a Code of Ethics and will provide a copy of the Code of Ethics to any client or prospective client upon request. The Code of Ethics is designed to reinforce fiduciary principles that govern the conduct of G&S and its personnel and is designed to comply with Rule 204A-1 under the Investment Advisers Act of 1940. The Code of Ethics covers a wide range of issues, including general fiduciary principles, conflicts of interest, insider trading, personal securities transactions, gifts, confidentiality, certification of compliance and sanctions.

G&S's access persons are permitted to purchase or sell publicly traded securities which may also be owned or recommended to be owned or sold by the Funds, The Merger Fund, The Merger Fund VL, Dunham and the UCITS Fund, subject, in most cases, to pre-clearance requirements and certain other restrictions set forth in the Code of Ethics. All persons deemed to be access persons of G&S are subject to the provisions of the Code of Ethics regarding personal

securities transactions and trading while in the possession of inside information and may only enter into such transactions subject to the Code of Ethics. G&S's access persons also must report their personal securities transactions periodically, which reports are reviewed for trading inconsistent with G&S's Code of Ethics by G&S's CCO or his designee. The Code of Ethics is designed to mitigate conflicts of interest and prevent violations of law by persons subject to its provisions.

#### Participation in Client Transactions

G&S and its related entities may engage in a broad range of activities, including investment activities for the account of other investment funds. In the ordinary course of conducting G&S's activities, the interests of a Fund may conflict with the interests of G&S, other Funds or their respective affiliates. Certain of these conflicts of interest, as well as a description of how G&S addresses such conflicts of interest, can be found below.

HVP and LTD may make investments in, or otherwise enter into transactions with other investment funds or accounts managed or sponsored by G&S or its affiliates, or with affiliates of G&S or a general partner of any of the Funds, as applicable (collectively, the "Related Parties"). Conflicts of interest may arise in a number of different situations involving transactions with the Related Parties ("Related Party Transactions"), including, without limitation, (i) if the Funds invest in a Related Party or a Related Party invests in the Funds or (ii) if the Funds invest in an existing investment held by a Related Party. G&S will use its reasonable judgment when resolving conflicts of interest that arise in connection with Related Party Transactions.

#### Conflicts

The material conflicts of interest encountered by G&S include those discussed below, although the discussion below does not necessarily describe all of the conflicts that may be faced by G&S. Certain other conflicts may be disclosed throughout this brochure and the brochure should be read in its entirety for other conflicts.

#### Allocation of Investment Opportunities Among Funds

In connection with its investment activities, G&S may encounter situations in which it must determine how to allocate investment opportunities among various Funds and other persons, which may include, but are not limited to, funds advised by WCM. In recognition of its fiduciary duties, it is the policy of G&S to allocate such investment opportunities on an equitable basis and in accordance with the written policies and procedures relating to the allocation of investment opportunities G&S has adopted. Typically, in order to address potential conflicts of interest associated with the aggregation of trades for multiple Funds, G&S, in conjunction with WCM, where applicable, will determine how an aggregated trade will be allocated among eligible Funds and/or accounts either (i) before or (ii) at the time the trade order is entered, where practicable. The pre-allocation of trades may not be practical or possible in a large number of transactions. In those situations, G&S and WCM will typically allocate an investment opportunity using a default methodology, which may include allocating the investment opportunity *pro rata* among eligible Funds and/or accounts based on either each eligible Fund's

and/or account's (i) total assets or (ii) existing position in the relevant security (or securities, as the case may be).

There can be no assurances that an investment opportunity that comes to the attention of G&S and WCM will not be allocated wholly or primarily to certain funds advised or sub-advised by them, with the Funds being unable to participate in such investment opportunity or participating only on a limited basis. If, in the discretion of G&S, the Funds should not participate in a particular investment opportunity for tax or regulatory reasons, such investment opportunity will not be allocated to such Funds.

#### Diverse Membership

The investors in the Funds may include U.S. taxable and tax exempt entities, and persons and institutions from jurisdictions outside of the United States. Such investors may have conflicting investment, tax and other interests with respect to their investments in a Fund. The conflicting interests among the investors may relate to or arise from, among other things, the nature of investments made by a Fund, the structuring of the acquisition of investments and the timing of the disposition of investments. As a consequence, conflicts of interest may arise in connection with decisions made by G&S, including with respect to the nature or structuring of investments, that may be more beneficial for one investor than for another investor, especially with respect to investors' individual tax situations. In selecting and structuring investments appropriate for a Fund, G&S will consider the investment and tax objectives of the applicable Fund, not the investment, tax or other objectives of any investor individually.

#### Other Activities

The general partner or trustee of a Fund, as applicable, G&S and their respective officers and employees devote as much of their time to the activities of each Fund as the particular general partner, trustee or G&S, as applicable, deem necessary and appropriate. Such persons are not restricted from forming additional investment funds, from entering into other investment advisory relationships, or from engaging in other business activities, even though such activities may be in competition with the Funds. These activities could be viewed as creating a conflict of interest in that the time and effort of such persons will not be devoted exclusively to the business of one particular Fund, or to the Funds collectively.

The general partner or trustee of a Fund, G&S and their respective principals, owners, or employees may engage in investment activities for other client accounts, for their own accounts and for family members and others and may make personal investments in other investment funds, some of which have investment strategies similar to that of the Funds, or that may participate with the Funds in certain private or special situation investment opportunities. *See discussion under "Code of Ethics" and "Allocation of Investment Opportunities Among Funds."*

### **ITEM 12 - BROKERAGE PRACTICES**

In selecting a broker-dealer to execute any given transaction, G&S will seek "best execution" of the transaction except to the extent it may be permitted to pay higher brokerage commissions in exchange for brokerage and research services (as discussed below).

In determining whether a particular broker or dealer is likely to provide best execution in a particular transaction, G&S may take a number of factors into consideration, including but not limited to: the best net price available; the reliability, integrity and financial condition of the broker-dealer; the size and complexity of the order; the broker-dealer's order flow in the security to be traded; the broker-dealer's willingness to commit capital to facilitate the transaction; and the value of the expected contribution of the broker-dealer to the investment performance of the Funds on a continuing basis.

G&S and WCM may receive research or brokerage services other than execution from a broker-dealer or third party in connection with client securities transactions. These are known as "soft dollar" benefits. G&S may cause the Funds to pay commissions higher than those charged by other broker-dealers in return for soft dollar benefits if G&S determines in good faith that such commissions are reasonable in relation to the value of brokerage, research and other services provided, either in terms of the particular transaction or G&S's overall responsibilities for accounts over which G&S exercises investment discretion.

When G&S uses client brokerage commissions to obtain research or other products or services, G&S receives a benefit because it does not have to produce or pay for the research, products or services. G&S may have an incentive to select or recommend a broker-dealer based on G&S's interest in receiving the research or other products or services, rather than on G&S's clients' interest in receiving most favorable execution. G&S typically advises Funds that pursue merger arbitrage investment strategies and often aggregate their trading activities. Accordingly, soft dollar benefits often are useful in managing all or a number of G&S-advised accounts. It is, therefore, typically not practicable for G&S to allocate soft dollar benefits proportionately to the soft dollar credits each account generates. Some of the services received as a result of Fund transactions may primarily benefit accounts other than the Fund that generated the credits.

Some research or other products or services received from a broker-dealer or third party may be only partially eligible for soft dollar payments (a "mixed-use" product or service). In these cases, G&S makes a reasonable allocation of the cost between that portion which is eligible and that portion which is ineligible. The eligible portion may be paid for with soft dollars and the ineligible portion will be paid for with G&S's own funds (hard dollars). This allocation decision may present a conflict of interest to G&S because it is deciding how much it will pay out of its own pocket.

Additionally, in allocating portfolio brokerage, G&S may select broker-dealers who also provide brokerage, research and other services that may be useful to other accounts over which G&S or WCM exercises investment discretion. G&S may have an incentive to select or recommend a broker-dealer based on G&S's interest in receiving client referrals, rather than on G&S's clients' interest in receiving most favorable execution.

G&S's Chief Compliance Officer, or his designee, meets periodically with Fund management personnel to review the performance of each selected broker-dealer, the services being provided by the broker-dealer and the fees being paid for those services to evaluate whether G&S is satisfying its best execution obligations.

During G&S's last fiscal year, G&S only acquired products and services that qualified under Section 28(e) of the Securities Exchange Act of 1934 with client brokerage commissions.

When the Funds are engaged in the simultaneous purchase or sale of the same securities, G&S and WCM may aggregate the orders. G&S believes that such bunching generally facilitates the timely and efficient execution of trades. Moreover, G&S may be able to execute bunched orders at more favorable prices than would be realized when effecting a number of individual, sequential purchase or sale transactions. As a result of the practice of bunching orders, however, G&S and WCM often must allocate purchases and sales of securities among different client accounts following the execution of a bunched purchase or sale order. Shares are allocated among the various accounts *pro rata* or in some other equitable manner consistent with the investment objectives, risk profile and other characteristics of each account. *See Item-11 Code of Ethics, Participation or Interest in Client Transactions and Personal Trading—Allocations of Investment Opportunities Among Funds* above.

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

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

As described in HVP's Amended and Restated Agreement of Limited Partnership, G&S provides HVP's limited partners with written unaudited quarterly reports, written audited annual financial statements and a Schedule K-1. As described in LTD's Placing Memorandum, G&S provides LTD's shareholders with written audited financial statements of LTD, including its annual report, and written unaudited interim reports. A shareholder of LTD may request additional information which G&S in its discretion may or may not provide.

Pursuant to the applicable investment management agreement which G&S has entered into, which may be amended from time to time, G&S may provide written monthly fact sheets, quarterly letters and annual reports to Fund investors, which may include a report of current positions, valuations, prices and transactions; commentary; a statement of total assets; and performance.

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

While not a client solicitation arrangement, G&S may from time to time enter into arrangements whereby it compensates consultants for recommending prospective investors to the Funds. These arrangements may provide that the consultants receive a fee based on a certain percentage of the investment advisory fee received by G&S from these referred Fund investors.

### **ITEM 15 – CUSTODY**

Fund investors should expect to receive quarterly, or more frequent, account statements from their broker-dealer or bank or other qualified custodian. To the extent G&S provides periodic unaudited reports, clients should compare the account statements received from their qualified custodians with the reports, if any, received from G&S.

## **ITEM 16 - INVESTMENT DISCRETION**

G&S has discretionary authority to manage securities accounts on behalf of the Funds. Each Fund's Fund Documents include a description of certain investment limitations applicable to the Fund. Prior to assuming discretion in managing clients' assets, G&S enters into an investment management agreement, limited partnership agreement or other agreement that explains the scope of G&S's discretionary authority.

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

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

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

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

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

## **ITEM 18 - FINANCIAL INFORMATION**



G&S does not require or solicit prepayment of fees six months or more in advance and no present financial condition is reasonably likely to impair G&S's ability to meet contractual commitments to clients.