

# Mittleman Investment Management, LLC

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## Brochure

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This brochure provides information about the qualifications and business practices of Mittleman Investment Management, LLC. If you have any questions about the contents of this brochure, please contact us at (516) 686-6200 or [phil@mittlemanbrothers.com](mailto:phil@mittlemanbrothers.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.

Additional information about Mittleman Investment Management, LLC also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

References herein to Mittleman Investment Management, LLC as a “registered investment adviser” or any reference to being “registered” does not imply a certain level of skill or training.

## **Item 2      Material Changes**

There have been no material changes made to Mittleman Investment Management, LLC's disclosure statement since its last Annual Amendment filing on March 23, 2012.

## **Item 3      Table of Contents**

Item 1	Cover Page.....	1
Item 2	Material Changes.....	2
Item 3	Table of Contents.....	2
Item 4	Advisory Business.....	3
Item 5	Fees and Compensation.....	4
Item 6	Performance-Based Fees and Side-by-Side Management.....	7
Item 7	Types of Clients.....	8
Item 8	Methods of Analysis, Investment Strategies and Risk of Loss.....	8
Item 9	Disciplinary Information.....	18
Item 10	Other Financial Industry Activities and Affiliations.....	18
Item 11	Code of Ethics, Participation or Interest in Client Transactions and Personal Trading.....	19
Item 12	Brokerage Practices.....	20
Item 13	Review of Accounts.....	23
Item 14	Client Referrals and Other Compensation.....	23
Item 15	Custody.....	23
Item 16	Investment Discretion.....	16
Item 17	Voting Client Securities.....	24
Item 18	Financial Information.....	25

#### **Item 4      Advisory Business**

- A. Mittleman Investment Management, LLC (the “Registrant”) is a limited liability company formed on November 8, 2005 in the State of New York. The Registrant became registered as an Investment Adviser Firm on December 16, 2005. The Registrant is owned by Master Control LLC, which is owned by Mittleman Brothers, LLC. Christopher Mittleman, David Mittleman and Philip Mittleman are the Registrant’s owners and principals.
- B. As discussed below, the Registrant offers to its clients (individuals, private investment funds, entities, trusts, estates and charitable organizations, etc.) investment advisory services. The Registrant’s investment advice is provided in accordance with and subject to the investment objectives, strategies, guidelines, restrictions and limitations contained in the applicable offering, governing and/or account documents, and the information in this brochure is qualified in its entirety by the information set forth in such documents.

#### **ADVISORY ACCOUNTS**

The Registrant provides investment advisory services to separately managed advisory accounts of various advisory clients. Advisory accounts are managed in accordance with the terms, conditions, guidelines and limitations set forth in the Investment Advisory Agreement between the Registrant and each advisory account client. **See Item 8 below.**

#### **PRIVATE INVESTMENT FUND**

The Registrant also serves as the general partner and investment manager of Precog Capital Partners, LP (the “Private Fund”), a pooled investment vehicle that is a Delaware limited partnership. We also may serve as general partner of and/or investment manager to other private investment funds in the future. To the extent that certain of the Registrant’s individual advisory clients qualify, they will be eligible to participate as members of the Private Fund. Some of the Registrant’s advisory clients are solicited to invest in the Private Fund where the Registrant deems such investments suitable, but no advisory client is ever obligated to invest in the Private Fund. Investment in the Private Fund involves a significant degree of risk. All relevant information, terms and conditions related to the Private Fund, including the compensation to be received by the Registrant, suitability, risk factors, and potential conflicts of interest, are set forth in the offering, governing and subscription documents that each subscriber is required to receive and/or execute prior to being accepted as a member of the Private Fund. The Private Fund offers ultra-high net worth, qualified investors who are qualified purchasers an investment strategy that is more concentrated and thus more volatile than the average separate account portfolio that the Registrant would administer to most individual advisory clients. **See Item 8 below.**

**Please Note.** Although the Private Fund might be deemed an advisory account client of the Registrant, throughout this brochure, the discussion of the Private Fund is separated from that of the Registrant’s other advisory account clients except where such separation is unnecessary because the Private Fund is treated in the same manner as the Registrant’s other clients.

#### **MISCELLANEOUS**

**Client Obligations.** In performing its services, Registrant will not be required to verify any information received from the client or from the client’s other professionals, and is expressly authorized to rely thereon. Moreover, each client is advised that it remains

his/her/its responsibility to promptly notify the Registrant if there is ever any change in his/her/its financial situation or investment objectives for the purpose of reviewing/evaluating/revising Registrant's previous recommendations and/or services.

**C. ADVISORY ACCOUNTS**

The Registrant will provide investment advisory services specific to the needs of each advisory account client. Prior to providing investment advisory services, an investment adviser representative will ascertain each client's investment objective(s). Thereafter, the Registrant will allocate and/or recommend that the client allocate investment assets consistent with the designated investment objective(s). The client may, at anytime, impose reasonable restrictions, in writing, on the Registrant's services.

**THE PRIVATE FUND**

The Registrant provides investment advice to the Private Fund in accordance with the investment objectives, policies and guidelines set forth in the applicable offering and governing documents, and not in accordance with the individual needs or objectives of any particular investor in the Private Fund. Investors generally are not permitted to impose restrictions or limitations on the management of the Private Fund. Notwithstanding the foregoing, the Registrant may enter into side letter agreements with one or more investors in the Private Fund that alter, modify or change the terms of the interests held by those investors.

D. The Registrant does not participate in a wrap fee program.

E. As of February 5, 2013, the Registrant had \$ 155,778,472 in assets under management on a discretionary basis.

**Item 5 Fees and Compensation**

**A. ADVISORY ACCOUNTS**

The Registrant provides discretionary investment advisory services to clients on a fee-only basis. The Registrant's annual investment advisory fee is 1.50% of the market value of the assets placed under the Registrant's management. The Registrant, in its sole discretion, may charge a lesser investment management fee and/or reduce or waive its minimum asset requirement (described in Item 7 below) based upon certain criteria (i.e. anticipated future earning capacity, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.). The Registrant could also determine to charge a performance fee in the future. Please note: the Registrant requires a minimum asset level of \$1 million. The Registrant, in its sole discretion, may waive its minimum asset requirement and charge an annual fee of 2.00% for accounts with less than \$1 million in assets under management.

## **THE PRIVATE FUND**

The Registrant receives compensation from the Private Fund in the form of a 2% annual management fee and a performance fee equal to 20% of the net realized and unrealized appreciation in the value of each investor's capital account, made only with respect to the appreciation in the value of the capital account in excess of 10% annually.

The Registrant's advisory fees with respect to the Private Fund and each investor generally are not negotiable. However, the Registrant may enter into side letters or similar arrangements with certain investors that grant different terms (including the reduction or elimination of fees) to such investors than the terms generally applicable to other investors.

**Please Note:** For further information pertaining to the calculation of the Registrant's management fee and/or any incentive fees please review the Private Fund's subscription documents.

### **B. ADVISORY ACCOUNTS**

Clients may elect to have the Registrant's advisory fees deducted from their custodial account. Both Registrant's Investment Advisory Agreement and the custodial/clearing agreement may authorize the custodian to debit the account for the amount of the Registrant's investment advisory fee and to directly remit that management fee to the Registrant in compliance with regulatory procedures. In the limited event that the Registrant bills the client directly, payment is due upon receipt of the Registrant's invoice. The Registrant deducts fees and/or bills clients quarterly in advance, based upon the market value of the assets on the last business day of the previous quarter.

## **THE PRIVATE FUND**

Management fees are payable by investors quarterly, in advance, as of the beginning of each calendar quarter. Management fees are deducted directly from the capital account of each investor. Management Fees payable by any investor for any incomplete or partial fiscal quarter will be prorated over the applicable period of such fiscal quarter.

Performance fee will be allocated as of the close of business on the last day of each calendar year, the date of any withdrawal of capital by an investor at any time, and the date of winding up and termination of the Private Fund.

### **C. ADVISORY ACCOUNTS**

As discussed below, unless the client directs otherwise or an individual client's circumstances require, the Registrant generally recommends that Pershing, LLC ("Pershing") serve as the broker-dealer/custodian for client investment management assets, although the Registrant may recommend one or more other broker-dealer/custodian in the future. Broker-dealers such as Pershing charge brokerage commissions and/or transaction fees for effecting certain securities transactions (i.e. transaction fees are charged for certain no-load mutual funds, commissions are charged for individual equity and fixed income securities transactions). In addition to Registrant's investment management fee, brokerage commissions and/or transaction fees, clients will also incur, relative to all mutual fund and exchange traded fund purchases, charges imposed at the fund level (e.g. management fees and other fund expenses). When beneficial to the client, individual fixed-income and/or equity transactions may be effected through broker-dealers with whom the Registrant and/or the client have entered into arrangements for prime brokerage clearing services, who may effect certain client

transactions through other SEC registered and FINRA member broker-dealers (in which event, the client generally will incur both the transaction fee charged by the executing broker-dealer and a “tradeaway” fee charged by the prime broker). **See Item 12 below.**

#### **THE PRIVATE FUND**

In addition to management fees and/or performance allocations (as applicable), the Private Fund generally bears all costs and expenses relating to the Private Fund’s activities, including but not limited to expenses related to the cost of purchasing or disposing of investments (*e.g.*, brokerage commissions), office facilities and overhead, administrative services, internet, dues and subscriptions, telephone, office supplies, postage, accounting, filing fees, registration fees and similar fees, legal fees, data processing, insurance, travel and entertainment, and investment research services, all of which are billed separate and apart from the management fee. The Private Fund also pays directly its organizational expenses, legal fees, tax preparation fees, auditors’ fees and extraordinary expenses as well as regulatory filing fees, investment banking fees, consulting fees, travel expenses, proxy solicitation expenses and all investment related expenses incurred by it, including commissions, custodial fees, clearing fees, stock borrow fees and similar expenses. Such fees and expenses are charged to the Private Fund directly if they are incurred on behalf of the Private Fund by the Registrant or an affiliate. The Private Fund is also charged its pro-rata share of fees and expenses incurred by the Registrant or an affiliate as part of an overall investment program that includes other investment vehicles that the Registrant advises. The Private Fund generally is responsible for and pays all brokerage and custodial fees and expenses. **See Item 12 below.**

**Please Note:** In certain instances, the Private Fund and its investors may bear expenses that also may benefit the Registrant or the Registrant’s other advisory account clients.

#### **D. ADVISORY ACCOUNTS**

Registrant’s annual investment advisory fee will be prorated and paid quarterly, in advance, based upon the market value of the assets on the last business day of the previous quarter.

The Investment Advisory Agreement between the Registrant and the client will continue in effect until terminated by either party by written notice in accordance with the terms of the Investment Advisory Agreement. Upon termination, the Registrant will refund the pro-rated portion of the advanced advisory fee paid based upon the number of days remaining in the billing quarter.

## **THE PRIVATE FUND**

Subject to the terms and conditions disclosed in the applicable offering documents, each limited partner in the Private Fund, following two full calendar years after his or her admission to partnership in the Private Fund, will have the right to withdraw any amount equal to or less than 20% of such investor's holdings, and following three full calendar years after his or her admission, will have the right to withdraw any amount of such investor's holdings. Any withdrawal may only be made upon at least one hundred twenty (120) days prior written notice, subject to the right of the general partner to waive such restrictions.

Management fees are refunded proportionately as of the date of withdrawal to any limited partner permitted or required to withdraw as of any time other than the beginning of a calendar quarter.

Performance allocations are calculated and allocated as of the date of withdrawal with respect to any limited partner permitted or required to withdraw as of any time other than the end of a performance period.

- E. Neither the Registrant nor its representatives accept compensation from the sale of securities or other investment products.

### **Item 6 Performance-Based Fees and Side-by-Side Management**

Rule 205-3 of the Investment Advisers Act of 1940, as amended, permits a registered investment adviser to enter into a performance fee agreement with certain sophisticated clients who have the capacity to bear the potential additional risks of such a fee arrangement. An adviser can rely on Rule 205-3 only if the performance fee agreement is with "eligible" clients. Eligible clients are defined in the rule as natural persons and companies that have either at least \$1 million under management with the Registrant immediately after entering into a performance fee agreement or a net worth at the time the agreement is entered into in excess of \$2 million (the calculation of such amount for a natural person may include assets held jointly with a spouse, but does not include such person's primary residence or certain debt secured by such residence).

Consistent with the parameters of Rule 205-3 of the Investment Advisers Act of 1940, as amended (to the extent Rule 205-3 is applicable), the Registrant (and/or Registrant's affiliated entities) may receive, for the Private Fund, incentive or performance fee compensation on a fully disclosed written basis. The Registrant (and/or Registrant's affiliated entities) could, in the future, receive incentive or performance fee compensation for the services we provide to our advisory account clients or future funds.

Performance-based allocations or fees could motivate the Registrant to make investment decisions that are riskier or more speculative than would be the case if these arrangements were not in effect. In addition, because performance-based allocations or fees with respect to the Funds may be calculated on a basis that includes both realized and unrealized appreciation in portfolios based upon values assigned by the Registrant, the Registrant faces a conflict of interest in valuing those portfolios. Certain of the Registrant's individual employees and affiliates who are compensated to some extent based upon investment profits for which they are responsible face the same potential conflict. The Registrant addresses this conflict through full and fair disclosure in the

applicable governing, account and/or offering documents and/or this brochure, and through its code of conduct and other documents governing the conduct of its employees.

Because the Registrant and its representatives manage client accounts that charge both an asset-based fee and/or a performance based fee, there is a conflict of interest, as Registrant and its representatives have an incentive to favor and devote more time and effort to managing investments where the Registrant receives a performance fee. The Registrant addresses this conflict through full and fair disclosure in the applicable governing, account and/or offering documents and/or this brochure, and through its code of conduct and other documents governing the conduct of its employees.

**The Registrant's Chief Compliance Officer, Philip Mittleman, remains available to address any questions regarding these conflicts of interest.**

## **Item 7      Types of Clients**

### **ADVISORY ACCOUNTS**

The Registrant's clients generally include individuals, private investment funds, entities, trusts, estates, pension funds and charitable organizations. The Registrant may in the future provide investment advice to other types of clients. Effective January 1, 2013, the Registrant requires a minimum asset level of \$1,000,000. The Registrant has the discretion to accept investable assets below \$1,000,000, in which case the management fee is 2.00% of the assets under management for accounts opened and funded following January 1, 2013. Prior to January 1, 2013, the Registrant's account minimum was \$500,000.

The Registrant, in its sole discretion, may charge a lesser investment management fee and/or reduce or waive its minimum asset requirement based upon certain criteria (i.e. anticipated future earnings, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.).

### **THE PRIVATE FUND**

The minimum initial capital contribution generally required for an investor in the Private Fund is \$500,000. Nevertheless, capital contributions of lesser amounts may be accepted in the Registrant's discretion. To invest in the Funds, investors generally must be, among other things, "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, and "qualified clients" as such term is defined in Rule 205-3 under the Investment Advisers Act of 1940, as amended.

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

- A. The Registrant pursues superior returns through long-term investments in what it deems to be extremely undervalued securities, while maintaining a focus on limiting risk. The Registrant seeks to mitigate risk, which it defines as the probability of the long-term loss of capital, by investing in businesses that it believes are proven franchises with durable economic advantages, evidenced by a well-established track record of substantial free cash flow generation over complete business cycles, and only when the very low valuation at which the investment is made provides a significant margin of safety. The Registrant employs a concentrated, long-term investment approach, typically holding between 10 and 20 securities. Investments are made globally, with foreign holdings representing 30% of the Registrant's portfolios on average. Unconstrained by



capitalization parameters, the Registrant tends to gravitate towards smaller market capitalization companies where it has identified the greatest disparities between market price and its estimate of fair value. The Registrant buys stock in large capitalization companies as well, but only when the Registrant believes they are priced attractively enough to warrant inclusion in its portfolios. The Registrant believes that its ability to go wherever the best risk/reward ratios appear to be available, in companies small and large, domestic and international, gives it an advantage over other investment managers who it believes often operate within a more constrained investment universe.

The Private Fund offers purchasers an investment strategy that is similar to that employed by the Registrant for its advisory account clients, but more concentrated and thus more volatile than the average portfolio that the Registrant would administer to most individual advisory clients. The Registrant may also employ one or more techniques to leverage its assets (*e.g.*, margin transactions). The Registrant has full discretion in the types of securities in which the Private Fund invests.

The Registrant generally utilizes the *fundamental* method of security analysis, performing analyses on historical and present data, with the goal of making financial forecasts.

The Registrant may utilize the following investment strategies when implementing investment advice given to clients:

- Long-term purchases (securities held at least a year)
- Short-term purchases (securities sold within a year)
- Trading (securities sold within 30 days)
- Margin transactions (use of borrowed assets to purchase financial instruments)

For a more detailed description of the investment strategies applicable to the Private Fund, please refer to its offering and governing documents.

**Please Note: Investment Risk.** Different types of investments involve varying degrees of risk, and it should not be assumed that future performance of any specific investment or investment strategy (including the investments and/or investment strategies recommended or undertaken by the Registrant) will be profitable or equal any specific performance level(s).

## **B. CERTAIN RISK FACTORS**

*There can be no assurance that clients or investors will achieve their investment objectives or that investments will be successful. The Registrant's investment strategies involve a substantial degree of risk, including risk of complete loss. Nothing in this brochure is intended to imply, and no one is or will be authorized to represent, that the Registrant's investment strategies are low risk or risk free. The Registrant's investment strategies are appropriate only for sophisticated persons who fully understand and are capable of bearing the risks of investment. The various risks outlined below are not the only risks associated with the Registrant's investment strategies and processes and may not necessarily apply to each client or investor. With respect to the Private Fund, the*

*following risks are qualified in their entirety by the risks set forth in the applicable offering documents.*

*General Economic and Market Conditions.* The success of the Registrant's activities will be affected by general economic and market conditions, such as changes in interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of clients' investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of the Registrant's clients' investments. Volatility and/or illiquidity could impair the Registrant's clients' profitability or result in losses. The Registrant's clients could incur material losses even if it reacts quickly to difficult market conditions, and there can be no assurance that clients will not suffer material losses and other adverse effects from broad and rapid changes in market conditions in the future. Clients should realize that markets for the financial instruments in which the Registrant seeks to invest can correlate strongly with each other at times or in ways that are difficult for the Registrant to predict. Even a well-analyzed approach may not protect the Registrant's clients from significant losses under certain market conditions.

*Market Analysis Limitations.* Every method of analysis has its own inherent risks. To perform an accurate market analysis the Registrant must have access to current/new market information. The Registrant has no control over the dissemination rate of market information; therefore, unbeknownst to the Registrant, certain analyses may be compiled with outdated market information, severely limiting the value of the Registrant's analysis. Furthermore, an accurate market analysis can only produce a forecast of the direction of market values. There can be no assurances that a forecasted change in market value will materialize into actionable and/or profitable investment opportunities.

*Risks Associated with the Registrant's Primary Investment Strategies.* The Registrant's primary investment strategies - Long Term Purchases, Short Term Purchases, and Trading - are fundamental investment strategies. However, every investment strategy has its own inherent risks and limitations. For example, longer term investment strategies require a longer investment time period to allow for the strategy to potentially develop. Shorter term investment strategies require a shorter investment time period to potentially develop but, as a result of more frequent trading, may incur higher transactional costs when compared to a longer term investment strategy. Trading, an investment strategy that requires the purchase and sale of securities within a 30 day investment time period, involves a very short investment time period but will incur higher transaction costs when compared to a short term investment strategy and substantially higher transaction costs than a longer term investment strategy. The Registrant may employ varying combinations of the aforementioned investment strategies, but Long Term Purchases are by far the most heavily utilized.

*Margin Risks.* The Registrant may also implement and/or recommend the use of margin. Margin is an investment strategy with a high level of inherent risk. A margin transaction occurs when an investor uses borrowed assets to purchase financial instruments. The investor generally obtains the borrowed assets by using other securities as collateral for the borrowed sum. The effect of purchasing a security using margin is to magnify any gains or losses sustained by the purchase of the financial instruments on margin. Accordingly, the decision as to whether to employ margin is left totally to the discretion of client.

*Potential for Fraud.* In spite of the Registrant's desire to invest in reputable and trustworthy companies, there is a risk that it may invest clients' assets in an issuer that engages in fraud. As recent ponzi schemes involving Bernie Madoff and Allen Stanford have shown, instances of fraud can be particularly difficult to detect and prevent. To the extent that the Registrant invests in a company that engages in fraud, a client or an investor could lose all or a substantial portion of its investment and such fraud could have a material adverse effect on the client's financial condition and results of operations.

*Terrorist Attacks and War.* Terrorist activities, anti-terrorist efforts and other armed conflicts involving the United States or its interests abroad may adversely affect the United States, its financial markets and global economies and could prevent the Registrant from meeting its investment objectives and other obligations. The potential for future terrorist attacks, the national and international response to terrorist attacks, and other acts of war or hostility have created many economic and political uncertainties, which may adversely affect the United States and world financial markets and the Registrant's clients for the short or long-term in ways that cannot presently be predicted.

*Investment and Trading Risks Generally.* All investments risk the loss of capital. No guarantee or representation is made that the Registrant's investment strategies will be successful. The Registrant's investment strategies involve, without limitation, risks associated with limited diversification, equity risks, interest rates, currencies, illiquidity, volatility, tracking risks in hedged positions, security borrowing risks in short sales, credit deterioration or default risks, systems risks and other risks inherent in its activities. Certain investment techniques may, in certain circumstances, substantially increase the impact of adverse market movements to which clients' investments may be subject. In addition, the Registrant's clients' investments may be materially affected by conditions in the financial markets and overall economic conditions occurring globally or in markets where it invests clients' assets.

The Registrant's methods of minimizing such risks may not accurately predict future risk exposures. Risk management techniques are based in part on the observation of historical market behavior, which may not predict market divergences that are larger than historical indicators. Also, information used to manage risks may not be accurate, complete or current, and such information may be misinterpreted.

*Equity Risks.* As noted above, the Registrant invests primarily in equity and equity-linked securities. The value of these securities generally varies with the performance of the issuer and movements in the broader equity markets. As a result, clients may suffer losses if the Registrant invests in equity securities of issuers whose performance diverges from its expectations or if equity markets generally move in a single direction and the Registrant has not hedged against such a general move. The Registrant's clients also may be exposed to risks that issuers will not fulfill contractual obligations such as, in the case of convertible securities or private placements, delivering marketable common stock upon conversions of convertible securities and registering restricted securities for public resale. In some cases, the issuers of equity securities may be highly leveraged or subject to other risks such as limited product lines, markets or financial resources. Some of the small and mid-cap issuers of equity securities in which the Registrant invests may be more vulnerable than larger capitalization issuers to adverse business or market developments, may have limited markets or financial resources and may lack experienced management. In addition, some equity securities may be illiquid. The Registrant may acquire a significant portion of the outstanding public float of a particular company,

creating additional illiquidity, especially in the event that the Registrant wished to dispose of or reduce its position in such company by selling shares into the market in a short period of time. Due to perceived or actual illiquidity or investor concerns regarding leveraged capitalization, certain equity securities often trade at significant discounts to otherwise comparable investments or are not readily tradeable. Such securities generally do not produce current income for clients and may also be speculative. In addition, actual and perceived accounting irregularities may cause dramatic price declines in the equity securities of companies reporting such irregularities or that are rumored to be subject to accounting irregularities.

*Relative Value and Directional Investments.* The Registrant's investment strategies depend on its ability to accurately predict future price movements of securities or the convergence of market prices toward the theoretical values expected by it. Any such attempt to predict future price movements is inherently risky and inaccurate. Often, price movements will be determined by unanticipated factors, and the Registrant's analysis of known factors may prove incorrect, in each case potentially leading to substantial losses to clients.

*Small and Medium Capitalization Companies.* The Registrant invests in the securities of companies with small to medium capitalizations. While the Registrant believes such securities provide significant potential for appreciation, securities of certain companies, particularly smaller-capitalization companies, involve higher risks in some respects than do investments in securities of larger companies. For example, prices of small-capitalization and even medium-capitalization securities are often more volatile than prices of large-capitalization securities and the risk of bankruptcy or insolvency of many smaller companies (with the attendant losses to clients) is higher than for larger, "blue-chip" companies. In addition, due to thin trading in the securities of some small-capitalization companies, an investment in those companies may be illiquid.

*Short Selling.* The Registrant's clients' investment portfolios does not currently, but could in the future include short positions. Short selling involves selling securities which may or may not be owned and borrowing the same securities for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from a decline in the price of a particular security to the extent that such decline exceeds the transaction costs and the costs of borrowing the securities. The extent to which the Registrant engages in short sales depends upon its 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 clients of buying those securities to cover the short position. There can be no assurance that the Registrant will be able to maintain the ability to borrow securities sold short. In such cases, clients 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 security necessary to cover a short position will be available for purchase at or near prices quoted in the market. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss.

*Highly Volatile Markets.* The prices of financial instruments in which the Registrant invests may be volatile. Price movements of the financial instruments in which the Registrant invests 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. The Registrant's clients are subject to the risk of failure of any of the exchanges on which their positions trade or of their clearinghouses. 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.

*Investments in Unlisted Securities.* The Registrant may invest in unlisted securities of companies. Because of the absence of any trading market for these investments, it may take longer to liquidate, or it may not be possible to liquidate, these positions than would be the case for publicly-traded securities. Although these securities may be resold in privately negotiated transactions, the prices realized on these sales could be less than those originally paid by clients. Further, companies whose securities are not publicly-traded may not be subject to public disclosure and other investor protection requirements applicable to publicly-traded securities. In the event there is no trading market for these investments, the Registrant values such investments based either on consistently applied objective standards, such as indications from unaffiliated brokers, an independent appraisal or in accordance with other procedures the Registrant deems reasonable.

*Convertible Securities.* The Registrant may invest in convertible securities. Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted into or exchanged for a specified amount of common stock of the same or different issuer within a particular period of time at a specified price or formula.

The value of a convertible security is a function of its "investment value" (determined by its yield in comparison with the yields of other securities of comparable maturity and quality that do not have a conversion privilege) and its "conversion value" (the security's worth, at market value, if converted into the underlying common stock). The investment value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors may also have an effect on the convertible security's investment value. The conversion value of a convertible security is determined by the market price of the underlying common stock. If the conversion value is low relative to the investment value, the price of the convertible security is governed principally by its investment value. To the extent the market price of the underlying common stock approaches or exceeds the conversion price, the price of the convertible security will be increasingly influenced by its conversion value. A convertible security generally will sell at a premium over its conversion value by the extent to which clients place value on the right to acquire the underlying common stock while holding a fixed-income security. Generally, the amount of the premium decreases as the convertible security approaches maturity.

A convertible security may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument. If a convertible security held by the Registrant is called for redemption, the Registrant will be required to permit the issuer to redeem the security, convert it into the underlying common stock or sell it to a third party. Any of these actions could have an adverse effect on the Registrant's ability to achieve its investment objective.

*Concentration of Investments and Risk Management Failures.* The Registrant typically invests client funds in a limited number of small to medium issuers and generally has no formal guidelines relating to diversification of clients' assets. As a result, clients' portfolios may be concentrated in a limited number of issuers, types of financial instruments, industries, sectors, strategies, countries, or geographic regions, and any such concentration of risk may increase losses suffered by clients. This limited diversity could expose clients to losses disproportionate to market movements in general. Even when the Registrant attempts to control such risks, risks associated with different assets may be correlated in unexpected ways, with the result that clients face concentrated exposure to certain risks. In addition, many other investment managers pursue similar strategies, which creates the risk that many funds would be forced to liquidate positions at the same time, reducing liquidity, increasing volatility and exacerbating losses. Although the Registrant attempts to identify, monitor and manage significant risks, these efforts do not take all risks into account and there can be no assurance that these efforts will be effective. Many risk management techniques are based on observed historical market behavior, but future market behavior may be entirely different. Any inadequacy or failure in the Registrant's risk management efforts could result in material losses for its clients.

*Non-U.S. Investments.* The Registrant may invest in financial instruments of non-U.S. corporations and governments. Investing in the financial instruments of companies (and, from time to time, governments) outside of the United States involves certain considerations not usually associated with investing in financial instruments of U.S. companies or the U.S. government, including political and economic considerations, such as greater risks of expropriation, nationalization, confiscatory taxation, imposition of withholding or other taxes on interest, dividends, capital gains or other income, limitations on the removal of assets and general social, political and economic instability; the relatively 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; the evolving and unsophisticated laws and regulations applicable to the securities and financial services industries of certain countries; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict clients' investment opportunities. In addition, accounting and financial reporting standards that prevail outside of the U.S. generally are not as high as U.S. standards and, consequently, less information is typically available concerning companies located outside of the U.S. than for those located in the U.S. As a result, the Registrant may be unable to structure transactions to achieve the intended results or to mitigate all risks associated with such markets. It may also be difficult to enforce clients' rights in such markets.

*Corporate Debt.* The Registrant may invest in bonds, notes and debentures issued by corporations. These instruments may pay fixed, variable or floating rates of interest, and may include zero coupon obligations. The Registrant may invest in corporate debt instruments that have experienced or are contemplated to experience ratings downgrades. Other instruments may have the lowest quality ratings or may be unrated. Credit ratings evaluate the safety of the principal and interest payments, not the market value risk of lower-rated instruments. Such ratings also do not reflect macroeconomic or systemic risk, including the risk of increased illiquidity in the credit markets. It is also possible that a rating agency might not change its rating of a particular issue on a timely basis and, as a result, outstanding ratings may not reflect the issuer's current credit standing. Conversely, rating agencies may re-rate an instrument which could cause substantial loss as the ratings are downgraded. The Registrant's clients' investments may experience significant

credit rating volatility. In addition, clients' may be paid interest in kind in connection with investments in corporate debt and related financial instruments (*e.g.*, the principal owed to clients in connection with a debt investment may be increased by the amount of interest due on such debt investment). Such investments may experience greater market value volatility than debt obligations that provide for regular payments of interest in cash and, in the event of a default, clients may experience substantial losses.

*Competition.* The markets in which the Registrant participates are extremely competitive. There can be no assurance that it will continue to be able to identify or successfully pursue attractive investment opportunities in this environment. Clients should expect that their investments will involve substantially more company-specific and market risk and associated volatility in the future than in the past. The Registrant competes with many firms that have substantially greater financial resources, more favorable financing arrangements, larger research staffs and more securities traders than are available to the Registrant.

*Less Liquid Instruments.* Under certain market conditions, such as during volatile markets or when trading in an instrument or market is otherwise impaired, the liquidity of clients' portfolio positions may be reduced. In addition, the Registrant's clients may hold large positions with respect to a specific type of instrument, which may further reduce liquidity. During such times, the Registrant may be unable to dispose of certain assets, which would adversely affect its ability to rebalance clients' portfolio or to meet withdrawal requests. In addition, such circumstances may force the Registrant to dispose of clients' assets at reduced prices, thereby adversely affecting clients' performance. If there are other market participants seeking to dispose of similar assets at the same time, the Registrant may be unable to sell such assets or prevent losses relating to such assets. Furthermore, if clients incur substantial trading losses, the need for liquidity could rise sharply while its access to liquidity could be impaired. In conjunction with a market downturn, clients' counterparties could incur losses of their own, thereby weakening their financial condition and increasing clients' credit risk to them.

The Registrant may also invest in securities that are subject to legal or other restrictions on transfer. The Registrant may be contractually prohibited from disposing of such investments for a specified period of time. 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. The market prices, if any, for such investments tend to be volatile and may not be readily ascertainable, and the Registrant 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.

*Default and Credit Risks.* The Registrant may invest in debt obligations of both government and corporate issuers. These financial instruments involve the risk that the obligor either cannot or will not fulfill its obligations under the terms of the financial instrument. The Registrant's clients also assume the credit risk to their brokers, custodians and other counterparties in connection with brokerage arrangements, derivatives and other contractual relationships. In evaluating credit risk, the Registrant is often dependent upon information provided by the obligor, which may be materially inaccurate or fraudulent. Any actual default, or any circumstance that increases the

possibility of such a default, could have a material adverse effect on the Registrant's clients.

*Interest Rate Risks.* The Registrant's investment strategies may include investments in debt securities of government and corporate issuers. These and various other assets, as well as clients' borrowings, subject clients to risks associated with movements in interest rates. For example, the Registrant may be required to manage both curve risk, which is the risk that the slope of the yield curve will vary from the slope assumed in the Registrant's strategy, and credit spread risk, which is the risk that the spreads between yields of differently rated issuers will change in a manner that adversely affects clients' portfolio.

*Litigation.* The Registrant's investment activities may subject its clients to the risks of becoming involved in litigation with third parties. The expense of defending against claims against its clients by third parties and the payment of any amounts pursuant to settlements or judgments would be borne by clients and reduce net assets. The Registrant and its affiliates will generally be indemnified by clients in connection with any such litigation, subject to certain conditions.

*Trading Decisions.* Trading decisions made by the Registrant are based on fundamental and other analysis. Any factor that would lessen the prospect of major trends occurring in the future (such as increased governmental control of, or participation in, the financial markets) may reduce the prospect that a particular trading method or strategy will be profitable in the future. In the past, there have been periods without discernable trends and, presumably, such periods will continue to occur in the future. Moreover, any factor that would make it more difficult to execute trades at desired prices in accordance with the signals of the trading method or strategy (such as a significant lessening of liquidity in a particular market) would also be detrimental to profitability. Further, many advisors' trading methods utilize similar analyses in making trading decisions. Therefore, bunching of buy and sell orders can occur, which makes it more difficult for a position to be taken or liquidated. No assurance can be given that the Registrant's strategies will be successful under all or any market conditions.

*"Widening" Risk.* For reasons not necessarily attributable to any of the risks set forth herein (for example, supply/demand imbalances or other market forces), the prices of the financial instruments in which the Registrant invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even more "undervalued" levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

*Counterparty Risks.* The Registrant expects to establish relationships to obtain prime brokerage and other related services; however, there can be no assurance that it will be able to maintain such relationships or establish such relationships. An inability to establish or maintain such relationships would limit the Registrant's trading activities and could create losses, preclude it from engaging in certain transactions and prime brokerage services and prevent it from trading at optimal rates and terms. Moreover, a disruption in the prime brokerage services provided by any such relationships before the Registrant establishes additional relationships could have a significant impact on its business due to its reliance on such counterparties.



Furthermore, there is a risk that any of the Registrant's counterparties could become insolvent and/or the subject of insolvency proceedings. If one or more of the Registrant's counterparties were to become insolvent or the subject of insolvency proceedings, there exists the risk that the recovery of clients' securities and other assets from the Registrant's prime brokers or broker-dealers will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker or broker-dealer.

The Registrant is not restricted from dealing with any particular counterparty or from concentrating any or all of its clients' transactions with one counterparty. Moreover, the Registrant's internal credit function which evaluates the creditworthiness of its counterparties may prove insufficient. The Registrant's ability to transact business with any one or more counterparties, the lack of complete and "foolproof" evaluation of the financial capabilities of its counterparties and the absence of a regulated market to facilitate settlement may increase the potential for losses by clients.

*Dependence of Investors in the Private Fund on the Registrant and the Fund Manager.* All management decisions for the Private Fund will be made by the Registrant and the fund manager. Accordingly, no person should invest in the Private Fund unless he or she is willing to entrust all aspects of the management of the Private Fund to the Registrant and the fund manager, who will have full discretion in the types of securities in which the Private Fund will invest. The Private Fund is dependent upon the skill, judgment and expertise of the Registrant and its employees. The operating agreement allows the limited partners to remove the Registrant as the general partner only for "cause," defined as fraud, gross negligence or reckless or intentional misconduct by the general partner in carrying out its duties as general partner which has caused materially adverse consequences to the Private Fund. Although the fund manager will devote a significant amount of his time to the interests of the Private Fund, he may engage in other business activities, including certain activities that may be competitive with those of the Private Fund. The fund manager is not subject to an employment contract, and may decide to engage in entirely separate or competing activities at some time in the future.

*Conflicts of Interest.* Various conflicts of interests exist among the Registrant, its investment team and its respective affiliates, on the one hand, and its clients and the investors, on the other hand. The Registrant's principals currently serve and may serve as directors, officers or committee members of public companies and their activities on behalf of those other companies may present actual and/or potential conflicts of interest (including conflicting fiduciary duties). In particular, such persons could face conflicts of interest between discharging their duties as directors, officers or committee members, as the case may be, of such companies and acting in the best interest of the Registrant's clients. **See Items 6, 10, 11 and 12 for a discussion of various conflicts of interest faced by the Registrant and its employees and affiliates.**

**THE FOREGOING RISK FACTORS DO NOT PURPORT TO BE A COMPLETE DESCRIPTION OF ALL OF THE RISKS ASSOCIATED WITH THE REGISTRANT'S INVESTMENT STRATEGIES. PROSPECTIVE CLIENTS AND INVESTORS SHOULD READ THIS BROCHURE AND ALL OTHER APPLICABLE DISCLOSURE MATERIALS IN THEIR ENTIRETY BEFORE MAKING ANY INVESTMENT DECISIONS.**

- C. Currently, the Registrant primarily allocates advisory account client investment assets among various individual equity (stocks) and debt (bonds), on a discretionary basis in

accordance with the client's designated investment objective(s). To date, the Private Fund has generally invested in publicly traded domestic and international company stock, although the Registrant has full discretion in the types of securities in which the Private Fund invests. **See the risk factors set forth in Item 8.B above.**

#### **Item 9      Disciplinary Information**

Neither the Registrant nor any member of its management has been involved in any legal or disciplinary events related to past or present investment clients or investors, or that would be material to a client's or prospective client's evaluation of the Registrant's advisory business or the integrity of its management.

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

- A. Neither the Registrant, nor any member of its management, is registered or has an application pending to register, as a broker-dealer or a registered representative of a broker-dealer.
- B. Neither the Registrant, nor any member of its management, is registered or has an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or an associated person of the foregoing.
- C. **Private Investment Fund**. The Registrant serves as the general partner and investment manager of the Private Fund. In addition, certain control persons of the Registrant may have financial interests in the Private Fund. In general, control persons of the Registrant intend to maintain significant investments in the Private Fund. This relationship presents certain potential conflicts of interest, including those described below:
- To the extent that certain of Registrant's individual advisory clients qualify, they will be eligible to participate as members of the Private Fund. Some of the Registrant's advisory clients are solicited to invest in the Private Fund where the Registrant deems such investments as suitable, but no advisory client is ever obligated to invest in the Private Fund. Because the Registrant's principals can earn compensation from the Private Fund that may exceed the investment advisory fee that the Registrant would earn under its standard "assets under management" fee, the recommendation that a client become an investor in the Private Fund presents a conflict of interest. The Registrant addresses this conflict through full disclosure to clients and operating in accordance with its code of ethics and fiduciary duties. **See Item 11A below.**
  - The Registrant may receive, for the Private Fund, incentive or performance fee compensation on a fully disclosed written basis. Because the Registrant and its representatives manage client accounts that charge an asset-based fee, this arrangement creates a conflict of interest, as the Registrant and its representatives have an incentive to favor and devote more time and effort to managing investments of the Private Fund. The Registrant addresses this conflict through full disclosure to clients and operating in accordance with its code of ethics and fiduciary duties. **See Item 11A below.**
  - The participation of related persons as investors in the Private Fund also creates a conflict of interest, as the Registrant and its representatives have an incentive to favor and devote more time and effort to managing investments of the Private Fund, and

also have an incentive to recommend that advisory clients participate in the fund if they perceive that such additional investment will benefit the fund overall. The Registrant addresses this conflict through full disclosure to clients and operating in accordance with its code of ethics and fiduciary duties. **See Item 11A below.**

**The Registrant's Chief Compliance Officer, Philip Mittleman, remains available to address any questions that a client or prospective client may have regarding the above relationship and any corresponding potential conflict of interest such relationship may create.**

- D. The Registrant does not receive, directly or indirectly, compensation from other investment advisors that it recommends or selects for its clients nor does it have any other business relationships with any such advisers that create a material conflict of interest.

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

- A. The Registrant has adopted and implemented a code of ethics, which sets forth standards of business conduct for the Registrant's employees. The code of ethics is primarily designed to educate employees about the Registrant's philosophy regarding ethics and professionalism, emphasize its fiduciary duties to clients, encourage employees to comply with applicable laws, prevent the misuse of material non-public information, the circulation of rumors and other forms of market abuse and address conflicts of interest that arise from personal trading by employees. Among other things, the Registrant imposes restrictions on access persons relating to the purchase or sale of securities for their own accounts and the accounts of certain affiliated persons. Access persons are required to submit quarterly reports disclosing personal securities transactions and annual reports disclosing personal securities holdings. Such reports are reviewed by the Registrant's Chief Compliance Officer. The Registrant also maintains certain policies and procedures designed to prevent employees and principals from misusing material non-public information. The Registrant will furnish a copy of its code of ethics to clients and investors upon request.
- B. The Registrant or its representatives may recommend that clients buy or sell securities or other investment products in which the Registrant or a related person has some financial interest. In particular, the Registrant may recommend that certain of its advisory clients invest in the Private Fund. In addition, certain control persons of the Registrant may have financial interests in the Private Fund. In general, control persons of the Registrant intend to maintain significant investments in the Private Fund. **See Item 10.C above for a description of the Registrant's relationship with the Private Fund, the conflicts of interest it presents and how the Registrant addresses such conflicts.**

Related persons of the Registrant may also serve as a director of a company whose securities are held by one or more clients. Philip Mittleman, one of the Registrant's Managing Members, serves on the Board of Directors for Mythic Paint, a paint manufacturer. Mr. Mittleman has served as a member of the Board since March 23, 2007. Any recommendation by the Registrant that a client invest a portion of their investment assets in Mythic Paint would create a direct conflict of interest. Should a client choose to invest in Mythic Paint, the Registrant will not receive a management fee for any portion of the client's assets under management so invested. Additional relationships such as this could arise in the future.

The Private Fund may co-invest with third parties or otherwise participate in pooled investment vehicles with others if the Registrant determines that such investments or arrangements represent the best way to access a particular investment opportunity. The Registrant or its related persons may manage or have direct investments in these pooled investments as well. The Registrant intends to address any such conflict through full disclosure to clients and operating in accordance with its code of ethics and fiduciary duties. **See Item 11A above.**

**The Registrant's Chief Compliance Officer, Philip Mittleman, remains available to address any questions that a client or prospective client may have regarding the above arrangements and any corresponding potential conflicts of interest such arrangements may create.**

- C. Subject to various restrictions set forth in the Registrant's code of ethics, its principals and employees may purchase for themselves securities purchased for, or recommended to, clients. Allowing principals and employees to purchase these securities may motivate those employees and/or affiliates to engage in "scalping," which is the practice of attempting to benefit from the increase in price resulting from recommendations to clients, and other potentially abusive practices. To prevent such practices, the Registrant closely monitors the investments made by its principals and employees. The Registrant has a personal securities transactions policy that sets forth certain procedures with which its access persons must comply and restricts access persons from trading in securities purchased for or recommended to clients in certain situations that the Registrant believes could lead to the types of practices described above. **See Item 11.A above.**

The Registrant serves as the general partner and investment manager of the Private Fund. Certain related persons of the Registrant participate as investors in the Private Fund. **See Item 10.C above.**

The Private Fund may co-invest with third parties or otherwise participate in pooled investment vehicles that the Registrant or its related persons may manage or in which they may have direct investments. **See Item 11.B above.**

- D. **See Item 11.C above.**

## **Item 12 Brokerage Practices**

- A. In the event that the Registrant's advisory account clients request that the Registrant recommend a broker-dealer/custodian for execution and/or custodial services (exclusive of those clients that may direct the Registrant to use a specific broker-dealer/custodian), the Registrant generally recommends that investment management accounts be maintained at Pershing, although the Registrant may recommend one or more other broker-dealer/custodian in the future. Prior to engaging Registrant to provide investment management services, the client is required to enter into a formal Investment Advisory Agreement with Registrant setting forth the terms and conditions under which Registrant will manage the client's assets, and a separate custodial/clearing agreement with each designated broker-dealer/custodian.

In general, the Registrant has authority to determine the brokers and other counterparties to be used for Private Fund transactions and to negotiate commission rates and other

monies paid by the Private Fund. Generally, the Private Fund uses Pershing, although it may use one or more other broker-dealer/custodian in the future

Factors that the Registrant considers in recommending and using Pershing (or any other broker-dealer/custodian) to clients include historical relationship with the Registrant, financial strength, reputation, execution capabilities, pricing, research, and service. Although the Registrant has a duty to obtain best execution with respect to commissions and/or transaction fees paid by Registrant's clients, a client may pay a commission that is higher than another qualified broker-dealer might charge to effect the same transaction where the Registrant determines, in good faith, that the commission/transaction fee is reasonable in relation to the value of the brokerage and research services received. In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of a broker-dealer's services, including the value of research provided, execution capability, commission rates, and responsiveness. Accordingly, although Registrant will seek competitive rates, it may not necessarily obtain the lowest possible commission rates for client account transactions. The brokerage commissions or transaction fees charged by the designated broker-dealer/custodian are exclusive of, and in addition to, Registrant's investment management fee. The Registrant's best execution responsibility is qualified if securities that it purchases for client accounts are mutual funds that trade at net asset value as determined at the daily market close.

1. Research and Other Soft Dollar Benefits

The Registrant generally has not, although could in the future, use soft dollars generated by client accounts to pay for certain research and/or related services provided by brokers described above. The term "soft dollars" refers to the receipt by an investment manager of products and services (including research) provided by brokers without any cash payment by the investment manager, based on the volume of revenues generated from brokerage commissions for transactions executed for clients of the investment manager. The products and services available from brokers include both internally generated items (such as research reports prepared by employees of the broker) as well as items acquired by the broker from third parties (such as quotation equipment).

Using soft dollars to obtain investment research and/or related services creates a conflict of interest between the Registrant and its clients. Soft dollars may be used to acquire products and services that are not exclusively for the benefit of the clients that paid the commissions and that may primarily or exclusively benefit the Registrant. If the Registrant is able to acquire these products and services without expending its own resources (including management fees paid by clients), its use of soft dollars would tend to increase its profitability. Furthermore, the Registrant may have an incentive to select or recommend brokers based on its interest in receiving research or other products or services, rather than on its clients' interest in receiving most favorable execution. The Registrant could also cause clients to pay commissions (or markups or markdowns) higher than those charged by other brokers in return for soft dollar benefits.

If the Registrant accepted soft dollar benefits in the future, the Registrant believes they would generally be used to service all of the Registrant's clients.

The Registrant would seek to allocate soft dollar benefits among client accounts in a fair and equitable manner under the circumstances, but there can be no assurance that it would be successful in this regard.

**The Registrant's Chief Compliance Officer, Philip Mittleman, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding potential conflict of interest such arrangement may create.**

2. In selecting or recommending brokers, the Registrant does not consider whether it or related persons receive client or investor referrals from such brokers.
3. The Registrant does not generally accept directed brokerage arrangements (when a client requires that account transactions be effected through a specific broker-dealer). In such client directed arrangements, the client will negotiate terms and arrangements for their account with that broker-dealer, and Registrant will not seek better execution services or prices from other broker-dealers or be able to "batch" the client's transactions for execution through other broker-dealers with orders for other accounts managed by Registrant. As a result, clients may pay higher commissions or other transaction costs or greater spreads, or receive less favorable net prices, on transactions for the account than would otherwise be the case.

**Please Note:** In the event that the client directs Registrant to effect securities transactions for the client's accounts through a specific broker-dealer, the client correspondingly acknowledges that such direction may cause the accounts to incur higher commissions or transaction costs than the accounts would otherwise incur had the client determined to effect account transactions through alternative clearing arrangements that may be available through Registrant.

**The Registrant's Chief Compliance Officer, Philip Mittleman, remains available to address any questions that a client or prospective client may have regarding the above.**

- B. The Registrant may, and generally attempts to, combine or "bunch" orders when possible to obtain best execution, to negotiate more favorable commission rates or to allocate equitably among the Registrant's clients differences in prices and commissions or other transaction costs that might have been obtained had such orders been placed independently. Under this procedure, transactions will be averaged as to price and will be allocated among clients in proportion to the purchase and sale orders placed for each client account on any given day. The Registrant will not receive any additional compensation or remuneration as a result of such aggregation.

The Registrant generally allocates investment opportunities among its clients in a fair and equitable manner based upon, among other things, the investment objectives, guidelines and restrictions, risk profiles, financial conditions and tax status of its clients. If each participating client receives less than its full allocation, then each participating client generally receives its *pro rata* portion of the executed order. Under certain circumstances, the Registrant has discretion to utilize alternative allocation procedures, provided that all participating clients are treated fairly and equitably.

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

#### **A.     ADVISORY ACCOUNTS**

Account reviews are conducted on at least a weekly basis by the chief investment officer. All investment supervisory clients are advised that it remains their responsibility to advise the Registrant of any changes in their investment objectives and/or financial situation. All clients (in person or via telephone) are encouraged to review financial planning issues (to the extent applicable), investment objectives and account performance with the Registrant on an annual basis.

#### **THE PRIVATE FUND**

The Registrant's chief investment officer conducts reviews of the Private Fund and its investments on at least a weekly basis. With respect to accounting matters, the Registrant has engaged a nationally-recognized, independent public accounting firm to conduct annual audits of the Private Fund. The Registrant also prepares unaudited quarterly financial statements for the Private Fund.

- B.     The Registrant may conduct account reviews on an other than periodic basis upon the occurrence of a triggering event, such as a change in client investment objectives and/or financial situation, market corrections and client request.

#### **C.     ADVISORY ACCOUNTS**

Clients are provided, at least quarterly, with written transaction confirmation notices and regular written summary account statements directly from the broker-dealer/custodian and/or program sponsor for the client accounts. The Registrant may also provide a written periodic report summarizing account activity and performance.

#### **THE PRIVATE FUND**

The Registrant generally provides investors in the Private Fund monthly statements with account information provided by the administrator, Frendel, Brown and Weissman, annual audited financial statements, and annual U.S. income tax information. The Registrant attempts to provide such statements to investors within 120 days after the end of each fiscal year, but there can be no assurance that it will be successful in this regard. The Registrant may also provide other reports and information to investors. All such statements and reports are written. Pershing, as custodian for the Private Fund, also sends quarterly reports of account holdings directly to investors.

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

- A.     Except as otherwise described in this brochure, the Registrant currently does not receive any economic benefit from any person who is not a client for providing investment advice or other services to clients.
- B.     Neither Registrant nor its Representatives compensate any non-supervised person for client referrals.

### **Item 15     Custody**

#### **A.     ADVISORY ACCOUNTS**

The Registrant does not have custody of any advisory account client funds or securities (other than those of the Private Fund, discussed below).

### **THE PRIVATE FUND**

The Registrant has, or may be deemed to have, custody of the Private Fund's cash and securities. In general, the Private Fund's cash and securities are held with one or more qualified custodians. The Registrant may change custodians at any time and from time to time without the consent of, or notice to, investors. In general and to the extent required by law, independent public auditors will conduct annual audits of the Private Fund, and audited financial statements (prepared in accordance with generally accepted accounting principles) will be provided to investors on an annual basis. The Registrant generally provides investors in the Private Fund monthly statements with account information provided by the administrator, Frendel, Brown and Weissman. Pershing, as custodian for the Private Fund, also sends quarterly reports of account holdings directly to investors.

**Please Note:** Investors are urged to compare any statement or report provided by the Registrant with the account statements received from the account custodian or any of the other reports described above.

## **Item 16 Investment Discretion**

### **ADVISORY ACCOUNTS**

The client can determine to engage the Registrant to provide investment advisory services on a discretionary basis. Prior to the Registrant assuming discretionary authority over a client's account, the client is required to execute an Investment Advisory Agreement, naming the Registrant as the client's attorney and agent in fact, granting the Registrant full authority to buy, sell, or otherwise effect investment transactions involving the assets in the client's name found in the discretionary account.

Clients who engage the Registrant on a discretionary basis may, at any time, impose restrictions, in writing, on the Registrant's discretionary authority (i.e. limit the types/amounts of particular securities purchased for their account, exclude the ability to purchase securities with an inverse relationship to the market, limit or proscribe the Registrant's use of margin, etc.).

### **THE PRIVATE FUND**

Subject to the guidelines and objectives set forth in the applicable governing documents, the Registrant has discretionary power and authority over the types of financial instruments to be bought or sold, as well as the amount to be bought or sold on behalf of the Private Fund. Each investor in the Private Fund generally grants the Registrant a limited power of attorney to enable the Registrant to execute the applicable partnership agreement and certain other documents relating to the Private Fund on its behalf.

## **Item 17 Voting Client Securities**

### **A. ADVISORY ACCOUNTS**

Unless the client directs otherwise in writing, the Registrant is responsible for voting client proxies (however, the client maintains exclusive responsibility for all legal proceedings or other types events pertaining to the account assets, including, but not limited to, class action lawsuits.). The Registrant votes proxy proposals, amendments, consents or resolutions in a manner that it believes serves the best interests of the advisory account client, as determined in the Registrant's discretion, and in accordance with its proxy voting policy, a copy of which is available upon request. The Registrant will maintain records pertaining to proxy voting as required pursuant to Rule 204-2(c)(2)



under the Investment Advisers Act of 1940, as amended. Copies of the Registrant's voting policies and procedures and information pertaining to how the Registrant voted on any specific proxy issue is available upon written request. Requests should be made by contacting the Registrant's Chief Compliance Officer, Philip Mittleman.

#### **THE PRIVATE FUND**

The Registrant generally has the authority to vote proxies of securities owned by the Private Fund. Investors generally may not direct or otherwise influence the Registrant's vote with respect to any particular proxy solicitation. The Registrant votes proxies in accordance with its proxy voting policy. **See Item 17.A Advisory Accounts above.**

- B. As set forth in Item 17.A, the Registrant votes client proxies.

#### **Item 18 Financial Information**

- A. The Registrant does not solicit fees of more than \$1,200, per client, six months or more in advance.
- B. The Registrant is unaware of any financial condition that is reasonably likely to impair its ability to meet its contractual commitments relating to its discretionary authority over certain client accounts.
- C. The Registrant has not been the subject of a bankruptcy petition.

**ANY QUESTIONS: The Registrant's Chief Compliance Officer, Philip Mittleman, remains available to address any questions that a client or prospective client may have regarding the above disclosures and arrangements.**