

# **D. E. Shaw Direct Capital, L.L.C.**

## **Form ADV Part 2A: The Brochure**

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This brochure provides information about the qualifications and business practices of D. E. Shaw Direct Capital, L.L.C. (the “Adviser” or “DESDC”), an investment adviser registered with the United States Securities and Exchange Commission (the “SEC”) under the U.S. Investment Advisers Act of 1940, as amended (the “Advisers Act”). Such registration does not imply a certain level of skill or training. If you have any questions about the contents of this brochure, please contact us at (212) 478-0000. The information in this brochure has not been approved or verified by the SEC or by any state securities authority.

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

This brochure is for informational purposes only. It does not convey an offer of any type and is not intended to be, and should not be construed as, an offer to sell, or the solicitation of an offer to buy, any interest in any entity, investment, or investment vehicle.

### **Material Changes**

There have been no material changes to this brochure since its most recent annual update on March 30, 2012.

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

DESDC is a Delaware limited liability company and an investment adviser registered with and regulated by the SEC under the Advisers Act.

The Adviser provides investment advice to certain affiliated collective investment schemes and other entities (the “Funds”). The Funds are institutional vehicles whose investor base consists of institutional investors and other highly sophisticated, high net worth participants. These investors must meet certain minimum financial requirements (e.g., an institution must generally own and invest on a discretionary basis at least \$25 million of certain investments), among others, in order to be eligible to participate in the Funds, which are structured as private investment companies that are exempt from registration as investment companies under U.S. law by virtue of Section 3(c)(7) of the Investment Company Act of 1940, as amended (the “Investment Company Act”).

DESDC was formed in and has been a registered investment adviser since 2008. Since the D. E. Shaw group’s organization in 1988, the D. E. Shaw group has built a significant presence in many of the world’s capital markets, investing in a wide range of companies and financial instruments within both the major industrialized nations and a number of emerging markets. The D. E. Shaw group’s past activities have ranged from the deployment of investment strategies based on either mathematical models or human expertise to the acquisition of existing companies and the financing or development of new ones.

D. E. Shaw & Co., L.P. (“DESCO LP”) is the managing member and sole owner of DESDC. DESCO LP’s principal owner is Dr. David Elliot Shaw. Other entities and individuals hold minority stakes in DESCO LP.

DESDC bases its advice to clients on the investment objectives and restrictions (if any) set forth in the applicable offering memorandum, organizational documents, investment management agreement, and/or subscription agreements, as the case may be (each and collectively, the “Governing Document”).

DESDC managed approximately \$370 million in investment capital on a discretionary basis as of January 1, 2013.

#### **Item 5:      Fees and Compensation**

Fees for advisory services generally include a performance-based fee and an asset-based fee and are generally set forth in the applicable Governing Document. DESDC enters into performance-based fee arrangements with clients that fall within the definition of a “qualified client” pursuant to Rule 205-3 under the Advisers Act or as permitted under Section 205(b) of the Advisers Act. Asset-based fees are generally paid monthly in advance based on net assets as of the beginning of the relevant month. The fee schedule for qualified clients of the Adviser currently includes an annual asset-based fee of 1.5% and a performance-based fee of 20% of realized net profits. A percentage of the management fee is deducted at the beginning of each month from the applicable Fund. The performance charge, which is subject to loss carryforward provisions, is assessed quarterly on realized net profits. The Governing Document of the applicable Fund provides the definitive terms of such fees. In general, if an asset-based fee has been paid in full in advance for a period in which either the advisory contract with the relevant client has been

terminated, or, with respect to a Fund, for the period in which an investor has withdrawn or redeemed its investment in such Fund, the applicable portion of such asset-based fee paid relating to the portion of the period after such termination, withdrawal, or redemption will be returned or credited to the client or to the withdrawing or redeeming Fund investor, subject to the actual terms of the applicable Governing Document; however, the Governing Documents typically do not permit a termination, withdrawal, or redemption mid-period.

DESDC may negotiate fees and other terms in certain cases. The Adviser may from time to time enter into agreements with certain underlying investors in the Funds that may provide for terms of investment that are more favorable than the terms described in the applicable Governing Document. Such terms may include the waiver, reduction, or rebate of management fees, Fund expenses and/or performance fees, the provision of additional information or reports or more favorable transfer rights. No such agreement will necessarily entitle any other Fund investor to the same terms of investment.

Funds advised by DESDC may incur expenses in connection with custodial or brokerage services discussed in Item 12. In addition, each Fund bears its operating costs and expenses as described more fully in the applicable Governing Document. Furthermore, the Adviser may be entitled under the Governing Document to be reimbursed for some or all expenses that it or its related persons incur on behalf of the relevant client.

Effective January 3, 2012, DESDC retained the Sub-Adviser to serve as sub-adviser to DESDC, providing certain investment advisory services to DESDC with respect to the Funds (the "Services"). One or more related persons of DESDC have entered into certain contractual arrangements with the Sub-Adviser pursuant to which such related persons have a right to receive amounts calculated as a portion of the Sub-Adviser's revenues. This arrangement gives rise to a potential conflict of interest in DESDC's choice of the Sub-Adviser to provide the Services. However, no additional management fee or performance –based fees will be charged to DESDC investors as a result of the sub-advisory arrangement. Rather, in consideration of, and as exclusive compensation for, the Services, DESDC will pay or cause to be paid to the Sub-Adviser a portion of each of the management fee and performance-based fee DESDC receives in respect of the Funds.

Neither the Adviser nor its supervised persons receives compensation for the sale of securities or other investment products to clients or investors.

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

DESDC enters into performance-based fee arrangements with clients as discussed in Item 5 above.

The performance-based fees available to the Adviser in connection with a particular client may be higher than those available to the Adviser in connection with another client, whether in percentage or absolute dollar amounts. Therefore, the Adviser may have an incentive to devote more research and development or other activities, and/or to allocate investment opportunities, to such higher fee-paying client.

When trading on behalf of multiple clients with differing performance-based fees, the Adviser endeavors to allocate investment opportunities among clients in a fair and equitable manner. The Adviser's trade allocation for any given client may vary based on differences in investment objectives among clients,

different capital constraints of each client, varying leverage preferences of each client, and any scheduled increase or decrease of any particular client's assets under management. The Adviser does not alter its allocation policy with respect to a client, or allocate trades among multiple advisory clients, without the approvals of relevant senior management and compliance personnel.

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

DESDC's only clients are the Funds, which are structured as private investment companies that are exempt from registration under Section 3(c)(7) of the Investment Company Act. A minimum dollar value of assets and other conditions are typically imposed on investors in the Funds.

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

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

DESDC acts as an investment adviser on a discretionary basis to certain Funds primarily with respect to corporate loans, and also with respect to securities, commodities, other financial instruments, other interests, and any other property of any kind (collectively, "Investments"). Funds managed by the Adviser are focused on providing debt and equity capital to small and midsize businesses in all industry sectors throughout North America. The Adviser seeks to build long-term recurring business relationships with management teams, lending institutions, financial sponsors, and intermediaries.

The Adviser will seek to accomplish its investment objective through the origination, purchase and sale, and/or holding of Investments. The portfolios of clients advised by the Adviser may include some or all of the following Investments, as well as other Investments: loans, bonds, notes, debentures, bills, trade claims, and other forms of indebtedness or liability issued or incurred by corporations, sovereign nations, governmental agencies and instrumentalities, municipalities, or other entities; common and preferred stock of corporations (including investment companies); options, rights, warrants, convertible securities, exchangeable securities, synthetic and/or structured convertible or exchangeable products, participation instruments, and investment contracts; bank notes, term loans, debtor-in-possession loans, revolving loans, bank guarantees, letters of credit, and other forms of lender assets or obligations; currencies; swaps and other derivative instruments; futures, options on futures, and forward contracts; mortgages, mortgage- and other asset-backed securities, real estate, easements, other forms of real property-related instruments, and interests in the foregoing and in real estate investment trusts; commodities; money market instruments; receivables; financial interests in settlements of legal disputes; assets with specified tax attributes; limited partnership and other limited liability interests; general partnership and other unlimited liability interests; royalty rights and real property interests; and/or contracts or derivatives relating to the foregoing; in each case whether now existing or created in the future. The Adviser also will engage in activities in furtherance of or incidental to the origination, purchase and sale, and/or holding of the above Investments, including entering into repurchase agreements, reverse repurchase agreements, buy-sellbacks, sell-buybacks, and other trading or financing transactions.

## **Potential Risk Factors**

An investment with the Adviser involves substantial risks that should be carefully considered. Certain risk factors that may be considered applicable to an investment with the Adviser are outlined below. Additional risk factors are outlined in the Governing Document for the applicable Fund. It should be noted, however, that there may be other risk factors applicable to such an investment that are not identified but that might still result in material losses to investors. Prospective investors should also consult their own legal, investment, tax, and other advisers, and the applicable Governing Document, as to whether an investment with the Adviser is appropriate for them.

It should be noted that many of the risks outlined under one caption or heading are applicable to one or more other captions and headings.

## **No Assurance of Investment Return**

An investment in a Fund managed by the Adviser involves a high degree of risk, including the risk that the entire amount invested may be lost. An investment in a Fund managed by the Adviser is not intended as a complete investment program. Such an investment should be regarded as speculative in nature and appropriate only for a sophisticated investor that can afford a loss of all of its investment with the Adviser and that is able to invest for an indefinite period. It should not be assumed that an investment in a Fund managed by the Adviser will be profitable. In addition to the risk of loss on its Investments, clients' investments are subject to the direct and indirect fees and expenses outlined elsewhere in this brochure or applicable Governing Document, which will reduce returns and require that the Adviser make a certain level of profit from its investing activities in order for an investment simply to break even.

Past performance of the Adviser's strategies or the investment vehicles sponsored, advised, and/or managed by the Adviser, or of any investment strategies operated within any such investment vehicle, is not indicative of the results that will be achieved by the Adviser in the future and provides no assurance of the success of the Adviser in achieving its investment objective.

## **General Factors**

The prospects of an investment in a Fund managed by the Adviser could be materially adversely affected by changes or instability in market, economic, political, technological, regulatory, and social conditions, and by numerous other factors outside the control of the Adviser.

Disruptions in the global financial markets may have materially adverse, and in certain cases catastrophic, consequences for the values, liquidity, and stability of certain Investments. Such disruptions may occur in the future, and the duration, severity, and ultimate effect of such disruptions are difficult to forecast.

In addition, many of the Adviser's investment strategies and/or Investments are likely to be exposed to risks relating to weaknesses in various global economies and risks relating to the economic cycle. Numerous factors affecting the performance of the Adviser's investment strategies, such as interest rates, commodity prices, equity prices, availability, and terms of financing, demand from market participants, and deflationary and inflationary pressures, may be affected by the economic cycle and long-term economic trends. Predictions about financial market conditions and economic factors are highly uncertain, and the presence, duration, and impact of any market or economic conditions could have a material adverse effect on the Adviser's investment strategies.

The Adviser may choose not to attempt to, or be unable to, hedge the risk exposures outlined in this brochure, and there can be no assurance that any hedging attempted by the Adviser would reduce applicable risks.

### **Special Risks of Certain Markets**

Certain markets may pose special risks due to, among other factors, the limited availability of useful information, the reliance on self-interested persons for price and other information, and more or less regulation. For example, price information might be available only from brokers or dealers and might not be verifiable. Further, less regulation in certain markets might enable market intermediaries or other investors to engage in “frontrunning” (whether directly or through their customers or agents) of the Adviser’s trades, to misuse information about positions managed by the Adviser to reduce the value or liquidity of those positions, and to take other actions that materially adversely affect the Adviser’s investment strategies. The limited availability of price information or actions of market intermediaries or investors could exacerbate other risk factors outlined in this brochure, including short squeezes, and could have a material adverse effect on the Adviser’s investment strategies. In addition, brokers, dealers, or other market participants may withdraw or substantially reduce the scope of their activity with regard to certain markets or Investments without notice, resulting in disruptions to strategies, pricing, and/or the ability to liquidate or close out positions. Any of the foregoing could have a material adverse effect on the Adviser’s investment strategies.

### **Availability of Investment Opportunities**

Identification and exploitation of investment opportunities and investment strategies by the Adviser involve a high degree of uncertainty. The Adviser makes decisions based on its assumptions, assessments, and estimates, all of which are subject to error. There can be no assurance that the Adviser will be able to identify and/or successfully take advantage of suitable investment opportunities. Even if the Adviser takes advantage of an investment opportunity, there is a risk that such investment opportunity will result in losses to the Adviser’s clients. Further, the Adviser may elect to stop deploying any particular investment strategy on behalf of a particular Fund at any time, regardless of whether such strategy has been successful or whether other Funds continue (or begin) to deploy such strategy. If the Adviser is not able to identify and/or take advantage of suitable investment opportunities, it may alter its investment strategy and/or risk tolerances in order to deploy capital, which may have a material adverse effect on the Adviser’s investment strategies. In addition, the Adviser may rely on market participants to inform it of particular trading and/or other investment opportunities. Client returns may be reduced if market participants fail to provide such information or if the Adviser is otherwise unable to source opportunities it considers appropriate for its investment strategies.

### **Origination Activities**

The Adviser may cause clients to engage in the origination of debt and/or equity financing. If a client engages in such activities, it will be subject to applicable laws in each jurisdiction in which such activities take place. Such laws may require registration with applicable authorities and compliance with extensive regulatory regimes.

The market for originating debt and equity financing is highly competitive, and the Adviser may be unable to compete effectively with other market participants for origination opportunities. Funds managed by the Adviser may compete for opportunities with public and private investment funds, commercial and investment banks, and commercial finance companies. In general, the corporate, non-mortgage debt, and equity origination market presents relatively low barriers to entry, and significant competition is likely. Price pressure from competitors (including market participants that are not directly originating loans) may cause the Adviser to recommend a client lower the interest rates that it charges borrowers, which consequently may lower the value of the loans. Further, if competitors adopt less stringent loan origination standards in order to maintain their loan origination volume, the Adviser may cause clients to do so as well. If the Adviser adopts less stringent loan origination standards, a client will bear increased risk for each loan originated under such less stringent standards, which may not be compensated by an increase in price.

Alternatively, the Adviser may determine not to adopt less stringent origination standards in this competitive environment, which decision may result in a loss of market share. Increased pressure on pricing and origination opportunities likely would reduce the volume and quality of the Adviser's origination activity and materially adversely affect clients. Some competitors may have higher risk tolerances or different risk assessments than the Adviser, thereby allowing such competitors to achieve a broad diversification of Investments and to establish more relationships than the Adviser. These competitive pressures could have a material adverse effect on clients.

The Adviser has limited experience in originating mortgage loans. Mortgage lending activities are highly regulated by U.S. federal, state, local, and other governmental authorities.

### **Limited Diversification; Concentration; Correlation**

The overall portfolios of the Adviser's clients may not be broadly diversified among particular issuers, issuances, companies, countries, industries, exchanges, counterparties, strategies, types of Investments, or other shared characteristics. In general, less diversification may lead to greater volatility and/or risk than would be the case with a more broadly diversified portfolio. Even if a client's overall portfolio is diversified, however, there can be no assurance that such diversification will reduce volatility and/or risk. In addition, a client's portfolio may be concentrated in particular issuers, issuances, companies, countries, industries, exchanges, counterparties, strategies, types of Investments, and/or other shared characteristics, without any limitation other than applicable law or regulation (if any). Such concentration would magnify the risks associated with such investments for the client, including the risk of significant losses.

There can be no assurance that the Adviser's clients will achieve returns that are not closely correlated with various market indices or the returns of other investment vehicles. There can be no assurance that the Adviser will value less-correlated returns more highly than any other factor in selecting the Investments and strategies. Further, certain Investments made and strategies deployed by the Adviser may experience returns that individually or in the aggregate are correlated (possibly highly) with various market indices or other strategies, including various equity, debt, commodities, or currency markets around the world. In addition, certain of the strategies deployed by the Adviser may maintain (possibly extensive) unhedged exposure for an indefinite period to various sources of equity, credit, interest-rate,



and/or other risk, whether known or unknown, while other strategies deployed on behalf of a client may have such unhedged exposures from time to time. There can be no assurance that an investment with the Adviser would improve the risk/return profile of any investor's portfolio or otherwise improve the performance of the investor's overall portfolio, and an investment in a Fund managed by the Adviser may in fact result in material losses.

### **Low Creditworthiness Investments**

There is no minimum credit standard for any of the Adviser's investment strategies, and a (possibly substantial) portion may, whether at the time of investment or at a later time, involve Investments that are unrated; rated below "investment grade" by recognized rating services; and/or defaulted. Unrated, sub-investment-grade, and defaulted Investments generally involve greater risk of loss in either a short or a long position than do investment-grade Investments. For example, the market values and yields of unrated, sub-investment-grade, and defaulted Investments generally react more dramatically to changes in general economic conditions, in the levels of interest rates, and in the financial condition and prospects of their issuers than do those of more highly rated Investments. During periods of economic downturn or rising interest rates, issuers of unrated, sub-investment-grade, and defaulted Investments may experience, to a greater degree than issuers of more highly rated Investments, certain forms of financial stress that could materially adversely affect such Investments. Such issuers may be in early stages of development; may not have proven operating histories; may be operating at a loss or have significant variations in operating results; may be engaged in rapidly changing businesses with products subject to a substantial risk of obsolescence; may require substantial additional capital to support their operations, to finance expansion, or to maintain their competitive position; or may otherwise have a weak financial condition. Additionally, such issuers may be highly leveraged, which may present greater risks to these companies.

Adverse publicity and investor perceptions, whether based on fundamental analysis, market rumors, distress of related issuers, or other sources, may materially adversely affect such low creditworthiness Investments. Adverse effects on long positions in these Investments include the increased probability of default, the decreased value of any recovery in connection with a reorganization proceeding, decreased secondary market prices (if any) for these Investments, and general decreases in the liquidity of these Investments. The secondary market for these Investments is concentrated among relatively few market-makers or investors and may be expected to be less liquid than the secondary market for Investments that have higher ratings or are issued by non-distressed issuers. In addition, the lower liquidity of unrated, sub-investment-grade, and defaulted Investments, as well as other factors outlined above, could exacerbate the risks of short positions in these Investments.

Certain forms of low creditworthiness Investments may be issued pursuant to note indentures, promissory notes, or other indicia of indebtedness that contain fewer debt covenants, rights, and remedies compared to those afforded to lenders under a credit agreement. As a result, such Investments may be more sensitive to certain risk factors as compared to similar debt instruments with greater debt covenants, rights, and remedies. Moreover, the lack of certain financial covenants with respect to such Investments may result in a higher risk of loss and may hinder the ability of the Adviser to restructure a problematic loan in order to mitigate its exposure to loss.

## **Derivative Instruments**

The Adviser may trade all types of derivative instruments without limitation other than any applicable limitations imposed by regulations and/or by counterparties and clearing brokers. Derivative instruments are financial instruments that derive their performance, at least in part, from the performance of an underlying asset, index, interest rate, or other reference instrument. Examples of derivative instruments include swaps, futures, forwards, options, warrants, options on futures, and swaptions.

Investments and trading in derivative instruments are generally highly speculative and involve various risks that are different in certain respects from, and are possibly greater than, the risks associated with investing directly in the applicable underlying assets or reference instrument. Examples of various risks associated with derivative instruments include market risk, complexity, a high degree of leverage, illiquidity, the absence of reliable price quotes and/or a reliable trading market, unstable correlation between a derivative instrument and the underlying asset or reference, volatility, tax risk, government intervention to influence prices, legal or regulatory uncertainty, and, with respect to over-the-counter derivative instruments, non-performance of counterparties (including direct or central counterparties).

In addition, agreements that govern the Adviser's Investments in derivative instruments typically impose obligations on the Adviser or the Fund. Under such agreements, a failure to observe such obligations may result in the declaration of an event of default, which would permit the counterparty to exercise a range of remedies, possibly including the ability to unilaterally terminate Investments governed by such agreements and to require the Adviser to pay such counterparty the replacement cost of the terminated Investments based on market quotes obtained by such counterparty, which quotes may be materially different than market prices. Such agreements also typically include payment or valuation provisions that require determinations by a calculation agent or a valuation agent (typically the dealer). If the Adviser is unable to negotiate favorable terms for such provisions or rights to dispute such determinations, the counterparty may have rights to make determinations that adversely affect the applicable Investments.

Trading derivative instruments might deprive a client of certain tax benefits obtained from trading the underlying assets or reference instruments and/or, with respect to over-the-counter derivative instruments, from trading exchange-traded instruments.

Trading in options or warrants involves a risk of loss related to the premium for the option or warrant as well as a risk of loss related to the value of the underlying security or instrument, which loss in either case could be substantial. The writing of an uncovered option by a client may result in an unlimited loss of a client's capital within a relatively short period of time.

Trading in futures contracts and options on such contracts may be subject to limitations imposed by regulatory authorities and relevant exchanges, which may prevent a client from liquidating positions and could subject a client to substantial losses. Many derivative instruments, including forward contracts and options on forward contracts, are not traded on exchanges and are generally not regulated.

The regulation of derivative instruments is evolving, and changes in such regulation may adversely affect investments in Funds managed by the Adviser. For example, several U.S. legislative bodies and regulatory

authorities have enacted or are considering legislation and rules for oversight and/or regulation of the previously largely unregulated market in over-the-counter derivatives.

### **Debt Investments**

Without limiting the scope of its possible activities, the Adviser may cause clients to hold, structure, and restructure loans and other forms of indebtedness.

The discussion in this section is based in part upon principles of U.S. federal and state laws. With respect to Investments relating to non-U.S. borrowers, there can be no assurance that the laws of certain non-U.S. jurisdictions (and/or the consequences of such laws) would not result in additional risks.

#### **Secured Loans; Second Lien Loans; Unsecured or Subordinated Loans**

Measures taken by the Adviser to protect clients' interests in loans in which they may invest, including the validity or enforceability of such loans and the creation and maintenance of the anticipated priority and perfection of applicable security interests, may prove to be inadequate. There can be no assurance that any collateral would be sufficient to cover the obligations being collateralized or the amount of a client's investment. Any collateral may decline in value; may be subject to competing claims of creditors; may be difficult to recover or sell due to legal, regulatory, or other reasons; or otherwise may be inadequate to allow a client to recoup its investment.

The Adviser may cause clients to invest in certain loans ("Second Lien Loans") that are secured by a second priority interest or lien on collateral but are subordinated to other secured obligations. Second Lien Loans are subject to a risk that the cash flow of the related borrower and the property securing the Second Lien Loan may be insufficient to make scheduled payments on the Second Lien Loans after giving effect to any obligations in respect of the senior secured loans of the borrower. Second Lien Loans are also expected to be less liquid than senior secured loans.

Finally, the Adviser may cause a client to invest in various types of unsecured indebtedness (such as senior unsecured, subordinated, or general indebtedness) that would be junior in priority to the claims of secured creditors. The claims of secured or senior creditors may exhaust some or all of the assets of a borrower before unsecured, subordinated, or general creditors may participate in such assets.

#### **Lender Liability; Equitable Subordination; Fraudulent Conveyance**

Investments structured as loans or other forms of indebtedness may subject clients to claims of lender liability and/or may be subject to claims of equitable subordination or recharacterization.

The risk of such claims may be exacerbated if a client holds a significant equity position and/or certain management positions (including representation on the board of directors) with respect to the applicable borrower. Under the concept of "equitable subordination," a court may subordinate the claim of a lender or bondholder to the claims of other creditors in certain circumstances, such as if the court finds that such lender or bondholder engaged in inequitable conduct to the detriment of other creditors. In addition, under certain circumstances, a loan may be recharacterized as an equity contribution if a court determines that the loan was in substance a disguised equity contribution to a company. If a court recharacterizes a loan as an equity contribution, such loan would be made subordinate to the claims of all creditors. Any successful claims of lender liability against a client or any successful claims of equitable

subordination or recharacterization could have a material adverse effect on such Investment held by a client (possibly resulting in losses that exceed the value of such Investment).

Investments structured as loans or other forms of indebtedness may also be subject to claims of fraudulent conveyance. Any claims of fraudulent conveyance or preferential payment with respect to an investment could have a material adverse effect on a client, which could be required to return related payments.

### **Certain Additional Risks**

The terms of certain loans or other forms of indebtedness held by clients advised by the Adviser may obligate such clients to extend to a borrower additional credit in the future, either at the request of the borrower or if certain other conditions are met. Any such additional extension of credit would increase a client's exposure to the applicable borrower. In addition, if a client does not have adequate available funds or chooses not to fund at the time additional credit is required, the borrower may seek to assert claims for damages against the client.

Certain of the loans in which the Adviser may cause a client to invest may require the client to indemnify or reimburse the lead or agent bank for the loan for costs incurred by such bank. Such indemnification or reimbursement may cause substantial losses to the client and may be required in addition to any costs incurred by the client itself. In addition, lenders and other persons may seek to bring claims against the client for the acts or omissions of a lead or agent bank.

### **Distressed Issuers**

The Adviser may cause clients to invest in long and short positions in Investments issued by or otherwise related to companies that at the time of the applicable investment are experiencing, or subsequent to the applicable investment do experience, various forms of financial, business, operational, legal, and/or other distress or impairment, including companies involved in bankruptcy or other reorganization or liquidation proceedings (collectively, "Reorganization Proceedings"), as well as those emerging from Reorganization Proceedings and those seeking financial restructurings or reorganizations outside such proceedings. These Investments involve a high degree of risk and the total value of the applicable Investment may be lost.

The Adviser also may cause clients to purchase from banks, other financial institutions, or other investors bank loans (whether through assignment or participation transactions) and other forms of direct or indirect indebtedness (including revolving loans and letters of credit) of distressed companies. Investments in loan participations would expose a client to risks related to the creditworthiness of the banks or other financial institutions issuing such participations.

The Adviser also may cause clients to purchase bankruptcy claims (including trade claims), which are amounts owed to creditors of a distressed company. Investments in bankruptcy claims are difficult to value. Moreover, bankruptcy claims generally are illiquid and non-interest-bearing, and there can be no assurance that a company will be able to satisfy its obligations under a claim.

Sophisticated financial and legal analysis is often necessary for successful investment in distressed companies. There is no assurance that the Adviser will correctly evaluate the value of the collateral (if any) supporting the Investments held by a client or the prospects for a successful reorganization or

similar action. Such Investments may be subject to additional risks, such as significant volatility in the value of the Investment; the involuntary exchange of such Investments for cash, financial instruments, or other property (including illiquid Investments) having substantially less value than the original Investment; and/or delayed or extended payment for such Investments.

In addition, Reorganization Proceedings, as well as other financial restructurings or reorganizations, are subject to a number of risks. For example, such proceedings may be of uncertain duration; may be subject to unanticipated and possibly lengthy delays; may involve substantial legal, professional, and administrative costs to the reorganizing company and its investors; may involve other factors that are beyond the control of the reorganizing company and its investors; and/or may result in the liquidation of the reorganizing company. Further, the Adviser, on behalf of a client, may decide to become involved in the restructuring of a particular distressed company, including through representation on creditors' or equityholders' committees or other groups (whether formal or informal) and participation in litigation or direct negotiations with the company's management, each of which may involve special risks and/or conflicts of interest for a client. The occurrence of any of these risks could have a material adverse effect on the value of the applicable Investment or on the Adviser's ability to dispose of or to act to protect the value of such Investment.

### **Illiquid Investments**

The Adviser may cause clients to make investments characterized by varying degrees of liquidity, such as Investments for which there exists no actively traded secondary market and which are thus highly illiquid or for which there is an absence of readily ascertainable market values. Any illiquidity with respect to the Investments recommend by the Adviser may or may not be anticipated and/or may vary over time. Such Investments may constitute a substantial portion of the client's assets managed by the Adviser and may involve significant transaction costs when they are purchased or disposed of, whether through adverse price movements (whether related to liquidity or otherwise), increased spreads between quotes and dealer mark-ups (which may already be material for such Investments), and/or other transaction costs. The Adviser may choose to liquidate illiquid Investments (quickly or otherwise) if it believes that such liquidations may be warranted by market conditions or other considerations.

In addition, the Adviser may cause clients to invest in Investments that are subject to resale restrictions due to regulatory, statutory, or contractual provisions that limit the ability of the Adviser to liquidate such Investments. Such regulatory, statutory, or contractual restrictions could cause liquidity-related losses, could result in exposure to unhedged positions, and could have other material adverse effects on clients.

### **Leverage; Margin**

Many of the strategies deployed by the Adviser are highly dependent on the use of leverage for their success. The Adviser intends to use instruments (including futures, swaps, options, and other derivative instruments) that, if such instruments were to decrease in value, could result in losses exceeding the capital allocated to them. In addition, the Adviser may cause clients to buy certain Investments on margin and/or may enter into swaps or other derivative instruments to enhance leverage or for any other reason.

The amount of leverage employed from time to time by clients is determined by the Adviser. The Adviser may cause a client to employ leverage up to the maximum amount permitted by applicable law and regulation and by the persons extending credit or otherwise providing leverage to the client. Only a limited amount of the leverage employed by a client may be apparent from the balance sheet or other financial statements of the client, and a large portion (and possibly the majority) of the leverage employed may be effected through off-balance sheet transactions or methods, such as total return swaps (which can offer leveraged exposure to the applicable reference instruments).

A client may incur potentially significant expenses, including interest charges and commitment fees, in connection with any leverage that it uses. In addition, the rights of any lenders to a client to receive payments of interest or repayments of principal generally will be senior to the rights of the client's investors and the terms of any such borrowings may restrict certain activities of a client (including the client's ability to make distributions).

Although any financial leverage may have the effect of increasing returns in the event of favorable investment results, returns will be reduced by the cost of borrowing, and investment losses and other losses will be exacerbated by leverage (possibly causing substantial losses, including losses exceeding the total value of the assets of a client). The use of leverage by the Adviser will increase the volatility of the investment performance of its investment strategies.

The persons that are expected to extend credit or otherwise provide leverage to clients generally are entitled to receive margin or other collateral to secure such leverage, and many of such persons have discretion to increase the collateral requirements for the leverage they provide, in certain circumstances on very little notice. Although the Adviser is expected to allocate a portion of a client's available cash to act as a "liquidity cushion" to cover additional collateral requirements, the amount so allocated may not be sufficient to meet the additional collateral requirements imposed by the persons providing leverage or warranted by market conditions. In addition, persons extending credit or otherwise providing leverage may impose certain financial and non-financial covenants, including requiring that the capital of a client exceed certain levels and/or that reductions in a client's capital do not exceed certain amounts or percentages. In the event these or other covenants are violated, such persons may terminate credit lines or derivative contracts and/or require the liquidation of some or all of a client's Investments. Even absent a violation of a covenant or other agreement, such persons may have the right to terminate credit lines or derivatives contracts and/or to compel a client to liquidate or cover an Investment with little notice, possibly resulting in a disposition of the collateral or assets at a time and/or in a manner adverse to the client. A client may be materially adversely affected if (a) it fails to meet any collateral requirements, whether as a result of increased requirements imposed by any such persons or as a result of market fluctuations affecting the value of collateral or of the associated Investment; (b) some or all of its Investments are liquidated in order to meet such increased requirements or in response to a violation of a covenant or other agreement; (c) its credit lines are terminated, or (d) leverage otherwise becomes unavailable or difficult to maintain. The adverse effects of liquidating Investments would be exacerbated when the applicable investments are illiquid.

More generally, losses experienced by a client and/or by other investors holding positions that overlap those of clients could lead to the imposition of increased collateral requirements, which could in turn require the liquidation (by clients and/or such other investors) of certain positions, which liquidations

may occur at disadvantageous times and/or more quickly than would otherwise be desirable. The market impact associated with such liquidations could in turn lead to further losses (by clients and/or such other investors), potentially leading to a “vicious cycle” that could result in progressively increasing losses to clients. Such events could also lead to a rapid deterioration in the liquidity associated with the affected positions as well as unexpected adverse correlations among various Investments held by clients, thus further exacerbating the adverse effects to clients. Notwithstanding such losses and illiquidity, the Adviser may elect to have clients increase their exposure to such Investments, which may result in further losses.

The institutions, including brokerage firms and banks, with which a client may trade or invest may encounter financial difficulties that may require such institutions to reduce the amount of financing provided to the client, resulting in forced liquidation of substantial portions of the client’s Investments. Any financial difficulty of any such counterparty, or any reduction in the amount of financing granted to a client by any such counterparty, could have a material adverse effect on the client.

Notwithstanding the foregoing, there can be no assurance that clients will be able to borrow money, use margin, or engage in any financing transaction in order to obtain and/or employ leverage. Further, a client may not be able to obtain leverage and/or other financing, whether at a reasonable cost or at all, in the event that the Investments held by the client are not sufficiently diversified. Any inability of a client to obtain, employ, and/or maintain leverage or other forms of financing, whether at a reasonable cost or at all, would be expected to result in (possibly materially) lower returns to the client than had the client been able to obtain, employ, and/or maintain such leverage at a reasonable cost.

### **Private Investment Activities**

The Adviser may engage in certain private investment activities, certain risks of which are outlined below.

#### **Private Equity-Related Investments Generally**

The Adviser may cause clients to acquire controlling or non-controlling positions in privately held companies.

Private equity-related Investments are generally characterized by an extremely high degree of illiquidity, frequently lasting several years and possibly indefinitely. The realization of a private equity return, if any, generally occurs only upon the partial or complete monetization of an Investment by means of a dividend, distribution, recapitalization, initial public offering, asset liquidation, sale, other disposition, or similar financial event. Contractual or legal restrictions may delay realization of a private equity-related Investment beyond the occurrence of any such financial event. In addition, a client generally is expected to earn little or no current cash income on such Investments prior to any realization event.

Private equity-related Investments may be extremely difficult to value, particularly in the absence of a specific liquidity event, readily available comparables, or a material change in the company associated with such Investment or the industry in which such company operates. Even if a valuation change is ultimately made, the change may be, by necessity, highly subjective.

The long time horizons of investing in private equity-related Investments may expose a client to shifts in market, economic, political, technological, regulatory, and/or social conditions to an unusual degree. Developments occurring after a private equity-related Investment is acquired may fundamentally alter the

anticipated market for such Investment, preventing the Adviser from disposing of the Investment profitably or at all, or subjecting the client to risk of a potentially complete loss on such Investment.

The Adviser may become involved in the exercise of control of a particular privately held company, including in the form of representation on the boards of directors, equityholders' committees, or other groups (whether formal or informal) and participation in litigation.

### **Follow-on Investments; Co-Investments**

Following its initial investment in a privately held company, the Adviser may be presented with the opportunity to provide additional capital to such company. Even if such an investment is desired, it is possible that a client will have insufficient available capital to act. Any decision by the Adviser not to make a follow-on investment or any inability by a client to fund such an investment could have a material adverse effect on a privately held company in need of capital, potentially materially adversely affecting the client.

The Adviser may recommend co-investing with third parties (including other clients advised by the Adviser, or other Related Persons of the Adviser) through consortiums of investors, partnerships, joint ventures, or other similar arrangements. Such Investments may involve risks in connection with such third-party involvement, including the possibility that any such third party may have financial, legal, or regulatory difficulties that have a material adverse effect on such Investment, may have economic or business interests or goals that are inconsistent with those of the relevant client, may pursue interests inconsistent with those of the relevant client, may default on their obligations, and/or may be in a position to take (or block) action in a manner contrary to the relevant client's investment objective. In addition, a client may in certain circumstances be liable for the actions of its co-investors. Such Investments may involve performance charges, incentive compensation arrangements, and/or other fees payable to such third parties.

### **Hedging Transactions**

The Adviser may seek to limit a client's exposure to various risk factors through the use of various hedging techniques. There can be no assurance that such hedging techniques will be effective or that they will result in higher or more stable returns than would have been the case had they not been employed. Moreover, such hedging techniques may limit any potential gain that might result from an increase in the value of a hedged position.

It should be noted that any hedging techniques employed by the Adviser would be intended only to reduce exposure to certain risks and not to reduce all forms of investment risk. Further, the Adviser is not obliged to hedge any particular form of risk in any particular situation, and the Adviser will be free to have clients assume such risks and/or to change its investment policies and practices in any manner as determined by the Adviser and without the approval of or notice to clients. Moreover, certain of the investment strategies deployed by the Adviser may from time to time have extensive unhedged exposure to various sources of equity, credit, interest rate, and/or other risk, whether known or unknown.

Under certain circumstances, hedging techniques intended to reduce certain forms of risk may actually increase risk, whether due to the unintended market impact of hedging transactions, leverage effects associated with hedging positions, unexpected adverse price movements of a hedging instrument relative



to the hedged instrument (*i.e.*, adverse changes in the “basis” between the hedging and hedged instrument), lower liquidity of the hedged and hedging positions relative to an unhedged position, the risks related to the use of derivative instruments, or other factors. In addition, even where the Adviser seeks to hedge a particular risk, a suitable hedging transaction might not be identified by the Adviser, might not be available to a client, and/or might not be successfully executed.

### **Unlimited Liability Investments**

The Adviser may cause clients to invest directly or indirectly in unlimited liability entities, which investments would expose a client to a risk of loss in excess of its initial investment in such entities. Such investments may be made in general partnerships and/or other unlimited liability entities.

### **Use of Sub-Advisers**

Effective January 3, 2012, DESDC retained the Sub-Adviser to serve as sub-adviser, providing certain investment advisory services to DESDC with respect to the Funds. Certain risks are related to the engagement of the Sub-Adviser. For example, although the Sub-Adviser and its employees will devote a certain amount of time and effort to the Services, it may also devote a substantial (and possibly greater) amount of its time and resources to activities unrelated or only partly related to the Services. These other activities may include advising other clients of the Sub-Adviser, sponsoring other investment vehicles (including those with investment objectives similar to or overlapping with those of the Funds), making investments for their own accounts, or engaging in other lines of business. These other activities could compete with the Funds for the purchase, sale, trading, structuring, and restructuring of investments. In addition, such activities could conflict with advice the Sub-Adviser gives to DESDC in respect of one or both of the Funds. For example, the Sub-Adviser could advise one or both Funds to buy or sell certain investments while simultaneously advising the other Fund, or other clients of the Sub-Adviser, to undertake a different (including potentially opposite) strategy with respect to those investments. Such activities could also expose the Sub-Adviser to material risks independent of those associated with its provision of the Services, and the occurrence of any such risks could adversely affect the Sub-Adviser’s ability to provide the Services.

## **Item 9: Disciplinary Information**

In April 2010 and June 2010, certain entities in the D. E. Shaw group advised by DESCO LP unintentionally violated futures contract position limits set by the U.S. Commodities Futures Trading Commission (“CFTC”) in connection with trading soybeans and corn, respectively, on the Chicago Board of Trade, a member of the CME Group. In each case, the violation was as of the close of trading on a single day, and in each case, the D. E. Shaw group discovered the violation and put on correcting trades on or before the next trading day and before receiving notification of the violations, so that its positions were below the applicable limits. DESCO LP submitted to the CFTC an Offer of Settlement, in which DESCO LP consented to cease and desist from such violations and to the payment of a civil monetary penalty of \$140,000. The CFTC entered an Order on February 22, 2012, accepting the Offer of Settlement. The CME Group issued warning letters to the D. E. Shaw group for each violation.

DESDC believes there are no other legal or disciplinary events that are material to a client’s or prospective client’s evaluation of its advisory business or the integrity of its management.

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

Certain management persons of the Adviser are registered representatives of D. E. Shaw Securities, L.L.C. (“SEC LLC”), which is a related person of the Adviser and a broker-dealer registered under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”) and a member of Financial Industry Regulatory Authority, Inc. (“FINRA”).

DESDC previously relied on exemptions from registration as a commodity pool operator (“CPO”) and commodity trading adviser with the Commodity Futures Trading Commission (the “CFTC”), but DESDC does not engage in any activity that would require such registrations or exemptions from registration. DESCO LP and certain of its related persons are currently registered as CPOs pursuant to the Commodity Exchange Act (the “CEA”) and are members of the National Futures Association (the “NFA”). Certain other of DESDC’s related persons have been listed with the CFTC as commodity pools and will be operated as “exempt pools” in accordance with Commodity Futures Trading Commission Rule 4.7. DESCO LP and certain of its related persons rely on an exemption from registration as commodity trading advisers with the CFTC. One of the management persons of DESCO LP is registered with the NFA as an associated person of the Adviser and each of the Adviser’s related persons that is registered as a CPO.

### **Related Persons**

The Adviser is part of an international financial services firm. The Adviser acts as managing member, manager, holding company, and/or “parent company” for certain of its related persons, and this activity may be considered to be separate from the provision of investment advice. For purposes of this brochure, the Adviser does not consider itself to be engaged in the business of its related persons.

Subject to applicable law, DESDC may use for clients, or suggest or recommend to clients, placement agent services offered by the Adviser’s related person, SEC LLC. To the extent that the services of SEC LLC are used, clients may be charged a fee. The Adviser’s related persons license (or sublicense) certain intellectual property from the Adviser and may utilize the Adviser’s employees in connection with their businesses.

DESDC is a managing member or manager of certain Funds and acts as adviser for such Funds as well as for other Funds.

The Adviser’s related person, DESCO LP is registered with the SEC as an investment adviser under the Advisers Act, is registered as a CPO pursuant to the CEA, and is a member of the NFA. The Adviser licenses certain intellectual property from DESCO LP and utilizes certain assets and resources of DESCO LP or the Adviser’s other related persons (including without limitation certain employees of related persons) in connection with its own investment advisory activities. All of the persons treated as the Adviser’s employees in this Form ADV are employees of DESCO LP or the Adviser’s other related persons; may share their time among the Adviser, DESCO LP, the Adviser’s other related persons, and/or affiliates of the foregoing; and receive compensation and other benefits from DESCO LP, the Adviser’s other related persons, and/or such affiliates. In addition, as agreed between the entities, the Adviser may reimburse DESCO LP for certain expenses and DESCO LP may reimburse the Adviser for certain expenses.

## **Certain Potential Conflicts of Interest**

DESDC and its related persons and their directors, partners, officers, and employees may have various advisory, transactional, financial, and other interests in securities and/or other financial instruments that may be purchased or sold by the Adviser's advisory clients (or clients of related advisers), which themselves may be related persons. DESDC, and/or its related persons that are investment advisers, has established a variety of restrictions, procedures, and disclosures designed to address potential conflicts between the interests of its clients and the interests of itself and/or its related persons in this regard, to ensure that its actions are consistent with the best interests of its advisory clients in this context. When conflicts of interest in this regard arise, they are addressed in compliance with all legal requirements and such restrictions, procedures, and disclosures, as applicable. Restrictions and procedures generally are established by heads of the applicable strategies, senior management, and/or compliance personnel.

Although the Adviser expects to devote a certain amount of time and effort to the business and affairs of each client, it will also devote a substantial (and probably a greater) amount of its working time and effort to activities unrelated or only partly related to the business or affairs of such client, including various investment and trading activities, the provision of various financial services, various technology-related activities, and various other similar and dissimilar activities. These other activities may require substantial commitments of time and resources by the Adviser. Participation in such other activities may or may not be offered to clients, as determined by the Adviser.

The Adviser may establish a new Fund or other entity in the future that would be exposed to certain of the investment strategies deployed on behalf of clients. Clients might or might not be permitted to participate in such new Fund or other entity, as determined by the Adviser. The Adviser may determine to continue or discontinue any such competing activity being conducted for the benefit of a client. If such activity is discontinued, the relevant client may forgo the benefit of material future investments and of expertise developed by the Adviser. If such activity is continued, then competition with such new Fund or other entity may materially adversely affect the relevant client. Among the factors the Adviser would consider in making such decision are the operational, tax, regulatory, and legal efficiencies; capital stability; sources of additional capital; and the expected performance profile of the applicable strategy.

As disclosed in the applicable Governing Document, DESDC has no obligation to recommend for purchase or sale by its clients any securities that the Adviser, its related persons, and/or personnel of the foregoing may purchase for themselves or for other clients. In addition, the ability of DESDC to effect and/or recommend transactions for certain or all clients may be restricted due to actual or perceived regulatory requirements in the United States or elsewhere, to the Adviser's or a related person's internal policies designed to comply with such requirements, to actual or perceived conflicts of interest, to operational issues, and/or to other issues. Regulatory or contractual limitations related to effecting transactions for certain of DESDC's clients may not apply to other clients, resulting in differences among the composition of and return from client portfolios. DESDC reserves the right not to effect transactions for clients with or through its related persons.

As disclosed in the applicable Governing Document, DESDC may give advice and take action with respect to any of its clients that may differ from the advice given, or may involve a different timing or nature of action taken, with respect to any one or all other clients that the Adviser or its related persons advise, and

thus effect transactions for such clients at prices or rates that may be more or less favorable than for other clients. DESDC may advise one or more clients to take positions the same as, different from, or opposite to positions the Adviser or its related persons advise one or more other clients to take. In general, the Adviser will act in the best interests of its clients, subject to applicable law and to any agreement, organizational or other document, or disclosure applicable to a particular client or underlying investor. DESDC and/or its related persons may hold the same (or the opposite) position in a given security, commodity, or other financial instrument as that held by the client at the same time.

Any common (or opposing) positions described above may limit the ability of DESDC to add to the position held on behalf of any client, to readily liquidate such a position, or to obtain a favorable price in the course of such liquidation. In effecting transactions for the client, related person, and/or any other persons or entities, it may not always be possible or consistent with the investment objective of the client or of such other persons or entities to take or liquidate the same investment positions at the same time or at the same prices. The “market impact” associated with a liquidation by such other persons or entities may adversely affect a client’s ability to liquidate its position; or where a client’s position is liquidated, the price at which such liquidation occurs; or where a client does not liquidate its position, the mark-to-market value of such position.

DESDC, its related persons, and/or their clients may trade with each other from time to time upon the advice of the Adviser and, as applicable, related persons. DESDC generally does not itself trade securities on a principal basis with clients. Certain clients and related persons of the Adviser, however, are deemed principals (and in the future other clients may be deemed principals), based on SEC staff guidance, due to the investment in each such client or related person by the Adviser and controlling persons exceeding 25% of that client’s or related person’s assets. To the extent that DESDC and/or its related persons (including Funds) engage (or are deemed to engage) in principal securities transactions, any such transactions will comply with applicable law. DESDC and/or its related persons may have interests in such transactions that are adverse to a particular client.

To the extent permitted by applicable law and the applicable Governing Documents, DESDC or its related persons may effect “cross transactions” between the Adviser’s and/or its related persons’ client accounts in which one client will purchase securities held by another client. DESDC and/or its related persons will direct clients to enter into such transactions only when the transactions are consistent with the best interests of both clients and at a price that the Adviser and/or its related persons believe constitutes best execution for both clients. Neither DESDC nor any related party receives any commission or commission equivalent in connection with these transactions.

One or more related persons of DESDC have entered into certain contractual arrangements with the Sub-Adviser pursuant to which such related persons have a right to: (1) appoint a member to the Sub-Adviser’s principal advisory board (if constituted), (2) receive amounts calculated as a portion of the Sub-Adviser’s revenues and a portion of the proceeds of any sale of the Sub-Adviser, and (3) consent to certain transactions proposed to be undertaken by the Sub-Adviser. These arrangements give rise to a potential conflict of interest in DESDC’s choice of the Sub-Adviser to provide the Services. However, no additional management fee or performance-based fees will be charged to DESDC investors as a result of the sub-advisory arrangement; rather, in consideration of, and as exclusive compensation for, the Services, DESDC will pay or cause to be paid to the Sub-Adviser a portion of each of the management fee and

performance-based fee DESDC receives in respect of the Funds. Finally, consent of the Funds' investors was sought (and obtained) in respect of the retention by DESDC of the Sub-Adviser.

Disclosures regarding conflicts of interest and their resolution generally will be contained in the applicable Governing Document, this brochure, and/or another document. Other documents, such as financial or periodic reports, furnished to clients or investors may contain disclosure regarding conflicts of interest.

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

DESDC and its affiliated investment advisers have adopted a code of ethics (the "Code") that establishes the standard of business conduct that must be followed by, among others, all partners, directors, officers, and employees of the Adviser and these investment advisers (collectively "Supervised Persons"). The Code incorporates the following general principles, which all Supervised Persons are expected to uphold: act in the best interests of clients; conduct personal securities transactions in a manner consistent with the Code, which seeks to address certain conflicts of interest in this regard; avoid taking any inappropriate advantage of one's position at the Adviser; maintain confidentiality of information concerning the Adviser's securities recommendations and client securities holdings and transactions; and provide accurate disclosure in reports required by auditors, regulators, or government bodies.

The Adviser believes that these general principles not only help the Adviser fulfill its obligations undertaken as an investment adviser, but also protect the Adviser's reputation and instill in employees the Adviser's commitment to honesty, integrity, and professionalism.

The Code also provides guidelines for Supervised Persons regarding adherence to securities laws generally, transactions in personal accounts involving public and private securities and commodities, activities outside of the investment adviser's business, giving and receiving business-related gifts, and the maintenance and memorialization of certain family and/or close personal relationships. For example, the Code requires that all Supervised Persons obtain approval prior to effecting any securities or commodities transaction in a personal or related account for which the employee exercises control. In addition, the Code requires that all Supervised Persons report Code violations and outlines potential sanctions for such violations. The Adviser's Chief Compliance Officer is responsible for various aspects of the Code's administration, including without limitation the monitoring and review of personal securities and commodities transactions of Supervised Persons, and is available for any questions Supervised Persons have regarding the Code. The Adviser will provide a copy of the Code to any client or prospective client upon request and may elect to provide a copy of the Code to investors in the Funds.

Please see Item 10 for additional information regarding conflicts of interest.

### **Item 12: Brokerage Practices**

Generally, DESDC is authorized by each client to determine the financial institution or counterparty to be used, if any, for each transaction executed on behalf of such client. In selecting such financial institutions or counterparties for transactions, DESDC seeks to obtain the best execution of transactions for its clients

under the circumstances (consistent with what it believes to be the best overall interests of the client), but need not solicit competitive bids, and does not have an obligation to seek the lowest available commission cost. The price offered by a financial institution or counterparty, including commissions and commission equivalents, if any, and other transaction costs, is normally an important factor in this decision, but financial institution and counterparty selection also takes into account the overall quality of the execution services offered, including without limitation such factors as: execution capability; willingness and ability to commit capital; creditworthiness and financial stability; clearance and settlement capability; ability to maintain confidentiality; the provision of research and other services; and potential or perceived conflicts between clients of DESDC and its related persons. Accordingly, transactions will not always be executed at the best price or the lowest available commission. In addition, DESDC is not required to negotiate “execution only” commission rates; thus, the clients may be deemed to be paying for other services provided by the financial institution that are included in the commission rate. Subject to its duties under the express terms of any applicable agreement and under applicable law, the Adviser may determine eligibility of and/or direct transactions or commissions to certain broker-dealers, exchanges, or other financial institutions and counterparties (or their affiliates) that are direct or indirect owners of DESDC, are owned directly or indirectly by the Adviser, or are otherwise affiliated with the Adviser; have made (or whose affiliates have made or directed) investments in Funds advised by DESDC or a related party; or may be willing to furnish other services for the benefit of the Adviser or a related party. In the latter case, such services will include only brokerage and research services that are deemed to fall within the safe harbor provided by Section 28(e) of the Exchange Act or any amendment or successor to such provision. Such services may include the provision of information on economic trends or conditions, political developments, industries, groups of securities, individual countries, and individual companies, as well as post-trade brokerage services or communication services related to the execution, clearing, and settlement of transactions. Research or other services obtained in this manner may be used in servicing any or all advisory clients of DESDC and may be used in connection with advisory accounts other than those that pay commissions and commission equivalents to the financial institution relating to the research or other service arrangements. The receipt of such services from particular financial institutions or counterparties may cause the Adviser to have an incentive to select or recommend such financial institutions or counterparties rather than financial institutions or counterparties from which the Adviser’s clients would receive the most favorable execution. The appropriateness of brokerage commissions is evaluated by the Adviser on an ongoing basis.

Clients may need to maintain and use a number of brokerage accounts to facilitate the various trading strategies deployed by DESDC. Nevertheless, the clearing, settlement, and custody of client positions may be carried out by a limited number of counterparties and, depending on the Investment, may require negotiation on a transaction-by-transaction basis. This may create a concentration of exposure to the creditworthiness of the counterparties carrying out such clearing, settlement, and custody. Any failure of any such counterparty could have, and has had in the past, a material adverse effect on clients.

When portfolio decisions are made contemporaneously for multiple clients in the same instrument, DESDC may, if consistent with market conditions, client characteristics, and applicable law, bunch or aggregate client orders (including orders for clients in which the Adviser, its related persons, and/or its personnel have beneficial interests) for execution. Such bunched or aggregated orders might facilitate execution and may reduce brokerage and other costs. DESDC, however, is not required to bunch or

aggregate orders if (a) portfolio management decisions are not made contemporaneously, (b) if the Adviser determines that it would be consistent with its investment management duties or the interests of its clients not to do so, or (c) if bunching or aggregating is not practical operationally or otherwise. Because of prevailing trading activity, it is frequently not possible to receive the same price or execution on the entire volume of positions purchased or sold in such bunched or aggregated orders. When this occurs, the Adviser (in its sole and absolute discretion) may charge or credit clients participating in the bunched or aggregated order with the average price of the various prices received for that order, or alternatively, may charge or credit such clients with a price determined in good faith to be an appropriate price. Positions purchased or sold in a bunched transaction are allocated to the participating clients using methods determined by DESDC in its sole discretion (which methods may include *pro rata* by assets under management or by proportionate order size). DESDC may, however, increase or decrease the transaction amount allocated to each client if necessary to avoid holding odd-lots or small numbers of positions for particular clients. If DESDC is unable to or does not fully execute a bunched transaction or DESDC determines that it would be impractical to allocate a small number of positions among all of the accounts initially intended to participate in the transaction, the Adviser may allocate such positions in a manner determined in good faith to be an appropriate allocation. Although it is anticipated that the bunching or aggregation of orders will benefit each client overall, aggregating orders may disadvantage clients, including without limitation by resulting in shared allocations of orders or worse execution prices for client. Alternatively, not aggregating orders may disadvantage clients, including without limitation by resulting in higher costs or worse execution prices for client orders.

Subject to applicable legal restrictions, DESDC or its related persons may execute transactions in which it or its related persons act as broker or principal as applicable, and may also execute transactions in which the Adviser and/or its related persons have an interest, as described in Item 10.

DESDC's related persons may also have independent authority to determine and direct the execution of the Adviser's clients' portfolio transactions, within the objectives, risk and liquidity profiles, and policies (if any) specified by each client or outlined in the applicable Governing Document and/or other written agreement with a client, subject to the same policies and restrictions discussed above.

The Adviser attempts to correct any identified trade errors. As with all financial gains and losses attributable to its investments, any financial gains or losses resulting from trade errors are generally borne by the applicable client and underlying investors (as more fully described in the applicable Governing Document).

When trading on behalf of multiple clients with differing performance-based fees, the Adviser endeavors to allocate investment opportunities among clients in a fair and equitable manner. The Adviser's trade allocation for any given client may vary based on differences in investment objectives among clients, different capital constraints of each client, varying leverage preferences of each client, and any scheduled increase or decrease of any particular client's assets under management. The Adviser does not alter its allocation policy with respect to a client, or allocate trades among multiple advisory clients, without the approvals of relevant senior management and compliance personnel.

DESDC does not currently participate in directed brokerage.

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

Certain of the Adviser's employees (the "Investment Committee") or their designees will review potential Investments and will approve all programs of acquisition, loan originations, programs of disposal, and hedging strategies. Valuations of investments are reviewed by the Adviser's President and presented to the Investment Committee on at least a monthly basis. The Investment Committee, senior management, and/or other supervisors are responsible for reviewing certain documents prepared in the investment process, trade data, and other reports on a regular basis and for overseeing the investment activity, trading activity, and loan origination performed on behalf of the Adviser's clients. The frequency of all such reviews is determined as warranted by the purpose of the review and other circumstances. In addition to reports required by applicable law, DESDC provides reports in accordance with the applicable Governing Document or other written agreements with particular clients or underlying investors.

The Adviser provides advisory clients and/or investors in Funds with written reports on a periodic basis that generally include, among other things, the net asset value or the capital balance of the account and a measure of performance based on the change in valuation of the account during the report period.

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

The Adviser may and has in the past entered into capital introduction agreements with certain financial institutions under which the financial institution does not receive compensation for this service. The Adviser does not currently use solicitors for client referrals. The Funds may engage, and in the past have engaged, internal and/or external placement agents for placement of new fund interests. Additionally, DESDC does not currently select or recommend broker-dealers based on whether DESDC or its related persons receive client referrals.

### **Item 15: Custody**

The Adviser or its related persons are deemed to have custody of the assets of the Funds. Fund investors do not receive account statements from the custodian; rather, the Funds are subject to an annual audit, and the audited financial statements are distributed to each Fund investor.

### **Item 16: Investment Discretion**

DESDC accepts discretionary authority to manage securities on behalf of its clients. The procedures governing assumption of this authority are outlined in the applicable Governing Document.

### **Item 17: Voting Client Securities**

The Advisers Act generally requires investment advisers to vote all proxies within their authority. DESDC has adopted a proxy voting policy and procedure in order to comply with the obligation and address potential conflicts of interest. When voting client securities or proxies for a client account, the Adviser's primary objective is to make voting decisions in the best interest of that client. The Adviser does not vote proxies where it does not have the authority to do so or where the cost of doing so, in the opinion of the



Adviser, would exceed the expected benefits to the client. With respect to certain proxies, the Adviser may vote shares through and in accordance with the recommendations of an independent third party proxy voting service (the "Voting Service Recommendations"). When voting client securities, DESDC endeavors to act in a manner that will enhance the economic values of the assets of the client under management. The Adviser has established written policies and procedures designed to address potential conflicts of interest and to ensure that shares owned by a client for which the Adviser provides advice are voted in the best interest of such client (the "Proxy Voting Procedures"). The Adviser will provide a copy of the Proxy Voting Procedures to any client or prospective client upon request and may elect to provide a copy to investors.

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

The Adviser does not require or solicit prepayment of fees more than 6 months in advance. The Adviser has not been the subject of a bankruptcy petition at any time during the past ten years.