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# **Five Mile Capital Partners LLC**

## **Client Brochure**

**March 29, 2013**

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301 Tresser Boulevard, 12<sup>th</sup> Floor  
Stamford, CT 06901  
[www.fivemilecapital.com](http://www.fivemilecapital.com)

This Brochure provides information about the qualifications and business practices of Five Mile Capital Partners LLC. If you have any questions about the contents of this Brochure, please contact us at (203) 905-0950. The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission ("SEC") or by any state securities authority.

Five Mile Capital Partners LLC is registered as an investment adviser with the SEC pursuant to the Investment Advisers Act of 1940, as amended. Recipients of this Brochure should be aware that registration with the SEC does not constitute an endorsement by the SEC of an investment adviser's skill or expertise. Further, registration does not imply or guarantee that a registered adviser has achieved a certain level of skill or training in providing advisory services to clients. Our oral and written communications are intended to provide you with information which you may use to determine to hire or retain us to provide investment advice.

Additional information about Five Mile Capital Partners LLC is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov)

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## **Item 2: Material Changes**

Since the last annual update to this Brochure as filed with the SEC on February 14, 2012, there have been no material changes to the information provided in this Brochure. The information contained in this Brochure reflects routine updates in connection with the annual review and update of our Form ADV Parts 1 and 2.

You may request a copy of our Brochure by contacting Annie Hsieh at 203-905-0953 or by e-mail at [ahsieh@fivemilecapital.com](mailto:ahsieh@fivemilecapital.com).

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## Item 4: Advisory Business

### A. Description of the Firm

Five Mile Capital Partners LLC (“**we**” or “**us**” or “**our**” or “**Five Mile**”) was organized in February of 2003 as an alternative asset management company focused predominantly on fixed income and credit products for institutional clients and high net worth individuals. Our 25% and more owners are Steven P. Baum, Thomas A. Kendall and Konrad R. Kruger. Our management team maintains the majority stake in the company's business and controls investment, risk management and operational matters.

We specialize in investment opportunities in real estate, debt products, structured finance, asset-based lending and financial services private equity. Our principals have significant experience, knowledge and skills relevant to the financial services industry and believe the cyclical and dynamic nature of the sector continually provides a broad opportunity for investments across the capital structure.

We have organized and control the following entities which serve as the general partners to the Funds (as defined below)(collectively, the “**Five Mile Managers**”):

1. SCFFI GP LLC
2. FMCP II GP LLC
3. Five Mile Capital Investment Opportunities GP LLC
4. Five Mile Capital II CT Co-Investment GP LLC
5. Five Mile Capital II LOPO Co-Investment GP LLC

As supervised persons of Five Mile, the Five Mile Managers intend to conduct their activities in accordance with the Investment Advisers Act of 1940, as amended, and the rules thereunder (the “**Advisers Act**”). Any employee of Five Mile Managers, and any other person acting on their behalf, are and shall be subject to the supervision and control of Five Mile. The Five Mile Managers are relying on Five Mile’s registration under the Advisers Act and are not registering themselves. The Five Mile Managers shall be included in all references to “we,” “us” or “Five Mile” herein.

### B. Types of Advisory Services

We provide investment advisory services to private pooled investment vehicles (the “**Private Funds**”). A complete description of each Private Fund, including its operations and activities, management fees, incentive fees, minimum investment amounts and structure can be obtained from such Private Fund’s offering documentation.

The Private Funds are not registered as investment companies under the U.S. Investment Company Act of 1940, as amended (the “**Investment Company Act**”) and are, therefore, not

subject to various provisions of the Investment Company Act. Shares or interests in the Private Funds are not registered for sale under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), and are instead sold to qualified investors on a private placement basis. All U.S. investors in the Private Funds must qualify as accredited investors under the Securities Act and, for some Private Funds, “qualified purchasers” under Section 2(a) (51) (A) of the Investment Company Act.

The investors in the Private Funds may include, among others, foundations and endowments, public and private pensions, insurance companies, other pooled investment vehicles, banks, and high net worth individuals.

We may, from time to time, sponsor and manage investment vehicles on a transaction-by-transaction basis to allow certain persons to invest alongside one or more Funds in specific portfolio companies and other assets of the Private Funds (each such vehicle, a “**Co-Investment Fund**”). Co-Investment Funds are typically limited to investing in securities relating to the transaction or transactions with respect to which they were organized.

The Private Funds may also be structured in a “master-feeder” form whereby investors make capital contributions to a “feeder fund” which in turn contributes all or substantially all of its capital to a “master fund” wherein the Private Fund’s investment trading program is typically conducted.

We may also sponsor and manage certain other entities which are “feeder” vehicles organized to invest exclusively in a Private Fund and/or special purpose vehicles that have been formed to facilitate portfolio investments by the Private Funds or their investors for tax, regulatory or economic purposes.

The services we or our affiliates provide to a Private Fund, in the capacity as the investment manager or general partner or otherwise, may include: organizing and managing the Private Fund’s business affairs; acquiring, financing and disposing of investments; preparing financial statements; preparing tax related schedules; and providing investor relations functions such as drafting, printing and distributing correspondence to investors and prospective investors. We or our senior professionals typically invest our own capital in each investment theme pursued by the Private Funds, either through direct investments in a Private Fund or Co-Investment Fund or investment in the general partner of a Private Fund.

We primarily provide investment advisory services related to real estate, debt products, structured finance, asset-based lending and private equity transactions.

Investment advice is provided directly to the Private Funds and not individually to the investors of the Private Funds.

For a list of the Private Funds, please refer to Section 7.B. of Schedule D of Part 1 to Five Mile’s Form ADV which is publicly available at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). See Item 8 for more information with respect to the investment strategies of the Private Funds.

We also serve as collateral manager for a non-registered collateralized debt obligation (“CDO”). As such, we provide ongoing collateral and asset management services to the CDO.

#### **C. Client Tailored Services and Client Tailored Restrictions**

We manage each Private Fund based on the investment objectives and investment restrictions set forth in the limited partnership agreement of each such Private Fund (the “**Partnership Agreement**”) and investment management agreement between us and the general partner (the “**Management Agreement**,” and together with the Partnership Agreement of each Private Fund and the confidential private placement memorandum of a Private Fund, the “**Governing Documents**”).

Each Private Fund may impose investment restrictions or guidelines as it deems appropriate to achieve its particular investment objective. Such investment restrictions and/or guidelines are typically described in the Governing Documents for each Private Fund.

Further, we may enter into side letters with certain investors in a Private Fund which impose further restrictions on our discretionary authority.

The collateral management services we provide to the CDO are governed by the terms of the collateral management agreement.

#### **D. Wrap Programs**

We do not participate in wrap programs.

#### **E. Assets Under Management**

As of December 31, 2012, we managed \$2.008 billion of Private Fund and CDO assets on a discretionary basis.

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

### **A. Fee Schedule, Payment Method and Prepayment of Fees and Refunds**

As investment adviser to each Private Fund, we typically receive an annual management fee equal to a percentage of the net assets or invested capital, as the case may be, and a performance fee or incentive allocation equal to a percentage of the Private Fund's net profits, which may be subject to a loss carry forward provision or clawback provision, as the case may be. All fees for the Private Funds are disclosed in the Governing Documents, which are provided to prospective investors.

We, in our discretion, may waive or reduce the management fee applicable to all or any of the investors in each Private Fund or agree with an investor to waive or alter the management fee as to that investor. Investors in a Private Fund may have different fee arrangements. We may from time to time enter into a side letter agreement with one or more investors in a Private Fund which may, among other terms, provide for reduced management fees or greater or more frequent transparency with respect to the Private Fund.

Management fees are payable monthly or quarterly in advance, as the case may be, and performance fees may be payable when earned. We may elect to defer payment of all or part of the management fee and/or performance fee. Management fees and performance fees are generally deducted from the applicable Private Fund assets.

Each Private Fund was organized with the intent that it be advised by us, and a related person serves as the general partner of each Private Fund. No general partner of any Private Fund intends to cause the Private Fund to terminate its advisory relationship with us absent our liquidation or bankruptcy. In addition, Private Fund investors generally are not permitted to withdraw from a Private Fund prior to its dissolution but may sell or transfer their interests subject to approval by the General Partner. Private Fund investors individually have no right to terminate the Private Fund's advisory relationship with us.

We and/or our affiliates may be entitled to receive fees from actual or prospective portfolio investments of the Private Funds, including origination, directors', transaction, breakup, commitment, closing, and monitoring fees. Although these fees are in addition to management fees paid by the Private Funds, we and/or our affiliates will in certain circumstances reduce management fees in connection with the receipt of such fees.

Investors should refer to the applicable Governing Documents for more details related to calculation and payment of fees.

We receive a collateral management fee as set forth in the collateral management agreement and offering document for the CDO, which is generally based on the size of the portfolio being managed.

## **B. Other Fees and Expenses**

The Private Fund assets are held in the custody of a bank, trust company, broker-dealer or other entity selected by us. The Private Fund will bear any custodial fees associated with such account. Any fees so incurred by the Private Fund will be in addition to the fee payable to us on the overall value of or amount invested for the account. See Item 15.

The Governing Documents of each Private Fund provide a description of any additional fees and expenses for which such Private Fund may be responsible. Generally, each Private Fund will be responsible for all costs and expenses relating to the organization of such Private Fund and of maintaining the operations of such Private Fund and the investments paid by or on behalf of such Private Fund, including, without limitation, (i) legal, filing, auditing, consulting, administration, accounting and other professional fees and expenses; (ii) expenses associated with periodic reporting to the Private Funds; (iii) financial statements and tax returns; (iv) insurance, interest and other expenses incurred in respect of borrowings, if any; (v) other expenses associated with the acquisition, holding, monitoring, settlement and disposition of such Private Fund's investments (including, without limitation, any brokerage, custody or hedging costs); (vi) the costs and expenses of any custodians, lenders, investment banks and other financing sources; (vii) any indemnity expenses; and (viii) the costs and expenses of any litigation involving such Private Fund.

To the extent we or any affiliate receive any origination, disposition or exit fees in connection with the operation of a Private Fund ("**Transaction Fees**"), such Transaction Fees will either be paid to the Private Fund or credited against the management fee payable to us (in either case net of any related unreimbursed expenses incurred by us or any affiliate).

The CDO may incur various expenses with respect to the ongoing administration of the collateral assets, which fees are in addition to the collateral management fee payable to us.

## **C. Sales Compensation**

We are affiliated with Five Mile Capital Securities LLC ("**FMCS**"), a broker-dealer registered with the SEC and a member of FINRA. We have arrangements with FMCS whereby FMCS acts as placement agent for the Private Funds and receives fees. See Item 10. Certain of our employees who are registered representatives of FMCS receive sales-based compensation for marketing and selling the Private Funds.

We do not execute securities transactions for the Private Funds through FMCS.

In addition, we may engage, or cause the Private Funds to engage, unaffiliated placement agents to market and sell interests or shares in the Private Funds to prospective investors. We require

placement agents to have all appropriate licenses and registrations to conduct their business, including when applicable, to be registered as broker-dealers with the SEC and to be members of FINRA. The applicable Five Mile Manager may elect to reduce the management fee to the extent of any placement fees borne by the Private Fund.

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

“Performance-Based Fees” are fees that are based on a share of the capital gains or capital appreciation of the assets of an account. We may receive performance fees from the Private Funds that we manage. See Item 5A above. Fees based on performance will only be charged in accordance with the provisions of Rule 205-3 under the Advisers Act.

Performance-based compensation may create an incentive for us to cause a Private Fund to make investments that are riskier than it would otherwise make. Performance-based fee arrangements may also create an incentive to favor higher carried interest percentages paying Private Funds over other Private Funds in the devotion of time, resources and allocation of investment opportunities. The Private Funds have investment periods and overall duration that are generally limited to prescribed time periods, subject to extensions as permitted under the governing documents, subject to investor approval. The prospect of continuing to earn additional income from a Private Fund may create an incentive for us to extend the investment period or duration of a Private Fund in accordance with the governing documents.

To manage these potential conflicts, we have adopted a number of compliance policies and procedures. These policies and procedures include (i) our Code of Ethics (see Item 11), (ii) our Compliance Manual, and (iii) allocation policies which seek to ensure that investment opportunities are allocated fairly among Private Funds and that all Private Funds are managed in accordance with their investment mandate. See Item 12. We do not consider fee structures in allocating investment opportunities.

In addition, generally, and except as may be otherwise set forth in the Governing Documents of a Private Fund, conflict is mitigated by provisions that restrict Five Mile principals from forming a new investment fund (other than co-investment vehicles and special purpose vehicles) having similar investment objectives until a certain percentage of a Private Fund’s commitments have been called, reserved or allocated for investment in portfolio companies or payment of Private Fund expenses.

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

We provide discretionary advisory services to the Private Funds and non-discretionary advisory services to the CDO. Investment advice is provided directly to the Private Funds and not individually to the investors in the Private Funds.

We generally require investors in a Private Fund to make a minimum capital commitment to that Private Fund, although the amount of the minimum varies from fund to fund. The minimum investment requirements may be waived by us in our sole discretion. Investors that are U.S. persons must be “accredited investors” under Regulation D under the Securities Act of 1933, as amended, “qualified clients” under the Advisers Act who are eligible to enter into a performance fee arrangement, and, for some Private Funds, “qualified purchasers” under the Investment Company Act.

All potential investors must go through certain suitability and compliance procedures (including anti-money laundering procedures), prior to acceptance of any subscription from such investor. We require Private Fund investors to make representations concerning their financial sophistication and ability to bear the risk of loss of their entire investment in a Private Fund.

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

### A. Methods of Analyses

Our investment strategy is based on an asset level investment approach in the following areas: (i) asset level credit underwriting; (ii) securitization and structuring of asset pools; (iii) servicing/risk management; and (iv) operating models for real estate, consumer finance and other leveraged finance companies. By constantly surveying opportunities across asset categories as well as throughout the capital structure in an opportunistic fashion, the Management Team endeavors to optimize each Private Fund's risk/return profile.

**Target Complex Transactions.** Assessing real estate related debt and other financial assets structures and achieving appropriate risk-adjusted returns requires careful asset level analysis. We maintain in-house resources to model and analyze the characteristics of the proposed investments, generate cash flow projections and conduct scenario and sensitivity analyses on these projections. Our team has developed a thorough due diligence, underwriting and investment review process, which enables us to analyze, underwrite and quickly close time-sensitive transactions.

**Focus on Undervalued or Out-of-Favor Asset-Based Cash Flows.** We target primarily debt and debt-like investment opportunities demonstrating strong current cash flow and/or the potential for value generation and capital appreciation.

**Create Value through Structuring Techniques.** We endeavor to enhance investment returns through the use of structured finance techniques, including securitization, asset repositioning and the transfer of risks to third parties, either directly or through the use of derivative instruments.

**Actively Identify and Mitigate Risks.** We attempt to mitigate the risks inherent in the investment strategy through: (i) complete and thorough due diligence, including not only credit and market driven factors but legal and sponsor due diligence; (ii) ongoing performance monitoring with a focus on the intended exit of an investment; and (iii) ongoing portfolio analysis of interest rates, leverage and other market driven risks.

**Continually Evaluate Exit Options.** Some investments contain intrinsic exit strategies through expected amortization of principal and contractual maturities. Stress analyses are performed on such assets to gauge potential refinancing risk at maturity. Additionally, return expectations are analyzed under various exit strategies, such as asset sales, foreclosures, work-outs and securitizations. In the case of a private equity or platform investment, the Management Team continually monitors the performance metrics of such investments versus public and private market comparables in order to estimate potential value creation in the context of possible exits.

## **B. Investment Strategies**

*Investments in securities involve risk of loss that investors must be prepared to bear.*

The following is a summary of the principal investment strategies employed by us. The material risks associated with each of these strategies is set forth in C. below. This is a summary only. Investors should look to the Offering Documents of each Private Fund for a more complete description of each strategy. Investors should not rely solely on the descriptions provided below.

1. **Five Mile Capital Structured Income Fund LP**--purchases, originates, finances, manages and disposes of investments in the following asset classes:

- real estate debt instruments
- other financial asset oriented debt instruments
- other asset-based investments

The investment period of Five Mile Capital Structured Income Fund LP has ended and, as such, Five Mile Capital Structured Income Fund LP is no longer permitted to make new investments.

2. **FMCP II LP**—purchases, originates, finances, manages and disposes of investments in the following asset classes:

- real estate debt instruments
- other financial asset oriented debt instruments
- direct real estate equity
- financial asset-based companies

The investment period of FMCP II LP has ended and, as such, FMCP II LP is no longer permitted to make new investments .

3. **Five Mile Capital Investment Opportunities LP**—purchases, originates, finances, manages and disposes of investments in the following asset classes:

- real estate debt instruments
- other financial asset oriented debt instruments
- direct real estate equity

Five Mile Capital Investment Opportunities LP is still permitted to make new investments.

4. **Five Mile Capital II CT Co-Investment LP**—purchases, originates, finances, manages and disposes of investments in the following asset classes:

- real estate debt instruments
- other financial asset oriented debt instruments

The investment period of Five Mile Capital II CT Co-Investment I LP has ended, and, as such, Five Mile Capital II CT Co-Investment I LP is no longer permitted to make new investments.

5. **Five Mile Capital II LOPO Co-Investment LP**—purchases, originates, finances, manages and disposes of investments in the following asset classes:

- direct real estate equity

The investment period of Five Mile Capital II LOPO Co-Investment LP has ended, and as such, Five Mile Capital II LOPO Co-Investment LP is no longer permitted to make new investments.

Investment opportunities which are appropriate for more than one Private Fund will be allocated by us according to our allocation policies as set forth in the Governing Documents of each Private Fund and as described further in Section 12.B below.

## **C. Material Risks**

### *Investment Strategy Risks:*

Investment risks specific to the investment strategy of each Private Fund are described in the Governing Documents of such Private Fund. Such risks may include (but are not limited to):

#### *Investment Risk*

Acquiring interests in a Private Fund is intended for sophisticated investors who can accept a high degree of risk in their portfolio, do not need regular current income from their investment with us and can accept a potential loss of their entire investment. A Private Fund portfolio may lack diversification and liquidity, and its performance may be volatile, thereby increasing the risk of loss. In addition, the fees and expenses associated with the Private Fund may offset its profits.

#### *General Market and Economic Conditions*

The success of a Private Fund's investments will be affected by general economic and market conditions, such as interest rates, availability of credit, credit defaults, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of the Private Fund's investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations).

#### *High Risk Investments*

The Private Fund may pursue an opportunistic credit driven investment strategy targeting real estate and financial asset investments. This is done through (i) investing in, or originating, real estate and financial asset oriented debt instruments; (ii) purchasing pools of such assets; (iii) purchasing securities backed by such instruments; (iv) investing in platforms/companies that focus on originating, servicing or financing such assets; and (v) investing in direct real estate equity. Such assets generally carry below-investment grade credit ratings, or lack credit

ratings altogether. These assets and/or the loans underlying these types of assets may be in default or may have a greater than normal risk of future defaults, delinquencies, bankruptcies or fraud losses. There can be no assurance that the assets will perform, the borrowers will pay as expected, or, if defaulted, that the underlying assets will be able to be foreclosed upon and liquidated in a cost effective manner. In addition to the risks of borrower default, the Private Fund will be subject to a variety of risks in connection with such debt instruments, including risks arising from mismanagement or a decline in the value of collateral, contested foreclosures, bankruptcy of the debtor, claims for lender liability, violations of usury laws and the imposition of common law or statutory restrictions on the Private Fund's exercise of contractual remedies for defaults on such investments.

Please also refer to Item 10 for a discussion on certain conflicts of interest.

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

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to a client's or potential client's evaluation of the firm or the integrity of the firm's management in this item.

We have no legal or disciplinary events to report.

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

### **A. Registration as a Broker-Dealer or Registered Representative.**

Our affiliate, FMCS, is a registered broker-dealer. FMCS acts as placement agent for the Private Funds, for which it receives a placement agent fee. FMCS does not execute portfolio transactions for the Private Funds. Certain of our employees also provide services to and/or are registered as registered representatives with FMCS. In such capacity, subject to applicable law, they may receive sales commissions in connection with the sale of interests in the Private Funds. Such persons may face conflicts of interest in dedicating time and resources to the management of the Private Funds, which may have a detrimental effect on the performance of the Private Funds. We address this conflict of interest by providing in its Code of Ethics that all supervised persons have a duty to act in the best interests of each Private Fund.

Because the fees that the Private Funds pay to FMCS may not be negotiated at arms length, it is possible that the Private Funds may pay higher or lower fees to FMCS than they would pay to unaffiliated broker-dealers.

### **B. Registration as a Futures Commission Merchant, Commodity Pool Operator, Commodity Trading Advisor or Associated Person**

Neither we nor any management person is registered as a futures commission merchant, commodity pool operator, commodity trading advisor or associated person of any such entities.

### **C. Material Relationships**

We currently have certain relationships or arrangements with related persons that are material to our advisory business and the Private Funds.

Below is a discussion of such relationships/arrangements and certain conflicts that arise from them.

#### **1. *Broker-dealer, municipal securities dealer, or government securities dealer or broker***

We are affiliated with FMCS, a registered broker-dealer. FMCS acts as placement agent for the Private Funds. See Item 5.

#### **2. *Investment Company or other pooled investment vehicle***

FMCP and/or an affiliate acts as adviser and/or general partner to the Private Funds.

Certain of the Private Funds have “key personnel” provisions in their governing documents which requires the Management Team members to devote substantially all of their business time to managing the assets and operations of the Private Funds and implementing the investment strategy of the Private Funds.

**3. *Other investment adviser or financial planner***

As indicated in Item 4, we control the Five Mile Managers who are relying on our registration under the Advisers Act and are not registering themselves.

Certain inherent conflicts of interest arise from the fact that: (1) we provide investment management services to more than one Private Fund, and (2) Private Funds may have one or more overlapping investment objectives and/or investment strategies and participation in specific investment opportunities may be appropriate for more than one Private Fund. Participation in investment opportunities which are suitable for more than one Private Fund will be allocated pursuant to our allocation policy and procedures (see Item 12.B).

## Item 11: Code of Ethics

### A. Code of Ethics

In order to address conflicts of interest, we have adopted a code of ethics (the “**Code**”) which is applicable to all of our supervised persons (collectively, “**Employees**”). The Code generally sets the standard of ethical and professional business conduct that we require of our Employees, requires Employees to comply with applicable federal securities laws and regulations, and sets forth provisions regarding personal securities transactions by certain Employees deemed access persons under applicable regulations. Additionally, the Code sets forth our policies and procedures with respect to material, non-public information and other confidential information, and the fiduciary obligations that we and each of our Employees owes to each advisory client.

The Code is circulated at least annually to all Employees, and each Employee at least annually must certify in writing that he or she has received and followed the Code and any amendments thereto.

We will provide a copy of the Code to any client or prospective client upon request.

### B. Recommendations Involving Material Financial Interests

We may participate or have an interest in Private Fund transactions as described below. We make all investment management decisions in the Private Funds’ best interests.

#### 1. *Principal and Agency Transactions:*

Principal transactions are generally defined as transactions where an adviser, acting as principal for its own account or the account of an affiliated broker-dealer, buys from, or sells any security to, an advisory client. A principal transaction would occur if FMCP or FMCS bought securities for its own inventory from a Private Fund or sold securities from its inventory to a Private Fund.

We and FMCS do not engage in principal transactions with the Private Funds.

An “agency cross transaction” is defined as a transaction where a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlled by or under common control with the investment adviser, acts as broker for both the advisory client and for another person on the other side of the transaction. An agency cross trade would occur if securities are purchased or sold between Private Fund accounts through FMCS. We do not engage in agency cross transactions.

## 2. ***Cross Transactions***

It is our policy not to engage in buying or selling of securities from one Private Fund to another (typically referred to as a “cross trade”).

## 3. ***Investment in Funds***

We or an affiliate will generally make a general partner or similar investment in the Private Funds. We or an affiliate may also purchase (and sell) shares of certain Private Funds, generally as a co-investment. We, our investment professionals and principals and related persons may invest in the Private Funds or be granted interest in or phantom interests related to the Private Funds. We do not believe that these investments cause a conflict of interest between us and the Private Funds but rather function to better align the interests of the investors with our own interests since our own capital or an affiliate’s is being invested alongside the investors’ capital. By virtue of our capital investment in the Private Funds, we may be considered to participate, indirectly, in transactions effected for the Private Funds. The foregoing relationships, fees and any other actual or potential conflicts of interest arising therefrom are disclosed in the Governing Documents. Any such investments are made in conformity with the Code which has procedures regarding the use of confidential information and personal investing.

## 4. ***Buying and Selling Securities That Are Recommended to Clients:***

We may buy for Private Funds securities of issuers in which another Private Fund has made, or is making, a senior or subordinate investment, which may create conflicts of interest. For example, if one Private Fund is invested in debt securities of an issuer and another Private Fund is invested in equity securities of the same issuer, if the issuer experiences financial or operating challenges which impact the price of its securities, decisions relating to actions to be taken may raise conflicts of interest between these Private Funds. We may have Private Funds with different or competing investment objectives. As a result, we may take, on behalf of one Private Fund, consistent with such Private Fund’s investment objectives, a contrary investment position to that taken by another Private Fund which position is consistent with such other Private Fund’s investment objective.

## **C. Personal Trading**

We recognize that the personal securities transactions of certain of our Employees considered access persons under applicable regulations demand the application of a high code of ethics, and we require that all such transactions be carried out in a way that does not endanger the interest of any Private Fund. At the same time, we believe that if investment goals are similar for the Private Funds and for such Employees, it is logical and even desirable that there be common ownership of some securities. Therefore, in order to address conflicts of interest, we have adopted a set of procedures, included in the Code, with respect to transactions effected by such Employees for their personal accounts. In order to monitor compliance with our personal trading policy, we have adopted a monthly securities transaction reporting system for such Employees. For purposes of the policy, an Employee’s “personal account” generally includes any

account (a) in the name of the Employee, his/her spouse, his/her minor children or other dependents residing in the same household, (b) for which the Employee is a trustee or executor, or (c) which the Employee controls.

## **D. Other Conflicts of Interests**

Our Code of Ethics has policies and procedures to address the following additional conflicts of interest. While we do not believe that there are any conflicts that pose material risks to the Private Funds, we wish to note some additional potential conflicts that are inherent in our structure and activities. We also have included brief descriptions of the procedures we use to mitigate their effects.

### *1. Non Public Material Inside Information/Insider Trading*

We have established policies and procedures reasonably designed to prevent the misuse by us and our Employees of material information regarding issuers of securities that has not been publicly disseminated ("material non-public information"). In general, under the procedures, when we are in possession of material non-public information related to a publicly-traded security or the issuer of such security, whether acquired unintentionally or otherwise, neither we nor any Employee is permitted to render investment advice as to, or otherwise trade or recommend a trade in, the securities of such issuer until such time as the information that we have is no longer deemed to be material non-public information.

### *2. Gifts/Gratuities*

Our Code sets forth procedures regarding gifts and business entertainment to address the potential conflicts of interest surrounding these practices. A further explanation of our gift and business entertainment policy can be found in our Code.

### *3. Political Contributions*

Due to the potential for conflicts of interest, we have established procedures relating to political contributions which are designed to comply with applicable federal and state law. All Employees are required to seek preapproval before making any political contribution.

### *4. Valuation*

Our Private Funds may at times hold illiquid or difficult to value investments. We believe our valuation policies and procedures enable us to value Private Fund assets fairly and in a manner that is consistent with the best interests of our Private Funds. Typically, our fees are based upon the value of the Private Fund's portfolio. We have the authority to determine the value of our investments which may be illiquid or difficult to value, and in such cases have an incentive to select the highest potential value for these investments. Our judgments as to the value of investments in our Private Funds are subject to review and audit by the Private Funds'

auditors. Fees earned from the CDO are based on the outstanding principal amount of the assets collateralized by the CDO as determined by the trustee for the CDO.

#### 5. *Conflicts from Competing Interests*

The Private Funds may compete with each other for access to our resources, including investment opportunities. There may be conflicts of interest in allocating investment opportunities among the current and future funds we manage. There are no restrictions on us from forming, sponsoring, owning and/or managing additional investment vehicles that have overlapping investment objectives or investment criteria. We are subject to our own allocation policies, which are subject to change in our discretion. We may devote more time, attention or resources to some of these potentially competing funds than to others or present an opportunity to certain funds that we do not or cannot present to all. This could have a material adverse effect on a fund's ability to acquire assets, generate cash flow and income, and make distributions.

We may confront conflict concerns when allocating scarce investment opportunities, given the benefit to us of favoring Private Funds that pay a higher fee or generate more income for us. To address this conflict of interest, we have adopted various allocation policies (See Section 12) as well as supervisory procedures that are intended to fairly allocate investment opportunities among competing Private Funds.

Performance-based compensation may create a conflict of interest, as it can create an incentive for us to make or recommend investments that are riskier or more speculative than would be the case in the absence of such compensation structure. Certain of our supervised persons may individually receive, as part of their compensation, carried interest payments or equivalent phantom interests, which are based on the performance of the relevant Private Fund. To address these potential conflicts, we have policies and procedures designed to ensure that each of the Private Funds is managed in a manner that is consistent with our fiduciary obligations, as well as with the Private Fund's investment objectives, investment strategies and restrictions.

#### 6. *Conflicts from our other activities and investments*

We may engage in a broad spectrum of finance and investment activities that are independent from, and may from time to time conflict with, the Private Funds. In the future there might arise instances where our interests conflict with the interests of the Private Funds and/or its investors. Subject to the restrictions set forth in the Governing Documents, we may engage in transactions with, provide services to, invest in, advise, sponsor and/or act as investment manager to portfolio companies, investment vehicles and other persons or entities that may have similar structures and investment objectives and policies to those of a Private Fund. These entities may compete with the Private Funds for investment opportunities. They may also co-invest with the Private Funds in certain transactions. We attempt to mitigate the risk of these conflicts by our policies on allocation of investment opportunities (See Section 12), however, conflicts of interest may still arise.

## 7. *Conflicts in general*

Various parts of this brochure discuss potential conflicts of interest that arise from our advisory business. We disclose these conflicts due to the fiduciary relationship we have with the Private Funds. When acting as a fiduciary, we owe Private Funds a duty of loyalty. This includes the duty to address, or at minimum disclose, conflicts of interest that may exist between different Private Funds; between us and the Private Funds; or between our employees and the Private Funds. Where potential conflicts arise from our fiduciary activities, we will take steps to mitigate, or at least disclose, them. Conflicts arising from fiduciary activities that we cannot avoid (or chose not to avoid) are mitigated through written policies that we believe protect the interests of our Private Funds as a whole. In these cases – which include issues such as personal trading and client entertainment, discussed above – regulators have generally prescribed detailed rules or principle for investment firms to follow. By complying with these rules, using robust compliance practices, we believe that we handle these conflicts appropriately.

## **Item 12: Brokerage Practices**

### **A. Criteria for Selection of Broker-Dealers**

#### **In General—Brokerage Selection**

For our Private Funds, we have full investment discretion to select securities to be bought or sold, the amount of such securities, the broker dealer to be used and the commission to be paid. In selecting broker/dealers, we have an obligation to seek best execution on behalf of each Private Fund. To fulfill this responsibility, we have established a Committee that is responsible for approving broker-dealers, banks and other financial institutions for eligibility to effect the Private Funds' transactions ("Approved Broker List") and for reviewing broker-dealer trading volumes, prices, financial status and the overall quality of execution.

The Approved Broker List will be established based on factors determined by the Committee. The Committee will meet on a periodic basis to review the Approved Broker List, and to determine whether all of the broker-dealers listed continue to demonstrate the ability and commitment to provide us with best execution, in light of the changing needs and trading of the Private Funds. The Committee may add or remove brokers from the Approved Broker List from time to time in its discretion.

The portfolio manager/trader will select broker-dealers from the Approved Broker List to execute particular transactions in such a manner that the Private Fund's total cost or proceeds in each transaction is the most favorable considering relevant circumstances and factors. Additionally, when selecting broker-dealers from the Approved Broker List for trade execution, the portfolio manager/trader will consider, where appropriate, the full range and quality of the services of a broker-dealer.

#### **Research and Other Soft Dollar Benefits**

Soft dollars refers to the practice of using a portion of the commissions generated when executing client transactions to acquire useful research and brokerage services from broker-dealers. Our policy is to not direct soft dollar credits to individual brokers or dealers on behalf of our Private Funds.

#### **Brokerage for Client Referrals**

We do not enter into agreements with, or make commitments to, any broker-dealer that would bind us to compensate that broker-dealer, directly or indirectly, for client referrals (or sale of fund interests) through the placement of brokerage transactions.

## **Directed Brokerage**

We do not engage in directed brokerage transactions.

## **Trade Errors**

Trade errors are evaluated on a case-by-case basis. If we determine that our gross negligence, willful misconduct or fraud was the direct cause of a trade error, we generally will compensate a Private Fund for any losses resulting from such trade error. If a third-party's negligence or other wrongdoing causes a trading error that is material to a Private Fund, we will attempt to recover the amount of loss from the third party for the Private Fund. We do not assume responsibility for compensating the Private Fund, or making the third party compensate the Private Fund, in such cases.

## **B. Aggregation of Orders/Allocation of Trades**

We do not engage in trade aggregation for Private Fund transactions.

From time to time, it may be possible for limited investment opportunities to be appropriate for more than one Private Fund. Conflicts of interest may arise in connection with the allocation of limited investment opportunities to different Private Funds. In general, if a limited investment opportunity is sought by more than one Private Fund, we will allocate such opportunity among the Private Funds on the basis of each Private Fund's relative assets. In addition, variations to this straight allocation methodology are permitted for legitimate portfolio management reasons, such as cash availability, tax considerations or other reasons. Any material deviation and the reasons thereof, will be evidenced in writing.

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

### **A. Periodic Reviews**

The Management Team monitors all Private Funds and their investments on an ongoing basis. The Management Team also is responsible for approving the acquisition by a Private Fund of investments meeting established or negotiated investment guidelines.

### **B. Non-Periodic Reviews**

The Management Team meets as needed, to review portfolio performance, portfolio diversification and investments generally.

### **C. Client Reports**

Private Fund investors receive such reports as are provided for in the Private Fund's Governing Documents. Private Fund financial statements will be prepared in accordance with U.S. Generally Accepted Accounting Principles and will be distributed to investors after the end of each Private Fund's fiscal year.

We, in our discretion, may provide more frequent reports and/or more detailed information to all or any of the investors in the Private Funds.

Investors in the CDO receive reports from the trustee for the CDO which addresses the underlying collateral assets and asset performance.

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

### **A. Compensation by Non-Clients**

To the extent we or any affiliate receive any origination, disposition or exit fees in connection with the operation of a Private Fund ("Transaction Fees"), such Transaction Fees will either be paid to the Private Fund or credited against the management fee payable to us (in either case net of any related unreimbursed expenses incurred by us or any affiliate).

We and/or our affiliates may be entitled to receive special servicing fees from the servicing of commercial mortgage loans underlying certain of the investments of the Private Funds. We may obtain such special servicing assignments by exercising special servicing designation decision rights possessed by the Private Funds. These fees are for distinct additional services provided to the Private Funds by third-party providers. To the extent we or any of our affiliates provide these services, they will be contracted at market rates or lower.

### **B. Compensation for Client Referrals**

Neither we nor a related person directly or indirectly compensates any person for client referrals. While not a client solicitation arrangement, we note that we may from time to time engage, or cause the Private Funds to engage, one or more persons, including FMCS, to act as a placement agent for a Private Fund in connection with the offer and sale of interests to certain prospective investors. We require placement agents to have all appropriate licenses and registrations to conduct their business, including when applicable, to be registered as broker-dealers with the SEC and to be members of FINRA.

## Item 15: Custody

Generally, neither we nor our affiliates maintain physical possession of the funds or securities of any Private Fund. Physical custody of the assets of a Private Fund will be maintained with a bank, trust company, broker-dealer or other qualified custodian ("**Qualified Custodian**") selected by us in our exclusive discretion, which selection may change from time to time generally without the consent of investors in the Private Fund.

Although neither we nor our affiliates have physical possession or custody of the assets of any Fund, under Rule 206(4)-2 of the Advisers Act (the "Custody Rule"), we are deemed to have "constructive" custody of the assets of the Private Funds by virtue of our and our affiliates relationships with the Private Funds.

In order to comply with the Custody Rule, the Private Funds undergo an annual audit performed by an independent accounting firm registered with, and subject to inspection by, the Public Company Accounting Oversight Board (PCAOB). The audited financial statements, prepared in accordance with GAAP, are distributed to all investors in each Private Fund within 120 days of the end of the fund's fiscal year.

We do not have custody of the assets collateralizing the CDO which are held by the trustee for the CDO, which is a Qualified Custodian.

## **Item 16: Investment Discretion**

Subject to any investment restrictions set forth in the Governing Documents for a Private Fund, we have discretionary authority to make the following determinations without obtaining the consent of any Private Fund investor before the transactions are effected:

- the investments that are to be bought or sold;
- the total amount of investments to be bought or sold;
- the brokers, investment banks or placement agents, if any, through which investments are to be bought or sold; and
- the acquisition price and associated fees at which investment transactions for a Private Fund are effected.

Our discretionary authority is derived from our authority as the investment manager of each Private Fund and our authority pursuant to the Governing Documents, including the Management Agreement of each Private Fund.

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

We typically do not invest in equity securities on behalf of the Private Funds. However, from time to time, we may invest in equity securities which have voting rights attached to them and in such cases will have authority to vote proxies for the Private Funds. As an investment adviser, we have a fiduciary duty to act solely in the best interests of the Private Funds when exercising this authority. It is our policy to vote proxies for equity securities held by the Private Funds in a timely manner and make voting decisions that are in the best interests of the Private Funds.

From time to time the Private Funds may hold securities that are involved in class action settlements. Our Operating Committee and the portfolio managers, as appropriate, shall review the terms of each class action settlement as it is applicable to holders of the security in question and shall exercise our fiduciary duty to the Private Funds in determining whether or not to participate in such settlements.

## **Item 18: Financial Information**

We are not aware of any financial condition reasonably likely to impair our ability to meet contractual commitments to the Private Funds or the CDO.