

**Part 2A of Form ADV: Firm Brochure**

April 18, 2013

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**This brochure provides information about the qualifications and business practices of Cortex Capital Management, LLC. If you have any questions about the contents of this brochure, please contact us at (817) 288-3955. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.**

**Cortex Capital Management, LLC is an investment adviser that is registered with the United States Securities and Exchange Commission. Registration with the United States Securities and Exchange Commission does not imply a certain level of skill or training.**

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

## Material Changes

Our initial ADV Part 2A was filed on January 30, 2013. This ADV Part 2A contains the following material changes:

- Cover Page: we have changed our phone number.
- Clients and Legal Structure: we have sponsored a new pooled investment vehicle, Cortex Global Fund Offshore, Ltd., which invests in parallel with our existing client, Cortex Global Fund, LP, through the Cortex Global Master Fund, LP. This has resulted in changes throughout this ADV Part 2A.
- Trade Error Policy: We have described our trade error policy, which is consistent with the legal agreements between our clients and investors in our clients.

We recommend that you read this ADV Part 2A in its entirety.

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### 1. Advisory Business

Cortex Capital Management, LLC (which we refer to as “we” “us” “our firm” and the “adviser”), founded in December 2012, is an investment services firm that currently provides investment management services to investors solely through Cortex Global Fund, LP and Cortex Global Fund Offshore, Ltd. (which we refer to as “our clients” or the “Funds”). We direct the investments and operations of the Funds through Cortex Global Master Fund, LP (which we refer to as the “Master Fund”). The Funds invest all their assets through their limited partner interests in the Master Fund. The adviser may also advise separately managed account clients if appropriate opportunities arise. Mark J. Stupfel owns 100% of the adviser. Mark J. Stupfel also indirectly owns 100% of Cortex Capital Partners, LP (the “General Partner”), which serves as the general partner of Cortex Global Fund, LP and general partner of the Master Fund. Mr. Stupfel’s ownership of the General Partner is controlled via ownership of MJS Equity, LLC, the

general partner of the General Partner. He also owns all the limited partnership interests of the General Partner. MJS Equity, LLC serves as a general partner of the Master Fund.

We focus on researching, evaluating and investing in a broad range of securities and financial instruments, publicly traded and private in nature, including U.S. and non-U.S. equity and equity related securities, bonds and other fixed income securities, debt and structured finance instruments, private investment funds, futures, forward contracts, warrants, options, repurchase agreements, reverse repurchase agreements, swaps and other derivative instruments, currencies and commodities for our clients.

We attempt to always act in the best interest of our clients. Our firm adheres to the investment strategy set forth in our clients' offering documents. We do not modify our securities recommendations to our clients according to the particular interests of our clients' underlying investors, nor do we allow underlying investors to place restrictions on the trading we conduct for our clients. If we provide investment advice in the future to a separately managed account, the advice directed to the separately managed account may be tailored to that client through the trading program as set forth for that account in the relevant investment management agreement, but should generally follow the same investment program of the Funds.

We do not participate in any wrap fee programs.

As of April 1, 2013, we managed approximately \$116,000,000 of regulatory assets on a discretionary basis calculated in accordance with the instructions and guidance for Form ADV.

## **2. Fees and Compensation**

Our firm receives compensation from our clients based on the percentage of assets we manage and on performance achieved for our clients' accounts. We charge our clients an annual asset-based fee equal to 1.5% of each underlying investor's capital account in the Master Fund.

We also charge a performance-based profit allocation equal to 15% of each underlying investor's annual net realized and unrealized profits, subject to a "loss carryforward" or "high water mark" limitation. This means that we only receive a performance-based profit allocation when an underlying investor's Master Fund capital account value for the year has recovered any losses from all prior years (reduced pro rata by any withdrawn or redeemed capital). The Funds make performance-based profit-sharing allocations to Cortex Capital Partners, LP, a general partner of the Master Fund, and an affiliate of our firm.

Employees of our firm, and their related accounts, do not pay the above fees or allocations, but our fees are not negotiable.

We deduct the asset-based fee described above from each underlying investor's Master Fund capital account at the beginning of each month, based on the prior month end balance. We deduct the performance-based compensation described above from each

underlying investor's Master Fund capital account at the end of each year, when applicable, or whenever an underlying investor makes a withdrawal or redemption from a client, but only on the withdrawn or redeemed amount, when applicable.

Investors in our clients are only allowed to withdraw or make a redemption, with 60 days prior notice, at the end of each quarter, after a one year lock up period for that capital contribution or purchase of shares, as the case may be, has expired. Accordingly, we do not need to provide fee refunds to underlying investors before the end of a billing period, because they do not pay a fee in excess of what they owe.

In connection with our advisory services, our clients, and consequently the investors in our clients, bear all organizational and operational expenses. The list below details some of these expenses, but does not include every possible expense our clients may incur.

- legal fees (including settlement costs),
- costs of any litigation or investigation involving our clients' activities,
- accounting costs (including tax preparation and audit expenses),
- administration costs,
- insurance,
- costs associated with reporting and providing information to existing and potential investors,
- any governmental fees imposed on our clients and
- withholding and/or transfer taxes.

Our clients, and consequently investors in our clients, also bear all of its investment-related expenses, such as:

- proxy expenses,
- interest and commitment fees on loans and debit balances,
- borrowing charges on securities sold short,
- custodial fees,
- brokerage commissions,
- trade processing fees, including clearing and settlement charges,
- research fees and materials (including online news and quotation services),

- costs of any outside appraisers, accountants, attorneys or other experts or consultants engaged in connection with specific transactions,
- bank charges and
- other ordinary miscellaneous research and trade-related expenses.

For more information on brokerage transactions and costs, please see Section 9: Brokerage Practices. We may choose to absorb some of these costs on behalf of our clients in our sole discretion.

Neither our firm nor any of our employees receives any transaction-based compensation for the sale of securities or other investment products, including charges or fees from the sale of mutual funds.

### **3. Performance-Based Fees and Side-By-Side Management**

Cortex Capital Partners, LP, an affiliate of our firm owned by Mark J. Stupfel, receives a performance-based profit allocation from the investors in Cortex Global Fund, LP and Cortex Global Fund Offshore, Ltd. All management fees and performance-based profit allocations are assessed and charged at the Master Fund level. As explained above in Section 2, the performance-based compensation that the underlying investors in our clients incur equals 15% of each underlying investor's annual profits, subject to a "loss carryforward" or "high water mark" limitation.

Because the Funds are our clients and because all investors (except those affiliated with our firm) in the Funds are subject to the same fee structure, we have no incentive to focus our efforts on accounts from which we receive performance-based compensation to the detriment of management fee only accounts. Should we later accept any separately managed account clients, we intend to subject them to the same compensation arrangement in part to mitigate any potential conflicts of interest in the allocation of trades.

### **4. Types of Clients**

We provide investment advice to our clients, Cortex Global Fund, LP and Cortex Global Fund Offshore, Ltd., pooled investment vehicles. The underlying investors in our clients are typically:

- Individuals
- Trusts and estates
- Corporations, partnerships or other business entities
- Pooled investment vehicles
- Non-profit Foundations

- University and other endowment organizations
- State or personal retirement investment vehicles

Other than employees and firm-affiliated investors, no investors have different fee terms than those applicable to all investors as described above.

### Investment Requirements

To invest in our clients, we generally require a minimum investment of \$1,000,000, although at times we may waive this requirement.

We require that U.S. investors in Cortex Global Fund, LP and Cortex Global Fund Offshore, Ltd. qualify as both accredited investors and qualified purchasers. Accredited investors generally means (i) individuals with \$1,000,000 of net worth (excluding their primary residence) or who have made \$200,000 in each of the two previous years (or \$300,000 joint income with one's spouse) or (ii) entities with assets totaling over \$5,000,000. Qualified purchasers generally means (i) individuals who own not less than \$5,000,000 of investments or (ii) entities, acting for their own account or the accounts of other qualified purchasers, who own and invest on a discretionary basis not less than \$25,000,000 of investments.

We have not set a minimum amount of assets for a separately managed account client, but the amount of assets in the account would need to be sufficiently large to justify the additional administrative expense of a separately managed account versus an investment in a Fund.

This firm brochure is not an offer to invest in our clients.

## **5. Methods of Analysis, Investment Strategies and Risk of Loss**

We may employ any and all types of investment analysis and strategies, including fundamental and technical analyses. We employ a comprehensive bottom up, fundamental research process to identify securities that we believe to be underpriced and reduce risk with selected short selling of securities we believe to be overpriced. We undertake top-down macroeconomic analysis to determine favorable environments around the world for exceptional growth rates, reasonable fiscal balances and balance sheets and limited government regulation and corruption, while monitoring exposure to macro changes in global markets. Our macroeconomic analysis also allows us to place certain trades in currencies, commodities and fixed income to generate positive performance or that may act as a hedge for our clients' exposures. Investing in securities involves significant risk of loss that our clients, and any of the investors in our clients, should be prepared to bear.

Certain risks associated with an investment in our clients include:

- *Dependence on Key Employee.* Our firm's investment performance will be substantially dependent on the services of Mark J. Stupfel. In the event of the death, disability, or departure of Mr. Stupfel, the business of our clients may be adversely affected.
- *Investment Judgment and Market Risk:* The success of our investment program depends, in large part, on correctly evaluating future price movements of potential investments. We cannot guarantee that we will accurately predict these price movements and that our investment program will be successful.
- *Investment and Trading Risk:* Investments in securities and other financial instruments involve a degree of risk that the entire investment may be lost. The use of short sales and option trading can, in certain circumstances, substantially exacerbate the impact of unfavorable price movements on our client's investments. Also, changes in the general level of interest rates may negatively affect our clients' results.
- *Financial Markets and Regulatory Change:* The instability in the global financial markets has heightened the risks associated with the investment activities and operations of hedge funds, including those resulting from a reduction in the availability of credit and the increased cost of short-term credit, a decrease in market liquidity and an increased risk of bankruptcy of third parties with which we work. Market disruptions over the recent years and the increase in capital being allocated to hedge funds and other alternative investment vehicles have led to increased scrutiny and regulation over the hedge fund and asset management industry. In addition, the laws and regulations affecting business continue to evolve unpredictably. Laws and regulations applicable to our clients, especially those involving taxation, investment and trade, can change quickly and unpredictably in a manner adverse to our clients' interests.

The following is a description of the various strategies that we utilize in advising our clients and some important risks associated with each strategy. The following explanation of certain risks is not exhaustive, but rather highlights some of the more significant risks involved in our investment strategies. Additional risks related to our investment strategies can be found in our clients' offering documents.

- *Equity Securities:* We buy, on our clients' behalf, equity securities, seeking to profit from both security selection and thematic sector or market timing decisions. The value of these investments will generally vary with their issuer's performance and movements in the equity markets. Also, a company's board of directors may not always act in the best interest of the company's shareholders. Consequently, our clients may suffer losses if they invest in equity instruments of issuers whose performance and activity diverges from our expectations.

- *Short Selling:* Short selling of securities occurs when we borrow securities on behalf of our clients, promising to buy them at a later date. If the price drops, we can buy the securities for our clients at the lower price and our clients make a profit on the difference. If the price of the securities rises, we have to buy them back at the higher price, and the investment loses money. Buying the securities can itself cause the price of the securities to rise further which would exacerbate the potential for loss.
- *Fixed-Income Securities:* At times, our clients may invest in bonds or other fixed-income securities. Fixed-income securities provide periodic returns and the eventual return of the principal at the end of the term. The value of fixed-income securities changes in response to interest rate fluctuations and market perception of the issuer's ability to pay off its obligations. Fixed-income securities are also subject to the risk that their issuer may be unable to make interest or principal payments on its obligations.
- *Currency Transactions.* We will use foreign exchange techniques and instruments (*e.g.*, currency forward contracts) for our clients. We may take long or short foreign exchange positions on behalf of our clients to reflect the foreign exchange element of the underlying local currency cash position of the derivative or cash instrument.
- *Derivative Instruments.* Our clients may utilize various derivative instruments when making investments. Derivative instruments are used for hedging purposes and to enhance returns. These derivative instruments need not be listed on exchanges or traded in established over-the-counter markets. We are not registered, pursuant to an exemption, as a "commodity pool operator" with the United States Commodity Futures Trading Commission ("CFTC"). As a result, our clients will not employ derivative instruments which would require registration, although we have the flexibility to use derivative instruments when applicable CFTC and other registrations are effected. Generally, our clients may utilize the following derivative instruments:
  - *Forward Contracts on Securities or Currencies.* We may trade in forward purchases and sales of securities and purchase and sell forward contracts on currencies on behalf of our clients.
  - *Repurchase Agreements.* We may invest in repurchase agreements on behalf of our clients, which are agreements pursuant to which our clients acquire securities from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. When we enter into a repurchase agreement on behalf of our clients, the seller will generally be required to maintain the value of the securities and other collateral subject to the repurchase agreement, marked to market daily, at not less than an agreed amount. Our



custodian or other agent will have custody of securities acquired by our clients under a repurchase agreement.

- *Interest Rate Swaps, Caps, Floors and Collars.* We may enter into interest rate swap transactions or purchase or sell interest rate caps, floors or collars in order to obtain the desired exposure to a particular interest rate sector for our clients, for the purpose of profiting from interest rate differentials or to protect the value of our clients' portfolios from interest rate fluctuations.
- *Options:* There are risks associated with the sale and purchase of options. Our clients may invest in call and/or put options. Call options are the right to buy a security at a certain price within a defined time period. Put options are the right to sell a security at a certain price within a defined time period. A buyer of either type of option assumes the risk of losing its entire investment in the option. A buyer of a call option risks losing its investment if the particular security never reaches the designated price within the set time period. A buyer of a put option risks losing its investment if the particular security does not decline enough to reach the designated price within the set time period.
- *Short-Term Trades:* Short-term trading involves a certain degree of risk. Frequent trading results in high turnover and brokerage commission expenses, which can adversely affect our clients' performance if trading is not sufficiently profitable.
- *Leverage/Borrowing:* We may borrow against our clients' assets when we believe that the proceeds from doing so will exceed the interest paid on the borrowing. Borrowing involves risk to our clients because the interest on the borrowed amount may be greater than the income from or increase in the value of the securities purchased with the borrowed amount. Also, the value of the securities purchased with the borrowed amount can decline below the amount borrowed.

Any investment profits made with the proceeds from borrowings in excess of interest paid on the borrowings will cause the income and value of our clients to be greater than would otherwise be the case. On the other hand, if the value of the additional securities purchased with the borrowed money does not increase enough to cover the interest paid on the borrowings, then the income and value of our clients will be less than would otherwise be the case. Generally, borrowing-type techniques used to increase potential returns are all forms of leverage.

- *Illiquid Investments:* We may make some illiquid investments on our clients' behalf. Illiquid investments are (1) investments that are not heavily traded and cannot easily be converted to cash or (2) investments that we believe our

clients must hold for several years to reach their potential value. If our clients require cash and we must sell illiquid investments at an inopportune time, we might not be able to sell illiquid investments at prices that reflect our assessment of their value or the amount paid for them.

- *Non-U.S. Investments.* We buy and sell significant amounts of foreign securities for our clients' accounts. Investments in non-U.S. securities involve certain risks not typically associated with investing in U.S. securities, such as risks relating to (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar (the currency in which the books of our clients are maintained) and the various non-U.S. currencies in which our clients' portfolio securities will be denominated and costs associated with conversion of investment principal and income from one currency into another; (ii) differences between the U.S. and non-U.S. securities markets, including the absence of uniform accounting, auditing and financial reporting standards and practices and disclosure requirements, and less government supervision and regulation; (iii) political, social or economic instability; (iv) imposition of foreign income, withholding or other taxes; and (v) the extension of credit, especially in the case of sovereign debt.

Investing in the securities of companies in certain developing countries may involve considerations not usually associated with investing in securities of companies of more developed countries, including, among other things, political and economic considerations, such as greater risks of expropriation, nationalization and general social, political and economic instability; the small size of the securities markets in some countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict our clients' investment opportunities. In addition, accounting and financial reporting standards that prevail in foreign countries generally are not equivalent to U.S. standards and, consequently, less information is available to investors in companies located in foreign countries than is available to investors in companies located in the United States. There is also less regulation, generally, of the securities markets in non-U.S. countries than there is in the United States.

We encourage our investors to consider all of the risk factors we have explained. Any investors in our clients risk the loss of their entire investment.

## **6. Disciplinary Information**

Neither our firm, nor any of our directors, officers or principals has been involved in any criminal or civil actions in a domestic, foreign or military court.

Neither our firm, nor any of our directors, officers or principals has been involved in any administrative proceedings before the Securities and Exchange Commission, any other

federal regulatory agency, any foreign financial regulatory authority, a state securities board or any other state regulatory agency.

Neither our firm, nor any of our directors, officers or principals has been involved in any self-regulatory organization proceedings.

## **7. Other Financial Industry Activities and Affiliations**

Neither our firm, nor any of our directors, officers or principals is registered as a broker-dealer or a representative of a broker-dealer or has an application pending to register as a broker-dealer or a registered representative of a broker-dealer.

Neither our firm nor any of our directors, officers or principals is registered, or has an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or is an associated person of any of the above.

Cortex Capital Partners, LP, an affiliate of our firm, serves as the general partner to Cortex Global Fund, LP and Cortex Global Master Fund, LP. Mark J. Stupfel indirectly controls Cortex Capital Partners, LP through his ownership and control of its general partner, MJS Equity, LLC and all the limited partner interests of Cortex Capital Partners, LP. MJS Equity, LLC is also a general partner of Cortex Global Master Fund, LP. Mr. Stupfel also controls our firm and serves as a director of Cortex Global Fund Offshore, Ltd.

We address this potential conflict of interest by fully disclosing the relationship among Cortex Capital Partners, LP, our firm and our clients in our clients' offering documents. Although Mark J. Stupfel's control of Cortex Global Fund, LP's general partner, service as a director of Cortex Global Fund Offshore, Ltd., control of Cortex Global Master Fund, LP's general partner and control of the investment manager may give him heightened control and discretion over our clients, he manages any potential conflicts of interest by adhering to the investment strategy and business philosophy discussed in our clients' offering documents. In addition, the Funds, the Master Fund, Cortex Capital Partners, LP and MJS Equity, LLC, on one side, and our firm, on the other side, have entered into an investment management agreement. While this may be an interested party agreement, the material terms of the investment management arrangement are fully disclosed to all investors in our clients prior to their investment.

We receive office space and certain back-office administrative services from Kleinheinz Capital Partners, Inc., whose affiliates are significant investors in the Funds. In return for these services, we pay Kleinheinz Capital Partners, Inc. a fee, calculated as a certain percentage of the management fee and performance-based profit allocation we earn from managing the Funds. While Kleinheinz Capital Partners, Inc.'s affiliates' investments in the Funds may present a conflict of interest, none of the fees for administrative services provided by Kleinheinz Capital Partners, Inc. are borne by the clients. Other than discussed above, Kleinheinz Capital Partners, Inc.'s affiliates invest on the same terms as all other investors. James K. Phillips, the chief financial officer of Kleinheinz Capital Partners, Inc., serves as a director to Cortex Global Fund Offshore, Ltd.

## **8. Code of Ethics, Participation or Interest in Client Transactions and Personal Trading**

Our firm has adopted a code of ethics (the “Code of Ethics”) and compliance policies and procedures to ensure compliance with applicable laws and regulations. The Code of Ethics seeks to address and minimize potential conflicts of interest as required by Rule 204A-1 of the Investment Advisers Act of 1940, as amended. The Code of Ethics includes rules regulating personal securities trading by our employees. These rules are meant to ensure that our employees conduct their securities trading in a manner designed to avoid actual or potential conflicts and to avoid any abuse of an individual’s position of trust and responsibility. The Code of Ethics requires (i) pre-clearance before purchasing an IPO or a new private placement, (ii) periodic reporting of personal securities transactions and holdings, (iii) pre-clearance of personal trades to be placed through our trading desk, and (iv) prompt internal reporting of any violations of the Code of Ethics.

Our employees may buy or sell the same securities as the Funds. This creates the potential risk that an employee could trade in a security that may be under consideration for an investment (or sale) by the Funds, with the possibility that the employee could receive better pricing than the Funds. We believe this is mitigated by our policies and procedures, including pre-clearance of employee trades, that are intended to permit trading only when the adviser does not intend to trade in that security. In addition, we periodically review trading for abuse, suspicious trading patterns and inappropriate frequencies of employee trading. A copy of the Code of Ethics is available upon request.

## **9. Brokerage Practices**

We have complete investment and brokerage discretion over our clients’ accounts. We select broker-dealers for our clients’ securities transactions and determine the reasonableness of their compensation based on a number of factors, including the following:

- the financial strength, integrity and stability of the broker-dealer;
- the ability to effect prompt and reliable executions at favorable prices (including the applicable broker-dealer spread or commission, if any);
- the operational efficiency with which transactions are effected, taking into account the size of order and difficulty of execution;
- the broker-dealer’s risk in positioning a block of securities; and
- the competitiveness of commission rates in comparison with other broker-dealers satisfying our other selection criteria.

We may enact trades through broker-dealers which also provide research to us and manage mutual investors’ assets. This creates a potential conflict of interest with our clients because we may be incented to trade through firms or individuals that provide

research and/or bring investors to our clients. This risk is mitigated by our policies and procedures covering brokerage selection and best execution review.

Our firm does not recommend, request or require that our clients, or any investor in our clients, execute transactions through a specified broker-dealer. We do not permit our clients or any investor in our clients to direct us to execute transactions through a specified broker-dealer.

Because our clients conduct all their trading and operations through the Master Fund, we do not currently aggregate trade orders. There is no requirement to solicit competitive bids or to seek the lowest available commission cost for our clients' securities transactions, and higher commissions may be paid to brokers whose firms provide investment research and analysis. Accordingly, if we determine in good faith that the amount of commissions charged by a broker is reasonable in relation to the value of the brokerage and research services provided by the broker, our clients may pay commissions to these brokers in an amount greater than the amount another broker might charge. Because our clients conduct all their trading and operations through the Master Fund, any research services obtained from brokers are allocated to the clients through the Master Fund. If we were to accept a separately managed account client at a later date, we would attempt to conduct all transactions in the same securities as close to simultaneously as possible, aggregate trade orders to the extent possible and, if possible, allocate research pro rata.

We Have the Authority to Utilize Research and Other Soft Dollar Benefits. We are authorized to pay higher commissions to brokerage firms that provide us or our affiliates with certain investment and research information. Research services furnished by brokers may include written information and analyses concerning specific securities, companies or sectors; market, financial and economic studies and forecasts; statistics and pricing or appraisal services; discussions with research personnel; and invitations to attend conferences or meetings with management or industry consultants. We are not required to weigh any of these factors equally.

In addition to research services, we may be offered other non-monetary benefits by broker-dealers. These benefits may take the form of payment of all or a portion of our affiliate's costs and expenses of operation such as supplies, salaries, employee benefits, telephone, postage, transportation, travel, meals and entertainment, placement fees and other marketing costs, office equipment, news wire and data processing charges, legal and accounting fees, office rent and electricity, quotation services and periodical subscription fees and all other trading related expenses.

We have the option to use "soft dollars" generated by our clients to pay for the research and non-research related services described above. The term "soft dollars" refers to the receipt by an investment manager of products and services provided by brokers, without any cash payment by the investment manager, based on the volume of revenues generated from brokerage commissions for transactions executed for clients of the investment manager. The products and services available from brokers include both internally generated items (such as research reports prepared by employees of the broker) as well as

items acquired by the broker from third parties (such as quotation equipment). Section 28(e) of the United States Securities Exchange Act of 1934, as amended, provides a “safe harbor” to investment managers who use soft dollars generated by their advised accounts to obtain investment research and brokerage services that provide lawful and appropriate assistance to the investment manager in the performance of investment decision-making responsibilities. In the event we elect to use soft dollars, our use will generally fall within the safe harbor afforded by Section 28(e).

The Use of Soft Dollars Can Create a Conflict of Interest. Using client transactions to obtain research and other benefits creates incentives that result in conflicts of interest between advisers and their clients. If we use client markups or markdowns to obtain research products and services, our firm receives a benefit because we do not have to pay for the research products and services. The availability of these benefits may influence us to select one broker-dealer rather than another to perform services for our clients, based on our interest in receiving the products and services instead of on our clients’ interest in receiving the best execution prices. Obtaining these benefits may cause our clients to pay higher fees than those charged by other broker-dealers.

The use of soft dollars to obtain research services and to pay for other costs and expenses that our firm might otherwise incur creates a conflict of interest between our firm and our clients because our clients pay for products and services that are not exclusively for their benefit and that may be primarily or exclusively for the benefit of our firm. To the extent that we are able to acquire these products and services without expending our own resources, our use of soft dollar benefits tends to increase our profitability.

## **10. Review of Accounts**

Mark J. Stupfel, our President and principal portfolio manager, reviews our clients’ accounts on a daily basis and determines whether their investments still provide value to the account or whether we should replace any positions.

We directly provide our clients’ underlying investors with monthly written statements that contain information about each underlying investor’s account. We provide the investors in our clients with quarterly written reports that contain a brief review of our clients’ performance for the relevant quarter. We also furnish our clients’ investors with annual written audited financial statements and tax information to assist U.S. investors in completing their tax returns.

## **11. Client Referrals and Other Compensation**

Our firm may, from time to time, in our sole discretion, engage third party marketers to introduce prospective investors. These arrangements generally entail a referral fee agreement with our firm whereby (i) the third party marketer is required to be appropriately registered, and (ii) the third party marketer receives a periodic fee, generally a percentage of the management and incentive fees, generated from the investor. These fees generally require us to continue paying the third party marketer until the investor no longer maintains an investment relationship with our firm or until the

referral fee agreement expires.

Our firm does not, nor do any principals or employees of our firm, receive any economic benefit from non-clients for providing advisory services to our clients.

## **12. Custody**

While it is our firm's practice not to accept or maintain physical possession of our clients' assets, we are deemed to have custody of their assets under Rule 206(4)-2 of the Investment Advisers Act of 1940, as amended, because we have the authority to access our clients' funds and deduct fees and expenses from their accounts.

In order to comply with Rule 206(4)-2, we utilize the services of qualified custodians (as defined under Rule 206(4)-2) to hold all of our clients' assets. We also ensure that the qualified custodians maintain these funds in accounts that contain only our clients' funds and securities, under our clients' name. In accordance with Rule 206(4)-2, we also (1) engage an outside auditor to audit our clients at the end of each fiscal year and (2) distribute the results of the audit in audited financial statements that are prepared in accordance with generally accepted accounting principles to all investors in our clients within 120 days after the end of the fiscal year. Finally, we receive daily account statements for our clients from our primary custodians, which we compare with our own records.

The majority of our clients' assets are held, pursuant to a prime brokerage agreement, with Merrill Lynch Professional Clearing Corp. We, at times, utilize additional foreign custodians to hold our clients' assets. These foreign custodians may not be subject to the same regulatory control as U.S. financial institutions and they may not offer the same amount or type of protection that a U.S. financial institution might be able to offer its clients. In order to mitigate these risks we utilize large, well established financial institutions as counterparties.

## **13. Investment Discretion**

### Scope of Authority

Our firm accepts discretionary authority to manage our clients' securities accounts. Essentially, this means that we have the authority to determine, without obtaining specific consent from our clients or their investors, which securities to buy or sell and the amount of securities to buy or sell. Despite this broad authority, we are committed to adhering to the investment strategy and program set forth in our clients' offering documents. Mark J. Stupfel, our President and principal portfolio manager, reviews our clients' account regularly to ensure that we are observing our clients' investment strategies and objectives.

### Procedures for Assuming Authority

Before accepting their subscriptions, we provide all potential investors in our clients with an offering document that sets forth, in detail, our investment strategy and program. By completing our subscription documents to invest in our clients, investors give us

complete authority to manage their investments in accordance with our clients' offering documents they received.

#### Trade Error Policy

Except in cases of willful misconduct, bad faith or gross negligence, gains or losses that may occur as a result of errors occurring when our firm places client trades, are born by our clients. Our firm records and periodically reviews trade errors for appropriateness or the existence of impropriety.

### **14. Voting Client Securities**

We have adopted a proxy voting policy (the "Proxy Policy"). The Proxy Policy seeks to further the best interests of our clients. If a proxy vote creates a potential material conflict between the interests of our firm and the interests of our clients, we will resolve the conflict before voting the proxy by consulting with third party advisors such as proxy voting advisors and legal counsel. The Proxy Policy is available to all prospective investors. The Proxy Policy and records relating to past votes will be made available to existing investors upon request in writing.

Neither our clients, nor investors in our clients, can direct us to vote client proxies in a certain manner. Upon request, our clients' investors can obtain (1) a copy of our proxy voting policies and procedures and (2) information concerning proxy votes on our clients' behalf.

We maintain the following records relating to proxy voting in our office:

- Copies of our proxy voting policies and procedures and any amendments.
- Proxy statements received for client securities.
- Records of proxy votes cast on behalf of our clients.

We receive our clients' proxies and similar solicitations and we have the authority to vote our clients' proxies.

### **15. Financial Information**

We do not require nor do we solicit prepayment of more than \$1,200 in fees per client, six months or more in advance.

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

We have never been the subject of a bankruptcy petition.