

## Z CAPITAL PARTNERS

### Form ADV Part 2A: Firm Brochure

### Z Capital Partners, L.L.C.

April 1, 2014

#### **Principal Office**

Z Capital Partners, L.L.C.

Two Conway Park  
150 Field Dr. Suite 300  
Lake Forest, IL 60045

(p): 847-235-8100

(f): 847-235-8111

[www.zcap.net](http://www.zcap.net)

This Brochure provides information about the qualifications and business practices of Z Capital Partners, L.L.C. and its affiliates (collectively “Z Capital” or “Advisor”). If you have any questions about the contents of this Brochure, please contact us at (847) 235-8100 or email [investorrelations@zcap.net](mailto:investorrelations@zcap.net). In addition, the information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (the “SEC”) or by any state securities authority.

Z Capital is registered as an investment adviser with the SEC under the Investment Advisers Act of 1940 (the “Advisers Act”). Registration as an investment adviser with the SEC does not imply a certain level of skill or training.

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

## **Item 2: Material Changes**

There have been no material changes to this Brochure since the last filing, in March 2013.

**Item 3: Table of Contents**

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

## Item 4: Advisory Business

Z Capital Partners L.L.C. (“Z Capital”) is a private firm organized as a limited liability company under the laws of the State of Delaware to provide investment management services to private funds. James Zenni, Jr., President and Chief Executive Officer of Z Capital Partners, L.L.C., founded Z Capital Partners, L.L.C. in 2006 and is its controlling principal. Z Capital is headquartered in Lake Forest, IL and also has an office in New York, New York.

Z Capital, through its affiliated management entities, serves as an investment manager and provides discretionary advisory services to pooled investment vehicles organized and sponsored by Z Capital, including private investment partnerships. As of March 31, 2014, Z Capital and its affiliates, managed approximately \$1.5 billion of regulatory assets on a discretionary basis on behalf of its funds.

Typically, within each fund structure is a designated general partner or investment adviser (the “General Partner(s)”). Unless and only to the extent that the context otherwise requires, references to Z Capital include the General Partner(s) (including Z Capital Special Situations GP, L.P., Z Capital Special Situations GP II, L.P., Z Capital Special Situations Adviser, L.P. and Z Capital Loan Opportunity Adviser, L.L.C.). All answers in this Brochure are given for, or are applicable to Z Capital Partners, L.L.C., Z Capital Special Situations GP, L.P., Z Capital Special Situations GP II, L.P., Z Capital Special Situations Adviser, L.P., and Z Capital Loan Opportunity Adviser, L.L.C., together or individually (as appropriate), except when otherwise specified.

Z Capital Special Situations Adviser, L.P. and Z Capital Special Situations GP, L.P. serve as investment adviser and general partner, respectively, to two domestic private investment funds, and have done so since inception in December 2008, Z Capital Special Situations Fund, L.P. and Z Capital Special Situations Fund-A, L.P., which feed into a third domestic private investment fund, Z Capital Special Situations Fund Holdings I, L.L.C. (collectively the “Special Situations Fund”). Z Capital Special Situations GP, L.P. also serves as general partner for nine domestic private investment funds (the “Co-Invest Funds”). The Co-Invest Funds invest in middle-market companies alongside the Special Situations Fund and Special Situations Fund II, as defined below.

Z Capital Special Situations Adviser, L.P. and Z Capital Special Situations GP II, L.P. serve as investment adviser and general partner, respectively, to two new domestic private investment funds, Z Capital Special Situations Fund II, L.P. and Z Capital Special Situations Fund II-A, L.P., which feed into a third domestic private investment fund, Z Capital Special Situations Fund Holdings II, L.L.C. (collectively the “Special Situations Fund II”).

The Special Situations Fund and Special Situations Fund II employ an opportunistic, value-oriented private equity strategy that includes making private equity control investments in middle-market companies that may require turnaround, restructuring, bankruptcy or are otherwise special situations. The Special Situations Fund and Special Situations Fund II invest in companies that may be challenged by the need to effect immediate changes to their financial structure and/or business model. Z Capital seeks to create value throughout economic cycles by utilizing its significant operational and restructuring expertise in executing its acquisition strategy and actively working with management teams to enhance enterprise value through operational and strategic initiatives.

The Special Situations Fund and Special Situations Fund II are organized in a master-feeder structure, each with two domestic feeder funds investing into a master fund.

Z Capital Loan Opportunity Adviser, L.L.C., a Delaware limited liability company formed in April 2009, serves as the general partner and investment adviser of one domestic private investment fund, Z Capital Loan Opportunity Fund, L.P., and investment adviser to two offshore private investment funds, Z Capital Loan Opportunity Offshore Fund Ltd., Z Capital Loan Opportunity Intermediate Fund Ltd. The domestic and offshore funds each invest through a common offshore Cayman Islands master fund, Z Capital Loan Opportunity Master Fund Ltd., for which Z Capital Loan Opportunity Adviser, L.L.C. also acts as investment adviser. These three funds and one master fund are referred to collectively as the “Loan Fund”. The Loan Fund is a private fund that originates and invests in below investment grade senior secured leveraged loans, debtor-in-possession financings (“DIP”), and opportunistic financings primarily for middle market companies. These debt instruments are secured by a combination of various corporate assets including real estate, accounts receivable, inventory, manufacturing plants and industrial equipment. DIP loans typically have super seniority status in the capital structure. The Loan Fund, Special Situations Fund, and Special Situations Fund II shall hereafter be referred to as the “Fund” or collectively as the “Funds”.

In providing services to the Funds and Co-Invest Funds, Z Capital formulates each Fund’s and Co-Invest Fund’s investment objectives, directs and manages the investment and reinvestment of each Fund’s and Co-Invest Fund’s assets, and provides reports to investors. Investment advice is provided directly to the Funds and Co-Invest Funds and not individually to the limited partners or members of the Funds and Co-Invest Funds (the “Investors”). Z Capital manages the assets of the Funds and Co-Invest Funds in accordance with the terms of each Fund’s confidential offering or private placement memoranda (“Memoranda”), individual limited partnership or L.L.C. agreements and other governing documents applicable to each Fund and Co-Invest Fund (collectively the “Governing Fund Documents”). All terms are generally established at the time of the formation of a Fund and Co-Invest Fund, and are only terminable once the applicable Fund or Co-Invest Fund is dissolved. All of the discussions of the Fund and the Co-Invest Funds in this Brochure, including but not limited to their investments, the strategies used in managing the Funds and the Co-Invest Funds, associated fees and costs and the conflicts of interest faced by Z Capital and its affiliates in connection with the management of the Funds and the Co-Invest Funds, are qualified in their entirety by the respective Governing Fund Documents.

Investors may not impose restrictions on the Funds’ investment activities. Z Capital has full discretion in trading on behalf of the Funds and Co-Invest Funds. It does not require, and does not seek approval from the Funds or the Co-Invest Funds or the Investors with respect to its trading.

Member or limited partnership interests in the Funds and Co-Invest Funds are not registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and the Funds and Co-Invest Funds are not registered under the Investment Company Act of 1940, as amended (the “Investment Company Act”). Accordingly, interests in the Funds and Co-Invest Funds are offered and sold exclusively to investors satisfying the applicable eligibility and suitability requirements in private transactions within the United States.

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

### General

Z Capital provides investment advisory services to each of the Funds and Co-Invest Funds pursuant to separate investment advisory agreements (the “Agreements”). The Agreements for each Fund and Co-Invest Fund, along with specific Governing Fund Documents, set forth in detail the fee structure relevant to each such Fund or Co-Invest Fund. The terms of the Agreements are generally established at the time of the formation of the applicable Fund and Co-Invest Fund.

Z Capital typically receives compensation from fees based on a percentage of assets under management or committed capital, fees or allocations based on performance and certain other fees or expenses related to transactions (see below). Investors should review all fees charged by Z Capital to fully understand the total amount of fees to be paid by a Fund or Co-Invest Fund and, indirectly, by its Investors.

### Management Fees

The Funds and certain Co-Invest Funds pay Z Capital and/or its affiliates an annual management fee (the “Management Fee”). The Management Fees for the Special Situation Fund and Special Situations Fund II are 1.75% and 2%, respectively, per annum and this fee is paid quarterly in advance. This fee is typically based upon committed capital during the investment period and on invested capital thereafter, in each case in accordance with the Governing Fund Documents.

The Management Fee for the Co-Invest Funds, if any, may vary by fund from 0% to 2% per annum and this fee is paid quarterly in advance. This fee is typically based upon invested capital, in accordance with the Governing Fund Documents.

The Management Fee for the Loan Fund is 2% per annum and this fee is paid quarterly in arrears. The Management Fee is prorated for any intra-month additions, withdrawals, or distributions.

Z Capital and its affiliates reserve the right to waive or reduce management fees for certain investors, including employees, a limited number of strategic partners, advisors and consultants and others as Z Capital may determine in its sole discretion.

### Other Fees Earned by Z Capital

Z Capital, its affiliates, and their respective members, officers or employees may charge the portfolio companies or other investments of the Funds and Co-Invest Funds a variety of fees such as: advisory fees, organization or success fees, break-up fees, directors’ fees, monitoring fees, introduction fees, consulting fees, transaction fees, syndication fees, origination fees, agent fees, administration fees, and other similar fees (collectively “Other Fees”). Also, employees of Z Capital who serve on the board of directors of portfolio companies may receive compensation (in the form of cash, stock options or other equity awards) in their capacity as directors. A portion of the direct and indirect compensation received by Z Capital, its employees or affiliates will be retained by Z Capital subject to the Governing Fund Documents.

The recipients of this Brochure must refer to the detailed information found in each Fund's Memorandum and other Governing Fund Documents and each Co-Invest Fund's Governing Fund Documents for specific information about the fees earned by Z Capital and the fees charged to the Fund.

#### Other Expenses Charged to the Funds and Co-Invest Funds

In addition to management fees, performance-based fees (discussed below in Item 6) and Other Fees, the Funds and Co-Invest Funds will reimburse Z Capital (to the extent not reimbursed by a portfolio company) the transactional fees and expenses related to services provided by Z Capital and third parties for the Funds and Co-Invest Funds. Those transactional fees and expenses will vary by Fund and Co-Invest Fund, and include but are not limited to, the following: costs and expenses associated with making, holding, and the management, sale or proposed sale of any Fund or Co-Invest Fund investment including brokerage commissions (see Brokerage Practices in Item 12), spreads, markups, clearing and settlement costs, short dividends, commitment fees, investment banking fees, consulting fees, interest and custody expenses, expense associated with proposed investments that are not ultimately made by the Funds or Co-Invest Funds, consultants' and other experts' fees, legal and due diligence expenses including travel expenses (meals, lodging and travel which may include the use of an aircraft owned or leased by a related person of the General Partner in order to conduct due diligence related to the assessment, purchase, management or sale of investments and for any other purpose related to the investment activities and operations of the Funds and Co-Invest Funds).

The Funds and Co-Invest Funds will bear their own direct operating expenses, including but not limited to, the following: legal, audit, accounting, consulting and tax preparation expenses, printing and mailing costs, administration fees, custodian fees, market information systems, computer software expenses, pricing services and financial modeling services fees, filing fees, insurance and extraordinary expenses (e.g., indemnification, litigation, or taxes), financing vehicle organization and operating expenses, offshore administration fees, directors' fees, fees and expenses of the advisory committees of the Funds (made up of select Investors and performing functions as defined in the Governing Fund Documents), and fees associated with annual Investor meetings. The Funds may also pay their pro-rata share of the General Partner's internal legal, accounting, and administrative expenses, as well as their pro-rata share of the General Partner's costs associated with, and maintenance of, certain technology systems used in the General Partner's day-to-day operations.

#### *Organizational Expenses*

Each Fund will bear all reasonable legal and other organizational and offering expenses incurred in the formation of each Fund and Co-Invest Fund and related entities ("Organizational Expenses"). All organization expenses will be charged and disclosed according to the Governing Fund Documents.

#### *Placement Fees*

All fees due to placement agents will generally be paid by the General Partners. If the Funds were to pay fees due to placement agents, the fees will reduce the management fees otherwise payable by Investors by an identical amount.

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

A portion of each Fund's net investment profit may be allocated to the capital account of its General Partner as a "performance fee" or "carried interest." The manner of calculation of such fees is disclosed in the Governing Fund Documents, and varies by fund. The Special Situations Fund, Special Situations Fund II and Co-Invest Funds allocate between 0% and 20% of their net realized profits as carried interest to the General Partner's capital account, on an investment by investment basis, subject to preferred returns and/or clawbacks, as applicable. The General Partner of Loan Fund reallocates a performance based fee of 20% of net profits from any Investors' capital account that is above the high water mark for each such capital account to the General Partner's capital account.

As is the case with management fees, Z Capital and its affiliates reserve the right to waive or reduce carried interest for certain investors, including employees, a limited number of strategic partners, advisors and consultants and others as Z Capital may determine in its sole discretion.

Members of Z Capital's investment team may receive a portion of Z Capital's carried interest, calculated on an investment-by-investment basis, with respect to investments for which that team member may bear responsibility. The fact that a significant portion of Z Capital's compensation (and its affiliates and investment professionals' compensation) is directly computed on the basis of profits earned by the Funds and Co-Invest Funds or generated by the sale or disposition of Fund and Co-Invest Fund assets may create an incentive for Z Capital to make investments on behalf of the Funds and Co-Invest Funds that are riskier or more speculative than would be the case in the absence of such compensation. The fact that certain Co-Invest Funds have no performance-based fee may also create a conflict of interest favoring the allocation of Z Capital's time and resources to those Funds and Co-Invest Funds that do have a performance-based fee. However, this conflict is mitigated by the fact that the Co-Invest Funds invest alongside Special Situations Fund and Special Situations Fund II.

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

Z Capital provides discretionary management and advisory services to the Funds and Co-Invest Funds directly, subject to the direction and control of the General Partner of each Fund and Co-Invest Fund, and not individually to the underlying Investors. As mentioned in Item 4, neither the interests in the Funds or Co-Invest Funds nor the Funds or Co-Invest Funds themselves are registered under the Securities Act or Investment Company Act. Investors in the Funds and Co-Invest Funds include, but are not limited to, global sovereign wealth funds, endowments, pension funds, insurance companies, foundations, family offices, wealth management firms and other financial institutions in North America, Europe, Asia and the Middle East..

The minimum commitment for an Investor is outlined in the respective Governing Fund Documents and is generally \$10 million. However, Z Capital maintains discretion to accept less than the minimum investment commitment.

The General Partner on its own behalf and/or on behalf of the Funds or Co-Invest Funds without the approval of any Investor or any other person may enter into a side letter or similar agreement



(an “Other Agreement”) to or with an Investor which has the effect of establishing rights under, or altering or supplementing the terms of the Governing Fund Documents. Investors should further recognize that any terms contained in an Other Agreement to or with an Investor shall govern with respect to such Investor notwithstanding the provisions of the Governing Fund Documents. Other Agreements may grant certain Investors lower fees, lower minimum investment requirements, preferential withdrawal rights, and additional reporting and informational rights, as well as address other matters. The General Partner will not enter into an Other Agreement if it believes the terms thereof would have a material adverse impact on the other Investors.

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

The investment strategy for Special Situations Fund and Special Situations Fund II is to pursue an opportunistic, value-oriented approach in private equity that includes making control investments in middle-market companies that may require turnaround, restructuring, bankruptcy or are otherwise special situations. The Special Situations Fund and Special Situations Fund II invest in companies that may be challenged by the need to effect immediate changes to their financial structure and/or business model and leverages its operational expertise in actively working with management teams to enhance enterprise value. Z Capital seeks to create value for its investors throughout economic cycles by utilizing its significant operational and restructuring expertise in executing its acquisition strategy and actively working with management teams to enhance enterprise value through operational and strategic initiatives. The Co-Invest Funds invest in middle-market companies alongside the Special Situations Fund and Special Situations Fund II.

The Loan Fund’s investment strategy is to originate and invest in below investment grade senior secured leveraged loans, DIP, and opportunistic financings primarily for middle market companies. These debt instruments are secured by a combination of various corporate assets including real estate, accounts receivable, inventory, manufacturing plants and industrial equipment. DIP loans typically have super seniority status in the capital structure.

The descriptions contained below are a brief overview of different market risks related to Z Capital’s investment strategies; however, the descriptions are not intended to serve as an exhaustive list or a comprehensive description of all risks and conflicts that may arise in connection with the management and operations of the Funds and Co-Invest Funds. Investors should also see the Governing Fund Documents for additional risk disclosures.

### **Risks Related to all of the Funds and Co-Invest Funds**

#### *Alternative Investment Vehicles*

For legal, tax, regulatory, or other reasons, the Funds may form one or more alternative investment entities to make investments through such entity for the Funds. Generally, in such event, each Investor would participate in such an alternative investment vehicle on substantially the same terms and conditions as it participates in the Funds.

#### *General Investing Risks*

All investing involves a risk of loss and the investment strategy offered by Z Capital could lose money over short or even long periods. An investment in the Funds and Co-Invest Funds may be

deemed a speculative investment and is not intended as a complete investment program. It is designed for sophisticated investors who fully understand and are capable of bearing the risk of an investment in the Funds and/or Co-Invest Funds. No guarantee or representation is made that a Fund or Co-Invest Fund will achieve its investment objective or that Investors will receive a return of their capital.

#### *General Portfolio Risk*

The Special Situations Fund and Special Situations Fund II's investment portfolios will consist primarily of securities issued by privately held companies, and operating results in a specified period will be difficult to predict. Such investments involve a high degree of business and financial risk that can result in substantial losses or delays in realizations due to bankruptcy and court proceedings.

In managing the Loan Fund, Z Capital may utilize certain investment techniques, such as investing in below investment grade debt, which may include the debt of financially-distressed companies, borrowing funds for investment purposes, short-selling and entering into swaps and other derivative transactions, all of which entail significant risks. The assets of the Loan Fund consist primarily of below investment grade secured debt securities, instruments issued by securitization vehicles and loans made to highly leveraged companies. Non-U.S. dollar denominated securities in which the Loan Fund invests also entail currency risk. Bank loans, swaps and forward currency contracts are not traded on regulated exchanges, are not registered with U.S. or other governmental authorities and are not subject to the rules of any self-regulatory organization. Swap and forward contracts are generally entered into with banks, may not be assigned without the consent of the counterparty, and may result in losses to the Loan Fund in the event of a default or bankruptcy of the counterparty.

#### *Liquidity Issues*

There will be no public market for interests in the Fund or Co-Invest Funds, and none is expected to develop. There are substantial restrictions upon the transferability of interests in the Fund and Co-Invest Funds under the Governing Fund Documents and applicable securities laws.

A large portion of the Loan Fund's portfolio may consist of securities, loans and other financial instruments which are not actively and widely traded. Consequently, it may be relatively difficult for the Loan Fund to dispose of such investments at favorable prices in connection with withdrawal requests, adverse market developments or other factors. Illiquid securities may also be more difficult to value.

An investment in the Special Situations Fund, Special Situations Fund II and Co-Invest Funds should be viewed as illiquid. In general, withdrawals of interests in the Special Situations Fund, Special Situations Fund II and Co-Invest Funds are not permitted and interests therein are not freely redeemable. It is uncertain as to when profits, if any, will be realized. Losses on unsuccessful investments may be realized before gains on successful investments are realized. The return of capital and the realization of gains, if any, generally will occur only upon the partial or complete disposition of an investment. While an investment may be sold at any time, it is not generally expected that this will occur for a number of years after the initial investment. Before such time, there may be no current return on the investment.

#### *No Assurance of Returns*

There is no assurance that the Funds or Co-Invest Funds will be able to generate returns for their Investors or that the returns will be commensurate with the risks of investing in the types of companies and transactions described herein. There can be no assurance that the Funds' or Co-Invest Funds' investment objectives will be achieved or that there will be any return of capital. Therefore, an Investor should only invest in a Fund or Co-Invest Fund if the Investor can withstand a total loss of its investment. The past investment performance of the entities with which officers and employees of Z Capital have been associated cannot be taken to guarantee future results of any investment in the Funds or Co-Invest Funds.

#### *Dependence on Key Personnel*

Control over the operation of the Funds and Co-Invest Funds will be vested entirely with the respective General Partner, and the Funds' and Co-Invest Funds' future profitability will depend largely upon the business and investment acumen of Z Capital's investment team and in particular the President and CEO. The loss of service of one or more of the investment team members could have an adverse effect on the Funds' and Co-Invest Funds' ability to realize their investment objectives. Investors generally have no right or power to take part in the management of the Funds or Co-Invest Funds, and as a result, the investment performance of the Funds or Co-Invest Funds will depend entirely on the actions of the respective General Partner. In the case of the Special Situations Fund and Special Situations Fund II, while the General Partner will monitor the performance of each investment, it will primarily be the responsibility of each portfolio company's management team to operate the portfolio company on a day-to-day basis.

#### *Indemnification*

The Funds and Co-Invest Funds will be required to indemnify the General Partners, their affiliates, and their respective officers, employees, directors, agents, stockholders, members and partners for any liabilities incurred in connection with the affairs of the Funds and Co-Invest Funds. Such liabilities may be material and have an adverse effect on the returns to the Investors. For example, certain members of the investment team may serve as directors of portfolio companies, and may be subject to derivative or other similar claims brought by shareholders of such companies. The indemnification obligation of the Funds or Co-Invest Funds would be payable from the assets of the Funds or Co-Invest Funds, including the unfunded commitments of the Investors. If the assets of the Funds or Co-Invest Funds are insufficient, the General Partner may recall distributions previously made to the Investors, subject to certain limitations in the Governing Fund Documents.

#### *Default Rates of Loans and High Yield Securities*

There are varying sources of statistical default rate data for loans and high yield securities and numerous methods for measuring default rates. The historical performance of the high yield market or the leveraged loan market is not necessarily indicative of its future performance, particularly as most models are based on periods that did not include a prolonged or deep recession. Should increases in default rates occur with respect to the securities in which the Loan Fund invests (which may be likely in a prolonged recession), the actual default rates of the securities held by the Loan Fund may exceed the hypothetical default rates used by the General Partner in determining to purchase such securities.

#### *Loan Participations*

The Funds may invest in loan participations, which involve certain risks in addition to those associated with direct loans. A loan participant may not have a contractual relationship with the borrower of the underlying loan. As a result, in such circumstances, the participant is generally dependent upon the lender to enforce its rights and obligations under the loan agreement in the event of a default and may not have the right to object to amendments or modifications of the terms of such loan agreement. A participant in a syndicated loan also may not have voting rights, in which case such voting rights are retained by the lender. In addition, a loan participant is subject to the credit risk of the lender as well as the borrower, since a loan participant is dependent upon the lender to pay its percentage of payments of principal and interest received on the underlying loan. Loan participations are also subject to the possible invalidation of an investment transaction as a “fraudulent conveyance” under relevant creditors’ rights laws and so-called “lender liability” claims by the issuer of the obligations.

#### *Interest Rate Risk*

The value of any fixed-rate securities in which the Funds invest generally will have an inverse relationship with interest rates. Accordingly, if interest rates rise, the value of such securities may decline. In addition, to the extent that the receivables or loans underlying specific securities are pre-payable, the value of such securities may be negatively affected by increasing prepayments, which generally occur when interest rates decline.

#### Risks Related to the Special Situations Fund, the Special Situations Fund II and the Co-Invest Funds

##### *Need for Follow-On Investments*

Following its initial investment in a given portfolio company, the Special Situations Fund and Special Situations Fund II or certain Co-Invest Funds may decide to provide additional funds to such portfolio company or may have the opportunity to increase its investment in a successful portfolio company. There is no assurance that the Special Situations Fund or Special Situations Fund II will make follow-on investments or that the Special Situations Fund or Special Situations Fund II will have sufficient funds to make all or any of such investments. Any decision by the Special Situations Fund or Special Situations Fund II to not make follow-on investments or its inability to make such investments may have a substantial negative effect on a portfolio company in need of such an investment or may result in a lost opportunity for the Special Situations Fund or Special Situations Fund II to increase its participation in a successful operation.

##### *Leverage*

The Special Situations Fund, Special Situations Fund II and Co-Invest Funds may make use of leverage by incurring or having a portfolio company incur debt to finance a portion of its investment in a given portfolio company. Leverage generally magnifies the Special Situations Fund’s, Special Situations Fund II’s and Co-Invest Funds’ opportunities for gain and their risk of loss from a particular investment. The use of leverage will also result in interest expense and other costs to the Special Situations Fund, Special Situations Fund II, and Co-Invest Funds that may not be covered by distributions made to the Special Situations Fund, Special Situations Fund II and Co-Invest Fund or appreciation of their investments. Leverage often imposes restrictive financial and operating covenants on a company, in addition to the burden of debt service, and may impair its ability to finance future operations and capital needs. The leveraged capital structure of portfolio companies

will increase the exposure of the Special Situations Fund's. Special Situations Fund II's and Co-Invest Funds' investments to any deterioration in a company's condition or industry, competitive pressures, an adverse economic environment or rising interest rates and could accelerate and magnify declines in the value of the Special Situations Fund's, Special Situations Fund II's and Co-Invest Funds' investments in the leveraged portfolio companies in a down market. In the event any portfolio company cannot generate adequate cash flow to meet debt service, the Special Situations Fund, Special Situations Fund II and Co-Invest Funds may suffer a partial or total loss of capital invested in the portfolio company, which could adversely affect the returns of the Fund.

#### Risks Related to the Loan Fund

##### Leverage

The Loan Fund may utilize leverage by purchasing securities with the use of borrowed funds, entering into total return swaps and through other leveraging techniques. In addition, the Loan Fund may use affiliates formed specifically for the purpose of issuing medium-term notes, commercial paper, collateralized loan obligations and/or other financing instruments to generate leverage. The use of leverage by the Loan Fund creates certain risks. Leverage magnifies gains and losses attributable to other investment policies and practices, such as investing in below investment grade instruments. However, there can be no assurance that adequate (or any) leverage will be available to the Loan Fund. There can be no assurance that the Loan Fund would be able to maintain adequate financing, particularly in adverse market conditions, such as those that generally occurred during the latter part of 1998 and 2007-2009. If it is not able to do so, forced portfolio liquidations and significant losses could result.

### **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 investor's evaluation of the adviser or the integrity of the adviser's management. Neither Z Capital nor any of its officers, directors, employees or other management persons, have been involved in any legal or disciplinary events in the past 10 years that would require disclosure in response to this item.

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

Z Capital or the General Partners are responsible for decisions regarding such Funds and have full discretion over the management of such Funds' investment activities. While the General Partners are not separately registered as investment advisers with the SEC, all of their investment advisory activities are subject to the Investment Advisers Act of 1940, as amended (the "Advisers Act") and the rules thereunder. All supervised persons of each of the affiliated advisers are subject to the same written Code of Ethics (the "Code") administered by the same Chief Compliance Officer.

Z Capital's affiliated entities are exempt from registration as a commodity pool operator.

Z Capital is affiliated with Z Capital Commercial Finance, LLC ("ZCCF") that engages in the business of originating loans. The Funds may purchase loans originated, structured or serviced by ZCCF for which ZCCF receives fees. The Loan Fund would need approval of the Loan Fund's advisory committee to purchase loans originated by ZCCF.

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

### *Code of Ethics*

Pursuant to Rule 204A-1 of the Advisers Act, Z Capital has adopted the Code predicated on the principle that Z Capital owes a fiduciary duty to the Investors and its Funds and Co-Invest Funds. The Code is designed to address and avoid potential conflicts of interest and is applicable to all officers, directors, members, partners or employees of Z Capital (the “Supervised Persons”). Z Capital requires its Supervised Persons to act in the Funds’ and Co-Invest Funds’ best interests, abide by all applicable regulations and avoid any action that is, or could even appear to be, legally or ethically improper. A copy of Z Capital’s Code is available upon request by contacting us at (847) 235-8100.

### *Supervised Persons*

Supervised Persons may only trade in securities excepted from the definition of Reportable Securities (as defined by the Code) as well as municipal bonds, exchange traded funds, obligations of governments of European Union countries, the United Kingdom, Canada, Switzerland and Japan, currencies, commodities and commodity futures.

Supervised Persons are prohibited from investing in IPOs or securities obtained through a private placement (except for those private placements managed by Z Capital) and therefore pre-clearance of such securities is not needed. Supervised Persons are also required to provide quarterly reports regarding transactions and holdings. Supervised Persons must disclose all personal accounts initially upon commencement of employment or otherwise upon being designated a Supervised Person, and annually thereafter.

### *Conflicts of Interest*

Z Capital is subject to certain conflicts of interest in advising the Funds and Co-Invest Funds. Some of these conflicts are summarized here, but this summary does not attempt to describe all of the conflicts of interest associated with an investment in the Funds and Co-Invest Funds. The Governing Fund Documents contain a more complete description of what Z Capital believes to be the most significant conflicts of interest associated with an investment in each Fund, but is also not an exhaustive list.

Z Capital’s affiliated entities serve as the investment adviser and General Partner, to the Funds and Co-Invest Funds. The General Partners of the Funds will have an investment in the Fund and certain Co-Invest Funds. Therefore, Z Capital may be considered to participate indirectly in transactions effected for the Funds and certain Co-Invest Funds. The foregoing relationships, fees, and any other actual or potential conflicts of interest are disclosed in the respective Governing Fund Documents.

## **Item 12: Brokerage Practices**

Z Capital will seek to obtain best execution. Z Capital endeavors to assess the dealers and other counterparties used at both an aggregate and transaction-by-transaction level. Generally speaking, best price would be the most critical factor considered, especially in the context of selling investment positions. In general, Z Capital’s investments are private placement securities which only certain dealers or other counterparties may offer or trade in. Therefore, Z Capital is limited to

entering into transactions with those dealers and counterparties offering or trading in the investment, and the characteristics of the investment drive the decision as to which dealer or other counterparty Z Capital uses. However, Z Capital may contact various dealers or counterparties to determine where a particular investment is available to achieve the best possible price. Z Capital may take into account the available quantity of the investment offered by a dealer or counterparty when determining to transact.

As part of the investment process, Z Capital determines the appropriate price at which Z Capital is comfortable buying or selling investment positions based on its internal analysis of the investments. Z Capital will negotiate spreads with respect to certain transactions and execute such trades to consider the benefit of fairly compensating brokers and other counterparties in order to gain future investment opportunities for the Funds and Co-Invest Funds and other information flow that benefits the Funds and Co-Invest Funds. Z Capital may determine that an investment opportunity is appropriate for one or more Funds and may allocate transactions among these clients. Z Capital will endeavor to identify and resolve conflicts with respect to investment opportunities in a manner which it deems equitable under the facts and circumstances and in accordance with applicable legal requirements including the U.S. federal securities laws.

The General Partners are generally authorized to make the following determinations, subject to each Fund and Co-Invest Fund's investment objectives and restrictions, without obtaining prior consent from the relevant Fund and Co-Invest Fund or any of its Investors: (1) which securities or other instruments to buy or sell; (2) the total amount of a particular security or other instrument to buy or sell; (3) the executing broker or counterparty for any transaction; and (4) the broker's imputed spread or other transaction-based costs that are paid in connection with such transactions.

Z Capital does not participate in any soft dollar arrangements outside of receiving research available to other institutional investors. Research services received from brokers and dealers are supplemental to Z Capital's own research effort. To the best of Z Capital's knowledge, these services are generally made available to all institutional investors doing business with such broker-dealers. Z Capital does not separately compensate such broker-dealers for the research and does not believe that it "pays-up" for such broker-dealers' services due to the difficulty associated with the broker-dealers not breaking out the costs for such services.

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

All investments are carefully reviewed and approved by Z Capital's investment team. The loans and other investments are reviewed on a continuous basis and members of the investment team meet regularly to discuss investment ideas, the market, and the events of the prior period. The investment team also engages in various informal meetings and discussions as they continuously monitor the portfolio and current and potential investments.

Z Capital provides each Investor with the following reports in accordance with the terms of the applicable Governing Fund Documents: (i) audited annual financial statements; (ii) a monthly report for the Loan Fund or a quarterly report for the Special Situations Fund, Special Situations Fund II and Co-Invest Funds setting forth an unaudited capital account balance for the Investor in the respective Fund or Co-Invest Fund, and such other information as the General Partners may deem appropriate; and (iii) annual tax information necessary to complete any applicable tax returns. Z

Capital also holds annual meetings with the Investors of the Special Situations Fund and Special Situations Fund II.

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

Z Capital has previously used and may periodically engage third party placement agents in the future, to introduce prospective investors to the Funds. The fees and expenses of any third-party placement agents are paid by Z Capital and not by the Investors.

### **Item 15: Custody**

Z Capital has access to client accounts (i.e., the Funds and Co-Invest Funds) since its affiliated entities serve as the General Partners of the Funds and Co-Invest Funds. Investors will not receive custodial statements from the custodians of the Funds or Co-Invest Funds investment portfolio. Instead, the Funds and Co-Invest Funds are and will be subject to an annual audit by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and the audited financial statements are distributed to each Investor. The audited financial statements will be prepared in accordance with generally accepted accounting principles and distributed within 120 days of each Fund and Co-Invest Fund's fiscal year end.

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

In accordance with the terms and conditions of the Governing Fund Documents, and subject to the direction and control of the General Partner of each Fund and Co-Invest Fund, Z Capital generally has discretionary authority to determine, without obtaining specific consent from the Funds or Co-Invest Funds or their underlying Investors, the securities and the amounts to be bought or sold on behalf of the Funds or Co-Invest Funds, and to perform the day-to-day investment operations of the Funds or Co-Invest Funds.

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

In accordance with its fiduciary duty to Investors and Rule 206(4)-6 of the Advisers Act, Z Capital has adopted and implemented written policies and procedures governing the voting of securities held by the Funds or Co-Invest Funds.

The Fund or Co-Invest Funds' portfolios may, on occasion, hold equity securities for which proxy votes may be held. While the Funds or Co-Invest Funds may from time to time have some form of voting rights, the Funds and Co-Invest Funds generally do not invest in publicly-traded equity securities and thus traditional proxy voting generally does not apply. Z Capital may have significant control via board membership (or otherwise) of the companies it invests in on behalf of the Funds and Co-Invest Funds, and it will ensure that all decisions are in the best interests of the Funds and Co-Invest Funds. The types of rights the Funds and Co-Invest Funds generally have are handled as part of the investment process and investment team members shall retain all documentation reasonably available to identify the basis for the decision and why it was made in the best interests of the Funds and Co-Invest Funds.

For each portfolio company, designated investment member have principal responsibility for the ongoing monitoring and reporting of the investment. In cases where a proxy vote may occur (or



similar rights apply), the relevant investment member will draw a conclusion as how best to serve the interest of Z Capital's Funds and Co-Invest Funds and will subsequently direct the CCO or Controller to cast the votes with that Funds and Co-Invest Funds best interest as the determining factor. In all cases, Z Capital will vote in accordance with its fiduciary duty and attempt to maximize value on behalf of the Funds and Co-Invest Funds.

All conflicts of interest with respect to the voting of securities will be resolved in the interests of the Funds and Co-Invest Funds. In situations where Z Capital perceives a material conflict of interest, Z Capital will obtain recommendations from the applicable Fund's Advisory Board to provide an independent recommendation on how Z Capital should vote the Funds and Co-Invest Funds' interest.

All proxies that Z Capital receives will be treated in accordance with these policies and procedures. A copy of Z Capital's written proxy voting policies and procedures, as well as a record of how Z Capital has voted in the past, will be maintained and available for review upon written request.

## **Item 18: Financial Information**

A balance sheet is not required to be provided as Z Capital (i) does not solicit fees more than six months in advance, (ii) does not have a financial condition that is likely to impair its ability to meet contractual commitments to clients and (iii) has not been subject to any bankruptcy proceeding during the past 10 years.