

**Whippoorwill Associates, Inc.**

11 Martine Avenue  
White Plains, NY 10606  
914-683-1002

March 31, 2015

**This brochure provides information about the qualifications and business practices of Whippoorwill Associates, Inc. If you have any questions about the contents of this brochure, please contact us at 914-683-1002. 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.**

**Additional information about Whippoorwill Associates, Inc. also is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

**While we refer to ourselves as a “registered investment adviser”, registration does not imply a certain level of skill or training.**

## **2. MATERIAL CHANGES**

There have been no material changes since the last update of our brochure dated March 28, 2014. We have updated our assets under management in Section 4 of this brochure.

### **3. TABLE OF CONTENTS**

1.	COVER PAGE.....	1
2.	MATERIAL CHANGES .....	2
3.	TABLE OF CONTENTS.....	3
4.	ADVISORY BUSINESS .....	4
5.	FEES AND COMPENSATION .....	4
6.	PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT.....	6
7.	TYPES OF CLIENTS.....	7
8.	METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS.....	7
9.	DISCIPLINARY INFORMATION.....	12
10.	OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS .....	12
11.	CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING.....	12
12.	BROKERAGE PRACTICES.....	14
13.	REVIEW OF ACCOUNTS .....	15
14.	CLIENT REFERRALS AND OTHER COMPENSATION .....	15
15.	CUSTODY .....	16
16.	INVESTMENT DISCRETION .....	17
17.	VOTING CLIENT SECURITIES .....	17
18.	FINANCIAL INFORMATION .....	17
19.	REQUIREMENTS FOR STATE-REGISTERED ADVISERS .....	18

#### **4. ADVISORY BUSINESS**

Whippoorwill Associates, Inc., a Delaware corporation (“Whippoorwill” or “we”), has been a distressed investment manager since its founding in December 1990. Whippoorwill is wholly-owned by Shelley F. Greenhaus. Whippoorwill’s two Principals are Shelley F. Greenhaus and Steven K. Gendal.

Whippoorwill invests primarily in the securities and obligations of companies that are experiencing operational and/or financial distress, anticipating a turnaround, or are undervalued due to discrete extraordinary events. We refer to such investments as “Distressed Investments” and to such companies as “Distressed Companies”. The underlying problems faced by Distressed Companies may include mismanagement, limited availability of or access to working capital, excessive leverage, operating difficulties or a combination of some or all of such factors and others. As a means of resolving at least certain of their underlying problems, many of the Distressed Companies in which we invest will be involved in, or contemplating, an attempt to restructure their balance sheets, either inside or outside of bankruptcy proceedings.

Whippoorwill has a historical bias towards investing in small cap and middle market companies. We believe the small cap and middle market is often ignored by larger managers as they cannot put enough capital to work to justify allocating research time and other resources. Whippoorwill believes that with fewer investors looking at these credits, the small cap and middle market sector is less efficiently priced and thus provides more attractive investment opportunities.

We tailor our advisory services to the stated objectives of the private investment funds, separately managed accounts, and subadvised registered investment companies that we manage. Limitations and restrictions on investing in certain securities or types of securities, if any, are set forth in the operative agreements of, the investment management agreements entered into with, and/or in investment guidelines provided by, each private investment fund, separately managed account, and subadvised registered investment company that we manage.

##### ***Investment Discretion***

We have sole discretion to determine investment acquisitions and dispositions consistent with the stated investment objectives and limitations of our clients. We do not participate in wrap fee programs.

As of December 31, 2014, we provided discretionary asset management for approximately \$521,600,000 of client assets, and non-discretionary asset management for \$0.

#### **5. FEES AND COMPENSATION**

##### ***Private Investment Funds***

As described more fully in the offering memoranda for Whippoorwill Distressed Opportunity Fund, L.P., Whippoorwill Offshore Distressed Opportunity Fund, Ltd., and Whippoorwill Loan Opportunity Fund, L.P., each investor in these funds is generally charged, monthly in advance, a

base management fee of 0.125% (1.5% annualized) of the value of the investor's investment at the beginning of each calendar month.

As described more fully in the offering memorandum for Whippoorwill Institutional Partners, L.P., each investor in this fund is generally charged, monthly in advance, a base management fee of 0.125% (1.5% annualized) of (i) during the fund's investment period, the investor's capital commitment and (ii) thereafter, the cost basis of the fund's assets that have not yet been sold.

As described more fully in the applicable offering memorandum for Whippoorwill Credit Opportunity Fund, L.P. and Whippoorwill Offshore Credit Opportunity Fund, Ltd., each investor in these funds is generally charged, monthly in advance, a base management fee of either 0.125% (1.5% annualized) or 0.167% (2.0% annualized) of the value of the investor's investment at the beginning of each calendar month.

Fees are not negotiable. The base management fee is due and payable at the beginning of each month and we deduct such fees from the account of each fund. If a fund's advisory contract with Whippoorwill is terminated, Whippoorwill will refund the unearned portion of any fee that has been pre-paid, based upon the number of days in the applicable period that the advisory contract is no longer in effect.

Fees charged with respect to the funds are fixed. Whippoorwill, in its discretion, may elect to issue one or more additional classes or series of interests and the fees and other terms and provisions of such classes or series may differ from those described above.

### ***Separately Managed Accounts***

Separately managed account clients pay Whippoorwill a base management fee based on a percentage of the assets being managed, generally 0.125% per month or 0.375% per quarter (1.5% annualized). Whippoorwill bills the clients for these fees. Fees charged with respect to separately managed accounts are negotiated on a case-by-case basis. Base management fees may be paid on a monthly or quarterly basis, either in advance or in arrears. If a client's advisory contract with Whippoorwill is terminated, Whippoorwill will refund the unearned portion of any fee that has been pre-paid, based upon the number of days in the applicable period that the advisory contract is no longer in effect.

### ***Subadvised Registered Investment Companies***

Whippoorwill subadvises one or more registered investment companies. Whippoorwill receives a subadvisory fee based on a percentage of the assets being subadvised equal to 1.125% per annum. Whippoorwill bills the clients for these fees. Fees charged with respect to subadvised registered investment companies are negotiated on a case-by-case basis. Subadvisory fees may be paid on a monthly, quarterly, or annual basis, either in advance or in arrears. If a registered investment company's subadvisory contract with Whippoorwill is terminated, Whippoorwill will refund the unearned portion of any fee that has been pre-paid, based upon the number of days in the applicable period that the advisory contract is no longer in effect.

## ***General***

Clients bear all of their own operating costs and expenses, including, but not limited to:

- the fees and expenses relating to investments (whether or not consummated), including brokerage commissions, attorneys' fees, and other transaction costs;
- in the case of private investment funds, insurance premiums protecting the funds, the general partner, the investment manager, any of their affiliates, and any of their respective directors, officers, members, employees, and agents from liability to third parties in connection with fund affairs;
- legal, tax, accounting, auditing, administration, and appraisal expenses;
- custodial fees;
- fees and expenses of consultants and experts;
- all expenses of liquidating the private investment funds;
- any taxes, fees or other governmental charges levied against a client;
- all fees and expenses incurred in enforcing the client's rights and remedies in connection with its investments and other property; and
- for applicable funds, the expenses and costs of the Advisory Committee.

Please refer to Section 12 of this brochure for a further discussion of Whippoorwill's brokerage practices. In addition, please refer to Section 6 of this brochure for a discussion of performance-based allocations and fees charged to our clients.

## **6. PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

All of the private investment funds and separately managed accounts that we manage (but not subadvised registered investment companies that we manage) are subject to a performance-based allocation, fee, or carried interest, in addition to the fee on assets under management described in Section 5 of this brochure.

### ***Conflict of Interests***

Because Whippoorwill receives incentive allocations, incentive fees, or carried interest with respect to certain clients' investments, there may be an incentive for the firm to select investments that are riskier or more speculative than would otherwise be selected. In addition, although the incentive allocations, incentive fees, or carried interest charged to Whippoorwill's various funds and accounts are similar in many ways, there are certain differences, and subadvised registered investment companies that we manage are not charged with any such incentive allocations, incentive fees, or carried interest. This could create an incentive for Whippoorwill to allocate what it believes are superior investment opportunities to the funds and/or accounts that will pay the most in incentive allocations, incentive fees, or carried interest. Whippoorwill discloses these conflicts of interest to investors and prospective investors, and describes the type of investments we have made in the past and expect to make in the future, so that clients understand this risk. We also address these potential conflicts of interest by establishing and carefully applying policies and procedures for allocating investment opportunities, which seek to ensure that investments are allocated among funds and accounts on an objective basis (see Section 11 of this brochure for further discussion).

## **7. TYPES OF CLIENTS**

We manage private investment funds that are exempt from registration under Section 3(c)(1) and/or Section 3(c)(7) of the Investment Company Act of 1940, as amended. We also manage separately managed accounts for large institutional investors. Whippoorwill's investors, whether in private investment funds or separately managed accounts, include endowments, foundations, insurance companies, public and private pension plans, and family offices. The minimum dollar amount of a subscription in Whippoorwill Distressed Opportunity Fund, L.P. is \$5 million, the minimum dollar amount for the initial purchase of shares in Whippoorwill Offshore Distressed Opportunity Fund, Ltd. is \$1 million, the minimum dollar amount of a subscription in Whippoorwill Credit Opportunity Fund, L.P. is \$500,000, the minimum dollar amount for the initial purchase of shares in Whippoorwill Offshore Credit Opportunity Fund, Ltd. is \$500,000, and the minimum dollar amount of a subscription in Whippoorwill Loan Opportunity Fund, L.P. is \$1 million. (Such minimums may be waived in Whippoorwill's discretion, except that (1) with respect to Whippoorwill Offshore Distressed Opportunity Fund, Ltd., the initial investment amount for any investor may in no event be less than \$50,000, and (2) with respect to Whippoorwill Offshore Credit Opportunity Fund, Ltd., the initial investment amount for any investor may in no event be less than \$100,000.) In addition, while the size of a separately managed account would be subject to negotiation, Whippoorwill believes that the ideal minimum is \$100 million. In addition to the foregoing types of clients, we also subadvise one or more registered investment companies.

## **8. METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

While we generally follow the analytical methodologies and investment strategies discussed below, these methodologies and strategies are not intended to represent an exclusive list, but to provide examples. Not all these methodologies or strategies may be utilized at the same time or in the same proportions, and we may modify and/or implement additional strategies as appropriate for different investments or in response to different market conditions.

### **Methods of Analysis – Investment Process**

Whippoorwill has created a disciplined investment process, applied in the following steps:

1. Sources of Ideas/Deal Flow – utilizing a well-established network of bankers, brokers, attorneys, and investors.
2. Investment Selection – identifying investment opportunities using fundamental (bottom-up) research, legal analysis and due diligence, including, when appropriate, discussions with management, competitors, suppliers and customers.
3. Investment Plan – developing the parameters (*i.e.*, position in capital structure, price targets, and time horizon) for each investment.
4. Portfolio Risk Management – managing portfolio risk through portfolio diversification, fundamental research and due diligence, and investment allocation among risk categories.

5. Activist Approach – “Working the Investment” – active monitoring and, as necessary, participating in restructurings.

6. Exit Strategy – executing a disciplined disposition strategy.

All of the firm’s investment professionals generally meet as a group on a daily basis. The investment professionals discuss, among other subjects, potential investments, changes in the fundamentals of specific issuers, risk allocation, appropriate diversification, and overall market conditions.

After potential investments are identified, the proposed investments are screened and, if the initial review concludes that further investigation is warranted, a comprehensive analysis is commenced. Various sources of information are considered as part of the comprehensive analysis, including filings with the SEC and bankruptcy courts, company and industry websites, news services, and industry contacts.

Legal documents, such as credit agreements and bond indentures, are reviewed internally by investment professionals, one of whom is also an attorney. Industry consultants and outside attorneys are hired in certain situations to help analyze complex issues. Our investment professionals also, when appropriate, will meet or have discussions with company management, customers, suppliers, and competitors.

If a comprehensive analysis validates the initial thesis and the investment falls within the firm’s risk/return parameters, the potential investment idea is presented to all of Whippoorwill’s investment professionals for discussion and consideration. The potential investment idea is vetted and may require further due diligence, which is addressed in one or more subsequent meetings. Although investment and disposition decisions are the responsibility of the Principals, such decisions are generally made by a collaborative effort among Whippoorwill’s investment professionals.

We closely monitor the performance of each portfolio company, its competitors and the applicable industry group. Reviews of each investment are conducted periodically or whenever a material development occurs.

## **Investment Strategy**

Whippoorwill invests primarily in the securities and obligations of companies that are experiencing operational and/or financial distress, anticipating a turnaround, or are undervalued due to discrete extraordinary events. The underlying problems faced by distressed companies may include mismanagement, limited availability of or access to working capital, excessive leverage, operating difficulties or a combination of some or all of such factors and others. As a means of resolving at least certain of their underlying problems, many of the distressed companies in which Whippoorwill invests will be involved in, or contemplating, an attempt to restructure their balance sheets, either inside or outside of bankruptcy proceedings.

Whippoorwill has a historical bias towards investing in small cap and middle market companies. We believe the small cap and middle market is often ignored by larger funds as they cannot put enough capital to work to justify allocating research time and other resources. Whippoorwill



believes that with fewer investors looking at these credits, the small cap and middle market sector is less efficiently priced and thus provides more attractive investment opportunities.

Whippoorwill utilizes the activist experience of its Principals and other investment professionals to attempt to maximize returns and reduce risk. Our experience as owners, board members, members of creditors committees and proponents of a variety of capital structure solutions for our portfolio companies gives us the credibility and skill sets necessary to actively influence the investment process.

Whippoorwill deploys its capital in a broad investment universe, including secured and unsecured bonds and bank debt (including revolving credit facilities), trade claims, rescue financing, debtor in possession (“DIP”) financing and exit financing. Investments made by Whippoorwill include defaulted bank debt and bonds of companies in bankruptcy, or involved in out of court restructurings. It is expected that, in many cases, distressed investments would result in our clients receiving new equity and/or bonds in the restructured company. Whippoorwill expects to identify and acquire investments at prices that it believes represent significant discounts from their intrinsic value.

Whippoorwill seeks to create a blended portfolio of investments with varying risk parameters. The firm’s investments fall into three general types:

- **Securities that trade at higher yields than debt of companies with comparable credit statistics because of “perceived” rather than actual risk.** These obligations are either secured and overcollateralized, or unsecured with a significant value cushion or legal structure protection. These investments include defaulted bank debt that remains current, rescue financing, exit financing and DIP (debtor in possession) loans.
- **Investments in companies that are experiencing operational difficulties, but have balance sheets with strengths that help to weather the storm, and companies that have overleveraged balance sheets, but improving credit profiles.** Whippoorwill believes that typical investments in this group have a low probability of default, thus limiting principal risk. Whippoorwill believes that its historical restructuring experience provides an advantage over high yield funds in assessing these “stressed” situations.
- **Deeply distressed and defaulted situations.** These investments focus on specific events and catalysts. Whippoorwill plays an activist role in these investments, including sitting on boards of directors or creditors committees. In some of these situations Whippoorwill expects a recovery to consist of private equity of the company subsequent to its restructuring.

To mitigate risk further, Whippoorwill remains diversified in terms of both company and industry concentration.

## **Risk of Loss**

Investing in securities and other instruments in which Whippoorwill invests involves risk of loss that you should be prepared to bear. Whippoorwill believes that its investment program, research techniques and risk allocation strategy moderate this risk to some degree. There can be no guarantee, however, that we will be successful.

There are investment risks associated with the types of investments we may purchase and sell for clients, which are described below.

**Risks Associated with Distressed Investments.** We regularly invest in securities and obligations of companies that are experiencing significant financial or business difficulties, including companies involved in bankruptcy or other reorganization and liquidation proceedings, both in and out of court. This can include investments in secured and unsecured bonds and bank debt (including revolving credit facilities), defaulted debt, trade claims, rescue financing, debtor in possession (“DIP”) financing, exit financing, and equities. Although such investments may result in significant returns, they involve a substantial degree of risk. Any one or all of our investments may be unsuccessful. Our investments may not show any return for a considerable period of time. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There is no assurance that Whippoorwill will correctly evaluate a company’s assets or the prospects for a successful reorganization or similar action. In any reorganization or liquidation proceeding relating to a company in which we invest, we may lose our entire investment, may be required to accept cash or securities with a value less than our original investment, and/or may be required to accept payment over an extended period of time. Under such circumstances, the returns generated from our investments may not compensate investors adequately for the risks assumed.

Distressed investments require active monitoring and may, at times, require participation in business strategy or reorganization proceedings by Whippoorwill. Our involvement in an issuer’s reorganization proceedings could result in the imposition of restrictions limiting our ability to liquidate our position in the issuer.

We invest in debt, including, without limitation, higher yielding (and, therefore, higher risk) debt securities. In most cases, such debt will be rated below “investment grade” or will be unrated and face ongoing uncertainties and exposure to adverse business, financial or economic conditions and the issuer’s failure to make timely interest and principal payments. The market values of these debt securities may reflect individual corporate developments. It is likely that a major economic recession could have a materially adverse impact on the value of such securities. In addition, adverse publicity and investor perceptions, whether or not based on fundamental analysis, may also decrease the value and liquidity of these debt securities.

**Effects of Bankruptcy.** We regularly purchase securities and other obligations of companies that are experiencing significant financial or business distress, including companies involved in bankruptcy, reorganization or liquidation proceedings. Such investments may involve reorganization proceedings that entail, among other things, a substantial reduction in the interest

rate and a substantial write-down of the principal of the loan. In addition, there are a significant number of risks inherent in the bankruptcy process:

- First, many events in a bankruptcy case are the product of contested matters and adversary proceedings determined by a court with equitable power and are beyond the control of specific creditors. While creditors are generally given an opportunity to object to significant actions, there can be no assurance that a bankruptcy court in the exercise of its broad powers would not approve actions that would be contrary to our interests.
- Second, the effect of a bankruptcy filing on a company may adversely and permanently affect the company. The company may lose its market position and its key employees and otherwise become incapable of restoring itself as a viable entity. If, for this or for any other reason, a chapter 11 reorganization is converted to or becomes a liquidation, the liquidation value of the company may not equal the liquidation value that was believed to exist at the time of the investment.
- Third, the duration of a bankruptcy case is difficult to predict. A creditor's return on investments can be adversely affected by delays while the plan of reorganization is being negotiated, approved by the parties in interest and confirmed by the bankruptcy court (until it ultimately becomes effective). For example, in general, unsecured creditors' claims for interest accrued between the bankruptcy filing and a reorganization plan's consummation are not allowed.
- Fourth, the administrative costs to the debtor and official or unofficial committees in connection with a bankruptcy case are frequently high and will be paid out of the debtor's estate prior to any return to general unsecured creditors. If a bankruptcy case involves protracted or difficult litigation, or turns into a liquidation, substantial assets may be devoted to such administrative costs and, as a result, a creditor's costs in monitoring and enforcing of its claim may also substantially increase.
- Fifth, bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization. Because the standard for classification is vague, there exists the risk that our influence with respect to the class of securities we own can be lost by increases in the number and amount of claims in that class or by different classification and treatment.
- Sixth, there are no assurances that companies will obtain the financing required to operate in a bankruptcy.
- Seventh, in the early stages of the bankruptcy process, it is often difficult to estimate the extent of, or even to identify, any contingent claims that might be made.

In addition, we may purchase participations in loans or other debt obligations. In such cases, we will not be the holder of record of the debt obligation and may have limited rights with respect to voting the interest.

**Credit Risk; Interest Rate Risk.** Debt securities are subject to credit and interest rate risks. "Credit risk" refers to the likelihood that an issuer will default in the payment of principal and/or interest on an instrument. Financial strength, solvency and prospects of an issuer are primary factors influencing credit risk. In addition, lack or inadequacy of collateral or credit enhancement for a debt security may affect its credit risk. Credit risk may change over the life of an instrument, and debt obligations, which may be rated by rating agencies, are often reviewed and may be subject to downgrade. "Interest rate risk" refers to the risks associated with market changes in interest rates. Interest rate changes may affect the value of a debt security indirectly

(especially in the case of fixed rate debt securities) and directly (especially in the case of debt securities whose rates are adjustable). In general, rising interest rates will negatively impact the price of a fixed rate debt security and falling interest rates will have a positive effect on price. Adjustable rate securities also react to interest rate changes in a similar manner although generally to a lesser degree (depending, however, on the characteristics of the reset terms, including the index chosen, frequency of reset and reset caps or floors, among other factors). Interest rate sensitivity is generally more pronounced and less predictable in instruments with uncertain payment or prepayment schedules.

Additional risk factors applicable to investments in Whippoorwill Credit Opportunity Fund, L.P., Whippoorwill Offshore Credit Opportunity Fund, Ltd., and Whippoorwill Loan Opportunity Fund, L.P. may be found in the Confidential Private Placement Memorandum for each fund.

## **9. DISCIPLINARY INFORMATION**

None.

## **10. OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

Whippoorwill Distressed Opportunity Fund GP, LLC, a Delaware limited liability company controlled by Whippoorwill, serves as the general partner for Whippoorwill Distressed Opportunity Fund, L.P.

Whippoorwill Institutional Partners GP, LLC, a Delaware limited liability company controlled by Whippoorwill, serves as the general partner for Whippoorwill Institutional Partners, L.P.

Whippoorwill Credit Opportunity Fund GP, LLC, a Delaware limited liability company controlled by Whippoorwill, serves as the general partner for Whippoorwill Credit Opportunity Fund, L.P.

Whippoorwill Loan Opportunity Fund GP, LLC, a Delaware limited liability company controlled by Whippoorwill, serves as the general partner for Whippoorwill Loan Opportunity Fund, L.P.

Please refer to Section 11 of this brochure for a discussion of related conflicts of interest.

## **11. CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

Our Code of Ethics (the “Code”) sets a standard of conduct to which our employees are held, consistent with providing the highest quality investment advice to its clients. The Code sets forth our dedication to building and maintaining a reputation for upholding the highest standards of integrity, conduct and professional execution in pursuit of these goals. Any conduct which could compromise these objectives and policies is considered a severe transgression of an employee's duties and obligations to Whippoorwill.

The Code requires compliance with the provisions set forth in our Employee Compliance Manual relating to employee securities transactions and holdings and use of material, non-public

information, including the reporting requirements and enforcement procedures in connection with employee securities transactions generally. The procedures and restrictions on employee securities transactions are designed to ensure that no employee is taking advantage of his or her position, or even giving the appearance of placing his or her own interests above those of Whippoorwill's clients.

The Code includes provisions such as:

- A requirement that employees not trade in securities of issuers identified on a restricted list;
- A pre-approval requirement for employee trading in personal securities accounts;
- Periodic reporting of all activity in personal securities accounts;
- Restrictions on the use of material nonpublic information; and
- Annual certifications of compliance.

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

***Principal and Cross Transactions.*** Whippoorwill and its personnel generally do not purchase or sell any securities for their own accounts to or from client accounts. If a principal transaction were to occur, it would be executed in compliance with the requirements of applicable law, including Section 206(3) of the Investment Advisers Act of 1940. As neither Whippoorwill nor any of its affiliates is registered as a broker-dealer, it does not engage in agency cross transactions. Whippoorwill does not routinely direct one fund or account to sell securities to another fund or account through internal cross transactions. If any such transaction were to occur, it would be effected on an arm's-length basis, consistent with valuation procedures established by Whippoorwill. Whippoorwill would not charge any fees to effect an internal cross transaction.

***Conflicts of Interest.*** Whippoorwill and its affiliates serve as the general partner of limited partnerships and as the investment manager of private investment funds, and our employees may participate directly or indirectly as investors in such funds. Conflicts of interest could arise from the fact that Whippoorwill's existing and prospective clients may be solicited to invest in such investment partnerships and funds. Prospective investors are urged to consider these conflicts of interest when making an investment decision.

While Whippoorwill's employees may buy or sell securities in which Whippoorwill's funds and accounts also invest, the funds and accounts will be provided the first opportunity to effect transactions in such securities before employees may do so. Employees are required to notify Whippoorwill before effecting securities transactions to ensure compliance with the foregoing policy. Our employee profit sharing plan also may buy or sell securities in which our funds and accounts invest. In such cases, either the funds and accounts will be provided the opportunity to effect transactions in such securities before the employee profit sharing plan, or the employee

profit sharing plan will participate on a *pro rata* basis with the funds and accounts at the same time.

***Allocation of Investment Opportunities.*** It is Whippoorwill's policy to treat all discretionary accounts fairly. Accordingly, subject to each client's investment guidelines and restrictions and except as discussed below, the following procedures are followed when the same security is traded for multiple clients' accounts.

When orders to purchase or sell the same securities on identical terms are placed by more than one account managed by Whippoorwill, all orders will be allocated on a *pari passu* or *pro rata* basis among relevant clients' accounts, unless in Whippoorwill's good faith judgment a different allocation method is more appropriate under the circumstances. *Pari passu* allocation of investment opportunities generally will be based on the specific guidelines and restrictions of each client's investment, the total amount of funds under management (including drawn and undrawn commitments), and the availability of cash in the client account. *Pro rata* allocation of divestment opportunities generally will be based on accounts' respective holdings in the investment being sold unless, in Whippoorwill's good faith judgment, a different allocation method is more appropriate for certain accounts under the circumstances (*e.g.*, which could be the case in respect of a sale opportunity if one account was in an active investment mode, while another account was in a liquidation mode).

At the end of each trading day, partially filled orders generally will be allocated *pari passu* or *pro rata* based on the intended allotment for each account (*e.g.*, if 80% of a sale order is filled, each account will be allotted 80% of the original allotment amount for such sale). Transaction expenses will be allocated *pro rata* among clients' accounts according to their investments or divestment. To the extent possible, the allocation should result in each client receiving the securities at a cost, in the aggregate, reflective of the average cost of all such securities purchased or sold on any trading day.

## **12. BROKERAGE PRACTICES**

Whippoorwill's primary consideration in effecting a security transaction will be execution at the most favorable price to the firm's clients under the circumstances. In selecting a broker-dealer to execute each particular transaction, Whippoorwill may also consider, among other things, the following: the best net price available; the size of and difficulty in executing the order; settlement capability and financial condition of the broker-dealer; reputation; and experience in the prevailing market place. Whippoorwill may also consider the value of research and statistical information provided by a broker-dealer. Accordingly, the price which Whippoorwill may cause the clients to pay in any transaction may be less favorable than that available from another broker-dealer if the difference is reasonably justified by other aspects of the portfolio execution services offered. Research and statistical information includes advice as to the value of securities, the advisability of investing in, purchasing or selling securities, the ability to attend conferences sponsored by the broker-dealer, and the availability of securities or purchasers or sellers of securities, and furnishing analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts. If Whippoorwill obtains research or other services from a broker-dealer, it receives a benefit because it does not have to produce or pay for such research or other services. We could have an

incentive to select broker-dealers based on our interest in receiving research or other services, rather than on our clients' interest in receiving most favorable execution.

When orders to purchase or sell the same securities on identical terms are placed by more than one account managed by Whippoorwill, to the extent feasible, the transactions are normally allocated as to amount such that each account receives the securities at a cost, in the aggregate, reflective of the average cost of all such securities purchased or sold on any trading day. Such orders are generally combined to facilitate best execution.

Whippoorwill will not accept any "soft dollar" products from broker-dealers. As stated above, Whippoorwill receives research and statistical information from time to time from broker-dealers who effect client transactions.

### **13. REVIEW OF ACCOUNTS**

In general, Whippoorwill's accounts are reviewed continuously by Shelley F. Greenhaus and Steven K. Gendal, the firm's Principals, and other investment professionals employed by Whippoorwill, generally on a daily basis by one or more of such individuals. Matters which may be reviewed include changes in the fundamentals of specific issuers, appropriate diversification and risk allocation, security selection, and overall market conditions.

On a quarterly basis, investors in private investment funds and separately managed accounts that we manage receive a letter providing market commentary and performance highlights of their portfolio for the prior quarter. Investors in Whippoorwill Distressed Opportunity Fund, L.P., Whippoorwill Offshore Distressed Opportunity Fund, Ltd., Whippoorwill Institutional Partners, L.P., Whippoorwill Credit Opportunity Fund, L.P., Whippoorwill Offshore Credit Opportunity Fund, Ltd., and Whippoorwill Loan Opportunity Fund, L.P. receive audited financial statements on an annual basis. In addition, clients may receive performance and/or other reports on a monthly or quarterly basis. Certain investors may receive more detailed information.

### **14. CLIENT REFERRALS AND OTHER COMPENSATION**

Whippoorwill from time to time has entered into agreements with one or more private placement agents ("Placement Agents") to place interests in limited partnerships and other investment funds sponsored and managed by Whippoorwill or an affiliate of Whippoorwill. As a result of the efforts of Placement Agents, certain prospective investors may instead establish separate accounts to be managed by Whippoorwill.

Whippoorwill currently has agreements whereby Placement Agents are compensated for services in respect of placing new investments in Whippoorwill Distressed Opportunity Fund, L.P., Whippoorwill Offshore Distressed Opportunity Fund, Ltd., Whippoorwill Institutional Partners, L.P., Whippoorwill Credit Opportunity Fund, L.P., Whippoorwill Offshore Credit Opportunity Fund, Ltd., Whippoorwill Loan Opportunity Fund, L.P. or other partnerships, or referrals of separate accounts or subadvised registered investment companies on the basis of one or more of the following: (i) reimbursement of out-of-pocket expenses; (ii) retainer fees for consulting services payable in advance which may reduce other fees payable; and (iii) fees, payable over varying time periods, earned in amounts of up to two-thirds of the asset based management fees

and up to 20% of performance fees or allocations payable or made by Whippoorwill Distressed Opportunity Fund, L.P., Whippoorwill Offshore Distressed Opportunity Fund, Ltd., Whippoorwill Institutional Partners, L.P., Whippoorwill Credit Opportunity Fund, L.P., Whippoorwill Offshore Credit Opportunity Fund, Ltd., Whippoorwill Loan Opportunity Fund, L.P., other partnerships, or separate accounts or subadvised registered investment companies to Whippoorwill or affiliates of Whippoorwill.

No investor in any fund, separate account, or subadvised registered investment company referred to Whippoorwill by Placement Agents is charged any amount retained by Whippoorwill as a result of such referral and there is no differential in the amount of the advisory fees charged and retained by Whippoorwill or its affiliates that is attributable to the existence of the compensation arrangements with Placement Agents; however, Whippoorwill or its affiliates in certain cases may direct a fund to pay the fees of Placement Agents, but, in such event, there is an equal and offsetting reduction in the advisory fees payable by the fund to Whippoorwill during the same period. In the case of certain funds, the organizational and syndication expenses which are paid by such funds may include out-of-pocket expenses, including travel expenses, reasonably incurred by Placement Agents. Payments made to Placement Agents are solely in consideration for consulting services to Whippoorwill or its affiliates and for activities in connection with placing interests in funds or referrals of separate accounts.

Whippoorwill expects to retain and compensate one or more Placement Agents in the future.

## **15. CUSTODY**

Whippoorwill has entered into custody arrangements with State Street Bank & Trust Company, Bank of New York Mellon, or Union Bank (collectively, the “Primary Custodians”) for the various funds, accounts, and subadvised registered investment companies it manages. A portion of the assets of certain clients may also be held at one or more prime brokers or other qualified custodians, including BNP Paribas Prime Brokerage, Inc., Jefferies LLC, and TD Bank, N.A. (collectively with the Primary Custodians, the “Custodians”). Whippoorwill will discuss the use of other custodians at a client’s request. The applicable Custodian opens and maintains a separate custodial account for each fund, separately managed account, or subadvised registered investment company and holds any security certificates on behalf of clients. In the event that we receive a security certificate of a client, we promptly forward it to the applicable Custodian to hold on behalf of the respective client.

***Private Investment Funds.*** Each private investment fund is subject to an annual audit, and copies of the audited financial statements, prepared in accordance with generally accepted accounting principles, are sent annually, within 120 days after the end of each year, to all investors in the applicable private investment fund. We maintain bank and/or brokerage accounts for the benefit of each private investment fund. Each such account is opened and maintained in the name of the respective private investment fund.

***Separately Managed Accounts.*** Whippoorwill does not have custody of separately managed account client assets. The applicable Custodian sends account statements at least quarterly to each client. Clients are urged to carefully review these statements regularly to ensure accuracy. In addition, we prepare account summaries from our internal records that show holdings and



gains and losses. We urge our clients to check them against their account statements to ensure that there are no material discrepancies.

***Subadvised Registered Investment Companies.*** Whippoorwill does not have custody of subadvised registered investment company client assets. The applicable Custodian sends account statements at least quarterly to each client. Clients are urged to carefully review these statements regularly to ensure accuracy.

## **16. INVESTMENT DISCRETION**

Whippoorwill has entered into an investment management agreement with each private investment fund client, which agreement provides us with full discretion to determine investments to be purchased and sold and the terms of those transactions. Limitations on our investment discretion are set forth in the respective investment management agreement, the agreement of limited partnership or other operative agreement of the respective private investment fund and/or any applicable side letter agreements with investors. Separately managed accounts are also managed on a discretionary basis. Clients opening separately managed accounts are required to execute an investment management agreement that, among other things, grants us the authority to manage their assets on a discretionary basis. In addition, subadvised registered investment companies are managed on a discretionary basis. Such clients are required to execute an investment management agreement that, among other things, grants us the authority to manage their assets on a discretionary basis.

## **17. VOTING CLIENT SECURITIES**

Whippoorwill is required by law to implement written policies and procedures relating to the voting of proxies it receives in respect of client accounts. These policies and procedures are designed to (i) ensure that client securities are voted in the best interests of clients and (ii) address material conflicts of interest that may arise between the interests of clients and Whippoorwill's interests. Whippoorwill has full discretion to exercise all voting rights that arise from our clients' securities holdings (which may, in circumstances that we deem appropriate, result in a determination by Whippoorwill to abstain from voting). Accordingly, we track each security position, maintain a log of upcoming events that may require a vote of security holders and ensure that we have all proxies and other necessary documentation. The Principals will generally be responsible for determining all voting decisions. Whippoorwill intends to make such decisions based on the best interests of its clients without regard to the personal interests of any particular investor. In the instance of a material conflict of interest, Whippoorwill will either disclose the conflict to the client and obtain its consent, or take other steps designed to ensure that a decision to vote the proxy was based on Whippoorwill's determination of the clients' best interests. Clients may contact us for information about how their securities have been voted. Clients may also obtain a copy of our proxy voting policies and procedures upon request.

## **18. FINANCIAL INFORMATION**

N/A

**19. REQUIREMENTS FOR STATE-REGISTERED ADVISERS**

N/A