



**ACON FUNDS MANAGEMENT, L.L.C.**

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This amended and restated brochure provides information about the qualifications and business practices of Acon Funds Management, L.L.C. (“**ACON**” or the “**Adviser**”) and its affiliates. If you have any questions about the contents of this brochure, please contact the Adviser’s Chief Compliance Officer at 202-454-1100. 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. The Adviser is registered with the SEC under the U.S. Investment Advisers Act of 1940, as amended (the “**Advisers Act**”). This registration does not, however, imply a certain level of skill or training of the Adviser or its personnel.

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

## Item 2 - Material Changes

The Adviser registered as an investment adviser with the SEC on March 30, 2012. The Adviser is filing this annual updating amendment to its Part 2A Brochure (this “**Brochure**”). This Brochure replaces the amended and restated brochure that was filed in April 2014.

This Brochure has been updated in:

- Item 4 (*Advisory Business*) to update the Adviser’s regulatory assets under management;
- Item 5 (*Fees and Compensation*) to supplement disclosures regarding the fees, fee offsets and expenses associated with the Adviser’s investment program, including with respect to allocations;
- Item 7 (*Types of Clients*) to supplement disclosures regarding the types of investors participating in the Adviser’s investment program; and
- Item 8 (*Methods of Analysis and Investment Strategies—Risks*) to clarify and supplement various risks associated with the Adviser’s investment program, including without limitation with respect to conflicts of interest.

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## Item 4 - Advisory Business

### Advisory Firm

Acon Funds Management, L.L.C. (“**ACON**” or the “**Adviser**”) is a private equity investment advisory company located in Washington, D.C. The Adviser was formed in 2006 and provides investment supervisory services to various pooled investment vehicles (each, an “**ACON Investment Vehicle**” or an “**Investment Vehicle**”) that target making investments in middle-market companies, principally in the United States, with the objective of achieving long-term appreciation for their investors. The Adviser’s investment strategy focuses on revenue growth and operational improvements as one of the primary tools to achieve value creation. The Adviser’s Investment Vehicles target equity and equity-linked debt investments and other opportunistic investments, and aim to invest primarily in companies in which the Adviser will have the right to control or exert significant influence over the portfolio company’s strategic planning, operations and development. One or more ACON representatives typically participate as a member of the board of directors of each portfolio company investment and as a member of one or more board committees.

The Adviser is a limited liability company organized under the laws of the State of Delaware. The Adviser is owned by Bernard Aronson, Kenneth Brotman, Jonathan Ginns, Daniel Jinich and Guillermo Bron.<sup>1</sup> The Adviser is party to an arrangement with ACON Investments, L.L.C. (“**ACON Investments**” or the “**Firm**”) pursuant to which ACON Investments and/or its affiliates provide the services of various private equity fund investment, finance, accounting, tax, legal, compliance and support professionals to the Adviser. ACON Investments is an international private equity fund management company that was founded in 1996 by Messrs. Aronson, Brotman and Ginns. Since its inception, the Firm has managed approximately \$3.5 billion in capital.<sup>2</sup> ACON and its affiliated investment advisers currently operate private equity funds and other investment vehicles in two primary lines of business: (1) United States-based middle-market leveraged buyout transactions and (2) Latin America-based middle-market leveraged buyout or mezzanine like or similar debt transactions.<sup>3</sup>

The Adviser currently manages one private equity fund:

- **ACON-BASTION PARTNERS II, L.P.**,<sup>4</sup> a \$374.3 million fund that was established in 2006 to make middle-market private equity investments principally in the United States, with a focus on demographic growth/Hispanic-themed, deep value/distressed and energy/energy services investments (“**ABP II**”). The commitment period for ABP II expired in 2011. As

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<sup>1</sup> Please refer to Schedules A and B to ACON’s Part 1 of Form ADV for information regarding ACON’s beneficial owners and control persons.

<sup>2</sup> Represents cumulative capital commitments in the Firm’s U.S. and Latin American private equity platforms since ACON Investments’ inception in 1996 through December 31, 2014

<sup>3</sup> See Item 10 (*Other Financial Industry Activities and Affiliations*) for a list of the other ACON affiliated registered investment advisers.

<sup>4</sup> This fund consists of two parallel partnerships, Acon-Bastion Partners II, L.P., a Delaware limited partnership, and Acon-Bastion Partners II (Offshore), L.P., a Cayman Islands exempted limited partnership.

permitted by the terms of the agreements governing the operation and establishment of ABP II, an affiliated registered investment adviser of ACON has formed a successor private equity fund, ACON Equity Partners III, L.P. that is managed by ACON EQUITY MANAGEMENT, L.L.C. (SEC File No. 801-74406).

ABP II is also referred to herein as the “**ACON Fund**” or the “**Fund**.”

In addition to the private equity fund platform that the Adviser offered to its investors, ACON and its affiliates (including other registered affiliated investment advisers of ACON) also offered investors in its Fund, prospective investors and third parties that were not Fund investors, opportunities to invest alongside the Fund in ACON-identified investment opportunities through a co-investment platform named **ACON INVESTMENT PARTNERS (“AIP”)**. AIP was a dedicated co-investment platform whereby interested investors could elect to participate in co-investment transactions alongside the Fund, with a new limited partnership vehicle being established for each co-investment transaction (each, an “**AIP Vehicle**”). AIP was marketed alongside ABP II. In addition, the Adviser and its affiliates (including other registered affiliated investment advisers of ACON) offered co-investment opportunities outside the AIP platform (each AIP Vehicle as well as each vehicle formed outside the AIP program for co-investors, a “**Co-Invest Vehicle**”). The Co-Invest Vehicles typically invest and divest at the same time and on the same terms and conditions as the Fund. Often, a Co-Invest Vehicle will also be an aggregation vehicle through which both the ACON Fund and the various co-investors make their investment into the portfolio company.

In connection with the sponsorship and operation of the Fund and under certain circumstances the Co-Invest Vehicles, the Adviser organizes various domestic and foreign feeder funds, parallel funds and alternative investment vehicles (and related blockers) (collectively, “**Feeders, Parallel Funds and AIVs**”). The Adviser organizes these vehicles to accommodate the particular tax, regulatory, or other specific needs of an investor or group of investors investing in the Fund or Co-Invest Vehicle. For avoidance of doubt, the term “**Investment Vehicles**” includes the ACON Fund, Co-Invest Vehicles and Feeders, Parallel Funds and AIVs for which the Adviser provides advisory services.

### **Types of Advisory Services Offered**

The Adviser focuses on deep value investments in middle-market companies organized principally in the United States. In connection therewith, ACON directly or through special purpose general partner or manager entities established to manage ACON Investment Vehicles (collectively, “**GPs/Managers**”) provides investment advisory services to the Investment Vehicles, including identifying, evaluating, structuring, recommending and negotiating investment acquisition and disposition opportunities; identifying sources of financing for proposed investments; supervising the negotiation, preparation and review of agreements and other documents in connection with investments, dispositions and financings; and ongoing monitoring and management of portfolio company investments. ACON, directly and through services provided by ACON Investments and/or its affiliates, also provides investment-related services in connection therewith, including without limitation accounting, tax return and information preparation, compliance, legal, administrative, and other financial support services.

The relationship between ACON and each Investment Vehicle is governed by the U.S. Investment Advisers Act of 1940, as amended (the “**Advisers Act**”), as well as the governing documents of each Investment Vehicle (each an “**Investment Agreement**”; and, when specifically referring to the Fund, the “**Fund Agreement**”) and the terms of any investment advisory agreements concluded between ACON and each Investment Vehicle. Investments in the ACON Investment Vehicles are privately offered only to qualified investors that satisfy applicable eligibility and suitability requirements. ACON Investment Vehicles are not registered under the U.S. Investment Company Act of 1940, as amended (the “**Investment Company Act**”) and the limited partnership or other interests offered by such vehicles are not registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”). Certain ACON personnel (including without limitation employees of ACON affiliates and Principals of the Fund) also may invest (and often are required by investors to invest) in ACON Investment Vehicles (including Co-Invest Vehicles), and as a result, their economic interests may be better aligned with those of the investors.

In connection with the provision of advisory services to the Investment Vehicles, ACON or its GPs/Managers may enter into side letters or other writings (“**Side Letters**”) with specific investors, including Fund investors, which have the effect of establishing rights under, or altering or supplementing the terms of, a vehicle’s Investment Agreement in respect of the investor to whom a Side Letter is addressed. A Side Letter with an investor may provide the investor with economic, regulatory and other terms that are more favorable than the terms offered to other investors. For example, Side Letter provisions may include, for the benefit of an investor, a waiver or reduction of management and/or other fees/allocations (including differences in application of fee offset provisions with respect to such investor), payment of reduced carried interest, the provision of additional information or reports, rights related to specific regulatory requests of certain investors, more favorable transfer rights, the ability to opt-out of certain investments, withdrawal rights due to adverse tax or regulatory events, consent rights to certain Investment Vehicle actions or Investment Agreement amendments, priority and/or other rights with respect to the review of co-investment opportunities and rights to participate on the ACON Fund’s investor advisory committee.

### **Services Tailored to Individual Needs of Clients**

ACON provides investment advice to the Investment Vehicles consistent with the terms of the Investment Agreements and not individually to the investors in such vehicles.

### **Wrap Fee Programs**

Wrap fee programs are comprehensive fees charged by an investment adviser to a client for providing a bundle of services, such as investment advice, investment research and brokerage services. ACON does not participate in wrap fee programs.

### **Client Assets**

As of December 31, 2014, ACON had approximately \$357.9 million of client assets under management, all of which is managed on a discretionary basis.

## Item 5 - Fees and Compensation

### Fees

#### *Management Fees*

Initially, ACON charged the Fund a management fee (the “**Fund Management Fee**”) of 1.875% per annum of capital committed to the Fund by each investor in the Fund. The Fund Management Fee is payable semi-annually in advance and is subject to waiver and/or offsets as more fully described below (including under the subheading “*Other Fees Earned by ACON and Fee Offsets*”). After the end of the Fund’s commitment period, which was four years from the initial closing, the Fund Management Fee stepped down to 1.75% per annum calculated on the basis of each investor’s actively invested capital. In the ACON Fund Agreement, “actively invested capital” generally means the amount of capital that is currently invested in Fund assets (*i.e.*, portfolio companies that have not been realized) as of the particular calculation date reduced only for permanent impairments of value in such assets. “Actively invested capital” is not calculated in the same manner as “fair value” (nor does “actively invested capital” equate to “assets under management” as reported in Item 4 of this Brochure). The Fund Management Fee was initially described in the Fund’s private placement memorandum. It was subsequently negotiated by investors prior to the final closing of the Fund and is detailed in the Fund Agreement. For a discussion of offsets applied to the Fund Management Fee, see below under the heading “*Other Fees Earned by ACON and Fee Offsets*.” Note that as described in more detail below under the heading “*Other Fees and Expenses*,” as well as in Item 8 (*Methods of Analysis, Investment Strategies and Risk of Loss—Risks—Certain Conflicts of Interest*), ACON may cause one or more persons who are independent contractors of ACON or its affiliates to provide consulting services to portfolio companies on a range of operational issues. To the extent that any such person’s time is allocated to a portfolio company with respect to the provision of operational services, the costs associated with such time shall be allocated to and paid (or reimbursed, if applicable) by such portfolio company or by the Investment Vehicle. Such allocations will be made by ACON in a manner that is fair, equitable and consistent with the terms of such portfolio company’s management services agreement or other agreement with the Investment Vehicle and/or an ACON affiliate. The resulting payments received by ACON, its affiliates or the independent contractor providing operational services will not result in an offset of any Fund Management Fee or other management fee.<sup>5</sup>

ACON or a GP/Manager thereof also may charge (or may have charged) the Co-Invest Vehicles (including the AIP Vehicles or the investors therein) a per annum management fee (a “**Co-Invest Vehicle Management Fee**” and together with the Fund Management Fee, the “**Management**

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<sup>5</sup> For time these operational personnel spend providing general non-operational portfolio company monitoring services and/or general administrative Firm time, ACON will allocate costs associated with such time for these services provided to itself. In this case, investors will not bear, directly or indirectly, such costs. Reasonable travel, lodging and meal costs incurred by such operations personnel when providing services (operational or not) to a portfolio company will be billed to such portfolio company to the extent consistent with the specific portfolio company management services agreement or other agreements with ACON or its affiliate and reimbursed in accordance with ACON’s regular expense billing and reimbursement practices and, as with other ACON executives’ out-of-pocket expenses, will not result in an offset of any Fund Management Fee or other management fee.

Fee”).<sup>6</sup> Co-Invest Vehicle Management Fees are not generally subject to fee offset provisions as is the case with Fund Management Fees. In general, the economics received by ACON in connection with investments by co-investors may or may not be more favorable to ACON than those provided by the ACON Fund that is investing alongside such co-investors and, as a result, may create incentives that could affect how ACON allocates investment opportunities or ultimately makes decisions with respect to its management of a particular portfolio company investment. The terms of each Co-Invest Vehicle may vary quite significantly from one another depending upon, among other factors, the size, investment stage and risk profile of the portfolio company investment and the investor base.

The Adviser and its GPs/Managers may exempt certain persons from payment of both Fund Management Fees and Co-Invest Vehicle Management Fees or otherwise reduce such Management Fees payable by certain investors, including without limitation ACON personnel, persons with family or other relationships with the Adviser and its affiliates and unaffiliated parties, including without limitation business associates, strategic partners, advisors, consultants and significant investors.

As permitted under the Fund Agreement, the Adviser and its GPs/Managers may also waive or agree to reduce the Fund Management Fee in exchange for a credit towards the amount of capital the Fund Principals and other ACON personnel would otherwise be required to contribute to the Fund. The investors of the Fund may be required to make a *pro rata* contribution according to their respective commitments to fund any contribution that would otherwise have been required of ACON personnel and Fund Principals in connection with any such waiver or reduction and, as a result, the exercise of such waiver may result in an acceleration of investor capital contributions. Waived or reduced Fund Management Fees in these circumstances are not subject to the Fund Management Fee offsets described below and may be significant.

### ***Carried Interest (Performance-Related Compensation)***

The Adviser, directly or through GPs/Managers, charges the ACON Fund a 20% participation in the profits of the Fund. This “profits interest” is referred to as the “**Fund Carried Interest**,” and is only payable after certain return thresholds are met, as defined in the Fund Agreement. The Fund Carried Interest payments are subject to a hurdle or “preferred return” rate (calculated at an annual 8% rate), the clawback described below and an escrow requirement in place for the benefit of the investors in the Fund. See Item 6 (*Performance-Based Fees and Side-by-Side Management*) for greater detail about the Fund Carried Interest.

The Fund Carried Interest is payable based on the aggregate performance of all of the investments in the Fund. To address potential interim distributions, the aggregate Fund Carried Interest is subject to recalculation at various points during the Fund’s life, including at the end. Following each recalculation, to the extent more than 20% of the Fund’s profits have been

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<sup>6</sup> Note that the Management Fee provisions relating to the AIP program were set forth in the offering memorandum for ABP II and AIP and were structured to be similar to the terms offered to investors in ABP II. However, certain AIP vehicles were formed after the end of the AIP commitment period or otherwise outside the AIP framework. Accordingly, the economics of certain AIP vehicles were negotiated by investors at the time of the relevant vehicle’s formation and are different from the economic terms paid by investors in ABP II.



distributed to the ACON GPs/Managers (or earmarked for distribution thereto and placed in escrow for the benefit of investors), the investors are entitled to “claw back” such excess by receiving a distribution from escrow or, if insufficient, through a return of funds from the ACON GP/Manager. To support the repayment of this clawback, the Fund Principals execute a guaranty in favor of the Fund and its investors. From time to time, certain third parties, including for example advisors and placement agents, may also be granted the right to receive a portion of the Fund Carried Interest.

ACON or a GP/Manager thereof also may charge (or may have charged) the Co-Invest Vehicles (including the AIP Vehicles or the investors therein) a percentage participation in the profits of such vehicles, which percentage may vary (“**Co-Invest Vehicle Carried Interest**” and together with the Fund Carried Interest, the “**Carried Interest**”).<sup>7</sup> The Co-Invest Vehicle Carried Interest payments (if any) are typically subject to a “preferred return” rate as set forth in the particular Investment Agreement, however such Carried Interest payments are not otherwise subject to clawback or escrow because these vehicles do not usually make more than one portfolio company investment. In addition, as indicated above, in general the economics received by ACON in connection with investments by co-investors may or may not be more favorable to ACON than those provided by the ACON Fund that is investing alongside such co-investors. As a result, these differences may create incentives that could affect how ACON allocates investment opportunities or ultimately makes decisions with respect to its management of a particular portfolio company investment. The terms of each Co-Invest Vehicle may vary quite significantly from one another depending upon, among other factors, the size, investment stage and risk profile of the portfolio company investment and the investor base.

As is the case with Management Fees, the Adviser and its GPs/Managers may exempt certain persons from payment of both Fund Carried Interest and Co-Invest Vehicle Carried Interest or otherwise reduce such Carried Interest payable by certain investors, including without limitation ACON personnel, persons with family or other relationships with the Adviser and its affiliates and unaffiliated parties, including without limitation business associates, strategic partners, advisors, consultants and significant investors.

### ***Other Fees Earned by ACON and Fee Offsets***

In addition to Management Fees and Carried Interest, in connection with the affairs of the ACON Investment Vehicles, ACON (or its GPs/Managers) and affiliates thereof may receive fee income paid by portfolio companies or other third parties, including, for example: (i) monitoring fees, set-up fees, financial advisory fees, success fees, transaction fees or other similar fees; (ii) cash and non-cash directors’ fees; and (iii) termination, break-up or other similar fees, payments or compensation, in each case received in connection with investments or proposed investments of the ACON Fund and/or co-investors and Co-Invest Vehicles, or services provided in connection

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<sup>7</sup> Note that the Carried Interest provisions relating to the AIP program were set forth in the offering memorandum for ABP II and AIP and were structured to be similar to the terms offered to investors in ABP II. However, certain AIP vehicles were formed after the end of the AIP commitment period or otherwise outside the AIP framework. Accordingly, the economics of certain AIP vehicles were negotiated by investors at the time of the relevant vehicle’s formation and are different from the economic terms paid by investors in ABP II.

therewith (collectively, “*Other Fees*”). Other Fees may include accelerated portfolio company monitoring fees in the event of a sale of a company prior to the expiration of the term of the applicable portfolio company monitoring fee or management services agreement. Such accelerated monitoring fees may be calculated based on expectations or estimates of future events and, accordingly, may be higher or lower than the actual cost and/or amount of services provided. These Other Fees, net of related expenses, to the extent they are earned in connection with an investment made by the Fund, are generally shared with the Fund and its investors as required pursuant to the terms of the Fund Agreement, through reductions or what are known as “offsets” against subsequent installments of the Fund Management Fee due from investors. If no such subsequent installments are due, then excess offset amounts will be returned to investors upon liquidation of the Fund. Any balance not so shared is retained by ACON (or affiliates) as additional revenue. The ACON Fund offset relating to Other Fees is 100%, meaning that each fee-paying investor in the ACON Fund will receive an offset of 100% of such investor’s *pro rata* share (based on ownership of the Fund) of the Other Fees earned by ACON (or affiliates) relating to an investment made by the Fund. ACON (or affiliates) will retain 100% of the GPs/Managers’ *pro rata* share (based on their ownership of the Fund) of the Other Fees.<sup>8</sup> Other Fees received by ACON and affiliates in connection with an investment made by two or more ACON Investment Vehicles (for example, by the Fund and a Co-Invest Vehicle) or by an ACON Investment Vehicle and co-investors, are first allocated among the various ACON Investment Vehicles and co-investors *pro rata* in accordance with the relative ownership by each such person of the portfolio company, or some other fair and reasonable methodology depending upon the circumstances and if permitted by the terms of the Fund Agreement. A portion of the Other Fees so allocable to the Fund is then further allocated among the investors in the Fund and applied to offset the Fund Management Fee as described above. The terms of the Investment Agreements governing the Co-Invest Vehicles may or may not provide for fee offsets. To the extent no such co-investor fee offsets are provided, then ACON (or affiliates) will retain as earned revenue all fee income not allocated to fee-paying investors in the Fund.<sup>9</sup>

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<sup>8</sup> By way of example, if an investor contributes 10% of the capital to the Fund with respect to an investment by the Fund alone, and ACON receives Other Fees in the amount of \$1,000,000 with respect to the investment, then the investor will receive an offset of \$100,000 against its next installment of the Fund Management Fee (*i.e.*, 100% of the \$100,000 that is the investor’s *pro rata* share (10%) of the \$1,000,000 of Other Fees). Using this same example, assume ACON affiliates provide 2% of the Fund’s capital and that such capital does not pay Fund Management Fees. In this example, ACON will retain as revenue 100% of the ACON affiliates’ 2% *pro rata* share of the Other Fee (*i.e.*, \$20,000) since the ACON affiliate does not pay Management Fees and therefore is not subject to a fee offset.

<sup>9</sup> To the extent of investments made by investment vehicles managed by ACON-affiliated registered investment advisers, this same allocation methodology will apply across all such vehicles/investors/co-investors, with similar procedures being followed for purposes of applying fee offsets and determining the amount retained by ACON and/or its affiliates as additional revenue. Thus, if an investor in an ACON Fund contributes 10% of the capital to the Fund with respect to an investment by the Fund where a Co-Invest Vehicle invests 30% and the Fund invests 70%, and ACON receives Other Fees in the amount of \$1,000,000 with respect to the investment, then the investor will (typically) receive an offset of \$70,000 against its next installment of the Fund Management Fee (*i.e.*, the portion of the Other Fee attributable to the Fund is 70% or \$700,000; and the investor will receive a fee offset of 100% of the \$70,000 that is the investor’s *pro rata* share (10%) of this \$700,000 attributable fee). Using this same example, assume ACON affiliates provide 2% of the Fund’s capital and that such capital does not pay Fund Management Fees. In this example, ACON will retain as revenue (i) 100% of the ACON affiliates’ 2% *pro rata* share of the Other Fee (*i.e.*, \$14,000) since the ACON affiliate does not pay Management Fees and therefore is not

The right of ACON and its GPs/Managers and affiliates to receive Other Fees may create a conflict of interest between ACON, on the one hand, and the various Investment Vehicles and their investors, on the other hand, because the fees may be substantial and the Investment Vehicles and their investors do not have a direct interest in the fees. ACON believes, however, that the Management Fee offset mechanism described above (to the extent applicable) and the equity commitments made by owners of the Adviser and other ACON personnel in the ACON Fund and other Investment Vehicles, significantly mitigates this potential conflict. In addition, ACON believes this potential conflict is often further mitigated by the fact that Other Fees may become limited as the result of negotiations involving third parties, such as with sellers, buyers, and management teams or boards of directors of, or lenders to, portfolio companies.

With respect to directors' fees or other similar compensation, to the extent an employee of an ACON affiliate or a Fund Principal receives directors' compensation in connection with board service for a portfolio company of an Investment Vehicle managed by the Adviser, the compensation is turned over to ACON or its affiliates and is allocated across ACON Investment Vehicles and co-investors *pro rata* as described above. Any requisite offsets against the Fund Management Fee and/or Co-Invest Vehicle Management Fee (if any) are applied as described above. Persons who are not employees of ACON affiliates or Fund Principals, even if they serve at ACON's request on a board of directors of a portfolio company advised by the Adviser, are permitted to retain board fees and the like that they may receive as individual compensation for themselves. Consequently, no fee offset will be applied to such fees. Employees of ACON affiliates and Fund Principals that serve on the boards of companies that are managed by other ACON affiliated investment advisers also are not required to turn directors' fees and other similar compensation over to the Adviser, but rather are required to turn such compensation over to the relevant ACON affiliated investment adviser for allocation and offset in accordance with the terms governing such affiliates' investment vehicles. Finally, board fees and other similar compensation received by employees of ACON affiliates and Fund Principals in connection with outside board service (*i.e.*, companies that are not owned by investment vehicles managed by ACON or any of its affiliates) may be retained by such persons for themselves and, accordingly, there is no offset taken against Management Fees in connection therewith.

The recipients of this Brochure should refer to the detailed information found in each Investment Agreement (including applicable Side Letters) for specific information about the fees earned by ACON, including Other Fees, and the fees charged to the ACON Fund, Co-Invest and other Investment Vehicles (including the AIP Vehicles) as well as the treatment of fee offsets. In addition, inasmuch as the Management Fees, Other Fees and Carried Interest payable by investors in Feeders, Parallel Funds and AIVs may vary depending upon the particular tax, economic, regulatory or other circumstances that prompted the formation of such vehicles, recipients should also refer to the operative agreements of such entities for specific information regarding such aspects of ACON's compensation.

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subject to a fee offset plus (ii) the \$300,000 attributable to the Co-Invest Vehicle as typically the investors in such vehicle will not pay a Management Fee and therefore are not subject to a fee offset. Note that co-investors may negotiate for the right to be reimbursed for their *pro rata* share of Other Fees attributable to Co-Invest Vehicles and, accordingly, ACON may not retain all of the amounts cited above.

## How Fees are Billed

The Adviser or its GPs/Managers causes the Management Fees due in respect of a particular Investment Vehicle to be paid to ACON (or an affiliate thereof) by (i) requiring investors to make capital contributions, (ii) withholding from investment proceeds that would otherwise be distributable to investors or (iii) in certain cases, causing the Investment Vehicle to borrow money (subject in each case to the terms of the respective Investment Agreement).

Distributions of Carried Interest are made in accordance with the terms of each Investment Vehicle's Investment Agreement.

## Other Fees and Expenses

The various types of fee income received by ACON are described above.

Except to the extent set forth below or in an applicable Investment Agreement, each ACON Investment Vehicle bears and is charged with costs and expenses of its organization, activities, operations and meetings (to the extent not reimbursed by third parties), including without limitation: (i) costs and expenses related to the investigation, purchase, holding, making, monitoring, management, restructuring and disposition of investments (including unconsummated investments or "broken deals") (collectively, "**Portfolio Investment Expenses**"); (ii) fees and expenses of administrators, custodians, economists, consultants, outside counsel and accountants (including audit fees); (iii) the costs of insurance; (iv) any taxes, fees or other governmental charges levied against the ACON Investment Vehicle; (v) costs and expenses of investor meetings, meetings of any investor advisory committees, and other investor advisory committee costs, including any firm retained by such committee to determine the fair market value of unrealized portfolio investments; (vi) interest on and fees and expenses arising out of all borrowings made in connection with the Investment Vehicle's activities and operations, including the arrangement thereof; (vii) fees and expenses incurred in connection with any audit investigation, governmental inquiry or public relations undertaking relating to the ACON Investment Vehicle or its activities; (viii) costs related to investor reporting (including preparation of tax reporting and filing documents and Schedule K-1s); and (ix) costs and expenses of any litigation relating to the activities or operations of the ACON Investment Vehicle, the amount of any judgments or settlements paid in connection therewith and any other indemnification or other expenses or liabilities related to the affairs of the ACON Investment Vehicles. For avoidance of doubt, "**Portfolio Investment Expenses**" also generally include without limitation expenses paid to brokers in connection with the sale or purchase of portfolio company interests; sales commissions; appraisal fees; taxes; brokerage fees; underwriting commissions and discounts; and legal, accounting, investment banking, consulting, information services and professional fees related to the discovery, investigation, development, making, management and disposition of investments; and travel and accommodation expenses incurred in connection with such activities (except travel and entertainment expenses of ACON personnel). Out-of-pocket expenses associated with completed investments by an ACON Investment Vehicle are typically reimbursed by the relevant portfolio company or capitalized as part of the acquisition price of the relevant transaction.

Unreimbursed costs and expenses associated with all legal and other organizational and offering expenses incurred in connection with organizing and establishing ACON Investment Vehicles and related entities (collectively, “**Organizational Costs**”) are also charged to Investment Vehicles.<sup>10</sup> In the case of the Fund, Organizational Costs are capped at an amount set forth in the Fund Agreement. Excess amounts incurred above such cap are borne by ACON. Organizational Costs include, without limitation, all legal, accounting, incorporation, and securities filing expenses, out-of-pocket expenses incurred by placement agents, and other out-of-pocket costs incurred in connection with capital raising such as printing and other similar costs, fees, and expenses (but excluding travel and entertainment expenses of ACON personnel). With respect to organization of an ACON Investment Vehicle, fees of placement agents engaged by ACON or other affiliates thereof in connection therewith are borne by ACON and not charged to the Investment Vehicle.

ACON bears the cost of all routine overhead expenses, including rent, utilities, secretarial expenses and compensation and employee benefits of employees of ACON and its affiliates, as well as travel and entertainment expenses of ACON personnel.

From time to time, as the need may arise and to add value to the ACON Investment Vehicle portfolio company investments, ACON may make available to one or more of such portfolio companies the services of one or more of its employees with operations or other expertise to work as an operating executive or consultant in lieu of such portfolio companies hiring outside third parties. In such a case, ACON may seek to be reimbursed by the applicable portfolio company based upon the services provided by the employee and subject to the terms of the portfolio company monitoring or other agreement that ACON may have negotiated and executed with the portfolio company. Alternatively, the portfolio company may compensate the seconded employee directly. In either case, the Adviser will seek to have the reimbursement/compensation be on market terms. Depending on the terms of the applicable Investment Vehicle’s Investment Agreement, the amount of the compensation paid by the portfolio company (whether to the Adviser or its affiliates or directly to the employee) may or may not constitute an “Other Fee,” and therefore may or may not result in an offset of the Management Fees as described above. Also from time to time, ACON or one of its GPs/Managers engages individuals in a consulting capacity to serve as operating partners or executives for ACON upon market terms. Such operating partners or executives spend all or substantially all of their time working in an operational role directly at one or more portfolio companies. ACON intends that the costs of working with such operating partners or executives will be reimbursed or directly paid for by the applicable portfolio company based upon the services provided by the consultant and subject to the terms of the portfolio company monitoring agreement that ACON may have negotiated and executed with the portfolio company. In seeking such arrangement, ACON does not seek to make a profit, but rather intends to be reimbursed only for its cost. Such reimbursement payments received by ACON or the operating partner or executive are not “Other Fees” and do not result in an offset of the Management Fee as described above.

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<sup>10</sup> Often, in connection with the acquisition of a portfolio company or completion of a follow-on acquisition for an existing portfolio company, the portfolio company will pay for Organizational Expenses associated therewith such that there may not be unreimbursed costs.

From time to time, the Fund (or other private equity funds sponsored by ACON's other affiliated registered investment advisers) may invest in portfolio companies engaged in the retail, consumer products, services or other industry. ACON personnel and investors may derive immaterial benefits from such investments due to the fact that they may obtain, for personal use, discounts on, or receive on a complimentary basis, goods or services as a result of their employment or association with ACON or its affiliates.

Investors should review all fees and expenses charged by ACON, its GPs/Managers and others to the respective ACON Investment Vehicles to determine the total amount of fees and expenses to be paid by these vehicles and, indirectly, their investors.

### **Refunds for Fees Charged in Advance**

Management Fees typically are paid in advance. The terms of the ACON Investment Vehicles (which are closed-end vehicles) do not generally contemplate a return of fees to investors to the extent that ACON's services terminate prior to the end of the relevant payment period, except that at the end of the term of the ACON Fund, the Fund Management Fees are due in advance only for the applicable *pro-rated* partial period.

### **Compensation for Sales of Securities**

Neither ACON nor any of its supervised persons accept compensation for the sale of securities or other investment products, including asset-based sales charges or service fees from the sale of mutual funds.

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

As noted in Item 5 (*Fees and Compensation*), the ACON Fund, and sometimes the Co-Invest Vehicles, pay a performance-based fee, referred to as Carried Interest, to the Adviser or its GPs/Managers. A potentially significant portion of the long-term compensation of ACON's investment and other professionals is derived from their participation in the Carried Interests paid by these Investment Vehicles. As such, ACON may be incentivized to make investments that are more speculative than would be the case in the absence of such compensation. In addition, the difference in performance fee arrangements across various Investment Vehicles managed by ACON as well as by its other affiliated registered investment advisers may create an incentive to favor higher fee paying accounts over other accounts in the allocation of investment opportunities.

ACON believes there are several mitigants to these potential conflicts. All of the private equity funds sponsored by ACON and its affiliates (including its other affiliated registered investment advisers) have substantially similar fee structures. The investment strategies of the U.S. and Latin America private equity funds sponsored by ACON and its affiliated registered investment advisers do not overlap. Consequently, these funds do not compete to invest in the same target portfolio companies. In fact, the U.S. funds, by and large, are specifically prohibited from investing in the Latin America funds' geographical focus area, and the Latin America funds are generally prohibited from investing outside of Latin America. Within each of the U.S. and Latin America fund strategies, ACON and its affiliates have agreed generally not to establish a

competing (or successor) private equity fund until such time as a substantial portion of the commitments (typically 75%) made to the existing fund have been drawn down from investors to make portfolio company investments, used for expenses or reserved (although the specific provisions of such successor fund trigger may vary from fund to fund across the entire platform offered by affiliates of ACON Investments). The personal capital invested by ACON personnel also serves to mitigate these conflicts. In addition, each investment made by the Fund undergoes a rigorous due diligence and transaction approval process that culminates in the approval (or rejection) of each investment and disposition by the ACON investment committee.

As described above, ACON and its GPs/Managers have reserved the right to waive or reduce the Carried Interest for certain investors in the Fund and the Co-Invest Vehicles. In addition, to the extent ACON or a GP/Manager thereof charges Carried Interest with respect to a Co-Invest Vehicle (including the AIP Vehicles or the investors therein), ACON may be incentivized to allocate investment opportunities away from an ACON Fund and toward these co-investors because Carried Interest in a Co-Invest Vehicle (including the AIP Vehicles or with respect to the investors therein) is not typically subject to clawback.

To address the potential conflicts raised by these types of allocation issues, ACON has established a written Fund Allocation and Co-Investment Policy (the “**Allocation Policy**”). In determining how to allocate investments across multiple eligible Investment Vehicles, ACON generally offers investment opportunities first to the ACON Fund up to an amount of the transaction deemed prudent by ACON, taking into account investment and operating guidelines, diversification objectives and limitations, tax and regulatory considerations, minimum or maximum dollar limits (including, where applicable, potential for follow-on investments associated with a particular investment and the minimum and maximum Fund allocation that is prudent for such follow-on investment), sharing agreements set forth in the ACON Fund Agreement and conflicts provisions set forth therein and other relevant factors, including risk (collectively, the “**Allocation Factors**”). To the extent there is excess investment opportunity beyond that which the Adviser or its GPs/Managers determines is appropriate or advisable to be offered to the Fund, then the Adviser or its affiliates may offer the remaining co-investment opportunity to potential eligible co-investors, following the procedures outlined in ACON’s written Allocation Policy (which includes consideration relating to the process by which ACON will select potential eligible co-investors) and consistent with the provisions in applicable Fund and Investment Agreements.

ACON Investment Vehicles permit non-cash distributions of marketable securities to be made to investors (and in the case of liquidation of the vehicle, other types of in kind distributions), which may create a conflict of interest as hereinafter described. When distributions are made in kind, the amount of any such distributions will be accounted for purposes of the Investment Vehicle’s distribution waterfall at the fair market value of the distributed property (which determination is made in accordance with valuation procedures specified in the ACON Investment Vehicle’s Investment Agreement). The amounts that an investor in such Investment Vehicle ultimately realizes from amounts distributed in kind may be less than the fair value determined at the time of the distribution from the ACON Investment Vehicle. Because the Adviser (or an affiliate thereof) receives Carried Interest distributions based upon the fair value of amounts distributed to investors, there could be an incentive for ACON to make distributions

in kind rather than liquidating an investment and distributing the net cash proceeds to investors. Each Investment Agreement has specific procedures governing distributions in kind, including their valuation. With respect to marketable securities, the Investment Agreement typically requires ACON to value the investment by averaging inputs taken over a couple-week period before and sometimes after the determination date. ACON believes this and other procedures set forth in the Investment Agreement mitigate the potential conflicts associated with this risk by limiting the Adviser's ability to make in kind distributions and/or reducing the potential incentive to do so. In addition, the amount that an investor in an Investment Vehicle might ultimately realize from amounts distributed in kind may exceed the fair value determined at the time of the distribution, further mitigating the risk associated with this potential conflict.

## **Item 7 - Types of Clients**

ACON, directly or through its GPs/Managers, provides investment advisory, management and administrative services to the ACON Investment Vehicles only. Investment advice is not provided individually to the investors in such vehicles.

The ACON Investment Vehicles are pooled investment vehicles formed under foreign and domestic laws and operated as exempt investment pools under the Investment Company Act. The investors participating in ACON Investment Vehicles may include, among others, a broad range of U.S. and non-U.S. investors, including without limitation pension funds, funds of funds, sovereign wealth funds, family offices, development banks, asset managers, endowments and foundations and insurance companies. On occasion, ACON may also offer investment opportunities to other qualified institutions and individuals (for example, executives of present or former portfolio companies). In addition, investors in ACON Investment Vehicles may include ACON personnel and persons with family or other relationships with the Adviser and its affiliates and unaffiliated parties, including without limitation business associates, service providers, strategic advisors, consultants and operating personnel as described above. Details concerning applicable investor suitability criteria are set forth in the respective private placement memoranda and subscription materials for the Investment Vehicles.

ACON may impose a minimum investment commitment for investors in ACON Investment Vehicles, however this minimum may be waived in ACON's sole discretion.

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

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

The Adviser's U.S.-focused investment strategy on behalf of each Investment Vehicle is to seek to increase the value of, and to find desirable exit opportunities for, the investments made by or on behalf of each such vehicle. This strategy may involve the use of information generated by individuals or entities not affiliated with ACON or its affiliates. Sources of such information include, but are not limited to, research provided by institutions and the brokerage community, internally and externally generated analysis of potential opportunities, specialized consultants, industry experts, and industry and trade publications, as well as direct contact with management of potential portfolio companies and related due diligence.



The Adviser's investment strategy begins by identifying middle-market companies in which it can generally invest \$20 to \$150 million of equity capital, although the Adviser may seek to do transactions that involve more or less capital depending upon the circumstances. ACON seeks to structure capital to each individual investment in order to meet the specific needs of a given opportunity and the company's specific business plan. As owners and with ACON representatives serving on the portfolio company's board, ACON becomes an active participant in guiding the growth or expansion of the ACON Investment Vehicle's portfolio companies. The Adviser's industry experience and broad affiliate network allows its investment professionals and its portfolio company management teams to draw on a diverse set of strategic, financial and industry-specific resources.

ACON focuses on investment opportunities at times of change—responding at points of inflection where value creation is possible. The Adviser's understanding of industry trends, regulatory mandates and changes, international trade opportunities and demographic indicators help it to identify prospects that the Adviser believes will allow maximum value for its investors.

The Adviser believes its close work with proven partners and management teams drives performance improvement and unlocks shareholder value. The Adviser is committed to actively overseeing each portfolio company by helping its management develop and execute strategic initiatives; launch and integrate subsequent acquisitions; arrange for debt and/or equity financings; recruit additional management resources; and generate liquidity opportunities in public and/or private markets.

ACON generally follows an investment process which seeks to: (i) generate a continuous flow of quality, proprietary deal leads; (ii) subject potential transactions to a multi-stage screening process with certain hurdles at each stage; (iii) institute the appropriate controls and monitoring mechanisms to facilitate the ability of ACON's investment professionals to add value to portfolio companies; and (iv) maximize the value of investments upon exit.

## **Risks**

ACON Investment Vehicles generally seek private investments in middle-market companies the primary operations of which are within the United States. Certain of the risks related to this investment strategy are summarized below. There are significant risks and potential conflicts of interest in investing in private securities issued by middle-market companies. Prospective investors should carefully consider all of the risks related to investing in an ACON Investment Vehicle that are set forth in the private placement memorandum or other offering document (if applicable) for that particular ACON Investment Vehicle, including those discussed below. Certain ACON Investment Vehicles, such as the Co-Invest Vehicles, are formed for the sole purpose of investing in a single asset. As such, a single asset investment may involve risks greater than those generally associated with more diversified funds like the ACON Fund, including significant fluctuation in returns. In addition, a single asset investment may be concentrated in an industry or country that contains greater economic, political and/or regulatory risk. Risk factors may occur simultaneously and/or may compound on each other, resulting in an unpredictable effect on the value of an investment in any ACON Investment Vehicle. As a result, no assurance can be given as to the effect that any risk factor may have on the value of an

investment in an ACON Investment Vehicle. In addition, ACON may pursue investments outside of the industries and sectors in which ACON has previously made investments or has internal operational experience. For these and other reasons, there can be no assurance that ACON Investment Vehicles will be able to invest capital on attractive terms or generate returns for investors. The investment track records of the members of ACON's investment management team provide no assurance of future results for ACON Investment Vehicles.

***Private equity-related investments generally.*** All securities investments risk the loss of capital. Investments in ACON Investment Vehicles are speculative and involve a high degree of risk. Investments with ACON should be undertaken only by investors that have the financial sophistication and expertise to evaluate the merits and risks of an investment in such vehicle and for which the ACON Investment Vehicle does not represent a complete investment program. There can be no assurance that any ACON Investment Vehicle will meet its investment objectives or otherwise be able to carry out its investment program successfully or that an investor will receive a return of its capital contributed to the Investment Vehicle. In addition, there can be no assurance that any ACON Investment Vehicle will be able to generate returns for investors or that returns will be commensurate with the risks of the Investment Vehicle's investments. Investment in any ACON Investment Vehicle should only be made by investors that can afford a loss of their entire investment. Prospective investors should consult their own legal, tax and/or financial advisors prior to investing in an ACON Investment Vehicle.

***Issuer selection and issuer-specific risks.*** In implementing its investment strategy, the Adviser will focus on making investments in companies that have significant issuer-specific risks as a result of business, financial, market or legal uncertainties, including companies that require operational improvements or restructuring. There can be no assurance that ACON will correctly evaluate the nature and magnitude of the various factors that could affect the value of the investment or the potential return on investment. Valuations of private investments may be volatile, and a variety of other factors that are inherently difficult to predict, such as domestic or international economic and political developments and changes to the financial condition or outlook of these issuers, may significantly affect the results of ACON's investment activities and the value of the investments made by ACON Investment Vehicles.

Middle-market companies. The objective of the ACON Investment Vehicles is to invest in middle-market companies. ACON's focus on "middle-market companies" generally includes companies with enterprise valuations in the range of \$100 million to \$500 million; however, in certain circumstances, ACON has targeted companies below and above this range. Although investments in middle-market companies may present greater opportunities for growth, such investments may also entail larger risks than are customarily associated with investments in larger companies. Medium-sized companies may have more limited product lines, market, and financial and other resources. As a result, such companies may be more vulnerable to general economic trends and to specific changes in markets and technology. In addition, future growth may be dependent on additional financing, which may not be available on acceptable terms when required. Further, there is ordinarily a more limited marketplace for the sale of interests in smaller, private companies, which may make realizations of gains more difficult. In addition, the relative illiquidity of private equity investments generally, and the somewhat greater illiquidity

of private investments in small- and medium-sized companies, could make it difficult for ACON Investment Vehicles to react quickly to negative economic or political developments.

***Distressed investments.*** ACON Investment Vehicles may invest in the securities and obligations, including debt obligations that are in covenant or payment default, of companies experiencing significant financial difficulties and material operating issues, including companies that may have been, are or will become involved in bankruptcy proceedings or other restructuring, recapitalization or liquidation processes. Investments in such companies involve a substantial degree of risk that is generally higher than the risk involved in investing in companies that are not in financial or operational distress. Given the heightened difficulty of the financial analysis required to evaluate distressed companies, there can be no assurance that ACON will correctly evaluate the value of the assets of a distressed company securing its debt and other obligations or correctly project the prospects for the successful restructuring, recapitalization or liquidation of such company. Therefore, in the event that an underlying portfolio company of an ACON Investment Vehicle becomes involved in bankruptcy proceedings or a restructuring, recapitalization or liquidation is required, such Investment Vehicle may lose some or all of its investment or may be required to accept illiquid securities with rights that are materially different than the original securities in which the Investment Vehicle invested.

***Availability of investment opportunities and diversification.*** The business of identifying and structuring private equity investments is highly competitive and involves a high degree of uncertainty. It is possible that ACON Investment Vehicles will never be fully invested if enough sufficiently attractive investments are not identified or consummated during the vehicle's commitment period. In addition, an ACON Investment Vehicle may participate in a limited number of investments and, as a consequence, the aggregate return of that Investment Vehicle may be substantially adversely affected by the unfavorable performance of even a single investment. There can be no assurance that ACON will be able to consummate and exit investments that satisfy its rate of return objectives. To the extent an Investment Vehicle has concentrated investments in a particular geographic region, security, investment sector or stage of investment, investments may become more susceptible to fluctuations in value resulting from adverse economic or business conditions or events applicable to such region, type of security, sector or stage of investment.

***Restrictions on transfer; long-term and illiquid nature of interests and of underlying investments.*** Interests in the ACON Investment Vehicles are not registered under the Securities Act, the securities laws of any U.S. state or the securities laws of any other jurisdiction, and therefore, cannot be resold or transferred unless registered under the Securities Act (and other applicable securities laws) or an exemption from registration is available. No public market exists for the interests and none is expected to develop. Further, approval by ACON or an affiliate of a transfer of an investor's interest in an Investment Vehicle is required before any transfer may occur, which ACON may withhold, typically in its sole discretion. Accordingly, interests in the Investment Vehicles constitute illiquid investments and only those investors that are able to bear the risk of their investment for an indefinite period should purchase interests in the Investment Vehicles.

While an ACON Investment Vehicle's investments may generate some current income, the return of capital and the realization of gains, if any, from an investment will occur only upon the partial or complete disposition of such investment. Investments in portfolio companies typically will not be liquidated for a number of years after the initial investment, and it is unlikely that any Investment Vehicle will realize substantial capital gains during its early years. An Investment Vehicle may invest in investments that unexpectedly cannot be realized in an orderly fashion until after the date on which the ACON Investment Vehicle is scheduled to terminate. Although it is the Adviser's expectation that all investments will be disposed of prior to the end of an Investment Vehicle's term, the Investment Vehicle may have to sell or otherwise dispose of investments on disadvantageous terms as a result of the ACON Investment Vehicle's termination, or distribute such investments in kind. There can be no assurance that purchasers will be found for the investments made by ACON Investment Vehicles.

Certain investments may be distributed in kind to the investors in an Investment Vehicle and it may be difficult to liquidate the securities received at a price or within a time period that is determined to be ideal by such investors. After a distribution of securities is made to the investors, many of such investors may decide to liquidate such securities within a short period of time, which could have an adverse impact on the price of such securities. The price at which such securities may be sold by such investors may be lower than the value of such securities determined pursuant to the Investment Agreement, including the value used to determine the amount of Carried Interest available to ACON with respect to such investment.

***Market, economic and legal/regulatory risks.*** The portfolio companies of the Investment Vehicles may be materially and adversely affected by market, economic, and political conditions globally, including factors affecting tax rates and policy, interest rates, the availability of credit, currency exchange rates and trade barriers. Consequently, portfolio companies may not achieve their expected operational objectives and might experience substantial fluctuations in their operating results. Realization events could be delayed as a result of general market, economic, and political conditions. In addition, following severe global market volatility and dislocations, financial institution failures and defaults and large financial frauds in recent years, U.S. and foreign governmental authorities, agencies and representatives have called for financial system and participant regulatory reform. The duration, severity and ultimate effect of recent market conditions and government actions cannot be predicted. Governmental regulatory activity may also have a significant effect on interest rates and on the economy generally, which in turn may affect the performance of investments made by the Investment Vehicles. The adoption of new laws or regulations, or changes in the interpretation of existing laws or regulations, could have a material adverse effect on portfolio companies of the Investment Vehicles.

***Portfolio company leverage.*** To the extent that an ACON Investment Vehicle invests in a company with a leveraged capital structure, its investment will be subject to increased exposure to adverse factors such as a significant rise in interest rates, a severe downturn in the economy or deterioration in the condition of the company or its industry. In the event that a company is unable to generate sufficient cash flow to meet obligations under its indebtedness, the value of the Investment Vehicle's investment could be significantly reduced or even eliminated. Additionally, underlying portfolio companies may be subject to restrictive financial and operating covenants as a result of their use of leverage. This leverage may impair these

companies' ability to finance their future operations and capital needs. As a result, their flexibility to respond to changing business and economic conditions and to business opportunities may be limited. A leveraged company's income and net assets will tend to increase or decrease at a greater rate than if borrowed money were not used.

***ACON Investment Vehicle leverage.*** An ACON Investment Vehicle may also borrow money on its own behalf (*i.e.*, for expenses, including Management Fees, and for purposes of making a portfolio company investment) or guarantee indebtedness (such as the guarantee of an underlying portfolio company's debt). If an Investment Vehicle incurs indebtedness, it could result in interest expense and other costs that may not be covered by distributions made to the Investment Vehicle or appreciation of its investments. An ACON Investment Vehicle may incur leverage on a joint and several basis with one or more other Investment Vehicles and entities managed by the GPs/Managers or any of their respective affiliates and may have a right of contribution, subrogation or reimbursement from or against such entities. In addition, to the extent an ACON Investment Vehicle incurs indebtedness (or provides such guarantees), such amounts may be secured by capital commitments made by the Investment Vehicle's investors in accordance with the respective Investment Agreement and such investors' contributions may be required to be made directly to the lenders instead of such Investment Vehicle. In borrowing on behalf of an Investment Vehicle, the Adviser or its affiliates will be subject to conflicts of interest between repaying such obligations and retaining such borrowed amounts for the benefit of the Investment Vehicle.

***Bridge financings.*** From time to time, an ACON Investment Vehicle may lend money to portfolio companies on a short-term basis in anticipation of a future issuance of equity or long-term debt securities or for other purposes. Such bridge loans will typically be convertible into a more permanent, long-term security; however, for reasons not always in the Investment Vehicle's control, such long-term securities may not be issued and such bridge loans may remain outstanding. Bridge loans may or may not be secured. In such event, the interest rate on such loans may not adequately reflect the risk associated with the position taken by the ACON Investment Vehicle.

In addition, from time to time for strategic or other reasons in connection with investments to be made by the Fund with an anticipated side-by-side investment from a Co-Invest Vehicle or co-investors, the Fund may bridge a co-investor's investment. This situation may occur for various reasons, including that co-investors may not have had the opportunity to complete their due diligence by the time the transaction is required to close. This can be expected because ACON does not typically introduce a transaction for review by co-investors until ACON has made an affirmative decision to move forward with an investment. Thus, co-investors often lag behind ACON in evaluating a transaction. In these cases, a Co-Invest Vehicle or co-investor in effect purchases a portion of an investment from the Fund, although typically ACON attempts to structure these transactions by having the Fund provide a bridge financing to a portfolio company that will subsequently be repaid using the proceeds of investments made by co-investors. ACON endeavors to structure these transactions so that all or a portion of the ACON Fund's bridge financing is repaid in no more than three to six months or some similar period of time (to avoid any changes in valuation of the underlying investment) with interest generally equal to at least the preferred return rate in the Fund Agreement. There can be no assurance that

co-investors will agree to pay such interest or that their co-investment commitments into the Co-Invest Vehicle will close in a timely manner or for the targeted amount sought from co-investors.

***Controlling interests.*** Although it is the Adviser's intention to structure investments to avoid liability for any ACON Investment Vehicle, because of its equity ownership, representation on the board of directors and/or contractual rights, an ACON Investment Vehicle may often be considered to control, participate in the management of or influence the conduct of portfolio companies. Although such positions in certain circumstances may be important to the Investment Vehicle's investment strategy and may enhance the GP/Manager's ability to manage such Investment Vehicle's investments, they may also have the effect of impairing ACON's ability to sell the related securities when, and upon the terms, it may otherwise desire, and may subject the GP/Manager and the Investment Vehicle to claims they would not otherwise be subject to as an investor, including claims of breach of the duty of loyalty, securities claims and other director or officer related claims. In general, an ACON Investment Vehicle will indemnify ACON and its affiliates and its representatives from such claims. In addition, such controlling interest by an Investment Vehicle in a portfolio company may expose the Investment Vehicle, and the assets thereof, to risk of liability for environmental damage, under-funded benefit plans, product defects, failure to supervise management, violation of governmental regulations, violations of fiduciary duties to minority owners and other types of liability, including without limitation, in the case of debt investments, lender liability. Such liabilities may exceed the value of the Investment Vehicle's investment in that portfolio company.

The ACON Investment Vehicles are also likely to be represented on the boards of directors of many of their portfolio companies or have their representatives serve as observers to such boards of directors. Under certain circumstances, ACON personnel may also serve as officers of portfolio companies. Although such positions in certain circumstances may be important to the Investment Vehicle's investment strategy and may enhance the Adviser's ability to manage the Investment Vehicle's investments, they may also have the effect of impairing the Adviser's ability to sell the related securities when, and upon the terms, it may otherwise desire. They may also subject the Adviser, its affiliates, the Adviser's personnel and the Investment Vehicle(s) to claims they would not otherwise be subject to as an investor, including claims of breach of duty of loyalty, securities claims and other director or officer related claims. In general, the Investment Vehicles indemnify the Adviser, its affiliates and the Adviser's personnel and other persons acting on the Adviser's behalf in connection with the investment from such claims.

***Non-controlling investments.*** ACON Investment Vehicles may hold less than 50% of the outstanding voting interests of any portfolio company and, therefore, may have a limited ability to sell or protect their investments in any such portfolio company, although as a condition of investment, the Adviser or its affiliates may negotiate representation on the board of directors of each such portfolio company or appropriate minority shareholder and supervisory rights to protect the Investment Vehicle's investments. There can be no assurance that such representation or rights, if sought, will be obtained. In addition, there is the possibility that the portfolio company in which the Investment Vehicle invests or the other investors in the portfolio company may have economic or business interests or goals that are inconsistent with those of the ACON Investment Vehicle. In such cases, the vehicle may not be in a position to limit or otherwise protect the value of its investment in such portfolio company.

***Risks associated with publicly traded investments.*** The ACON Investment Vehicles may invest a portion of their total commitments in publicly traded securities. Investments in securities of publicly traded companies may be sensitive to movements in the stock markets on which they are traded. Instability in the securities markets may also increase the risks inherent in such investments. The ability of portfolio companies to refinance debt securities may depend on their ability to sell new securities in the public high-yield debt market or otherwise.

***Investments in restructurings.*** ACON Investment Vehicles may invest in restructurings that involve portfolio companies that are experiencing or are expected to experience financial difficulties, which may never be overcome. Such investments could, in certain circumstances, subject the Investment Vehicles to certain additional potential liabilities that may exceed the value of the Investment Vehicles' investments therein. For example, under certain circumstances, lenders that have inappropriately exercised control over the management and policies of a debtor may have their claims subordinated or disallowed or may be found liable for damages suffered by parties as a result of such actions. Furthermore, bankruptcy proceedings to which portfolio companies may become subject may subject the Investment Vehicles to certain additional potential liabilities that may exceed the value of the Investment Vehicles' investment. In addition, under certain circumstances, payments to the Investment Vehicles and distributions by the Investment Vehicles to the investors may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

#### **Certain Conflicts of Interest**

ACON, its affiliates and its related entities engage in a broad range of advisory and non-advisory activities, including investment activities for their own account and for the account of other Investment Vehicles and providing transaction-related, investment advisory, legal, management and other services to Investment Vehicles and their respective portfolio companies. Accordingly, various potential and actual conflicts of interest may arise from the overall investment activities of the GPs/Managers and their affiliates, including other ACON Investment Vehicles and their respective portfolio companies. The following briefly summarizes some of these conflicts, but is not intended to be an exclusive list of all such conflicts. Any references to ACON and its affiliates in this section will be deemed to include their respective affiliates, partners, members, shareholders, officers, directors, managers and employees.

***Strategic investors; investments in joint ventures.*** An ACON Investment Vehicle may jointly invest in transactions with one or more strategic investors or other co-parties (which may consist of third parties or investors), including through joint ventures or other entities. Such investments may involve risks not present in direct investments, including, for example, the outcomes of collaborative decision-making varying (adversely) from those which ACON would have reached itself, and the possibility that such co-party might become bankrupt, or might have interests, objectives, rights or remedies that are different from or may conflict with those of the ACON Investment Vehicles. Such investments may also involve risks not present in investments for which an Investment Vehicle invests alone or offers traditional co-investment opportunities that are managed by ACON or one of its affiliates. Furthermore, if any such co-party becomes bankrupt or defaults on its funding obligations, it may be difficult for the Investment Vehicle to make up the shortfall. The Investment Vehicle may be required to make additional contributions

to replace such shortfall, reducing the diversification of such Investment Vehicle's investments. The ACON Investment Vehicle may also be liable for the conduct of its co-venture parties. In addition, in negotiating an investment through joint ventures or other similar arrangements, the ACON Investment Vehicle may have to agree to less favorable terms (e.g., bearing a disproportionate share of expenses) than might be present in direct investments or traditional co-investment arrangements.

***Co-investment.*** As described above, the Adviser, its GPs/Managers and affiliates thereof (including other registered affiliated investment advisers of ACON) are authorized to and may offer co-investment opportunities to other investors. Co-investment opportunities may be offered, even in situations where the ACON Fund is not fully invested in the applicable investment opportunity, if, in the opinion of the Adviser or its affiliates, the amount invested by the ACON Fund is sufficient for its purposes (including, without limitation, from a Fund diversification standpoint), or such co-investment may (i) encourage reciprocal investment offers to the Fund, (ii) enhance the investment opportunity or (iii) allow the Fund to participate in transactions that, if entered into without co-investors, would exceed the limits of the Fund's risk management guidelines. Co-investors may, however, demand a significant level of control over the joint investment and may not, in all cases, have the same interests or objectives as the Fund. For example, co-investors may receive certain additional rights, including, without limitation, governance rights, veto and/or other control rights, although typically such rights are given to co-investors that ACON and its affiliates believe are aligned with the ACON Fund, and such co-investors may be investors in the Fund alongside which they are making an additional co-investment.

In addition, ACON or affiliates thereof may receive economic consideration (including without limitation Management Fees, Other Fees and/or Carried Interest) with respect to co-investment opportunities; however this may not always be the case. The fee income received by the Adviser and/or its affiliates with respect to co-investments may not be subject to the same fee offset provisions as set forth in the ACON Fund Agreement. In addition, Co-Invest Vehicle Carried Interest is typically not subject to clawback or escrow provisions because these vehicles do not typically make more than one portfolio company investment. These economics may or may not be more favorable to ACON and its affiliates than those provided by the ACON Fund and, as a result, may create incentives that could affect how the Adviser allocates investment opportunities. Co-investment opportunities may be offered to some, but not all, investors in ACON's discretion. In determining whether to offer a co-investment opportunity to any person, ACON will follow the procedures set forth in the Investment Agreements for each Investment Vehicle as well as its written Allocation Policy regarding allocation of investment opportunities.

***Transactions with portfolio companies and conflicts of interest.*** As described in Item 5 (*Fees and Compensation*), ACON and its affiliates may receive, from prospective portfolio companies, actual portfolio companies or their respective affiliates, monitoring fees, set-up fees, financial advisory fees, success fees, transaction fees and other similar fees, as well as break-up fees. Certain of these fees may not be established on an arm's-length basis and may adversely impact the performance of the relevant portfolio companies. Moreover, because the investors will receive a benefit from such fees only to the extent set forth in the Investment Agreement governing their investment (whether in the Fund or Co-Invest Vehicle), such fees may create an



incentive for the Adviser and its GPs/Managers to approve and cause such vehicle to make more speculative investments than it would otherwise make in the absence of such compensation.

***Investment Vehicle expenses related to operational services and monitoring costs.*** ACON may cause one or more persons who are independent contractors of ACON or its affiliates to provide consulting services to portfolio companies on a range of operational issues. To the extent that any such person's time is allocated to a portfolio company with respect to the provision of operational services, the costs associated with such time shall be allocated to and paid (or reimbursed, if applicable) by such portfolio company or by the Investment Vehicle. Such allocations will be made by ACON in a manner that is fair, equitable and consistent with the terms of such portfolio company's management services agreement or other agreement with the Investment Vehicle and/or an ACON affiliate. The resulting payments received by ACON, its affiliates or the independent contractor providing the services will not result in an offset of any Management Fee. In addition, the reasonable travel, lodging and meal costs incurred by such an independent contractor of ACON or its affiliates when providing services (operational or not) to a portfolio company will be billed to such portfolio company to the extent consistent with the specific portfolio company management services agreement or other agreement with the Investment Vehicle (or its affiliate) and reimbursed in accordance with ACON's regular expense billing and reimbursement practices. As with other ACON executives' out-of-pocket expenses, the payment of these amounts will not result in an offset of any Management Fee. The fees and expenses described above and the manner in which they are handled increase the overall cost of the Investment Vehicle's investment program from the perspective of an investor, and could negatively impact financial returns.

***Reimbursements from portfolio companies.*** A portfolio company typically will reimburse ACON (and/or its affiliates) or service providers retained at ACON's discretion for expenses (including without limitation travel expenses) incurred by ACON (and/or its affiliates) or such service providers in connection with its or their performance of services for such portfolio company, including for consultative operational services described above. This subjects ACON to conflicts of interest because the Investment Vehicle will generally not have an interest or share in these reimbursements, and the amount of such reimbursements may be substantial. ACON determines the amount of these reimbursements for such services in its own discretion, subject to its internal reimbursement policies and practices. Any fee paid or expense reimbursed to ACON (and/or its affiliates) or such service providers generally is subject to: agreements with sellers, buyers and management teams; the review and supervision of the board of directors of or lenders to portfolio companies; and/or third party co-investors in its transactions. These factors help to mitigate related conflicts of interest.

***Recommendations of service providers to portfolio companies.*** ACON will generally exercise its discretion to recommend to an Investment Vehicle or to a portfolio company thereof that it contract for services with (i) ACON, its affiliates or a related person of ACON (which may include a portfolio company of an Investment Vehicle or other funds that ACON advises) or (ii) an entity with which ACON or its affiliates or current or former personnel has a relationship or from which ACON or its affiliates or their personnel otherwise derives financial or other benefit. This subjects ACON to conflicts of interest, because although ACON selects service providers that it believes are aligned with its operational strategies and will enhance portfolio company

performance and, relatedly, the Investment Vehicle's returns, ACON may have an incentive to recommend the related or other person because of its financial or other business interest. There is a possibility that ACON, because of such belief or for other reasons, may favor such retention or continuation even if a better price and/or quality of service could be obtained from another person. Whether or not ACON has a relationship or receives financial or other benefit from recommending a particular service provider, there can be no assurance that no other service provider is more qualified to provide the applicable services or could provide such services at lesser cost.

ACON may also, from time to time, employ personnel with pre-existing ownership interests in portfolio companies owned by a Fund or other Investment Vehicles advised by ACON; conversely, former personnel or executives of ACON (and/or its affiliates) may serve in significant management roles at portfolio companies or service providers recommended by ACON. Similarly, ACON, its affiliates and/or personnel maintain relationships with (or may invest in) financial institutions, service providers and other market participants, including managers of private funds, banks and brokers. Certain of these persons or entities will invest (or will be affiliated with an investor) in, engage in transactions with and/or provide services (including services at reduced rates) to the Fund, ACON and/or its affiliates or other Investment Vehicles ACON advises. ACON may have a conflict of interest with the Investment Vehicle in recommending the retention or continuation of a third-party service provider to such Investment Vehicle or a portfolio company if such recommendation, for example, is motivated by a belief that the service provider or its affiliate(s) will continue to invest in the Investment Vehicle or any future investment vehicles advised by ACON, will provide ACON information about markets and industries in which ACON operates (or is contemplating operations) or will provide other services that are beneficial to ACON. ACON may have a conflict of interest in making such recommendations, in that ACON has an incentive to maintain goodwill between it and the existing and prospective portfolio companies for the Investment Vehicle, while the products or services recommended may not necessarily be the best available to the portfolio companies held by the Investment Vehicle.

***Restrictions on affiliate investment activities.*** ACON, its affiliates, the Fund Principals and partners, members, officers, and employees of ACON (and/or its affiliates) may buy or sell securities or other instruments that ACON has recommended to an Investment Vehicle. In addition, during an Investment Vehicle's commitment period, with respect to any opportunity to purchase securities that would be permissible for such vehicle to purchase under the respective Investment Agreement, the GPs/Managers (and their respective affiliates) will offer such opportunity to the Investment Vehicle; provided that the obligation generally will not apply to (i) investment opportunities that would be permissible under the governing documents of any successor Investment Vehicle, (ii) investment opportunities involving an investment below certain dollar threshold amounts and (iii) other investment opportunities not permitted to be offered to the particular Investment Vehicle because of confidentiality, fiduciary or other obligations (for example, in connection with an ACON employee or representative's service on a company's board of directors). Other restrictions on the investment activities of ACON, its affiliates, the Fund Principals and partners, members, officers and employees of ACON (and/or its affiliates) are set forth in ACON's Code of Ethics. The investment policies, fee arrangements and other circumstances of these and other investments may vary across Investment Vehicles.

**Cross-fund investments.** One or more investment vehicles managed by ACON or its affiliates may make a “cross-fund investment.” A cross-fund investment means an investment in a portfolio company in which another Investment Vehicle, or an investment vehicle sponsored by an ACON affiliate (including another ACON affiliated registered investment adviser), already has an investment. Historically, cross-fund investing has occurred very rarely. Cross-fund investments most often occur when the vehicle with the existing investment does not have sufficient capital to make a follow-on investment or is at or approaching the end of its commitment period or term. Cross-fund investing may raise conflicts of interest for a variety of reasons. Often, the security that will be purchased by the later-investing Investment Vehicle may have more attractive terms and conditions than the securities issued to the earlier Investment Vehicle and may be higher in the capital structure than those held by the earlier vehicle. For example, the earlier vehicle may hold equity securities of a company and the later vehicle may purchase convertible debt securities of such company. In such a situation, the interests of the two ACON Investment Vehicles may not always be aligned, which may give rise to actual or potential conflicts of interest or the appearance of such conflicts of interest. For example, questions may arise as to whether payment obligations and covenants at the portfolio company level should be enforced, modified or waived, or whether debt should be refinanced.

The fact that one Investment Vehicle’s interests sit higher in a company’s waterfall, or the stage of maturity of each Investment Vehicle (*i.e.*, how close to the end of the vehicle’s life it may be) also could impact decision-making regarding potential sales processes, including what valuation to target and whether an exit should be pursued. Questions may arise about what action should be taken when a company is in financial distress, including whether to enforce claims and whether to initiate restructuring or liquidation inside or outside of bankruptcy. Cross-fund investing may raise the risk of using the assets of one Investment Vehicle to support the portfolio of another vehicle, which action might be motivated by a desire by the Adviser to attempt to reduce the potential clawback liability of an ACON affiliate (and therefore the guarantor liability of the ensuing carry recipients). In determining whether to make a cross-fund investment and upon what terms, ACON will follow the procedures set forth in the Investment Agreement for each Investment Vehicle. These procedures typically require receipt of investor advisory consent from each affected vehicle to the conflicts of interest inherent in the transaction. In addition, ACON has a written Allocation Policy that it will follow regarding allocation of investment opportunities.

**Allocation of expenses.** Cross-fund investing and co-investing can raise conflict issues relating to allocation of expenses across multiple vehicles. To the extent more than one ACON Investment Vehicle is invested in a portfolio company, ACON will allocate expenses across all such entities (or the investors therein) in the manner required by the Investment Agreement or, in the absence of such a requirement, in an other fair and equitable manner. In the case of expenses incurred in connection with proposed transactions to be completed by the Fund, but which transactions are not consummated (“**Broken Deal Expenses**”), allocation issues similarly may arise. For example, the Adviser may have intended to pursue the transaction and close it alongside investments from one or more co-investors. Depending upon the timing of when the transaction breaks up, however, a co-investment vehicle may not yet have been formed and no co-investors may yet have been identified or agreed to be bound to pay their share of Broken Deal Expenses. In these cases, the full amount of Broken Deal Expenses relating to any such

proposed transaction will be borne entirely by the Fund. In the case of Broken Deal Expenses incurred in connection with the investigation or evaluation of a prospective acquisition to be made by an existing portfolio company, this issue is mitigated to the extent the existing portfolio company bears the Broken Deal Expenses directly.

***Allocation of break-up fees.*** Cross-fund investing and co-investing also can raise conflict issues relating to allocation of fee income across multiple vehicles. To the extent more than one ACON Investment Vehicle is invested in a portfolio company, ACON will allocate fees received across all such entities (or the investors therein) in the manner required by the Investment Agreement or, in the absence of such a requirement, in an other fair and equitable manner. In connection with proposed transactions with prospective portfolio companies where the transaction is not consummated, certain of these prospective portfolio companies may pay “break-up fees” and other amounts to the Fund in connection therewith. The Adviser may have intended to pursue the transaction and close it alongside investments from one or more co-investors. Depending upon the timing of when the transaction breaks up, however, a co-investment vehicle may not yet have been formed and no co-investors may yet have been fully identified. In these cases, the Adviser would expect the full amount of any such break-up fees to be paid to the Fund (absent other circumstances). Alternatively, consistent with the Fund Agreement, such break-up fees may be paid to ACON. Depending on whether a co-investment vehicle has been formed with potential co-investors therein identified, all or a *pro rata* portion of the amounts so paid to ACON may offset Fund Management Fees paid by the Fund, as described above in Item 5 (*Fees and Compensation*). Investors (or potential investors) in co-investment vehicles should know that reductions in Fund Management Fees may not benefit investors in other vehicles where Management Fees are not paid, and Fund investors should understand that not all of the break-up fees may be allocated to the Fund if a *pro rata* allocation of the fee is made across more than one ACON Investment Vehicle or to the co-investors therein. In the case of break-up fees received in connection with the investigation or evaluation of a prospective acquisition by an existing portfolio company, this issue may be mitigated as the existing portfolio company typically will receive the break-up fee directly, and therefore the owners of such portfolio company indirectly benefit from receipt of such fee *pro rata* to the extent of their ownership of the portfolio company.

***Conflicts with portfolio companies.*** ACON personnel will serve as directors of certain portfolio companies and, in that capacity will be required to make decisions that consider the best interests of the portfolio company. In certain circumstances, for example in situations involving bankruptcy or near-insolvency of a portfolio company or capital raising, actions that may be in the best interest of that portfolio company may not be in the best interests of the ACON Investment Vehicle, and vice versa. Accordingly, in these situations, conflicts of interest may arise between such individual’s duties as an officer or employee of ACON or its affiliates and such individual’s duties as a director of a portfolio company. When such circumstances arise, it may be necessary that the ACON director resign or abstain from certain decision-making at the portfolio company board level, which may impact the rights of the ACON Investment Vehicle with respect to such company.

***Material non-public information.*** By reason of their responsibilities in connection with their other activities (including serving on boards of directors of various companies), certain ACON

representatives may acquire confidential or material non-public information or be otherwise restricted from initiating transactions in certain securities. ACON Investment Vehicles will not be free to act upon any such information. Due to these restrictions, ACON Investment Vehicles may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it otherwise might have sold.

***Reliance on ACON investment professionals and related conflicts.*** The success of each ACON Investment Vehicle may depend, in substantial part, upon the skill and expertise of the investment professionals of ACON and, in particular, on certain key executives named as principals in the Investment Agreements. ACON and its affiliates will devote as much of their time to the activities of the ACON Investment Vehicles as they deem necessary and appropriate consistent with the requirements of the applicable Investment Agreement. Fund personnel may work on other projects, including serving as members of the boards of directors of companies other than portfolio companies of the Investment Vehicles. These activities could be viewed as creating a conflict of interest in that the time and effort of ACON personnel will not be devoted exclusively to the business of the ACON Investment Vehicles. In addition, there can be no assurance that any or all of these investment professionals will continue to be associated with ACON throughout the life of any ACON Investment Vehicle. The loss of services of one or more such professionals could have a material adverse effect on the performance of one or more ACON Investment Vehicles and ACON generally.

Investment professionals responsible for managing a particular ACON Investment Vehicle will have responsibilities with respect to other Investment Vehicles, including other private equity funds and co-investment vehicles sponsored by affiliates of ACON, including the other registered investment advisers. Conflicts of interest may arise in allocating the time and services of these investment professionals between such investment vehicles.

One of the Principals of the Fund is a Managing Director of an unaffiliated private equity fund adviser, focusing on investments in the financial services sector. ACON and its affiliates are implementing policies and procedures to address potential conflicts of interest that may arise as a result of this affiliation. Inasmuch as the Principal remains an owner of the Adviser and an equity participant in and investment committee member of the Fund, and that such Fund is outside its commitment period and no longer making new investments, the Adviser believes any such conflicts of interest that may arise are manageable.

***Lack of management rights.*** Investors generally will have no opportunity to control the day-to-day operation, including, but not limited to, investment and disposition decisions, of the Investment Vehicles, and will be permitted to vote only in the limited circumstances set forth in the Investment Agreements. The Investment Agreements typically limit the circumstances under which the Adviser, its affiliates and personnel of the Adviser can be held liable to the Investment Vehicle. Investors may, as a result of such provisions, have a more limited right of action in certain cases than they would in the absence of such provisions. Investors will not make decisions with respect to the selection, management, disposition or other realization of any investment, or any other decisions regarding the Investment Vehicles' business and affairs. In order to safeguard their limited liability for the liabilities and obligations of the Investment

Vehicles, investors must rely entirely on ACON and its GPs/Managers to conduct and manage the affairs of the Investment Vehicles.

***Side letters and opt-out rights.*** As described above, the Investment Vehicles, ACON and its GPs/Managers may enter into written agreements, or Side Letters, with one or more investors. These Side Letters may entitle an investor to make an investment in an ACON Investment Vehicle on terms other than those provided to other investors. Any such terms, including with respect to: (i) economic terms, (ii) opting out of particular investments, (iii) reporting obligations of the vehicle, (iv) transfers to affiliates, (v) co-investment opportunities, (vi) withdrawal rights due to adverse tax or regulatory events, (vii) consent rights to certain Investment Vehicle actions or Investment Agreement amendments or (viii) any other matters described herein, may be more favorable than those offered to any other investors. Furthermore, the Adviser or its affiliates may permit certain business associates and “friends and family” of ACON to invest directly or indirectly in Investment Vehicles on terms that may be more favorable than those offered to other investors, including with respect to the non-payment or reduction in payment of Management Fees and Carried Interest or different treatment with respect to fee offsets.

***Conflicts among investors.*** Prospective investors also should be aware that ACON and its GPs/Managers may encounter potential conflicts of interest in connection with the Investment Vehicles’ activities. For example, investors are expected to include taxable and tax-exempt entities and may include persons or entities organized in various jurisdictions. As a result, the investors may have conflicting investment, tax and other interests with respect to their investments in the Investment Vehicle. The conflicting interests of individual investors may relate to or arise from, among other things, the nature of investments made by the Investment Vehicle, the structuring or acquisition of investments, the timing of disposition of investments or any other decisions made by ACON and/or its GPs/Managers that may be more beneficial for one type of investor than for another, including investors affiliated with the Adviser. In selecting investments appropriate for the Investment Vehicles, the Adviser and its GPs/Managers will consider the investment objectives of the Investment Vehicles as a whole, not the investment objectives of any investor individually.

## **Item 9 - Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that are material to a client’s or prospective client’s evaluation of the adviser’s business or the integrity of its management. ACON does not have any legal or disciplinary events to report.

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

### **Broker-Dealers**

Neither ACON nor any of its management persons are registered, or have an application pending to register, as a broker-dealer or a registered representative of a broker-dealer.

## **Futures and Commodity Trading**

Neither ACON nor any of its management persons are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or an associated person of the foregoing entities.

## **Material Relationships**

Some of the key management executives and investment professionals of ACON, as well as the Chief Financial Officer, Chief Compliance Officer, Chief Legal Officer and other employees and/or consultants of ACON and its affiliates serve in similar capacities for the following affiliates of ACON that are also registered investment advisers:

- ACON EQUITY MANAGEMENT, L.L.C. (SEC File No. 801-74406);
- ACON Investments Management, LLC (SEC File No. 801-74421);
- ACON LatAm Management, L.L.C. (SEC File No. 801-74408);
- ACON Saga Manager, LLC (SEC File No. 801-74423);
- RSA FMO MANAGER, LLC (SEC File No. 801-74422); and
- RSA Signal Manager, LLC (SEC File No. 801-74626).

The Adviser is party to an arrangement with ACON Investments, a service affiliate, pursuant to which ACON Investments and/or its affiliates provide the services of various private equity fund investment, finance, accounting, legal, compliance and support professionals to the Adviser. In addition, through this arrangement, certain administrative services including the payment of payroll, benefits and overhead costs are provided to shared employees and facilities.

## **Other Investment Advisers**

ACON does not recommend or select other investment advisers for the ACON Investment Vehicles. However, it may, as described above, sub-contract certain services to its affiliates.

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

### **Code of Ethics**

ACON and its affiliates have adopted a Code of Ethics (the “**Code**”) to ensure that ACON fulfills its fiduciary requirements to the ACON Investment Vehicles and to identify, address and avoid potential conflicts of interest which exist when providing advisory services to these vehicles. The Code requires that personnel of ACON comply with all applicable provisions of federal securities laws. The Code includes policies and procedures related to the disclosure and pre-clearance of certain trading activity. The policy also addresses confidentiality and insider trading and expressly prohibits personnel from disseminating material non-public information or using such information inappropriately for the benefit of any party. Personnel are required to provide written certification as to their compliance with the Code on an annual basis.

ACON will provide a copy of its Code of Ethics to any client or prospective client upon request. Please contact Teresa Y. Bernstein, Chief Compliance Officer, at 202-454-1100 x771 or [tbernstein@aconinvestments.com](mailto:tbernstein@aconinvestments.com).

### **Participation or Interest in Client Transactions**

From time to time, consistent with each ACON Investment Vehicle's investment objectives and subject to satisfaction of the policies and procedures set forth in the Code, the Investment Vehicle's Investment Agreements and applicable law, ACON or its GPs/Managers may recommend that an ACON Investment Vehicle acquire or sell securities in which an ACON related or affiliated person has a pre-existing direct or indirect interest, and the Adviser or its GP/Manager may cause the Investment Vehicle to effect the recommended transaction. A potential conflict of interest could arise in that the interested ACON related person could benefit from such a purchase or sale of the applicable security by the Investment Vehicle. The Code, however, is designed to identify and manage conflicts of interest to the extent they arise in connection with such transactions, and to ensure that ACON fulfills its role as a fiduciary to the Investment Vehicles. In particular, the Code requires that ACON act in the best interests of the ACON Investment Vehicles, in good faith and in an ethical manner. Certain terms of each Investment Vehicle's Investment Agreements (including for example the possible need for investor advisory committee approval) and the equity participation of ACON investment professionals in the ACON Investment Vehicle further mitigate such conflicts.

### **Personal Trading**

From time to time, subject to satisfaction of the policies and procedures set forth in the Code, the ACON Investment Vehicles' Investment Agreements and applicable laws, an ACON related person may acquire or sell securities that are recommended to an Investment Vehicle or in which the ACON Investment Vehicle has a pre-existing direct or indirect interest. A potential conflict of interest could arise in that the interested ACON related person or affiliate could benefit from the Investment Vehicle's ownership, or subsequent sale, of the applicable security. However, the Code is designed to identify and manage conflicts of interest to the extent they arise in connection with the personal securities transactions and other investment activities of ACON related persons, and to ensure that ACON fulfills its role as a fiduciary to each ACON Investment Vehicle. In particular, the Code requires that ACON related persons abide by policies and procedures in connection with their personal securities trading activities, and such activities are monitored under the Code to ensure compliance with such policies and procedures.

### **Personal Trading Contemporaneous with Client Transactions**

From time to time, in appropriate circumstances and subject to satisfaction of the policies and procedures set forth in the Code and each Investment Vehicle's governing documents, ACON personnel and other related persons or affiliates may co-invest in the investments made by ACON Investment Vehicles at the same time as and on a side-by-side basis with ACON Investment Vehicles (including their investors). ACON does not believe that this common industry practice gives rise to material conflicts of interest, and that certain potential conflicts of interest are addressed by the Code and the ACON Investment Vehicle's Investment Agreements.



However, because ACON personnel may have the opportunity to select the particular investments in which they may choose to participate (and the amount of their participation), the ACON investment professionals may have personal and financial motivations with respect to a particular transaction that may not necessarily be aligned with investors in the ACON Investment Vehicles.

## **Item 12 - Brokerage Practices**

ACON primarily invests in private securities and does not regularly engage in high volume trading of public securities. Accordingly, ACON is generally not in a position to select a broker-dealer for any ACON Investment Vehicle's transactions.

ACON may distribute securities to investors in an Investment Vehicle or sell such securities, including through using a broker-dealer if a public trading market exists. ACON may also sell securities in an Investment Vehicle through privately negotiated transactions with or without the use of brokers or dealers. If ACON or one of its affiliates sells publicly traded securities for the Investment Vehicle, they are responsible for directing orders to broker-dealers to effect securities transactions for managed accounts. ACON will select brokers on the basis of best price and execution capability. ACON has no duty or obligation to seek in advance competitive bidding for the most favorable commission rate applicable to any particular client transaction or to select any broker on the basis of its purported or "posted" commission rate, but will endeavor to be aware of the current level of the charges of eligible brokers and to minimize the expenses incurred for effecting client transaction to the extent consistent with the interests and policies of the accounts. Although ACON generally seeks competitive commission rates, ACON will not necessarily pay the lowest commission or commission equivalent. Transactions may involve specialized services on the part of the broker involved and thereby entail higher commissions or their equivalents than would be the case with other transactions requiring more routine services.

ACON does not have any soft dollar arrangements.

ACON engages placement agents from time to time. However, such placement agents are not used as broker-dealers to effect transactions in publicly traded securities on behalf of any ACON Investment Vehicle.

In the private equity context, aggregation of the purchase or sale of securities for multiple client accounts is generally not relevant.

## **Item 13 - Review of Accounts**

### **Periodic Review of Client Accounts**

The investments made by the Investment Vehicles are generally private, illiquid and long-term in nature. Accordingly, the review process is not directed toward a short-term decision to dispose of securities. However, ACON's personnel monitor and review companies in which an ACON Investment Vehicle invests including, for example, by participating in board meetings and management calls, reviewing annual and interim financial statements and making on-site visits to such companies. Each ACON Investment Vehicle's financial statements are maintained and

monitored by the finance staff of an affiliate of ACON under the supervision of the Controller and Chief Financial Officer. In addition, financial statements for certain Investment Vehicles, including the ACON Fund, are audited on an annual basis by an independent third-party accounting firm.

### **Factors that Trigger a Review of Client Accounts**

ACON's investment committee regularly supervises and monitors the investment activities of the ACON Investment Vehicles.

### **Reports to Clients**

Audited financial statements are provided to investors in certain ACON Investment Vehicles, including the ACON Fund, generally within 120 days of the end of the vehicles' fiscal year. Unaudited financial statements and investor-specific account statements are generally provided within 45-60 days of the end of the vehicles' fiscal quarter, along with information about the financial performance of the companies in which the ACON Investment Vehicle has invested.

Certain investors in an ACON Investment Vehicle may request information relating to the ACON Investment Vehicle and, to the extent such information is readily available or may be obtained without unreasonable effort or expense, ACON generally will provide such investors with the information requested. Investors that request and receive such information will consequently possess information regarding the business and affairs of the ACON Investment Vehicle that may not be known to other investors. As a result, certain investors may be able to take actions on the basis of such information which, in the absence of such information, other investors may not take.

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

As described in Item 5 (*Fees and Compensation*), ACON and its related persons may receive, from prospective portfolio companies, actual portfolio companies or their respective affiliates, monitoring fees, organization fees, set-up fees, financial advisory fees, success fees, transaction fees and other similar fees, either in cash or securities, termination, break-up and topping fees, and cash and non-cash directors' fees, including any such fees payable in the form of warrants, options, derivatives and other rights in respect of securities owned by the ACON Investment Vehicles and otherwise.

ACON does not currently engage any placement agents. From time to time, in the context of organizing an ACON Investment Vehicle, ACON may have compensated one or more placement agents for referrals of investors. A prospective investor solicited by a placement agent or other third party would have been advised of any such arrangement, including the receipt of fees. As described in Item 5 (*Fees and Compensation*), placement fees are generally borne by ACON.

### **Item 15 - Custody**

In connection with the management of investments for certain investors, ACON may have, or may be deemed to have, custody of certain funds or securities of the ACON Investment

Vehicles. Rule 206(4)-2 (the “**Custody Rule**”) of the Advisers Act defines custody as holding client securities or assets or having any authority to obtain possession of them, including the authority to withdraw funds or securities from a client’s accounts or ownership of or access to client funds or securities (such as through fee deductions). With the exception of certain assets, which are defined as “privately offered securities” under the Custody Rule, the assets of certain ACON Investment Vehicles, including the Fund, are held in custody by unaffiliated broker/dealers or banks acting in the capacity as “qualified custodians.”

In accordance with the Custody Rule, ACON’s Chief Compliance Officer is responsible for ensuring that the ACON Investment Vehicles’ securities, other than “privately offered securities,” are held only with unaffiliated broker-dealers or banks acting as qualified custodians. ACON’s Chief Compliance Officer is also responsible for arranging for annual independent audits of the ACON Investment Vehicles by a major accounting firm within 120 days of each vehicle’s fiscal year end and for obtaining audited financial statements prepared in accordance with generally accepted accounting principles in the United States. ACON generally arranges for the delivery of such audited financial statements to investors within 120 days of each vehicle’s fiscal year end.

#### **Item 16 - Investment Discretion**

Typically, ACON and/or its GPs/Managers provides investment advice to the ACON Investment Vehicles on a discretionary basis and ACON or a GP/Manager accepts discretionary investment authority for the ACON Investment Vehicles pursuant to each Investment Vehicle’s Investment Agreement and subject to the investment guidelines set forth therein.

#### **Item 17 - Voting Client Securities**

ACON accepts authority to vote the securities held by the ACON Investment Vehicles. In accordance with SEC rules, ACON and its affiliates have adopted Proxy Voting Policies and Procedures (the “**Proxy Policy**”) to address how they votes proxies for the ACON Investment Vehicles’ portfolio investments. The Proxy Policy seeks to ensure that ACON votes proxies (or similar instruments) in the best interest of the Investment Vehicle, including when there may be material conflicts of interest in voting proxies. The Adviser and its GPs/Managers generally believe their interests are aligned with the Investment Vehicles through their ownership interest in the Investment Vehicles. In the event, however, there is or may be a conflict of interest between the Adviser and an ACON Investment Vehicle in voting proxies, the Adviser may address the conflict using several alternatives, including by seeking the approval or concurrence of the Investment Vehicle’s investor advisory committee on the proposed proxy vote or through other alternatives set forth in the Proxy Policy. In addition, the Proxy Policy sets forth certain specific proxy voting guidelines ACON and its affiliates follow when voting proxies on behalf of the ACON Investment Vehicles. Upon request, an investor may obtain a copy of ACON’s Proxy Voting Policy as well as information about how ACON voted any proxies on the ACON Investment Vehicles’ behalves by contacting the Chief Compliance Officer, Teresa Y. Bernstein, at 202-454-1100 x771 or [tbernstein@aconinvestments.com](mailto:tbernstein@aconinvestments.com).

**Item 18 - Financial Information**

Fees are not collected six months or more in advance. Accordingly, ACON has no disclosures related to this item.

ACON is not aware of any financial condition that is reasonably likely to impair its ability to meet contractual commitments to the ACON Investment Vehicles.

ACON has never been the subject of a bankruptcy petition.