

# Night Owl Capital Management, LLC

## FORM ADV PART 2A – DISCLOSURE BROCHURE

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*This disclosure brochure provides clients with information about the qualifications and business practices of Night Owl Capital Management, LLC, an independent investment advisory firm registered with the United States Securities and Exchange Commission ("SEC"). It also describes the services Night Owl Capital Management, LLC provides as well as background information on those individuals who provide investment advisory services on behalf of Night Owl Capital Management, LLC. Please contact John Kim, Managing Director and Chief Compliance Officer of Night Owl Capital Management, LLC, at 203-302-3870 if you have any questions about the contents of this disclosure brochure.*

*The information in this disclosure brochure has not been approved or verified by the SEC or by any state securities authority. Registration with the SEC does not imply that Night Owl Capital Management, LLC or any individual providing investment advisory services on behalf of Night Owl Capital Management, LLC possess a certain level of skill or training. Additional information about Night Owl Capital Management, LLC is available on the Internet at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). You can search this site by a unique identifying number, known as a CRD number. The CRD number for Night Owl Capital Management, LLC is 106030.*

**Item 2 – Material Changes**

This item discusses specific material changes to the Night Owl Capital, LLC disclosure brochure.

Pursuant to current SEC Rules, Night Owl Capital, LLC will ensure that clients receive a summary of any materials changes to this and subsequent brochures within 120 days of the close of the firm's fiscal year which occurs at the end of the calendar year. Night Owl Capital, LLC may further provide other ongoing disclosure information about material changes as necessary.

Night Owl Capital, LLC also provide clients with a new brochure as necessary based on changes or new information, at any time, without charge.

There have been no material changes to this brochure since the date of its last annual update (February 17, 2016).

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## Item 4 – Advisory Business

### Our Company

Based in Greenwich, Connecticut, Night Owl Capital Management, LLC (“Night Owl Capital” or the “Company”), is an independent, privately-held Delaware limited liability company that has been an SEC-registered investment adviser since 1993. The Company changed its name from Southfield Investment Management, LLC in October of 2011.

The principal owner of the Company is John Kim.

### Our Services

Night Owl Capital provides investment management services to both separately managed accounts and private investment funds (e.g., hedge funds).

#### Separately Managed Accounts

Night Owl Capital provides value-based, growth-oriented investment management services for high net worth individuals and institutions. Following the investment philosophy outlined in the section “Our Investment Philosophy” (see below), Night Owl Capital manages separate investment accounts for clients. While most client portfolios will match the Company’s “model” portfolio, some portfolios may differ depending on the individual circumstances of a client.

Night Owl Capital will also at times manage investment accounts on a non-discretionary basis.

#### Private Investment Funds

*Important Note: Private investment funds advised by Night Owl Capital are not offered or sold to the public. They are accessible only to investors who are “Accredited Investors” as defined in Regulation D under the Securities Act of 1933 and “Qualified Clients” as defined in Rule 205-3 of the Investment Advisers Act of 1940, who receive a confidential private placement memorandum issued by the fund and who ultimately become parties to the limited partnership agreement governing operation of the fund.*

Night Owl Capital is the investment manager of Night Owl Partners, LP (the “Partnership”). Please see the “Investment Strategies” section of this disclosure brochure for additional information regarding the investment objectives, types of investments and risk exposures of Night Owl Partners, LP.

The terms and conditions for participation in Night Owl Partners, LP, including management and incentive fees, conflicts of interest and risk factors, are set forth in the fund’s offering documents, which each prospective investor shall receive, and be required to complete and submit certain portions thereof to Night Owl Capital in order to demonstrate qualification for a fund investment.

Because of the “pooled” nature of private investment funds, clients may not impose restrictions on investments in certain securities or types of securities.

## **Our Investment Philosophy**

Throughout the Company's history, Night Owl Capital has followed the same investment principles:

### Invest in High Quality Companies

We search for superior businesses that have unique, enduring franchises with sustainable competitive advantages. They must also have proven business models with a history of profitability, earnings growth, high returns on capital, and excess cash generation. These businesses must have attractive growth opportunities – we look for companies that are capable of growing their intrinsic value for a number of years. Finally, we want our companies to have disciplined management teams that allocate capital wisely.

### Wait for an Attractive Valuation

Once we find a business we like, we estimate the company's intrinsic value based on a discounted free cash flow analysis. We then wait for the market to provide us an opportunity to buy shares below this intrinsic value. We are willing to be patient. As a result, we may lag the market during bull market bubbles, but we believe that not overpaying will result in superior results over the long term and better downside protection for our investors.

### Use Concentrated Portfolios

Given our stringent requirements, only a limited number of companies meet our investment criteria. Therefore, when we do find an attractive opportunity, we try to invest as much as we can without taking excessive company-specific risk. As a result, the typical portfolio has between 15-20 positions with each position representing 2-10% of the portfolio. We will increase and trim positions based on our view of the position's expected return to take advantage of short term market volatility.

### Invest for the Long Term

We are long term investors. Given our selective investment criteria, once we find a company we like, we tend to hold it for a long time. We believe that the best way to build wealth is to find great businesses and hold them while they grow and prosper. Our long term investment horizon results in low portfolio turnover and low trading and tax expenses. Notwithstanding our long term investment horizon, we will sell a position if we foresee a deterioration in the company's fundamentals and / or its valuation is far above our view of its intrinsic value.

## **Our Investment Team**

The Night Owl Capital investment team consists of the following professionals:

*John S. Kim*  
*Managing Director*

Mr. Kim graduated from Yale University *magna cum laude* with a BA in Ethics, Politics and Economics in 1995. Mr. Kim also received his J.D. from Yale Law School in 2000. Mr. Kim has served as Managing Director of Night Owl Capital since 2003. Prior to that, Mr. Kim was an Associate in the Mergers & Acquisitions Department of Morgan Stanley from 2000 to 2003. He

also served as an equity analyst at J. Bush & Co. from 1999 to 2000 and as a consultant at Mercer Management Consulting from 1995 to 1997.

*Charlie Gao*  
Analyst

Mr. Gao joined Night Owl Capital in 2014. Prior to joining the firm, Mr. Gao worked at The Blackstone Group as an analyst in their alternative asset management group. Mr. Gao graduated from the University of Pennsylvania with a B.S. in Electrical Engineering, *magna cum laude*.

*James Jiang*  
Analyst

Mr. Jiang joined Night Owl Capital in 2015. Prior to joining the firm, Mr. Jiang was a summer analyst at The Blackstone Group in their Restructuring and Reorganization group. Mr. Jiang graduated from Yale University with a B.A. in Economics, *summa cum laude*.

## **Our Assets Under Management**

As of December 31, 2016, the total amount of client assets managed by Night Owl Capital is approximately \$526,742,000. Of this total amount, \$276,381,000 of client assets are managed on a discretionary basis and \$250,361,000 of client assets are managed on a non-discretionary basis.

## **Item 5 – Fees and Compensation**

### **Separately Managed Accounts**

The annual fee for Night Owl Capital's separately managed account services will be charged as a percentage of assets under management. The investment management fee charged is determined by the composition of a client's account. Client accounts are charged a fee based on an annualized rate of 1.5% for the first \$5 million and 1.0% on assets over \$5 million.

Fees are paid quarterly in advance and are calculated and assessed in the first business week of a calendar quarter based on the market value of an account on the last business day of the preceding quarter. Market value is as reflected in the custodian's statement as of the end of the quarter plus any accrued interest on fixed income securities. In the event the account custodian cannot provide a market value, Night Owl Capital will determine the asset's fair market value. Fees will be adjusted if there are additions or withdrawals during the first sixty days of the quarter of assets equal to 15% or more of the total value of the account on the date of the addition or withdrawal. Such fees will be calculated based on the annualized rate for the particular type of account, the number of days remaining in the quarter on the date of the addition or withdrawal and the amount of the assets added or withdrawn, and will be assessed or credited, as applicable, in the quarter following the quarter in which the addition or withdrawal was made.

Fees are typically deducted directly from a client's account.

### **Private Investment Fund**

Night Owl Capital acts as investment adviser for Night Owl Partners, LP, a private investment fund organized as a pooled investment vehicle, and charges an asset based management fee of

approximately 1.0% per year on assets under management. Additionally, an affiliate of Night Owl Capital serves as general partner of Night Owl Partners, LP and shares in the profits based on the performance of the assets under management pursuant to the terms of the relevant agreement. Generally, Night Owl Capital's affiliate will receive 20% of the net profits generated above an annual non-cumulative hurdle rate of 7%. Asset based fees are generally payable on a quarterly basis in advance and the performance-based allocation accrues monthly and generally is payable annually or more frequently and is subject to a "high water mark." This means that no performance allocation will be made as to net profits in a period to the extent they "restore" net losses previously allocated to an investor in the investment vehicle. Night Owl Capital in its capacity as investment adviser (or its affiliate in its capacity as general partner) for an investment vehicle, is reimbursed for allocable legal, accounting and administrative expenses that are directly related to such investment vehicle or such investment vehicle's investments.

Because the general partner (an affiliate of Night Owl Capital) receives a performance allocation, an investor in Night Owl Partners, LP must be a "Qualified Client." As defined in Rule 205-3 under the Investment Adviser Act of 1940, as amended, a "Qualified Client" is an individual or company that immediately after entering into an investment contract has at least \$750,000 under management with the advisory firm or an individual or a company with a net worth (or a joint net worth, in the case of an individual, with assets held jointly with a spouse) of more than \$1,500,000 immediately before entering into the investment contract.

The terms and conditions for participation in Night Owl Partners, LP, including management and performance allocation, conflicts of interest and risk factors, are set forth in the fund's offering documents, which each prospective investor shall receive, and be required to complete and submit certain portions thereof to Night Owl Capital in order to demonstrate qualification for a fund investment.

### **Important Additional Fee Information**

#### Fee Only

Night Owl Capital is compensated solely by fees paid by its clients and does not accept commissions or compensation from any other source (i.e., mutual funds, insurance products or any other investment product).

#### Fees Negotiable

Night Owl Capital retains the right to modify fees, including minimum account sizes, in its sole and absolute discretion, on a client-by-client basis based on the size, complexity and nature of the advisory services provided. As a result, a small number of clients may have fee arrangements that differ from the fee schedule described above.

#### Balanced Account Fees

Night Owl Capital also manages balanced accounts for individual clients who have as a secondary objective higher income and/or the preservation of capital. Balanced account clients are charged an advisory fee based on an annualized rate of 1.0%. Balanced accounts are no longer offered to new clients.

### Fixed Income Account Fees

Night Owl Capital also manages some accounts that are invested primarily in fixed income securities. Fixed income account clients are charged a fee based on an annualized rate of 0.35%. Fixed income accounts are no longer offered to new clients.

### Direct Debiting of Client Accounts

In order for Night Owl Capital's advisory fees to be directly debited from a client's account, the client provides written authorization (in Night Owl Capital's investment management agreement) permitting Night Owl Capital to bill the custodian. In addition, the account must be held by a qualified custodian and the qualified custodian must agree to send to the client an account statement on at least a quarterly basis. The account statement must indicate all amounts disbursed from the account including the amount of advisory fees paid directly to Night Owl Capital. Clients are informed that it is their responsibility to verify the accuracy of the fee calculation and that the account custodian will not determine whether the fee is properly calculated.

### Termination of Client Relationship

The investment advisory contract may be terminated by either party upon seven day's prior written notice. Upon termination, the prorated amount of any pre-paid fees for the remainder of the quarter following termination will be refunded. Night Owl Capital will send a check to the client for the amount of the refund.

### Mutual Fund Fees

All fees paid to Night Owl Capital for investment advisory services are separate and distinct from the fees and expenses charged by mutual funds to their shareholders. These fees and expenses are described in each fund's prospectus. These fees will generally include a management fee, other fund expenses, and a possible distribution fee. If the fund also imposes sales charges, a client may pay an initial or deferred sales charge. A client could invest in a mutual fund directly, without the services of Night Owl Capital. In that case, the client would not receive the services provided by Night Owl Capital which are designed, among other things, to assist the client in determining which mutual fund or funds are most appropriate to each client's financial condition and objectives. To the extent that client assets are invested in money market funds or cash positions, the fees for monitoring those assets are in addition to the fees included in the internal expenses of those funds paid to their own investment managers, which are fully disclosed in each fund's prospectus. Accordingly, the client should review both the fees charged by the funds and the fees charged by Night Owl Capital to fully understand the total amount of fees to be paid by the client and to thereby evaluate the advisory services being provided.

### Trading and Other Costs

All fees paid to Night Owl Capital for investment advisory services are separate and distinct from transaction fees charged by broker dealers associated with the purchase and sale of equity securities and options. In addition, fees do not include the services of any co-fiduciaries, accountants, broker dealers or attorneys. Please see the section entitled "Brokerage Practices" on page 13 of this disclosure brochure for additional information on brokerage and other transaction costs.



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

As stated in the “Fees and Compensation” above, under certain circumstances an affiliate of Night Owl Capital is eligible to receive a performance-based allocation (*e.g.*, for its management of Night Owl Partners, LP). In addition, Night Owl Capital manages client accounts where it is not eligible to receive performance-based compensation for its advisory services.

Situations – such as those described above – where Night Owl Capital manages both accounts that pay performance-based compensation and accounts that do not pay performance-based compensation gives rise to certain conflicts of interest that have the potential to motivate Night Owl Capital to favor its performance-based account clients over other clients. For example, performance-based compensation is typically significantly higher than the asset-based fees paid on traditional accounts. In the case of private investment funds, many investment advisers, including Night Owl Capital or its related persons, have significant investments in the funds that they manage. As a result, Night Owl Capital has additional incentives to favor the performance-based clients over other clients by allocating investment opportunities to the performance-based accounts. Finally, because performance-based compensation is not paid unless Night Owl Capital achieves a certain level of performance, the performance allocation arrangement may create an incentive for Night Owl Capital to make investments that are more risky or more speculative than might be the case in the absence of an allocation based on performance.

Night Owl Capital has implemented various policies and procedures to mitigate real or potential conflicts of interest. Currently, the assets of Night Owl Capital’s separately managed account clients and the Partnership are custodied at two different brokerage firms. Consequently, Night Owl Capital may use a different broker for the separately managed accounts and the Partnership, respectively, to execute a transaction that involves the same security. In addition, Night Owl Capital will execute most transactions in a serial manner in order to prevent the two brokers from competing with one another for order flow. Night Owl Capital will alternate the order of execution to ensure that no client receives favorable treatment in execution.

In the event that Night Owl Capital is buying or selling highly liquid securities (*e.g.*, large cap stocks), Night Owl Capital may determine that the simultaneous execution of transactions by different brokers representing different Night Owl Capital clients will not adversely impact the execution price for Night Owl Capital’s various clients. In such a case, Night Owl Capital may instruct brokers representing Night Owl Capital’s different clients to execute the transactions at the same time.

In cases in which Night Owl Capital uses a single broker to buy or sell the same security for both the separately managed accounts and the Partnership, Night Owl Capital will allocate between the separately managed accounts and the Partnership on a pro rata basis.

Please see the section entitled “Brokerage Practices” on page 13 of this disclosure brochure for additional information on Night Owl Capital’s brokerage practices.)

## **Item 7 – Types of Clients**

Night Owl Capital provides investment advisory services to individuals (including high net worth individuals), trusts, estates, charitable organizations, corporations, other types of business entities and private investment funds organized as pooled investment vehicles (commonly known as “hedge funds”).

## **Engaging the Services of Night Owl Capital**

### Separately Managed Accounts

All clients wishing to engage Night Owl Capital for investment advisory services must sign an investment management agreement that governs the relationship with Night Owl Capital. The investment management agreement describes the services and responsibilities of Night Owl Capital to the client. It also outlines Night Owl Capital's fee in detail.

In addition to completing Night Owl Capital's internal documents (e.g., investment management agreement), clients must complete certain broker-dealer/custodial documentation. Upon completion of these documents, Night Owl Capital will be considered engaged by the client. A client has an ongoing responsibility for ensuring that Night Owl Capital is informed in a timely manner of changes in the client's investment objectives and risk tolerance.

### Private Investment Fund

Investors in Night Owl Partners, LP will be required to complete a subscription agreement (including an investor questionnaire to determine their eligibility for investment in the fund) and become a party to the operating agreement that governs the operation of Night Owl Partners, LP.

## **Conditions for Managing Accounts**

### Separately Managed Accounts

Night Owl Capital requires new clients to have a minimum account of \$500,000, although Night Owl Capital retains the right to reduce or waive this minimum account size. Accounts of less than \$500,000 may be set up when the client and Night Owl Capital anticipate the client will add additional funds to the accounts bringing the total to \$500,000 within a reasonable time.

### Private Investment Funds

The minimum capital contribution by a limited partner to Night Owl Partners, LP is \$1,000,000, subject to the discretion of the fund's general partner (an affiliate of Night Owl Capital) to accept lesser amounts.

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

### **Types of Investments**

Night Owl Capital will typically invest in a range of securities including, domestic and foreign equity securities, warrants, corporate debt securities, commercial paper, certificates of deposit, municipal and United States government securities, mutual funds and options.

### **Investment Strategies**

#### Separately Managed Accounts

Night Owl Capital's core strategy for its separately managed accounts is to invest in domestic and foreign equity securities that the Company believes will compound in value over a long-term investment horizon. Night Owl Capital may utilize different investment strategies based upon the needs of the client.

Using a long-term purchase strategy generally assumes the financial markets will go up in the long-term which may not be the case. There is also the risk that the segment of the market that you are invested in or your particular investments will decrease in value even if the overall financial markets advance. Purchasing investments long-term may create an opportunity cost (e.g., “locking-up” assets that may be better utilized in the short-term in other investments).

### Private Investment Partnerships

Night Owl Partners, LP, the private investment limited partnership managed by Night Owl Capital has a similar investment strategy as the separately managed accounts, but may at times employ strategies and pursue investment opportunities that Night Owl Capital deems unsuitable for its separately managed accounts. These strategies may include, but are not limited to, higher portfolio concentration, illiquid securities, short positions, leverage, “special situations” and derivatives.

### **Security Analysis**

The security analysis method typically employed by Night Owl Capital is fundamental analysis.

#### *Risk Associated with Methods of Analysis*

The analysis of securities requires subjective assessments and decision-making by experienced investment professionals, however, there is always the risk of an error in judgment.

Night Owl Capital’s securities analysis methods rely on the assumption that the companies whose securities the firm purchases and sells, the rating agencies that review these securities, and other publicly-available sources of information about these securities, are providing accurate and unbiased data. While Night Owl Capital is alert to indications that data may be incorrect, there is always the risk that the firm’s analysis may be compromised by inaccurate or misleading information.

Fundamental analysis, when used in isolation, has a number of risks:

- Information obtained may be incorrect and the analysis may not provide an accurate estimate of earnings, which may be the basis for a stock’s value. If securities prices adjust rapidly to new information, utilizing fundamental analysis may not result in favorable performance.
- The data used may be out of date.
- It ignores the influence of random events such as oil spills, product defects being exposed, acts of God and so on.
- It assumes that there is no monopolistic power over markets.
- The market may fail to reach expectations of perceived value.

### **Sources of Information**

In conducting security analysis, Night Owl Capital may utilize the following sources of information: financial newspapers and magazines, research materials prepared by others, inspection of corporate activities, corporate rating services, annual reports, prospectuses, filings with the U.S. Securities and Exchange Commission and company press releases.

## **Risk**

### General

All securities investing and trading activities risk the loss of capital. The value of equity securities may fluctuate in response to specific situations for each company, industry market conditions, and general economic and financial market conditions. There can be no assurance that Night Owl Capital's investment activities will be successful or that clients will not suffer losses.

### General Economic and Market Conditions

The success of Night Owl Capital's investments may be affected by general economic and market conditions, such as economic cycles, poor equity markets, interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, and national and international political circumstances. These factors may affect the level and volatility of securities prices and the liquidity of the investments. Unexpected volatility or illiquidity could impair the investment's profitability or result in losses.

### Limited Diversification

A client's account may likely have limited diversification. There are no percentage limitations imposed by law or otherwise on the percentage of a client's assets that may be invested in the securities of any one issuer. To the extent that the client's account is concentrated in a few key industries, the risk of loss is greater than if the portfolio were invested in a more diversified manner among various sectors. In addition, although the diversification of the client's investments in a variety of securities is intended to reduce the client's exposure to adverse events associated with specific issuers, the number of client investments will be limited. As a consequence, the client's returns as a whole may be adversely affected by the unfavorable performance of even a single investment.

### Small Capitalization Stocks

Night Owl Capital may invest in equity securities without restriction as to market capitalization, such as those issued by smaller capitalization companies, including micro cap companies. The prices of the securities of smaller companies may be subject to more abrupt or erratic market movements than larger, more established companies, because these securities typically are traded in lower volume and the issuers typically are more subject to changes in earnings and prospects. In addition, due to thin trading in securities of some micro- and small-capitalization companies, an investment in those companies may be illiquid.

### Non-U.S. Securities

Night Owl Capital may invest in securities of, and derivatives of securities of, non-U.S. issuers (both public and private) and in depository receipts, such as American Depositary Receipts ("ADRs"), that represent indirect interests in securities of non-U.S. issuers. Non-U.S. securities may be listed on non-U.S. exchanges or traded in non-U.S. over-the-counter markets. Investments in non-U.S. securities can be affected by risk factors generally not thought to be present in the U.S. These factors include, but are not limited to, the following: varying custody,

brokerage and settlement practices; difficulty in pricing; less public information about issuers of non-U.S. securities; less governmental regulation and supervision over the issuance and trading of securities than in the U.S.; the unavailability of financial information regarding the non-U.S. issuer or the difficulty of interpreting financial information prepared under non-U.S. accounting standards; less liquidity and more volatility in non-U.S. securities markets; the possibility of expropriation or nationalization; the imposition of withholding and other taxes; adverse political, social or diplomatic developments; limitations on the movement of funds or other assets between different countries; difficulties in invoking legal process abroad and enforcing contractual obligations; and the difficulty of assessing economic trends in non-U.S. countries. Investment in non-U.S. countries also generally involves higher brokerage and custodian expenses than does investment in U.S. securities.

Other risks of investing in non-U.S. securities include changes in currency exchange rates (in the case of securities that are not denominated in U.S. dollars) and currency exchange control regulations or other non-U.S. or U.S. laws or restrictions, or devaluations of non-U.S. currencies. A decline in the value of a non-U.S. currency versus the U.S. Dollar would reduce the U.S. Dollar value of the client's portfolio securities denominated in such non-U.S. currency, all other things being equal. In addition, Night Owl Capital may incur costs in connection with conversion between various currencies. The foregoing risks may be greater in emerging industrialized and less developed countries.

#### Initial Public Offerings

Night Owl Capital may purchase securities of companies in initial public offerings or shortly thereafter. Special risks associated with these securities may include a limited number of shares available for trading, illiquidity, lack of investor knowledge of the issuer, and limited operating history. These factors may contribute to substantial price volatility for the shares of these companies. The limited number of shares available for trading in some initial public offerings may make it more difficult for Night Owl Capital to buy or sell significant amounts of shares without an unfavorable impact on prevailing market prices. In addition, some companies in initial public offerings are involved in relatively new industries or lines of business, which may not be widely understood by investors. Some of these companies may be undercapitalized or regarded as developmental stage companies, without revenues or operating income, or the near-term prospect of achieving them.

#### Fixed-Income Securities

Night Owl Capital may, from time to time, invest in fixed-income securities. The value of fixed-income securities will change in response to fluctuations in interest rates and applicable credit spreads, including general corporate credit spreads and industry and company-specific credit spreads. In addition, the value of certain fixed-income securities can fluctuate in response to perceptions of credit worthiness, political stability or soundness of economic policies. All other things being equal, when interest rates decline, the value of fixed-income securities generally can be expected to rise. Conversely, when interest rates rise, the value of fixed-income securities generally can be expected to decline. Night Owl Capital may invest in fixed-income securities of U.S. and non-U.S. issuers.

#### Options

Night Owl Capital typically does not buy or sell options for its separately managed accounts. Night Owl Capital may at times do so at the request of a client. The use of options involves a

high degree of embedded leverage, which can involve greater market risk, especially when not used to hedge an underlying security. Accordingly, special risks are associated with the use of options. In addition to directional risks of the underlying securities, options are subject to fluctuations in the volatility of the underlying security and fluctuations in prevailing interest rates to a lesser extent. For options used in hedging, there can be no guarantee of a correlation between price movements in the option and in the portfolio securities being hedged. A lack of correlation could result in a loss on both the hedged securities and the hedging vehicle so that the return might have been better had hedging not been attempted. In addition, a decision as to whether, when and how to use options involves the exercise of skill and judgment which are different from those needed to select portfolio securities, and even a well-conceived transaction may be unsuccessful to some degree because of market behavior, currency fluctuations or interest rate trends. If Night Owl Capital is incorrect in its forecasts regarding market values, currency fluctuations, interest rate trends, or other relevant factors, the client may be in a worse position than if Night Owl Capital had not engaged in options transactions. Although Night Owl Capital is experienced in the use of options as an investment technique, this experience does not completely mitigate the risk that the potential loss incurred by the client in writing options is unlimited.

There also can be no assurance that a liquid market will exist at a time when Night Owl Capital seeks to close out an option position. Lack of a liquid market for any reason may prevent Night Owl Capital from liquidating an unfavorable position.

#### Leverage and Margin Transactions

Night Owl Capital typically does not buy securities on margin for its separately managed accounts. Night Owl Capital may at times do so at the request of a client. A client may use margin borrowing so long as, immediately after incurring such debt, the aggregate debt in the client's account does not exceed 50% of the market value of the client's total assets at that time. The use of margin borrowing is a speculative technique that involves special risk considerations. Interest costs on borrowings may fluctuate with changing market rates of interest and may partially offset or exceed the return earned on borrowed funds. To the extent a client's account is leveraged, the value of its assets will tend to increase more when its portfolio securities increase in value, and to decrease more when its portfolio securities decrease in value, than if its assets were not leveraged. In addition, use of leverage by a client will increase the exposure of the client's investments to adverse economic factors such as rising interest rates, an economic downturn or deterioration in the value of such investments. As a result of an economic downturn or dislocations in the credit markets, as have occurred in recent years, a client may be unable to obtain the desired amount of leverage or may be required to liquidate investments if existing leverage facilities are withdrawn or reduced, either of which could have an adverse impact on the client's returns. While the margin borrowing limit is 50% of total assets, determined at the time of incurring the debt, that test is only applied at the time of a borrowing by the client. A client is not required to maintain on an ongoing basis aggregate debt at or below 50% of its total assets, so it is possible that, after the client incurs debt, the client's assets may deteriorate in value, in which case the client's aggregate debt may significantly exceed 50% of its total assets.

#### Private Investment Funds

Private investment funds (commonly known as hedge funds) generally involve various risk factors and liquidity constraints, a complete discussion of which is set forth in the fund's offering documents, which will be provided to each investor for review and consideration. Each prospective investor will be required to complete a subscription agreement, pursuant to which the

investor shall establish that they are qualified for investment in the limited partnership, and acknowledges and accepts the various risk factors that are associated with such an investment.

### **Cash Management**

Night Owl Capital does not set target percentages for cash in a client's account. The amount of cash in a client's account is a function of Night Owl Capital's ability to find suitable investments for the account. Typically, cash is held in a core money market fund. Night Owl Capital may, on occasion, use certificates of deposit, fixed income securities and other cash alternatives.

### **Item 9 – Disciplinary History**

Neither Night Owl Capital nor any of its supervised persons have any reportable disciplinary history.

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

Night Owl Capital serves as adviser to Night Owl Partners, LP, a private investment fund organized as a pooled investment vehicle. Night Owl Capital has implemented various policies and procedures to mitigate real or potential conflicts of interest. Please see the section entitled "Performance-Based Fees and Side-By-Side Management" of this disclosure brochure for additional information about any potential conflicts of interest and how such conflicts are handled by Night Owl Capital.

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

#### **Our Code of Ethics**

Night Owl Capital has adopted a Code of Ethics to prevent violations of federal securities laws. The Code of Ethics is predicated on the principle that Night Owl Capital and its employees owe a fiduciary duty to its clients. Accordingly, Night Owl Capital expects all employees to act with honesty, integrity and professionalism and to adhere to federal securities laws. Night Owl Capital and its employees are required to adhere to the Code of Ethics. At all times, Night Owl Capital and its employees must (i) place client interests ahead of the Company's; (ii) engage in personal investing that is in full compliance with the Company's Code of Ethics; and (iii) avoid taking advantage of their position. Clients and prospective clients may request a copy of Night Owl Capital's Code of Ethics by contacting Michele Montano at 203-302-3870.

#### **Prohibition on Use of Insider Information**

Night Owl Capital has also adopted policies and procedures to prevent the misuse of "insider" information. A copy of Night Owl Capital's Insider Trading policies and procedures is available to any client or prospective client upon request. For a copy of Night Owl Capital's Insider Trading policies and procedures, please contact Michele Montano at 203-302-3870.

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

*Night Owl Capital may purchase or sell securities or investment products for its client portfolios in which Night Owl Capital or its related personnel have a material financial interest.*

An affiliate of Night Owl Capital acts as general partner of Night Owl Partners, LP. As the general partner, the affiliate maintains a capital account in Night Owl Partners, LP and therefore, receives allocations of net profit (or losses) of the Partnership. The general partner, portfolio manager and employees of Night Owl Partners, LP have invested in the Partnership. In order to create a strong congruity of interest between the management of Night Owl Partners, LP and its investors, all investment professionals employed by Night Owl Capital are encouraged to invest in the Partnership.

*Night Owl Capital or individuals associated with Night Owl Capital may buy, sell, or hold in their personal accounts the same securities that Night Owl Capital recommends to its clients.*

To minimize conflicts of interest, and to maintain the fiduciary responsibility Night Owl Capital has for its clients, Night Owl Capital has established the following policy: in all cases, clients' orders take precedence over those of Night Owl Capital or its related persons. If Night Owl Capital engages in a buying or selling program with respect to a particular security, trades of Night Owl Capital and its related persons in the security may be executed together with those of clients in a series of transactions. In such cases, the trades of Night Owl Capital's related persons will only be executed if the price received improves the average price that the clients would have otherwise received.

Night Owl Capital's written compliance policies and procedures require that all trades made by principals, employees and/or supervised persons of Night Owl Capital require prior approval. Night Owl Capital will also maintain quarterly reports on all personal securities transactions, except transactions in investment company securities and/or other exempt transactions.

#### *Additional Information*

At times, Night Owl Capital or its related persons may purchase securities that it deems appropriate only for its or their own account. Based on the experience of Night Owl Capital or its related persons holding the securities and on further research and due diligence, Night Owl Capital may at a later time purchase such securities for client accounts at prices which might be higher or lower than those originally paid.

### **Item 12 - Brokerage Practices**

#### **Best Execution**

Best execution has been defined by the SEC as the "execution of securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances." The best execution responsibility applies to the circumstances of each particular transaction and an investment adviser must consider the full range and quality of a broker-dealer's services, including, among other things, execution capability, commission rates, the value of any research, financial responsibility and responsiveness.

When placing portfolio transactions for client accounts, Night Owl Capital's primary objective is to obtain the best price and best execution, taking into account the costs, promptness of execution and other qualitative considerations.



## **Broker Analysis**

Night Owl Capital evaluates a wide range of criteria in seeking the most favorable price and market for the execution of transactions. These include the broker-dealer's trading costs, efficiency of execution and error resolution, financial strength and stability, capability, positioning and distribution capabilities, information in regard to the availability of securities, trading patterns, statistical or factual information, opinion pertaining to trading and prior performance in serving Night Owl Capital.

Also in consideration is such broker-dealers' provision or payment of the costs of research and other investment management-related services (the provisional payment of such costs by brokers are referred to as payment made by "soft dollars", as further discussed in the "Research/Soft Dollars Benefits" section immediately below). Accordingly, if Night Owl Capital determines in good faith that the amount of trading costs charged by a broker-dealer is reasonable in relation to the value of the brokerage and research or investment management-related services provided by such broker, the client may pay trading costs to such broker in an amount greater than the amount another broker might charge.

Night Owl Capital's Chief Compliance Officer is responsible for continuously monitoring and evaluation the performance and execution capabilities of brokers that transact orders for our client accounts to ensure consistent quality executions. In addition, Night Owl Capital periodically reviews its transaction costs in light of current market circumstances and other relevant information.

## **Brokerage Classification**

Night Owl Capital classifies client accounts in two ways – prime and non-prime. Prime accounts have assets greater than \$125,000 and have a signed Prime Broker agreement in place with their custodian. Non-prime accounts are those that have less than \$125,000 in assets and are not authorized to trade with brokers other than their custodian.

### Non-Prime Brokerage Accounts

For its non-prime brokerage accounts, Night Owl Capital places trades with the Fidelity Institutional Wealth Services Group ("Fidelity") program sponsored by Fidelity Brokerage Services, Inc. For smaller, non-block trades, Night Owl Capital executes trades electronically through Fidelity's Wealth Central electronic trading platform. Most trades placed with Fidelity are placed with a price limit and are monitored to ensure that the executions are consistent with the current market conditions.

Please see the disclosures in the "Research/Soft Dollar Benefits" section below for additional information on benefits Night Owl Capital receives for directing client transactions to Fidelity.

### Prime Brokerage Accounts

For its prime brokerage accounts, Night Owl Capital executes transactions with those brokers who are able to both effect the best execution of a given order and supply research services used in Night Owl Capital's investment decision-making process. Night Owl Capital believes that these brokerage firms often are able to provide superior execution since they make a market and/or are familiar with the trading patterns of those securities.

Successfully managing these prime-brokerage relationships is instrumental in achieving overall lower execution costs. Night Owl Capital and its clients benefit from these strong relationships in different ways. The brokers used will continuously “show” Night Owl Capital the active level of interest in securities held by Night Owl Capital’s clients in hopes of facilitating a natural trade whereby the broker represents both the buyer and seller and, as a result, offer lower transaction costs.

Please see the disclosures in the “Research/Soft Dollar Benefits” section below for additional information on benefits Night Owl Capital receives for directing client transactions to these brokers.

## **Research/Soft Dollar Benefits**

### Custodial Broker

Night Owl Capital utilizes the services of the Fidelity Institutional Wealth Services Group (“Fidelity”) program sponsored by Fidelity Brokerage Services, Inc. While there is no direct linkage between the investment advice given to clients and Night Owl Capital's participation in the Fidelity program, economic benefits are received by Night Owl Capital, which would not be received if Night Owl Capital did not give investment advice to clients. These benefits include: a dedicated trading desk that services Fidelity participants exclusively, a dedicated service group and an account services manager dedicated to Night Owl Capital's accounts, access to a real-time order matching system, ability to 'block' client trades, electronic download of trades, balances and positions, access, for a fee, to an electronic interface with Fidelity's software, duplicate and batched client statements, confirmations and yearend summaries, the ability to have advisory fees directly debited from client accounts (in accordance with federal and state requirements), a quarterly newsletter and access to Fidelity mutual funds. Benefits of participating in the Fidelity program also include access to over 350 mutual fund families and 4,500 mutual funds not affiliated with Fidelity, of which over 2,000 have no transaction fee, ability to have loads waived for Night Owl Capital's clients who invest in certain Fidelity loaded funds, when certain conditions are met and maintained and the ability to have custody fees waived (when negotiated by the adviser and allowed under certain circumstances).

Fidelity may also make available to Night Owl Capital other products and services that benefit Night Owl Capital, but may not benefit its clients’ accounts. Some of these other products and services assist Night Owl Capital in managing and administering clients’ accounts. These include software and other technology that provide access to client account data (such as trade confirmations and account statements), facilitate trade execution (and allocation of aggregated trade orders for multiple client accounts), provide research, pricing information and other market data, facilitate payment of Night Owl Capital’s fees from its clients’ accounts, and assist with back-office support, record keeping and client reporting. Many of these services generally may be used to service all or a substantial number of Night Owl Capital’s accounts, including accounts not maintained at the specific broker-dealer that is offering this particular service. Fidelity also provides Night Owl Capital with other services intended to help Night Owl Capital manage and further develop its business enterprise. These services may include consulting, publications, conferences and presentations on practice management, information technology, business succession, regulatory compliance, and marketing. Fidelity may discount or waive fees it would otherwise charge for some of these services or pay all or a part of the fees of a third-party providing these services to Night Owl Capital.

The benefits received through participation in the Fidelity program do not depend upon the amount of transactions directed to, or amount of assets custodied by, Fidelity.

While as a fiduciary Night Owl Capital endeavors to act in its clients' best interest, Night Owl Capital's recommendation that clients maintain their assets in accounts with Fidelity may be based in part on the benefit to Night Owl Capital of the availability of some of the foregoing products and services and not solely on the nature cost or quality of custody and brokerage provided by these broker-dealers which may create a conflict of interest.

### Other Brokers

Night Owl Capital executes transaction through brokers who are able to both effect the best execution of a given order and supply research services used in the investment decision making process. The only commission premiums paid are for proprietary research and research conferences provided by a select number of brokers. In addition, Night Owl Capital may at times allocate commissions between an execution broker and a broker providing research in order to ensure both best execution and to compensate brokers for helpful research.

### **Brokerage Selection**

#### Night Owl Capital Discretion

Night Owl Capital is authorized by the client to select the broker or dealer to be used and to determine the commission rate paid. Please see the disclosures in "Best Execution" and "Broker Analysis" sections above for additional information on the criteria used by Night Owl Capital to select client brokerage.

### **Trade Aggregation/Allocation**

It is the objective of Night Owl Capital to provide a means of allocating trading and investment opportunities between advisory clients on a fair and equitable basis and in compliance with all applicable state and federal guidelines. With respect to clients' accounts with substantially similar investment objectives and policies, Night Owl Capital may often seek to purchase or sell a particular security in each account. Night Owl Capital will aggregate orders only when such aggregation is consistent with its duty to seek best execution and is consistent with the investment objective of each client. No client account will be unfairly favored over any other account.

Prices of securities that are purchased or sold in blocks are averaged and allocated proportionately among all accounts for which such securities are appropriate. Executed trades are allocated to accounts first on a cost efficiency basis, then on a portfolio investment level and lastly, by random allocation.

### **Trade Errors**

Clients are reimbursed for any losses occurring in their accounts as a result of trading errors. In such cases, Night Owl Capital will deposit the amount of any loss caused by the trading error directly into the client's account. Clients do not keep any gains in their account as the erroneous trade is rebooked to Night Owl Capital's error account and donated to charity.

### **Item 13 - Review Of Accounts**

#### Reviews

While the underlying securities in client accounts are continuously monitored, each account is reviewed at least monthly by Night Owl Capital's investment professionals to ensure that investment objectives are being met and to determine appropriate levels of cash balances, industry concentrations and diversification.

#### Reports

##### *Separately Managed Accounts*

Separately managed account clients receive a monthly statement of transactions and positions in their account directly from their custodian. These clients also receive trade confirmations each time a transaction takes place in their accounts (although some clients elect to receive quarterly confirmations). At the end of each quarter, clients receive detailed written evaluations of their portfolios from Night Owl Capital showing costs of securities and current market values. The current market value of the portfolio of the clients are as reflected in the custodian's statements as of the end of the quarter plus any accrued interest on fixed income securities. In addition, a performance report showing results year-to-date and since inception of the account is distributed quarterly to separately managed account clients. Clients are urged to compare the account statement provided by the broker-dealer/custodian with those provided by Night Owl Capital.

##### *Private Investment Funds*

Investors in private investment funds managed by Night Owl Capital will receive monthly reports showing performance and market values. Limited partners will also receive an annual report with audited financial statements including valuations of the limited partners' capital accounts. The general partner, an affiliate of Night Owl Capital, will be responsible for overseeing the preparation of the annual Schedule K-1 for the limited partners.

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

From time to time, Night Owl Capital may retain solicitors to refer clients to Night Owl Capital. If a client is introduced to Night Owl Capital by either an unaffiliated or an affiliated solicitor, Night Owl Capital may pay that solicitor a referral fee in accordance with the all requirements of the Investment Advisers Act, and any corresponding state securities law requirements. Any such referral fee shall be paid solely from Night Owl Capital's advisory fee, and shall not result in any additional charge to the client.

If the client is introduced to Night Owl Capital by an unaffiliated solicitor, the solicitor must, at the time of the solicitation:

1. Disclose the nature of their solicitor relationship;
2. Provide each prospective client with a copy of the Night Owl Capital written disclosure brochure;

3. Provide each prospective client a copy of the solicitor's written disclosure statement that discloses the terms of the solicitation arrangement between Night Owl Capital and the solicitor, including the compensation to be received by the solicitor.

Any affiliated solicitor of Night Owl Capital shall disclose the nature of their relationship to prospective clients at the time of the solicitation and will provide all prospective clients with a copy of this written disclosure statement.

#### **Item 15 - Custody**

Custody of separately managed account client assets will be maintained with the independent custodian selected by the client. Night Owl Capital will not have physical custody of any assets in the client's account except as permitted for payment of advisory fees. Clients will be solely responsible for paying all fees or charges of the custodian. Clients will authorize Night Owl Capital to give the custodian instructions for the purchase, sale, conversion, redemption, exchange or retention of any security, cash or cash equivalent or other investment for the client's account.

Clients will receive directly from the custodian at least quarterly a statement showing all transactions occurring in the client's account during the period covered by the account statement, and the funds, securities and other property in the client's account at the end of the period. *Clients are urged to compare the account statement provided by the broker-dealer/custodian with any statements provided by Night Owl Capital.*

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

##### Separately Managed Accounts

Night Owl Capital requires that it be provided with written discretionary authority (e.g., limited power of attorney contained in Night Owl Capital's investment management agreement) to make the following determinations without obtaining the consent of the client before the transactions are effected: (1) which securities are bought and sold for the account; (2) the total amount of securities to be bought and sold; (3) selecting the broker or dealer with whom orders for the purchase or sale of securities are placed for execution, unless specifically instructed to the contrary through the investment management agreement or investment policy statement; and (4) the prices and commission rates at which securities transactions are effected. Night Owl Capital's authority in making investment related decisions may be limited by account guidelines, investment objectives and trading restrictions, as agreed between Night Owl Capital and the client and set forth in writing in the investment management agreement or investment policy statement.

##### Private Investment Funds

As investment manager of Night Owl Partners, LP, Night Owl Capital is solely responsible for researching, selecting and monitoring investments and in making decisions on when and how much to invest with or withdraw from a particular investment. Limited partners in private investment funds organized as limited partnerships do not have any right to participate in management or in making investment decisions. In addition, Night Owl Capital has authority to select the broker or dealer with whom orders for the purchase or sale of securities for the funds are placed for execution. Night Owl Capital also has the authority to determine the prices and commission rates at which securities transactions for the funds are effected.

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

### **Proxy Voting**

#### Separately Managed Accounts

Night Owl Capital does not vote proxies on behalf of its separately managed account clients. Therefore, although Night Owl Capital may provide investment advisory services relative to client investment assets, it is the client that maintains exclusive responsibility for: (1) directing the manner in which proxies solicited by issuers of securities beneficially owned by the client shall be voted and (2) making all elections relative to any mergers, acquisitions, tender offers, bankruptcy proceeding or other type events pertaining to the client's investment assets. Night Owl Capital and/or the client shall correspondingly instruct each custodian of the assets to forward to the client copies of all proxies and shareholder communications relating to the client's investment assets. Night Owl Capital will, however, make tender offer elections for the client.

On rare occasions, if an issue is deemed critical, Night Owl Capital may contact clients and suggest a particular vote. Clients can contact John Kim, Managing Director, at 203-302-3870 if they have questions regarding a particular solicitation.

#### Private Investment Funds

The act of managing assets of clients may include the voting of proxies related to such managed assets. Where the power to vote in person or by proxy has been delegated, directly or indirectly, to the investment adviser, the investment adviser has the fiduciary responsibility for (a) voting in a manner that is in the best interests of the client and (b) properly dealing with potential conflicts of interest arising from proxy proposals being voted upon. Accordingly, Night Owl Capital has instituted proxy voting policies and procedures ("Proxy Voting Policies and Procedures") that are designed to (i) ensure that proxies are voting in an appropriate manner and (ii) complement Night Owl Capital's investment policies and procedures regarding its general responsibility to monitor the performance and/or corporate events of companies which are issuers of securities held in managed accounts.

Night Owl Capital's general policy is to vote proxy proposals, amendments, consents or resolutions relating to client securities, including interests in private investment funds, if any (collectively, "proxies"), in a manner that serves the best interests of the applicable fund as Night Owl Capital determines in its sole discretion, taking into account the following factors: (i) the impact on the value of the securities; (ii) the costs and benefits associated with the proposal; and (iii) the customary industry and business practices. The Proxy Voting Policies and Procedures also address how Night Owl Capital will vote proxies with regard to specific matters, such as the election of Board members, mergers and acquisitions, compensation, independent auditors and other matters. Investors may obtain a copy of the Night Owl Capital's Proxy Voting Policies and Procedures and the proxy voting record relating to Night Owl Partners, LP, by contacting Michele Montano at 203-302-3870.

### **Class Action Settlements**

Although Night Owl Capital has discretion over client accounts, it will not be responsible for handling client claims in class action lawsuits or similar settlements involving securities owned by the client. Clients will receive the paperwork for such claims directly from their account custodians. Each client should verify with their custodian or other account administrator whether

such claims are being made on the client's behalf by the custodian or if the client is expected to file such claims directly.

## **Item 18 - Financial Information**

### **Prepayment of Fees**

Because Night Owl Capital does not require or accept prepayment of more than \$1,200 in fees six months or more in advance, Night Owl Capital is not required to include a balance sheet with this disclosure brochure.

### **Financial Condition**

Night Owl Capital does not have any adverse financial conditions to disclose.

### **Bankruptcy**

Night Owl Capital has never been the subject of a bankruptcy petition.

## **Item 19 - Additional Information**

### **PRIVACY NOTICE**

Night Owl Capital views protecting its clients' private information as a top priority and has instituted policies and procedures to ensure that client information is private and secure. Night Owl Capital does not disclose any nonpublic personal information about its clients or former clients to any nonaffiliated third parties, except as permitted or required by law. In the course of servicing a client's account, Night Owl Capital may share some information with its service providers, such as transfer agents, custodians, broker-dealers, accountants, and lawyers, etc. Night Owl Capital restricts internal access to nonpublic personal information about the client to those persons who need access to that information in order to provide services to the client and to perform administrative functions for Night Owl Capital. As emphasized above, it has always been and will always be Night Owl Capital's policy never to sell information about current or former clients or their accounts to anyone. It is also Night Owl Capital's policy not to share information unless required to process a transaction, at the request of a client, or as required by law. For the full text of Night Owl Capital's Privacy Policy, please contact Michele Montano at 203-302-3870.

### **ANTI-MONEY LAUNDERING**

Night Owl Capital has adopted an anti-money laundering policy consistent with the requirements of the United States PATRIOT Act.

### **CLIENT COMPLAINTS**

Clients may contact Michele Montano at 203-302-3870 to submit a complaint. Written complaints should be sent to Night Owl Capital Management, LLC, 55 Old Field Point Road, Greenwich, CT 06830.