

# **D. E. Shaw & Co., L.P.**

## **Form ADV Part 2A: The Brochure**

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January 13, 2017

This brochure provides information about the qualifications and business practices of D. E. Shaw & Co., L.P. (“DESCO LP”), an investment adviser registered with the United States Securities and Exchange Commission (the “SEC”) under the U.S. Investment Advisers Act of 1940, as amended (the “Advisers Act”). Such registration does not imply a certain level of skill or training. If you have any questions about the contents of this brochure, please contact us at +1 (212) 478-0000. The information in this brochure has not been approved or verified by the SEC or by any state securities authority.

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

This brochure is for informational purposes only. It does not convey an offer of any type and is not intended to be, and should not be construed as, an offer to sell, or the solicitation of an offer to buy, any interest in any entity, investment, or investment vehicle.

### **Material Changes**

The only material changes to this brochure since its most recent update on March 30, 2016 are updated disclosures regarding potential conflicts of interest; these disclosures appear in Items 6, 10, and 12.

## **Table of Contents**

Item 4:	Advisory Business.....	3
Item 5:	Fees and Compensation .....	3
Item 6:	Performance-Based Fees and Side-by-Side Management.....	5
Item 7:	Types of Clients .....	6
Item 8:	Methods of Analysis, Investment Strategies, and Risk of Loss .....	6
Item 9:	Disciplinary Information.....	34
Item 10:	Other Financial Industry Activities and Affiliations.....	36
Item 11:	Code of Ethics, Participation or Interest in Clients' Transactions, and Personal Trading .....	46
Item 12:	Brokerage Practices .....	47
Item 13:	Review of Accounts.....	49
Item 14:	Client Referrals and Other Compensation.....	50
Item 15:	Custody .....	50
Item 16:	Investment Discretion.....	50
Item 17:	Voting Client Securities.....	51
Item 18:	Financial Information .....	51

#### **Item 4:      Advisory Business**

DESCO LP is a Delaware limited partnership and an investment adviser registered with and regulated by the SEC under the Advisers Act. DESCO LP serves as the managing member or manager of, and/or the investment adviser to, of certain entities in the D. E. Shaw group. As used in this Part 2A, the term “the Adviser” includes both DESCO LP and the relying advisers identified as such in Section 7.A of Schedule D to Part 1A of this Form ADV (each, a “Relying Adviser,” and collectively, the “Relying Advisers”), except where the context otherwise requires.

The Adviser provides investment advice to a number of affiliated collective investment schemes (or hedge funds) and other entities (collectively, the “Funds”). (As used herein, the term “clients” refers to the Funds.) The investor base of the Funds comprises institutional investors and other highly sophisticated, high-net-worth participants. These investors must meet certain minimum financial requirements (*e.g.*, an institution generally must own and invest on a discretionary basis at least \$25 million of certain investments), among other requirements, to be eligible to participate in the Funds, which are structured as private investment companies that are exempt from registration as investment companies under U.S. law by virtue of Section 3(c)(7) of the Investment Company Act of 1940, as amended (the “Investment Company Act”).

DESCO LP was formed in 1992 and has been a registered investment adviser since 1999. Since the D. E. Shaw group’s organization in 1988, DESCO LP and its predecessor firms have pursued attractive and sustainable risk-adjusted returns for clients and investors. The D. E. Shaw group invests globally using a broad array of strategies in both public and private markets. Widely recognized as a pioneer in quantitative investing, particularly in equities, futures, and options, the D. E. Shaw group also has formidable expertise in areas that involve fundamental analysis or portfolio manager discretion, such as credit, energy, and macro investing.

DESCO LP’s principal owner is Dr. David Elliot Shaw. Other entities and individuals hold minority stakes in DESCO LP.

The Adviser bases its advice to clients on the investment objectives and restrictions (if any) set forth in such clients’ applicable offering memoranda, organizational documents, investment management agreements, and/or subscription agreements, as the case may be (each, a “Governing Document,” and collectively, the “Governing Documents”).

The Adviser managed approximately \$27,300,600,000 in investment capital on a discretionary basis as of January 1, 2016.

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

The Adviser’s compensation for advisory services generally includes a performance-based fee, charge, or allocation (each, a “Performance Charge”) and an asset-based fee (a “Management Fee”), the terms of which are set forth in the applicable Governing Document. The Adviser enters into Performance Charge arrangements with clients that fall within the definition of a “qualified client” pursuant to Rule 205-3 under the Advisers Act or as permitted under Section 205(b) of the Advisers Act. Performance Charges

generally are paid in arrears annually or, where applicable, at the time of a withdrawal or distribution of capital. Management Fees generally are paid monthly or quarterly in advance based on net assets as of the beginning of the relevant month or quarter, respectively. The fee schedule for qualified clients of the Adviser includes a Management Fee of up to 3.5% annually and a Performance Charge that currently ranges from 15% to 35% of net profits; for certain Funds, the Performance Charge is assessed only on net profits above a given “hurdle” or “preferred” rate of return. A percentage of the Management Fee (if any) is deducted monthly or quarterly from the applicable Fund. Each Performance Charge is assessed annually (or on a *pro rata* basis upon a withdrawal or distribution from the applicable Fund) on net profits, if any, or distributable amounts and is generally subject to loss carryforward provisions. The Governing Document of the applicable Fund provides the definitive terms of such compensation. In general, if a Management Fee has been paid in full in advance for a period in which either the advisory contract with the relevant client has been terminated, or, with respect to a Fund, for the period in which an investor has withdrawn its investment in such Fund, the applicable portion of such Management Fee paid relating to the portion of the period after such termination or withdrawal will be returned or credited to the client or to the withdrawing or redeeming Fund investor, subject to the terms of the applicable Governing Document; however, the Governing Documents typically do not permit such intraperiod terminations or withdrawals.

For certain classes of interests in certain Funds, the Adviser may designate certain Investments, including without limitation those that the Adviser determines, in its sole discretion, are illiquid, lack a readily assessable market value, and/or should be held (often for an extended period of time) until the occurrence of a specified event or the resolution of a specified circumstance, as so-called “side pocket” Investments. (Note that the Adviser is no longer making new side pocket investments, although it may continue to make follow-on investments in existing side pocket investments.) Generally, each such side pocket Investment will be valued at historical cost, and Performance Charges will not be paid until such side pocket Investment pays a dividend, effects a distribution, makes an interest payment, is liquidated, is realized, or is otherwise redesignated by the Adviser in its sole discretion as a non-side pocket Investment. Certain Funds or classes of Fund interests (including those holding side pocket Investments) may have additional fee guidelines, which are set forth in the applicable Governing Document.

The Adviser negotiates fees and other terms in certain cases. The Adviser from time to time has entered into agreements with certain underlying investors in the Funds that provide for terms of investment that are more favorable than the terms set forth in the applicable Governing Document. Such terms may include, among other things, the waiver, reduction, or rebate of Management Fees, Fund expenses, and/or Performance Charges; the provision of additional information or reports; more favorable transfer and/or withdrawal rights; provisions regarding indemnification and/or the jurisdiction and choice of law for disputes regarding the investment; provisions regarding the investor’s and/or the Adviser’s confidentiality obligations; and “most-favored-nation” provisions covering one or more terms or rights. No such agreement necessarily entitles any other Fund investor to the same terms of investment as offered in such agreement.

Funds advised by the Adviser generally incur expenses in connection with custodial or brokerage services outlined in Item 12. In addition, each Fund bears its operating costs and expenses as set forth in the applicable Governing Document (including certain operating costs and expenses relating to services

provided by Arcesium, as outlined below). Furthermore, the Adviser is entitled under each such Governing Document to be reimbursed for some or all expenses that it or its related persons incur on behalf of the relevant client, including compensation and overhead costs attributable to certain personnel of the Adviser or its related persons who provide services to the relevant client.

Neither the Adviser nor its supervised persons receives compensation for the sale of securities or other investment products to clients or investors.

### **Services Provided by Arcesium LLC**

The Adviser has engaged Arcesium LLC (“Arcesium”) to provide certain middle- and back-office technology and services to the Adviser. Arcesium is a joint venture between a subsidiary of DESCO LP and a third-party investor that holds a minority stake in Arcesium.

Arcesium provides certain technology and services with respect to the Funds related to various middle- and back-office functions, including trade capture, asset servicing, margin and collateral monitoring, trade and position reconciliation, pricing, investor relations, and compliance. In providing such technology and services, Arcesium is subject to the overall supervision of the Adviser.

The Funds bear certain operating costs and expenses associated with services provided by Arcesium. For certain Funds, such operating costs and expenses reflect estimates of the time personnel of Arcesium devote to providing such services and the compensation and overhead costs attributable to such personnel. Any fees paid by a Fund to Arcesium do not reduce the Management Fee and/or any operating costs or expenses of such Fund.

Arcesium has no portfolio management, investment advisory, or fiduciary responsibilities with respect to any Fund. Arcesium does not manage, monitor, or oversee any trading decisions of any Fund, any Fund’s compliance with its investment objectives, or any other aspects of the portfolio management activity of any Fund.

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

When trading on behalf of multiple clients, the Adviser endeavors to allocate investment opportunities among such clients in a fair and equitable manner. The Adviser’s trade allocation among clients may vary based on, among other things, differences in investment objectives, capital constraints, and/or leverage preferences among clients, and any anticipated increase or decrease of any particular client’s assets under management. The Adviser does not alter its allocation policy with respect to a client, or allocate trades among multiple clients, without the approvals of the Adviser’s relevant senior management and compliance personnel.

As outlined in further detail in this Item 6 and in Items 10 and 12, the Adviser and/or its related persons may hold significant ownership interests in certain clients. Furthermore, the Adviser and/or its related persons may receive the benefit of more favorable terms (such as with respect to fees or the reimbursement of expenses) in connection with their management of certain clients than in connection with their management of other clients. For purposes of this brochure, (a) “Significant Management Capital Fund” or “SMC Fund” refers to any Fund in which the Adviser or its related persons are the ultimate beneficial holders of significant ownership interests, potentially including a substantial majority

or all of such ownership interests, and (b) “DESCO Favorable Fund” refers to any SMC Fund or to any Fund in which the Adviser and/or its related persons receive the benefit of more favorable terms (including higher Performance Charges or Management Fees or better expense reimbursement provisions) than those applicable to other Fund entities managed by the Adviser. In the future, the Adviser and its related persons’ ultimate beneficial ownership of an SMC Fund may increase (or decrease) and/or (y) the Adviser or its related persons may receive more favorable terms with respect to a DESCO Favorable Fund. Clients and prospective clients should note that SMC Funds and other DESCO Favorable Funds invest in asset classes in which other Funds also invest.

The Adviser and/or its related persons may (a) hold investments in DESCO Favorable Funds that are larger (whether in percentage or absolute dollar terms) than any investments they hold in other clients and/or (b) provide services to DESCO Favorable Funds that pay Management Fees, Performance Charges, or other amounts that are greater (whether in percentage or absolute dollar terms) than the corresponding amounts paid by other clients. As a result, the Adviser and/or its related persons have incentives to deploy more profitable investment strategies on behalf of, or to allocate more profitable investment opportunities to, such DESCO Favorable Funds instead of other clients, and have in fact done so on behalf of certain DESCO Favorable Funds. Any such deployment or allocation of such investment strategies or opportunities to a DESCO Favorable Fund would decrease the number and quality of investment strategies and opportunities available to such other clients. Further, the Adviser and its related persons have incentives to increase the capital each invests in SMC Funds, even if such increase would exacerbate the conflicts of interest described in this paragraph.

Please see Item 10 for additional information regarding certain conflicts of interest arising from the Adviser’s allocation of investment opportunities and Item 12 for discussion of aggregated client orders.

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

The Adviser’s only clients are the Funds, which are structured as private investment companies that are exempt from registration under Section 3(c)(7) of the Investment Company Act. A minimum dollar value of assets and other conditions are typically imposed on investors in the Funds.

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

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

The Adviser’s focus is the pursuit of potentially attractive investment opportunities and, in some cases, the active creation of new ones. The Adviser’s investment activities may be divided into three broad categories—quantitative strategies based on mathematical and computational models, qualitative strategies based on the analysis of human experts, and hybrid strategies that combine quantitative and qualitative approaches to investing. It should be noted that not all of the Adviser’s clients participate in all of the investment activities or hold all of the investments outlined in this Item 8.

Quantitative strategies are a central focus of the Adviser’s activities and are used in an attempt to identify underpriced and overpriced securities, to manage various forms of portfolio risk, and to reduce the cost of transacting in various financial instruments. Although a great deal of human effort is expended

conducting research in each of these areas, the Adviser's quantitative strategies are largely based on mathematical models embodied in computer software rather than on human judgments regarding the fundamental soundness of the underlying companies or other assets. By contrast, the Adviser's qualitative strategies are based on the analysis of particular companies, resources, industries, economies, and entrepreneurial opportunities by professionals with relevant asset- and market-specific knowledge. Investments include both publicly traded and privately held financial instruments, certain physical commodities and commercial rights, and in some cases, entire companies. Certain Funds managed by the Adviser may also provide individually tailored debt and equity financing to both healthy and financially distressed companies. As noted above, the Adviser also deploys hybrid strategies that involve a combination of quantitative and fundamental techniques.

The instruments in which Funds managed by the Adviser may invest include without limitation common and preferred stock; futures, options on futures, and forward contracts; bonds, notes, debentures, bills, trade claims, and other forms of indebtedness or liability issued or incurred by corporations, banks, sovereign nations, governmental agencies and instrumentalities, municipalities, or other persons; options, rights, and equity and other warrants; convertible bonds, convertible preferred securities, and other convertible instruments; exchangeable securities, synthetic and/or structured convertible or exchangeable products, participation instruments, and investment contracts; residential and/or commercial mortgage-backed securities, and other asset-backed securities; residential and/or commercial mortgage loans, other whole loans, and other consumer, commercial, and/or asset-based receivables; real estate, easements, other forms of real property-related instruments, interests in the foregoing, interests in public and/or private real estate investment trusts ("REITs"), real estate operating companies ("REOCs"), and other companies that engage in real estate-related businesses; currencies; energy-related products and instruments; weather-related instruments; emissions allowances and transmission rights; commodities; cash and cash equivalents; money market instruments; bank notes, term loans, debtor-in-possession loans, revolving loans, bank guarantees, letters of credit, and other forms of lender assets or obligations; swaps (including total return swaps, variance swaps, volatility swaps, asset swaps, credit default swaps, and interest rate swaps), swaptions, and equity and other derivative instruments; receivables; financial interests in settlements of legal disputes; insurance- and reinsurance-related products; instruments having a value or return that is explicitly tied to the occurrence (or non-occurrence) of economic, political, legal, natural, technological, bankruptcy, default, and/or other events; catastrophe bonds, industry loss warranties, and other catastrophe risk-linked instruments; royalty trusts; intellectual property; assets with specified tax attributes; limited partnership and other limited liability interests; general partnership and other unlimited liability interests; interests in investment companies; and/or any other security, instrument, interest, or property selected by the Adviser (collectively, "Investments").

Such Investments are expected to be issued by or relate to publicly held issuers, privately held issuers, and other issuers of various types both in the United States and outside the United States, and may be either controlling or non-controlling Investments, in each case without restriction. Additionally, the types of Investments held by Funds managed by the Adviser and the countries in which they are issued are likely to vary over time. Such Investments may be traded on exchanges, "over-the-counter," or on any other markets, or may not be traded on any exchange or other market. The Adviser's trading and other authority with respect to a particular client will be outlined in the applicable Governing Document.

## **Potential Risk Factors**

An investment in a Fund managed by the Adviser involves substantial risks that should be carefully considered by a prospective investor. Certain risk factors that may be applicable to an investment in a Fund managed by the Adviser are outlined below. Additional risk factors are outlined in the Governing Document for the applicable Fund. It should be noted, however, that there may be other risk factors applicable to such an investment that are not identified but that might still result in material losses to investors. Prospective investors should also consult their own legal, investment, tax, and other advisers, and the applicable Governing Document, as to whether such an investment is appropriate for them.

It should be noted that many of the risks outlined under one caption or heading are applicable to one or more other captions and headings.

## **No Assurance of Investment Return**

An investment in a Fund managed by the Adviser involves a high degree of risk, including the risk that the entire amount invested will be lost. An investment in a Fund managed by the Adviser is not intended as a complete investment program. Such an investment should be regarded as speculative in nature and appropriate only for a sophisticated investor that can afford a loss of all of its investment and that is able to invest for an indefinite period. It should not be assumed that an investment in a Fund managed by the Adviser will be profitable. In addition to the risk of loss on the Fund's Investments, an investment in a Fund is subject to the direct and indirect fees and expenses (including any applicable Management Fee and operating costs) outlined elsewhere in this brochure or in the applicable Governing Document, which will reduce returns and require that the Fund make a certain level of profit from its investing activities in order for an investment simply to break even.

Past performance of any of the Adviser's strategies or the investment vehicles sponsored, advised, and/or managed by the Adviser, or of any investment strategies operated within any such investment vehicle, is not indicative of the results that will be achieved either by any such strategy or vehicle in the future or by any other strategy or vehicle. Further, such past performance provides no assurance of the success of any strategy or vehicle in achieving its investment objectives, including, for example, because investment strategies and/or personnel of one Fund may differ significantly from those of another Fund.

## **General Factors**

The operating results, financial condition, activities, and prospects of an investment in a Fund managed by the Adviser could be materially adversely affected by changes or instability in market, economic, political, technological, regulatory, and social conditions and by numerous other factors outside the control of the Adviser.

In recent years, disruptions in the global financial markets, the scope and severity of which are without precedent in recent financial history, have had materially adverse, and in certain cases catastrophic, consequences for the values, liquidity, and stability of certain types of Investments, including the types of Investments the Adviser's clients may pursue. Similar or dissimilar disruptions may occur in the future, and the duration, severity, and ultimate effect of such disruptions are difficult to forecast. These disruptions may lead to additional regulations or laws, which could have a material adverse effect on the Adviser and/or its clients.



In addition, many of the Adviser's investment strategies and/or Investments are likely to be exposed to risks relating to weaknesses in various global economies and risks relating to the economic cycle. Numerous factors affecting the performance of the Adviser's investment strategies, such as market volatility, interest rates, commodity prices, equity prices, currency prices, credit spreads, availability and terms of financing, demand from market participants, and deflationary and inflationary pressures, may be affected by the economic cycle and long-term economic trends. Predictions about financial market conditions and economic factors are highly uncertain, and the presence, duration, and impact of any market or economic conditions could have a material adverse effect on the Adviser's investment strategies.

The Adviser may choose not to attempt to, or be unable to, hedge the risk exposures outlined in this brochure, and there can be no assurance that any hedging attempted by the Adviser would reduce applicable risks.

The risk models and risk management techniques expected to be deployed by the Adviser are based on the information and data available to it as well as on its assumptions, assessments, and estimates, all of which are subject to error. As a result, such models and techniques may not account for all relevant factors or may not account for any such factors correctly. More generally, there can be no assurance that such models and techniques would be effective.

### **Special Risks of Certain Markets**

Certain markets may pose special risks due to, among other factors, the limited availability of useful information, the reliance on self-interested persons for price and other information, a limited number of market participants, and more or less regulation. For example, price information might be available only from brokers or dealers and might not be verifiable. Further, less regulation in certain markets might enable market intermediaries or other investors to engage in "frontrunning" (whether directly or through their customers or agents) of the Adviser's trades, to misuse information about positions managed by the Adviser to reduce the value or liquidity of those positions, and to take other actions that materially adversely affect the Adviser's investment strategies. The limited availability of price information or actions of market intermediaries or investors could exacerbate other risk factors outlined in this brochure, including short squeezes, and could have a material adverse effect on the Adviser's investment strategies. In addition, brokers, dealers, or other market participants may withdraw or substantially reduce the scope of their activity with regard to certain markets or Investments without notice, resulting in disruptions to strategies, pricing, and/or the ability to liquidate or close out positions. Any of the foregoing could have a material adverse effect on the Adviser's investment strategies.

### **International Investments**

The Adviser is expected to cause one or more of its clients to purchase, sell, hold, trade, originate, structure, restructure, and otherwise acquire or dispose of Investments relating to markets and/or issuers both in the United States and outside the United States, including in certain developing or emerging markets. International investing and trading involve special risks not typically associated with trading in Investments relating to markets and/or issuers solely in the United States. Depending on the particular countries and Investments involved and on the nature of the particular transactions executed outside of the United States, these special risks may include changes in exchange rates and exchange control

regulations; downgrades in sovereign credit ratings; devaluations or non-convertibility of non-U.S. currencies; failures or disruptions in central banks, banking systems, markets, or financial exchanges; changes in monetary policies, interest rates, or interest-rate policies; political, social, and economic instability; adverse diplomatic developments; investment and repatriation restrictions; the nationalization and/or expropriation of assets; government intervention in the private sector; default by public and private issuers on their financial obligations (and limited recourse in connection with such defaults); the imposition of non-U.S. taxes; discrimination against foreign investors; and less liquid markets, less information, higher transaction costs (including costs associated with alternative financing, structuring (including the use of tax blockers), and exit strategies), greater difficulty in enforcing contractual obligations, fewer or different rights for creditors generally, more uncertain procedures (if any) for bankruptcy or other reorganization or liquidation proceedings (“Reorganization Proceedings”), less information regarding legal and regulatory risks, less uniform accounting and auditing standards, greater price volatility, less reliable clearance and settlement procedures, more onerous regulatory requirements for private investment funds, and/or less government supervision of exchanges, brokers, market intermediaries, issuers, and other markets and market participants than is generally the case in the United States.

Further, individual non-U.S. economies may differ favorably or unfavorably from the U.S. economy in various respects, such as pace of economic growth, rate of inflation, amount of capital reinvestment, degree of resource self-sufficiency, and balance of payments position. For example, inflation and rapid fluctuations in inflation rates have had and may continue to have very negative effects on the economies and securities markets (both public and private) of certain countries in which the Adviser may invest, and may therefore have a material adverse effect on the Adviser’s investment strategies.

The Adviser’s clients may trade, directly or indirectly, Investments on exchanges, or use clearinghouses or clearing firms, located outside the United States. Some non-U.S. exchanges, in contrast to domestic exchanges, are “principals’ markets” in which performance is solely the responsibility of the individual member with whom the trader has entered into a contract and not that of an exchange or its clearinghouse. Clients thus may be subject to the risk of the inability of, or refusal by, a counterparty to perform with respect to any such contract. Moreover, as there may be less government supervision and regulation of non-U.S. exchanges, clearinghouses, and clearing firms than of those in the United States, clients also may be subject to greater risk of failures of the exchanges on which its positions trade and/or failures of such exchanges’ clearinghouses or clearing firms than it would be in the United States.

The foregoing risks are likely to be more pronounced in connection with Investments in countries with developing or emerging markets.

A client may be treated as a U.S. person for purposes of U.S. Commodities Futures Trading Commission (“CFTC”) regulations, which may limit such client’s ability to participate in certain non-U.S. futures. Alternatively, if a client is treated as a non-U.S. person under CFTC regulations, such client may be permitted to invest in non-U.S. futures, which are not subject to CFTC regulation or review. Any such client’s status as a U.S. person or non-U.S. person for these purposes will depend on, among other factors, the level of investment in such client by U.S. investors and, accordingly, such status may change from time to time.

## **Availability of Investment Opportunities**

There can be no assurance that the Adviser will be able to identify and/or successfully take advantage of suitable investment opportunities. For example, it is expected that the effectiveness of certain quantitative models developed in connection with the systematic trading strategies deployed by the Adviser will be particularly sensitive to changes in applicable policies, regulations, or laws; changes in the number, nature, or behavior of other market participants; and/or changes in economic or market conditions generally. The effectiveness of such models may therefore diminish, disappear, or become negative, any of which could occur quickly or over a more prolonged period. As a result, the performance of the applicable Fund will depend on the ability of the Adviser to develop suitable models and to respond to such changes. In addition, the Adviser decides which investment opportunities to pursue based on the information and data available to it and on its assumptions, assessments, and estimates, all of which are subject to error. Even if the Adviser takes advantage of an investment opportunity, there is a risk that such investment opportunity will result in losses to the Adviser's clients. Further, the Adviser may elect to stop deploying any particular investment strategy on behalf of a particular Fund at any time, regardless of whether such strategy has been successful or whether other Funds continue (or begin) to deploy such strategy. If the Adviser is not able to identify and/or take advantage of suitable investment opportunities, it may alter its investment strategy and/or risk tolerances in order to deploy capital, which may have a material adverse effect on the Adviser's investment strategies.

Even if investment opportunities are identified, the Adviser may cause one or more of its clients to hold significant cash positions for extended periods of time, which may materially reduce the returns of such client(s). Alternatively, the Adviser may cause one or more of its clients to hold little or no cash for extended periods of time, which may materially increase the risk of loss associated with such client's activities.

## **Concentration; Limited Diversification; Correlation**

The portfolios of the Adviser's clients may be concentrated in particular countries, industries, exchanges, counterparties, strategies, types of Investments, issuers, issues, companies, or other shared characteristics. Any such concentration could magnify the risks associated with the Investments held in such portfolios, including the risk of significant losses. Portfolios managed by the Adviser may not have any diversification requirements. In general, less diversification will tend to expose the applicable client to greater volatility and/or risk than would be the case with a more broadly diversified portfolio. Even if a particular client's portfolio were diversified, however, there can be no assurance that such diversification would reduce volatility and/or risk.

In addition, certain Investments held in a client's portfolio may represent, alone or together with Investments held in other clients' portfolios, a significant percentage of the markets in which such Investments are traded, and there are no restrictions (other than limits imposed by applicable law or regulation) on the percentage of any market that such Investments may represent. Occupying a significant position in any given market may result in such Investments being less liquid in such market than would be the case with a smaller position, may subject a portfolio to additional regulatory scrutiny or restrictions, and/or may have other adverse effects.

There can be no assurance that the Adviser's portfolios will achieve returns that are not closely correlated with various market indices or the returns of other investment vehicles. There can be no assurance that the Adviser will value less-correlated returns more highly than any other factor (or at all) in selecting the Investments and strategies. Further, it is anticipated that certain Investments made and strategies deployed by the Adviser will experience returns that individually or in the aggregate are correlated (possibly highly) with various market indices or other strategies, including various equity, debt, or other markets around the world. In addition, it is possible that certain strategies deployed by the Adviser on behalf of a client may be closely correlated with one another from time to time.

Moreover, certain of the strategies deployed by the Adviser may maintain (possibly extensive) unhedged exposure, whether intentional or unintentional, to various market movements, style factors, and other sources of risk, whether known or unknown, while other strategies deployed on behalf of a client may have such unhedged exposures from time to time. Such sources of risk may include changes in current or future levels and/or volatility of interest rates, currency prices, commodity prices, sovereign credit spreads, corporate credit spreads, and equity and other markets, as well as correlations between any such risks. There can be no assurance that an investment in a portfolio managed by the Adviser would improve the risk/return profile of any client's or investor's overall portfolio or otherwise improve the performance of such portfolio, and such an investment may in fact result in material losses.

### **Volatility of Investment Returns**

The performance of strategies the Adviser deploys on behalf of its clients may be highly volatile (both in absolute terms and relative to realized returns), potentially resulting in increased risks, including the risk of substantial losses. Such strategies may, by design or otherwise, have high volatility, negative skewness (or "left tail" risk), negative kurtosis (or "flat" distribution risk), high correlation with certain macroeconomic risk factors, high position concentrations, and/or other significant risks, whether in absolute terms, relative to expected and/or realized returns, or relative to certain strategies that are deployed by the Adviser on behalf of other clients. As a result, the investment returns of a particular client may vary significantly over time, and the risk of substantial losses to such client may be greater than it is for certain other clients of the Adviser. A prospective client or underlying investor should invest with the Adviser only if it has determined that such variance of returns is consistent with its investment objectives and risk tolerances.

The risks outlined in this section may be intentional and/or may result, in part, from the election by the Adviser not to take risk-reducing actions that it might deploy elsewhere, including where it deploys similar strategies on behalf of other clients.

### **Low Creditworthiness Investments**

A (possibly substantial) portion of the Investments held in connection with the Adviser's investment strategies may, whether at the time of investment or at a later time, be unrated; rated below "investment grade" by recognized rating agencies; and/or defaulted. Unrated, sub-investment-grade, and defaulted Investments generally involve greater risk of loss in either a short or a long position than do investment-grade Investments. For example, the market values and yields of unrated, sub-investment-grade, and defaulted Investments generally react more dramatically to changes in general economic conditions, in the levels of interest rates, and in the financial condition and prospects of their issuers than do those of

more highly rated Investments. During periods of economic downturn (and potentially during other periods), issuers of unrated, sub-investment-grade, and defaulted Investments may experience, to a greater degree than issuers of more highly rated Investments, certain forms of financial stress that could materially adversely affect such Investments. Such issuers may be in early stages of development; may not have proven operating histories; may be operating at a loss or have significant variations in operating results; may be engaged in rapidly changing businesses with products subject to a substantial risk of obsolescence; may require substantial additional capital to support their operations, to finance expansion, or to maintain their competitive position; or may otherwise have a weak financial condition. Additionally, such issuers may be highly leveraged, which may present greater risks to these companies.

Adverse publicity and investor perceptions, whether based on fundamental analysis, market rumors, distress of related issuers, or other sources, may materially adversely affect such low creditworthiness Investments. Adverse effects on long positions in these Investments include the increased probability of default, the decreased value of any recovery in connection with a reorganization proceeding, decreased secondary market prices (if any) for these Investments, and general decreases in the liquidity of these Investments. The secondary market for these Investments is concentrated among relatively few market-makers or investors and may be expected to be less liquid than the secondary market for Investments that have higher ratings or are issued by non-distressed issuers. In addition, the lower liquidity of unrated, sub-investment-grade, and defaulted Investments, as well as other factors outlined above, could exacerbate the risks of short positions in these Investments.

Certain forms of low creditworthiness Investments may be issued pursuant to note indentures, promissory notes, or other indicia of indebtedness that contain fewer debt covenants, rights, or remedies compared to those afforded to lenders under a credit agreement. As a result, such Investments may be more sensitive to certain risk factors as compared to similar debt instruments with greater debt covenants, rights, or remedies. Moreover, the lack of certain financial covenants with respect to such Investments may result in a higher risk of loss and may hinder the ability of the Adviser to restructure a problematic loan in order to mitigate its exposure to loss.

### **Credit Ratings**

Certain of the bonds, loans, or other forms of indebtedness in which a Fund may invest may receive ratings from Moody's, Standard & Poor's, Fitch, or another credit rating agency. No assurance can be given that ratings assigned by a credit rating agency will not be withdrawn or revised downward if, in the view of such credit rating agency, circumstances so warrant. Any such withdrawal or downward revision with respect to an Investment could have a material adverse effect on such Investment. Such ratings reflect only the views of those credit rating agencies, which views may prove inaccurate, and the Adviser is not obligated to obtain such ratings or to provide any such ratings to its clients or to underlying investors.

### **Currencies**

Client accounts generally will be denominated in U.S. dollars. Therefore, Investments in such accounts generally will be subject to fluctuations in the value of a client's own domestic currency relative to the U.S. dollar.

With respect to certain of its clients' portfolios, the Adviser expects to recommend Investments that are denominated in currencies other than U.S. dollars, and there generally would be no limit on the portion of Investments that may comprise such Investments. In addition, the Adviser may cause such portfolios to make investments in non-U.S. currencies themselves. As a result, a client may be exposed to currency risks, including the risk of fluctuations in the value of the applicable currency relative to the U.S. dollar. The occurrence of any such currency risk could have a material adverse effect on such client. The Adviser may or may not seek to hedge such exposures, and there can be no assurance that any such hedging would be feasible or, if undertaken, would reduce applicable risks. A client may also incur costs in connection with hedging against currency exposures and conversions between various currencies.

### **Derivative Instruments**

The Adviser's clients may make investments in all types of derivative instruments, subject only to any limitations imposed by applicable law or regulation and/or by counterparties and clearing brokers. Derivative instruments are financial instruments that derive their performance, at least in part, from the performance of an underlying asset, index, interest rate, or other reference instrument. Examples of derivative instruments include swaps, futures, forwards, options, warrants, options on futures, and swaptions.

Investments and trading in derivative instruments are generally highly speculative and involve various risks that are different in certain respects from, and are possibly greater than, the risks associated with investing directly in the applicable underlying assets or reference instruments. Examples of various risks associated with derivative instruments include market risk, complexity, a high degree of leverage, illiquidity, the absence of reliable price quotes and/or a reliable trading market, unstable correlation between a derivative instrument and the underlying asset or reference instrument, volatility, tax risk, government intervention to influence prices, legal or regulatory uncertainty, insider trading by other market participants, and non-performance of counterparties (including direct or central counterparties).

A decrease in the value of the derivative instruments held by a client of the Adviser could result in losses exceeding the capital allocated to them. Further, because trading such derivative instruments often requires amounts of capital that are small relative to the instruments' notional value, such trading may result in leveraging effects for such client's overall portfolio. Although such leveraging effects may have the effect of increasing returns experienced by such client in the event of favorable investment results, returns experienced by such client will be reduced by the cost of borrowing, and investment losses and other losses will be exacerbated by such leveraging effects (possibly causing substantial losses). Such leveraging effects may increase the volatility of the investment performance of Investments and, as a result, the returns experienced by such client. The Adviser may employ leveraging effects up to the maximum amount permitted by applicable law and regulation and by counterparties, and may effect derivatives transactions resulting in leveraging effects through off-balance-sheet transactions or methods.

In addition, agreements that govern the Adviser's investments in derivative instruments typically impose obligations on the Adviser or the applicable client. Under such agreements, a failure to observe such obligations (e.g., a failure to meet a required margin call) may result in the declaration of an event of default, which could permit the counterparty to exercise a range of remedies, possibly including the ability to unilaterally terminate Investments governed by such agreements and to require the Adviser's client to pay

such counterparty the replacement cost of the terminated Investments based on prices determined by such counterparty, which may be materially different than market prices. Such agreements also typically include payment or valuation provisions that require determinations by a calculation agent or a valuation agent (typically the dealer). If the Adviser is unable to negotiate favorable terms for such provisions or rights to dispute such determinations, the counterparty may have rights to make determinations that materially adversely affect the applicable Investments.

Trading derivative instruments might deprive a client of certain tax benefits obtained from trading the underlying assets or reference instruments and/or, with respect to over-the-counter derivative instruments, from trading otherwise similar exchange-traded instruments.

Trading in options or warrants involves a risk of loss related to the premium for the option or warrant as well as a risk of loss related to the value of the underlying security or instrument, which loss in either case could be substantial. The writing of an uncovered option by a client may result in an unlimited loss of a client's capital within a relatively short period of time.

Trading in futures contracts and options on such contracts may be subject to limitations imposed by regulatory authorities and relevant exchanges that may prevent a client from liquidating positions and could subject such client to substantial losses. Many derivative instruments, including forward contracts and options on forward contracts, are not traded on exchanges and are generally not regulated.

The regulation of derivative instruments is evolving, and changes in such regulation may materially adversely affect Investments in client portfolios. For example, several U.S. and non-U.S. regulatory authorities have enacted or are considering rules for oversight and/or regulation of the previously largely unregulated market in over-the-counter derivatives.

## **Debt Investments**

Without limiting the scope of its possible activities, the Adviser may cause clients to hold, structure, restructure, and otherwise acquire or dispose of bonds, loans, and other forms of indebtedness.

The discussion in this section is based in part upon principles of U.S. federal and state laws. However, it is possible that a significant portion of a particular client's portfolio will be invested in non-U.S. jurisdictions, and there may be no limit on the portion of such portfolio that can be invested in such Investments. With respect to Investments relating to non-U.S. borrowers, there can be no assurance that the laws of certain non-U.S. jurisdictions (and/or the consequences of such laws) would not result in additional risks.

### **General Risks; Default**

In general, any Investments by a client of the Adviser in bonds, loans, or other forms of indebtedness will entail various market risks (*i.e.*, the risk that certain market factors, including interest rates, credit spreads, and supply and demand imbalances caused by the activities of other market participants will cause the value of the applicable Investment to decline) and issuer-specific risks (*e.g.*, the risk of non-payment of interest and principal; the risk that changes in an issuer's credit quality causes the value of the applicable Investment to decline). Further, the Adviser may cause a client to invest in debt instruments that are currently in default or that may later experience events of default. Any default in payment under any debt instrument owned by a client of the Adviser may result in material losses to such client. The

Adviser's clients may also invest in pools of loans, which may be subject to additional risks, such as high correlation of the performance of the loans in any such pool.

### **Debt Market Conditions**

In recent years, disruptions in debt markets have affected the price of, as well as participants' ability to make, certain types of Investments, and there can be no assurance that these disruptions will not reoccur in the future. Any such disruptions may negatively affect a wide range of issuers and may increase the likelihood that such issuers will be unable to make principal and interest payments on, or refinance, outstanding debt when due. Moreover, the risk that such disruptions will affect an issuer's ability to pay its debts and obligations when due is enhanced if such issuer in turn provides credit to third parties or otherwise participates in the credit markets. In the event of a default by an issuer, the Adviser's clients could lose both capital invested in, and anticipated profits from, any affected Investment. The reoccurrence of the events described in this paragraph, or other similar or dissimilar events, could have an adverse impact on the availability of credit to businesses generally and may lead to an overall weakening of the U.S. and other economies around the world. In addition, any disruptions of this kind may affect a client's ability to procure its own financing arrangements and/or the terms of any such arrangements.

### **Secured Loans; Unsecured or Subordinated Loans**

Clients of the Adviser may invest in loans secured by property of the borrower. Investments in such loans are subject to the risk that some or all of the underlying collateral will decrease in value to an extent that the value of such collateral is insufficient to satisfy the borrowers' payment obligations under such loans in the event of a default. Measures taken by the Adviser to protect clients' interests in loans in which they may invest, including the validity or enforceability of such loans and the creation and maintenance of the anticipated priority and perfection of applicable security interests, may prove to be inadequate. There can be no assurance that any collateral would be sufficient to cover the obligations being collateralized or the amount of a client's investment. Any collateral may decline in value; may be subject to competing claims of creditors; may be difficult to recover or sell due to legal, regulatory, or other reasons; or otherwise may be inadequate to allow a client to recoup its investment.

The Adviser may cause clients to invest in loans that are secured with a junior priority interest or lien on collateral that is subordinated to senior secured obligations. Such loans are subject to a risk that the cash flow of the related borrower and the collateral securing such a loan may be insufficient to make scheduled payments after giving effect to any obligations in respect of the senior secured loans of the borrower. As a result, in certain situations little or no recovery may be available following a default with respect to such a loan. Such loans are also expected to be less liquid than senior secured loans. Such loans are intended to be senior in right of payment and priority to any unsecured obligations, but the priority of such loans could be challenged, whether in bankruptcy court or otherwise. Any successful challenge could have a material adverse effect on the value of the applicable Investment.

Finally, the Adviser may cause a client to invest in various types of unsecured indebtedness (such as senior unsecured, subordinated, or general indebtedness) that would be junior in priority to the claims of secured creditors. The claims of secured or senior creditors may exhaust some or all of the assets of a borrower before unsecured, subordinated, or general creditors may participate in such assets, thus materially adversely affecting the value of the applicable Investment.



### **Lender Liability; Equitable Subordination; Fraudulent Conveyance**

Investments structured as loans or other forms of indebtedness may subject clients to claims of lender liability and/or may be subject to claims of equitable subordination or recharacterization. The risk of such claims may be exacerbated if a client holds a significant equity position and/or certain management positions (including representation on the board of directors) with respect to the applicable borrower. It is also possible that such claims could arise without the direct involvement of a client or the Adviser with the applicable borrower. Any successful claims of lender liability against a client or any equitable subordination or recharacterization of any Investment (which may result in the claims of a client being subordinated to the claims of certain or all other creditors) could have a material adverse effect on such Investment held by a client (possibly resulting in losses that exceed the value of such Investment) and thus on the client itself.

Investments structured as loans or other forms of indebtedness may also be subject to claims of fraudulent conveyance if the borrower was insolvent or rendered insolvent. Any successful claims of fraudulent conveyance or preferential payment with respect to an Investment could have a material adverse effect on such Investment and, possibly, on a client, and the client and/or one or more of its underlying investors may be required to return related payments and could experience losses that exceed the value of such Investments.

### **Certain Additional Risks**

Clients of the Adviser may engage one or more loan or mortgage servicers to assist with the collection of payments from borrowers in respect of such clients' Investments in loans, mortgages, and other forms of indebtedness. The fees and costs associated with such assistance generally would be borne by the applicable client(s). A decision not to utilize such a servicer, the termination of the engagement of such a servicer, the inability to replace such a servicer, and/or the poor performance of such a servicer may result in lower returns on the applicable clients' Investments and have a material adverse effect on the clients.

Certain loans in which the Adviser may cause a client to invest may be subject to additional obligations, including intercreditor agreements (pursuant to which certain creditors agree to restrictions on their rights) or future extensions of credit to the borrower. Such obligations may materially adversely affect the value of such loans, such as by limiting the ability of the applicable client to exercise its rights under a loan agreement or by increasing such client's exposure to the borrower.

### **Asset-Backed Securities**

The Adviser may cause clients to invest directly or indirectly in asset-backed securities, which are structured securities collateralized or backed by another asset or assets, such as residential or commercial mortgages, home equity loans, auto loans, student loans, installment sale contracts, credit card receivables, business loans, investment-grade or high yield debt, or a mix of such assets. Asset-backed securities may include instruments such as commercial mortgage-backed securities, residential mortgage-backed securities, collateralized mortgage obligations, collateralized bond obligations, collateralized debt obligations, and collateralized loan obligations, and may include synthetic structures that are backed by derivative instruments instead of by the relevant loans, bonds, or other assets themselves. Other types of

asset-backed securities, including interest-only, inverse interest-only, and principal-only securities, may participate in only certain types of income streams generated by the underlying assets.

Asset-backed securities are often extremely complex, and their values and returns may be subject to significant fluctuations as a result of relatively small changes in interest rates; the rates of prepayments, defaults, or late payments with respect to the relevant underlying assets; or other factors. The value of an asset-backed security is highly dependent upon the performance of its underlying assets and upon the expected quality of the underlying assets.

Substantial leverage may be inherent in the structure of some asset-backed securities. Consequently, asset-backed securities may present a greater degree of risk than other types of fixed income securities and may be more volatile, less liquid, and more difficult to price accurately than less complex securities. The Adviser may recommend hedging transactions in certain circumstances to protect against interest rate movements, prepayment risk, defaults, or other factors, but there can be no assurance that such hedging transactions, if any are undertaken, would fully protect a client against such risks.

Asset-backed securities are typically separated into tranches representing different degrees of credit quality, with lower-rated tranches being subordinate to senior tranches. It is expected that the returns on the junior tranches of such securities would be especially sensitive to the rate of defaults in the collateral pool and would be subject to a substantially greater risk of non-payment than would senior tranches of such securities. There are no restrictions on the tranches in which clients of the Adviser may invest.

The Adviser may cause clients to, directly or indirectly, issue mortgage-backed and other asset-backed securities collateralized by real property and/or other assets. Any such asset-backed securities generally would be for resale in the secondary market and may include collateralized mortgage obligations, real estate mortgage investment conduits, and collateralized debt obligations. In connection with any such issuance, it is possible that a client of the Adviser would not be able to sell all or a portion of the subordinated tranches, whether debt or equity. Such tranches would generally be the first to bear any losses with respect to the underlying collateral.

Because mortgage-backed securities comprise pools of underlying loans, such securities are subject to risks similar to those applicable to investments in particular mortgage loans. In addition, certain types of mortgage-backed securities contain highly complex interest-rate and cash-flow provisions and may be highly volatile with respect to yield, total return to maturity, and market value. For example, a mortgage-backed securities position may experience losses due to defaults in one or more underlying mortgage loans, but it may be difficult to assess the extent of such losses because the resolution of such defaults may occur only after extended settlement negotiations, or after the foreclosure and subsequent liquidation of the underlying properties, which could take a significant period of time.

Asset backed securities backed by other types of loans may be subject to similar risks. Even though assets typically support the underlying loans, full recovery of a loan in the event of default may not be possible due to litigation costs or delays, legal uncertainties, limited marketability or reduced valuations of the asset, and other similar or dissimilar factors. Accordingly, any defaults may materially adversely affect an Investment in asset-backed securities. In addition, the quality of certain asset-backed securities in which clients of the Adviser may invest is subject to the accuracy and completeness of representations made by the borrowers under the underlying loans. Accordingly, clients of the Adviser that invest in asset-backed

securities are subject to the risk that originators of certain such securities fail to adequately verify such representations, whether because of defects in the verification systems used by such originators or otherwise.

### **Sovereign Debt**

Clients of the Adviser may make Investments in sovereign debt instruments. Certain sovereign issuers have in the past experienced substantial difficulties in servicing their external debt obligations, which has led to defaults on certain obligations and the restructuring of certain indebtedness. Countries in which clients of the Adviser may invest may experience high rates of inflation, high interest rates, exchange rate fluctuations and currency devaluation, large amounts of external debt, balance of payments and trade difficulties, political and/or social uncertainty and instability, and/or poor economic performance or conditions. Any of these factors, as well as other factors, could materially increase the risk of a total or partial default by such sovereign issuers and/or the risk of the restructuring of all or certain indebtedness of such sovereign issuers, either of which may result in substantial losses for the Adviser's clients.

### **Distressed Debt and Other Investments**

The Adviser may cause clients to make investments in instruments issued by or otherwise related to companies that at the time of the applicable investment are experiencing, or subsequent to the applicable investment do experience, various forms of financial, business, operational, legal, and/or other distress or impairment, including companies involved in bankruptcy or other reorganization or liquidation proceedings (collectively, "Reorganization Proceedings"), as well as those emerging from Reorganization Proceedings and those seeking financial restructurings or reorganizations outside such proceedings. These Investments involve a high degree of risk that the total value of the applicable Investment may be lost.

The Adviser also may cause clients to purchase from banks, other financial institutions, or other investors bank loans (whether through assignment or participation transactions) and other forms of direct or indirect indebtedness (including revolving loans and letters of credit) of distressed companies. Investments in loan participations would expose a client to risks related to the creditworthiness of the banks or other financial institutions issuing such participations. As a holder of participation interests or as a member of a loan syndicate, such client may not be able to assert any rights against the borrowers of the underlying indebtedness and may need to rely on the financial institutions issuing the participations or the lead or agent bank to assert such rights. These financial institutions and banks may have reasons not to assert their rights, whether due to a limited financial interest in the outcome, other relationships with the borrowers, the threat of potential counterclaims, or other reasons.

The Adviser also may cause clients to purchase bankruptcy claims (including trade claims), which are amounts owed to creditors of a distressed company. Investments in bankruptcy claims are difficult to value. Moreover, bankruptcy claims generally are illiquid and non-interest-bearing, and there can be no assurance that a company will be able to satisfy its obligations under a claim.

Sophisticated financial and legal analysis is required to invest successfully in distressed companies, and there can be no assurance that the Adviser will adequately perform such analysis. Among other things, the Adviser may not correctly determine the value of the collateral (if any) supporting the Investments

held by a client or the prospects for a successful reorganization or similar action. Such Investments may be subject to additional risks, such as significant volatility in the value of the Investment; the involuntary exchange of such Investments for cash, financial instruments, or other property (including illiquid Investments) having substantially less value than the original Investment; and/or delayed or extended payment for such Investments.

In addition, Reorganization Proceedings, as well as other financial restructurings or reorganizations, are subject to a number of risks. For example, such proceedings may be of uncertain duration; may be subject to unanticipated and possibly lengthy delays; may involve substantial legal, professional, and administrative costs to the reorganizing company and its investors; may involve other factors that are beyond the control of the reorganizing company and its investors; and/or may result in the liquidation of the reorganizing company. Further, the Adviser, on behalf of a client, may decide to become involved in the restructuring of a particular distressed company, including through representation on creditors' or equityholders' committees or other groups (whether formal or informal) and participation in litigation or direct negotiations with the company's management, each of which may involve special risks and/or conflicts of interest for a client. The occurrence of any of these risks could have a material adverse effect on the value of the applicable Investment or on the Adviser's ability to dispose of or to act to protect the value of such Investment.

Moreover, the Adviser, on behalf of a client, may become involved in managing and/or operating companies in various states of distress or impairment, by acquiring control positions or certain assets of such companies. This involvement may include creating business plans and hiring senior management, who, together with such company's other personnel, is expected to have experience with such activities. The Adviser may rely on the expertise of existing management, notwithstanding the negative track record of such persons, and/or new management, which may not have a significant track record.

Administrative costs related to Reorganization Proceedings may be substantial and generally are paid from the reorganizing company's assets prior to any payments to creditors or equityholders. Certain other claims, including claims for taxes, have priority by law over claims of creditors and equityholders. Such administrative costs and other claims could materially reduce the return to the Adviser's clients on a particular Investment.

### **Origination Activities**

The Adviser may cause clients to engage in the origination, modification, and/or restructuring of debt and/or equity financing. If a client engages in such activities, it will be subject to applicable laws in each jurisdiction in which such activities take place. Such laws are frequently highly complex and may include licensing requirements.

The market for originating debt and equity financing is highly competitive, and the Adviser's clients may compete for opportunities with public and private investment funds, commercial and investment banks, and commercial finance companies. In general, the corporate, non-mortgage debt, and equity origination markets present relatively low barriers to entry, and significant competition is likely. The Adviser's clients may be unable to compete effectively with other market participants, or may be able to compete only by charging borrowers lower interest rates and/or by adopting less stringent loan origination standards. Alternatively, the Adviser may determine not to adopt less stringent origination standards in a

competitive environment, which decision may result in a loss of market share. Increased pressure on pricing and origination opportunities likely would reduce the volume and quality of the Adviser's origination activity and materially adversely affect clients. Some competitors may have higher risk tolerances or different risk assessments than the Adviser, thereby allowing such competitors to achieve a broad diversification of Investments and to establish more relationships than the Adviser. These competitive pressures could have a material adverse effect on clients.

The Adviser has limited experience in originating mortgage loans. Mortgage lending activities are highly regulated by U.S. federal, state, local, and other governmental authorities.

### **Energy-Related Strategies**

The Adviser may deploy various energy-related strategies on behalf of its clients. Energy markets operate in a politically charged environment and are subject to extensive regulation by various U.S. federal, state, local, and/or non-U.S. governmental authorities. These authorities directly or indirectly set, approve, or accept certain rates and contracts; establish or amend import and export controls; encourage or discourage capital projects; oversee energy transmission and distribution infrastructure; regulate energy markets; and otherwise govern matters relating to energy. The political environment and the high degree of regulation increase uncertainty with respect to pricing, supply, transmission, and/or delivery in energy markets, and could materially adversely affect any applicable Fund.

There is often only limited price information available in markets for trading energy and other energy-related Investments, and certain of this price information may be unreliable because it may reflect illiquidity, regulatory intervention, and/or improper behavior by market participants, including possible manipulation. Many of these markets also suffer from high volatility and a lack of transparency, and data from these markets may not prove useful when creating or applying quantitative trading strategies. In addition, many of these markets function or are regulated in isolation. These factors may result in limited coordination among markets and market participants and limited usefulness of various data.

Investment strategies deployed by the Adviser might not be based upon reliable data, and may be deployed based on the available data without correction. Also, applying models based upon data from other markets or even earlier time periods may prove unprofitable as a result of the limited applicability of these models across markets or time periods. The deployment of investment strategies based upon the data described herein could have a material adverse effect on a client of the Adviser, particularly because energy-related strategies that may be deployed on behalf of a client include quantitative investment strategies and certain risk models that depend on reliable historical information for their successful development and implementation.

The markets for trading energy and energy-related Investments are affected by the number and type of market participants, which have varied significantly over time. Risks associated with illiquidity and volatility of energy markets may be exacerbated during periods in which many participants exit the market or significantly reduce their trading activities, or in which trading decreases generally due to market redesign or regulatory or other changes. In other periods, the depth and liquidity of such markets may change depending upon the mix of market participants such as suppliers, distributors, end users, and "financial" investors. Regulatory authorities or market participants may respond to any perceived uncertainty by changing the available products or services, the accessibility of markets, regulation, or

other matters relating to the industry. Any such change could have a material adverse effect on a client of the Adviser.

Many regulators or operators of energy markets in which the Adviser may participate have authority to impose price caps, price restrictions, retroactive price changes, position limits, “circuit breakers,” and other mechanisms to address volatility or manage supply and/or demand in such markets. Various authorities may intercede in markets to exercise this authority. Such interventions may be difficult to predict and may significantly affect the markets in which the Adviser operates or hopes to operate. Any form of price cap, price restriction, or other mechanism implemented to try to control or adjust pricing, supply, or other market variables could have a material adverse effect on any client on whose behalf the Adviser deploys energy-related strategies.

One or more clients of the Adviser may also invest in emissions allowances, which may include emissions allowances of any type in any country under the jurisdiction of any regulatory authority.

### **Commodities**

The Adviser may cause its clients to invest in commodities, commodity futures contracts, and other instruments, interests, or property relating to or commonly regarded as commodities, along with rights and options, including puts and calls, with respect to any of the foregoing (collectively, “Commodity Interests”), potentially including Investments in energy-related commodities, such as natural gas, electricity, coal, oil, and oil products; weather; metals; minerals; agricultural products; livestock; and emissions allowances and other environmental commodities.

The prices and/or liquidity of Commodity Interests may be highly volatile and may be influenced by a multitude of factors, including supply and demand relationships; interest rates; international trade; rates of inflation; governmental regulation (including import and export controls) and taxation; monetary and exchange control policy; policies of commodities exchanges; and environmental, social, political, or economic events. This volatility may be further magnified by commodities investors’ use of leverage, including leverage resulting from low margin deposits required with respect to certain types of Commodity Interests. Many positions in Commodity Interests may be highly leveraged, and as a consequence relatively minor price changes could result in immediate and substantial losses to the applicable client.

In addition, the Adviser’s ability to trade successfully in certain commodities markets on behalf of its clients may be undermined by limited or unreliable price information and/or improper behavior of market participants, including price fixing, market manipulation, and other predatory practices.

No actively traded market may exist for certain Commodity Interests, which may impair the ability of the Adviser to sell or to realize, on behalf of its clients, the full value of Investments in such Commodity Interests.

Commodity Interests and/or commodity markets are generally subject to complex and stringent laws, as well as to extensive and, in certain cases, evolving regulations imposed by applicable governmental agencies or exchanges. The Adviser’s clients may bear substantial costs complying with such laws and regulations, and any actual or alleged violation of such laws or regulations may involve civil or criminal penalties; expose such clients to lawsuits from public and private parties; and/or cause such clients to

incur material legal, contractual, settlement, reputational, or other costs. In addition, changes in such laws or regulations may increase uncertainty among market participants, may undermine contractual or market expectations of such clients and other market participants, may increase compliance costs, and may materially adversely affect liability of market participants (including such clients).

The Adviser does not currently expect that any of its clients will be required to make or take physical delivery of any commodities underlying its Commodity Interests. However, it is possible that such a client may be required to make or take such delivery in certain situations, including in the event of an extended shut down of a commodity exchange on which such Commodity Interests trade or in any other situation that severely limits the liquidity of any Commodity Interests. A client may also make or take physical delivery of commodities if the Adviser determines such client should do so. Making or taking physical delivery of commodities would result in additional risks and costs to a client, including those associated with acquiring, storing, transporting, hedging, insuring, and reselling such commodities. In addition, such client may lack necessary licenses or approvals to make or take delivery of such commodities, and such delivery may expose such client to additional laws and regulations that would not otherwise apply to such client's trading of Commodities Interests. The realization of any such risks could have a material adverse effect on such client.

### **Small or Midsized Companies**

Certain Investments held by the Adviser's clients may be issued by, or otherwise related to, small or midsized companies. Such Investments may involve greater risk than comparable Investments issued by or related to large companies. Small or midsized companies may face intense competition for important resources, such as experienced management and personnel, capital, and financing. Such companies may be at a disadvantage relative to larger companies, including with respect to sales or distribution resources, operational and financial controls, or other economies of scale. Small and midsized companies may be more likely to experience financial, operational, legal, and/or other distress.

Investments in or related to small and midsized companies may be less liquid or exhibit more price volatility than Investments in large companies. The securities of small and midsized companies are often traded over-the-counter or on regional exchanges, which may have lower volumes than are typical on national exchanges, or may be privately held, with no secondary market for such securities.

### **Illiquid Investments; Inability to Trade**

The Adviser may cause clients to make investments characterized by varying degrees of liquidity, such as Investments that become illiquid subsequent to their acquisition as a result of market or other factors, for which there exists no actively traded secondary market and which are thus highly illiquid, or for which there is an absence of readily ascertainable market values. Any illiquidity with respect to the Investments recommended by the Adviser may or may not be anticipated and/or may vary over time. Such Investments may constitute a substantial portion of the client's assets managed by the Adviser and may involve significant transaction costs when they are purchased or disposed of, whether through adverse price movements (whether related to liquidity or otherwise), increased spreads between quotes and dealer mark-ups (which may already be material for such Investments), and/or other transaction costs. The Adviser may choose not to liquidate any Investments (quickly or otherwise) if it believes that such liquidations are not warranted by market conditions or other considerations; conversely, the Adviser may

choose to liquidate illiquid Investments (quickly or otherwise) if it believes that such liquidations may be warranted by market conditions or other considerations.

In addition, the Adviser may cause clients to acquire Investments that are subject to resale restrictions due to regulatory, statutory, or contractual provisions that limit the ability of the Adviser to liquidate such Investments. Such regulatory, statutory, or contractual restrictions could cause liquidity-related losses, could result in exposure to unhedged positions, and could have other material adverse effects on clients.

With respect to Investments (if any) for which a secondary market does exist, a client of the Adviser could suffer material losses were it unable to open or liquidate positions, whether due to changes or instability in market conditions, trading halts due to regulatory limits (such as daily-price-fluctuation limits), emergency trading bans, counterparty actions, and/or other factors. In addition, the agreement governing a particular over-the-counter instrument held by a client of the Adviser may provide such client's counterparty with discretion as to whether a particular position may be opened or closed under the agreement, regardless of the interests of such client.

### **Leverage; Margin**

Many of the strategies deployed by the Adviser are highly dependent on the use of leverage for their success, and certain clients are expected to employ leverage (which may be substantial) in connection with their investment and other activities. The Adviser intends to use instruments (including futures, swaps, options, and other derivative instruments) that, if such instruments were to decrease in value, could result in losses exceeding the capital allocated to them. In addition, the Adviser may cause clients to buy certain Investments on margin and/or to enter into swaps or other derivative instruments to enhance leverage or for another reason.

The amount of leverage employed by clients is determined by the Adviser. The Adviser may cause a client to employ leverage up to the maximum amount permitted by the terms of the applicable Governing Document, by applicable law and regulation, and by the persons extending credit or otherwise providing leverage to the client. Only a limited amount of the leverage employed by a client may be apparent from the balance sheet or other financial statements of the client, and it is possible that a large portion (and possibly the majority) of the leverage employed would be effected through off-balance sheet transactions or methods, such as total return swaps (which can offer leveraged exposure to the reference instrument).

A client may incur potentially significant expenses, including interest charges and commitment fees, in connection with any leverage that it uses. In addition, the rights of any lenders to a client to receive payments of interest, additional margin, or repayments of principal generally will be senior to the rights of the client's underlying investors, and the terms of any such borrowings or arrangements may restrict certain activities of a client, including the client's ability to make distributions.

Although any financial leverage may have the effect of increasing returns to a client (and its underlying investors) in the event of favorable investment results, returns will be reduced by the cost of borrowing, and investment losses and other losses will be exacerbated by leverage (possibly causing substantial losses, including losses exceeding the total value of the assets of a client). The use of leverage by the Adviser on behalf of a client will increase the volatility of the investment performance of the applicable client's Investments and, as a result, the returns to such client's underlying investors.



Notwithstanding the foregoing, there can be no assurance that clients will be able to borrow money, use margin, or engage in any financing transaction in order to obtain and/or employ leverage. Events in the global financial markets in recent years have decreased the availability, and increased the cost, of certain forms of financing. Further, a client may not be able to obtain leverage and/or other financing, whether at a reasonable cost or at all, in the event that the Investments held by the client are not sufficiently diversified. Any inability of a client to obtain, employ, and/or maintain leverage or other forms of financing, whether at a reasonable cost or at all, would be expected to result in (possibly materially) lower returns to the client than had the client been able to obtain, employ, and/or maintain such leverage at a reasonable cost.

### **Complexity of Quantitative Strategies**

Many of the investment strategies that the Adviser deploys on behalf of clients, and many of the Adviser's clients' Investments, are highly complex. In many cases, the successful deployment of a particular investment strategy is expected to require or involve sophisticated mathematical calculations and complex computer programs. Although the Adviser intends to use good faith efforts to carry out such calculations and programs correctly and to use them effectively, there can be no assurance that it will successfully do so. Errors have occurred and may continue to occur in designing, writing, testing, monitoring, and/or implementing such calculations and programs, including errors in the manner in which such calculations and programs function together. Any such error may be difficult to detect, may not be detected for a significant period of time, and could have a material adverse effect on the Adviser's clients. This risk may be exacerbated by the fact that elements of certain investment strategies deployed by the Adviser are expected to result in the execution of a significant number of trades over a relatively short period of time, which may result in many trades being affected by any such error before it can be detected and corrected. In addition, such calculations and programs are dependent upon accurate market and other data, and inaccuracies in or any corruption of such data (or errors in incorporating such data) may have a material adverse effect on the results of such calculations and programs. The Adviser may seek to apply existing calculations and programs to different components of the investment strategies deployed on behalf of its clients (including different markets, strategies, or Investments), but there can be no assurance that such application would prove effective in such different contexts. Moreover, the effectiveness of such calculations and programs is expected to diminish over time, including as a result of changes in the market and/or changes in the behavior of other market participants. The Adviser may respond to such diminishing effectiveness by making certain changes to the investment strategies and/or the manner in which they are implemented. Any such changes could increase the likelihood of the errors described above.

The complexity of the components of the investment strategies that apply such calculations and programs, and the interactions among such components, may make it difficult or impossible to detect the source of any weakness or failure in such components and/or such calculations and programs before material losses are incurred. For example, it may be difficult or impossible to distinguish unexpected trading results caused by market activity from unexpected trading results caused by an error in the applicable calculations or programs. Any mathematical calculations and computer programs utilized by the Adviser are subject to inherent limitations and may be improved upon as experience is gained, strategies are refined, and markets change. However, there can be no assurances that the Adviser would be able to make, or would make, any

such improvements, and its inability or failure to do so could have a material adverse effect on the Adviser's clients.

Further, the Adviser's clients are exposed to risks arising from the systematic or algorithmic trading of other market participants. Market events such as the "flash crash" of May 6, 2010 illustrate how the behavior of one or a small number of market participants can cause dramatic movements in the prices of individual securities and/or the market as a whole. The systematic nature of certain investment strategies deployed by the Adviser may make the Adviser's clients particularly susceptible to such movements, which could have unforeseen effects on one or more such investment strategies and/or on the interactions among such strategies. Any such market event could have a material adverse effect on a client of the Adviser.

### **Reliance on Technology; Cybersecurity; Back-up Measures**

The Adviser's investment activities and investment strategies are dependent upon various computer and telecommunications technologies, many of which are provided by or are dependent upon third parties such as data feed, data center, telecommunications, or utility providers. The successful deployment, implementation, and/or operation of such activities and strategies, and various other critical activities of the Adviser on behalf of its clients, could be severely compromised by system or component failure, telecommunications failure, power loss, a software-related "system crash," unauthorized system access or use (such as "hacking" or other cybersecurity breaches), computer viruses and similar programs, fire or water damage, human errors in using or accessing relevant systems, or various other events or circumstances. Such events or circumstances may affect the Adviser directly and/or may affect one or more third parties (including Arcesium and any third-party administrator to a Fund) that provide services to the Adviser and/or its clients.

It is not possible to provide comprehensive and foolproof protection against all such events and circumstances, and no assurance can be given about the ability of the Adviser or any third party to continue providing applicable services. Any event or circumstance that affects the Adviser's or one or more third party's computer and/or telecommunications systems or operations could have a material adverse effect on the Adviser's clients, including by preventing the Adviser from trading, modifying, liquidating, and/or monitoring its clients' Investments. Moreover, any unauthorized access to the information systems of the Adviser or certain third parties could result in the loss, disclosure, or improper use of information relating to Investments and/or personally identifiable information of the Adviser's clients or underlying investors in the Funds; any such loss, disclosure, or use could have a material adverse effect on such clients or investors.

The Adviser maintains back-up electronic books and records at their disaster recovery site, which is a fully operational data center facility. In the case of events that interrupt the Adviser's computer and/or telecommunications systems or operations, the Adviser hopes to resume trading, modifying, liquidating, and/or monitoring its clients' Investments relatively promptly, subject to any circumstances that are outside the control of the Adviser. In the case of severe business disruptions (e.g., regional power outage or loss of personnel), the Adviser may not resume such activities for one or more business days because (among other things) such resumption is dependent on other critical business constituents, such as brokers and exchanges, and on the nature of the disruption. Although the foregoing reflects the Adviser's objectives, designs, and/or plans, no assurance can be given that these objectives, designs, and/or plans will be realized, or that, in particular, the Adviser would be able to resume operations following a business disruption, and any such disruption could have a material adverse effect on the Adviser's clients.

## **Private Investment Activities**

The Adviser may cause clients to acquire controlling or non-controlling positions in privately held companies. Such investments may be in newly-established or existing companies, may be made at any level of the capital structure of such companies, and may be acquired through primary or secondary transactions. In addition, a client of the Adviser may make multiple investments in a company, whether in a single transaction or in multiple follow-on transactions. If a client is presented with an opportunity to make a subsequent investment in a company but fails to do so, such failure may have a material adverse effect on the client's original investment. If a client does make multiple investments in a company, such investments may result in conflicts of interest between different clients of the Adviser or different underlying investors or groups of investors (particularly if the investments are made at different levels of the capital structure) and may materially adversely affect the return experienced by one or more clients or by a particular investor or group of investors (for example, investments at different levels of a company's capital structure may have conflicting interests when the company is insolvent).

Investments in private debt and equity instruments generally are characterized by a high degree of illiquidity, with the holding periods of such instruments frequently lasting several years and possibly indefinitely. The realization of a return, if any, on any such Investment may be delayed by contractual or legal restrictions (for example, lockups that are imposed by underwriters restricting the sale of shares after an initial public offering). Investors must be prepared to bear the risks of a client's owning such Investments for an extended and indefinite period of time. In addition, a client generally is expected to earn little or no current cash income on such Investments prior to any realization event.

An Investment in private debt or equity instruments may be difficult to value, particularly in the absence of a specific liquidity event, readily available information about comparable investments, or a material change in the company, industry, or financial instruments associated with such Investment. Moreover, the difficulty in valuing certain private Investments may create conflicts of interest.

The long time horizons of certain private Investments may expose a client to shifts in market, economic, political, technological, regulatory, and/or social conditions to an unusual degree. Developments occurring after such an Investment is acquired may fundamentally alter the anticipated market for such Investment, preventing the Adviser from disposing of such Investment profitably or at all, or subjecting the client to risk of a complete loss on such Investment.

The Adviser may become involved in the exercise of control of a particular privately or publicly held company in connection with its private investment activities or otherwise, including by participating in boards of directors, equityholders' committees, or other groups (whether formal or informal) and by being involved in litigation. Any involvement in the affairs of such companies may result in special risks that are similar to the risks associated with Investments related to distressed issuers and with a client's obtaining access to sensitive non-public information.

A client may make investments in entities having independent management who receive an asset-based fee, performance-based fee, other profit participation, and/or equity for (past, present, or future) services. These management compensation arrangements are not offset against any fees, performance charges, or expenses imposed by the Adviser or its affiliates.

## **Insurance- and Reinsurance-Related Instruments and Products**

The Adviser may cause clients to purchase, sell, hold, trade, structure, restructure, and otherwise acquire or dispose of instruments that offer direct or indirect exposure to insurance, reinsurance, and insurance- and reinsurance-related risks (collectively, “Insurance-Related Investments”). These instruments may include indirect interests in reinsurance contracts acquired through equity investments in D. E. Shaw Re (Bermuda), Ltd. (“DESCO Re”), a Bermuda-based insurance and reinsurance company managed by D. E. Shaw & Co. (Bermuda), Ltd. (“DESCO Bermuda”), a wholly owned subsidiary of the Adviser; insurance-linked securities, such as catastrophe bonds, catastrophe options, and catastrophe futures; and securities in other public or private entities (insurance- or reinsurance-related or otherwise). Insurance-Related Investments that may be held by a client are generally characterized as having values that are directly or indirectly tied to the occurrence or non-occurrence of catastrophic or other events that are traditionally the subject of insurance.

The success of a client’s Insurance-Related Investments is largely dependent on the ability of the Adviser to forecast the probabilities and risks of various events. However, such probabilities and risks are difficult to forecast accurately, and any such forecasts will require subjective judgments. In addition, models that seek to forecast such probabilities and risks with respect to the type, frequency, and severity of such events are frequently inaccurate and/or inadequate. Errors or inaccuracies in such forecasts could have a material adverse effect on Insurance-Related Investments that were based in whole or in part on such forecasts. In addition, it is possible that the occurrence of the insured risks (e.g., natural disasters or other catastrophic events) would result in potentially material losses for a client, even in the absence of errors or inaccuracies in such forecasts.

There is often only limited price information available in markets for Insurance-Related Investments. There may not be active secondary markets for certain Insurance-Related Investments. Where a secondary market does exist, there is no assurance that it would have a sufficient number of participants to provide efficient or even adequate pricing or liquidity. As a result, Insurance-Related Investments are generally highly illiquid and their prices may be highly volatile, thus resulting in an increased risk of material losses. This illiquidity and price volatility may be particularly pronounced during certain seasons or around the time of a specific weather-related event, even in cases where a particular Insurance-Related Investment has only a limited apparent connection to such season or event.

## **Short Sales**

Many of the investment strategies expected to be deployed by the Adviser on behalf of its clients involve the execution of “short sales.” In a short sale, an investor borrows securities from a lender and sells such securities to another person while retaining an obligation to return to the lender an equivalent quantity of the borrowed securities at a later date. Short selling allows an investor to profit from declines in a security’s value. Although short sales may be useful under certain circumstances in the pursuit of potential profit opportunities and/or the mitigation of certain forms of risk, they may result in an unlimited loss of capital within a relatively short period of time, whether due to price changes, recalls sought and penalties imposed by lenders of the borrowed securities, short squeezes, unavailability of the securities at the time the Adviser desires to close out the short position, or other causes.

Purchasing securities to close out the short position can itself cause the price of such securities to rise, further exacerbating the loss. Financing methods employed or derivative transactions recommended by the Adviser may involve the economic equivalent of short positions in various Investments, which could have economic consequences substantially similar to those caused by the execution of short sales.

A number of countries from time to time have imposed restrictions or outright bans on short sales and related transactions in certain types of securities or instruments, making it difficult or impossible for many market participants either to continue to implement their strategies or to control the risk of their open positions. In addition, short sales historically have been, and continue to be, subject to certain restrictions under U.S. federal securities laws. Other countries also have adopted or may adopt similar or other types of short-selling restrictions and short-position reporting requirements. Any ongoing or future regulatory limitations on short selling, or any ongoing or future requirement to disclose short sales or short positions, may materially adversely affect the Adviser's ability and willingness to implement strategies based on or involving short sales on behalf of clients.

### **Electronic Trading**

The Adviser expects to trade on electronic trading and order routing systems. Transactions using an electronic system are subject to the rules, regulations, and policies of the exchanges or persons offering the system or listing the instrument. Characteristics of electronic trading and order routing systems vary widely with respect to order matching procedures, opening and closing procedures and prices, trade error policies, and trading limitations or requirements. Trading on such systems may also expose a client of the Adviser to the risk that the applicable exchanges may have discretion to cancel particular orders or trades under certain circumstances, including in the event of market disruptions. Any such cancellations could affect such client's portfolio in unexpected and/or adverse ways.

There are also differences regarding qualifications for access, grounds for termination of access, limitations on the types of orders that may be entered into the system, and other applicable terms. Each of these matters may present different risk factors with respect to trading on or using a particular system. Each system may also present risks related to system access, varying response times, the behavior of other market participants, security, service providers, and the receipt and monitoring of electronic mail.

Trading through an electronic trading or order routing system is also subject to risks associated with system or component failure, whether such failure affects the hardware or software of the exchange or person offering the relevant system or of the Adviser. In the event of system or component failure, it is possible that, for a certain time period, it might not be possible to enter new orders, execute existing orders, or modify or cancel orders that were previously entered. System or component failure may also result in loss of orders or order priority. Trading venues offering an electronic trading or order routing system typically adopt rules to limit their liability, the liability of member brokers and software and communication system vendors, and the amount that may be collected for system failures and delays, which rules vary among the venues.

In addition, changes in laws or regulations related to electronic trading and order routing systems are currently being considered in certain jurisdictions. Any such changes could have a material adverse effect on certain strategies deployed by the Adviser.

## **Hedging Techniques and Transactions**

The Adviser may seek to limit a client's exposure to various risk factors through the use of various hedging techniques. There can be no assurance that such hedging techniques will be effective or that they will result in higher or more stable returns than would have been the case had they not been employed. Moreover, such hedging techniques may limit any potential gain that might result from an increase in the value of a hedged position.

It should be noted that any hedging techniques employed by the Adviser would be intended to reduce a client's exposure to certain risks under certain circumstances and not to reduce all forms of risk. Further, the Adviser is not obliged to hedge any particular form of risk in any particular situation, and the Adviser will be free to cause any client to assume such risks and/or to change its investment policies and practices in any manner as determined by the Adviser, without notice to or the consent of such client or its underlying investors. Moreover, certain of the investment strategies deployed by the Adviser may from time to time have extensive unhedged exposure, whether intentional or unintentional, to various market movements, style factors, and other sources of risk, whether known or unknown (*e.g.*, changes in the levels and/or volatility of interest rates currency prices, commodity prices, sovereign credit spreads, corporate credit spreads, and equity and other markets, as well as correlations between any such risks).

Under certain circumstances, hedging techniques intended to reduce certain forms of risk may actually increase risk, whether due to the unintended market impact of hedging transactions, leverage effects associated with hedging positions, unexpected adverse price movements of a hedging instrument relative to the hedged instrument (*i.e.*, adverse changes in the "basis" between the hedging and hedged instrument), lower liquidity of the hedged and hedging positions relative to an unhedged position, the general risks related to the use of derivative instruments, or other factors.

In addition, even where the Adviser seeks to hedge a particular risk, a suitable hedging transaction might not be identified by the Adviser, might not be available to the applicable client, might be too expensive, and/or might not be successfully executed.

## **Portfolio Turnover**

Certain investment strategies that are expected to be deployed by the Adviser are based at least in part on short-term considerations and thus are characterized by rapid portfolio turnover. Such rapid turnover is expected, among other things, to cause clients to experience substantial brokerage fees, commissions, and/or commission-equivalents, and/or increased aggregate liquidity costs (or price "slippage"), any or all of which could have a material adverse effect on the investment performance of the Adviser's investment strategies.

## **Position Limits, Trading Restrictions, and Reporting Requirements**

Certain U.S. and non-U.S. governments, regulators, and self-regulatory bodies have imposed (and may impose) limits, triggers, and/or other thresholds with respect to positions in certain types of securities, futures contracts, and other assets that the Adviser may recommend for its clients. Positions owned, held, or controlled by related entities (such as the Adviser, its affiliates, or one or more of their clients) may be aggregated for purposes of determining whether such thresholds have been reached or exceeded. With respect to positions managed by such entities, the Adviser or its affiliates may (a) limit trading in such

positions in order to avoid reaching such thresholds or (b) if such thresholds are exceeded, (i) dispose of positions to the extent necessary to fall below those thresholds, (ii) be limited in purchasing or selling such positions for a certain period of time, or (iii) be subject to disclosure obligations, filings, fines, limits on short-term trading profits, or other consequences; in each case which could have a material adverse effect on the Advisers' clients. In cases in which a particular client's positions are required to be aggregated with positions held by other clients of the Adviser (or its affiliates), such other clients may utilize the full amount of available position limits for their own benefit, and, as a result, the original client could be required to limit certain types of Investments or liquidate certain of its positions. When multiple entities are affected by such limits, triggers, and/or other thresholds, the Adviser or its affiliates may determine to allow the consequences to fall disproportionately on certain entities, which could have a material adverse effect on one or more of the Adviser's clients.

Existing and prospective clients and their underlying investors should be aware that the CFTC has proposed rules that would impose a position limits regime for futures, options on futures contracts, and swaps with respect to certain agricultural, energy, and metal commodity futures contracts, along with futures, options on futures contracts, and swaps that are economically equivalent to such contracts. The CFTC has also recently proposed rules that would apply aggregation criteria that are more restrictive in some respects than the current rules. If adopted in their proposed form, any such rules, and any additional rules or rule amendments adopted by the CFTC in the future, may hinder the ability to trade such contracts and could have an adverse effect on one or more of the Adviser's clients. The Markets in Financial Instruments Directive II may have a similar impact.

The application of both the currently effective and the proposed position limit rules is uncertain in a number of respects and, depending on the particular facts and circumstances involved, may require a person to aggregate certain of the Advisers clients' commodity interest positions with such person's own positions in such commodity interests. In the event that a person were to be subject to these aggregation requirements with respect to its investment with the Adviser, it is not expected that the Adviser would make any change to its management of the applicable Investments or to its investment approach to permit such person to comply with such position limits, and the Adviser may not provide information to such person about any of its clients' portfolio's particular positions, which would undermine such person's ability to comply with such position limits.

In certain situations, the Adviser may recommend that a client engage in transactions that, as a result of ownership of a security or other instrument by such client, another client, or otherwise, would require filings with a governmental agency, public disclosure, and/or compliance with other regulatory requirements, such as beneficial ownership reporting or certain restrictions on trading. In addition, the Adviser may be restricted (by law or by its internal policies) in its ability to trade a particular Investment or may determine to limit or prohibit the participation of the client in a particular Investment or to recommend that the client to liquidate a particular Investment at an inopportune time. Compliance with filing and other requirements (including additional reporting requirements imposed in the future on the Adviser and/or its clients) may result in additional costs to a client and/or may delay its ability to trade, or to respond in a timely manner to changes in the markets with respect to, the applicable security or other instrument. The regulatory regimes outlined above may change over time, and any such changes may materially adversely affect one or more clients.

## **Publicly Available Information; Disclosures to Investors**

Certain information regarding clients of the Adviser and/or their Investments may be required to be made publicly available, which could have a material adverse effect on the value of, or the Adviser's plans with respect to, such Investments. Further, changes in law or regulation could increase the amount and frequency of required disclosures applicable to the Adviser and/or its clients. In addition, the Adviser may have clients that may be (or whose underlying owners may be) required under applicable law (including freedom of information laws) to make publicly available certain information provided by the Adviser to such client. Moreover, such clients or underlying owners, whether or not subject to freedom of information laws or similar disclosure requirements, could disclose information regarding the Adviser and/or Investments in violation of their confidentiality obligations to the Adviser.

Because various aspects of the Adviser's investment strategies are based upon quantitative trading methods or other proprietary information, any of the foregoing disclosures of information would increase the already material risk that other market participants will seek to use such information to their advantage (such as by reverse engineering the Adviser's investment strategies, by seeking to adversely affect the prices of the Investments recommended by the Adviser to its clients, by "frontrunning" a client's Investments, by causing a client to prematurely liquidate Investments, or by other actions), which could have a material adverse effect on one or more clients.

## **Competition; Common Investor Risk**

Changing, evolving, and maturing markets, as well as an increase in the number of market participants employing strategies similar to or otherwise in competition with the strategies employed by the Advisers, may make it significantly more difficult to identify and/or participate in profitable investment opportunities. Certain of these market participants may possess competitive advantages over the Adviser or any of its clients, including superior technology; greater expertise, experience, or resources; superior access to investment opportunities or information; lower cost of capital; fewer regulatory constraints; and/or higher risk tolerances. There can be no assurance that any effort by the Adviser to minimize any competitive disadvantages will be successful.

The Adviser and its clients may face other competitive challenges, whether due to regulation, limited liquidity, crowded markets, increased competition for personnel, or other similar or dissimilar factors. Competition and its challenges may have a material adverse effect on the Adviser and/or its clients.

In addition, it is expected that a (possibly substantial) number of other market participants will deploy models and investment strategies that overlap to varying degrees with the models and investment strategies that the Adviser deploys on behalf of certain clients. The activities of such other market participants could have a material adverse effect on such clients. For example, to the extent that such overlapping models react in similar ways to economic or other market events, it may be more difficult or expensive to purchase or dispose of particular Investments. Similarly, liquidations of overlapping positions held by such client's portfolio and by such other market participants may create a negative feedback loop resulting in progressively increasing losses to such client, rapid deterioration in the liquidity of the affected positions, and unexpected correlations among various Investments held by such client's portfolio.



### **Third-Party Litigation; Regulatory Actions**

The activities of the Adviser and its clients subject them to the risk of (a) becoming involved in claims or assertions of liability by third parties and/or (b) being the subject of investigations by, or enforcement or other actions brought by, regulatory or other authorities. In certain circumstances, this risk is greater where the applicable entity exercises management and/or other control of, or significant influence over, the affected Investment. More generally, recent actions of the U.S. Congress, the SEC, and other U.S. and non-U.S. governmental entities have resulted in increased regulation of private investment funds and their managers as well as increased enforcement activities. Even if the Adviser believes that such claims, assertions, investigations, or actions are unfounded and/or that its defenses are meritorious, significant legal and/or settlement costs may be incurred in connection with any of these claims or assertions. Under the Funds' Governing Documents, the Adviser and/or its related persons may be entitled to indemnification by the applicable Fund in connection with the matters described in this section. Accordingly, the fees and costs related to such matters, including amounts paid pursuant to settlements or judgments, may be borne by such Fund and thus the underlying investors in such Fund.

### **Changes in Law; Governmental Intervention**

Changes in tax, securities, reorganization, lender liability, and other laws, regulations, or policies, as well as changes in accounting standards, changes to exchange and self-regulatory organization rules, and other factors (any of which changes could have a retroactive effect), may decrease the number of investment opportunities for the Adviser's clients or eliminate such opportunities altogether, may decrease returns associated with certain Investments or certain elements of the Adviser's investment strategies, or may otherwise materially adversely affect the interests of the Adviser's clients. For example, because elements of the Adviser's systematic trading strategies are expected to include executing a significant number of trades and/or orders, the introduction of a transaction or similar tax in one or more jurisdictions or the introduction of order-to-trade ratio limits, fees, minimum order resting periods, or new registration or market-making requirements related to such ratio limits could have a material adverse effect on the applicable client. The regulatory environment for leveraged investors and private investment funds is also evolving, and changes in the direct or indirect regulation of such entities may materially adversely affect the ability of the Adviser's clients to pursue their respective investment objectives. Likewise, the ability of the Adviser's clients to pursue their respective investment objectives may be materially adversely affected by additional regulatory requirements or changes to regulatory requirements applicable to such clients, such as requirements that may be imposed due to other activities of the Adviser or its related persons or as a result of the investment in a particular Fund by certain investors or types of investors (including investors subject to the Employee Retirement Income Security Act of 1974, as amended).

It is impossible to predict the impact on the private investment fund industry, the Adviser, and/or any of the Adviser's clients of any new legislation or other requirements, or of the heightened interest generally in regulation and oversight of private investment funds and their managers or other market participants. Legislative and/or regulatory changes generally, and the focus on such funds, managers, and other market participants in particular, may prove disruptive to the industry and/or to the Adviser and, consequently, could have a material adverse effect on the Adviser's clients.

Financial and economic events over the past several years have caused pervasive and fundamental disruptions in the global financial markets, leading to extensive governmental intervention, both temporary and permanent. Such intervention, in isolation or together with other factors, has caused and may continue to cause such markets to exhibit higher volatility, less liquidity, greater correlation within such markets, and/or greater correlation (or increased negative correlation) of certain markets with other markets than would be the case in the absence of such intervention. Further, such intervention has, in certain cases, been implemented on an “emergency” basis, suddenly hindering or eliminating market participants’ ability to implement certain investment strategies or to manage the risk of their outstanding positions. These interventions have at times been unclear in scope and application, resulting in confusion and uncertainty that in turn have been materially detrimental to the efficient functioning of the markets as well as of previously successful investment strategies. Similar dynamics and effects may occur in the future.

It is impossible to predict what additional interim or permanent government restrictions may be imposed on financial markets and/or the effect of such restrictions on the Adviser’s investment strategies. However, it is possible there will be significantly increased regulation of the financial markets. Such increased regulation could have a material adverse effect on the Adviser’s clients.

#### **Investments in Additional Strategies; Investments in Emerging Strategies and Companies, Vehicles, Regions, and Markets**

Subject to the terms of the applicable Governing Document, the Adviser may invest certain clients’ assets in additional strategies, companies, asset classes, regions, and/or markets not outlined in this brochure. Such investment decisions will be based on one or more factors that the Adviser may deem relevant, including liquidity constraints and the availability of opportunities that it deems attractive. The Adviser is permitted to invest certain clients’ assets in strategies that have investment styles, investment returns, leverage, and associated risks that are different (possibly materially) from those outlined in this brochure. The Adviser may allocate a portion of the applicable client’s assets directly or indirectly to strategies with which the Adviser has limited or no familiarity, to companies and/or other vehicles having limited or no operating histories, and to regions or markets in which the Adviser has limited experience. Because such strategies, companies, vehicles, regions, and markets may, among other things, be more difficult to evaluate and/or monitor, they may expose clients to greater risk and lower returns than those with which the Adviser has more extensive experience. There can be no assurance that any decisions outlined in this paragraph will be successful or will not have a material adverse effect on a client.

#### **Item 9: Disciplinary Information**

DESCO LP’s wholly owned subsidiary, D. E. Shaw & Co. (Asia Pacific) Limited (“DESCO AP”), is a Relying Adviser and is licensed with the Securities & Futures Commission in Hong Kong to engage in certain regulated activities. (Please refer to Item 10 below for more detail regarding DESCO AP.) In December 2013, DESCO AP, on behalf of a Fund, entered into a block trade with a counterparty to purchase shares of a public company in Korea. Subsequently, on the same day, DESCO AP directed the Fund to sell those shares. Due to events outside the control of DESCO AP, the counterparty in the block trade unilaterally delayed the trade and failed to deliver the shares on the agreed date of settlement, which caused the Fund to fail on its delivery requirement for the subsequent sale of the shares. In September 2015, the Securities

& Futures Commission of Korea imposed a fine of approximately US \$13,000 on DESCO AP for violating Korean restrictions on short selling. DESCO AP paid such fine in October 2015.

In April 2014 and June 2014, DESCO LP submitted notifications of net short positions in the shares of a Swedish issuer to the Swedish Financial Supervisory Authority (the “SFSA”) pursuant to the European Union short-selling regulation (the “Regulation”) after the next-day notification deadline in the Regulation. In each case, the delay in the submission of the net short position notification was the result of unintentional human error, and DESCO LP submitted the required notification promptly upon its own discovery of such error. In January 2015, the SFSA imposed penalty fees of approximately US \$1,150 (in the case of the April 2014 notification) and US \$10,500 (in the case of the June 2014 notification) on DESCO LP for failure to report within the time period prescribed by the Regulation. The fines became effective in April 2015 and were paid by DESCO LP in May 2015.

In November 2012 and October 2013, certain entities in the D. E. Shaw group advised by certain of DESCO LP's Relying Advisers unintentionally violated a position limit applicable to natural gas futures traded on the New York Mercantile Exchange (“NYMEX”) and ICE Futures U.S., Inc. (“ICE”). In each case, the violation was discovered prior to the open of trading on the day after which it occurred, and corrective trades were placed soon thereafter to bring the applicable positions into compliance. With respect to each violation, DESCO LP submitted to NYMEX a settlement offer in which DESCO LP agreed to pay a fine of \$25,000 (in the case of the November 2012 violation) and \$75,000 (in the case of the October 2013 violation). NYMEX entered orders effective on May 1, 2014 accepting the settlement offers. ICE issued a warning letter to the D. E. Shaw group for the November 2012 violation. With respect to the October 2013 violation, DESCO LP entered into a settlement agreement with ICE, effective January 16, 2015, in which DESCO LP agreed to pay a fine of \$20,000 and to cease and desist from such position limit violations.

DESCO LP received a request for information from the SEC in June 2013 relating to compliance with Rule 105 of Regulation M under the Securities Exchange Act of 1934 (the “Exchange Act”) and identified five inadvertent violations of Rule 105 from 2010 through 2012. DESCO LP submitted an Offer of Settlement to the SEC, in which DESCO LP consented to cease and desist from such violations and to the payment of \$667,492.37, including disgorgement of \$447,794.00, prejudgment interest of \$18,192.37, and a civil monetary penalty of \$201,506.00. The SEC entered an Order on September 16, 2013, accepting the Offer of Settlement.

DESCO LP's related person, D. E. Shaw Securities, L.L.C. (“Securities LLC”), is a broker-dealer registered under the Exchange Act, and a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”). In June 2009, Securities LLC self-reported to FINRA inadvertent violations of certain rules regarding technical trade reporting obligations for certain short sale transactions it executed. Specifically, Securities LLC failed to include the short sale modifier in such transactions reported to the FINRA/Nasdaq Trade Reporting Facility. Securities LLC submitted a Letter of Acceptance, Waiver and Consent (“AWC”) to FINRA and consented to a censure and fine of \$45,000. FINRA accepted the AWC on December 2, 2011. In addition, FINRA conducted a routine trading and market making surveillance examination of Securities LLC in the beginning of 2010 and identified that Securities LLC had submitted inaccurate time stamps on certain order cancellations submitted to the Order Audit Trail System. Securities LLC

submitted an AWC to FINRA and consented to a censure and fine of \$15,000. FINRA accepted the AWC on May 7, 2013. Securities LLC's disciplinary history is available at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

In April 2010 and June 2010, certain entities in the D. E. Shaw group advised by DESCO LP unintentionally violated futures contract position limits set by the CFTC in connection with trading soybeans and corn, respectively, on the Chicago Board of Trade, a member of the CME Group. In each case, the violation was as of the close of trading on a single day, and in each case, the D. E. Shaw group discovered the violation and put on correcting trades on or before the next trading day and before receiving notification of the violations, so that its positions were below the applicable limits. DESCO LP submitted to the CFTC an Offer of Settlement, in which DESCO LP consented to cease and desist from such violations and to the payment of a civil monetary penalty of \$140,000. The CFTC entered an Order on February 22, 2012, accepting the Offer of Settlement. The CME Group issued warning letters to the D. E. Shaw group for each violation.

DESCO LP believes there are no other legal or disciplinary events that are material to a client's or prospective client's evaluation of its advisory business or the integrity of its management; note that DESCO LP's Form ADV Part 1 may include certain disciplinary events not outlined above.

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

Certain management persons of the Adviser are registered representatives of Securities LLC, which is a related person of DESCO LP. One of the management persons of DESCO LP is a registered representative of Diffusion Markets, L.L.C., which is a related person of DESCO LP and a broker-dealer registered under the Exchange Act and a member of the Chicago Board Options Exchange ("CBOE") and NYSE Arca.

DESCO LP and certain of its related persons are currently registered as commodity pool operators (each, a "CPO") pursuant to the Commodity Exchange Act (the "CEA") and are members of the National Futures Association (the "NFA"). Certain other of DESCO's related persons have been listed with the CFTC as commodity pools and will be operated as "exempt pools" in accordance with Commodity Futures Trading Commission Rule 4.7. One related person of DESCO LP relies on an exemption from registration as a CPO pursuant to CFTC Regulation 4.13(a)(3) ("Rule 4.13(a)(3)"), and DESCO LP and certain of its related persons rely on an exemption from registration as commodity trading advisors with the CFTC. One of the management persons of DESCO LP is registered with the NFA as an associated person of the Adviser and each of the Adviser's related persons that is registered as a CPO.

### **Related Persons**

DESCO LP is part of an international financial services firm. DESCO LP acts as managing member, manager, holding company, and/or "parent company" for certain of its related persons, and this activity may be considered to be separate from the provision of investment advice. For purposes of this brochure, DESCO LP does not consider itself to be engaged in the business of its related persons. DESCO LP's related persons license (or sublicense) certain intellectual property from DESCO LP and may utilize DESCO LP's employees in connection with their businesses.

DESCO LP is a managing member or manager of certain Funds and acts as adviser to such Funds as well as to other Funds.

Subject to applicable law, the Adviser may use for clients, or suggest or recommend to clients, placement agent services offered by DESCO LP's related person, Securities LLC. To the extent that the services of Securities LLC are used, clients may be charged a fee. DESCO LP's wholly owned subsidiary, D. E. Shaw Investment Management, L.L.C. ("DESIM"), is registered with the SEC as an investment adviser under the Advisers Act. DESIM is also registered as a CPO and a commodity trading advisor ("CTA") pursuant to the CEA and is a member of the NFA. DESIM licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities, the Adviser may reimburse DESIM for certain expenses and DESIM may reimburse the Adviser for certain expenses.

DESCO LP's wholly owned subsidiary, D. E. Shaw Direct Capital, L.L.C. ("DESDC"), is registered with the SEC as an investment adviser under the Advisers Act. DESDC licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities, the Adviser may reimburse DESDC for certain expenses and DESDC may reimburse the Adviser for certain expenses.

The Adviser's wholly owned subsidiary, D. E. Shaw Multi-Asset Adviser, L.L.C. ("Multi-Asset Adviser"), is a Relying Adviser and its personnel are subject to the supervision and control of DESCO LP. DESMAA is registered as a CPO pursuant to the CEA and is a member of the NFA. Multi-Asset Adviser relies on an exemption from registration as a CTA with the CFTC. Multi-Asset Adviser licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities, the Adviser may reimburse Multi-Asset Adviser for certain expenses and Multi-Asset Adviser may reimburse the Adviser for certain expenses.

DESCO LP's wholly owned subsidiary, D. E. Shaw Heliant Adviser, L.L.C. ("Heliant Adviser"), is a Relying Adviser and its personnel are subject to the supervision and control of DESCO LP. Heliant Adviser is registered as a CPO pursuant to the CEA and is a member of the NFA. Heliant Adviser relies on an exemption from registration as a CTA with the CFTC. Heliant Adviser licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities the Adviser may reimburse Heliant Adviser for certain expenses and Heliant Adviser may reimburse the Adviser for certain expenses.

DESCO LP's wholly owned subsidiary, D. E. Shaw Composite Adviser, L.L.C. ("Composite Adviser"), is a Relying Adviser and its personnel are subject to the supervision and control of DESCO LP. Composite Adviser is registered as a CPO pursuant to the CEA and is a member of the NFA. Composite Adviser relies on an exemption from registration as a CTA with the CFTC. Composite Adviser licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities, the Adviser may reimburse Composite Adviser for certain expenses and Composite Adviser may reimburse the Adviser for certain expenses.

DESCO LP's wholly owned subsidiary, D. E. Shaw Adviser, L.L.C. ("DESCO Adviser LLC"), is a Relying Adviser and its personnel are subject to the supervision and control of DESCO LP. DESCO Adviser LLC is registered as a CPO pursuant to the CEA and is a member of the NFA. DESCO Adviser LLC relies on an

exemption from registration as a CTA with the CFTC. DESCO Adviser LLC licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities, the Adviser may reimburse DESCO Adviser LLC for certain expenses and DESCO Adviser LLC may reimburse the Adviser for certain expenses.

DESCO LP's wholly owned subsidiary, D. E. Shaw Adviser II, L.L.C. ("DESCO Adviser II LLC"), is a Relying Adviser and its personnel are subject to the supervision and control of DESCO LP. DESCO Adviser II LLC is registered as a CPO pursuant to the CEA and is a member of the NFA. DESCO Adviser II LLC relies on an exemption from registration as a CTA with the CFTC. DESCO Adviser II LLC licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities, the Adviser may reimburse DESCO Adviser II LLC for certain expenses and DESCO Adviser II LLC may reimburse the Adviser for certain expenses.

DESCO LP's related person, D. E. Shaw & Co., L.L.C. ("DESCO LLC"), serves as managing member to certain clients of DESCO LP, but does not provide investment advisory services. DESCO LLC is not registered with the SEC as an investment adviser under the Advisers Act. DESCO LLC is registered as a CPO pursuant to the CEA and is a member of the NFA. DESCO LLC relies on an exemption from registration as a CTA with the CFTC. DESCO LLC and DESCO LP act as joint CPOs for certain commodity pools. DESCO LLC licenses certain intellectual property from DESCO LP and may utilize certain of DESCO LP's employees in connection with its own activities. In addition, as agreed between the entities, the Adviser may reimburse DESCO LLC for certain expenses and DESCO LLC may reimburse the Adviser for certain expenses.

DESCO LP's wholly owned subsidiary, D. E. Shaw Renewable Investments, L.L.C. ("DESRI"), is a Relying Adviser and its personnel are subject to the supervision and control of DESCO LP. DESRI licenses certain intellectual property from DESCO LP and utilizes certain of DESCO LP's employees in connection with its own investment advisory activities. In addition, as agreed between the entities, the Adviser may reimburse DESRI for certain expenses and DESRI may reimburse the Adviser for certain expenses.

DESCO LP's indirect subsidiary, D. E. Shaw & Co. (London), LLP ("DESCO London"), is a Relying Adviser and has received permission from the U.K. Financial Conduct Authority under Part 4A of the Financial Services and Markets Act 2000, authorizing it to engage in certain regulated activities in the United Kingdom. Pursuant to that authorization, DESCO London provides investment management and other services to DESCO LP that ultimately are for the benefit of certain of DESCO LP's advisory clients; DESCO LP compensates DESCO London for those services. DESCO London licenses certain intellectual property from DESCO LP and may utilize certain of DESCO LP's employees in connection with its own investment management activities. In addition, as agreed between the entities, DESCO LP may reimburse DESCO London for certain expenses and DESCO London may reimburse DESCO LP for certain expenses. The members of DESCO London are D. E. Shaw & Co. (U.K.), Ltd. ("DESCO UK"), Neil Cosgrove, and Julius Gaudio. The directors of DESCO UK are Neil Cosgrove, Julius Gaudio, and Chris Zaback. In addition to being a member of DESCO London and a director of DESCO UK, Mr. Cosgrove is a Managing Director of DESCO LP, having joined DESCO LP in February 1998. Mr. Cosgrove received his B.A. from St.

Catherine's College, University of Cambridge. Please refer to Form ADV Part 2B for the education and business backgrounds of Mr. Gaudio and Mr. Zaback.

DESCO LP's wholly owned subsidiary, D. E. Shaw & Co. (Asia Pacific) Limited ("DESCO AP"), is a Relying Adviser and is licensed with the Securities & Futures Commission in Hong Kong to engage in certain regulated activities, pursuant to which DESCO AP provides asset management and other services to DESCO LP that ultimately are for the benefit of certain of the Adviser's advisory clients; DESCO LP compensates DESCO AP for those services. DESCO AP is also registered as a foreign institutional investor with the Securities and Exchange Board of India. DESCO AP licenses certain intellectual property from DESCO LP and may utilize certain of DESCO LP's employees in connection with its regulated activities. In addition, as agreed between the entities, the Adviser may reimburse DESCO AP for certain expenses and DESCO AP may reimburse the Adviser for certain expenses. DESCO AP established its wholly owned subsidiary, D. E. Shaw Private Equity Investment Management (Shanghai) Co., Limited ("DESCO Shanghai") in accordance with the Wholly Foreign-Owned Enterprise Law of the People's Republic of China, the Detailed Implementing Rules with respect to the Wholly Foreign-Owned Enterprise Law of the People's Republic of China, and other relevant laws and regulations in the Pudong New Area, Shanghai. DESCO Shanghai provides private equity investment management and relevant consulting services to the Adviser that ultimately are for the benefit of certain of the Adviser's advisory clients. DESCO LP compensates DESCO Shanghai for those services. In addition, as agreed between the entities, the Adviser may reimburse DESCO Shanghai for certain expenses and DESCO Shanghai may reimburse the Adviser for certain expenses. The directors of DESCO AP are Julius Gaudio, Chris Zaback, and Donald Tang. Mr. Tang, who joined the D. E. Shaw group in July 2004, received his B.S. from Carnegie Mellon University. Please refer to Form ADV Part 2B for the education and business backgrounds of Mr. Gaudio and Mr. Zaback.

DESCO LP's wholly owned subsidiary, D. E. Shaw & Co. (Mauritius) Limited ("DESCO Mauritius"), provides financial and other services to the Adviser that ultimately are for the benefit of certain of the Adviser's advisory clients; DESCO LP compensates DESCO Mauritius for those services. In addition, as agreed between the entities, the Adviser may reimburse DESCO Mauritius for certain expenses and DESCO Mauritius may reimburse the Adviser for certain expenses. DESCO Mauritius's wholly owned subsidiary, D. E. Shaw India Advisory Services Private Limited ("DESIAS") provides non-binding investment recommendations and other services to DESCO Mauritius that ultimately are for the benefit of certain of the Adviser's advisory clients. DESCO Mauritius compensates DESIAS for those services. In addition, as agreed between the entities, DESCO Mauritius may reimburse DESIAS for certain expenses and DESIAS may reimburse DESCO Mauritius for certain expenses.

DESCO LP's related person, DESCO Re, is registered with the Bermuda Monetary Authority under the Insurance Act 1978 as a reinsurance and insurance company (Class 3). DESCO LP's wholly owned subsidiary, DESCO Bermuda, is registered with the Bermuda Monetary Authority under the Insurance Act 1978 as an insurance manager. Pursuant to an insurance management agreement between DESCO Re and DESCO Bermuda, all reinsurance and insurance activities of DESCO Re are performed by DESCO Bermuda. These activities ultimately are for the benefit of certain of the Adviser's advisory clients; the Adviser compensates DESCO Bermuda for those activities. DESCO Bermuda licenses certain intellectual property from DESCO LP and may utilize or employ certain of DESCO LP's employees in connection with

its activities as an insurance manager. In addition, as agreed between the entities, the Adviser may reimburse DESCO Bermuda for certain expenses and DESCO Bermuda may reimburse the Adviser for certain expenses. DESCO LP's employees may also serve as directors or officers of DESCO Bermuda and DESCO Re.

### **Certain Actual and Potential Conflicts of Interest**

The Adviser and its related persons and their directors, partners, officers, and employees have various advisory, transactional, financial, and other interests in securities and/or other financial instruments that may be purchased or sold by the Adviser's clients (or clients of related advisers), which themselves may be related persons. The Adviser, and/or its related persons that are investment advisers, has established a variety of restrictions, procedures, and disclosures designed to address potential conflicts between the interests of its clients and the interests of itself and/or its related persons in this regard, to ensure that its actions are consistent with the best interests of its clients in this context. When conflicts of interest in this regard arise, they are addressed in compliance with all legal requirements and such restrictions, procedures, and disclosures, as applicable. Restrictions and procedures generally are established by heads of the applicable strategies, senior management, and/or compliance personnel.

The Adviser and its related persons have actual and potential conflicts of interest with respect to the Adviser's clients. Although this section outlines certain such conflicts of interest, it does not purport to identify or describe all such conflicts; the applicable Governing Document of each Fund contains more extensive disclosure regarding the conflicts of interests that arise in connection with the operation of such Fund.

### **Conflicts Arising from Management and Operations of Clients**

Various conflicts of interest may arise from the management and operations of the Adviser's clients. For example, with respect to Funds managed by the Adviser and/or its related persons, the Adviser and/or such related persons have incentives to allocate expenses to any such Fund to the extent that doing so would reduce the amount of expenses that would be borne by the Adviser or such related persons (either directly or, for example, through their ownership of other Funds). Such conflicts are expected to arise in a variety of scenarios, including in determining which expenses related to work performed and/or services provided by personnel of the Adviser or its related persons will be deemed operating costs that are borne by the relevant Fund.

As an additional example, for Funds from which the Adviser or its related persons receive a Performance Charge, the existence of such Performance Charge, along with the absence of provisions requiring the manager of or the investment adviser to a Fund to absorb an equivalent percentage of any cumulative losses (other than as specified in the relevant provisions outlined in the Fund's applicable Governing Documents), may create an incentive for the Adviser and its applicable related persons to make decisions and/or investments on behalf of a Fund that are riskier or more speculative than those that would be made in the absence of a Performance Charge.

Another example of such conflicting incentives relates to the authority of the Adviser and its related persons to value each Fund's portfolio and to make determinations about a Fund's Management Fee and Performance Charge. Such valuations and such determinations affect the amount of the Management Fee and Performance Charge payable or allocable by a Fund to the Adviser and its related persons.



As outlined in each Fund's Governing Documents, the Adviser and/or its applicable related persons are authorized to determine the financial institutions and counterparties, if any, to be used by such Fund. Such financial institutions and counterparties (or their affiliates or other related persons) may have relationships with the Adviser and/or one or more of its related persons. Examples of such relationships include (a) investments by such financial institutions or counterparties or their clients in certain Funds and/or other affiliated entities; (b) investments by the Adviser's related persons in such financial institutions, counterparties, or their affiliates; and (c) placement agent, capital introduction, or other service or advisory relationships. These relationships may give the Adviser and/or its related persons an incentive to select such financial institutions and counterparties for the transactions of the applicable Fund even when such financial institutions or counterparties offer less competitive terms (such as with respect to fees) for their services.

### **Conflicts Arising from Other Activities**

In addition to conflicts of interest that arise with respect to the management and operation of the Adviser's clients, actual and potential conflicts of interest of the Adviser and its related persons also arise from, among other things, other activities ("Other Activities") that are unrelated (or only partly related) to the business and affairs of any particular client (*e.g.*, advising or managing other Funds). Such Other Activities may partially or exclusively benefit the Adviser and its related persons, and the Adviser or one or more related persons will make all decisions with respect to any actual and potential conflicts of interest with respect to the Adviser's clients and/or such clients' underlying investors, including conflicts involving the management and operations of clients or any Other Activity. Because the Adviser and its related persons may in the future expand the number, variety, and/or focus of their Other Activities, conflicts of interest (whether or not outlined in this brochure) may become more frequent and/or pronounced over time.

The Adviser and its related persons currently engage in a range of Other Activities, and there are no limits on the nature or the extent of Other Activities in which they may engage in the future. Such Other Activities in many cases will produce greater economic or other benefits for the Adviser and/or its related persons than certain clients produce for such parties, and thus will create incentives for the Adviser and its related persons to favor Other Activities over the applicable clients in various ways.

Examples of Other Activities that may be pursued by the Adviser and/or its related persons include:

(a) providing investment advice and/or operational or other services to various clients (including SMC Funds and/or other DESCO Favorable Funds) or other persons generally in exchange for Management Fees; (b) serving as general partner or manager of, or holding a limited partner, shareholder, member, or other ownership interest in, other investment vehicles (including SMC Funds and/or other DESCO Favorable Funds) or businesses generally in exchange for Performance Charges or other charges; (c) engaging in other investment, trading, lending, or financial businesses and activities unrelated to its clients; and (d) engaging in technology-related or other businesses and activities (including Arcesium, as outlined in Item 5).

Other Activities generally will benefit persons other than any particular client or its underlying investors. Such persons may include other clients and their investors, the Adviser itself or its related persons (such as when the Adviser pursues an investment opportunity for its own benefit and not for the benefit of a client), and/or the person performing the activity (such as when employees of the Adviser conduct trading

for their own accounts). In addition, the Adviser or a related person may participate in an investment alongside a client even if such client possesses sufficient desire and capital to make such investment entirely on its own. No client of the Adviser, and no investor in any such client, shall have any right to receive notice of, participate in, or otherwise receive the benefit of any Other Activity.

The interests of the Adviser and its related persons when engaging in Other Activities are expected to diverge from the interests of the Adviser's clients and/or such clients' investors. For example, the Adviser or its related persons may (a) hold investments in DESCO Favorable Funds that are larger (whether in percentage or absolute dollar terms) than any investments they hold in any particular other client and/or (b) provide services to DESCO Favorable Funds that pay Management Fees, Performance Charges, or other amounts that are greater (whether in percentage or absolute dollar terms) than the corresponding amounts paid by another client. As a result, the Adviser and its related persons have incentives to deploy more profitable investment strategies on behalf of, or to allocate more profitable investment opportunities to, such DESCO Favorable Funds instead of other clients, and have in fact done so on behalf of certain DESCO Favorable Funds. Any such deployment or allocation of such investment strategies or opportunities to a DESCO Favorable Fund would decrease the number and quality of investment strategies and opportunities available to other clients. Further, the Adviser and its related persons have incentives to increase the capital each invests in SMC Funds, even if such increase would exacerbate the conflicts of interest described in this paragraph.

More generally, the divergent interests of DESCO Favorable Funds, on the one hand, and other clients and/or their underlying investors, on the other hand, create incentives for the Adviser and certain of its related persons to devote more time and resources to such DESCO Favorable Funds rather than to other clients.

Currently, the Adviser and its related persons devote only a portion of their working time and effort to the business and affairs of any particular client of the Adviser, and it is expected that they will devote a substantial (and probably a greater) amount of their working time and effort to Other Activities (including the business and affairs of DESCO Favorable Funds). Moreover, any information learned, or expertise developed, by the Adviser or a related person that performs work on behalf of a client may also be used on behalf of one or more Other Activities. In addition, Other Activities may expose the Adviser and/or its related persons to risks independent of those associated with any particular client, and the occurrence of any such risks could adversely affect the Adviser and/or such related persons and their ability to perform work that benefits the Adviser's clients.

In addition, a client of the Adviser may, and in certain cases currently does, compete with Other Activities for (a) the purchase, sale, trading, structuring, and restructuring of Investments and investment opportunities; (b) the deployment of new investment strategies; and/or (c) the use of investment strategies or tools deployed or used on behalf of more than one client. Certain Other Activities also make use of certain intellectual property of the Adviser or certain of its related persons that is also used for clients of the Adviser. The use or non-use of any intellectual property by the Adviser with respect to its clients or with respect to any other person shall be determined by the Adviser.

The Adviser has policies to address certain of the conflicts outlined in this Item 10. However, any such policies will not necessarily eliminate the effects of such conflicts of interest. Moreover, in certain

instances the application of such policies may result in an economic benefit to certain clients (including DESCO Favorable Funds) or to the Adviser's related persons and not to other clients, and/or an economic harm to one or more clients.

### **Deployment and Modification of Investment Strategies and Tools; Exclusive Access; Shared Strategies; Preferential Access**

The Adviser and certain of its related persons have developed, and expect to continue to develop, various investment strategies. Such investment strategies may be distinguished by, among other things, asset class, instrument type, industry sector, geography, data inputs, time horizon, and/or investment approach. Each investment strategy may in turn comprise multiple elements, each of which may reflect a distinct investment thesis that attempts to identify trading opportunities based on various quantitative and/or qualitative factors. The risks described in this brochure with respect to investment strategies generally apply to individual elements of such investment strategies. The trading opportunities identified by each investment strategy are evaluated by the Adviser or its applicable related person on behalf of each Fund that participates in such investment strategy. Moreover, the Adviser and certain of its related persons have developed, and expect to continue to develop, portfolio optimization tools, price forecasting methods, risk management approaches, low latency trading approaches, transaction cost minimization techniques, and/or other tools (each, a "Portfolio Management Tool") to help execute trades and manage portfolios on behalf of relevant Funds. As outlined in this Item 10, the Adviser and its related persons face conflicts in deciding how to allocate resources and opportunities among the Adviser's clients (including DESCO Favorable Funds).

### **Deployment and Modification of Investment Strategies and Tools; Exclusive Access**

The Adviser may deploy one or more investment strategies or Portfolio Management Tools (a) on behalf of solely one client, (b) on behalf of a number of clients, or (c) on behalf of certain clients, including SMC Funds and/or other DESCO Favorable Funds, but not other clients. The Adviser and its related persons will determine which investment strategies and Portfolio Management Tools will be deployed on behalf of each client (for example, whether to deploy such items on behalf of a particular client at all and whether other clients will have preferential access to a Shared Strategy (as defined below) or shared Portfolio Management Tool relative to such client). Further, the Adviser and its related persons may (w) deploy a new investment strategy or Portfolio Management Tool, (x) cease to deploy any investment strategy or Portfolio Management Tool, (y) modify any investment strategy or Portfolio Management Tool, or (z) increase or decrease (in either relative or absolute terms) the capital or risk allocated to any investment strategy or Portfolio Management Tool, in each case with respect to any client. Such decisions may have a material adverse effect on the performance of any particular client and may instead benefit other clients (including SMC Funds and/or other DESCO Favorable Funds). In addition, in connection with any such decisions with respect to an investment strategy, a Fund may directly or indirectly engage in transactions with one or more other Funds. For the avoidance of doubt, neither the Adviser nor its related persons have any obligation to deploy any particular investment strategy or Portfolio Management Tool on behalf of any particular client, even if such deployment would be consistent with one or more of such client's investment objectives and even if such strategy is allocated to one or more other clients (including one or more SMC Funds and/or other DESCO Favorable Funds).

In fact, the Adviser and its related persons currently do not, and expect that in the future they will not, deploy on behalf of certain clients certain investment strategies, Portfolio Management Tools, and other opportunities deployed on behalf of various other clients. For example, one or more SMC Funds have been given exclusive access to certain investment strategies with shorter-duration time horizons, which may experience higher returns and/or higher Sharpe ratios (typically with higher operating costs and/or higher turnover) compared to longer-duration strategies. As a result, it is expected that if such an SMC Fund trades in the same or a similar instrument as a Fund that does not have access to such shorter-duration strategies, such SMC Fund will from time to time buy or sell such instrument at a more favorable time than such other Fund buys or sells such instrument, which is likely to have a (possibly material) adverse effect on prices paid or received by the other Fund for such instrument. Therefore, it is possible that such other Fund would experience materially better returns were it able to deploy such investment strategies.

### **Shared Strategies; Preferential Access**

For purposes of this brochure, any investment strategy that is deployed on behalf of more than one of the Adviser's clients is referred to as a "Shared Strategy," and each such client is referred to as a "Sharing Investor." In the case of certain Shared Strategies, certain Sharing Investors (including DESCO Favorable Funds) may be given preferential access, relative to other Sharing Investors, to such Shared Strategies (and resulting Investments). For example, if (a) preferential access has been granted to one or more Sharing Investors with respect to a Shared Strategy and (b) the Adviser or applicable related person determines there is insufficient capacity for all such Sharing Investors to participate in a particular trading opportunity to the full extent of each participant's desired exposure, then such opportunity would be offered to the relevant Sharing Investors in a specific order of priority, such that the client with the highest priority would have the ability to participate in such opportunity up to its desired exposure, while the client with the next highest priority would have the ability to participate in such trading opportunity only to the extent there was remaining capacity in such opportunity. In the event a Sharing Investor (which may include a DESCO Favorable Fund) is given preferential access, relative to another Sharing Investor, to a Shared Strategy, then such other Sharing Investor may be unable to obtain their desired (or any) exposure to such opportunity. Further, any such preferential access may require such other Sharing Investor to reduce or eliminate its exposure to such Shared Strategy, including by selling its holdings of Investments related to such Shared Strategy.

The identity, number, and relative priority of Sharing Investors that participate in a Shared Strategy may vary materially over time. The amount (whether relative or absolute) of each Sharing Investor's capital invested using a particular Shared Strategy may differ from the amount of any other Sharing Investor's capital invested using such Shared Strategy, and it is also possible that one Sharing Investor could take a different directional position relative to another Sharing Investor in the same instrument at any point in time due to changes in a given trading opportunity, differences in each participant's desired exposure, and/or determinations made by the Adviser or its applicable related persons. Thus, the returns experienced by one Sharing Investor in connection with a Shared Strategy may differ materially from those experienced by any other Sharing Investor. Further, the deployment of any Shared Strategy on behalf of multiple Sharing Investors may cause any such Sharing Investor to acquire and/or liquidate certain Investments at less favorable prices, and may reduce the amount of capital such Sharing Investor

is able to invest profitably, in each case relative to what would be the case if such Sharing Investor did not participate in such Shared Strategy.

As disclosed in the applicable Governing Documents, the Adviser has no obligation to recommend for purchase or sale by its clients any securities that the Adviser, its related persons, and/or personnel of the foregoing may purchase for themselves or for other clients. In addition, the ability of the Adviser to effect and/or recommend transactions for certain or all clients may be restricted due to actual or perceived regulatory requirements in the United States or elsewhere, to the Adviser's or a related person's internal policies designed to comply with such requirements, to actual or perceived conflicts of interest, to operational issues, and/or to other issues. Regulatory or contractual limitations related to effecting transactions for certain of the Adviser's clients may not apply to other clients, resulting in differences among the composition of and return from client portfolios. The Adviser reserves the right not to effect transactions for clients with or through its related persons.

### **Shared Positions; Conflicting Positions**

As disclosed in the applicable Governing Documents, the Adviser may give advice and take action with respect to any of its clients, including SMC Funds and/or other DESCO Favorable Funds, or with respect to the Adviser's own investments, that may differ from the advice given, or may involve a different timing or nature of action taken, with respect to any one or all other clients that the Adviser or its related persons advise, and thus effect transactions for such clients at prices or rates that may be more or less favorable than for other clients. In addition, the Adviser, its related persons, and/or other clients (including SMC Funds and/or other DESCO Favorable Funds) may hold the same (or the opposite) position in a given security, commodity, or other financial instrument as that held by a client at the same time, and the Adviser and/or its related persons may cause one or more clients to take actions that conflict with actions taken by other clients or that involve a different timing or nature of action taken than with respect to other clients. For example, it is possible that one client would (knowingly or unknowingly) buy or sell certain securities or instruments while another client is undertaking a different (including potentially opposite) strategy with respect to those securities or instruments. To the fullest extent permitted by law, the Adviser and its related persons are not required to seek to eliminate the possibility or effects of any such action. Accordingly, such an action may result in an economic benefit to one client and/or an economic harm to another client. In general, the Adviser will act in the best interests of its clients, subject to applicable law and to any agreement, organizational or other document, or disclosure applicable to a particular client or underlying investor.

Any common (or opposing) positions described above may limit the ability of the Adviser to add to the position held on behalf of any particular client, to readily liquidate such a position, or to obtain a favorable price in the course of such liquidation. In effecting transactions for the client, related person, and/or any other persons or entities, it may not always be possible or consistent with the investment objective of the client or of such other persons or entities to take or liquidate the same investment positions at the same time or at the same prices. The "market impact" associated with a liquidation by such other persons or entities may adversely affect a client's ability to liquidate its position; or where a client's position is liquidated, the price at which such liquidation occurs; or where a client does not liquidate its position, the mark-to-market value of such position.

The Adviser, its related persons, and/or their clients may trade with each other from time to time upon the advice of the Adviser and, as applicable, related persons. The Adviser generally does not itself trade securities on a principal basis with clients. However, certain clients and related persons of the Adviser, including SMC Funds, are deemed principals (and in the future other clients may be deemed principals), based on SEC staff guidance, due to the investment in each such client or related person by the Adviser and controlling persons exceeding 25% of that client's or related person's assets. To the extent that the Adviser and/or its related persons (including Funds) engage (or are deemed to engage) in principal securities transactions, any such transactions will comply with applicable law. The Adviser and/or its related persons may have interests in such transactions that are adverse to a particular client.

To the extent permitted by applicable law and the applicable Governing Documents, the Adviser and/or its related persons may effect "cross transactions" between the Adviser's and/or its related persons' client accounts in which one client will purchase securities held by another client. The Adviser and/or its related persons will direct clients to enter into such transactions only when the transactions are consistent with the best interests of both clients and at a price that the Adviser and/or its related persons believe constitutes best execution for both clients. Neither the Adviser nor any related party receives any commission or commission equivalent in connection with these transactions.

Disclosures regarding conflicts of interest and their resolution generally will be contained in the applicable Governing Document, this brochure, and/or another document. Other documents, such as financial or periodic reports, furnished to clients or investors also may contain disclosure regarding conflicts of interest.

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

The Adviser has adopted a code of ethics (the "Code") that establishes the standard of business conduct that must be followed by, among others, all partners, directors, officers, and employees of the Adviser (collectively, "Supervised Persons"). The Code incorporates the following general principles, which all Supervised Persons are expected to uphold: act in the best interests of clients; conduct personal securities transactions in a manner consistent with the Code, which seeks to address certain conflicts of interest in this regard; avoid taking any inappropriate advantage of one's position at the Adviser; maintain confidentiality of information concerning the Adviser's securities recommendations and client securities holdings and transactions; and provide accurate disclosure in reports required by auditors, regulators, or government bodies.

The Adviser believes that these general principles not only help the Adviser fulfill its obligations undertaken as an investment adviser, but also protect the Adviser's reputation and instill in employees the Adviser's commitment to honesty, integrity, and professionalism.

The Code also provides guidelines for Supervised Persons regarding adherence to securities laws generally, transactions in personal accounts involving public and private securities and commodities, activities outside of the investment adviser's business, giving and receiving business-related gifts, and the maintenance and memorialization of certain family and/or close personal relationships. For example, the Code generally requires that all Supervised Persons obtain approval prior to effecting a securities or

commodities transaction in a personal or related account for which the employee exercises control. In addition, the Code requires that all Supervised Persons report Code violations and outlines potential sanctions for such violations. The Adviser's Chief Compliance Officer is responsible for various aspects of the Code's administration, including without limitation the monitoring and review of personal securities and commodities transactions of Supervised Persons, and is available for any questions Supervised Persons have regarding the Code. The Adviser will provide a copy of the Code to any client or prospective client upon request and may elect to provide a copy of the Code to investors in the Funds.

Please see Item 10 for additional information regarding certain conflicts of interest arising from circumstances in which the Adviser recommends to clients, or buys or sells for client accounts, securities in which the Adviser or its related persons is invested (or is buying or selling) or otherwise has a financial interest.

## **Item 12: Brokerage Practices**

Generally, the Adviser is authorized by each client to determine the financial institution or counterparty to be used, if any, for each transaction executed on behalf of such client. In selecting such financial institutions and counterparties for transactions, the Adviser seeks to obtain the best execution of transactions for its clients under the circumstances (consistent with what it believes to be the best overall interests of the client), but need not solicit competitive bids, and does not have an obligation to seek the lowest available commission cost. The price offered by a financial institution or counterparty, including commissions and commission equivalents, if any, and other transaction costs, is normally an important factor in this decision, but financial institution and counterparty selection also takes into account the overall quality of the execution services offered, including without limitation such factors as: execution capability; willingness and ability to commit capital; creditworthiness and financial stability; clearance and settlement capability; ability to maintain confidentiality; the provision of research and other services; and potential or perceived conflicts between clients of the Adviser and its related persons. Accordingly, transactions will not always be executed at the best price or the lowest available commission. In addition, the Adviser is not required to negotiate "execution only" commission rates; thus, the clients may be deemed to be paying for other services provided by the financial institution that are included in the commission rate. Subject to its duties under the express terms of any applicable agreement and under applicable law, the Adviser may determine eligibility of and/or direct transactions or commissions to certain broker-dealers, exchanges, or other financial institutions and counterparties (or their affiliates) that are direct or indirect owners of the Adviser, are owned directly or indirectly by the Adviser, or are otherwise affiliated with the Adviser; have made (or whose affiliates have made or directed) investments in Funds advised by the Adviser or a related party; or may be willing to furnish other services for the benefit of the Adviser or a related party. In the latter case, such services will include only brokerage and research services that are deemed to fall within the safe harbor provided by Section 28(e) of the Exchange Act or any amendment or successor to such provision. Such services may include the provision of information on economic trends or conditions, political developments, industries, groups of securities, individual countries, and individual companies, as well as brokerage services or communication services related to the execution, clearing, and settlement of transactions. Research or other services obtained in this manner may be used in servicing any or all clients of the Adviser and may be used in connection with

advisory accounts other than those that pay commissions and commission equivalents to the financial institution relating to the research or other service arrangements. The receipt of such services from particular financial institutions or counterparties may cause the Adviser to have an incentive to select or recommend such financial institutions or counterparties rather than financial institutions or counterparties from which the Adviser's clients would receive the most favorable execution. The appropriateness of brokerage commissions is evaluated by the Adviser on an ongoing basis.

Clients may need to maintain and use a number of brokerage accounts to facilitate the various trading strategies deployed by the Adviser. Nevertheless, the clearing, settlement, and custody of client positions may be carried out by a limited number of counterparties and, depending on the Investment, may require negotiation on a transaction-by-transaction basis. This may create a concentration of exposure to the creditworthiness of the counterparties carrying out such clearing, settlement, and custody. Any failure of any such counterparty could have, and has had in the past, a material adverse effect on clients.

When portfolio decisions are made contemporaneously for multiple clients, including SMC Funds and/or other DESCO Favorable Funds, in the same instrument, the Adviser may, if consistent with market conditions, client characteristics, and applicable law, bunch or aggregate client orders (including orders for clients in which the Adviser, its related persons, and/or its personnel have beneficial interests) for execution. Such bunched or aggregated orders might facilitate execution and may reduce brokerage and other costs. The Adviser, however, is not required to bunch or aggregate orders if (a) portfolio management decisions are not made contemporaneously, (b) the Adviser determines that it would be consistent with its investment management duties or the interests of its clients not to do so, or (c) bunching or aggregating is not practical operationally or otherwise. Because of prevailing trading activity, it is frequently not possible to receive the same price or execution on the entire volume of positions purchased or sold in such bunched or aggregated orders. When this occurs, the Adviser (in its sole and absolute discretion) may charge or credit clients participating in the bunched or aggregated order with the average price of the various prices received for that order, or alternatively, may charge or credit such clients with a price determined in good faith to be an appropriate price. Positions purchased or sold in a bunched transaction are allocated to the participating clients using methods determined by the Adviser in its sole discretion (which methods may include *pro rata* by assets under management or by proportionate order size). The Adviser may, however, increase or decrease the transaction amount allocated to each client if necessary to avoid holding odd-lots or small numbers of positions for particular clients. If the Adviser is unable to or does not fully execute a bunched transaction or the Adviser determines that it would be impractical to allocate a small number of positions among all of the accounts initially intended to participate in the transaction, the Adviser may allocate such positions in a manner determined in good faith to be an appropriate allocation. Although it is anticipated that the bunching or aggregation of orders will benefit each client overall, aggregating orders may disadvantage certain clients, including without limitation by resulting in shared allocations of orders or worse execution prices for client orders. Alternatively, not aggregating orders may disadvantage certain clients, including without limitation by resulting in higher costs or worse execution prices for client orders.

In addition, in cases in which the Adviser bunches or aggregates orders on behalf of its clients, some executing brokers, clearing brokers, other counterparties, or trading facilities may require or request that a single entity be the party to the contract that covers all of the trades with the Adviser's clients. Where



one of the Adviser's clients is the party to such a contract, it will bear the risk that one of these other clients would default on its portion of any trade, and that the client that is the party to the contract would be liable for the defaulted obligation. Where one of the Adviser's clients is not the party to such a contract and is allocated a portion of a trade, it may bear the risk that the client of the Adviser that is the party to such contract would default under the contract, which may result in the cancellation of trades made on behalf of the client that is not the party to the contract.

Subject to applicable legal restrictions, the Adviser or its related persons may execute transactions in which it or its related persons act as broker or principal, as applicable, and may also execute transactions in which the Adviser and/or its related persons have an interest, as outlined in Item 10.

The Adviser's related persons may also have independent authority to determine and direct the execution of the Adviser's clients' portfolio transactions, within the objectives, risk and liquidity profiles, and policies (if any) specified by each client or outlined in the applicable Governing Document and/or other written agreement with a client, subject to the same policies and restrictions outlined above.

The Adviser attempts to correct any identified trade errors unless it determines that doing so would not be in the interest of the applicable client. As with all other financial gains and losses attributable to Investments, any financial gains or losses resulting from trade errors generally are borne by the applicable client and underlying investors, subject to the terms of the applicable Governing Document.

When trading on behalf of multiple clients, the Adviser endeavors to allocate investment opportunities among such clients in a fair and equitable manner. The Adviser's allocation of trades may vary based on, among other things, differences in investment objectives, capital constraints, and/or leverage preferences among clients, and any anticipated increase or decrease of any particular client's assets under management. In some cases, the Adviser may elect to execute a single transaction, and to allocate a portion of the resulting position to multiple Funds, including SMC Funds and/or other DESCO Favorable Funds, with the actual allocation being determined by the Adviser. Positions purchased or sold in such a transaction will generally be allocated using a *pro rata* method, though the Adviser may at times employ other methods in an effort to achieve an allocation that is fair and equitable (as determined by the Adviser). The Adviser's policies and procedures for allocating trades among multiple clients were developed by the firm's relevant senior management and compliance personnel, and the Adviser does not alter such allocation policies without the approval of such personnel.

The Adviser does not currently participate in directed brokerage.

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

For each of the Adviser's investment strategies, a strategy head and/or other supervisors are responsible for reviewing trading data and other reports on a regular basis and overseeing the trading activity performed on behalf of the Adviser's clients within such investment strategy. Such reviews include without limitation a verification that actual trading activity is consistent with the intended strategy, an analysis of risks associated with a particular strategy, and a determination that trading is undertaken in compliance with applicable regulations. Certain of the principal executive officers of the Adviser or its affiliates may review investment strategies periodically. In addition, the Adviser uses independent third parties to conduct financial audits of the accounts of its clients, and the Compliance Department reviews

certain other aspects of regulatory compliance. The frequency of all such reviews is determined as warranted by the purpose of the review and other circumstances.

In addition to reports required by applicable law, the Adviser provides reports in accordance with the applicable Governing Document or other written agreements with particular clients or underlying investors in Funds.

The Adviser provides clients and/or underlying investors in Funds with written reports on a periodic basis that generally include, among other things, the net asset value or the capital balance of such client's or investor's account and a measure of performance based on the change in valuation of such client's account or the applicable Fund during the report period.

In addition, with respect to many of the Funds, an independent third-party administrator and other independent third parties conduct an independent monthly verification of the Adviser's pricing of the investment positions held directly or indirectly by each such Fund. The independent third-party administrator provides a monthly letter to investors in such Funds that confirms, among other things, the accuracy of the capital balances and of certain monthly performance information reported by the Adviser or the Adviser's related persons to those investors, the performance of an independent pricing verification, and the percentage (if any) of the relevant Fund's investments for which the independent third party was unable to verify prices.

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

The Adviser and its related persons do not currently directly or indirectly compensate any person (other than supervised persons of the Adviser or its related persons) for client referrals. The Adviser has entered into capital introduction agreements with certain financial institutions; under these arrangements, the financial institution does not receive compensation for this service. Further, the Funds may engage, and in the past have engaged, internal and/or external placement agents for placement of interests in the Funds.

#### **Item 15: Custody**

Client assets are generally held in custody by unaffiliated qualified custodians; however, the Adviser is deemed to have custody of certain client assets. Fund investors do not receive account statements from the custodian; rather, the Funds are subject to an annual audit, and the audited financial statements are distributed to each Fund investor.

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

The Adviser accepts discretionary authority to manage securities on behalf of its clients. The terms and procedures governing assumption of this authority are set forth in the applicable Governing Document.

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

The Advisers Act generally requires investment advisers to vote all proxies within their authority. The Adviser does not vote proxies where it does not have the authority to do so or where the cost of doing so, in the opinion of the Adviser, would exceed the expected benefits to the applicable client. The Adviser generally votes most shares through and in accordance with the recommendations of an independent third-party proxy voting service (the "Voting Service Recommendations"). The Adviser has designated particular employees to review certain proxy matters. When the designated employees believe that the Voting Service Recommendation may be contrary to the best interest of a client, the designated employees may consider an alternative vote, in which case they must obtain the approval of the Chief Compliance Officer and a Managing Director, or their respective designees, before instructing the proxy voting service to vote the applicable proxy. For the avoidance of doubt, the Adviser retains the authority to vote proxies, has not delegated such authority to any other party, and may vote against any Voting Service Recommendation if it determines such recommendation may be contrary to the client's best interests.

The Adviser believes that the independent third-party proxy voting service's internal policy regarding conflicts of interest, including the use of information barriers, adequately satisfies potential conflict-of-interest concerns. Additionally, the Adviser has established written policies and procedures designed to ensure that shares owned by a client to which the Adviser provides advice are voted in the best interest of such client (the "Proxy Voting Procedures"). The Adviser will provide a copy of the Proxy Voting Procedures to any client or prospective client upon request and may elect to provide a copy to underlying investors in Funds.

## **Item 18: Financial Information**

The Adviser does not require or solicit prepayment of fees more than six months in advance. The Adviser has not been the subject of a bankruptcy petition at any time during the past ten years.