



**Part 2A of Form ADV: Axar Capital Management LP - *Brochure***

**Item 1 - Cover Page**

Amended May 1, 2018

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This Brochure provides information about the qualifications and business practices of Axar Capital Management LP (the “Adviser” or the “firm”). If you have any questions about the contents of this Brochure, please contact us at (212) 356-6130. The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority.

Axar Capital Management LP has filed an SEC registration application as a registered investment adviser. Registration of an investment adviser does not imply any level of skill or training. The oral and written communications of an investment adviser provide you with information about which you determine to hire or retain an investment adviser.

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

## **Item 2 - Material Changes**

Axar Capital Management LP (the “Adviser”) is providing this annual update to the “Brochure” since its last update dated March 30, 2017. A summary of changes since the last update is as follows:

- Item 4 reflects the Adviser’s assets under management as of December 31, 2017.

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#### Item 4 - Advisory Business

- A. The Adviser is a Delaware limited partnership and has its principal place of business in New York, New York. The Adviser provides discretionary investment advisory services to various pooled investment vehicles operating as private funds (each a “Fund” and, collectively, the “Funds”) and separately managed accounts. (the “Managed Accounts” and, together with the Funds, the “Clients”). Interests in the Funds are offered to certain sophisticated, qualified investors, including: high net worth individuals, retirement plans, trusts, partnerships, corporations, or other businesses.<sup>1</sup>

The Adviser was formed in 2015 by Axar GP LLC and the Adviser’s portfolio manager, Andrew M. Axelrod (the “Principal”).

- B. The Adviser’s primary investment objective is to generate positive risk-adjusted returns. The Adviser employs an opportunistic, value-oriented investment strategy supported by an analytical, fundamental research approach to identifying and assessing intrinsic value.
- C. While each of its Clients will follow the general strategy stated above, the Adviser may tailor the specific advisory services with respect to each Client based on the particular investment objectives and strategies described in the applicable Client’s (i) confidential offering memorandum or separate account agreement (as applicable) and (ii) governing documents, including but not limited to an investment management agreement (referred to collectively as “Governing Documents”). Managed account clients may impose restrictions on investing in certain securities or types of securities.

**All discussion of the Clients in this Brochure, including but not limited to their investments, the strategies used in managing the Clients, and conflicts of interest faced by the Adviser in connection with the management of the Clients are qualified in their entirety by reference to each Client’s respective Governing Documents.**

- D. The Adviser does not participate in wrap fee programs.
- E. As of December 31, 2017, the Adviser manages approximately \$664,332,878 in discretionary assets under management and \$0 in non-discretionary assets under management.

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<sup>1</sup> As a registered investment adviser, the Adviser owes a fiduciary duty to all of its clients. In 2006, the decision by the Court of Appeals for the D.C. Circuit in *Goldstein v. SEC*, 451 F.3d 873 (D.C. Cir. June 23, 2006), with respect to private funds, clarified that the “client” of an investment adviser to a private fund is the fund itself and not an investor in the fund.

## Item 5 - Fees and Compensation

- A. Below is a discussion of how the Adviser is generally compensated in connection with providing advisory services to its Clients. However, the Adviser may enter into different fee arrangements on a Client by Client basis. A potential investor in a Fund or any potential Client should read and review any and all Governing Documents in their entirety before making any investment decisions.

*Management Fees.* For its services to its Funds, the Adviser is entitled to a management fee (the “Management Fee”) which is paid by Fund investors and varies depending on the class of interests held by the applicable Fund investors (generally at an annual rate ranging from 1% to 2%). The Management Fee is paid in advance on a quarterly basis. The annual Management Fee may be negotiated by Fund investors.

With respect to the services rendered to Managed Accounts, the Adviser generally receives a quarterly management fee which is based upon a percentage of the applicable Managed Account’s net asset value as agreed upon between the Adviser and the Managed Account holder.

*Performance Allocation and Performance-Based Fees.* As of each December 31 of each year, an incentive allocation generally equal to 20% of any New Appreciation (as defined below) then attributable to each investor’s capital account corresponding to such investor’s interests or shares (the “Performance Allocation”) will be made. The Performance Allocation will be allocated to an affiliate of the Adviser.

The “New Appreciation” is equal to the amount by which the Net Asset Value of fund interests (calculated after deduction of Management Fees and for all accrued expenses, but prior to the Incentive Allocation being calculated) exceeds the High Water Mark attributable to such interests.

The “High Water Mark” applicable to each interest is the highest aggregate Net Asset Value of such interest as of any preceding December 31, after reduction for the Incentive Allocation then made.

With respect to the Managed Accounts, the Adviser is generally entitled to receive performance-based allocation at the end of each applicable performance period (as defined in the investment management agreement between the Adviser and the Managed Account holder).

Clients should note that similar advisory services may (or may not) be available from other registered investment advisers for similar or lower fees.

*Fund Organizational Expenses.* Funds also bear the expenses of the organization of the Funds. The organizational and initial offering costs of the Funds include legal, accounting, printing, marketing and comparable expenses (not including any placement fees). The Funds amortize such organizational expenses for Net Asset Value purposes in 60 equal monthly installments. The organizational expenses borne by the Funds are described in more detail in the Funds’ Offering Documents.

*Operating Expenses.* Fund investors pay operating expenses including: legal, auditing, accounting and other professional expenses (for example, accounting and tax advisory fees, tax compliance and filing-related costs (including FATCA and AEOI compliance), legal fees charged in negotiating, prime brokerage, ISDA Master Agreements and related custody and segregation agreements, repurchase agreements or other trading or financing agreements); administration expenses and fees including, but not limited to, the provision of any investment/management-related reporting and certain mid-office services; research expenses (including research-related and due diligence travel); investment expenses such as commissions, ticket charges, prime brokerage fees, give up fees, borrow costs, interest on margin accounts and other indebtedness and similar charges, costs associated with closing bank debt and trade claim trades (including legal fees as well as costs associated with delayed settlement risk), as well as other expenses incurred in connection with trading the Fund's account; costs and expenses associated with engaging expert networks and consultants; order management systems; custodial fees; bank and wire service and transaction fees; regulatory reporting costs (including, for example, Schedule 13D, 13F, 13G and Form PF filing costs and expenses, as well as EDGAR formatting and filing costs); compliance costs, including, without limitation, costs of compliance programs, third-party compliance consultants, actual and "mock" examinations, regulatory and governmental inquiries, subpoenas and proceedings (in each case, whether involving the Funds or the Adviser); and other expenses and legal fees related to the purchase, sale and maintenance of Fund assets as determined by the Adviser (including, but not limited to, withholding, income and other taxes). The Funds' operating expenses also include fund director fees and other legal structuring costs including costs associated with issuing interests or shares as well as revising the Funds' offering and operative documents. Also, the Funds' operating expenses include insurance premiums (including errors and omissions insurance for the principals, members, directors, officers and employees of the Adviser and its affiliates, and the Funds' and any master funds' directors).

Furthermore, and to the extent operating expenses or other expenses apply to more than one Fund or Client such as the Managed Accounts, the Adviser has implemented an expense allocation policy in order to allocate such shared expenses fairly among the applicable Clients.

*Miscellaneous.* The Adviser may grant waivers of the Management Fees and Performance Allocations to principals, affiliates, and employees of the Adviser.

The Adviser may agree with certain investors to a variation of the terms set forth in the Funds' Offering Documents.

- B. Management Fees and Performance Allocations from the Funds are paid/allocated as indicated in Item 5.A. above.
- C. Clients will incur brokerage and other transaction costs. Item 12 of this Brochure discusses how the Adviser selects brokers and determines the reasonableness of their compensation. The direct expenses borne by each Client are described in more full detail in each Client's Offering Documents.
- D. The Management Fee with respect to the Funds is paid in advance on a quarterly basis, as indicated in Item 1.A. The Management Fee with respect to a Managed Account may be paid in advance or arrears.
- E. Other than as described above, neither the Adviser nor any of its supervised persons receives

any compensation from the sale of securities or other investment products.

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

As stated in Item 5 above, the Adviser or its affiliates receive performance-based fees or allocations from certain Clients. These payments are subject to Section 205(a)(1) of the Investment Advisers Act of 1940, as amended (the “Advisers Act”), in accordance with the available exemptions thereunder, including the exemption set forth in Rule 205-3, which requires that performance-based fees only be charged to “qualified clients” (as such term is defined in Rule 205-3).

Performance-based fees, in general, may create an incentive for an adviser or its supervised persons to make investments that are riskier and more speculative than would be the case in the absence of a performance-based fee. Such fee arrangements may also create an incentive to favor higher fee paying clients over other clients in the allocation of investment opportunities. To address these conflicts of interest with respect to any future clients, the Adviser implements policies and procedures to ensure that all clients receive equitable and fair treatment with respect to the allocation of investment opportunities.



**Item 7 - Types of Clients**

As mentioned in Item 4, the Adviser provides investment advisory services to private funds for sophisticated, qualified investors, including: high net worth individuals, retirement plans, trusts, partnerships, corporations, or other businesses. The Adviser also provides advisory services to separately managed accounts for institutional investors.

The minimum initial investment in a Fund varies by class and is either \$5,000,000 or \$20,000,000, although the Adviser may accept investments in a lesser amount at their sole discretion.

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

### **A. Investment Objective and Philosophy**

The investment objective of the Adviser is to generate positive risk-adjusted returns.

The Adviser employs an opportunistic, value-oriented investment strategy supported by an analytical, fundamental research approach to identifying and assessing intrinsic value. The Adviser intends that the Clients' investment strategy will not regularly use leverage or borrowed money, although the Adviser may employ leverage and is not restricted from doing so. Further, there may be leverage embedded in several of the financial instruments the Funds hold.

The Adviser invests opportunistically in various securities and financial instruments across diverse sectors and asset classes, focusing on event-driven and special situations investments across the capital structure. While the Adviser trades primarily in the United States, Canada and other G10 countries, it may invest in certain other countries, including emerging markets, from time to time. The Adviser may invest in distressed or stressed bank debt and bonds, mezzanine debt, notes, asset-backed securities, lease obligations, listed and over-the-counter ("OTC") equities, post re-organization equities, trade claims, structured products, municipal bonds, convertible bonds, bank regulatory capital, pooled vehicles, liquidating vehicles or trusts, preferred stocks, warrants, derivatives, credit default swaps and other securities and investment instruments selected by the Adviser. Given the opportunistic nature of the investment strategy, the composition of the portfolio will shift over time, depending on market conditions.

The Adviser searches for changing market conditions, negative sentiment, stressed or distressed companies and inefficiencies that may create opportunities for value-oriented investing. The Adviser seeks situations where prices have become distorted for reasons unrelated to intrinsic value. Asset prices deviate from intrinsic value for a host of reasons including forced selling, uncertainty surrounding a change in the business or industry, bankruptcy or balance sheet stress and other misunderstood conditions. The Adviser seeks to maintain an extensive pipeline of actionable credit and equity ideas, allowing for patience and investment only when a significant discount is available. The Adviser believes its competitive advantage lies in a uniquely broad sourcing edge, a credit-oriented mindset and its personnel's experience curve.

The Adviser attempts to invest at prices that reflect a significant discount to intrinsic value. The Adviser performs bottoms-up, fundamental analysis on every investment, supported by a comprehensive due diligence process. The Adviser does not adhere to one particular formula to determine value, but uses a range of valuation methods including, but not limited to, cash flow and earnings power analysis as well as balance sheet-based valuations. By considering value from multiple perspectives and consistently applying conservative assumptions when forecasting, the Adviser intends to identify investments that are likely to increase in value in absolute terms and where some change, event or other catalyst will cause the market's valuation mispricing to be corrected.

## B. Risk Management

The Adviser analyzes risk at various levels, and the first level is always with an individual investment. The Adviser considers the probability and magnitude of a permanent loss of capital for each investment. The Adviser believes that deep, fundamental research applied to each position is the most reliable form of risk mitigation. The Adviser rigorously tests assumptions underlying each investment to understand the sensitivities in the Funds' portfolios. The Adviser will only pursue investments that it believes can tolerate a variety of stressed conditions.

The Adviser also considers risk at the portfolio level. The Adviser may use hedges when it perceives a high correlation to a particular risk across numerous investments such as macroeconomic factors, monetary policy, inflation, commodity prices or interest rates. The Adviser looks for mispriced instruments where realization of value is not dependent on the improvement in financial markets. This practice is intended to minimize the correlation between the Funds' various assets and that of the performance of the general financial markets.

\* \* \* \*

*There are no material restrictions on the strategies, leverage, markets or instruments that may be incorporated into the Adviser's portfolio or the percentage of the assets that may be committed to any particular strategy type, market or instrument. By investing, investors are relying on the discretionary market judgment of the Adviser's personnel, without any meaningful diversification, leverage, type of trading or strategy concentration limitations. The Adviser may change the trading parameters applicable to the portfolio at any time.*

*There can be no assurance that the Adviser will successfully implement its risk management program or that the Clients will not incur substantial or total losses.*

**PROSPECTIVE INVESTORS ARE URGED TO CONSULT WITH THEIR OWN FINANCIAL, LEGAL AND TAX ADVISERS REGARDING THEIR INDIVIDUAL CIRCUMSTANCES AND THE SUITABILITY OF AN INVESTMENT. INVESTORS COULD LOSE THEIR ENTIRE INVESTMENT.**

- C. THE ADVISER'S INVESTMENT STRATEGY INVOLVES A HIGH DEGREE OF BUSINESS AND FINANCIAL RISK THAT CAN RESULT IN SUBSTANTIAL LOSSES AND IS SUITABLE ONLY FOR INVESTORS PREPARED TO BEAR SUCH RISK. THE RISKS FACTORS BELOW ARE NOT INTENDED TO BE EXHAUSTIVE. PROSPECTIVE INVESTORS SHOULD CAREFULLY REVIEW THE RISKS DESCRIBED IN THE CLIENTS' OFFERING DOCUMENTS:**

### **Dependence on the Adviser**

The Clients must rely on the ability of the Adviser to manage the Funds' trading and investment program, including indirectly through its investment in a master fund if a master-feeder fund arrangement is used. The Adviser, in turn, depends on the services of certain key personnel. The loss of the Adviser's services could be material and adverse to the Clients and would likely result in the premature termination of the Clients.

### **Dependence on the Adviser's Personnel**

The success of the Clients depends upon the ability of the Adviser's personnel to develop and implement, as well as allocate the Clients' capital (or master fund capital in a master-feeder fund arrangement) among, investment strategies in an attempt to achieve the Clients' investment objectives. If the Adviser were to lose the services of the Adviser's personnel, the consequences to the Clients could be material and adverse, and would likely lead to the premature termination of the Clients.

### **Leverage**

The Funds may invest in derivative instruments that have leverage embedded and in other investment instruments and transactions that are inherently leveraged. Although it is not expected that the Funds will regularly borrow money directly, there are generally no restrictions on the amount or type of leverage which the Funds may use, and the Funds may borrow money directly from time to time. The Adviser will determine such leverage based on factors deemed relevant by the Adviser. The use of leverage can dramatically magnify both gains and losses, increasing the possibility of a shareholder's total loss of its investment in the Fund.

Leverage achieved by the Funds through margin borrowings requires them to post collateral with brokers and counterparties. As a general matter, the banks and dealers that provide financing to the Funds can apply essentially discretionary margin, haircut, financing, security and collateral valuation policies. Changes by banks and dealers in such financing policies, or the imposition of other credit limitations or restrictions, whether due to market circumstances or governmental, regulatory or judicial action, may result in large margin calls, loss of financing, forced liquidation of positions at disadvantageous prices, termination of swap and repurchase agreements and cross-defaults to agreements with other dealers. Any such adverse effects may be exacerbated in the event that such limitations or restrictions are imposed suddenly and/or by multiple market participants at or about the same time. The imposition of such limitations or restrictions could compel the Funds to liquidate all or part of their portfolio at disadvantageous prices. In recent years, banks and dealers have substantially curtailed financing activities and increased collateral requirements, forcing many hedge funds to liquidate positions. Any or all of these situations could arise due to circumstances that the Adviser may be unable to control.

### **Competition**

The Funds compete with numerous other private investment funds as well as other investors, many of which have resources substantially greater than the Funds.

The amount of capital committed to alternative investment strategies has increased dramatically during recent years. At the same time, market conditions have become significantly more adverse to many of such strategies than they were in previous years. The profit potential of the Funds may be materially reduced as a result of the "saturation" of the alternative investment field.

The "Volcker Rule" component of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") materially restricts proprietary speculative trading by banks, "bank holding companies" and other regulated entities. As a result, there has been a significant influx of new portfolio managers into private investment funds who had previously traded

institutional proprietary accounts. Such influx can only increase the competition for the Funds from other talented portfolio managers trading in the Funds' investment sectors.

### **Lack of Market Liquidity**

Despite the generally heavy volume of trading in many of the instruments traded by the Clients, the market for certain of these instruments may have periods of limited liquidity. Lack of liquidity can make it economically unfeasible for the Clients to recognize profits on open positions or to close out open positions against which the market is moving. In addition, illiquidity can disconnect market values from the historical pricing indicators used in the Adviser's investment analysis, and the fewer transactions that take place, the greater the risk that market values do not reflect true pricing relationships or fair value.

A financial exchange may from time to time suspend or limit trading. Such a suspension could render it difficult or impossible for the Clients to liquidate affected positions and thereby expose them to uncontrollable losses. There is also no assurance that off-exchange markets will remain liquid enough for the Clients to close out positions.

It is impossible to predict what additional interim or permanent governmental restrictions may be imposed on the markets (including specifically the hedge fund industry) and/or the effect of such restrictions on the Clients' strategies. However, the Adviser believes that there is a high likelihood of significantly increased regulation of the financial markets, and that such increased regulation could be materially detrimental to the Clients.

The events of 2008–2009 highlighted the adverse effects of market illiquidity on alternative investment strategies.

### **Market Disruptions**

The global financial markets have in the past few years gone through pervasive and fundamental disruptions that have led to extensive and unprecedented governmental intervention. Such intervention has in certain cases been implemented on an "emergency" basis, suddenly and substantially eliminating market participants' ability to continue to implement certain strategies or manage the risk of their outstanding positions. In addition — as one would expect given the complexities of the financial markets and the limited time frame within which governments have felt compelled to take action — these interventions have typically been unclear in scope and application, resulting in confusion and uncertainty which in itself has been materially detrimental to the efficient functioning of the markets as well as previously successful investment strategies.

The Clients may incur major losses in the event of disrupted markets and other extraordinary events in which historical pricing relationships become materially distorted. The risk of loss from pricing distortions is compounded by the fact that in disrupted markets many positions become illiquid, making it difficult or impossible to close out positions against which the markets are moving. The financing available to the Clients from their banks, dealers and other counterparties is typically reduced in disrupted markets. Such a reduction may result in substantial losses to the Clients. Market disruptions may from time to time cause dramatic losses

for the Clients, and such events can result in otherwise historically low-risk strategies performing with unprecedented volatility and risk.

### **Potentially Adverse Effects of “Low-Latency” Trading**

It is estimated that over 50% of the equity trades executed by securities exchanges are implemented by “low-latency” computerized strategies trading in massive volume and with high turnover on the basis of technical market factors. Such trading has little, if anything, to do with the qualitative analysis of the prospects for an issuer’s success. Low-latency trading not only eliminates mispricing on which the Funds might otherwise capitalize, but also may be a dominant factor in determining market prices, making it difficult for the Adviser’s investment approach to succeed.

### **Interest-Rate Risks**

The prices of the equities, fixed-income securities and credit securities held by the Clients may be sensitive to interest-rate fluctuations.

The operations of the issuers in which the Clients invest may also be sensitive to interest-rate changes. To the extent such issuers rely on financing for working capital needs, their profitability will be materially impacted by changes in interest rates, and such changes can also materially affect consumer demand for many products in the sectors in which the Clients will trade.

The Adviser does not purport to have any expertise predicting future interest-rate movements, particularly as interest rates can be materially influenced by government interests reflecting changing political as well as macro-economic factors.

### **Inflation**

There has been an unusually low rate of inflation in the United States and most other developed economies for some time. At the same time, the central governments have been injecting unprecedented amounts of financial stimulus into these economies — historically a recurring cause of serious inflation. Were significant inflation to occur, the effect on the Adviser’s strategy could be materially adverse — while unpredictable, stocks have traditionally been considered a form of “hedge” against inflation, but that is not always the case (particularly in the case of any individual stock) and the Clients will take short as well as long positions.

### **Systemic Risk**

The events of late 2008 demonstrated the systemic risk of a general loss in confidence, or simply uncertainty, concerning the stability of financial institutions in general. It is difficult, if not impossible, for any counterparty to know the financial condition of another counterparty in detail, and in a scenario in which a major investment bank declares bankruptcy, resulting in lasting uncertainty concerning, and material losses of, its customer funds, financial institutions can suddenly cease ordinary course dealings with each other, resulting in “credit freezes,” the inability to refinance short-term borrowings and general dysfunction of the financial markets.

Many other highly successful financial market participants sustained major losses as a result of the systemic dysfunction of the global financial system following the Lehman Brothers

bankruptcy. There can be no assurance that such disruptions will not recur or that the Funds will not incur major losses as a result.

### **Availability of Suitable Investments**

While the Adviser believes that there are currently available many attractive investments of the type in which the Funds currently invest, there can be no assurance that such investments will continue to be available for the Funds' investment activities, or that available investments will meet the Funds' investment criteria.

### **Credit Ratings**

Credit ratings of structured finance products, other debt instruments and investments represent the rating agencies' opinions regarding their credit quality and are not a guarantee of future credit performance of such securities. Rating agencies attempt to evaluate the safety of principal and interest payments and do not evaluate the risks of fluctuations in market value. Therefore, the ratings assigned to securities by rating agencies may not fully reflect the true risks of an investment. Further, in recent years many highly rated structured securities have been subject to substantial losses.

### **Certain Strategy Risks**

#### **Directional Trading**

Many of the positions taken by the Adviser will be fundamentally directional in nature, intended to profit from forecasting absolute price movements in a particular asset. Predicting future prices is inherently uncertain and the losses incurred, if the market moves against a position, will often not be hedged. The speculative aspect of attempting to predict absolute price movements is generally perceived to exceed that involved in attempting to predict relative changes in price.

#### **Fundamental Strategies**

Fundamental analysis — which posits that markets are imperfect and that mispricings can be identified between prevailing market prices and those indicated by underlying fundamental data — is subject to the risk of inaccurate or incomplete market information, as well as the difficulty of predicting prices based on such information. Furthermore, even if the analyst is able successfully to identify mispricings on the basis of fundamental factors, there is the additional uncertainty of predicting the duration of such mispricings and, accordingly, when or whether it will be profitable to invest so as to profit from them. Fundamental analysis is subject to significant losses when market sentiment leads to the prices of assets being materially discounted from the level indicated by fundamental analysis (as in the case of “flights to quality” when the demand for assets other than U.S. Treasury securities diminishes to a degree significantly in excess of that indicated by the fundamental differences between U.S. Treasury securities and other securities) or technical factors, such as price momentum or option expirations, dominate the market.

#### **Relative Value and Event-Driven Investments**

The Funds pursue certain relative value strategies, taking long positions in securities believed to be undervalued and short positions in securities believed to be overvalued. In the event that the perceived valuations underlying the Funds' trading positions were to fail to converge toward, or

were to diverge further from, the Adviser's expectations, the Funds could incur substantial losses. Market disruptions and uncertainty can also cause substantial losses if relative value positions are forced to be prematurely terminated due to severe price changes.

### **Credit Strategies**

The Funds invest in the credit markets attempting to take advantage of undervalued securities as well as relative mispricings. The identification of attractive investment opportunities in disrupted credit markets is difficult and involves a significant degree of uncertainty. The credit markets are, in general, highly susceptible to interest-rate movements, government interference, economic news, and investor sentiment. There was significant volatility in the credit markets in 2008-2009.

During periods of "credit squeezes" or "flights to quality," the market for credit instruments other than U.S. Treasury bills can become substantially reduced. This poses a particular risk that leveraged credit instrument positions held by hedge funds that pursue credit related investment strategies may need to be sold at discounts to fair value in order to meet margin calls. At the same time, dealers may correspondingly reduce the value of outstanding positions, resulting in additional margin calls as loan-to-value triggers are hit under prime brokerage and swap agreements. During the financial market crisis of 2008-2009, the market for credit instruments was so illiquid that a number of private investment funds had to sell otherwise highly desirable investments in other asset classes in order to meet margin calls on their credit positions.

### **Evolving Strategies; New Strategies**

The Adviser's investment approaches are continually evolving, and the Adviser may add new trading strategies at any time. The Adviser may allocate the Funds capital to develop and incubate new strategies, even if the Adviser has limited experience in such strategies. The Adviser anticipates that it will add additional, and terminate existing, strategies on an ongoing basis. There can be no assurance that the Adviser will be successful in implementing the strategies which the Adviser may from time to time develop and implement for the Funds, or that the Funds will not suffer losses during the development or incubation stage of a strategy.

### **Importance of Market Judgment**

The Adviser's strategies are by no means wholly quantitative or systematic; the market judgment and discretion of the Adviser's personnel are fundamental to the implementation of its investment strategies. Generally, the greater the importance of subjective factors to a trading strategy, the more unpredictable its results.

### **Credit Analysis and Credit Risk**

The strategies utilized by the Adviser require accurate and detailed credit analysis of issuers. The Adviser has limited experience on credit analysis, and there can be no assurance that its analysis will be accurate or complete. The Funds may be subject to substantial losses in the event of credit deterioration or bankruptcy of one or more issuers in their portfolio.

### **Duration of Investment Positions**

The Adviser typically does not know (except in the case of certain options or derivatives positions which have pre-established expiration dates) the maximum — or, often, even the



expected (as opposed to optimal) — duration of any particular position at the time of initiation. The length of time for which a position is maintained varies significantly, based on the Adviser's subjective judgment of the appropriate point at which to liquidate a position so as to augment gains or reduce losses.

Many of the Funds' transactions involve acquiring related positions in a variety of different instruments or markets at or about the same time. Frequently, optimizing the probability of being able to exploit the pricing anomalies among these positions requires holding periods of significant length — often many months to a year or more. Actual holding periods depend on numerous market factors which can both expedite and disrupt price convergences. There can be no assurance that the Funds will be able to maintain any particular position, or group of related positions, for the duration required to realize the expected gains, or avoid losses, from such positions.

Certain of the Funds' investments may not have a defined time horizon to the extent that they are based upon the realization of the enterprise value of an investment as it develops and evolves. The longer the duration of an investment by the Funds, the greater the exposure of such position to the risks of general economic changes as well as changes in the Adviser itself.

The Funds' ability to realize value from other illiquid investments is often dependent on a "valuation" event — an initial public offering, sale, refinancing, *etc.* The specific "exit strategy" for an illiquid investment may not be determined at the time that the Funds commit to such investment, and changing market conditions may preclude the execution of the "exit strategy" that the Adviser might have expected to implement.

### **Hedging Generally**

The Adviser is not obligated to enter into any hedging transactions. The Adviser will not, in general, attempt to hedge all market or other risks inherent in the Funds' positions and will hedge certain risks only partially, if at all. Specifically, the Adviser may choose not to hedge certain risks or determine that hedging is economically unattractive — either in respect of particular positions or in respect of the Funds' overall portfolio. The Funds' portfolio composition will commonly result in various directional market risks remaining unhedged. Although the Adviser may rely on diversification to control such risks to the extent that the Adviser believes it is desirable to do so, the Funds are not subject to any formal diversification policies.

If the Adviser attempts to enter into hedging transactions with the intention of reducing or controlling risk, these hedging transactions, even if successful in achieving their objective, will likely reduce the Funds' returns. Furthermore, hedging strategies may be ineffective in controlling risk, due to unexpected non-correlation (or even positive correlation) between the hedging instrument and the position being hedged, increasing rather than reducing both risks and losses.

To the extent that the Adviser hedges, its hedging positions generally will not be static but rather will be adjusted continually based on the Adviser's assessment of market conditions, as well as the expected degree of non-correlation between the hedges and the portfolio being hedged. The success of any of the Adviser's hedging strategies will depend on the Adviser's ability to implement such strategies efficiently and cost-effectively, as well as on the accuracy of the Adviser's ongoing subjective judgments concerning the hedging positions to be acquired by the Funds. Furthermore, to the extent that any hedging strategy involves the use of OTC derivatives

transactions, such a strategy would be impacted by implementation of the various regulations adopted pursuant to Dodd-Frank.

### **Reliance on Corporate Management and Financial Reporting**

Many of the Funds' strategies will rely on the financial information made available by the issuers to which the Funds have exposure. The Adviser will have no ability independently to verify the financial information disseminated by the issuers in which the Funds invest, and will depend upon the integrity of both the management of these issuers and the financial reporting process in general. Recent events have demonstrated the material losses that investors such as the Funds can incur as a result of corporate mismanagement, fraud and accounting irregularities. Equity securities prices are particularly vulnerable to instances of corporate mismanagement.

### **Uncertain Value of Investments**

The Adviser has broad discretion to invest the Clients' capital and will do so in certain cases in instruments which have an uncertain fair value.

There is a risk that an investor who makes a redemption will be paid an amount less than such investor would otherwise be paid if the actual value of the Clients' investments is higher than the value determined by the Adviser. Conversely, there is a risk that such investor might, in effect, be overpaid if the actual value of such investment is lower than the value determined by the Adviser.

The Clients may acquire a significant position in a given instrument — a position sufficiently large that the Funds are unable to transact freely in such instrument, due to practical, contractual, legal or regulatory restrictions. The value of such position may be materially less than it would have been in the absence of such restrictions.

The actual timing of a position's liquidation may materially affect the values obtained on such liquidation, irrespective of the "fair value" of such position.

The Adviser and its affiliates are entitled to rely, without independent investigation, upon pricing information and valuations furnished by third parties, including pricing services.

The prices which dealers and counterparties quote for certain positions may differ materially from the prices at which such dealers and counterparties would be prepared actually to execute transactions in such positions.

### **Volatility**

The prices of numerous instruments traded by the Clients have been subject to periods of excessive volatility in the past, and such periods can be expected to recur. Price movements are influenced by many unpredictable factors.

Although volatility can create profit opportunities for the Clients, it can also create the specific risk that historical or theoretical pricing relationships will be disrupted, causing what should otherwise be comparatively low risk positions to incur potentially substantial losses.

The financial markets experienced increased volatility in 2008–2010, which may recur in the future. On the other hand, in 2012 the equity markets experienced unusually low volatility,

causing many arbitrage and similar strategies (which focus on profiting from the mispricings created in part by market volatility) to incur major losses.

### **Stagnant Markets**

Although volatility is one indication of market risk, certain of the investment strategies employed by the Clients rely for their profitability on market volatility contributing to the mispricings that they are designed to identify. In periods of trendless, stagnant markets and/or deflation, such strategies have materially diminished prospects for profitability.

### **Illiquid and Longer-Term Investments**

The Clients may invest in certain illiquid and longer-term positions, including thinly traded securities and other less liquid assets, such as investments in private companies and liquidating vehicles or trusts.

If the Clients hold illiquid longer-term investments, the Adviser may determine the fair market value of such investments for accounting purposes using valuation models and market information. However, the Clients' valuation of these positions may differ materially from the value ultimately realized upon the liquidation of such investments, particularly as certain of such investments tend to have realization and/or events which cause their value to increase or decrease suddenly in a manner not previously reflected in the net asset value at which investors have recently subscribed and/or withdrawn.

There will often be no trading market for illiquid longer-term investments, and in the event the Clients hold such investments, the Funds might only be able to sell these positions, if at all, at materially disadvantageous prices.

### **Rising Interest Rates**

Global interest rates are currently at or close to historical lows. In the event that interest rates increase — particularly if they do so suddenly — a number of the Clients' outstanding positions could incur substantial losses, and the ongoing profit potential of certain of the strategies materially decrease.

### **Short Sales**

Short selling — the sale of securities not owned by the Clients — involves certain additional risks not applicable to other trading strategies. Short selling exposes the Clients to the risk of potentially unlimited losses.

Securities borrowed by the Clients in connection with a short sale need to be returned to the securities lender on short notice if so requested. If such a request occurs at a time when other short sellers of the same security are receiving similar requests, a "short squeeze" can occur, in which the Clients might be compelled, at a very disadvantageous time, to replace borrowed securities previously sold short with purchases on the open market, likely at prices significantly in excess of the proceeds received from the earlier short sales.

Securities exchanges have imposed various forms of ongoing and potential trading limitations and may impose additional restrictions in the future. Many of these limitations become effective

only after market declines, or increases in market volatility, above a certain level, but any of these limitations could, in unusual circumstances, materially adversely affect the Clients.

### **Possible Positive Correlation with Stocks and Bonds**

One of the goals in incorporating a non-traditional investment such as the shares into a portfolio is to provide a potentially valuable element of diversification. However, there can be no assurance, particularly during periods of market disruption and stress, that the performance of the Clients will, in fact, experience a low level of correlation with a traditional portfolio of stocks and bonds. In 2008–2009, many hedge funds incurred losses generally comparable to the decline in the S&P 500 stock market index. The Clients' concentration on equity and equity-linked markets may increase the likelihood of such correlation.

It appears that during periods when market liquidity contracts, both alternative and traditional investment strategies tend to incur losses. Periods of illiquidity can be expected to recur from time to time, and during such periods the potential diversification benefits of an investment with the Adviser may not be realized. On the contrary, the Clients' performance may be highly correlated with the performance of traditional portfolio holdings.

### **Participation on Creditors' Committees**

The Clients may participate on committees formed by creditors to negotiate with the management of financially troubled companies that may or may not be in bankruptcy. The Clients may also seek to negotiate directly with debtors with respect to restructuring issues. When the Clients choose to join a creditors' committee, the Clients would likely be only one of many participants, each of whom would be interested in obtaining an outcome that is in its individual best interests. There can be no assurance that the Clients would be successful in obtaining results most favorable to them in such proceedings, although the Funds may incur significant legal fees and other expenses in attempting to do so. As a result of participation by the Funds on such committees, the Clients may be deemed to have duties to other creditors represented by the committees, which might thereby expose the Clients to liability to such other creditors who disagree with the Clients' actions.

### **Material Non-Public Information**

The Adviser and its affiliates and their respective principals, members, directors, officers and employees (collectively the "Axar Parties") may have access to material non-public information regarding the securities in which the Fund invests. In the event that the Axar Parties receive such material non-public information, the Adviser may be prohibited from effecting transactions in a security that it would desire to effect and thus incur losses. For example, employees of the Adviser may serve on boards of directors or executive committees or in other management capacities at companies in which a Fund invests, either directly or indirectly. Serving in such a capacity may expose such employee, and by association the Adviser and the Fund, to certain limitations on the ability to trade the securities of the issuer company and certain conflicts of interest. As a result of such service, an employee may become aware, from time to time, of material non-public information about the company in which the Fund invests, and the employee's knowledge is likely to be attributed to the Adviser and its Clients. Further, by reason of the advisory, due diligence, committee participation and other activities of the Axar Parties, the Axar Parties may acquire confidential or material non-public information or be restricted from initiating transactions in certain securities.

The Axar Parties will not be free to divulge, or to act upon, any such confidential or material non-public information and, due to these restrictions, the Investment Manager may not initiate a transaction for the Master Fund's account that the Investment Manager otherwise might have initiated, and the Master Fund may be frozen in an investment position that it otherwise might have liquidated or closed out. As a result, the Adviser and the Fund may also be subject to Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including the disclosure requirements, the restrictions on purchases and sales, and the disgorgement of profits in certain circumstances. Alternatively, the Adviser and its affiliates may decline to receive material non-public information which it is entitled to receive on behalf of the Fund in order to avoid trading restrictions for the Fund as well as other Client accounts, even though access to such information might have been advantageous to the Fund and other market participants are in possession of such information.

### **Board Membership**

In addition to the risk that an employee of the Adviser may become aware of material non-public information regarding the securities in which a Fund invests as a result of such employee's board membership (as discussed above), an employee serving as a director of a company owned, directly or indirectly, by the Fund may also face a conflict between the fiduciary duties owed by such employee to the Fund and the duties owed to such company. In such circumstances, an employee may act in ways that are in the best interests of such company but not the Fund. The Adviser prevents employees from taking such positions when, in the Adviser's determination, the potential risks to the Fund outweigh the potential benefits. However, there can be no assurance that permitting the board membership of an employee will not result in less favorable results for a Fund or Client than if the employee was not permitted to serve in such capacity.

### **Subordination, "Cramdowns" and Dilution**

The Clients as the senior secured creditors of an issuer can find themselves subordinated to otherwise junior creditors, depending on the laws of the applicable jurisdiction. For example, a bankrupt issuer may be able to apply under local law to the relevant court for "debtor in possession" or similar financing in order to obtain new capital for its operations. The persons who invest such new capital will take a senior position to the Clients, even though the Clients were previously senior to such persons. The Clients may or may not be given an opportunity to participate in such financing.

A reorganization plan approved by any judicial or administrative body may result in a number of different creditors being compelled to accept materially adverse changes to the terms of the debt that they hold — including reduced interest rates, extended maturities and reduced acceleration rights. Such "cramdowns" may be imposed in the discretion of such governmental bodies in order to give the issuer a better chance of remaining economically viable.

In a reorganization, substantial amounts of equity are often issued to the senior lenders in return for the extinguishment of their debt. This can result in substantial dilution to an equity position previously acquired by the Clients — either directly or through the acquisition of convertible debt.

### **Uncertainties of Foreclosure Process**

If it becomes necessary to foreclose on the assets underlying a loan acquired by the Clients, significant uncertainty may arise as to the outcome of the proceeding. Courts or other arbiters typically have broad discretion as to how they deal with the claims of different creditors, and the claims of secured creditors may not — despite their legal entitlement — always be respected as a matter of policy. There is a greater uncertainty in many emerging markets with respect to foreclosure proceedings because the laws in such markets often are not designed to address institutional lending.

### **Inadequate Bankruptcy and Insolvency Laws**

The Clients may make investments in high yield and financially distressed companies around the world, and the issuers in which the Adviser invests on behalf of the Clients may from time to time be subject to local bankruptcy and insolvency laws. Moreover, even if issuers do not actually become bankrupt or insolvent, the possible effect of such laws on such issuers will directly impact the value of their securities.

### **Shared Investment Opportunities**

The Adviser may determine that certain investment opportunities are not appropriate for a Fund or, if appropriate, should not or cannot be allocated in their entirety to the Fund based on such factors as differing investment mandates, trading limitations, cash availability and other considerations deemed relevant by the Adviser, as set forth in its trade allocation policy. In such case, the Adviser may (but is not required to) allocate any unallocated portions of such opportunities to other Clients or to one or more investors in the Fund. Notwithstanding the foregoing, the Adviser has no obligation to offer any such co-investment opportunity to any Fund investor by virtue of its investment in the Fund. Fund investors participating in such co-investment opportunities may either invest directly in such co-investment opportunities or through vehicles managed by or otherwise affiliated with the Adviser (“Co-Investment Vehicles”). The fees, other compensation, and terms of any investment in a Co-Investment Vehicle may differ from the fees, other compensation, or terms of an investment in the Fund. Those participating in a shared investment opportunity in which the Fund participates, including Co-Investment Vehicles or other Clients, may liquidate a co-investment at a different time or times, and in different amounts than the Fund, which may have an adverse effect on the Fund.

In general, a Fund bears all (or its pro rata share of) the fees, costs and expenses associated with any shared investment opportunity that is unconsummated, including any portion thereof that may or would have been allocated to potential investors had such shared investment opportunity been consummated. Notwithstanding the foregoing, the Adviser will seek to allocate broken deal expenses to investors of the shared investment where it is appropriate and reasonable to do so; however certain investors, including potentially Co-Investment Vehicles or Clients formed specifically to invest in the shared investment opportunity, may have no assets from which to pay such expenses, in which case the Fund may bear more than its pro rata share.

## **Risks of Certain Instruments Traded**

### **Corporate Debt Obligations, Convertible Securities and High-Yield Securities**

The Clients may invest in corporate debt obligations, convertible securities (which are bonds, debentures, notes, preferred stocks or other securities that may be converted into or exchanged for a specified amount of common stock of the same or a different issuer within a particular period of time at a specified price or formula) and high-yield securities.

The market value of debt securities generally tends to decline as interest rates increase and, conversely, increase as interest rates decline. Convertible securities also appreciate when the underlying common stock appreciates, and conversely, depreciate when the underlying common stock depreciates. Debt obligations are subject to the risk of an issuer's inability to meet principal and interest payments on the obligations, *i.e.*, credit risk. The Adviser may actively expose the Clients to credit risk. However, there can be no guarantee that the Adviser will be successful in making the right selections and thus mitigate the impact of credit risk changes on the Clients.

Convertible securities generally: (i) have higher yields than the dividends on the underlying common stocks, but lower yields than non-convertible securities of a comparable duration; (ii) are less volatile in price than the underlying common stock due to their fixed-income characteristics; and (iii) have a significant option component to their value which is directly impacted by the prevailing market volatility and interest rates. The market for convertible securities is also typically materially less liquid than that for the underlying common stock and the value of convertible securities more directly at risk to increases in interest rates.

Because "high yield" bonds and preferred securities are rated in the lower rating categories by the various credit rating agencies, such securities result in greater risk of loss of principal and interest than higher-rated securities and are generally considered to be predominately speculative. They are also generally considered to be subject to greater risk than securities with higher ratings because the yields and prices of such securities may tend to fluctuate more than those for higher-rated securities, the market for lower-rated securities is thinner and less active.

### **Common Stocks**

The Clients invest in long and short positions in common stock. Common stock prices are directly affected by issuer-specific events, as well as general market conditions. In addition, in many countries investing in common stocks is subject to greater regulatory and self-regulatory scrutiny than investing in debt or other financial instruments.

### **Preferred Stock**

Preferred stock generally has a preference as to dividends and upon the event of liquidation over an issuer's common stock, but it ranks junior to debt securities in an issuer's capital structure. Preferred stock generally pays dividends in cash (or additional shares of preferred stock) at a defined rate, but unlike interest payments on debt securities, preferred stock dividends are payable only if declared by the issuer's board of directors. Dividends on preferred stock may be cumulative, meaning that, in the event the issuer fails to make one or more dividend payments on the preferred stock, no dividends may be paid on the issuer's common stock until all unpaid

preferred stock dividends have been paid. Preferred stock may also be subject to optional or mandatory redemption provisions.

### **Distressed Securities**

Investment in the securities of financially troubled issuers and operationally troubled issuers involves a high degree of credit and market risk. Although the Clients intend to invest in select companies that, in the view of the Adviser, have the potential over the long-term for capital growth, there can be no assurance that such financially troubled issuers or operationally troubled issuers can be successfully transformed into profitable operating companies. There is a possibility that the Clients may incur substantial or total losses on their investments or that such investments may not show any return for a considerable period of time. Under such circumstances, the returns generated from the Clients' investments may not compensate investors adequately for the risks assumed. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There can be no assurance that the Adviser will correctly evaluate the value of a company's assets or the prospects for a successful reorganization or similar action. During an economic downturn or recession, securities of financially troubled or operationally troubled issuers are more likely to go into default than securities of other issuers. In addition, it may be difficult to obtain information about financially troubled issuers and operationally troubled issuers.

Securities of financially troubled issuers and operationally troubled issuers are less liquid and more volatile than securities of companies not experiencing financial difficulties. The market prices of such securities are subject to erratic and abrupt market movements, and the spread between bid and asked prices may be greater than normally expected. In addition, it is anticipated that many of the Clients' portfolio investments may not be widely traded and that the Clients' investment in such securities may be substantial relative to the market for such securities. As a result, the Clients may experience delays and incur losses and other costs in connection with the sale of their portfolio securities.

Troubled company and other asset-based investments require active monitoring and may, at times, require participation in business strategy or reorganization proceedings by the Adviser. To the extent that the Adviser becomes involved in such proceedings, the Clients may have a more active participation in the affairs of the issuer than that assumed generally by an investor. In addition, involvement by the Adviser in an issuer's reorganization proceedings could result in the imposition of restrictions limiting the Clients' ability to liquidate its position in the issuer or increase the likelihood of the Clients being involved in litigation.

### **Defaulted Securities**

The Clients may invest in the securities of companies involved in bankruptcy proceedings, reorganizations and financial restructurings and may have a more active participation in the affairs of the issuer than is generally assumed by an investor. This may subject the Clients to litigation risks or prevent the Clients from disposing of securities. In a bankruptcy or other proceeding, the Clients as creditors may be unable to enforce their rights in any collateral or may have their security interest in any collateral challenged, disallowed or subordinated to the claims of other creditors. While the Clients will attempt to avoid taking the types of actions that would lead to equitable subordination or creditor liability, there can be no assurance that such claims will not be asserted or that the Clients will be able to defend against them successfully. Other



investors may purchase the securities of these companies for the purpose of exercising control or management, and the Clients may be at a disadvantage to the extent that the Clients' interests differ from the interests of these other investors.

Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions which may be contrary to the interests of the Clients. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such if they are considered to have taken over management and functional operating control of a debtor.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, plan approval by creditors and confirmation by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and the Clients and is subject to unpredictable and lengthy delays. In addition, during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganize and may be required to liquidate assets. The debt of companies in financial reorganization will in most cases not pay current interest, may not accrue interest during reorganization and may be adversely affected by an erosion of the issuer's fundamental values. Such investments can result in a total loss of principal.

United States bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that the Clients' influence with respect to a class of securities can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

The Clients may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

Investment in the debt of financially distressed companies domiciled outside the United States involves additional risks. Bankruptcy law and process may differ substantially from that in the United States, resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganization timing, and the classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganization remains highly uncertain.

### **Bank Loans and Participations**

The Adviser may invest a portion of the Clients' assets in bank loans and participations. The special risks associated with these obligations include (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws, (ii) so

called “lender liability” claims by the issuers of the obligations, (iii) environmental liabilities that may arise with respect to collateral securing the obligations, (iv) adverse consequences resulting from participating in such instruments with other institutions with lower credit quality and (v) limitations on the ability of the Clients or the Adviser to directly enforce their rights with respect to participations. The Adviser will balance the magnitude of these risks against the potential investment gain prior to entering into each such investment. Successful claims by third parties arising from these and other risks, absent bad faith, may be borne by the Clients. The Clients do not currently intend to originate, organize or serve as agents in connection with bank loans and participations.

In recent years, a number of judicial decisions in the United States have upheld the right of borrowers to sue lending institutions on the basis of various evolving legal theories (collectively termed “lender liability”). Generally, lender liability is founded upon the premise that an institutional lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to a borrower or has assumed a degree of control over the borrower resulting in a creation of a fiduciary duty owed to the borrower or its other creditors or shareholders. Because of the nature of certain of the Clients’ investments, the Clients could be subject to allegations of lender liability.

#### **Trade and Other General Unsecured Claims**

The Clients may acquire interests in claims of trade creditors and other general unsecured claim holders of a debtor. Trade claims generally include, but are not limited to, claims of suppliers for goods delivered and for which payment has not been made, claims for unpaid services rendered, claims for contract rejection and claims related to litigation. Trade claims are typically unsecured and may be subordinated to other unsecured obligations of the debtor. The repayment of trade claims is subject to significant uncertainties, including potential set-off by the debtor, characterization of “preferences” in bankruptcy as well as the other uncertainties described herein with respect to other distressed debt obligations.

#### **Swap Agreements**

Among the various derivative transactions the Clients may enter into are swap agreements and options on swap agreements (“swaptions”). These agreements can be individually negotiated and structured to include exposure to a variety of different types of investments, asset classes or market factors. The Clients, for instance, may enter into swap agreements with respect to interest rates, credit defaults, currencies, securities, indices of securities and other assets and/or other components of risk or return. Depending on their structure, swap agreements may increase or decrease the Clients’ market exposure.

Whether the Clients’ use of swap agreements or swaptions will be successful will depend on the Adviser’s selection and negotiation of such transactions for the Clients. Swap transactions may be highly illiquid and may increase or decrease the volatility of the Clients’ portfolio. Moreover, the Clients bear the risk of loss of the amount expected to be received under a swap agreement in the event of the default or insolvency of its counterparty. The Clients will also bear the risk of loss related to swap agreements, for example, due to breaches of such agreements or the failure of the Clients to post or maintain required collateral. Many swap markets are relatively new and still developing. Dodd-Frank, as well as possible additional government regulation or other

developments in the swap markets could adversely affect the Clients' swaps trading and result in material losses.

Dodd-Frank has required comprehensive regulation of swap agreements among many market participants, and may significantly disrupt the Clients' use of swaps — at least for the foreseeable future.

### **Indirect Participation on Swap Execution Facilities**

In an effort to facilitate the investment strategies employed by the Adviser on behalf of the Clients, the Adviser may engage brokers that are members of exchanges and/or swap execution facilities ("SEFs") to place trades on its behalf. While the Clients and Adviser are not direct members of any SEF, such indirect SEF participation may nevertheless require the Clients and/or Adviser to consent to the SEF's jurisdiction as a self-regulatory organization and to be subject to certain aspects of the SEF's rulebook, which could subject it to a wide range of regulations and other obligations, together with associated costs. Like any other self-regulatory organization, SEFs regularly revise and interpret their rules, and such revisions and interpretations could adversely impact the Clients.

### **Credit Default Swaps**

The Clients may purchase and sell credit derivatives contracts — primarily credit default swaps — both for hedging and speculative purposes. The typical credit default swap contract generally requires the seller to pay to the buyer, in the event that a particular reference entity experiences specified credit events, a specified notional amount in exchange for securities issued by such reference entity. In return, the buyer agrees to make periodic payments equal to a fixed percentage of the notional amount of the contract. The Clients may also purchase or sell credit default swaps on a basket of reference entities as part of a synthetic collateralized debt obligation transaction.

As a seller of credit default swaps, the Clients will incur leveraged exposure to the credit of the reference entity and are subject to many of the same risks they would incur if they were holding debt securities issued by the reference entity. However, the Clients would not have any legal recourse against the reference entity and would not benefit from any collateral securing the reference entity's debt obligations. In addition, the credit default swap buyer is likely to have broad discretion to select which of the reference entity's debt obligations to deliver to the Clients following a credit event and would likely choose the obligations with the lowest market value in order to maximize the payment obligations of the Clients.

As a buyer of credit default swaps, in circumstances in which the Clients did not own the debt securities that are deliverable under a credit default swap, the Funds would be exposed to the risk that deliverable securities would not be available in the market, or would be available only at unfavorable prices, as would be the case in a so-called "short squeeze."

As a buyer or a seller of credit default swaps, the Clients take credit risk with respect to their counterparties. Credit default swaps generally trade on the basis of theoretical pricing and valuation models, which may not accurately value such swap positions when established or when subsequently traded or unwound under actual market conditions.

In certain instances of issuer defaults or restructurings, it has been unclear under the standard industry documentation for credit default swaps whether or not a “credit event” triggering the seller’s payment obligation had occurred.

The market in credit default swaps may be substantially curtailed by Dodd-Frank and the regulations promulgated thereunder.

### **RMBS and CMBS**

The Clients may invest in residential (“RMBS”) and commercial (“CMBS”) mortgage-backed securities. Investing in RMBS and CMBS involves the general risks typically associated with investing in traditional fixed-income securities (including interest rate and credit risk), as well as additional risks peculiar to the mortgages underlying such RMBS and CMBS. Mortgage-backed securities (“MBS”) generally provide for the payment of interest and principal on a monthly basis, and there also exists the possibility, particularly with respect to RMBS, that principal may be prepaid at any time due to, among other reasons, prepayments on the underlying mortgage loans or other assets. The rate of prepayments on underlying mortgages affects the price and volatility of an MBS, and may have the effect of shortening or extending the effective maturity beyond what was anticipated. Further, different types of MBS are subject to varying degrees of prepayment risk. Finally, the risks of investing in such instruments reflect the risks of investing in real estate securing the underlying loans, including the effect of local and other economic conditions, the ability of tenants to make payments, and the ability to attract and retain tenants.

Prepayments of the mortgage loans underlying RMBS and CMBS may be affected by any number of factors. In general, any factors that increase the attractiveness of selling a mortgaged property or refinancing a mortgage loan, enhance a borrower’s ability to sell or refinance or increase the likelihood of default under a mortgage loan, would be expected to cause the rate of prepayment in respect of a pool of mortgage loans to accelerate.

Portfolios of MBS may be backed by residential mortgage loans located in only a few states or regions, and be subject to geographic risks relating to such areas.

### **Index Risk**

The Clients may invest in structured notes, variable rate asset-backed securities (“ABS”) and MBS, including adjustable-rate MBS, which are backed by mortgages with variable rates, and certain classes of MBS derivatives, the rate of interest payable under which varies with a designated rate or index. The value of these investments is closely tied to the absolute levels of such rates or indices, or the market’s perception of anticipated changes in those rates or indices. This introduces additional risk factors related to the movements in specific indices or interest rates which may be difficult or impossible to hedge, and which also interact in a complex fashion with prepayment risks.

### **Structured Notes**

The structured note market evolved as a way to give investors exposure to indices and risks which were otherwise not available to them. For example, U.S. fund managers restricted to dollar-denominated instruments issued by an agency of the U.S. government but who sought exposure to the yen, might have purchased an agency structured note, paying, in dollars, a coupon linked by some formula to the dollar/yen exchange rate. The coupon attached to a

structured note could depend on a wide variety of indices: U.S. or foreign interest rates, U.S. or foreign swap rates, foreign exchange rates or equity indices. The value of such a structured note is closely linked to the level of the relevant index (or indices). Moreover, the coupon may have an optional or contingent dependence on an index (or indices) increasing the complexity of any related hedge.

### **Consumer Asset-Backed Securities**

The Clients may invest in a wide variety of consumer asset-backed securities, including those backed by auto loans and leases, credit card loans and student loans, and other types of ABS, including those backed by small business loans, rental, commercial, and government fleet leases, certain insurance premium finance loans, equipment loans and leases, mortgage servicing advance loans, aircraft leases, manufactured housing installment sale contracts and installment loan agreements, floorplan loans and franchise loans.

Like MBS, ABS are affected by payments, defaults, and losses on the underlying assets and the recent global economic slowdown may adversely affect the performance and market value of these securities. Rising unemployment, decreases in the values of consumer assets and continued lack of availability of credit may lead to increased default rates across a wide range of different ABS receivables. Such market conditions may be accompanied by decreased consumer demand for the assets underlying such securities, which may weaken collateral coverage and increase the amount of a loss in the event of default.

ABS are also susceptible to prepayment risks. Receivables in ABS may or may not contain prepayment penalties. A reduction in interest rates may increase prepayments on the receivables and in turn a reduction in yield to maturity for ABS holders purchasing such securities at a premium. An increase in interest rates or other factors may slow prepayments which would result in a reduction in yield to maturity for ABS holders purchasing such securities at a discount. Governmental regulation may prohibit, limit, or delay repossession and sale of the assets to recover losses on defaulted assets underlying these ABS. As a result, payments on the related issue of ABS could be delayed and/or reduced. The assets underlying ABS may be obligations of the borrowers thereunder only and not insured or guaranteed by any other person or entity; consequently, distributions on such ABS may depend solely upon the amount and timing of payments and other collections on the related underlying assets.

### **Other Structured Investment Products**

In addition to structured notes, the Clients may issue, acquire or otherwise participate in a variety of different structured investment products including, but not limited to, total return swaps and options. These structured products involve not only the risks of the underlying “reference asset,” but also the risks (including acceleration of the financing embedded in the structure and/or restrictions imposed on the management and nature of the permissible reference assets) and costs of creating the structured products.

### **Equity-Linked Instruments and Related Options**

A number of the financial instruments to be traded by the Clients are referenced to underlying equities but also incorporate other components — duration, strike price, premiums, etc. — which can result in the Clients’ positions being unprofitable even though the Adviser may have correctly assessed the market value of the underlying equity instrument.

The Adviser may trade in put and call options, which involve qualitatively different risks than owning or selling short the underlying common stock. Because option premiums paid or received by an investor are small in relation to the market value of the investments underlying the options, trading put and call options is highly leveraged.

A number of traders as a matter of policy will not sell “naked” options — *i.e.*, options on common stocks not already owned by the trader in question — due to the risk of the value of such options spiking dramatically due to changes in stock prices, market volatility and/or interest rates. The Adviser, however, may from time to time sell “naked” options.

### **Derivatives Generally**

The Clients will use derivative financial instruments, including, without limitation, warrants, options, swaps, convertible securities, notional principal contracts, contracts for differences, forward contracts and futures contracts as well as options on such futures contracts. The use of derivative instruments — both for speculation and for hedging purposes — involves a variety of material risks, including the extremely high degree of leverage often embedded in such instruments as well as the possibility of material and prolonged deviations between the theoretical and realizable value of a derivative. The market in derivative instruments is also typically materially less liquid than the market in the underlying reference asset. Such risks (and other risks that may not be anticipated) may make it difficult as well as economically non-viable to the Clients to close out derivative positions in order either to realize gains or to limit losses.

Many of the derivatives to be traded by the Clients are principal-to-principal or “over-the-counter” contracts between the Clients and third parties entered into privately, rather than on an exchange. As a result, the Clients generally will not be afforded the regulatory and financial protections of an exchange or its clearinghouse (or of the government regulator that oversees such exchange and clearinghouse). OTC contracts subject the Clients to credit risk with regard to the third parties with which it trades and the Clients will also bear the risk of counterparty non-performance under such contracts. Furthermore, in privately negotiated transactions, the risk of the negotiated price deviating materially from fair value is substantial, particularly when there is no active market available from which to derive benchmark prices.

Many derivatives are valued on the basis of dealers’ pricing of these instruments. However, the price at which dealers value a particular derivative and the price which the same dealers would be willing to pay for such derivative should the Clients wish or be forced to sell such position may be materially different. Such differences can result in an overstatement of the Clients’ net asset value and may have a material adverse effect upon the Clients in situations in which the Clients are required to sell derivative instruments.

The Clients’ use of derivatives for hedging purposes will involve certain additional risks, including: (i) imperfect correlation between price movements in the asset on which the derivative is based and price movements in such derivative; and (ii) possible impediments to effective portfolio management or the ability to meet short-term obligations because of the percentage of the Clients’ assets segregated to secure their obligations under derivatives contracts.

The terms of the Clients’ derivative contracts generally will allow the counterparty to the Clients to terminate such contracts under numerous circumstances, including as a result of certain levels of net asset value declines (whether as a result of performance, redemptions or a combination of the two), increases in the Clients’ mark-to-market exposure to such counterparty and the Clients’

postponement of the determination of net asset value and/or Effective Dates. If a derivative contract is terminated prematurely, the Clients are likely to incur material losses.

### **Regulation of the OTC Derivatives Market**

Dodd-Frank, enacted in July 2010, includes provisions that comprehensively regulate the OTC derivatives markets for the first time. Dodd-Frank will ultimately mandate that a substantial portion of OTC derivatives must be executed in regulated markets and be submitted for clearing to regulated clearinghouses. OTC trades submitted for clearing will be subject to minimum initial and variation margin requirements set by the relevant clearinghouse, as well as margin requirements mandated by the U.S. Commodity Futures Trading Commission (“CFTC”), SEC and/or federal prudential regulators. OTC derivatives dealers also typically demand the unilateral ability to increase the Clients’ collateral requirements for cleared OTC trades beyond any regulatory and clearinghouse minimums. The regulators also have broad discretion to impose margin requirements on non-cleared OTC derivatives and new requirements apply to the holding of customer collateral by OTC derivatives dealers. These requirements may increase the amount of collateral the Clients are required to provide and the costs associated with providing it. OTC derivative dealers also are required to post margin to the clearinghouses through which they clear their customers’ trades instead of using such margin in their operations, as was widely permitted before Dodd-Frank. This has increased and will continue to increase the OTC derivative dealers’ costs, and these increased costs are generally passed through to other market participants in the form of higher upfront and mark-to-market margin, less favorable trade pricing, and the imposition of new or increased fees, including clearing account maintenance fees.

With respect to cleared OTC derivatives, the Clients will not face a clearinghouse directly but rather will do so through an OTC derivatives dealer that is registered with the CFTC or SEC and that acts as a clearing member. The Clients may face the indirect risk of the failure of another clearing member customer to meet its obligations to its clearing member. Such scenario could arise due to a default by the clearing member on its obligations to the clearinghouse triggered by a customer’s failure to meet its obligations to the clearing member.

The CFTC also now requires certain derivative transactions that were previously executed on a bi-lateral basis in the OTC markets to be executed through a regulated futures or swap exchange or execution facility. The SEC is also expected to impose similar requirements on certain security-based derivatives in the near future, though it is not yet clear when these parallel SEC requirements will go into effect. Such requirements may make it more difficult and costly for investment funds, including the Clients, to enter into highly tailored or customized transactions. They may also render certain strategies in which the Clients might otherwise engage impossible or so costly that they will no longer be economical to implement. If the Clients decide to execute derivatives transactions through such exchanges or execution facilities—and especially if it decides to become a direct member of one or more of these exchanges or execution facilities—the Clients would be subject to the rules of the exchange or execution facility, which would bring additional risks and liabilities, and potential requirements under applicable regulations and under rules of the relevant exchange or execution facility.

OTC derivative dealers are now required to register with the CFTC and will ultimately be required to register with the SEC. Registered swap dealers will also be subject to new minimum capital and margin requirements and are subject to business conduct standards, disclosure requirements, reporting and recordkeeping requirements, transparency requirements, position

limits, limitations on conflicts of interest, and other regulatory burdens. These requirements further increase the overall costs for OTC derivative dealers, which costs may be passed along to market participants as market changes continue to be implemented. The overall impact of Dodd-Frank on the Clients remains highly uncertain and it is unclear how the OTC derivatives markets will adapt to this new regulatory regime, along with additional, sometimes overlapping, regulatory requirements imposed by non-U.S. regulators.

### **Futures Contracts**

The Clients may trade futures contracts and commodity options, primarily for hedging purposes.

Trading in futures contracts is a specialized activity that may entail greater than ordinary investment risks. Futures markets are volatile and are influenced by factors, such as changing supply and demand relationships, governmental programs and policies, national and international political and economic events and changes in interest rates. In addition, because of the low margin deposit normally required in futures trading, a high degree of leverage is typical of a futures trading account. Consequently, a relatively small price movement in a futures contract may result in substantial losses to the trader. Futures trading may also be illiquid because certain futures exchanges do not permit trading in a particular type of future beyond certain set limits. If prices fluctuate during a single day's trading beyond those limits, which conditions have in the past sometimes lasted for several days in certain contracts, the Clients could be prevented from promptly liquidating unfavorable positions and thus be subject to substantial losses.

The CFTC and the United States commodities exchanges impose limits referred to as "speculative position limits" on the maximum net long or net short speculative positions that any person may hold or control in any particular futures or options contracts traded on United States commodities exchanges. For example, the CFTC currently imposes speculative position limits on a number of agricultural commodities (*e.g.*, corn, oats, wheat, soybeans and cotton) and United States commodities exchanges currently impose speculative position limits on many other commodities. Dodd-Frank significantly expands the CFTC's authority to impose position limits with respect to futures contracts and options on futures contracts, swaps that are economically equivalent to futures or options on futures, and swaps that are traded on a regulated exchange and certain swaps that perform a significant price discovery function. In response to this expansion of its authority, in 2012, the CFTC proposed a series of new speculative position limits with respect to futures and options on futures on so-called "exempt commodities" (which includes most energy and metals contracts) and with respect to agricultural commodities. Those proposed speculative position limits were vacated by a United States District Court, but the CFTC has again proposed a new set of speculative position limit rules which are not yet finalized (or effective). If the CFTC is successful in this second attempt, the size or duration of positions available to the Clients may be severely limited. All accounts owned or managed by the Adviser are likely to be combined for speculative position limit purposes. The Clients could be required to liquidate positions it holds in order to comply with such limits, or may not be able to fully implement trading instructions generated by its trading models, in order to comply with such limits. Any such liquidation or limited implementation could result in substantial costs to the Clients.



### **Currency Markets**

The Clients trade currencies and foreign exchange. Such transactions involve a significant degree of risk. The markets in which foreign exchange transactions are effected are volatile and specialized. Significant changes, including changes in liquidity and prices, can occur in such markets within very short periods of time, often within minutes. Foreign exchange trading risks include, but are not limited to, exchange rate risk, maturity gaps, interest rate risk and potential governmental interference through regulation of the local exchange markets, foreign investment or particular transactions in the native or foreign currencies. Foreign exchange transactions can result in the Clients' returns being substantially better or worse than they would have been had the Clients not entered into such transactions.

### **Exchange Rate Risk and Currency Hedging**

The Clients' investments generally are denominated in U.S. Dollars, though the Clients may make investments denominated in non-U.S. Dollar currencies from time to time. To the extent the Clients make investments denominated in non-U.S. Dollar currencies, the Clients are subject to the risk that the value of such other currencies will decline versus the U.S. Dollar. The Adviser may in its discretion, but is not required to, hedge currency risks, including through forward contracts (agreements to exchange one currency for another at a future date), swap agreements or futures, to protect against adverse changes in exchange rates and to facilitate transactions in non-U.S. securities to the extent and in the manner the Adviser deems practicable. In each instance, the ability to implement and maintain any such hedging transactions will be dependent upon numerous factors, including: (a) the willingness of the hedging counterparty or broker to accept or maintain such transactions; (b) the Clients' ability to satisfy margin or settlement payments on such transactions and the deadlines imposed for making such payments; and (c) the potential bankruptcy of the hedging counterparty or broker for such transactions.

### **Small to Medium Capitalization Companies**

The Adviser may invest a portion of the Clients' capital in the securities of companies with small to medium market capitalizations. Although the Adviser believes that these securities may provide significant potential for appreciation, such securities, particularly smaller-capitalization stocks, often involve higher risks than do investments in the securities of larger-capitalization companies. Smaller-capitalization stocks are often more volatile and more illiquid than large-capitalization stocks.

### **Municipal Instruments**

The Clients may invest in municipal bonds. These bonds—backed by the taxing power of a municipality, by dedicated revenue streams or by other sources—are subject to governmental approvals and political processes and are often limited in aggregate amount. The maturity dates, call and sinking fund payment and other terms of these securities vary widely, as does the demand for different issues, as well as the creditworthiness of the respective issuers. There can be no guarantee that the Adviser will be successful in making the right selections and thus mitigate the impact of credit risk on the Clients.

## **Non-U.S. Markets**

Investing in non-U.S. securities involves certain considerations not typically associated with investing in the securities of U.S. issuers. These considerations include changes in exchange rates and exchange control regulations, political and social instability, expropriation, imposition of punitive and retroactive taxes, less market liquidity and less available issuer-specific information than is generally the case in the United States, higher transaction costs, less government supervision of exchanges, brokers and issuers, difficulty in enforcing contractual obligations, lack of uniform accounting and auditing standards and greater price volatility.

## **Emerging Markets**

While the Clients trade primarily in the United States and Canada, it may invest in certain other countries, including other G-10 countries and emerging markets, from time to time. Investing in emerging market debt or equity involves certain risks and special considerations not typically associated with investing in other more established economies or securities markets. Such risks may include: (i) the risk of nationalization or expropriation of assets or confiscatory taxation; (ii) social, economic and political uncertainty including war; (iii) dependence on exports and the corresponding importance of international trade; (iv) price fluctuations, less liquidity and the smaller capitalization of the securities markets; (v) currency exchange rate fluctuations; (vi) rates of inflation (including hyperinflation); (vii) controls on foreign investment and limitations on repatriation of invested capital and on the Clients' ability to exchange local currencies for U.S. dollars; (viii) governmental involvement in and control over the economies; (ix) governmental decisions to discontinue support of economic reform programs generally and to impose centrally planned economies; (x) differences in auditing and financial reporting standards which may result in the unavailability of material information about issuers; (xi) less extensive regulation of the securities markets; (xii) longer settlement periods for securities transactions in emerging markets; (xiii) less developed corporate laws regarding fiduciary duties of officers and directors and the protection of investors; and (xiv) certain considerations regarding the maintenance of Clients' portfolio securities and cash with non-U.S. sub-custodians and securities depositories.

The foregoing risks are generally applicable to many non-U.S. markets. All of these risks tend to be exacerbated in the emerging markets.

## **Side Letters; Differential Access to Information; Differential Business Terms**

To the extent permitted by applicable contracts and law, the Adviser may agree to waive or modify the application of any provision of the offering terms described in its offering memorandum with respect to any investor, by side letter or otherwise, without obtaining the consent of any other investor. As a result of such side letters, certain investors may receive additional benefits which other investors will not receive. Except as required by law, in general, the Adviser is not required to notify the other investors of any such side letters or any of the rights and/or terms or provisions thereof, nor is the Adviser required to offer such additional and/or different rights and/or terms to any or all of the other investors. The Clients' board of directors have full transparency into the terms of any side letter to the extent the terms of such side letter affect the Clients.

The Adviser, its portfolio manager, and current Clients have entered into a contract with two strategic investors (the "Strategic Investors") who have a financial interest in the fees and profits earned by the Adviser. Further, the Strategic Investors are two of the largest investors in the Adviser's U.S. domiciled fund. The Strategic Investors do not have any equity stake in the

Adviser nor does either have management obligations pertaining to the Clients' portfolio, although both are available to consult with the Adviser from time to time regarding investment strategies.

The Strategic Investors are not sponsors or promoters of the Clients or their affiliates, have no duties to the Clients or its investors and will not be liable to the Clients or their investors for exercising or not exercising any respective rights.

### **Certain Credit Exposure Risks of Clients**

A Fund or Client may be exposed to the credit risks of other Clients as a result of certain co-investment or participation arrangements. For example, a participation agreement between a Fund and another Client may allow the Fund to trade certain assets on behalf of the other Client but receive settlement funding from such other Client at a later time. Exposure to the credit risk of other Clients poses the risk that the applicable Fund or Client will incur costs as a result of losses by such entities which are unrelated to the actions or trading of the Fund or Client.

The Adviser has endeavored to minimize this risk by closely monitoring and limiting any such credit exposure. In the event the Fund or Client trades on behalf of another Client pursuant to a participation or similar agreement, the Adviser will require prompt payment from the other Client to the applicable Fund or Client.

### **Cybersecurity**

As part of its business, the Adviser processes, stores and transmits large amounts of electronic information, including information relating to the transactions of its Clients and personally identifiable information of Clients and Fund investors, and conducts significant portions of its business over electronic networks. Similarly, third party service providers of the Adviser or Client may process, store and transmit such information and electronic transactions. The Adviser has procedures and systems in place that it believes are reasonably designed to protect such information and prevent data loss and security breaches. However, such measures cannot provide absolute security. The techniques used to obtain unauthorized access to data, disable or degrade service, or sabotage electronic networks or systems change frequently and may be difficult to detect for long periods of time. Hardware or software acquired from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise information and network security. Network connected services provided by third parties to the Adviser may be susceptible to compromise, leading to a breach of the Adviser's electronic networks or systems. The Adviser's systems, networks or facilities may be susceptible to employee error or malfeasance, government surveillance, or other security threats. On-line communications or services provided by Adviser to Clients or Fund Investors may also be susceptible to compromise. Breach of the Adviser's information systems may allow third parties to process unauthorized transactions on behalf of a Client or cause information relating to the transactions of a Client and personally identifiable information of Clients or Fund investors to be lost or improperly accessed, used or disclosed.

The service providers of the Adviser or a Fund are subject to the same electronic information security threats as the Adviser. If a service provider fails to adopt or adhere to adequate data security policies, or in the event of a breach of its networks, information relating to the transactions of a Fund and personally identifiable information of Fund investors may be lost or improperly accessed, used or disclosed.

The loss or improper access, use or disclosure of the Adviser's or a Client's proprietary information or systems may cause the Adviser or Client to suffer, among other things, financial loss, business disruption, liability to third parties, regulatory intervention or reputational damage. Any of the foregoing events could have a material adverse effect on a Client or Fund investors.

**Item 9 - Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to your evaluation of the adviser or the integrity of adviser's management.

The Adviser and its personnel have no legal or disciplinary events to report.

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

- A. The Adviser is not registered, and does not have an application pending to register, as a broker-dealer or registered representative of a broker-dealer. Currently, no employees of the Adviser are registered representatives of a broker-dealer.

Portfolio company investments of pooled investment vehicle Clients include investment advisers operated by management teams which are independent of the Adviser. Though certain supervised persons of Axar sit on the boards of such portfolio companies, the Adviser does not believe that these portfolio companies are material to the Adviser's business or its Clients (other than as portfolio companies) nor does the Adviser believe they create a material conflict of interest with respect to its Clients. In addition, the Adviser has implemented information sharing policies with respect to such portfolio companies.

- B. Neither the Adviser nor any of its management persons are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, commodity trading advisor, or an associated person of the foregoing entities.
- C. The Funds are affiliates of the Adviser. Additionally, Axar Capital Group LLC is an affiliate of the Adviser. Since Axar Capital Group LLC is entitled to receive a share of the Performance Allocation from the Funds, this may create an incentive for the Adviser to make investments that are riskier or more speculative than would be the case if such arrangement was not in effect. However, as noted in Item 11, the Adviser has adopted a written Code of Ethics that contains policies and procedures to address conflicts of interest. Under such policies and procedures, the Adviser is required to make investment decisions for its Clients in a manner that is consistent with its fiduciary duties to its Clients.

Axar Real Estate Management, LP, a subsidiary of the Adviser, provides management services to a private real estate investment partnership for sophisticated, qualified investors (the "Real Estate Partnership"). The Real Estate Partnership pursues investment strategies and objectives which are separate and distinct from those of the Adviser's Clients.

- D. The Adviser does not recommend or select other investment advisers for its Clients.

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

- A. The Adviser has adopted a written Code of Ethics designed to address and avoid potential conflicts of interest as required under Rule 204A-1 of the Advisers Act (the “Code”). The Code sets forth a standard of business conduct and compliance with federal securities laws by all of the Adviser's employees. The Code contains policies and procedures that ensure that all personal securities trading by employees of the Adviser is conducted in such a manner as to avoid actual or potential conflicts of interest or any abuse of an individual's position of trust and responsibility. The Adviser prohibits personal trading on certain securities or instruments; requires pre-clearance of personal trades in certain circumstances, including purchases of an IPO or a new private placement; requires periodic reporting of employees' personal securities transactions and holdings; and requires prompt internal reporting of Code violations.

The Adviser has established procedures to prevent the abuse of material, non-public information, which includes procedures for, among other things, the use and maintenance of restricted trading lists. Because the structure of the Adviser would make information barriers impractical, the firm has not imposed information barriers to restrict the internal flow of possible material, non-public information. Thus, all professionals are deemed to be in receipt of material, non-public information, in all instances where any professional of the Adviser has received material, non-public information, and, therefore, may not trade on the basis of that information.

The Adviser's Code of Ethics is available, upon request, to any Client or prospective Client as well as any Fund investor or qualified prospective Fund investor.

Additionally, the Adviser and its related entities engage in a broad range of activities. In the ordinary course of conducting its activities, the interests of a Client may, from time to time conflict with the interests of the Adviser, other Clients or their respective affiliates. Certain of these conflicts of interest, as well a description of how the Adviser addresses such conflicts of interest, can be found below.

In the case of all conflicts of interest, the Adviser's determination as to which factors are relevant, and the resolution of such conflicts, will be made using the Adviser's best judgment, but in its sole discretion. In resolving conflicts, the Adviser will consider various factors, including the interests of the applicable Clients with respect to the immediate issue and/or with respect to their longer-term courses of dealing. Certain procedures for resolving specific conflicts of interest are set forth below. When conflicts arise, the following factors generally mitigate, but will not eliminate, conflicts of interest:

- (1) A Client will not make an investment unless the Adviser believes that such investment is an appropriate investment considered solely from the viewpoint of such Client;
- (2) Many important conflicts of interest will generally be resolved by set procedures, restrictions or other provisions contained in the Governing Documents for the Clients;
- (4) Where the Adviser deems appropriate, unaffiliated third parties may be used to help resolve conflicts, such as the use of an investment banker to opine as to the fairness of a purchase or sale price; and
- (5) Prior to subscribing for interests in a Client, each investor receives

information relating to significant potential conflicts of interest arising from the proposed activities of the Client.

Specifically, with respect to conflicts of interest that may arise in connection with its investment activities, the Adviser has adopted written policies and procedures relating to the allocation of investment opportunities, and will make allocation determinations consistently with Client Governing Documents and such policies. The Adviser will not allocate investment opportunities based, in whole or in part, on (i) the relative fee structure or the amount of fees paid by any Client or (ii) the profitability of any Client.

- B. The Adviser's Principal is a member of the Funds. Therefore, the Adviser may be deemed to recommend to Clients or buy or sell for Clients, investments in which the Adviser has a material financial interest.

Additionally, the Adviser and its principals, members, directors, officers and employees (each an "Axar Party" and collectively, the "Axar Parties") may conduct other businesses including businesses within the securities or private investment fund industry. Any Axar Party may also serve as investment manager to other entities, accounts or investors and may conduct investment activities for their own accounts. For instance, and as discussed in Item 10, Axar Real Estate Management, LP, a subsidiary of the Adviser, provides management services to a private real estate investment partnership. However, as discussed above, the Adviser has established procedures to address potential conflicts of interests which may arise in its business, including such outside activities.

- C. The Adviser's Principal has invested a significant portion of his liquid net worth in the Funds and other accounts advised by the Adviser, but is not obligated to do so. Such amounts may be invested pro rata with the members of the Funds in all of the Funds' portfolio investments. In the view of the Principal, this aligns the interests of the Principal with the Funds and their investors and does not result in any conflicts of interest between the Adviser and the Funds.
- D. As provided by the Code, the Adviser may not recommend investments to Clients, or make investments for Clients, at or about the same time that the Adviser or its related persons buy or sell the same investments for their own account.



## Item 12 - Brokerage Practices

- A. The Adviser has complete discretion to determine, subject to each Client's disclosed investment objectives, policies and strategies, the securities to be purchased or sold and in what amounts, the broker-dealers and other financial intermediaries to use in effecting the transactions for Clients, and the commission rates to be paid for such transactions.

*Brokerage.* The Adviser selects the broker-dealers and other financial intermediaries used to effect transactions on behalf of its Clients. The Adviser seeks to obtain "best execution" from these broker-dealers based on a variety of factors. In selecting broker-dealers to effect portfolio transactions, the Adviser may cause Clients to enter into arrangements pursuant to which the Clients pay transaction costs in an amount greater than would be incurred if another broker-dealer were used. The Adviser is not required to solicit competitive bids or seek the lowest available commission or transaction costs. The transactions executed by Clients may be cleared through, and the Clients' investment instruments may be held by, a number of financial institutions the Adviser selects on terms negotiated with each such financial institution individually. Subject to the Adviser's agreement with each Client, the Adviser generally will use a variety of financial institutions both to take advantage of differing expertise and capabilities and to avoid, due to credit concerns, having all investment instruments concentrated at one firm. The Adviser does not consider the receipt of Client referrals when selecting broker-dealers to execute transactions.

Generally, the Adviser does not permit Clients to direct brokerage to a specified broker-dealer and all brokerage transactions will be executed through the broker-dealers selected by the Adviser. Nevertheless, certain Clients may require the Adviser to direct the Adviser to a particular broker. Such Clients must note that such directed brokerage arrangements limit the Adviser's ability to seek best execution and participate in aggregated trades (as described below) and therefore may result in increased cost for such Clients.

*Soft Dollars.* A portion of the commissions generated on Clients' brokerage transactions may generate "soft dollar" credits that the Adviser is authorized to use to pay for research and other non-research related services and products used by the Adviser or its affiliates. Although the Adviser will use the research and services in making investment decisions for the applicable Clients, the Adviser may use such research or services for other Clients and the applicable Clients will generally pay more than the lowest available commissions for execution of these transactions. The Adviser may also enter into "soft dollar" arrangements to cover Client expenses or costs and expenses of the Adviser to the extent such arrangements are permitted by law.

The ability to utilize soft dollar credits may give the Adviser an incentive to select brokers or dealers for Client transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Adviser rather than giving exclusive consideration to the interests of the Clients. In the event that the Adviser elects to use soft dollars, it intends to limit such use to services that fall within the safe harbor afforded by Section 28(e) of the Securities Exchange Act of 1934, as amended, or such services that are otherwise reasonably related to the investment decision-making process.

The term "soft dollars" refers to the receipt by an investment adviser of products and services provided by brokers, without any cash payment by the investment adviser, based on the volume of revenues generated from brokerage commissions for transactions executed for clients of the

investment adviser. The products and services available from brokers include both internally generated items (such as research reports prepared by employees of the broker) as well as items acquired by the broker from third parties (such as quotation equipment).

- B. In general (and when applicable), the Adviser attempts to aggregate multiple orders for the purchase or sale of the same instrument into block transactions, subject to the overall obligation to achieve best price and execution for its Clients.

**Item 13 - Review of Accounts**

- A. The Principal of the Adviser is responsible for reviewing Client investment portfolios on a daily basis relating to, among other factors, position sizes; exposure levels; margin requirements; and investment strategy compliance.
- B. See Item 13.A. above.
- C. The Adviser provides Fund investors with audited annual financial statements, periodic reports and other communications, and all tax information relating to their investments in the Funds necessary for U.S. federal income tax purposes.

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

- A. The Adviser does not receive any economic benefit, including sales awards or prizes, from any third party for providing advisory services to the Funds.
- B. The Adviser may enter into agreements with persons who refer potential investors for the Funds to the Adviser. For their referral services, these persons may receive compensation from the Adviser in the form of a percentage of the Management Fee and/or Performance Allocation that the Adviser and its affiliates receive from the Funds with respect to the referred investors. All solicitation arrangements that the Adviser may enter into will be designed to be in compliance with Rule 206(4)-3 under the Advisers Act and any similar state regulations. The Funds and their underlying investors are not responsible for any of the fees paid to the referring persons.

**Item 15 - Custody**

The Adviser is deemed, under Rule 206(4)-2 of the Advisers Act, to have custody of the assets of the Funds by virtue of the common control of the Adviser and the General Partner of the Funds. All assets and securities of the Funds are held by qualified custodians. As noted in Item 13 above, Fund investors receive annual financial statements audited by an independent public accounting firm. Fund investors are urged to carefully review these statements.

The Adviser does not have custody of separately managed account client assets.

**Item 16 - Investment Discretion**

The Adviser exercises discretion in managing the investments of its Clients based on the applicable Clients' investment objectives, policies, and strategies disclosed in its Offering Documents.

The Adviser generally contractually assumes discretionary authority over the assets of its Clients under investment management agreements entered into among the Adviser and the Clients.

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

The Adviser follows a proxy voting policy to ensure that proxies the firm votes, on behalf of each Client, are voted to further the best interest of that Client. The policy establishes a mechanism to address any conflicts of interests between the Adviser and its Clients. Further, the policy establishes how Clients' underlying investors may obtain information on how the proxies have been voted.

The Adviser determines how to vote after studying the proxy materials and any other materials that may be necessary or beneficial to voting. The Adviser votes proxies in a manner that it believes reasonably furthers the best interests of its Clients and their investors and is consistent with the investment philosophy as set forth in the relevant Clients Governing Documents.

If a proxy vote creates a material conflict between the interests of the Adviser and a Client, the Adviser will resolve the conflict before voting the proxies. The Adviser will take steps designed to ensure that a decision to vote the proxy was based on the Adviser's determination of the Client's best interest.

The Adviser maintains records of (i) all proxy votes that are made on behalf of its Clients; (ii) all written requests from each Client's underlying investors regarding voting history; and (iii) all responses (written and oral) to investors' requests. Such records are available to each Client's underlying investors upon request.

**Item 18 - Financial Information**

- A. The Adviser does not require or solicit prepayment of advisory fees six months or more in advance.
- B. The Adviser does not believe it has any financial condition that is reasonably likely to impair its ability to meet its contractual commitments to the Funds.
- C. The Adviser has not been the subject of a bankruptcy petition at any time during the past ten years.