

**Item 1. Cover Page**

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**The Brochure of**  
**MARCATO CAPITAL MANAGEMENT LP**  
**March 29, 2019**

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This Brochure provides information about the qualifications and business practices of Marcato Capital Management LP (the “Adviser”), an investment adviser registered with the United States Securities and Exchange Commission (the “SEC”). If you have any questions about the contents of this Brochure, please contact us at (415) 796-6350 or email [compliance@marcatollc.com](mailto:compliance@marcatollc.com). This information has not been approved or verified by the United States Securities and Exchange Commission (the “SEC”) or by any state securities authority.

Additional information about the Adviser also is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The Adviser is registered as an investment adviser with the SEC. Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.

**Item 2. Material Changes**

The Adviser has made changes to the Brochure since its last annual update on March 29, 2018. Effective May 29, 2018, Mark Shamia assumed the position of Chief Compliance Officer. Huntley A. Hanover, the former Chief Compliance Officer, continues to serve as a Partner and the Chief Operating Officer at the Adviser.

On March 1, 2018, the Adviser and its Relying Adviser, MCM Encore IM LLC, filed requests with the U.S. Commodity Futures Trading Commission (the "CFTC") to withdraw their registrations as commodity pool operators. The CFTC approved the Adviser's deregistration on June 1, 2018, and the Relying Adviser's deregistration on June 19, 2018. Both the Advisers and its Relying Adviser will rely on certain exemptions from registration as commodity pool operators.

Clients and prospective clients should carefully review the Brochure in its entirety.

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#### **Item 4. Advisory Business**

The Adviser, a Delaware limited partnership, commenced operations as an investment adviser in October 2010 and has its office in San Francisco, California. Richard T. McGuire (“Mr. McGuire”), as the limited partner of the Adviser and as the managing member of the general partner of the Adviser, Marcato Holdings LLC, a Delaware limited liability company, is the sole principal owner of the Adviser and controls the Adviser. The Adviser, together with MCM Encore IM LLC (a Relying Adviser of the Adviser and collectively referred to as the Adviser for purposes of this Brochure), provides investment management services to pooled investment vehicles that are offered to investors on a confidential, private placement basis. In connection with providing these investment management services, the Adviser has been appointed as the investment adviser with discretionary trading authorization. The general partner of the Adviser has ultimate responsibility for the management and operations of the Adviser.

The Adviser provides investment advisory services to (1) Marcato, L.P., Marcato International Ltd., and Marcato International Master Fund Ltd. (the “Marcato Funds”) and (2) Marcato Encore, L.P., Marcato Encore International Ltd., and Marcato Encore International Master Fund Ltd. (the “Encore Funds”). The Adviser may, from time to time, serve as the investment manager for additional funds or products, such as co-investment vehicles or any accounts, which may invest alongside the Funds in the securities of (or otherwise seeks to be exposed to the value of securities issued by) a particular issuer. As of the date of this Brochure, the Adviser serves as an investment manager for a family of funds (the “Co-Invest Funds” each a “Fund” and collectively with the Marcato Funds and Encore Funds, the “Funds”). Unless otherwise indicated, references in this Brochure to the investment and other activities of the “Funds” shall be deemed to refer to such activities as undertaken by the master funds.

The Adviser provides investment advisory services on a discretionary basis to the Funds, which are pooled investment vehicles intended for institutional investors and other sophisticated investors. In providing such services to the Funds, the Adviser formulates its investment objective, directs and manages the investment and reinvestment of each Fund’s assets, and provides reports to investors. The Adviser manages the assets of each Fund in accordance with the terms of the governing documents applicable to each Fund. Limited partnership interests or shares in the Funds are not registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and the Funds are not registered under the Investment Company Act of 1940, as amended (the “Investment Company Act”). Limited Partnership interests or shares in the Funds are offered on a confidential, private placement basis and are subject to applicable eligibility and suitability requirements for the respective Fund.

Investment advice is provided directly to the Funds and not individually to the investors of the Funds. The investors have no opportunity to select or evaluate any Fund investments or strategies. The investors may not impose restrictions on investing in certain securities or types of securities. The Adviser selects all Fund investments and strategies. The Adviser does not participate in any wrap-fee programs.

As of December 31, 2018, the Adviser had approximately \$625 million of regulatory assets under management. As of that date, the Adviser managed all such assets on a discretionary basis.

## **Item 5. Fees and Compensation**

The Adviser typically receives compensation from the Funds from the following source: (a) an asset-based charge based on the net asset value of the Fund, and (b) fees based on the performance of the Fund. Any investor should review all fees charged by the Adviser and its affiliates to fully understand the total amount of fees to be paid by the Fund and, indirectly, any investor in the Fund.

### Asset-Based Compensation

The Marcato Funds and Encore Funds pay the Adviser an annual asset-based fee at rates generally ranging from 1.25% to 2.0% per annum. The Co-Invest Funds generally pay an asset-based fee of 0.5% per annum. All asset-based fees are payable quarterly in advance at the beginning of each calendar quarter based upon the net asset value of each series of shares or interests. The asset-based fee is pro-rated for any period that is less than a full calendar quarter and is adjusted for contributions/subscriptions and withdrawals/redemptions occurring during the quarter. The Adviser has full authority and otherwise reserves the right to waive or modify the asset-based fee for certain investors, including employees, strategic partners, advisors, consultants, and others, as the Adviser may determine in its sole discretion. The Adviser's employees do not pay fees on their investments in the Funds.

### Performance-Based Compensation

Please see Item 6, the "Performance-Based Fees and Side-by-Side Management" section.

### Private Fund Expenses

In addition to paying asset-based fees and being subject to performance-based compensation, the Funds' accounts are also subject to other investment expenses such as legal and compliance expenses (including expenses related to regulatory filings (e.g., Form PF), indemnification expenses, expenses relating to regulatory or similar investigations, inquiries and "sweeps", dealings with regulators relating to the Fund's past, present and prospective holdings and expenses related to compliance software (but, for the avoidance of doubt, excluding those expenses related to the Adviser's or any of its affiliates' registration with the SEC, such as expenses incurred in connection with updating Form ADV)); professional fees and expenses (including fees and expenses of investment bankers, finders, appraisers, public and government relations firms and other consultants and experts); Fund audits (including custody audit, if any) and accounting expenses (including third party accounting services, if any); organizational expenses and ongoing offering expenses; payments for the custody of the Fund's assets and for the performance of administrative services; administrator fees and expenses; investment-related expenses (whether or not consummated) such as commissions, research fees and expenses (including Bloomberg and similar subscriptions and data services and research-related travel) and expenses associated with activist campaigns such as expenses related to event hosting and production, public presentations, public relations, government relations, forensic and other analyses and investigations, proxy contests, solicitations and tender offers, and compensation, indemnification and other expenses of any nominees proposed by the Adviser as directors or executives of portfolio companies; brokerage fees and commissions; risk management expenses (including expenses related to risk management software); order management systems, as well as other analytical systems; interest on margin accounts and other

indebtedness; expenses relating to short sales, including dividend and stock borrowing charges and expenses; clearing and settlement charges; custodial fees; bank service fees; margin and other interest expenses and transaction fees; blue sky and corporate filing fees and expenses; Fund-related insurance costs (including D&O and E&O insurance costs); and any other expenses related to the purchase, sale or transmittal of Fund assets. Expenses related to software (as outlined above) may include software used by the Adviser with respect to its management of the Funds. The Co-Invest Funds are subject to other expenses as described in the applicable investment advisory agreement, and in summary, the Co-Invest Funds are responsible for all trading costs and expenses associated with their investment portfolio.

As discussed, the Funds incur brokerage and other transaction costs. Please refer to Item 12 of this Brochure for a discussion of the Adviser's brokerage practices.

The Funds employ a master-feeder structure. The feeder funds bear a pro-rata share of the expenses associated with the related master fund.

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

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

A portion of the Adviser's compensation is directly computed on the appreciation, if any, in the net asset value of the Funds. As a result, the Adviser may have a conflict of interest between its responsibility to manage the Funds' investment portfolios and its interest in maximizing the performance-based allocation. For example, the performance-based fee may create an incentive to make investments on behalf of the Funds that are riskier or more speculative than would be the case in the absence of such compensation. In addition, when performance-based fees are calculated on a basis that includes both realized and unrealized gains, such fees may be greater than if based solely on realized gains. Further, the performance-based fees are not the product of an arm's length negotiation with any third party.

As of December 31 of each year and at any time there is a redemption, withdrawal or transfer of equity by an investor, each share or interest in the Funds, except for the Co-Invest Funds, is subject to a performance-based allocation generally ranging from 18-20% of any net profits (including realized and unrealized gains and losses), if any, attributable to such share or interest, subject to a loss carry-forward provision. For this purpose, net profits are reduced by the asset-based charge after taking into account all items of income, loss and expenses. For longer duration share classes, performance-based allocations are subject to achievement of certain hurdle rates. The Adviser has full authority to waive or modify the performance-based allocation. The Adviser's employees do not pay performance-based allocation on their investments in the Funds.

The Adviser receives a performance-based allocation from the Co-Invest Funds upon a distribution of the portfolio holding(s) as described in their investment advisory agreements. As of the date of this Brochure, the performance-based allocation for the Co-Invest Funds equals 10% of any excess over such initial subscription amount distributed to such investor.

**Item 7. Types of Clients**

As previously noted, the Adviser provides investment advisory services to the Marcato Funds, Encore Funds, and the Co-Invest Funds, which are private investment funds. All initial and additional subscription minimums are disclosed in the respective offering memorandum of each these private pooled investment vehicles. Each Fund relies on an exclusion from the definition of “Investment Company” provided by the Investment Company Act. Investors of the Funds may include high net worth individuals, pension funds and profit sharing plans, trusts, charitable organizations, institutions, endowments, fund of hedge funds, foreign sovereign wealth funds, family offices, and other entities.

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

The Funds generally seek to achieve their investment objective through a patient, value-oriented long/short investment strategy that emphasizes fundamental analysis and extensive research in the selection of a limited number of investment opportunities deemed to be uniquely attractive. In select situations, the Adviser may act as a catalyst to accelerate or amplify value creation by engaging with a company’s management or Board of Directors. The Funds invest primarily in long and short positions in publicly traded equity and equity related securities in U.S. and foreign issuers, but may also invest in other types of positions, including, without limitation, preferred stocks, stock warrants and rights, convertible securities, currency, commodity, foreign exchange deliverable and non-deliverable forward contracts, spot foreign exchange, swaps, options (purchased or written), futures contracts, debt and equity indices, other forward contracts and other derivative instruments, partnership interests and other securities or financial instruments including those of investment companies, asset and mortgage backed securities, consumer and commercial loans and receivables, high yield investments, and related synthetic instruments and credit-linked notes, and any other financial instrument the Adviser believes will help its objective.

With respect to the Funds’ long positions, the Funds will typically invest in positions that the Adviser believes are undervalued by the market or exhibit significant valuation discrepancies between current market prices and intrinsic business (or net asset) value. The Adviser’s investment strategy may involve investing in securities, typically equity securities, of companies that the Adviser believes are undervalued by the marketplace and are likely to appreciate as a result of, for example, operational improvements, a change in corporate direction or management, capital allocation or balance sheet changes, or other courses of action. In making such investments, the Adviser may act alone or together with one or more other investors or investment managers acting as a group. In order to implement any actions deemed necessary to maximize value, the Adviser, or other members of the investing group, may work with the management team of the target company or other investors of the target company to design an alternate strategic plan and assist them in its execution and may secure the appointment of persons selected by the Adviser or other members of the group to the company’s management team or board of directors. The Adviser, either alone or as part of a group, may also initiate investor actions (including those that may be opposed by company management or other investors in the company). In seeking the Funds’ objective, the Funds may engage in a buy and hold investment strategy wherein the Funds buy securities and hold them for a relatively long period of time, regardless of short-term factors such as fluctuations in the market or volatility of the stock price.

With respect to the Funds' short positions, the Funds may invest in sector hedges, broader equity or credit market hedges, or in single-name positions where the Adviser believes the company is overvalued and facing secular or structural challenges or using aggressive or misleading accounting. The Adviser may also short individual securities to hedge or reduce the Funds' long exposure.

The Adviser may offer any advisory services, engage in any investment strategy, and make any investment, including any not described in this Brochure, that the Adviser considers appropriate, subject to each Fund or client's investment objectives and guidelines. The investment strategies the Adviser pursues are speculative and entail substantial risks. Clients should be prepared to bear a substantial loss of capital. There can be no assurance that the investment objectives of any client will be achieved. No guarantee or representation is made that the Funds will achieve their investment objectives.

### ***Material Risks Relating to Investment Strategies***

*The following risk factors do not purport to be a complete list or explanation of all of the risks involved in an investment in the Funds advised by the Adviser. These risk factors include only those risks the Adviser believes to be material, significant or unusual and relate to particular significant investment strategies or methods of analysis employed by the Adviser. Please refer to the Funds' offering documents for a more complete description of the risk factors.*

*Nature of Investments.* The Adviser has broad discretion in making investments for the Funds. Investments may consist of investments in equity and equity-related securities and other financial instruments, as previously described. All such investments risk the loss of capital. There can be no assurance that the Adviser will correctly evaluate the nature and magnitude of the various factors that could affect the value of and return on investments. Prices of investments may be volatile, and a variety of factors that are inherently difficult to predict may significantly affect the results of the Funds' activities and the value of their investments. No guarantee or representation is made that the Funds' investment objectives will be achieved.

*Investments in Equity Securities.* The Adviser may use equity-related instruments in its investment program. Certain options and other equity-related instruments may involve significant economic leverage and may be subject to various types of risks, including market risk, liquidity risk, counterparty credit risk, legal risk and operations risk. In addition, market prices may decline as a result of general market conditions not specifically related to a company or industry, such as real or perceived adverse economic conditions, changes in the general outlook for corporate earnings, changes in interest or currency rates or adverse investor sentiment generally.

Further, equity investments may be even more susceptible to such events than other types of investments the Funds may make, given their subordinate position in the issuer's capital structure. As such, equity investments generally have greater price volatility than fixed income and other investments with a scheduled stream of payments, and the market price of equity investments is more susceptible to moving up or down in a rapid or unpredictable manner.



Certain issuers of equity securities may be subject to different, often less comprehensive accounting, reporting and disclosure requirements, may be listed on less liquid and more volatile markets, and may be subject to high brokerage commissions and other fees.

*Risk of Loss.* No guarantee or representation is made that the Adviser's methods of analysis or investment strategies will be successful. Investment results may vary substantially over time and may significantly vary among investors in the Funds. There is no assurance that the Funds will obtain profits or that a substantial or complete loss will not occur.

*General Market Conditions.* General economic and market conditions may, and likely will, have a significant impact on the profitability of the Funds. Such conditions include, but are not limited to, interest rates, availability of credit including for portfolio companies, credit defaults, inflation rates, changes in laws, trade barriers, currency exchange controls, economic disruptions in the U.S. and non-U.S. nations, and political circumstances and events.

*Foreign Securities.* Investing in securities of foreign governments and companies that are generally denominated in foreign currencies and utilization of options on foreign securities involves certain considerations comprising both risks and opportunities not typically associated with investing in securities of the United States Government or United States companies. These considerations include changes in exchange rates and exchange control regulations, political and social instability, expropriation, imposition of foreign taxes, less liquid markets and less available information than is generally the case in the United States, higher transaction costs, foreign government restrictions, less government supervision of exchanges, brokers and issuers, greater risks associated with counterparties and settlement, difficulty in enforcing contractual obligations, lack of uniform accounting and auditing standards, and greater price volatility.

*Foreign Taxes.* The Funds may invest in securities of corporations and other entities organized outside the United States. Income from such investments may be subject to foreign withholding taxes, which may or may not be reduced or eliminated by an income tax treaty.

*Preferred and Hybrid Securities Risks.* The Funds may invest in preferred stock and hybrid securities, which may have special risks. Preferred and hybrid securities may include provisions that permit the issuer, at its discretion, to defer distributions for a stated period without any adverse consequences to the issuer. If a Fund owns a preferred or hybrid security that is deferring its distributions, the Fund may be required to report income for tax purposes even though it has not yet received such income. Some preferred and hybrid securities are non-cumulative, meaning that the dividends do not accumulate and need not ever be paid.

Preferred and hybrid securities are subordinated to bonds and other debt instruments in an issuer's capital structure in terms of priority to corporate income and liquidation payments and, therefore, will be subject to greater credit risk than more senior debt instruments. For example, deterioration in the credit quality of the issuer will cause greater changes in the value of such instruments than senior debt securities with similarly stated yield characteristics. Preferred and hybrid securities may be substantially less liquid than many other securities, such as common stocks or U.S. government securities.

*Debt Securities.* The Funds may invest in unrated or low grade debt securities which are subject to greater risk of loss of principal and interest than higher-rated debt securities. The Funds may invest in debt securities which rank junior to other outstanding securities and obligations of the issuer, all or a significant portion of which may be secured on substantially all of that issuer's assets. The Funds may invest in debt securities which are not protected by financial covenants or limitations on additional indebtedness. In addition, evaluating credit risk for foreign debt securities involves greater uncertainty, because credit rating agencies throughout the world have different standards, making comparison across countries difficult.

*Leverage.* Although the Adviser generally plans to employ little margin leverage in pursuit of its investment strategy on behalf of its clients, the Adviser has authority to trade on margin and is not prohibited from employing more significant amounts of leverage to the extent it deems appropriate. Leverage increases returns to investors if a Fund earns a greater return on leveraged investments than such Fund's cost of such leverage. However, the use of leverage exposes such Fund to additional levels of risk including (i) greater losses from investments than would otherwise have been the case had such Fund not borrowed to make the investments, (ii) margin calls or changes in margin requirements may force premature liquidations of investment positions, (iii) losses on investments where the investment fails to earn a return that equals or exceeds such Fund's cost of leverage related to such investments and (iv) fluctuations in interest rates on such Fund's borrowings, which may have a negative effect on such Fund's profitability. In the case of a sudden, precipitous drop in the value of a Fund's assets, such Fund might not be able to liquidate assets quickly enough to repay its borrowings, further magnifying the losses incurred by such Fund.

In an unsettled credit environment, the Adviser may find it difficult or impossible to obtain leverage. To the extent a Fund incurs leverage as part of its investment strategy, the Adviser could find it difficult to fully implement its strategy. In addition, any leverage obtained, if terminated on short notice by the lender, could result in the Adviser being forced to unwind positions quickly and at prices below what the Adviser deems to be fair value for the positions.

*Activist Strategy.* The Funds' investment strategies may involve investing in equity securities of companies that the Adviser believes are undervalued by the marketplace and are likely to appreciate, including as a result of operational improvements, a change in corporate direction or management, capital allocation or balance sheet changes, or other courses of action. In making such investments, the Funds may act alone or together with one or more other investors or investment managers acting as a group. In order to implement any actions deemed necessary to maximize value, the Adviser, or other members of the investing group, may work with the management team of the target company or other investors of the target company to design an alternate strategic plan and assist them in its execution and may secure the appointment of persons selected by the Adviser or other members of the group to the company's management team or board of directors. The Adviser, either alone or as part of a group, may also initiate investor actions (including those that may be opposed by company management or other investors in the company).

This activist investment strategy may require, among other things: (i) that the Adviser properly identify portfolio companies whose securities prices can be improved through corporate and/or other courses of action; (ii) that the Funds acquire sufficient securities of such portfolio companies at a sufficiently

attractive price; (iii) that the Funds may incur expenses associated with an activist investment strategy, including potential litigation or other transactional costs; (iv) that the Funds avoid triggering antitakeover and regulatory obstacles while aggregating its position; (v) that management of portfolio companies and other security holders respond positively to the Adviser's proposals; and (vi) that the market price of a portfolio company's securities increases in response to any actions taken by portfolio companies. There can be no assurance that any of the foregoing will occur.

Activist strategies may prove ineffective for a variety of reasons, including: (i) opposition of the management or investors of the subject company; (ii) intervention of a governmental agency; (iii) efforts by the subject company to pursue a "defensive" strategy; (iv) market conditions resulting in material changes in securities prices; (v) the presence of corporate governance mechanisms such as staggered boards, poison pills and classes of stock with increased voting rights; and (vi) the necessity for compliance with applicable securities laws and applicable state corporate laws. In addition, opponents of a proposed change may seek to involve regulatory agencies in investigating the transaction or the Funds and such regulatory agencies may independently investigate the participants in a transaction, including the Funds, as to compliance with securities or other laws. Furthermore, successful execution of an activist strategy may depend on the active cooperation of investors and others with an interest in the subject company. Some investors may have interests which diverge significantly from those of the Funds, and some of those parties may be indifferent to the proposed changes. Moreover, securities that the Adviser believes are fundamentally undervalued or incorrectly valued may not ultimately be valued in the capital markets at prices and/or within the timeframe the Adviser anticipates, even if the Adviser's proposed changes are successfully implemented. Even if the prices for a portfolio company's securities have increased, no guarantee can be made that there will be sufficient liquidity in the markets to allow the Funds to dispose of all or any of their securities therein or to realize any increase in the price of such securities.

The Adviser (including its affiliates) may cause the Funds, either alone or together with others, to acquire a "control" position in any company, and may secure the appointment of persons to such company's management team or board of directors. In doing so, the investors in the Funds will be required to acknowledge and agree that the Adviser (and/or its affiliates, if any) may acquire fiduciary duties to such other company and to such other company's shareholders (which shall include members, unitholders, partners and similar persons) in addition to the duties that the Adviser (and/or its affiliates, if any) owe(s) the Funds. Such fiduciary duties may require the Adviser (and/or its affiliates, if any) to take actions that are in the best interests of the relevant company or its shareholders and the Adviser shall endeavor to act in such situations in the best interests of all parties concerned in accordance with the duties it owes to each such party. The Adviser's actions in such situations may not be in the best interests of the Funds. The investors in the Funds will be required to acknowledge that situations may arise where the Adviser (and/or its affiliates, if any) has (have) a conflict of interests between the duties that it (they) owe(s) to such companies and their shareholders, on the one hand, and those that it (they) owe(s) to the Funds, on the other.

The Adviser may also attempt to build strong relationships with company management. In certain cases, the Adviser's attempts to influence a company's management may result in the Adviser taking a seat on the company's board of directors. In such a case, there exists the risk that the Funds will be restricted in transacting in or redeeming their investment in that company as a result of, among other things, legal restrictions on transactions by company directors or affiliates. Because there is substantial uncertainty

concerning the outcome of transactions involving the target companies in which the Funds may invest, there exists a potential risk of loss by the Funds of their entire investment in such companies.

*Flexible Investment Approach and Risk of Untested Theses.* While the Funds will focus on long and short equity and equity-related positions, the Adviser has broad investment authority, and may trade in any type of security, issuer or group of related issuers, country, region and sector that it believes will help the Funds achieve their investment objectives. The Adviser has broad latitude with respect to the management of the Funds' risk parameters. The Adviser may utilize such leverage, position size, duration and other portfolio management techniques as it believes are appropriate for the Funds. Prospective investors must recognize that in investing in the Funds, they are placing their capital indirectly under the full discretionary management of the Adviser and authorizing the Adviser indirectly to trade for the Funds using strategies chosen and implemented in the manner determined by the Adviser in its sole discretion. There can be no assurance that the Adviser will be successful in applying its approach and there is material risk that an investor may suffer significant impairment or total loss of its capital.

While the Adviser will generally seek to employ the representative investment strategies and techniques discussed herein, the Adviser has substantial discretion in the types of securities that it may trade on behalf of its clients and has the right to modify the investment strategies and techniques of the Adviser without the consent of investors. New investment strategies and techniques may not be thoroughly tested in the market before being employed and may have operational or theoretical shortcomings that could result in unsuccessful trades and, ultimately, losses to the relevant investment portfolio. In addition, any new investment strategy or technique developed by the Adviser may be more speculative than earlier investment strategies and techniques and may involve material and as-yet-unanticipated risks that could increase the risk of an investment with the Adviser.

*Proxy Contests and Unsolicited Transactions.* The Funds may purchase securities of a company which is the subject of a proxy contest, or at which the Funds intend to solicit proxies, in the expectation that new board members or amendments to the charter or bylaws or other corporate policies of the company will be able to improve the company's performance or undertake various alternative courses of action so that the price of the company's securities will increase. If the Funds are not successful in adding new board members or obtaining any such changes to charters, bylaws or corporate policies or if new management is unable to improve the company's performance or undertake any such courses of action, the market price of the company's securities may fall, which may cause the Funds to suffer a loss.

*Dependence on Key Individuals.* The success of the Funds depends upon the ability of the Adviser's investment staff, particularly with respect to Mr. McGuire, to continue to develop and implement investment strategies that achieve the Funds' investment objectives. If the Adviser were to lose the services of Mr. McGuire, the consequence to the Funds could be material and adverse and could lead to the premature termination of the Funds.

*Litigation and Regulatory Investigations.* Some of the tactics that the Funds may use involve litigation. The Funds could be a party to lawsuits either initiated by them, or by a company in which the Funds invest, other shareholders of such company, or state and federal governmental bodies. There can be no assurance that any such litigation, once begun, would be resolved in favor of the Funds, and there is a risk of monetary damages and equitable relief against the Funds. In addition, the Funds may be subject from

time to time (and especially in the context of a proxy contest), to formal or informal investigations or inquiries by the SEC and other governmental and self-regulatory organizations in connection with its activities. Litigation and regulatory investigations may involve distraction of the Adviser's time and significant expenses to the Funds. Additionally, regulatory investigations and/or inquiries, to the extent known to investors, may result in withdrawals by some investors irrespective of the substance, merits, or ultimate outcomes of any such investigations or inquiries.

*Directorships on Boards of Portfolio Companies.* The Funds may obtain rights to participate substantially in and to influence substantially the conduct of management and the board of directors of issuers of securities acquired by them. Members, partners, officers, managers, employees, or affiliates of the Adviser and its affiliates or designees may serve as directors of, or in a similar capacity with, companies in which the Funds invest, the securities of which are purchased or sold on behalf of the Funds. In the event that material non-public information is obtained with respect to such companies or the Funds become subject to trading restrictions pursuant to the internal trading policies of such companies or as a result of applicable law or regulations, the Funds may be prohibited for a period of time from purchasing or selling the securities of such companies, which prohibition may have an adverse effect on the Funds.

*Substantial Positions in Portfolio Companies.* From time to time the Funds may acquire positions in the securities of particular companies that, by themselves or when combined with positions held in other investment funds and accounts sponsored, managed and/or otherwise advised by the Adviser and its affiliates, comprise a substantial percentage of those companies' outstanding securities. The Adviser, its affiliates and/or the Funds may be required to file with regulatory authorities reports of their beneficial ownership of such securities. In these cases, it may be difficult to liquidate or reduce the Funds' positions in these securities at all or at favorable prices, preventing the Funds from realizing profit or avoiding loss. In addition, there may be other circumstances under which the aggregate holdings of a security by the Funds and other accounts sponsored, managed and/or otherwise advised by the Adviser and its affiliates, or the involvement of the Adviser and/or its affiliates with the issuer of that security, limit the Funds' ability to liquidate or reduce their positions at all or at favorable prices. The Funds and their affiliates may at times attempt to influence management of a particular company or exercise control of a company.

*Third-Party Involvement.* The Funds may co-invest with third parties through partnerships, joint ventures, or other entities. Such investments may involve risks not present in investments where a third party is not involved, including the possibility that a third-party co-venturer or partner may at any time have economic or business interests or goals that are inconsistent with those of the Funds, or may be in a position to take action contrary to the investment objectives of the Funds or may breach its obligations under the applicable partnership, joint venture or other agreement. In addition, the Funds may in certain circumstances be liable for actions of their third-party co-venturer or partner.

*Reliance on Corporate Management and Financial Reporting.* The Funds are expected to rely heavily on the financial information made available by the issuers in which the Funds invest. The Adviser has no ability to independently verify the financial information disseminated by the issuer in which the Funds invest and is dependent upon the integrity of both the management of these issuers and the financial reporting process in general.

*Foreign Exchange Markets.* By trading in foreign exchange and investing in derivative instruments relating to international securities and such securities themselves, the Funds will have exposure to fluctuations in currency exchange rates. The Funds may, in part, seek to offset the risks associated with such exposure or to increase returns through foreign exchange transactions. Such transactions involve a significant degree of risk and the markets in which foreign exchange transactions are effected are volatile, specialized, and technical. 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 interference by foreign governments through regulation of local exchange markets, foreign investment or particular transactions in foreign currency. The foreign exchange transactions can result in the Funds' returns being substantially better or worse than what returns would have been had the Funds not entered into the transactions.

*Highly Volatile Markets and Concentration.* Price movements of the Funds' investments may be highly volatile and influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs, policies of governments, and national and international political and economic events and policies. In addition, governments from time to time intervene, directly and by regulation, in certain markets, particularly those in currencies, financial instruments, futures, and options. Such intervention often is intended directly to influence prices and may, together with other factors, cause all of such markets to move rapidly in the same direction because of, among other things, interest rate fluctuations. The Funds also are subject to the risk of the failure of any exchanges on which the positions of the Funds trade or of their clearinghouses.

Further, the Funds will generally be exposed to a concentration of investments (and the Co-Invest Funds are exposed to a highly concentrated investment), which could exacerbate volatility and investment risk. Although the Adviser may at times choose to do so, the Adviser is under no obligation to hedge any of the Funds' positions to mitigate these risks.

*Currency.* The Funds may invest a portion of their assets in principal instruments denominated in currencies other than the U.S. dollar or the price of which is determined with reference to currencies other than the U.S. dollar. The Funds will, however, value their securities and other assets in U.S. dollars. To the extent unhedged, the value of the Funds' assets will fluctuate with U.S. dollar exchange rates as well as the price changes of the Funds' investments in the various local markets and currencies. Thus, an increase in the value of the U.S. dollar compared to the other currencies in which the Funds make their investments will reduce the effect of increases and magnify the U.S. dollar equivalent of the effect of decreases in the prices of the Funds' securities in their local markets. Conversely, a decrease in the value of the U.S. dollar will have the opposite effect on the Funds' non-U.S. dollar securities. The Funds also may utilize options and forward contracts to hedge against currency fluctuations, but there can be no assurance that such hedging transactions will be effective.

*Hedging Transactions.* The Funds are not required to attempt to hedge portfolio positions. While the Funds may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Funds than if the Funds had not engaged in any such hedging transactions. In addition, the degree of correlation between price movements of the instruments used in a hedging strategy and price movements in the portfolio position being hedged may vary.

*Small- and Mid-Cap Companies.* The Funds may invest a portion of their assets in securities of small- and mid-cap companies. The Encore Funds in particular will invest primarily in long and short positions of publicly-traded equity and equity-related securities of small-cap companies. Small- and mid-cap companies may have more limited product lines, markets and financial and other resources. As a result, such companies may be more vulnerable to general economic trends and to specific changes in markets and technology.

In addition, in many instances, the frequency and volume of their trading may be substantially less than is typical of larger companies. The Funds may reach a relatively significant level of ownership in their portfolio companies, including their small- or mid-cap portfolio companies. As such, when making large sales, the Funds may have to sell portfolio holdings at discounts from quoted prices or may have to make a series of small sales over an extended period of time due to the lower trading volume of smaller company securities. The Funds may also be required to deal with only a few market makers when purchasing and selling these securities. In addition, the somewhat greater illiquidity of investments in small and mid-cap companies could make it difficult for the Funds to react quickly to negative economic or political developments. Transaction costs in small- and mid-cap company stocks may be higher than those for larger capitalized companies.

*Portfolio Turnover; Expenses.* The investment strategies of the Funds may require the Adviser to actively trade the Funds' portfolios. Additionally, the Funds will bear all expenses except for such overhead expenses as set forth above in "Item 5. Fees and Compensation." Consequently, brokerage commissions and other expenses of the Funds may significantly exceed those of other investment entities of comparable size.

*Concentrated Portfolio.* It is anticipated that the Funds will maintain a highly concentrated portfolio of investments. Accordingly, the Funds' portfolios generally will not be diversified among a wide range of issuers, industries, geographic areas, capitalizations, or types of securities and may have significant, concentrated positions. As a result, the investment portfolios of the Funds may be subject to more rapid changes in value than would be the case if the Funds were required to maintain a wide diversification among issuers, industries, geographic areas, capitalizations, or types of securities.

*Special Situations.* The Funds may invest in companies involved in (or the target of) acquisition attempts or tender offers or in companies involved in or undergoing work-outs, liquidations, spin-offs, reorganizations, bankruptcies, or other catalytic changes or similar transactions. In any investment opportunity involving any such type of special situation, there exists the risk that the contemplated transaction either will be unsuccessful, will take considerable time, or will result in a distribution of cash or a new security the value of which will be less than the purchase price to the Funds of the security or other financial instrument in respect of which such distribution is received. Similarly, if an anticipated transaction does not in fact occur, the Funds may be required to sell their investment at a loss. If the Funds have sold short securities that are the subject of a proposed cash tender offer or cash merger and the transaction is consummated, the Funds also may be forced to cover their short position at a loss. Because there is substantial uncertainty concerning the outcome of transactions involving financially troubled companies in which the Funds may invest, there is a potential risk of loss by the Funds of their entire investment in such companies.

*Commodity Trading Risks Generally.* The Funds may invest in commodity forward contracts, futures contracts (including financial futures), and other commodity interests or swaps. Trading in commodity interests may involve substantial risks. Commodity markets are highly volatile. The low margin or premiums normally required in such trading may provide a large amount of leverage, and a relatively small change in the price of a security or contract can produce a disproportionately larger profit or loss. This is due to the fact that generally only a very small portion (and in some cases none) of the value of the underlying security, commodity, or instrument is required to be paid in order to make such investments. In addition, many of these products are subject to variation or other interim margin requirements, which may force premature liquidation of investment positions. There is no assurance that a liquid secondary market will exist for commodity futures contracts or options purchased or sold, and the Funds may be required to maintain a position until exercise or expiration, which could result in losses. Many commodity exchanges limit the amount of fluctuation permitted in contract prices during a single trading day. Once the daily limit has been reached in a particular contract, no trades may be made that day at a price beyond that limit. Contract prices could move to the daily limit for several consecutive trading days permitting little or no trading, thereby preventing prompt liquidation of commodity interest positions and potentially subjecting the Funds to substantial losses. Investing in commodities and forward or futures contracts is a highly specialized investment activity entailing greater than ordinary investment risk.

*Investments in Convertible Securities.* The Funds may invest in convertible securities, which are securities that may be exchanged or converted into a predetermined number of the issuer's underlying shares or the shares of another company, or securities that are indexed to an unmanaged market index, at the option of the holder during a specified time period. Convertible securities may take the form of convertible preferred stock, convertible bonds or debentures, stock purchase warrants, zero-coupon bonds or liquid-yield option notes, stock index notes, mandatories, or a combination of the features of these securities. Prior to conversion, convertible securities have the same general characteristics as nonconvertible debt securities. As with all debt securities, the market value of convertible securities tends to decline as interest rates increase, and conversely, increase as interest rates decline. Convertible securities, however, also appreciate when the underlying common stock appreciates, and conversely, depreciate when the underlying common stock depreciates.

*Options.* The purchase or sale of an option involves the payment or receipt of a premium by the investor and the corresponding right or obligation, as the case may be, to either purchase or sell the underlying security, commodity or other instrument for a specific price at a certain time or during a certain period. Purchasing options involves the risk that the underlying instrument will not change price in the manner expected, so that the investor loses its premium. Selling options involves potentially greater risk because the investor is exposed to the extent of the actual price movement in the underlying security rather than only the premium payment received (which could result in a potentially unlimited loss). Over-the-counter options also involve counterparty credit and solvency risk.

The Funds may buy or sell (write) both call options and put options (either exchange-traded, over-the-counter or issued in private transactions). The Funds' options transactions may be part of a hedging tactic (i.e., offsetting the risk involved in another securities position) or a form of leverage, in which the Funds have the right to benefit from price movements in a large number of securities with a small commitment of capital. These activities involve risks that can be large, depending on the circumstances.



Swaps and certain options and other custom instruments are subject to the risk of non-performance by the counterparty, including risks relating to the creditworthiness of the counterparty. In addition, the Funds also are subject to the risk of the failure of any of the exchanges on which they trade or of their clearinghouses. The Funds may enter into swap agreements. Swap agreements can be individually negotiated and structured to include exposure to a variety of different types of investments or market factors. Depending on their structure, swap agreements may increase or decrease the exposure of the Funds to long-term or short-term interest rates (in the United States or abroad), foreign currency values, mortgage securities, corporate borrowing rates, asset-backed securities, collateralized debt obligations, indices, or other factors such as security prices, baskets of equity securities, or inflation rates.

Swap agreements tend to shift investment exposure from one type of investment to another. Depending on how they are used, swap agreements may increase or decrease the overall volatility of the portfolios of the Funds. The most significant factor in the performance of swap agreements is the change in the specific interest rate, currency, individual equity values, or other factors that determine the amounts of payments due to and from the Funds. If a swap agreement calls for payments by the Funds, the Funds must be prepared to make such payments when due. In addition, if a counterparty's creditworthiness declines, the value of swap agreements with such counterparty can be expected to decline, potentially resulting in losses by the Funds.

*Short Sales.* The Funds may establish short positions in indices, exchange-traded funds, common stock and other securities. Short sales can, in certain circumstances, substantially increase the impact of adverse price movements on the Funds' portfolios. A short sale involves the risk of a theoretically unlimited increase in the market price of the particular investment sold short, which could result in an inability to cover the short position and a theoretically unlimited loss. There can be no assurance that securities necessary to cover a short position will be available for purchase at the time the Funds desire to close out such short position. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss, a phenomenon also known as a "short squeeze."

In response to dislocations in the financial services industry during the financial crisis of 2008 and other market events, the SEC, the United Kingdom Financial Services Authority, now the Financial Conduct Authority (the "FSA"), and securities regulators of many other jurisdictions have implemented certain restrictions and disclosure requirements with respect to short selling of securities. In July 2009, the SEC implemented a rule requiring market participants to close out short sales within three days after the transaction date. In February 2010, the SEC adopted a short sale price test restriction, which limits short selling in a security whose price has decreased by 10% or more in a single day. Similar to the SEC initiatives, in September 2008, the FSA introduced a temporary ban on the creation or increase of net short positions in the UK financial sector and accompanied this with a new disclosure regime for significant short positions. In January 2009, the FSA lifted its temporary ban on short sales, but extended the new disclosure regime, which is currently in place without any time limit. In August 2011, Belgium, France, Italy and Spain imposed a similar, temporary ban on short selling, and Germany, which applied some restrictions to short selling in 2010, proposed a wider short selling ban to be applied across Europe. In November 2012, a European Union regulation began requiring disclosure to the applicable local regulator of net short positions in any stocks listed on European markets that exceed 0.2% of the issued capital of the relevant issuer, with additional disclosures at higher thresholds. Uncertainty surrounding the

confidential nature of the required disclosures of the Funds' short sales could discourage short selling by the Funds in circumstances where the Adviser believes that the public disclosure of such short sales may be adverse to the Funds' interests. In addition, limitations on the short selling of securities could interfere with the ability of the Funds to execute certain aspects of their investment strategies, including their ability to hedge certain exposures and execute transactions to implement their risk management guidelines, and any such limitations may adversely affect the performance of the Funds.

*Interest Rate Risk.* Changes in interest rates can affect the value of the Funds' investments in fixed income instruments. Increases in interest rates may cause the value of the Funds' investments to decline. The Funds may experience increased interest rate risk to the extent they invest, if at all, in lower-rated instruments, debt instruments with longer maturities, debt instruments paying no interest (such as zero coupon debt instruments), or debt instruments paying non-cash interest in the form of other debt instruments.

*Liquidity and Valuation of Investments.* The Funds may invest in securities that are subject to legal or other restrictions on transfer or for which no liquid market exists. The Funds may not be able to sell such securities when they desire to do so or to realize what they perceive to be their fair value in the event of a sale. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale. Because the markets for such securities are still evolving, liquidity in these securities is limited and liquidity with respect to lower-rated and unrated subordinated classes may be even more limited. As a result, calculating the fair market value of the Funds' holdings may be difficult and there can be no assurance that the Adviser's valuation will accurately reflect the value that will be realized by the Funds upon the eventual disposition of such investment. Disposition of such illiquid investments may also result in distributions in-kind to the investors. Such investments could also impair the Funds' ability to distribute redemption proceeds to a redeeming investor in a timely manner.

The investments held by the Funds will be valued and the net asset value of the Funds will be calculated using GAAP as a guideline (except that the Funds have elected that the Funds' organizational expenses be capitalized and amortized over a period to be determined in the Funds' sole and absolute discretion), and otherwise in compliance with each Fund's valuation policies. Any securities and instruments held by the Funds for which there is no clear valuation (e.g., no quoted prices) are assigned a value determined by the Adviser. The Adviser has a conflict of interest in that it will receive higher asset-based fees and a higher performance-based allocation will be made if the securities are given a favorable valuation.

*Custody and Prime Brokerage Risk.* There are risks involved in dealing with the custodians or prime brokers who settle Fund trades. The Funds' custodians (each, a "Custodian" and collectively, the "Custodians") are listed in the Adviser's Form ADV, Item 7. Although the Adviser monitors the Custodians and believes that they are appropriate custodians, there is no guarantee that the Custodians, or any other custodian that the Funds may use from time to time, will not become bankrupt or insolvent. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a bankruptcy, insolvency, failure, or liquidation of a broker-dealer, there is no certainty that, in the event of a failure of a broker-dealer that has custody of Funds' assets, the Funds would not incur

losses due to their assets being unavailable for a period of time, the ultimate receipt of less than full recovery of their assets, or both.

Morgan Stanley Trust National Association, one of the Funds' Custodians, is an affiliate of Morgan Stanley & Co., one of the Funds' prime brokers. To allow for more control and protection of its assets, the Funds maintain custody accounts with the Morgan Stanley Trust National Association instead of with either of its prime brokers. The Funds have been informed by the Morgan Stanley Trust National Association that the Morgan Stanley Trust National Association is organized so as to reduce the impact of a bankruptcy of Morgan Stanley & Co. on the Morgan Stanley Trust National Association.

The Funds and/or the Custodians may appoint sub-custodians in certain foreign jurisdictions to hold the assets of the Funds. The Custodians may not be responsible for cash or assets which are held by sub-custodians in certain foreign jurisdictions, nor for any losses suffered by the Funds as a result of the bankruptcy or insolvency of any such sub-custodian. The Funds may therefore have a potential exposure on the default of any sub-custodian and, as a result, many of the protections that would normally be provided to a fund by a custodian may not be available to the Funds. Under certain circumstances, including certain transactions where the Funds' assets are pledged as collateral for leverage from a non-broker-dealer custodian or a non-broker-dealer affiliate of a custodian, or where the Funds' assets are held at a foreign custodian, the securities and other assets deposited with the custodian or broker-dealer may not be clearly identified as being assets of the Funds and hence the Funds could be exposed to a credit risk with regard to such parties. Custody services in certain foreign jurisdictions remain undeveloped and, accordingly, there is a transaction and custody risk of dealing in certain foreign jurisdictions. Given the undeveloped state of regulations on custodial activities and bankruptcy, insolvency, or mismanagement in certain foreign jurisdictions, the ability of the Funds to recover assets held by a sub-custodian in the event of the sub-custodian's bankruptcy or insolvency could be in doubt, as the Funds may be subject to significantly less favorable laws than many of the protections that would be available under U.S. laws. In addition, there may be practical or time limitations associated with enforcing the Funds' rights to their assets in the case of a bankruptcy or insolvency of any such party.

*Trade Errors.* Investors should assume that trading errors may occur from time to time and that the Funds will both benefit from any resulting gains and be responsible for any resulting losses. Trading errors might include, for example, the purchase or sale of a security in the wrong amount or key stroke errors that occur when entering trades into an electronic trading system. The Adviser has established policies and procedures for the handling of trade errors to mitigate any potential loss. If it appears that a trade error has occurred, the Adviser will review the relevant facts and circumstances to determine an appropriate course of action. Both gains and losses resulting from trade errors that occurred in connection with the good faith performance the Adviser and its employees will be borne by the Funds unless the Adviser has determined that an error is the result of gross negligence or willful misconduct or a violation of applicable laws by the Adviser, in which case the Adviser would bear any losses resulting from such trade errors. The fact that the Adviser will make the determination as to whether an error was the result of gross negligence or willful misconduct or a violation of applicable laws represents a conflict of interest because the determination dictates whether the Adviser or the Funds bear the cost of losses due to trade errors.

*Duration of Investment Positions.* The Adviser may not know, except in the case of certain options or derivatives positions which have pre-established expiration dates, or debt or other securities with a stated

maturity date, the maximum – or 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 may vary significantly, based on the Advisers' 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 may 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. 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.

*Derivatives, Counterparty and Settlement Risk.* To the extent that the Funds invest in swaps, derivative or synthetic instruments, repurchase agreements or other over-the-counter transactions or, in certain circumstances, foreign securities, the Funds may assume credit risk with regard to parties with whom they trade and may also bear the risk of settlement default. These risks may differ materially from those entailed in exchange-traded transactions that generally are backed by clearing organization guarantees, daily marking-to-market and settlement, and segregation and minimum capital requirements applicable to intermediaries. Transactions entered directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of counterparty default. It is expected that all securities and other assets deposited with custodians or broker-dealers will be clearly identified as being assets (directly or indirectly) of the Funds, and hence the Funds should not be exposed to a credit risk with regard to such parties. However, it may not always be possible to achieve this segregation, and there may be practical or time problems associated with enforcing rights to their assets in the case of an insolvency of any such party. In valuing derivative instruments, it is anticipated that the Funds will typically rely on quotes or other information provided by counterparties.

Many emerging market countries have different clearance and settlement procedures from developed countries. There may be no central clearing mechanism of settling trades and no central depository or custodian for the safe keeping of securities. The registration, record-keeping and transfer of instruments may be carried out manually, which may cause delays in the recording of ownership. Increased settlement risk may increase counterparty and other risk. Certain markets have experienced periods when settlement dates are extended, and during the interim, the market value of an instrument may change. Moreover, certain markets have experienced periods when settlements did not keep pace with the volume of transactions resulting in settlement difficulties. Due to of the lack of standardized settlement procedures, settlement risk in emerging markets is more prominent than in more mature markets.

*Convergence Risk.* The Funds may pursue relative value strategies by taking long positions in securities believed to be undervalued and short positions in securities believed to be overvalued. In the event that the perceived mis-pricings underlying the Funds' trading positions were to fail to converge toward, or were to diverge further from, the Adviser's expectations, the Funds may incur a loss.

*Material Non-Public Information.* By reason of their responsibilities in connection with the Funds and other investment activities, personnel of the Adviser may acquire confidential or material, non-public information that would limit the ability of the Funds to buy and sell certain of their investments. The Funds' investment flexibility may be constrained due to the inability of the Adviser to use such information

for investment purposes. Moreover, the Adviser may be restricted from initiating transactions in certain securities or selling certain investments, due to its acquisition of confidential or material, non-public information, at a time when the Adviser would otherwise take such action.

*Lack of Liquidity of Fund Investments/Restricted or Non-Marketable Securities.* Fund assets may, at any given time, include securities and other financial instruments or obligations that are thinly-traded, making purchase or sale of such securities at desired prices or in desired quantities difficult or impossible. Furthermore, the sale of any such investments may be possible only at substantial discounts, and it may be extremely difficult to value any such investments accurately.

#### **Item 9. Disciplinary Information**

This Item is not applicable.

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

The Adviser is registered as an investment adviser with the SEC and provides discretionary investment advisory services to the Funds. On March 1, 2018, the Adviser and its Relying Adviser, MCM Encore IM LLC, filed requests with the U.S. Commodity Futures Trading Commission (the “CFTC”) to withdraw their registrations as commodity pool operators. The CFTC approved the Adviser’s deregistration on June 1, 2018, and the Relying Adviser’s deregistration on June 19, 2018. Both the Advisers and its Relying Adviser will rely on certain exemptions from registration as commodity pool operators. The Adviser and its management persons are not registered as, and do not have any applications to register as, a futures commission merchant or associated persons of a futures commission merchant.

The Adviser and its management persons are not registered as broker-dealers and do not have any application pending to register with the SEC as a broker-dealer or registered representative of a broker-dealer.

Each of the Funds has entered into and may, in the future, enter into agreements with certain prospective or existing investors whereby such investors may be subject to terms and conditions that are more advantageous than those set forth in the offering memorandum of a Fund. The modifications are solely at the discretion of the Fund and may, among other things, be based on the size of the investor's investment in the Fund, an agreement by an investor to maintain such investment in the Fund for a significant period of time, or other similar commitments by an investor to the Fund. As noted in Items 5 and 6, the employees of the Adviser do not pay fees on their investments in the Funds.

The Adviser and Mr. McGuire have entered into an arrangement with an initial investor (the “Initial Investor”), entitling the Initial Investor to receive a portion of the asset-based fee and to be allocated a portion of the performance-based compensation. The Initial Investor also has certain additional rights, including, without limitation: (i) consent rights over certain actions related to the Funds and/or their subsidiaries, (ii) advance notice with respect to certain events or actions related to the Funds and/or their subsidiaries, (iii) information and transparency rights, and (iv) certain other rights that are in addition to, and may be more favorable than, the rights of other investors in the Funds. The Initial Investor is not a

sponsor or promoter of the Funds and/or their subsidiaries, has no duties to other investors, and will not be liable to other investors for exercising or not exercising any rights that it may have.

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**

The Adviser has adopted a Code of Ethics (the “Code”) in accordance with Rule 204A-1 under the Investment Advisers Act of 1940 (the “Advisers Act”), to foster compliance with applicable federal statutes and regulatory requirements, minimize circumstances that may lead to or give the appearance of conflicts of interest with clients, insider trading, or unethical business conduct as well as promote a culture of high ethical standards. Current and prospective investors may obtain a copy of the Code by contacting the Chief Compliance Officer at the contact information listed on the first page of this document.

The basic tenant of the Adviser’s Code is that the interest of the clients comes first. The Code generally prohibits employees of the Adviser from personally purchasing or selling securities, subject to certain exceptions, e.g., employees may purchase and sell certain securities such as shares issued by open-ended mutual funds, money market funds, U.S. Treasury bonds, and commercial paper. In addition, if any employee has any direct or indirect beneficial ownership in any non-exempted security as of the date she or he joined the Adviser, any sale of that security thereafter must be pre-cleared in writing by the Chief Compliance Officer or his/her designee. In addition, with the prior written approval of the Chief Compliance Officer, an employee may enter into a transaction in certain types of limited offerings (i.e., an offering that is exempt from registration under the Securities Act pursuant to Section 4(a)(2), Section 4(6), Rule 504, Rule 505 or Rule 506 thereunder). Employees are required to disclose their personal holdings and transactions on a periodic basis, as well as certify on a periodic basis as to the completeness of the reported holdings and transactions. The Chief Compliance Officer monitors employees’ personal holdings and transactions.

The Adviser’s personnel are required to comply and on a periodic basis certify their compliance with the Code of Ethics and the Insider Trading Policies.

In certain limited instances, the Adviser and/or its employees may give advice and take action for their own accounts that may differ from advice given and action taken on behalf of the Funds. In addition and as described above, the Adviser and/or its employees may invest in third-party private investment funds that invest in some of the same securities the Adviser invests in on behalf of the Funds. Further, from time to time, the Adviser and/or its employees may have an investment position or interest in the same securities recommended to or owned by the Funds. As such, the Adviser may purchase or sell for the Funds’ securities of an issuer in which the Adviser and/or its employees also have an investment position or interest. Finally, the Adviser and/or its employees may hold an interest in securities prior to the Funds initiating a position in such securities.

## **Item 12. Brokerage Practices**

### **A. Factors Considered in Selecting or Recommending Broker-Dealers for Client Transactions and Determining the Reasonableness of Their Compensation**

The Adviser has discretion to determine the broker or dealer to be used for each securities transaction for the Funds, and the Adviser has complete discretion in deciding the broker-dealer to be used for a particular transaction. The Adviser need not solicit competitive bids and may not necessarily select the broker or dealer based on lowest pricing. In selecting broker-dealers on the basis of seeking best execution and other relevant considerations, the Adviser will consider the following non-exhaustive factors: price quotes; the size of the transaction and ability to find liquidity; timeliness of execution; confidentiality; expertise in the specific financial instrument or sector; the nature of the market for the financial instrument; presence in the market for the financial instrument or sector or particular position; the broker-dealer's financial stability; reputation; prior experience with the broker, including with respect to diligence, fairness, and integrity; quality of research services; and other factors deemed appropriate by the Adviser. It is not the Adviser's practice to negotiate "execution only" commission rates; thus the Funds may be deemed to be paying for research, brokerage or other services provided by the broker which are included in the commission rate. The Adviser maintains policies and procedures to ensure the periodic review of broker dealer services and executions.

Section 28(e) of the Securities Exchange Act of 1934, as amended, is a "safe harbor" that permits an investment manager to use commissions or "soft dollars" to obtain research and brokerage services that provide lawful and appropriate assistance in the investment decision-making process. Except for services that would be a Fund expense or as otherwise described below, the Adviser will limit the use of "soft dollars" to obtain services which constitute research and brokerage within the meaning of Section 28(e). Research services within Section 28(e) may include, but are not limited to, research reports (including market research); certain financial newsletters and trade journals; software providing analysis of securities portfolios; corporate governance research and rating services; attendance at certain seminars and conferences; discussions with research analysts; meetings with corporate executives; consultants' advice on portfolio strategy; data services (including services providing market data, company financial data and economic data); advice from brokers on order execution; and certain proxy services. Brokerage services within Section 28(e) may include, but are not limited to, services related to the execution, clearing and settlement of securities transactions and functions incidental thereto (i.e., connectivity services between the Adviser and a broker-dealer and other relevant parties such as custodians); trading software operated by a broker-dealer to route orders; software that provides trade analytics and trading strategies; software used to transmit orders; clearance and settlement in connection with a trade; electronic communication of allocation instructions; routing settlement instructions; post trade matching of trade information; and services required by the SEC or a self-regulatory organization such as comparison services, electronic confirms or trade affirmations. The use of commissions arising from the Funds' investment transactions for services other than research and brokerage will be limited to services that would otherwise be a Fund expense. The use of commissions to obtain such other services would be outside the parameters of Section 28(e).

In some instances, the Adviser may receive a product or service that may be used only partially for functions within Section 28(e) (e.g., an order management system, trade analytical software, proxy

service). In such instances, the Adviser will make a good faith effort to determine the relative proportion of the product or service used to assist the Adviser in carrying out its investment decision-making responsibilities and the relative proportion used for administrative or other purposes outside Section 28(e). The proportion of the product or service attributable to assisting the Adviser in carrying out its investment decision-making responsibilities will be paid through brokerage commissions generated by client transactions and the proportion attributable to administrative or other purposes outside Section 28(e) will be paid for by the Adviser from its own resources with the exception of products or services that would otherwise be a Fund expense, which will still be paid for through brokerage commissions.

Research and brokerage services obtained by the use of commissions arising from the Funds' portfolio transactions may be used by the Adviser in its other investment activities and thus, the Funds may not necessarily, in any particular instance, be the direct or indirect beneficiaries of the research or brokerage services provided. The Adviser uses the research, trading-desk access, and other benefits received from broker-dealers to benefit or serve all of the Funds. The Adviser does not seek to allocate these benefits proportionately to the Funds based on trading activity or the commissions that their transactions generate.

When the Adviser uses Fund commissions to obtain products and services, the Adviser's Best Execution Committee meets quarterly to review and evaluate its soft dollar practices and to determine whether, the commissions used to obtain those products and services were reasonable in relation to the value of the products or services provided by the broker-dealer. This determination is viewed in terms of either the specific transaction or the Adviser's overall responsibilities to the accounts over which the Adviser exercises investment discretion.

Although the Adviser will make a good faith determination that the amount of commissions paid is reasonable in light of the products or services provided by a broker, commission rates are generally negotiable and thus, selecting broker-dealers on the basis of considerations that are not limited to the applicable commission rates may result in higher transaction costs than would otherwise be obtainable. The receipt of such products or services and the determination of the appropriate allocation in the case of "mixed use" products or services create potential conflicts of interests between the Adviser and its clients.

The Adviser may place transactions with a broker or dealer that provides the Adviser (or an affiliate) with the opportunity to participate in capital introduction events sponsored by the broker-dealer, or refers investors to the Funds or other products advised by the Adviser (or an affiliate). Additionally, employees of the Adviser may participate in conferences and programs sponsored by the brokers for investors interested in investing in private investment funds. The Adviser may place transactions with such broker-dealers if otherwise consistent with seeking best execution.

#### B. Order Aggregation and Allocation Practices

Conflicts of interest may arise from the fact that the Adviser and its affiliates may provide investment management services to multiple clients, including, without limitation, pooled investment vehicles, separately managed accounts, proprietary accounts and other investment vehicles. In general, the Adviser's allocation and its affiliates seek to act in a fair and equitable manner in allocating suitable



investment and trading opportunities among the Funds, or a family of funds (e.g., Marcato Funds and Encore Funds). However, equality of treatment is a subjective determination and it cannot be assured in all situations.

In allocating investment opportunities, the Adviser and its affiliates will determinate (i) whether a particular investment opportunity meets the overall investment objectives of the applicable Funds, or family of funds, and (ii) the methodology for allocating such orders among the participating Funds, in each case, based upon various allocation factors. In making these determinations, the Adviser will take into account several factors, including, without limitation, the market capitalization of the underlying issuer and the risk-return profile of the proposed investment in light of the investment objectives and strategies, diversification requirements, risk parameters, liquidity requirements, position size limitations, exposure limitations and any applicable tax and regulatory considerations of the participating Funds. Once the Adviser and its affiliates have determined that an opportunity is appropriate for more than one of the Funds, i.e., the Marcato Funds and Encore Funds, the Adviser will aggregate orders and allocate such orders among the Funds as follows: (i) pro-rata based on net asset value, (ii) based on relative position size ratio (e.g., 2:1) expressed as a percentage of net asset value among the Funds, (iii) based on position size targets (expressed as a percentage of net asset value), (iv) equally among the Marcato Funds and Encore Funds until each Fund achieves its respective target equity size or (v) in any other manner deemed fair and equitable by the Adviser and its affiliates. In such instances, the Adviser and its affiliates will seek to act in a fair and equitable manner in allocating suitable investment and trading opportunities among the Funds. As described above, the Adviser and its affiliates may take into account one or more of the aforementioned allocation factors in determining which allocation method to use for an aggregated order. The specific allocation method of any trade is determined by the Adviser and its affiliates at the time such order is placed.

The Adviser and its affiliates may, from time to time, offer investors in the Funds and/or other third-party investors the opportunity to co-invest with the Funds in particular investments. The Adviser and its affiliates are not obligated to arrange co-investment opportunities for investors, and no investor will be obligated to participate in such an opportunity. The Adviser and its affiliates have sole discretion as to the amount (if any) of a co-investment opportunity that will be allocated to a particular investor and may allocate co-investment opportunities instead to other investors (including co-investment funds managed by the Adviser) or to third parties. If the Adviser determines that an investment opportunity is too large for a Fund, its other clients, the Adviser and its affiliates may, but will not be obligated to, make proprietary investments therein. The Adviser or its affiliates may receive fees and/or incentive allocations from co-investors, which may differ as among co-investors and also may differ from the fees and/or incentive allocations borne by the Funds.

### **Item 13. Review of Accounts**

The Adviser performs various daily, weekly, monthly, quarterly and periodic reviews of each Fund account. These reviews are conducted by the Adviser's (1) portfolio manager, (2) senior investment professionals, (3) individual in charge of finance, and (4) other middle/back office employees. The Funds undergo an annual audit, which as of the date of this Brochure, is performed by KPMG. The Funds' fund administrator also independently confirms pricing, valuation, and fee calculations on a monthly basis. A review of a Fund account may also be triggered by any unusual activity or special circumstances.

Investors in each Fund receive (1) unaudited reports of the performance of the Fund on a monthly basis; (2) monthly capital account statements directly from the fund administrator; (3) quarterly reports to investors that generally include investment summaries, market summaries, and other narrative descriptions of the events of the prior quarter; and (4) annual tax reports and audited financial statements. The Adviser also may, from time to time, provide other information to Investors in the Adviser's discretion that it deems advisable and desirable.

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

The Adviser does not currently compensate any person for referrals of clients. However, the Adviser may in the future enter into arrangements to provide investment advice to other clients and/or may enter into arrangements with marketing or placement agents to assist with the marketing of the Funds to investors.

Broker-dealers (including, without limitation, prime brokers) and other counterparties may provide a variety of services, including capital introduction services. The Adviser is not required to direct any volume of business in return for these services. However, it has an incentive to maintain relationships with these firms based on their prior and continued services.

#### **Item 15. Custody**

All Fund assets are held in custody by unaffiliated broker-dealers or banks; however, the Adviser is deemed to have custody of the Funds' assets within the meaning of the Advisers Act. The Funds are audited annually by an independent public accountant that is registered with, and subject to regular inspection by the Public Company Accounting Oversight Board, and the audited financial statements are distributed to each investor. The audited financial statements are prepared in accordance with generally accepted accounting principles and distributed within 120 days of each Fund's fiscal year end.

#### **Item 16. Investment Discretion**

The Adviser provides investment advisory services on a discretionary basis to the Funds. Prior to assuming discretion in managing a Fund's assets, the Adviser enters into an investment management agreement or other agreement (e.g., limited partnership agreement) that sets forth the scope of the Adviser's discretion. The Adviser's investment decisions and advice with respect to each Fund are subject to the Fund's investment objectives and guidelines, as set forth in its offering documents.

#### **Item 17. Voting Client Securities**

The Adviser has adopted written proxy voting policies and procedures in accordance with Rule 206(4)-6 of the Advisers Act. In voting proxies for the Funds, the Adviser is guided by general fiduciary principles. The Adviser's goal is to act prudently and in the best interest of the Funds, and accordingly of investors in the Funds. The Adviser seeks to consider all positive and negative consequences its vote could have on the value of the investment. When the Adviser votes proxies, the Adviser does so in a manner that it

believes will be consistent with efforts to maximize the value of the Funds' positions. In its discretion, the Adviser may choose not to vote on a particular proxy.

If the Adviser encounters an identifiable conflict of interest with respect to a particular vote, with sufficient time before a vote, the managing member of the Adviser's general partner and the Chief Compliance Officer will determine how to vote the proxy consistent with the best interests of the Funds and in a manner not affected by the conflict of interest. The managing member of the Adviser's general partner and the Chief Compliance Officer may opt for a voting procedure by which guidance is sought from outside legal counsel on matters involving a material conflict of interest.

Investors may not direct the Adviser as to how vote in a particular solicitation.

Investors may obtain a copy of the Adviser's proxy voting policies and procedures and information about how the Adviser voted a Fund's proxies by contacting the Chief Compliance Officer at the contact information listed on the first page of this document.

**Item 18. Financial Information**

This Item is not applicable.

**Item 19. Requirements for State-Registered Advisers**

This Item is not applicable.