



## **VENOR CAPITAL MANAGEMENT LP**

7 Times Square, Suite 4303  
New York, New York 10036

Telephone: (212) 703-2100  
[www.venorcapital.com](http://www.venorcapital.com)

### **FORM ADV PART 2A: FIRM BROCHURE**

**March 30, 2019**

Venor Capital Management LP is an investment adviser that is registered with the Securities and Exchange Commission. Registration with the Securities and Exchange Commission does not imply a certain level of skill or training.

**This brochure provides information about the qualifications and business practices of Venor Capital Management LP. If you have any questions about the contents of this brochure, please contact us at (212) 703-2100. The information in this brochure has not been approved or verified by the Securities and Exchange Commission or by any state securities authority.**

**Additional information about Venor Capital Management LP also is available on the Securities and Exchange Commission's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

## Material Changes

This annual amendment to our brochure reflects (i) that our recovery funds have completed disposition of all of their assets and are in the process of making liquidating distributions to investors and (ii) updated information with respect to assets under management in Item 4. The foregoing is a summary of only those changes made since the most recent update of our brochure that we believe may be material.

## Table of Contents

	<u>Page</u>
Table of Contents .....	1
Item 4. Advisory Business .....	2
Item 5. Fees and Compensation .....	3
Item 6. Performance-Based Fees and Side-by-Side Management .....	5
Item 7. Types of Clients .....	5
Item 8. Methods of Analysis, Investment Strategies, and Risk of Loss.....	5
Item 9. Disciplinary Information .....	22
Item 10. Other Financial Industry Activities and Affiliations .....	23
Item 11. Code of Ethics, Participation or Interest in Client Transactions, and Personal Trading.....	23
Item 12. Brokerage Practices .....	25
Item 13. Review of Accounts.....	27
Item 14. Client Referrals and Other Compensation .....	27
Item 15. Custody .....	27
Item 16. Investment Discretion.....	27
Item 17. Voting Client Securities.....	28
Item 18. Financial Information .....	29

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

Venor Capital Management LP, a Delaware limited partnership founded in July 2005, is an investment advisory firm with its principal place of business in New York, New York. Venor Capital Management GP LLC, a Delaware limited liability company, is the general partner of Venor Capital Management LP. Jeffrey A. Bersh and Michael J. Wartell are the co-founders and Co-Chief Investment Officers of Venor Capital Management LP and the co-founders and co-managing members of each of:

- Venor Capital Management GP LLC;
- Venor Capital GP LLC, a Delaware limited liability company that serves as the general partner of certain of our clients;
- Venor Special Situations GP LLC, a Delaware limited liability company that serves as the general partner of certain of our clients;
- Venor Trevithick GP LLC, a Delaware limited liability company that serves as the general partner of one of our clients; and
- Venor Raven Holdings GP LLC, a Delaware limited liability company that serves as the general partner to one of our clients.

In addition, Mr. Bersh and Mr. Wartell each own greater than 25% of each of Venor Capital Management LP, Venor Capital Management GP LLC, Venor Capital GP LLC, Venor Special Situations GP LLC, , Venor Trevithick GP LLC, and Venor Raven Holdings GP LLC. As such, Mr. Bersh and Mr. Wartell control our firm.

Our firm provides investment advisory services to private investment funds and a separately managed account. Our private fund clients consist of:

- Venor Capital Master Fund Ltd., which is structured as a master-feeder fund and which (together with its feeder funds) we refer to in this brochure as our “flagship fund” and through which we advise its feeder funds;
- Venor Special Situations Fund II LP, which is structured as a master-feeder fund and which (together with its feeder fund) we refer to in this brochure as our “special situations fund” and through which we advise its feeder fund;
- Raven Holdings, L.P., which we refer to in this brochure as our “special purpose client fund”;
- Trevithick LP, which we refer to in this brochure as our “fund-of-one”; and
- Raven Holdings II, L.P., which we refer to in this brochure as our “custom client fund”.

In providing advisory services, we formulate the investment objective for each client, direct and manage the investment and reinvestment of each client’s assets, and provide periodic reports to investors in each private fund client.

Generally, our flagship fund, special situations fund, special purpose client fund, fund-of-one, and our managed account client share the investment objective of identifying investments with attractive prospective risk-adjusted return characteristics in order to achieve superior overall investment returns, primarily through capital appreciation, while also concentrating on the preservation of capital. Such clients invest in value and event-driven opportunities across the corporate capital structure with a preference for investments higher in the capital structure, such as corporate bonds, bank loans, and other fixed-income securities, but also have the flexibility to invest in equities, credit derivatives, busted convertibles, trade/lease claims, preferred stock, liquidating trusts, rescue funding, and other financial

obligations. Such clients are focused on investment opportunities primarily in the United States and Western Europe, but may also invest in companies based in other countries in North America, other Organisation for Economic Co-operation Development countries, and Latin America.

The custom client fund's investment objective is to build a portfolio of select investments with respect to which one or more other clients has received its desired allocation as determined by the firm in good faith at the time of investment.

Our firm tailors our advisory services to each client's needs and investment mandates as disclosed in its offering document, organizational agreement, or managed account agreement. We manage the assets of each client in accordance with the governing documents applicable to the specific client. While much of this brochure applies to all our clients, certain information included herein applies to specific clients only. Thus, it is crucial for any investor or prospective investor in a private fund client or any client or prospective client to closely review the applicable offering document, organizational agreement, or managed account agreement with respect to, among other things, the terms, conditions, and risks of investing. While restrictions on the types of securities in which we invest for our clients vary from client to client as disclosed in the client's governing documents, generally neither clients nor investors of our clients may impose restrictions on investment in certain securities or types of securities. We describe investment strategies our firm employs on behalf of our clients in greater detail below in Item 8.

Our firm does not participate in wrap fee programs.

As of December 31, 2018, our firm managed \$879,092,832 of client assets on a discretionary basis and did not manage any client assets on a non-discretionary basis.

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

### ***Fees***

Our firm, or an affiliate of our firm, typically receives compensation from our clients based on the percentage of assets we manage and by receiving performance-based compensation.

The management fee is typically an amount up to 1.5% per year of each client's net assets, determined and payable either monthly or quarterly, in advance or in arrears. Any client who pays a management fee in advance will generally not have the ability to terminate the applicable advisory contract before the end of the billing period, and as a result we generally do not provide for a refund of management fees.

With respect to certain of our clients, the incentive compensation is up to 20% of the net realized and unrealized appreciation in each such client's net assets. We typically determine and charge such incentive compensation on an annual basis, but will determine and charge it for shorter periods under certain circumstances (such as with respect to amounts withdrawn or redeemed from a client). The incentive compensation is subject to a loss carryforward or high-water mark provision that generally requires that any losses suffered by such clients (adjusted to reflect withdrawals and redemptions) be offset by subsequent net profits before our firm is entitled to subsequent incentive compensation from such clients.

With respect to each investor in certain of our other clients, we typically receive incentive compensation in an amount up to 20% of distributions to such investor after a return to such investor of (i) an amount equal to capital contributions made by such investor for portfolio investments, management fees and expenses and (ii) in some cases, a preferred return on such amounts at a rate up to 10% (which is compounded for certain clients).

Our fees are deducted from the accounts of the investors in our client funds and invoiced to our managed account client. Our fees are generally not negotiable, though the fees applicable to managed accounts depend on each individual arrangement. Our firm may waive, reduce, or otherwise modify the management fee and/or incentive allocation for any investor in our client funds, including affiliates of our firm. In addition, we occasionally enter into side letter arrangements with certain investors in our client funds, in which we grant such investors preferential terms.

Although the foregoing is a brief summary of the management fee and incentive compensation arrangements applicable to our clients, please note that this brief summary is not a substitute for the detailed terms provided in the offering documents, organizational agreements, or managed account agreements of our clients. The details of how the management fee and incentive allocation or carried interest, as applicable, are calculated for our client funds can be found in the organizational and offering documents of our client funds, which are provided to investors and potential investors in our client funds. The details of how the management fee and carried interest are calculated for the special purpose client fund and custom client fund are included in our investment management agreement with, and in the organizational documents of, our special purpose client fund and custom client fund, respectively. The details of how the management fee and performance fee are calculated for our managed account client are included in the managed account agreement with such managed account client.

### ***Expenses***

The expenses paid by clients are set forth in detail in the offering document, organizational agreement, or managed account agreement of the relevant client. Such expenses differ among and within clients. Thus, although the following is a summary of expenses our clients will generally bear, it is not an exhaustive or complete list with respect to all clients. Investors and prospective investors and clients and prospective clients should therefore review the offering document, organizational agreement, or managed account agreement carefully because such documents, and not this brochure summary, describe more precisely the expenses such client will bear. Generally, each of our clients bears its own operating and other expenses, including, but not limited to:

- The management fee;
- Fees to the administrator;
- Investment expenses (*i.e.*, expenses related to the investment of our client fund's assets, including, without limitation, brokerage commissions, interest expense, professional and consulting fees relating to particular investments and expenses related to the purchase and sale of securities, investment-related travel and lodging expenses and research-related expenses, including, without limitation, news and quotation equipment and services (*e.g.*, Bloomberg terminal expenses and exchange feed expenses));
- Legal expenses including, without limitation, costs associated with regulatory compliance (*e.g.*, expenses related to anti-money laundering monitoring, expenses related to investor-related compliance obligations (*e.g.*, FATCA), expenses related to position-specific regulatory filings (*e.g.*, Schedules 13, Forms 13F, Forms 3, 4, and 5, and Hart-Scott-Rodino notifications), and expenses related to non-position-specific regulatory filings (*e.g.*, Forms 13H and Forms D));
- Accounting, audit and tax preparation expenses;
- Taxes;
- Other expenses associated with the operation of the client (*e.g.*, third party valuation expenses and premiums for certain insurance policies); and

- All extraordinary expenses.

Expenses to be borne by more than one client are allocated across the applicable clients in a fair and equitable manner, generally *pro rata* based on the size of the applicable investment or client (as applicable), or based on which clients would receive the benefit of the expenses paid (e.g. for research on an investment that has not yet been purchased for any client).

Neither our firm nor any of our supervised persons receives any transaction-based compensation for the sale of securities or other investment products.

A description of the brokerage and other transaction costs that will be borne by our clients is in Item 12 of this brochure.

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

As described in Item 5 above, our firm receives part of its compensation from each client in the form of performance-based compensation. However, such performance compensation is not charged in the same amount or manner for all clients. The variation of performance compensation structures among clients may create an incentive for our firm to direct the best investment ideas to, or to allocate the sequence of trades in favor of, clients that have a performance compensation arrangement more favorable to our firm. Our firm is committed to allocating investment opportunities on a fair and equitable basis and has established policies and procedures to address the conflicts of interest described above in this Item 6. Our firm does not manage any funds or accounts that do not pay performance-based compensation.

## **Item 7. Types of Clients**

Our firm generally provides investment advice to our clients, and not individually to the investors in our clients. Investors in our clients may include high net worth individuals, trusts, estates, corporate and public pension and profit sharing plans, endowments, charitable organizations, funds of private funds and family offices.

The current minimum initial investment in our flagship fund is \$5,000,000. However, we may waive or reduce the minimum initial investment amounts in certain circumstances, subject to statutory limitations.

Our special situations fund, special purpose client fund, and fund-of-one are no longer accepting new capital commitments from investors. Our recovery funds have completed disposition of all of their assets and are in the process of making liquidating distributions to investors.

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

The descriptions set forth in this brochure of specific advisory services that our firm offers to our clients, and investment strategies pursued and investment made by our firm on behalf of our clients, should not be understood to limit in any way our firm's investment activities. Our firm may offer any advisory services, engage in any investment strategy and make any investment, including any not described in this brochure, that we consider appropriate, subject to each client's investment objectives and guidelines.

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

Our clients seek to achieve their objectives through a combination of process-driven bottom-up research and disciplined trading and risk management procedures. Generally, our clients share the investment objective of identifying investments with attractive prospective risk-adjusted return characteristics in

order to achieve superior overall investment returns, primarily through capital appreciation, while also concentrating on the preservation of capital. Our flagship fund, special situations fund, special purpose client fund, fund-of-one, custom client fund, and managed account client invest in value and event-driven opportunities across the corporate capital structure with a preference for investments higher in the capital structure, such as corporate bonds, bank loans, and other fixed-income securities, but also have the flexibility to invest in equities, credit derivatives, busted convertibles, trade/lease claims, preferred stock, liquidating trusts, rescue funding, and other financial obligations. Such clients are focused on investment opportunities primarily in the United States and Western Europe, but may also invest in companies based in other countries in North America, other Organisation for Economic Co-operation and Development countries, and Latin America.

The difference between the investment objective of our flagship fund, on the one hand, and our special situations fund, special purpose client fund, and custom client fund on the other hand, is that our special situations fund, special purpose client fund, and custom client fund generally are limited to investing in longer-term, special situations investments, which are typically also held in the portfolio of our flagship fund. The investment objective of our managed account client is substantially similar to the investment objective of our flagship fund. In addition, our fund-of-one primarily focuses on opportunities in debt securities and other related debt instruments resulting from catalyst-driven events and value propositions created by market inefficiencies and its portfolio is generally more concentrated than that of the flagship fund with longer-duration and/or less-liquid investments, subject to certain investment guidelines set forth in the governing documents of the fund-of-one. The particular strategy employed with respect to a particular group of investments may change over time.

The foregoing is a summary description of the strategies employed by our clients. The strategy employed with respect to each client is set forth more particularly in and governed by the terms and conditions of the applicable offering document, organizational agreement, or managed account agreement of the relevant client. Thus, any investor or prospective investor in a private fund client or any client or prospective client is reminded that the disclosures in this brochure are qualified by and subject to such offering documents, organizational agreements or managed account agreements.

Despite our firm's research and analysis, investing involves a risk of loss that any clients and investors in our clients must be prepared to bear. Please see the "Risks" section below for a detailed explanation of the investment strategies our firm employs and some of the significant risks associated with them.

### ***Risks***

The investment strategies we use entail substantial risks, including, but not limited to, those listed below. Further risk factors are listed in the offering documents of our client funds.

#### **General Risk Factors**

**Dependence on Key Individuals and Allocation of Resources.** Investors in our client funds have no authority to make decisions on behalf of our client funds, and the owners of our special purpose client fund and managed account client have very limited authority to make decisions on behalf of our special purpose client fund and managed account client, respectively. The success of our clients depends upon the ability of our firm, particularly those of Mr. Bersh and Mr. Wartell, to develop and implement investment strategies that achieve our clients' investment objectives. If our clients were to lose the services of either of Mr. Bersh or Mr. Wartell, the consequence to our clients could be material and adverse and could lead to, for example, the premature termination of our private fund clients. Although the officers and employees of our firm, including Mr. Bersh and Mr. Wartell, devote as much of their time to the business of our clients as they believe is necessary to assist them in achieving our clients' investment objectives



and to administer our client's operations, they are not required to devote substantially all or any specific portion of their working time to the affairs of any one of our clients.

**Absence of Regulatory Oversight.** While our private fund clients may be considered similar to investment companies, no private fund client is required to, nor does it intend to, register as an investment company under the Investment Company Act or the laws of any jurisdiction and, accordingly, the provisions of such statutes (which may provide certain regulatory safeguards to investors) are not applicable.

**“Master-Feeder” Structure.** Certain of our client funds invest through a “master-feeder” structure, which presents certain unique risks to investors in such client funds. For example, a smaller feeder fund investing in the master fund may be materially affected by the actions of a larger feeder fund investing in the master fund. Also, if a larger feeder fund withdraws from the master fund, the remaining feeder fund may experience higher *pro rata* operating expenses, thereby producing lower returns. A master fund may become less diverse due to a withdrawal by a larger feeder fund, resulting in increased portfolio risk.

**Limited Liquidity.** An investment in our private fund clients or a managed account is suitable only for certain sophisticated investors that have no need for immediate liquidity in their investment. An investment in a private fund provides limited liquidity because interests in private funds cannot be transferred freely. In addition, our firm has the authority to suspend withdrawal rights, if any are available, in whole or in part, under certain circumstances. These limitations on liquidity must be considered significant.

**Effect of Withdrawals.** A significant withdrawal of capital by investors from our flagship fund may cause a temporary imbalance in our other clients' portfolios or on our flagship fund's portfolio which may adversely affect our other clients or the remaining investors in our flagship fund.

**Restrictions on Transfer and Withdrawal and Factors Affecting the Timing of Returns to Investors.** The interests in our fund clients are illiquid and have significant limitations on transferability. Voluntary withdrawals from our special situations fund, and fund-of-one are not permitted. Other than during a harvest period, we generally determine the amount and timing of distributions to investors in our special situations fund and fund-of-one and there can be no guarantee of the amount or timing of any returns to such investors.

**Failure to Make Capital Contributions.** If one or more investors in our special situations fund, fund-of-one, or custom client fund fails to pay when due installments of its capital commitment, our special situations fund, fund-of-one, or custom client fund, as applicable, could be rendered unable to acquire investments or otherwise pay its obligations when due. As a result, such client fund will be subjected to significant penalties that would materially adversely affect the returns of the investors. If an investor defaults, such investor will be subject to various remedies, including, without limitation, forfeiture of its capital account balance and a forced sale of its interests at a reduced value.

**In-Kind Distributions.** Although our client funds will endeavor to pay all withdrawals and distributions in cash, our firm has discretionary authority to provide an investor withdrawing or otherwise receiving distributions from our client funds with securities and/or other investment instruments owned by our client funds directly or via the distribution of interests in a liquidating account or vehicle in lieu of, or in combination with, cash. The value of non-cash assets distributed may increase or decrease before such assets can be sold by the investor, and the investors receiving non-cash assets will incur transaction costs in connection with the sale of such non-cash assets. Additionally, non-cash assets distributed to an investor in our client funds may not be readily marketable. The risk of loss and delay in liquidating these non-cash assets will be borne by such investor, with the result that such investor may receive less cash than it would have received on the date of distribution.

**Execution Risks and Investment Manager Error.** The execution of the trading and investment strategies employed by our firm can often require complex trades, difficult to execute trades, the use of negotiated terms with counterparties, and the execution of trades involving less common or novel instruments. In each case, our firm seeks best execution through the efforts of our staff and service providers to execute, settle, and clear such trades. However, in light of the complexity and global diversity involved, some errors and miscommunications with brokers and counterparties are inevitable and could result in losses to our clients. Our firm will evaluate the merits of potential claims for damage against brokers and counterparties who are at fault, and to the extent practicable, will seek to recover losses from those parties. Our firm may choose to forego pursuing claims against brokers and counterparties on behalf of our clients for any reason including, but not limited to, the cost of pursuing claims relative to the likely amount of any recovery and the maintenance of their business relationships with brokers and counterparties. In addition, our firm's own execution and operational staff may be solely or partly responsible for errors in placing, processing, and settling trades that result in losses to our clients, as our clients generally bear the costs of trade errors in the absence of our firm's bad faith, willful misconduct, or gross negligence.

**Recourse to Client Assets.** Our client's assets are available to satisfy all liabilities and other obligations of such client. If a client becomes subject to a liability, parties seeking to have the liability satisfied may have recourse to such client's assets generally and not be limited to any particular asset, such as the asset representing the investment giving rise to the liability.

**Business and Regulatory Risks of Private Funds.** Legal, tax, and regulatory changes could occur during the term of our clients that may adversely affect our clients and/or investors in our clients. The regulatory environment for private funds and similarly situated investment vehicles and accounts is evolving, and changes in such regulation may adversely affect the value of investments held by our clients. In addition, securities markets are subject to comprehensive statutes and regulations. The Securities and Exchange Commission, other regulators, and self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies. The effect of any future regulatory change on our clients could be substantial and adverse.

#### Conflict of Interest Risks

**Management of More than One Client.** Certain inherent conflicts of interest arise from the fact that our firm and its affiliates provide investment management services to each private fund client and managed account. Our firm is not required to accord exclusivity or priority to one client over another in the event of limited investment opportunities. The portfolio strategies employed by one or more of our clients could conflict with the transactions and strategies employed by our firm in managing one or more of our other clients and may affect the prices and availability of the securities and instruments in which a client invests, and vice versa. Participation in specific investment opportunities may be appropriate, at times, for more than one of our clients. In such case, participation in such opportunities will be allocated on an equitable basis taking into account such factors as the relative amounts of capital available for new investments, size of existing positions in the same or similar investment(s), relative exposure to short-term market trends, leverage, the tax situation and the respective investment programs and portfolio positions of our clients for which participation is appropriate. Notwithstanding the foregoing, our custom client fund will not be allocated a limited investment opportunity until our other clients have been allocated their desired amount of such opportunity as determined by the firm in good faith at the time of investment. Orders are typically combined for all such clients, and if any order is not filled at the same price, they are typically allocated on an average price basis. Similarly, if an order on behalf of one client cannot be fully executed under prevailing market conditions, our firm would allocate the trades among our clients on a basis that we consider equitable. Such considerations may result in allocations of certain investments among our clients on other than a *pari passu* basis. The use of a master-feeder structure also

may create a conflict of interest in that different tax considerations among the feeder funds of our client funds may cause the master funds of our client funds to structure or dispose of an investment in a manner that is more advantageous to one feeder fund. In determining investment capacity, the firm may be subject to a potential conflict of interest to the extent compensation terms among client accounts vary.

Our firm is not required to assure equality of treatment among all of our advisory clients and, therefore, there can be no assurance that a purchase or sale opportunity that would be suitable for one client will not be allocated to another client, with certain clients being unable to participate in such purchase or sale opportunity. Although our clients pursue investment objectives that are similar to each other's, the portfolios of our clients may differ as a result of purchases and withdrawals being made at different times and in different amounts, as well as because of different tax and regulatory considerations. It is possible, for example, that one client may have a long position in (or be a buyer of) a security or other investment instrument in which one or more other clients of our firm or its affiliates have a short position (or are sellers of such security or investment instrument). Situations may occur where one client could be disadvantaged because of the various other activities conducted by our firm.

**Conflicts Relating to Equity and Debt Ownership by our Clients and Affiliates.** From time to time, certain of our clients invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests of our clients insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and our clients may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for our firm to reconcile the conflicting interests of our clients in a way that protects all of their interests. Additionally, our firm or our nominees may hold board or creditors' committee memberships which may require us to vote or take other actions in such capacities that might be conflicting with respect to certain of our clients in that such votes or actions may favor the interests of one client over another client. Furthermore, our firm's fiduciary responsibilities in these capacities might conflict with the best interests of our client funds' investors.

**Management Fee and Performance-Based Compensation.** The management fee and the performance-based compensation arrangements for our private fund clients have not been negotiated at arm's-length. The existence of performance-based compensation may create an incentive for our firm to make more speculative investments on behalf of our clients than it would otherwise make in the absence of such performance-based compensation. Such performance-based compensation may result in compensation to our firm that may be greater than performance-based compensation allocable to other managers for similar services. In addition, because the incentive allocation for our flagship fund and managed account client is allocated based upon both realized and unrealized gains, there can be no assurance that such unrealized gains will ultimately be realized.

**Transactions Between Clients.** Our firm has the authority to recommend that certain of our clients purchase securities or other assets from or sell securities or other assets to, or engage in other transactions (including entering into derivative contracts and participation agreements) with, certain of our other clients when we believe such transactions are appropriate and in the best interests of each such client. In such an event our firm may recommend that such transaction(s) be effected by directing the legal transfer of the securities or other assets between such clients directly or by transferring the economic return of the securities or other assets between such clients through swaps or other derivatives. Our firm may have a potentially conflicting division of loyalty and responsibility regarding both parties to such transactions.

**Selection of Brokers and Dealers.** At this time, our firm makes no use of soft dollar credits, but there is nothing that precludes our firm from using soft dollar credits in the future. If our firm decides to use soft dollar credits, certain brokers and dealers retained may provide or may agree to provide our firm with soft dollar credits which our firm may use to purchase certain research and statistical services. These services would otherwise only be available to our firm for a cash payment. To the extent that our firm utilizes commissions to obtain items that would otherwise be an expense of our firm, such use of commissions could be viewed as additional compensation to our firm. As a result of receiving such services, our firm would have an incentive to use, and to continue to use, such brokers and dealers to effect transactions for the accounts over which our firm or our firm's affiliates exercise trading discretion so long as such brokers and dealers continue to provide such soft dollar credits to our firm.

In addition, from time to time, representatives of our firm speak at conferences and programs which are sponsored by prime brokers for investors interested in investing in private funds. These conferences and programs may provide opportunities by which our firm is introduced to potential investors in our client funds. Generally, the prime brokers are not compensated by our firm, our client funds or potential investors in our client funds for providing such "capital introduction" opportunities. In addition, from time to time prime brokers provide financing and other services to our client funds and our firm. Consequently, such additional services by a prime broker may influence our firm in deciding whether to use the services of such prime broker in connection with the activities of our clients.

**Side Letters.** Our client funds have the absolute discretion to enter into side letters or similar agreements with certain investors in our client funds which have the effect of establishing rights, terms, or conditions (including, without limitation, reductions in management fees and/or incentive allocation or other terms relating to liquidity, transparency, or access to co-investment opportunities) with respect to such investors that are more favorable than the rights, terms, and conditions established in favor other investors in our client funds without obtaining the consent of any other investor in our client funds (other than those whose rights are materially and adversely changed by such waiver or notification).

### Tax Risks

**Phantom Income.** Each investor subject to U.S. tax that invests in a client that is treated as a partnership for U.S. federal income tax purposes will be required to take into account its distributive share of all items of such client's income, gain, loss, deduction and credit, whether or not distributed. Our client funds do not expect to make regular cash distributions to their investors. Further, as a result of certain operating limitations, an investor in one of our client funds cannot be certain that it will be permitted to withdraw all or a portion of its interest in, or otherwise receive distributions from, our client funds in order to generate cash distributions sufficient to satisfy its tax liability with respect to its share of our client funds' profits. Accordingly, each investor in our client funds should ensure that it has sufficient cash flow from other sources to pay all tax liabilities resulting from such investor's ownership of its interest in our client funds.

**Unrelated Business Taxable Income for Certain Tax-Exempt Investors.** Pension and profit-sharing plans, Keogh plans, individual retirement accounts and other tax-exempt investors may realize "unrelated business taxable income," also known as UBTI, as a result of an investment in a client that is treated as a partnership for U.S. federal income tax purposes. Our clients may elect to participate in investments that give rise to UBTI through entities that are treated as partnerships for U.S. federal income tax purposes. Because of the "flow-through" principles applicable to partnerships, if UBTI is earned by a client that is treated as a partnership for U.S. federal income tax purposes, a tax-exempt investor in such client will realize UBTI.

**Other Tax Risks.** Changes in existing tax laws or regulations and their interpretation may occur and could alter the income tax consequences of an investment in any of our clients. In addition, our clients may take positions with respect to certain tax issues that depend on legal and other interpretive

conclusions. If the Internal Revenue Service or other applicable taxing authority successfully challenges any of these positions, an investor in such client may be found to have a different tax liability for that year than that reported on his or its U.S. federal income tax return. An audit of one of our clients may result in an audit of the returns of some or all of its investors, which examination could result in adjustments to the tax consequences initially reported by such client and affect items not related to an investment in such client. If such adjustments result in an increase in an investor's U.S. federal income tax liability for any year, such investor may also be liable for interest and penalties with respect to the amount of underpayment.

The taxation of our clients and their respective investors is complex. In addition, with respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains, or other income, limitations on the removal of funds or other assets of our clients, political, or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities or other investment instruments may be domiciled in a country other than the country in whose currency the security or instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

Any of the foregoing legal, regulatory and tax risks could give rise to material liabilities in periods after the occurrence of the transactions or other events giving rise to the claim. Consequently, such liabilities could be borne by investors who were not investors in our client funds at the time of such transactions and who did not derive any financial returns associated with such transactions.

#### Investment and Trading Risks

**General Investments Risks.** An investment in any of our client funds involves a high degree of risk, including the risk that the entire amount invested may be lost. Certain of our clients are permitted to invest in debt and equity securities and other financial instruments using investment techniques with significant risk characteristics. We make no guarantee that our clients' investment programs will be successful. Our clients' investment programs have utilized, and may in the future utilize, such investment techniques as short sales, options, swaps, and other derivatives investments which techniques can, in certain circumstances, maximize the adverse impact to which our clients may be subject.

**Liquidity of Investments.** From time to time, our clients invest in securities or other assets which are subject to legal or other restrictions on transfer or for which no liquid market exists. Our clients may not be able to dispose of such securities or other assets when our firm desires to do so or to realize what our firm perceives to be their fair value in the event of a disposition.

**Investments Longer than a Fund Client's Term.** Some or all of the investments held by our special situations fund, special purpose client fund, fund-of-one, and/or custom client fund are illiquid and there can be no assurance that that our special situations fund, special purpose client fund, fund-of-one, or custom client fund, will be able to realize any investment in a timely manner.

**Recent Developments in Financial Markets.** Recent developments in the global financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty. These developments have heightened the risks associated with the investment activities and operations of private funds, including without limitation, those resulting from a substantial reduction in the availability of credit and the increased cost of short-term credit, a decrease in market liquidity, an increased risk of insolvency of prime brokers and other counterparties, and regulatory changes that may have an adverse effect on private funds generally, and in particular, on our clients' ability to achieve their investment objectives. In addition, U.S. governmental action concerning instability in the U.S. financial markets could have a significant impact on the financial services industry. The private fund industry may continue

to be adversely affected by developments in the financial markets in the United States and abroad, and any future legal, regulatory, or governmental action and developments such financial markets and the broader U.S. and global economy could have an adverse effect on our clients' businesses, operations and performance. In light of such market turmoil and the overall weakening of the financial services industry, our firm, our clients, their respective prime brokers' and other financial institutions' financial condition may be adversely affected and they may become subject to legal, regulatory, reputational, and other unforeseen risks that could have a material adverse effect on our clients' business and operations.

**Financial Markets and Regulatory Change.** In addition to specific business and regulatory risks of private funds listed above, the laws and regulations affecting businesses in general continue to evolve in an unpredictable manner. Laws and regulations, particularly those involving taxation, investment and trade, applicable to our clients' activities can change quickly and unpredictably, and may at any time be amended, modified, repealed, or replaced in a manner adverse to the interests of our clients. Our clients and our firm may be, or may become, subject to unduly burdensome and restrictive regulation. In particular, in response to significant recent events in international financial markets, governmental intervention and certain regulatory measures have been or may be adopted in certain jurisdictions. The extent to which the underlying causes of these recent events are pervasive throughout global financial markets and have the potential to cause further instability is not yet clear. These recent events, and their underlying causes, are likely to be the catalyst for changes in global financial regulation for some time, and may result in major and unavoidable losses to our clients.

The Securities and Exchange Commission has adopted regulations under the Dodd-Frank Act requiring the reporting of securities-based swaps within 24 hours of entering into the swap, which will impose greater regulatory burdens on counterparties to securities-based swaps once they come into effect and will require swap data repositories to make information regarding the swap public. In addition, the Securities and Exchange Commission is considering revising the accredited investor standard to require a demonstrable level of financial sophistication and strict requirements to make timely reports regarding the offering of securities, which may negatively impact our clients' ability to raise capital in the future, and finally, the Securities and Exchange Commission has studied, but has not yet proposed rules requiring persons with substantial positions in securities to publicly report their short positions.

The Commodity Futures Trading Commission has not yet adopted or implemented all of the requirements relating to its swaps regime under the Dodd-Frank Act. The Commodity Futures Trading Commission has adopted but not yet implemented a new electronic reporting regime for "large traders" to include swap trading. In addition, the Commodity Futures Trading Commission has proposed but has not adopted combined position limits for certain physical commodity futures contracts as well as to swaps that reference the specified contracts and contracts settling against the specified contracts executed on or pursuant to the rules of a foreign board of trade providing direct access to U.S. persons and margin requirements for non-cleared swaps.

Our firm and our clients may be adversely affected if one or more the above regulations are adopted.

**AIFM Directive.** The Directive 2011/61/EU of the European Parliament and the Council of the European Union on alternative investment fund managers and any implementing legislation or regulations thereunder, known as the AIFM Directive, regulates alternative investment fund managers established in or marketing interests of an alternative investment fund in the European Economic Area, known as the EEA. The AIFM Directive sets out minimum conditions related to the marketing of interests in alternative investment funds in member states of the EEA and may impact our client funds' ability to attract investors in the EEA and may significantly increase their compliance costs, as well as the compliance costs of our firm. The AIFM Directive does not prohibit an investor in a relevant member state of the EEA subscribing for interests in a client fund at their own initiative in circumstances where

such interests have not been marketed in such relevant member state. However, any investor subscribing for interests in a client fund at their own initiative in a relevant member state should note that if such client fund has not been registered as being marketed in the relevant member state, no reports will be filed with the competent authority in the relevant member state by or in respect of such client fund and no investor shall be entitled to receive any disclosure or report that is mandated in respect of an alternative investment fund being marketed in any relevant member state. It is difficult to predict the full extent of the impact of the AIFM Directive on our firm and our client funds. We will continue to monitor the position and reserve the right to adopt such arrangements as we deem necessary or desirable to comply with the applicable requirements of the AIFM Directive.

**Political, Economic and Other Conditions.** Our clients' investments may be adversely affected by changes in economic conditions or political events that are beyond our firm's control. For example, a stock market break, continued threats of terrorism, the outbreak of hostilities involving the United States or any other jurisdiction in which our clients invest, the death of a major political figure, or the overthrow or replacement of a current ruling body may have significant adverse effects on our clients' investment results. Additionally, a serious pandemic, such as avian influenza, or a natural disaster, such as a hurricane, could severely disrupt the global, national, and/or regional economies and/or markets. Other factors, such as changes in U.S. or non-U.S. tax laws, U.S. or non-U.S. securities laws, bank regulatory policies, or accounting standards, may make corporate acquisitions less desirable. Similarly, legislative acts, rulemaking, adjudicatory, or other activities of the United States Congress, the Securities and Exchange Commission, the Federal Reserve Board, the New York Stock Exchange, the Financial Industry Regulatory Authority or other U.S. or non-U.S. governmental or quasi-governmental bodies, agencies, and regulatory organizations may make the business of our clients less attractive. A negative impact on economic fundamentals and consumer confidence may negatively impact market value, increase market volatility, and cause credit spreads to widen, each of which could have an adverse effect on the investment performance of our clients.

**Uncertain Exit Strategies.** Due to the illiquid nature of certain of our clients' investments, as well as the uncertainties of the reorganization and active management process, our firm will be unable to predict with confidence what the exit strategy will ultimately be for any given investment, or that one will definitely be available. Exit strategies, which appear to be viable when an investment is initiated, may be precluded by the time the investment is ready to be realized due to economic, legal, political, or other factors.

**Competition; Availability of Investments.** Our clients may be unable to find a sufficient number of attractive opportunities to meet their investment objectives or fully invest their assets and/or committed capital. Among other factors, competition for suitable investments from other investment funds and other investors may reduce the availability of investment opportunities. There has been significant growth in the number of private funds and managed accounts organized to make investments similar or identical to our clients' investments, which may result in increased competition to our clients in obtaining suitable investments. There can be no assurance that our firm will be able to identify or successfully pursue attractive investment opportunities in such environments.

**Co-Investments.** Generally, we have the ability to determine our clients' appetite for a given investment opportunity, and we are not precluded from allocating, and have allocated in the past, all or a portion of a given investment opportunity to co-investors. The allocation of all or a portion of an investment opportunity to co-investors could result in lower returns for our clients than had our clients taken the full opportunity for themselves. Furthermore, unless separately negotiated with clients or investors in our private fund clients, we generally reserve the right to allocate co-investment opportunities among our clients, investors in our clients and third parties as we may determine in our sole discretion. This could result in third parties receiving co-investment opportunities from us prior to such opportunities being presented or offered to our clients. In addition, we have charged, and may in the future charge, co-

investors a management fee and/or performance compensation. Depending upon the compensation arrangement applicable to co-investors as compared to the compensation arrangement applicable to the relevant clients, we may have an incentive to allocate an investment opportunity to a co-investment vehicle rather than to our existing clients. Where a co-investment is consummated with one or more existing clients, investment-related expenses are generally expected to be allocated *pro rata* between such clients and the participating co-investors. Where a co-investment is sought but ultimately fails to reach consummation, the relevant client accounts will generally bear all investment-related expenses pertaining to the applicable investment, whether or not such clients ultimately consummate such investment, in each case unless the relevant co-investors have agreed to bear their pro rata share of such expenses. There can be no assurances that a contemplated co-investment will reach consummation or that would-be co-investors will agree to bear their pro rata share of expenses for co-investments that fail to reach consummation.

**Risks Associated with Investments in Distressed Securities.** From time to time, certain of our clients invest in securities and/or other investment instruments of issuers that are experiencing significant financial or business difficulties, including issuers involved in bankruptcy or other reorganization and liquidation proceedings. Although such investments may result in significant returns to our clients, they may involve a substantial degree of risk.

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

From time to time, certain of our clients invest in bonds or other fixed income instruments, including, without limitation, debt securities that can yield higher returns (and, therefore, may be subject to higher risk), when our firm believes that such investments offer opportunities for capital growth. Such investments may be below "investment grade" and face ongoing uncertainties and exposure to adverse business, financial, or economic conditions which could lead to the issuer's inability to meet timely interest and principal payments. The market values of certain of these lower rated debt instruments tend to reflect individual corporate developments to a greater extent than do higher rated securities, which react primarily to fluctuations in the general level of interest rates. It is likely that a major economic recession could have a materially adverse impact on the value of such investments. In addition, adverse publicity and investor perceptions, whether or not based on fundamental analysis, may also decrease the value and liquidity of investments rated below investment grade.

**Lender Liability Considerations and Equitable Subordination.** 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 the 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. While believed to be unlikely, because of the nature of certain of our clients' investments, our clients could be subject to allegations of lender liability. In addition, under common law principles that in some cases form the basis for lender liability claims, if a lending institution (i) intentionally takes an action that results in the undercapitalization of a borrower to the detriment of other creditors of such borrower, (ii) engages in other inequitable conduct to the detriment of such other creditors, (iii) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (iv) uses its influence as a stockholder to dominate or control a borrower to the detriment of other creditors of such borrower, a court may elect



to subordinate the claim of the offending lending institution to the claims of the disadvantaged creditor or creditors, a remedy called “equitable subordination.” Because of the nature of certain of our clients’ investments, our clients could be subject to claims from creditors or shareholders of an obligor that our clients’ investments issued by such obligor that are held by our clients should be equitably subordinated. A significant number of our clients’ investments involve investments in which our clients are not the lead creditor. Accordingly, it is possible that lender liability or equitable subordination claims affecting our clients’ investments could arise without the direct involvement of our clients.

**Risks Associated with Bankruptcy Cases.** 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 our clients. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such when they take over management and functional operating control of a debtor. In those cases where our clients, by virtue of such action, are found to exercise “domination and control” of a debtor, our clients may lose their priority if the debtor can demonstrate that its business was adversely impacted or other creditors and equity holders were harmed by our clients.

Generally, the duration of a bankruptcy case can only be roughly estimated. Unless our clients’ claim in such case is secured by assets having a value in excess of such claim, no interest will be permitted to accrue and, therefore, our clients’ return on investment can be adversely affected by the passage of time during which the plan of reorganization of the debtor is being negotiated, approved by the creditors and confirmed by the bankruptcy court. It should also be noted that reorganizations outside of bankruptcy are also subject to unpredictable and potentially lengthy delays.

U.S. bankruptcy law permits the classification of “substantially similar” claims in determining the classification of claims in a reorganization for purposes of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that our clients’ influence with respect to a class of investment instruments can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class.

The administrative costs in connection with a bankruptcy proceeding are frequently high and will be paid out of the debtor’s estate prior to any return to creditors (other than out of assets or proceeds that are subject to valid and enforceable liens and other security interests) and equity holders. In addition, certain claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

From time to time, our firm, on behalf of one or more of our clients, elects to serve on creditors’ committees or other groups to ensure preservation or enhancement of such client’s position as a creditor. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If our firm concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to such client(s), our firm will resign from that committee or group or take other appropriate steps to adequately address the conflict, and such client(s) may not realize the benefits, if any, of participation on the committee or group. In addition, if any of our clients is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of its investments in such company while it continues to be represented on such committee or group.

From time to time, certain of our clients purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchases could be disallowed by a bankruptcy court if such court were to determine 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.

**Potential Involvement in Litigation.** As a result of our clients' activities generally, including investments in distressed investments and the possibility that our firm may participate in restructuring activities, our clients sometimes become involved in litigation, including litigation respecting creditor disputes and similar issues among classes of claimants. Litigation entails expense and the possibility of counterclaims against our clients and our firm and ultimately judgments may be rendered against our clients for which our clients do not carry insurance. In addition, our clients are sometimes required to expend funds to sustain or advance the claims underlying such investments. No assurance can be given that such clients will have funds available to sustain or advance the claims.

**Trade and Other General Unsecured Claims.** From time to time, certain of our clients 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 not paid, claims for unpaid services rendered, claims for contract rejections and claims related to litigation. Trade claims are typically unsecured and may, in unusual circumstances, 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 as well as the other uncertainties with respect to other distressed securities. A trade claim may be transferred or assigned before or after a petition in bankruptcy is filed, including after a proof of claim has been filed. Our clients' investments in trade claims and high risk receivables may also entail special risks including, but not limited to, fraud on the part of the assignor of the trade claim as well as logistical and mechanical issues which may affect the ability of our clients or their agent(s) to collect the claim in whole or in part.

**Bank Loans.** Certain of our clients' investment programs permit investments in significant amounts of bank loans either by assignment or participation. These obligations are subject to unique risks, including, but not limited to (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws; (ii) lender liability claims by the issuer of the obligations; (iii) environmental liabilities that may arise with respect to collateral securing the obligations; (iv) counterparty credit risk due to delayed settlement of the bank loan transactions; and (v) limitations on the ability of our clients to directly enforce their rights with respect to participations. In analyzing each bank loan or participation therein, our firm compares the relative significance of the risks against the expected benefits of the investment. Successful claims by third parties arising from these and other risks will be borne by our clients.

**Loan Participations and Assignments.** From time to time, certain of our clients invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including, but not limited to, credit risk, interest rate risk, liquidity risk and the risks of being a lender. Participations in commercial loans may be secured or unsecured. Loan participations typically represent direct participation in a loan to a corporate borrower, and generally are offered by banks or other financial institutions or lending syndicates. When purchasing loan participations, our clients assume the credit risk associated with the corporate borrower and may assume the credit risk associated with an interposed bank or other financial intermediary, and may only be able to enforce their rights through the lender, and may assume the credit risk of the lender in addition to the borrower. The participation interests in which our clients invest may not be rated by any nationally recognized rating service.

Investments in loans through a direct assignment of a financial institution's interests with respect to the loan may involve additional risks. For example, if a loan is foreclosed, our clients could become part owner of any collateral, and would bear the costs and liabilities associated with owning and disposing of

the collateral. In addition, it is conceivable that, under emerging legal theories of lender liability, our clients could be held liable as a co-lender. It is unclear whether loans and other forms of direct indebtedness offer securities laws protections against fraud and misrepresentation. In the absence of definitive regulatory guidance, our clients rely on our firm's research in an attempt to avoid situations where fraud or misrepresentation could adversely affect our clients.

**Investments in Undervalued Equity Securities.** The investment objective of certain of our clients is to invest in the equity securities of undervalued companies. The identification of investment opportunities in undervalued securities is a difficult task, and our firm cannot assure that such opportunities will be successfully recognized or acquired. While investments in undervalued securities offer the opportunities for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. In addition, our clients may be required to hold such securities for a substantial period of time before realizing their anticipated value. During this period, a portion of our clients' capital would be committed to the securities purchased, thus possibly preventing our clients from investing in other opportunities.

**Forward Trading.** Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardized; rather banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and "cash" trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by our clients due to unusually high trading volume, political intervention, or other factors. The imposition of controls by governmental authorities might also limit such forward (and futures) trading to less than that which our firm would otherwise recommend, to the possible detriment of our clients. Market illiquidity or disruption could result in major losses to our clients.

**Leverage and Financing Risk.** Generally, leverage may be utilized by certain of our clients on an opportunistic basis when warranted under the circumstances as determined by our firm. Accordingly, certain of our clients are permitted to pledge their securities in order to borrow additional funds for investment purposes. From time to time, certain of our clients also leverage their investment return with options, commodity futures contracts, short sales, swaps, forwards, and other derivative instruments. The amount of borrowings which our clients may have outstanding at any time may be substantial in relation to their capital.

While leverage presents opportunities for increasing our clients' total return, it has the effect of potentially increasing losses as well. Accordingly, any event which adversely affects the value of an investment by our clients would be magnified to the extent our clients are leveraged. The cumulative effect of the use of leverage by our clients in a market that moves adversely to our clients' investments could result in a substantial loss which would be greater than if no leverage were utilized.

In the futures and forward markets, margin deposits are typically low relative to the value of the futures contracts purchased or sold. Such low margin deposits are indicative of the fact that any futures or forward contract trading is typically accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a contract may result in immediate and substantial losses to the investor.

In general, the use of short-term margin borrowings results in certain additional risks to our clients. For example, should the securities pledged to brokers to secure our clients' margin accounts decline in value, our clients could be subject to a "margin call," pursuant to which our clients must either deposit additional funds or securities with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden drop in the value of our clients' assets, our clients might not be able to liquidate assets quickly enough to satisfy margin requirements.

**Hedging Transactions.** Our firm is not required to attempt to hedge portfolio positions in our clients and, for various reasons, may determine not to do so. Furthermore, our firm may not anticipate a particular risk so as to hedge against it. Our clients may utilize financial instruments, both for investment purposes and for risk management purposes in order to: (i) protect against possible changes in the market value of our clients' investment portfolios resulting from fluctuations in the securities markets and changes in interest rates; (ii) protect the unrealized gains in the value of our clients' investment portfolios; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in our clients' portfolios; (v) hedge the interest rate or currency exchange rate on any of our clients' liabilities or assets; (vi) protect against any increase in the price of any securities our clients anticipate purchasing at a later date; or (vii) for any other reason that our firm deems appropriate.

The success of the hedging strategy of our clients will be subject to our firm's ability to correctly assess the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the investments in the portfolios being hedged. Because the characteristics of many investment instruments change as markets change or time passes, the success of our clients' hedging strategy will also be subject to our firm's ability to continually recalculate, readjust, and execute hedges in an efficient and timely manner. While our clients may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for our clients than if our clients had not engaged in any such hedging transactions. For a variety of reasons, our firm may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Such imperfect correlation may prevent our clients from achieving the intended hedge or expose our clients to risk of loss. The successful utilization of hedging and risk management transactions requires skills complementary to those needed in the selection of our clients' portfolio holdings.

**Short Selling.** Short selling involves selling securities which are not owned and borrowing them for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from declines in market prices to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. The extent to which our clients engage in short sales will depend upon our clients' investment objectives, our firm's investment strategy and market opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to our clients of buying those securities to cover the short position.

In the second half of 2008, a number of jurisdictions, including the United States, adopted temporary bans on short sales and enacted regulations aimed at greater disclosure of short selling of certain equity securities. In addition, certain jurisdictions have continued to extend the effectiveness of such short sale bans. In the United States, there are legislative and regulatory initiatives that could lead to the restoration of certain restrictions on short selling that were lifted several years ago. There can be no assurance that regulation would not be adopted to curb any short sale activity. Any such limitation on short selling can have a material adverse impact on our clients' investment programs.

**Certain Derivative Investments.** Certain of our clients purchase and sell ("write") options on securities, currencies and commodities on U.S. and non-U.S. exchanges and over-the-counter markets. The writer of a put option assumes the risk of a decline in the market price of the underlying instrument below the

exercise price of the option. The buyer of a put option assumes the risk of losing its entire investment in the put option. If the buyer of the put holds the underlying instrument, the loss on the put will be offset in whole or in part by any gain on the underlying instrument.

The writer of a call option which is covered (*e.g.*, the writer has a long position in the underlying instrument) gives up the opportunity for gain on the underlying instrument above the exercise price of the option. The writer of an uncovered call option assumes the risk of a theoretically unlimited increase in the market price of the underlying instrument above the exercise price of the option. The buyer of a call option assumes the risk of losing its entire investment in the call option.

Options may be cash settled, settled by physical delivery or by entering into a closing purchase transaction. In entering into a closing purchase transaction, our clients may be subject to the risk of loss to the extent that the premium paid for entering into such closing purchase transaction exceeds the premium received when the option was written. Swaps and certain options and other custom instruments are subject to the risk of non-performance by the swap counterparty, including risks relating to the creditworthiness of the swap counterparty.

**Futures Contracts.** Certain of our clients trade in futures contracts (and options on futures). Futures positions may become illiquid. For example, most commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as “daily price fluctuation limits” or “daily limits.” Under such daily limits, during a single trading day no trades may be executed at prices beyond the daily limits. Once the price of a contract for a particular future has increased or decreased by an amount equal to the daily limit, positions in the future can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. Futures contract prices on various commodities or financial instruments occasionally have moved the daily limit for several consecutive days with little or no trading. Similar occurrences could prevent our clients from promptly liquidating unfavorable positions and subject our clients to substantial losses. In addition, our clients may not be able to execute futures contract trades at favorable prices if trading volume in such contracts is low. It is also possible that an exchange or a regulator (such as the Securities and Exchange Commission or the Commodity Futures Trading Commission) may suspend trading in a particular contract, order immediate liquidation and settlement of a particular contract or order that trading in a particular contract be conducted for liquidation only. In addition, the Commodity Futures Trading Commission and various exchanges impose speculative position limits on the number of positions that may be held in particular commodities. Trading in futures contracts and options are highly specialized activities that may entail greater than ordinary investment or trading risks.

**Margin on Futures and Leverage.** In futures markets, margin deposits are typically low relative to the nominal value of the futures contracts purchased or sold. In the forward, currency and certain other derivative markets, margin deposits may be even lower or may not be required at all. Such low margin deposits are indicative of the fact that any futures contract trading typically is accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a futures contract may result in immediate and substantial losses to the investor. Thus, like other leveraged investments, any purchase or sale of a futures contract may result in losses in excess of the amount invested.

**Swap Transactions.** Depending on their structure, swap agreements may increase or decrease our clients’ exposure to equity securities, long-term or short-term interest rates, foreign currency values, corporate borrowing rates, or other reference assets. Depending on how they are used, swap agreements may increase or decrease the overall volatility of our clients’ portfolios. The most significant factors in the performance of swap agreements is the change in the individual equity values, the specific interest rate, the currency value and other reference assets that determine the amounts of payments due to our clients. If

a swap agreement calls for payments by our clients, our clients 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 our clients.

Swap transactions are not traded on exchanges and are not subject to the same type of government regulation as exchange markets. As a result, many of the protections afforded to participants on organized exchanges and in a regulated environment are not available in connection with these transactions.

Trading in swaps and other derivative instruments can permit a high degree of synthetic leverage. Accordingly, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by our clients and could cause our clients' net asset value to be subject to wider fluctuations than would be the case if our clients did not use derivative instruments that provide leverage. Thus, like other leveraged investments, a derivatives trade may result in losses in excess of the amount invested. Any increase in the amount of leverage applied in trading will increase the risk of loss by the amount of additional leverage applied.

**Enhanced Regulation of Swaps.** Subject to exceptions for certain hedgers, the Wall Street Transparency and Accountability Act of 2010, also known as the WSTAA, (i) requires swaps accepted for clearing by a derivatives clearing organization or for trading through a designated contract market or swaps-execution facility to be so cleared and traded, (ii) requires margin for almost all swap transactions, (iii) subjects traders with a "substantial position" in swaps to registration and regulation requirements as a "major swap participant" or "swap dealer" and (iv) imposes position limits on swaps either individually or in the aggregate with respect to positions in commodity-futures contracts. Due to the requirements imposed by the WSTAA, our clients may experience increased transaction costs to pay for the clearing, execution, and segregation obligations. In addition, margin requirements may increase once margin is set by derivatives clearing organizations with input from the Commodity Futures Trading Commission, which may limit our clients' ability to engage in leverage and limit their returns. The application of position limits to swap contracts may also limit our clients' ability to concentrate in any particular contract or exposure to an underlying commodity and may negatively impact their ability to take advantage of current market trends or conditions. Any tightening in the market for swaps may significantly impact our clients and their returns. In addition, if our clients were deemed to be a swap dealer or a major swap participant under WSTAA, they may be required to register with the Commodity Futures Trading Commission and would be subject to a number of regulatory requirements that would significantly impact their legal obligations and returns.

**Enhanced Regulation of Short Sales and Credit Default Swaps.** Short sales and credit default swaps are subject to the provisions of the European Union Regulation on Short Selling and certain aspects of Credit Default Swaps. This short selling regulation imposes restrictions and disclosure requirements for persons taking short positions in European Union shares and sovereign bonds, and prohibits entering into uncovered credit default swaps in relation to European Union sovereign debt (*i.e.*, where the investor does not have an exposure that it is seeking to hedge either to the sovereign debt itself or to assets or liabilities whose value is correlated to the sovereign debt). In addition, this short selling regulation permits the competent authorities of European Union member states to prohibit or restrict short sales, limit sovereign credit default swaps, and impose emergency disclosure requirements, among other things, during times of stressed markets. Competent authorities may also restrict short sales of individual financial instruments which have suffered a significant fall in price in a single day. The provisions of this short selling regulation may hinder our clients' investment programs by preventing them from taking positions that our firm considers favorable. They may also result in overvaluations of certain financial instruments due to restrictions on market efficiency. In addition, the emergency powers granted to competent authorities during times of stressed markets and with respect to individual financial instruments may adversely affect our clients by preventing them from taking hedging positions or other positions that our firm considers to

be in its best interests. The imposition of emergency measures under this short selling regulation could, therefore, result in substantial losses to our clients.

**Credit Default Swaps.** Certain of our clients invest in credit default swaps. Credit default swaps can be used to implement our firm's view that a particular credit, or group of credits, will experience credit improvement or deterioration. In the case of expected credit improvement, our firm may sell on behalf of our clients credit default protection in which it receives a premium to take on the risk. In such an instance, the obligation of our clients to make payments upon the occurrence of a credit event creates leveraged exposure to the credit risk of the referenced entity. Certain of our clients also buy credit default protection with respect to a referenced entity if, in the judgment of our firm, there is a high likelihood of credit deterioration. In such instance, our clients will pay a premium regardless of whether there is a credit event. The credit default swap market in high-yield securities is comparatively new and rapidly evolving compared to the credit default swap market for more seasoned and liquid investment-grade securities, creating the risk that the newer markets will be less liquid, and making it potentially more difficult to exit or enter into a particular transaction.

**Counterparty and Custody Risk.** Some of the markets in which our clients effect transactions are "over-the-counter" or "interdealer" markets. The participants in such markets are typically not subject to credit evaluation and regulatory oversight as are members of "exchange-based" markets. This exposes our clients to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not *bona fide*) or because of a credit or liquidity problem, thus causing our clients to suffer a loss.

In addition, there are risks involved in dealing with the custodians or brokers who settle our clients' trades. Securities and other assets deposited with custodians or brokers may not be clearly or constantly identified as being assets of our clients, and hence our clients may be exposed to a credit risk with regard to such parties. In some jurisdictions, our clients may only be an unsecured creditor of their brokers in the event of bankruptcy or administration of such brokers. Further, there may be practical or time problems associated with enforcing our clients' rights to their assets in the case of an insolvency of any such party. Losses incurred by many private funds in relation to the bankruptcy and/or administration of Lehman Brothers Holdings and its affiliates illustrate the risks incurred in both derivatives trading and custody/brokerage arrangements. Many Lehman Brothers customers had their accounts frozen, and the inability to access these funds or positions has led to losses as well as extraordinary actions by such private funds.

**Bankruptcy Rules.** Any cash and securities maintained by our clients in accounts at U.S. broker-dealers registered with the Securities and Exchange Commission and Financial Industry Regulatory Authority are protected to a limited degree by the Securities Investor Protection Corporation. In the event of the bankruptcy of a broker-dealer, if sufficient funds are not available in the broker-dealer's customer accounts to satisfy claims, the reserve funds of the U.S. Securities Investor Protection Corporation will be used to supplement the distribution, up to a ceiling of \$500,000 per customer, including a maximum of \$250,000 for cash claims. Therefore, our clients could be at risk of loss for any amounts in excess of the limit listed above. In addition, if our clients trade in futures contracts, bankruptcy law applicable to all U.S. futures commission merchants, also known as futures commission merchants, requires that, in the event of the bankruptcy of such a futures commission merchant, all property held by the futures commission merchant, including certain property specifically traceable to a customer, will be returned, transferred, or distributed to the futures commission merchant's customers only to the extent of each customer's *pro rata* share of all property available for distribution to customers. If any futures commission merchant holding our clients' assets were to become bankrupt, it is possible that our clients would be able to recover none or only a portion of their assets held by such futures commission merchant. Furthermore, in the event of an insolvency of a futures commission merchant or other counterparty which

is not regulated by the Commodity Futures Trading Commission, the Commodity Futures Trading Commission's segregation protections would not be available to our clients. Other custodians and counterparties may have similar types of risks. Assets held outside the United States may be subject to different and/or diminished protection in the event of a counterparty failure located in such jurisdiction.

**Cybersecurity.** Our firm, as well as service providers to our firm and/or our clients, store and transmit large amounts of electronic information, including information relating to our clients' transactions and personally identifiable information of investors in our clients. The computer systems, networks and devices used by our firm and service providers to us and/or our clients to carry out routine business operations employ a variety of protections that our firm believes are reasonably designed to prevent damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches. Despite the various protections utilized, systems, networks, or devices potentially can be breached because the techniques used to obtain unauthorized access to data, disable or degrade service, or sabotage systems change frequently and may be difficult to detect for long periods of time. Our clients and/or their investors could be negatively impacted as a result of a cybersecurity breach.

Cybersecurity breaches can include (a) unauthorized access to systems, networks, or devices; (b) infection from computer viruses or other malicious software code; and (c) attacks that shut down, disable, slow, or otherwise disrupt operations, business processes or website access or functionality.

Cybersecurity breaches may cause (a) disruptions and impact business operations, potentially resulting in financial losses to our firm and/or our clients; (b) interference with our firm's ability to calculate the value of an investment in a client; (c) impediments to trading; (d) the inability by our firm and/or other service providers to transact business; (e) violations of applicable privacy and other laws; (f) regulatory fines, penalties, reputational damage, reimbursement or other compensation costs, or additional compliance costs; and/or (g) the inadvertent release of confidential information.

Similar adverse consequences could result from cybersecurity breaches affecting (a) issuers of securities in which our clients invest; (b) counterparties with which our clients engage in transactions; (c) governmental and other regulatory authorities; (d) exchange and other financial market operators, banks, brokers, dealers, insurance companies and other financial institutions; and (e) other parties. In addition, substantial costs may be incurred by these entities in order to prevent any cybersecurity breaches in the future.

## **Item 9. Disciplinary Information**

Neither our firm nor any of our directors, officers, or principals has been involved in any criminal or civil action in a domestic, foreign, or military court that is material to a client's or prospective client's evaluation of our advisory business or the integrity of our firm's management.

Neither our firm nor any of our directors, officers, or principals has been involved in any administrative proceedings before the Securities and Exchange Commission, any other federal regulatory agency, any state regulatory agency, or any foreign financial regulatory authority.

Neither our firm nor any of our directors, officers, or principals has been involved in any self-regulatory organization proceedings.



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

### ***Material Financial Industry Affiliations of the Firm***

Neither our firm nor any of our directors, officers, or principals is registered, or has an application pending to register, as a broker-dealer, registered representative of a broker-dealer, futures commission merchant, commodity pool operator, commodity trading advisor, or is an associated person of any of the above.

Neither our firm nor any of our directors, officers, or principals has a related person among any of the categories listed in Item 10(C) of Form ADV Part 2A other than Venor Capital GP LLC (a Delaware limited liability company affiliated with our firm that serves as the general partner of our flagship fund, two of the flagship fund's feeder funds and our special purpose client fund), Venor Special Situations GP LLC (a Delaware limited liability company affiliated with our firm that serves as the general partner to our special situations fund and our special situations fund's feeder fund and special purpose vehicle), Venor Trevithick GP LLC (a Delaware limited liability company affiliated with our firm that serves as the general partner of our fund-of-one), and Venor Raven Holdings GP LLC (a Delaware limited liability company affiliated with our firm that serves as the general partner of our custom client fund).

Finally, our firm does not recommend or select other investment advisers for our clients, nor does our firm have other business relationships with advisers that create material conflicts of interest.

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

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

We have adopted a Code of Ethics in accordance with Securities and Exchange Commission requirements. The purpose of our Code of Ethics is to identify the ethical and legal framework in which our firm and its personnel are required to operate and to highlight some of the guiding principles and mechanisms for upholding our firm's standard of business conduct. Our Code of Ethics is designed to ensure that all applicable personnel are aware of and adhere to our firm's policies and procedures. The description below is a summary only. We will provide a complete copy of our Code of Ethics to our clients and prospective clients, as well as investors and prospective investors in our client funds, upon request.

***Standard of Business Conduct.*** Our firm and its personnel have a fiduciary duty to our clients, and in this fiduciary capacity, we must place the interests of our clients before our own interests.

***Basic Principles.*** Our Code of Ethics is based on a few basic principles: (i) our firm and its personnel must place the interests of our clients above their own; (ii) the professional activities and personal investment activities of our firm's personnel must be consistent with our Code of Ethics and avoid any actual or potential conflict between the interests of clients and those of our firm or its personnel; (iii) the activities of our firm's personnel must be conducted in a way that avoids any abuse of any such person's position of trust with and responsibility to our firm and clients; (iv) our employees must not take any inappropriate advantage of their positions at our firm; (v) we must maintain independence in our investment decision-making process; and (vi) our firm's personnel may not engage in any act, practice, or course of conduct that would violate the provisions of Rule 204A-1 of the Investment Advisers Act of 1940, as amended, and other applicable securities laws.

***Conflicts of Interest.*** As a fiduciary, our firm has an affirmative duty of care, loyalty, honesty, and good faith to act in the best interests of our clients. Our firm makes every effort to avoid conflicts of interest

and fully disclose all material facts concerning any conflict of interest that may arise with respect to any of our clients. Our firm stresses that individuals subject to our Code of Ethics must try to avoid situations that have even the appearance of conflict or impropriety.

***Insider Trading.*** Our firm's personnel may not trade, either personally or on behalf of another, on material non-public information or communicate material non-public information to another person in violation of the law. This policy applies to all of our firm's personnel and extends to their activities both within and outside their duties for our firm. Our firm has also implemented policies and procedures designed to detect and prevent insider trading.

***Personal Securities Transactions.*** All personnel must comply with our firm's policy on personal trading. Except with respect to certain securities (including, indices, mutual funds, exchange-traded funds, and certain government securities) and with respect to certain accounts for which a person does not exercise investment discretion, personal securities transactions by our firm's personnel must be pre-approved by our firm's Chief Compliance Officer.

***Holdings and Transactions Reports.*** Every employee and access person must submit both initial and annual holdings reports to our firm's Chief Compliance Officer that disclose all covered securities held in any personal account. Every employee and access person must also submit a quarterly transaction report to the Chief Compliance Officer for each covered securities transaction in any personal account.

***Service as a Director.*** Our firm's employees are prohibited from serving on the boards of directors of any outside company, unless the service (i) would be in the best interests of our firm or our clients and (ii) has been approved in writing by our firm's Chief Compliance Officer; provided that our employees will not be required to obtain prior written approval for service on the boards of directors of charitable or civic organizations. In addition, any employee serving on the board of a private company which is about to go public may be required to resign either immediately or at the end of the current term.

***Reporting of Violations.*** Our firm has implemented policies and procedures whereby our firm's personnel are required to report any violation, apparent violation or potential violation of our Code of Ethics to our firm's Chief Compliance Officer.

***Review and Enforcement.*** Our firm's Chief Compliance Officer is responsible for ensuring adequate supervision over the activities of all persons who act on our behalf in order to prevent and detect violations of our Code of Ethics by such persons.

## **Conflicts of Interest**

Generally, neither our firm nor any related person of our firm recommends to our clients, or buys or sells for our clients, securities in which our firm or a related person of our firm has a material financial interest, except with respect to transactions effected pursuant to a warehousing arrangement.

Our firm and related persons of our firm generally do not invest in the same securities or related securities (e.g., warrants, options, or futures) that our firm or a related person of our firm recommends to our clients. In addition, our firm and related persons of our firm generally do not recommend securities to our clients, or buy or sell securities for our clients, at or about the same time that our firm or a related person buys or sells the same securities for our firm's own (or the related person's own) account. However, exceptions are made under limited circumstances.

From time to time, subject to applicable obligations under the Employment Retirement Income Security Act of 1974, as amended, as well as client or investment guidelines and restrictions, our firm is authorized to direct one of our clients to sell investments to another of our clients through an internal cross

transaction in which our firm will receive no compensation. In most cases, an independent pricing mechanism will be used to ensure objectivity. However, there could be times in which that pricing mechanism is not feasible or fair to our clients, in which case our firm will seek some pricing mechanism that is fair to both such clients.

To the extent that any such transaction may be viewed as a principal transaction due to the ownership interest in our client by our firm and its personnel, our firm will comply with the requirements of Section 206(3) of the Investment Advisers Act of 1940, as amended, and provide written notification to such client and obtain client consent either prior to the principal transaction or prior to its settlement.

Potential conflicts also may arise due to the facts that our firm and our personnel may have investments in some of our private fund clients but not in others or may have different levels of investment in our various private fund clients, or due to the fact that our clients pay different levels of fees to our firm.

In addition, our firm may give advice or take action with respect to investments of one or more of our clients that may not be given or taken with respect to our other clients with similar investment programs, objectives and strategies. Accordingly, our clients with similar investment strategies may not hold the same investments or achieve the same performance. Our firm may also advise our clients with conflicting programs, objectives or strategies. These activities may also adversely affect the prices and availability of other investments held or potentially considered for one or more clients.

From time to time, our firm has acquired, and may in the future acquire, securities or other financial instruments of an issuer for one of our clients which are senior or junior to securities or financial instruments of the same issuer that are held by, or acquired by, another of our clients. We recognize that conflicts may arise under such circumstances and will endeavor to treat all of our clients fairly and equitably.

Our firm maintains a list of companies about which a determination has been made that it is prudent to restrict or limit trading activity based on the possibility that our firm and employees have access to material nonpublic information. As a general rule, trades will not be allowed for clients, or for the personal accounts of employees, in the securities of an issuer appearing on the restricted list, except with the pre-approval of our firm's Chief Compliance Officer. Restrictions and limitations with regard to securities on the restricted list are also considered to extend to options, rights, or warrants relating to those securities and any securities convertible into those securities.

From time to time, we have directed (and may continue to direct) one or more of our client funds to structure all or a portion of an investment through a subsidiary, another client fund, or through a pooling vehicle that aggregates investments from multiple clients. While such an arrangement may be beneficial for all of our clients involved, nonetheless such an arrangement could create conflicts of interest that might not exist in the absence of such an arrangement. When structuring such an arrangement, our firm ensures that none of our clients will bear two levels of management fees or performance-based compensation.

## **Item 12. Brokerage Practices**

### ***Selection of Brokers***

Our firm has full authority to select broker-dealers to execute our clients' investment transactions and has appointed brokerage firms to act as "prime brokers" for each client. A firm appointed as our client's prime broker has certain administrative responsibilities, including the issuance of account statements and information with respect to securities transactions affected through other broker-dealers. A prime broker

may be allocated a portion of our clients' securities transactions, subject to principles of best execution. Our firm may, in its discretion, change its selections of one or more prime brokers for our clients.

Our firm allocates a portion of each client's brokerage business to additional brokers on the basis of certain considerations, which may include:

- The amount of commission;
- The quality of execution;
- Reputation, financial strength and stability;
- Block trading and block positioning capabilities;
- Willingness to execute difficult transactions;
- Willingness and ability to commit capital;
- Access to underwritten offerings and secondary markets;
- Ongoing reliability;
- Overall costs of a trade;
- Nature of the security and the available market makers;
- Desired timing of the transaction and size of trade;
- Confidentiality of trading activity; and/or
- Market intelligence regarding trading activity.

Brokers may provide our firm with capital introduction, marketing assistance, consulting with respect to technology, operations, equipment, commitment of capital, access to company management, and access to deal flow. Neither our firm nor our clients will separately compensate any broker for any of these services. Our firm has adopted policies and procedures that specify factors to be taken into account when selecting brokers and none of the foregoing services that may be provided by brokers as described in this paragraph are included among such factors.

Neither our firm nor any related person receives client referrals from any broker-dealer or third party that provides brokerage services to our clients. From time to time, however, our firm's personnel speak at or participate in conferences and programs sponsored by prime brokers and attended by persons and entities interested in investing in private funds. These conferences and programs may be a means by which our firm can be introduced to potential investors in our client funds. The prime brokers are not compensated by our firm, our clients, or potential investors in our private fund clients for providing such capital introduction opportunities. Such capital introduction services may assist our firm in raising capital and thus pose a potential conflict of interest.

We may utilize capital introduction and marketing assistance provided by broker-dealers for our private fund client subject to our obligation to allocate brokerage to those providers on the basis of best execution. Our firm has adopted policies and procedures that seek to ensure that our firm allocates brokerage to broker-dealers on the basis of best execution and that we do not act on a potential conflict of interest when selecting what brokers to use to execute client transactions.

### ***Research and Soft Dollars***

At this time our firm is not a party to, and does not anticipate entering into, any formal "soft dollar" arrangements. However, our firm has the option to use "soft dollars" generated by our clients to pay for

the research related services. In the event that our firm utilizes allocations of commission dollars, it will do so solely to pay for products or services that qualify as “research and brokerage services” within the “safe harbor” of Section 28(e) of the Securities Exchange Act of 1934, as amended.

### ***Aggregation of Orders***

From time to time, our firm places as an aggregated order for execution orders for publicly traded securities at the same time for the accounts of two or more of our clients. This practice enables our firm’s clients to seek more favorable executions and net prices for the combined order. If the order cannot be executed in full at the same price or time, the securities actually purchased or sold by the close of each business day are generally allocated *pro rata* among the participating clients in accordance with the initial amounts ordered by each client. However, the *pro rata* allocation may be adjusted to avoid having odd amounts of shares held in any client’s account or to avoid deviations from any pre-determined minimum/maximum holdings limits established for any client. Each client that participates in the order shall do so at the average price for all the transactions and shall share in commissions or other transaction costs on a *pro rata* basis.

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

Jeffery A. Bersh and Michael J. Wartell, in their capacities as our firm’s Co-Chief Investment Officers, review client portfolios on a continuous basis.

Our firm provides to investors in each private fund client such respective private fund client’s audited financial statements on an annual basis and unaudited monthly performance data on a monthly or quarterly basis.

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

Our firm does not, nor do any principals or employees of our firm, receive any economic benefit from non-clients for providing advisory services to our clients.

At this time our firm is not a party to an arrangement to pay a third party for the referral or solicitation of clients or investors in our private fund clients. We may enter into such an arrangement in the future, although our firm will not do so without the prior approval of Mr. Bersh or Mr. Wartell.

### **Item 15. Custody**

Although our firm does not custody our private funds’ cash or securities (which are custodied by our clients’ prime brokers or other qualified custodians), our firm is deemed to have constructive custody over securities and funds of our private fund clients according to the custody rule set forth in Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended. Our firm complies with the custody rule by providing audited financial statements of each private fund client to investors in such private fund client within 120 days of the end of the fiscal year to satisfy the reporting requirement.

Our firm does not have custody of cash or securities of our managed account client.

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

Our firm is provided with discretionary authority to manage the securities accounts of each of our clients as set forth in, and limited by, the terms and conditions of the relevant organizational documents or

investment advisory agreement with such client. Our firm does not provide advisory services directly to the investors in our clients. Generally, our firm assumes such authority by receiving a power of attorney through the execution of our advisory agreement.

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

Our firm has the authority to vote proxies relating to securities in client accounts. Accordingly, our firm has adopted policies and procedures governing the voting of proxies that include the following elements:

**General Policy.** The general policy is to vote proxies, which includes proxy proposals, amendments, consents, or resolutions relating to client securities, including interests in private investment funds, if any, in a manner that serves the best interests of the investing client(s), as determined by our firm in its discretion, and taking into account relevant factors, including, but not limited to:

- The impact on the value of the securities;
- The anticipated costs and benefits associated with the proposal;
- The effect on liquidity; and
- Customary industry and business practices.

**Specific Policies.** Specific policies set forth in our firm's policies and procedures include:

- Routine matters are typically proposed by company's management, directors, general partners, managing members, or trustees and (i) do not measurably change the structure, management, control, or operation of the company; (ii) do not measurably change the terms of, or fees or expenses associated with, an investment in the company; and (iii) are consistent with customary industry standards and practices, as well as the laws of the state of incorporation applicable to the company. For routine matters, we will vote in accordance with the recommendation of the company's management, directors, general partners, managing members, or trustees, as applicable, unless, in our firm's opinion, such recommendation is not in the best interests of the investing client(s).
- Non-routine matters involve a variety of issues and may be proposed by a company's management or beneficial owners, and may involve (i) a measurable change in the structure, management, control, or operation of the company; (ii) a measurable change in the terms of, or fees or expenses associated with, an investment in the company; or (iii) a change that is inconsistent with industry standards and/or the laws of the state of incorporation applicable to the company. We have specific proxy voting policies for non-routine matters, and in some cases, our firm votes on a case-by-case basis.

**Abstaining from Voting or Affirmatively Not Voting.** Our firm will abstain from voting (which generally requires submission of a proxy voting card) or affirmatively decide not to vote if our firm determines that abstaining or not voting is in the best interests of the investing client(s). In making such a determination, we will consider various factors including, but not limited to, (i) the costs associated with exercising the proxy (*e.g.*, translation or travel costs); and (ii) any legal restrictions on trading resulting from the exercise of a proxy. Furthermore, our firm will not abstain from voting or affirmatively decide not to vote merely to avoid a conflict of interest.

**Conflicts of Interest.** At times, conflicts may arise between the interests of the investing client(s), on the one hand, and the interests of our firm or its affiliates, on the other hand. If our firm determines that it has, or may be perceived to have, a conflict of interest when voting a proxy, our firm will address matters involving such conflicts of interest as follows:

- If a proposal is addressed by the specific policies in these procedures, our firm will vote in accordance with such policies.
- If our firm believes it is in the best interest of the investing client(s) to depart from the specific policies provided for in these procedures, our firm will be subject to the requirements of the third and fourth bullet points below, as applicable.
- If the proxy proposal is (i) not addressed by the specific policies or (ii) requires a case-by-case determination by our firm, our firm may vote such proxy as it determines to be in the best interest of the investing client(s), without taking any action described in the fourth bullet point below, provided that such vote would be against our firm's own interest in the matter (*i.e.*, against the perceived or actual conflict). Our firm will memorialize the rationale of such vote in writing.
- If the proxy proposal is (i) not addressed by the specific policies or (ii) requires a case-by-case determination by our firm, and (iii) our firm believes it should vote in a way that may also benefit, or be perceived to benefit, its own interest, then our firm must take one of the following actions in voting such proxy:
  - Delegate the voting decision for such proxy proposal to an independent third party;
  - Delegate the voting decision to an independent committee of partners, members, directors, or other representatives of the investing client, as applicable;
  - Inform the investing client (and investors in client fund and/or special purpose client fund if the client fund and/or special purpose client fund is the investing client) of the conflict of interest and obtain consent to (majority consent in the case of the client fund) vote the proxy as recommended by our firm; or
  - Obtain approval of the decision from the Chief Compliance Officer and third party legal advisors.

A complete copy of our firm's policies and procedures governing the voting of proxies, together with information regarding how our firm voted particular proxies, will be provided to clients and prospective clients upon request.

## **Item 18. Financial Information**

Our firm does not require, nor do we solicit, prepayment of more than \$1,200 in fees per client, six months or more in advance.

Item 18(B) is not applicable because our firm is in stable financial condition.

Venor Capital Management LP has never been the subject of a bankruptcy petition.