

FORM ADV PART 2A: FIRM BROCHURE



EMPERY ASSET MANAGEMENT, LP

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This brochure provides information about the qualifications and business practices of Empery Asset Management, LP (“Empery”). If you have any questions about the contents of this brochure, please contact us at 212-608-3300 or compliance@emperryam.com. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (the “SEC”) or by any state securities authority.

Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.

Additional information about Empery also is available on the SEC’s website at www.adviserinfo.sec.gov.

Item 2. MATERIAL CHANGES

In this Item Empery is required to disclose any material changes since its last annual update, which was the version dated March 30, 2023. There have been no material changes since the last annual update.

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Item 4. ADVISORY BUSINESS

Empery Asset Management, LP (“Empery”) is a Delaware limited partnership that was formed in February 2008 with its principal place of business in New York, New York. Empery was founded and is owned and controlled by Ryan M. Lane and Martin D. Hoe.

Empery provides discretionary investment management services to U.S. and non-U.S. pooled investment vehicles organized as private investment funds (collectively the “Funds”). Empery Asset Management, LP serves as the investment manager to Empery Tax Efficient, LP (“Empery Tax Efficient”), Empery Tax Efficient III, LP (“Empery Tax Efficient III”), Empery Debt Opportunity Fund, LP (“Empery Debt Opportunity Fund”), and Empery Partners, LP (“Empery Partners”), all of which are Delaware limited partnerships (collectively the “Domestic Funds”), and Empery Asset Master, Ltd. (“Empery Asset Master”) and Empery International, Ltd. (“Empery International”), each a Cayman Islands exempted company (Empery Asset Master and Empery International collectively, the “Offshore Funds”).

Empery Asset Master, Empery Partners and Empery International operate via a “master-feeder” structure, such that Empery Partners and Empery International (collectively, the “Feeder Funds”) invest all of their investable assets through Empery Asset Master (the “Master Fund”) and investments are made at the Master Fund level. Empery Asset Master also makes certain investments through special purpose vehicles.

Empery’s affiliate, Empery GP, LLC, a Delaware limited liability company (the “General Partner”), serves as the general partner of the Domestic Funds.

As described in further detail in Item 8 below, the Funds seek to generate absolute returns primarily through direct investment mainly in public companies and some late-stage private companies. The direct investment strategy seeks to exploit market inefficiencies by financing emerging growth companies that may be under-capitalized, have limited analyst coverage, or have low levels of institutional interest. When implementing this strategy, Funds other than Empery Debt Opportunity Fund may invest in every tier of the capital structure, including common equity, warrants, convertible preferred stock, convertible debt and other secured and unsecured debt of different levels of seniority, and the securities may be highly customized to optimize the investment risk-versus-reward profile. Empery Debt Opportunity Fund will invest primarily in debt, including convertible debt, or debt-like instruments.

In addition to the primary direct investment strategy, certain Funds may also engage in one or more of the following investment strategies: (i) market-neutral, sector-focused long/short; (ii) distressed debt investing; and/or (iii) event-driven options trading.

Empery’s investment decisions and advice with respect to each Fund are subject to each Fund’s investment objectives and guidelines as set out in the Fund’s private offering memorandum, limited partnership agreement, investment management agreement and/or other governing documents. Investors and prospective investors should refer to the offering memorandum and other governing documents of the applicable Fund for complete information on its investment objectives and guidelines.

In accordance with common industry practice, one or more of the Funds and/or Empery or its affiliate have or may in the future enter into “side letters” or similar arrangements with certain investors pursuant to which the investor is granted specific rights, benefits or privileges that are not made available to investors generally.

This brochure does not constitute an offer to sell or solicitation of an offer to buy the securities of any of the Funds. Any such offer or solicitation will be made only by means of a confidential private placement memorandum.

Empery does not participate in any wrap fee programs.

As of December 31, 2023, Empery had approximately \$136,910,434 in regulatory assets under management, all of which it manages on a discretionary basis.

Item 5. FEES AND COMPENSATION

The following is a general description of the fees and expenses paid by the Funds. In addition to this brochure, investors should refer to the relevant Fund's private offering memorandum for a complete understanding of how Empery is compensated for its services and the types of fees and expenses paid by the Funds. The information contained in this Item 5 is a summary only and is qualified in its entirety by the offering memorandum of each Fund.

For Empery's services to the Funds, Empery or the General Partner charge a management fee ("Management Fee"), as described below, and performance-based compensation in the form of either an incentive allocation or a performance fee ("Performance Fee"). In certain circumstances, these fees may be negotiable and/or waived. Empery or its affiliate are generally authorized to deduct fees directly from the assets of each Fund, at the times and in the amounts described in each Fund's private offering memorandum.

Management Fee

Empery charges Empery Tax Efficient, Empery Partners, Empery International and a class of interests in Empery Debt Opportunity Fund a Management Fee at an annual rate of 2% of the net assets of these Funds, or classes, as applicable, payable at the beginning of each quarter. Empery charges Empery Tax Efficient III and a class of interests in Empery Debt Opportunity Fund a Management Fee that is an aggregate fixed amount, subject to a cap, as determined by the General Partner and a majority of the limited partners of the applicable Funds and classes, which is payable at the beginning of each quarter. A portion of such aggregate fixed amount is paid by a class of interests in Empery Debt Opportunity Fund, and a portion of such aggregate fixed amount is paid by Empery Tax Efficient III.

The Management Fee for the Funds is calculated and paid in advance as of the first business day of each calendar quarter and accrued monthly over the quarter for which such Management Fee is paid. The Management Fee is prorated for capital contributions made at a time other than the beginning of a calendar quarter. To the extent that a withdrawal or redemption is made from a Fund as of any day that is not the last day of a calendar quarter, Empery would refund the Fund an amount of the Management Fee prorated from the date of the withdrawal or redemption, as applicable, to the end of the period covered by the advance Management Fee (which will in turn be refunded to the relevant withdrawing or redeeming investor).

Performance Fee

The Funds are subject to a Performance Fee that is allocated and/or paid to Empery or the General Partner, subject to a "high water mark" provision. The Performance Fee for Empery Tax Efficient, Empery Partners and Empery International is equal to 20% of the net realized and unrealized profits (if any) for the fiscal year, and the Performance Fee for Empery Tax Efficient III and Empery Debt Opportunity Fund is equal to 20% of the realized gains (if any) after deducting realized and unrealized losses for the fiscal year. The Performance Fee for a particular Fund may or may not be subject to a hurdle. The Performance Fee is generally calculated and payable annually, in arrears, as of the applicable Fund's fiscal year end, and upon an investor's withdrawal or redemption from a Fund. Investors should refer to the applicable Fund's private offering memorandum for additional information.

In the sole discretion of Empery or the General Partner, the Management Fee and/or the Performance Fee may be waived or reduced with respect to any investors in a Fund.

Additional Fees and Expenses

In addition to the Management Fee and Performance Fee, except as set out in the applicable offering memorandum and other governing documents, each Fund (and therefore, indirectly, the investors in such Fund) generally bears its own expenses. The below fees and expenses may not be applicable to all Funds.

To the extent permitted under the applicable offering memorandum and other governing documents, the Funds will bear their own expenses and their pro rata share of any trading vehicle's (and the Master Fund's, in the case of the Feeder Funds) expenses, including without limitation the following: (i) the Management Fee; (ii) expenses related to the research, due diligence and monitoring of actual and prospective investments (whether or not consummated) and the consummation of investments, including the following: third-party investment sourcing fees; fees and expenses related to obtaining research and market data (including any information technology hardware, software or other technology incorporated into the cost of obtaining such research and market data); due diligence expenses including consulting and appraisal fees; travel expenses; brokerage, and prime brokerage fees, commissions and expenses; expenses relating to short sales; clearing and settlement charges; custodial fees and expenses; bank service fees; interest expenses and fees related to financings or refinancings; fees and expenses of proxy research and voting services; and fees and expenses of third-party professionals, including consultants, attorneys and accountants; (iii) organizational and reorganizational expenses; and (iv) operational expenses, including the following: fees and expenses relating to information technology hardware, software or other technology (including costs of software licensing, implementation, data management and recovery services and custom development) used to research investments, evaluate and manage risk, facilitate valuations, facilitate accounting functions, facilitate compliance with the rules of any self-regulatory organization or applicable law (including reporting obligations), facilitate and manage the order execution of securities or otherwise manage the Fund or any trading vehicle, such as Bloomberg terminals, portfolio management systems, risk management systems and order management systems; fees and expenses of third-party risk management products, models and services; third-party administrative fees and expenses; fees and expenses of third-party professionals, including consultants, valuation service providers, attorneys and accountants; the costs of any litigation or investigation involving activities of the Fund or any trading vehicle; third-party audit and tax preparation expenses; insurance expenses, including premiums for D&O, cybersecurity and liability insurance covering the Fund, the General Partner, Empery and/or the members, partners, officers, employees and agents of any of them (except such insurance expenses shall exclude (i) 20% of any applicable premiums and/or expenses which shall be retained and paid for by the General Partner, Empery and/or their affiliates, as applicable, and (ii) expenses for any insurance product that could be construed as being compensation or a fringe benefit (e.g., life insurance products)); fees and expenses (including director registration fees) of the General Partner's and any trading vehicle's directors and officers; costs of preparing and distributing reports and notices; taxes; expenses incurred in connection with negotiating and complying with provisions of any side letter agreement; fees and expenses related to compliance with the rules of any self-regulatory organization or applicable law in connection with the activities of the Fund or any trading vehicle, including any governmental, regulatory, licensing, filing or registration fees or taxes (including fees and expenses incurred in connection with the preparation and filing of Form D, Section 13 filings, Section 16 filings, Form PF and other similar regulatory filings); expenses incurred in connection with the offering and sale of interests in the Fund and other similar expenses related to the Fund (excluding fees payable to any placement agent); extraordinary expenses, including the following: indemnification expenses; fees and expenses incurred in connection with any tax audit by any taxing authority, including any related administrative settlement and judicial review; and fees and expenses incurred in connection with the reorganization, dissolution, winding-up or termination of the Fund or any trading vehicle.

In general, Funds do not have a pre-determined limit on their ordinary or extraordinary operating expenses; however, some Funds have a cap on certain types of expenses, as set out in the applicable offering memorandum and governing documents. The Funds' actual annual operating expenses are disclosed in their year-end audited financial statements, which will be provided to each investor.

Generally, all expenses borne by the Funds, other than the Management Fee and any expenses that the General Partner or Empery determines should be allocated to a particular investor or investors (e.g., investor-related taxes), are charged to all investors on a pro rata basis. To the extent that expenses to be borne by the Funds are paid by the General Partner or Empery, the Funds will reimburse the applicable party.

Empery has adopted an expense allocation policy that is designed to ensure that expenses are allocated to Funds and investors in a fair and equitable manner. Empery will allocate expenses to each Fund in accordance with the Fund's offering memorandum and governing documents. Empery will generally allocate expenses among Funds that incur such expenses pro rata based on either the investment size, if related to a specific investment, or the assets of the Funds if unrelated to a specific investment.

Certain Funds impose a fee on the amount being withdrawn from the Fund if an investor submits a notice to withdraw, or withdraws, all or a portion of its investment during a specified time period following investment in a Fund.

The Funds treat organizational expenses in accordance with Generally Accepted Accounting Principles, consistently applied ("GAAP"), although the General Partner may elect to modify the treatment of such organizational expenses by amortizing the organizational expenses over a period of 60 months. Such amortization may result in a qualification of a Fund's annual audited financial statements. If a Fund amortizes its organizational expenses but terminates its operations before such expenses are fully amortized, the unamortized portion of the expenses will be debited against the Fund's assets at that time, which would decrease amounts available for distribution to investors.

Item 12 below further describes the factors that Empery considers in selecting or recommending broker-dealers for client transactions and determining the reasonableness of their compensation (e.g., commissions).

Neither Empery nor any of its supervised persons accepts compensation (e.g., brokerage commissions) for the sale of securities or other investment products.

Item 6. PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT

As noted in Item 5 above and further described in the applicable Fund's offering memorandum, Empery or the General Partner may receive a Performance Fee from the Funds. The Funds may pay different amounts of performance-based compensation. As a result, Empery and its affiliates may face certain conflicts of interest that may arise when an investment adviser accepts higher performance-based compensation from some clients than from other clients. In such cases, Empery may have an incentive to favor, or to allocate certain riskier investments to, a Fund that is subject to higher performance-based compensation. However, Empery has adopted allocation policies and procedures designed to ensure that investment opportunities are allocated among the Funds on a basis that is fair and equitable over time to each Fund relative to other Funds, taking into account all relevant facts and circumstances.

Performance-based compensation for some Funds is calculated on a basis that includes unrealized gains; such compensation may be greater than if it were based solely on realized gains.

The possibility that Empery or the General Partner may receive a Performance Fee from the Funds can create an incentive to make investments that are more speculative than it otherwise would in the absence of such Performance Fee.

While Empery or the General Partner may receive a Performance Fee from the Funds, they do not currently charge a Performance Fee with respect to investments in the Funds by certain investors including Empery's principals, employees and certain friends and family thereof.

Item 7. TYPES OF CLIENTS

Empery's clients consist of the Funds and any additional private funds or separate accounts that Empery may manage from time to time. The Funds are privately offered exclusively to "accredited investors" as defined in Regulation D under the Securities Act of 1933, as amended (the "Securities Act") and/or "qualified purchasers" as defined in Section 2(a)(51) of the Investment Company Act of 1940, as amended (the "Investment Company Act"), and rely on the exclusions from the definition of "investment company" in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act. Accordingly, none of the Funds are registered as investment companies under the Investment Company Act.

The limited partners of the Funds may include institutional investors, high net worth individuals and other sophisticated investors. The minimum required initial investments in the Funds range from \$100,000 to \$1,000,000, though Empery and/or the General Partner have discretion to waive these minimums. Additional details concerning applicable investor eligibility and suitability requirements for each Fund are set out in the applicable offering memorandum and subscription documents.

Item 8. METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS

The following is a general description of Empery's investment strategies, methods of analysis and material risks. The following description is merely a summary, and any description of the specific activities in which the Funds may engage are not intended in any way to limit the types of investment activities which the Funds may undertake or the allocation of Fund assets among such investments. Additional information regarding investment strategies, methods of analysis and material risks can be found in the relevant Fund's offering memorandum and other governing documents.

An investment in a Fund is speculative and is not intended as a complete investment program. The Funds are designed only for experienced and sophisticated investors who are able to bear the risk of substantial impairment or total loss of their investment in the Funds.

Methods of Analysis and Investment Strategies

The Funds seek to generate absolute returns primarily through direct investment mainly in public companies and some late-stage private companies. The direct investment strategy seeks to exploit market inefficiencies by financing emerging growth companies that may be under-capitalized, have limited analyst coverage, or have low levels of institutional interest.

In implementing this strategy, Funds other than Empery Debt Opportunity Fund will primarily seek to build a long-term warrant portfolio, however they will generally also invest in every tier of the capital structure, including common equity, convertible preferred stock, convertible debt and other secured and unsecured debt of different levels of seniority. Empery Debt Opportunity Fund will invest primarily in debt, including convertible debt, or debt-like instruments, that are structured to benefit from equity appreciation, but also provide protections often associated with debt instruments. Investments may be customized to optimize the investment risk-versus-reward profile. In addition to registered securities, some of these investments may consist of unregistered securities offered to Funds via privately negotiated transactions that are intended to become freely tradable at a later date, either through a registration of such securities by the issuer, satisfaction of a holding period by the Funds, or otherwise.

In addition to the primary direct investment strategy, one or more Funds may also engage in one or more of the following investment strategies: (i) market-neutral, sector-focused long/short; (ii) distressed debt investing; and/or (iii) event-driven options trading.

The market-neutral, sector-focused long/short investment strategy includes both investments that are long-term and driven by bottom-up fundamental analysis, and investments that are event-driven which tend to be short-term and are primarily related to emerging sector dynamics and events such as earnings and merger and acquisition announcements. This strategy utilizes long and short common equity and structured option positions. The Funds have not recently engaged in this strategy.

The event-driven options strategy seeks to capitalize on mispricing in the listed equity options market. Depending on the particular situation, which is usually driven by company-specific events, various options strategies are employed to take advantage of, for example, mispriced stock price distributions, arbitrage between-expiration volatility differences and express limited risk directional opinion.

The distressed debt strategy invests in the debt of distressed companies that may be expected to be restructured or relaunched through a merger, sale or some other form of operational and/or financial reengineering (e.g., rights offerings).

Material Risks

Prospective investors should carefully consider the risks of investing in any Fund, which include, without limitation, those set forth below. These risk factors include only those risks Empery believes to be material, significant or unusual and relate to particular significant investment strategies or methods of analysis that are or may be employed by Empery and do not purport to be a complete list or explanation of the risks involved in an investment in any of the Funds. Prospective investors should review the applicable offering memorandum of a Fund for a complete description of the material risks related to an investment in a Fund. The following risk factors may not be applicable to all Funds.

Legal and Regulatory Environment for Private Investment Funds and their Managers. The legal and regulatory environment worldwide for private investment funds (such as the Funds) and their managers is evolving. Changes in the regulation of private investment funds, their managers, and their trading and investing activities may have a material adverse effect on the ability of a Fund to pursue its investment program and the value of investments held by a Fund. There has been an increase in scrutiny of the private investment fund industry by governmental agencies and self-regulatory organizations. New laws and regulations or actions taken by regulators that restrict the ability of a Fund to pursue its investment program or employ brokers and other counterparties could have a material adverse effect on such Fund and the investors' investments therein. In addition, Empery may, in its sole discretion, cause a Fund to be subject to certain laws and regulations if it believes that an investment or business activity is in the Fund's interest, even if such laws and regulations may have a detrimental effect on one or more investors.

Risk of Loss. No guarantee or representation is made that a Fund's investment program, including a Fund's investment objective, diversification strategies or risk monitoring goals, will be successful. Investment results may vary substantially over time. No assurance can be made that profits will be achieved or that substantial or complete losses will not be incurred. Past investment results of the Funds and Empery are not necessarily indicative of their future performance.

Significant Fees and Expenses. The fees and expenses of a Fund may be significant. A Fund must generate sufficient income to offset such fees and expenses to avoid a decrease in the net asset value of such Fund.

Competition; Availability of Investments. Certain markets in which the Funds may invest are extremely competitive for attractive investment opportunities. As a result, there can be no assurance that Empery will be able to identify or successfully pursue attractive investment opportunities in such environments or that the Funds will be able to invest on favorable terms.

Significant Positions in Securities; Regulatory Requirements. In the event a Fund acquires a significant stake in certain issuers of securities and such stake exceeds certain percentage or value limits, the Fund may be subject to regulation and regulatory oversight that may impose notification and filing requirements or other administrative burdens on the Fund and Empery. Any such requirements may impose additional costs on the Fund and may delay the acquisition or disposition of the securities or the Fund's ability to respond in a timely manner to changes in the markets with respect to such securities.

In addition, "position limits" may be imposed by various regulators that may limit a Fund's ability to effect desired trades. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a Security. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. To the extent that a Fund's position limits were aggregated with an affiliate's position limits, the effect on the Fund and resulting restriction on its investment activities may be significant. If at any time positions managed by Empery were to exceed applicable position limits, Empery would be required to liquidate positions, which might include positions of the Fund, to the extent necessary to come within those limits. Further, to avoid exceeding any position limits, the Fund might have to forego or modify certain of its contemplated investments or trades.

In addition, if a Fund, acting alone or as part of a group, acquires beneficial ownership of more than 10% of a certain class of securities of a public company or places a director on the board of directors of such a company, under Section 16 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Fund may be subject to certain additional reporting requirements and may be required to disgorge certain short-swing profits arising from purchases and sales of such securities. Furthermore, in such circumstances the Fund will be prohibited from entering into a short position in such issuer’s securities, and therefore limited in its ability to hedge such investments. Similar restrictions and requirements may also apply in non-U.S. jurisdictions.

Counterparty Risk. Empery has established relationships to obtain financing, derivative intermediation and prime brokerage services that permit the Funds to trade in any variety of markets or asset classes over time. However, there can be no assurance that Empery will be able to maintain such relationships or establish new ones. An inability to maintain such relationships or establish new ones could limit a Fund’s trading activities, create losses, preclude the Fund from engaging in certain transactions or prevent the Fund from investing or trading at optimal rates and terms. Moreover, a disruption in the financing, derivative intermediation and prime brokerage services provided by any such relationships could have a significant impact on a Fund’s business due to the Fund’s reliance on such counterparties.

The Funds may effect transactions in the “over-the-counter” or “OTC” derivatives markets. The stability and liquidity of OTC derivatives transactions depends in large part on the creditworthiness of the parties to the transactions. In the OTC markets, a Fund enters into a contract directly with dealer counterparties which may expose the Fund to the risk that a counterparty will not settle a transaction in accordance with its terms because of a solvency or liquidity problem with the counterparty. Delays in settlement may also result from disputes over the terms of the contract (whether or not bona fide). In addition, the Fund may have a concentrated risk in a particular counterparty, which may mean that if such counterparty were to become insolvent or have a liquidity problem, losses would be greater than if the Fund had entered into contracts with multiple counterparties. Certain OTC derivative contracts require that a Fund post collateral.

If there is a default by a counterparty, a Fund under most normal circumstances will have contractual remedies pursuant to the agreements related to the transaction. However, exercising such contractual rights may involve delays or costs which could result in the net asset value of a Fund being less than if a Fund had not entered into the transaction. Furthermore, there is a risk that any of such counterparties could become insolvent and/or the subject of insolvency proceedings. In such case, the recovery of the Fund’s securities from such counterparty or the payment of claims therefor may be significantly delayed and the Fund may recover substantially less than, or none of, the full value of the securities entrusted to such counterparty. In addition, there are a number of proposed rules that, if they were to go into effect, may impact the laws that apply to insolvency proceeding and may impact whether a Fund may terminate its agreement with an insolvent counterparty.

Collateral that a Fund posts to its counterparties that is not segregated with a third party custodian may not have the benefit of customer-protected “segregation” of such funds. In the event that a counterparty were to become insolvent, a Fund may become subject to the risk that it may not receive the return of its collateral or that the collateral may take some time to return. In addition, a Fund may use counterparties located in jurisdictions outside the United States. Such local counterparties usually are subject to laws and regulations in non-U.S. jurisdictions that are designed to protect customers in the event of their insolvency. However, the practical effect of these laws and their application to a Fund’s assets are subject to substantial limitations and uncertainties. Because of the range of possible factual scenarios involving the insolvency of a counterparty and the potentially large number of entities and jurisdictions that may be involved, it is impossible to generalize about the effect of such an insolvency on a Fund and its assets. Prospective investors should assume that the insolvency of any such counterparty would result in significant delays in recovering a Fund’s securities from or the payment of claims therefor by such counterparty and a loss to the Fund, which could be material.

Valuation of Assets and Liabilities. The Funds' assets and liabilities are valued in accordance with Empery's valuation policy. The valuation of any asset or liability involves inherent uncertainty. The value of a security determined in accordance with the valuation policy may differ materially from the value that could have been realized in an actual sale or transfer for a variety of reasons, including the timing of the transaction and liquidity in the market. Uncertainties as to the valuation of portfolio positions could have an impact on the net asset value of a Fund if the valuation policy or the judgment of the Funds' administrator or Empery's third-party valuation provider regarding the appropriate valuation should prove to be incorrect.

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

The service providers of Empery and the Funds are subject to the same electronic information security threats as Empery. If a service provider fails to adopt or adhere to adequate data security policies, or in the event of a breach of its networks, information relating to the transactions of the Funds and personally identifiable information of investors may be lost or improperly accessed, used or disclosed. The loss or improper access, use or disclosure of Empery's or a Fund's proprietary information may cause Empery or the Fund to suffer, among other things, financial loss, the disruption of its business, liability to third parties, regulatory intervention or reputational damage. Any of the foregoing events could have a material adverse effect on a Fund and investors' investments therein.

Volatility Risk. A Fund's investment program may involve the purchase and sale of relatively volatile securities and/or investments in volatile markets. Fluctuations or prolonged changes in the volatility of such securities and/or markets can adversely affect the value of investments held by a Fund.

Exposure to Material Non-Public Information. From time to time, Empery receives material non-public information with respect to an issuer of publicly traded securities. In such circumstances, a Fund may be prohibited, by law, policy or contract, for a period of time from (i) unwinding a position in such issuer, (ii) establishing an initial position or taking any greater position in such issuer, and/or (iii) pursuing other investment opportunities related to such issuer.

Capital Structure Arbitrage. The success of a Fund's capital structure arbitrage strategy depends upon Empery's ability to identify and exploit the relationships between movements in different securities within an issuer's capital structure (including, bank debt, convertible and non-convertible senior and subordinated debt and preferred and common stock). Identification and exploitation of these opportunities involve uncertainty. There can be no assurance that Empery will be able to locate investment opportunities or to correctly exploit price discrepancies. A reduction in the pricing inefficiency of the markets in which a Fund will seek to invest will reduce the scope for the Fund's investment strategies. In the event that the perceived mispricings underlying a Fund's positions fail to materialize, these investment strategies could be unsuccessful or result in losses.

Event-Driven. The success of a Fund's event-driven investment strategy depends upon Empery's ability to make predictions about (i) the likelihood that an event will occur and (ii) the impact such event will have on the value of a company's securities. If the event fails to occur or it does not have the effect foreseen, losses can result. For example, the adoption of new business strategies or completion of asset dispositions or debt reduction programs by a company may not be valued as highly by the market as Empery had anticipated, resulting in losses. In addition, a company may announce a plan of restructuring which promises to enhance value, but fails to implement it, which can result in losses to investors. In liquidations and other forms of corporate reorganization, the risk exists that the reorganization either will be unsuccessful, will be delayed or will result in a distribution of cash or a new security, the value of which will be less than the purchase price to a Fund of the security in respect of which such distribution was made. The consummation of mergers and tender and exchange offers can be prevented or delayed by a variety of factors, including: (i) opposition of the management or stockholders of the target company, which will often result in litigation to enjoin the proposed transaction; (ii) intervention of a U.S. federal or state regulatory agency; (iii) efforts by the target company to pursue a "defensive" strategy, including a merger with, or a friendly tender offer by, a company other than the offeror; (iv) in the case of a merger, failure to obtain the necessary stockholder approvals; (v) market conditions resulting in material changes in securities prices; (vi) compliance with any applicable U.S. federal or state securities laws; and (vii) inability to obtain adequate financing. Because of the inherently speculative nature of event-driven investing, the results of a Fund's operations may be volatile and be expected to fluctuate from period to period. Accordingly, prospective investors should understand that the results of a particular period will not necessarily be indicative of results that may be expected in future periods.

Diversification and Concentration. Empery may select investments that are concentrated in a limited number or types of securities. In addition, a Fund's portfolio may become significantly concentrated in securities related to a single or a limited number of issuers, industries, sectors, strategies, countries or geographic regions. This limited diversification may result in the concentration of risk, which, in turn, could expose a Fund to losses disproportionate to market movements in general if there are disproportionately greater adverse price movements in such securities.

Long/Short. The success of a Fund's long/short investment strategy depends upon Empery's ability to identify and purchase securities that are undervalued and identify and sell short securities that are overvalued. The identification of investment opportunities in the implementation of a Fund's long/short investment strategies is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. In the event that the perceived opportunities underlying a Fund's positions were to fail to converge toward, or were to diverge further from values expected, a Fund may incur a loss. In the event of market disruptions, significant losses can be incurred which may force a Fund to close out one or more positions. Furthermore, the valuation models used to determine whether a position presents an attractive opportunity consistent with Empery's long/short strategies may become outdated and inaccurate as market conditions change.

Short-Term Market Considerations. Empery's trading decisions may be made on the basis of short-term market considerations, and the portfolio turnover rate could result in significant trading related expenses.

Long-Term. The success of a Fund's long-term investment strategy depends upon Empery's ability to identify and purchase securities that are undervalued and hold such investments so as to maximize value on a long-term basis. In pursuing any long-term strategy, a Fund may forego value in the short-term or temporary investments in order to be able to avail the Fund of additional and/or longer-term opportunities in the future. Consequently, a Fund may not capture maximum available value in the short-term, which may be disadvantageous, for example, for investors who withdraw all or a portion of their investment before such long-term value may be realized by the Fund.

Structured Product Arbitrage. The success of a Fund's structured product arbitrage strategy depends upon Empery's ability to identify and exploit the inefficient pricing of portfolio risk and the implicit correlations of time to default with respect to various categories of structured products and derivatives. In the event that

the perceived mispricings underlying a Fund's positions were incorrect, the Fund could incur losses. In addition, the lack of an established, liquid secondary market for some structured products (including CDOs) may make it difficult to realize the perceived value of such securities.

Leverage for Investment Purposes. The use of leverage will allow a Fund to make additional investments, thereby increasing its exposure to assets, such that its total assets may be greater than its capital. However, leverage will also magnify the volatility of changes in the value of a Fund's portfolio. The effect of the use of leverage by a Fund in a market that moves adversely to its investments could result in substantial losses to the Fund, which would be greater than if the Fund were not leveraged.

Borrowing for Cash Management Purposes. Funds have the authority to borrow for cash management purposes, such as to satisfy withdrawal requests. The rates at and terms on which a Fund can borrow will affect the operating results of the Fund.

Collateral. The instruments and borrowings utilized by a Fund to leverage investments may be collateralized by all or a portion of the Fund's portfolio. Accordingly, a Fund may pledge its securities in order to borrow or otherwise obtain leverage for investment or other purposes. Should the securities pledged to brokers to secure a Fund's margin accounts decline in value, the Fund could be subject to a "margin call", pursuant to which the Fund 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. The banks and dealers that provide financing to a Fund can apply essentially discretionary margin, "haircut", financing and collateral valuation policies. Changes by counterparties in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions at disadvantageous prices. Lenders that provide other types of asset-based or secured financing to a Fund may have similar rights. There can be no assurance that the Partnership will be able to secure or maintain adequate financing.

Lack of Control. A Fund may invest in debt instruments and equity securities of companies that it does not control, which the Fund may acquire through market transactions or through purchases of securities directly from the issuer or other shareholders. Such securities will be subject to the risk that the issuer may make business, financial or management decisions with which the Fund does not agree or that the majority stakeholders or the management of the issuer may take risks or otherwise act in a manner that does not serve the Fund's interests. In addition, a Fund may share control over certain investments with co-investors, which may make it more difficult for the Fund to implement its investment approach or exit the investment when it otherwise would. The occurrence of any of the foregoing could have a material adverse effect on a Fund and the investors' investments therein.

Hedging Transactions. A Fund may utilize securities for risk management purposes in order to: (i) protect against possible changes in the market value of the Fund's investment portfolio resulting from fluctuations in the markets and changes in interest rates; (ii) protect the Fund's unrealized gains in the value of its investment portfolio; (iii) facilitate the sale of any securities; (iv) enhance or preserve returns, spreads or gains on any security in the Fund's portfolio; (v) hedge against a directional trade; (vi) hedge the interest rate, credit or currency exchange rate on any of the Fund's securities; (vii) protect against any increase in the price of any securities the Fund anticipates purchasing at a later date; or (viii) act for any other reason that Empery deems appropriate. A Fund will not be required to hedge any particular risk in connection with a particular transaction or its portfolio generally. Empery may be unable to anticipate the occurrence of a particular risk and, therefore, may be unable to attempt to hedge against it. Empery may also attempt to hedge a risk by an indirect hedge that may not operate as a successful hedge. While a Fund may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Fund than if it had not engaged in any such hedging transaction. Moreover, the portfolio will always be exposed to certain risks that cannot be hedged.

Tax Efficiency. Certain Funds may seek to ensure that some of their investments are subject to long-term capital gains tax treatment and as a result may hold such investments for a longer period than would otherwise be the case if they were not seeking long-term capital gains tax treatment. By holding such

investments for a longer period, Funds may experience poorer overall performance and be exposed to additional risk and volatility than if they had not sought long-term capital gains tax treatment, due to a reduction in the value of such investments during the holding period.

Short Selling. The success of a Fund's short selling investment strategy depends upon Empery's ability to identify and sell short securities that are overvalued. 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 the Fund of buying those securities to cover the short position. There can be no assurance that a Fund will be able to maintain the ability to borrow securities sold short. In such cases, a Fund can be "bought in" (i.e., forced to repurchase securities in the open market to return to the lender). There also can be no assurance that the securities necessary to cover a short position will be available for purchase at or near prices quoted in the market. Purchasing securities to close out a short position can itself cause the price of the securities to rise further, thereby exacerbating the loss. Short strategies can also be implemented synthetically through various instruments and be used with respect to indices or in the over-the-counter market and with respect to futures and other instruments. In some cases of synthetic short sales, there is no floating supply of an underlying instrument with which to cover or close out a short position and a Fund may be entirely dependent on the willingness of over-the-counter market makers to quote prices at which the synthetic short position may be unwound. There can be no assurance that such market makers will be willing to make such quotes. Short strategies can also be implemented on a leveraged basis. Lastly, even though a Fund secures a "good borrow" of the security sold short at the time of execution, the lending institution may recall the lent security at any time, thereby forcing the Fund to purchase the security at the then-prevailing market price, which may be higher than the price at which such security was originally sold short by the Fund. Also, there are costs associated with borrowing securities, some of which may be substantial.

Micro-, Small- and Medium-Capitalization Companies. Investments in securities of micro- and small-capitalization companies involve higher risks in some respects than do investments in securities of larger "blue-chip" companies. For example, prices of securities of micro- and small-capitalization and even medium-capitalization companies are often more volatile than prices of securities of large-capitalization companies and may not be based on standard pricing models that are applicable to securities of large-capitalization companies. Furthermore, the risk of bankruptcy or insolvency of many smaller companies (with the attendant losses to investors) may be higher than for larger, "blue-chip" companies. Finally, due to thin trading in the securities of some micro- and small-capitalization companies, an investment in those companies may be or become illiquid.

PIPE Transactions. Private investments in public companies whose stocks are quoted on stock exchanges or which trade in the over-the-counter securities market, a type of investment commonly referred to as a "PIPE" transaction, may be entered into with smaller capitalization public companies, which will entail business and financial risks comparable to those of investments in the publicly-issued securities of smaller capitalization companies, which may be less likely to be able to weather business or cyclical downturns than larger companies and are more likely to be substantially hurt by the loss of a few key personnel. In addition, PIPE transactions will generally result in a Fund acquiring either restricted stock or an instrument convertible into restricted stock. As with investments in other types of restricted securities, such an investment may be illiquid. A Fund's ability to dispose of securities acquired in PIPE transactions may depend on the registration of such securities for resale. Any number of factors may prevent or delay a proposed registration. Alternatively, it may be possible for securities acquired in a PIPE transaction to be resold in transactions exempt from registration in accordance with Rule 144 under the Securities Act, or otherwise under the U.S. federal securities laws. There can be no guarantee that there will be an active or liquid market for the stock of any small capitalization company due to the possible small number of stockholders. As a result, even if a Fund is able to have securities acquired in a PIPE transaction registered or sell such securities through an exempt transaction, the Fund may not be able to sell all the securities on short notice, and the sale of the securities could lower the market price of the securities. There is no guarantee that an active trading market for the securities will exist at the time of disposition of the securities, and the lack of such a market could hurt the market value of a Fund's investments.

Bankruptcy Claims. A Fund's investments may include debt and equity of financially distressed companies, with such distress existing at the time of the investment or because of financial deterioration of a company. In the event that the issuer files for bankruptcy protection, a Fund will likely be unable to sell its claims without realizing a significant loss and may be unable to recover current interest on such claims during the course of the bankruptcy case. The markets in U.S. bankruptcy claims are generally not regulated by U.S. federal securities laws or the SEC. To the extent debt investment is unsecured (i.e., has no collateral securing repayment), such claims may have a lower priority than secured claims (which have first recourse to the collateral securing such claim). In addition, the debt of an issuer in bankruptcy may be adversely affected by an erosion of the issuer's business and overall value. Accordingly, there can be no guarantee that a debtor will be able to satisfy all of its liabilities or that a Fund will be able to recover the entire amount of its bankruptcy claim. 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 appear and be heard, there can be no assurance that a bankruptcy court would not approve actions that may be contrary to the interests of a Fund (in its role as a creditor). Furthermore, there are instances where creditors lose their priority under Title 11 of the United States Code (the "Bankruptcy Code") (i.e., are equitably subordinated) if, for example, they have engaged in misconduct that harms other creditors. In those cases where a Fund is found to have engaged in such misconduct, the Fund may lose its priority.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, the approval of the plan by creditors and confirmation of the plan by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and a Fund; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the issuer may not be able to reorganize and may be required to sell its assets either as a going concern or as part of a liquidation. As a result, even in those circumstances where a Fund may recover the entire amount of its bankruptcy claim, the Fund may be adversely impacted by any costs incurred by the Fund in representing its interests in a debtor's bankruptcy case.

U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for the purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that a Fund's influence with respect to a class of securities can be lost by virtue of the size of its claim relative to the claims of the entire class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for certain taxes) may impair the recovery of an investment in a bankruptcy claim.

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

Empery, on behalf of a Fund, may elect to serve on creditors' committees, equityholders' committees or other groups to ensure preservation or enhancement of the Fund's positions as a creditor or equityholder. A member of any such committee or group may owe a fiduciary duty and be subject to certain obligations to all members the committee represents and/or to other similarly situated parties. Empery may resign from that committee or group for any reason, including, for example, if Empery concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to the Fund. In such case, the Fund may not realize the benefits, if any, of participation on the committee or group. In addition, if the Fund is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of or increasing its investments in such company while it continues to be represented on such committee or group.

A Fund may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser. Additionally, the claim may be disallowed or subordinated if the bankruptcy court determines that the seller engaged in inequitable conduct that harmed other creditors.

Reorganizations can be contentious and adversarial, and it is by no means unusual for participants to use the threat of litigation and to engage in litigation as a negotiating technique. The expense of defending against claims by third parties and paying any amounts pursuant to settlements or judgments would generally be borne by a Fund.

Convertible Securities. A convertible security may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument. If a convertible security held by a Fund is called for withdrawal, the Fund will be required to permit the issuer to redeem the security, convert it into the underlying common stock or sell it to a third party. Any of these actions could have an adverse effect on the Fund's ability to achieve its investment objective or may limit the upside of a successful investment.

Debt Securities. Debt securities of all types of issuers may have speculative characteristics, regardless of whether they are rated. The issuers of such instruments (including sovereign issuers) may face significant ongoing uncertainties and exposure to adverse conditions that may undermine the issuer's ability to make timely payment of interest and principal in accordance with the terms of the obligations.

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

Prepayment Risk. The frequency at which prepayments (including voluntary prepayments by the obligors and accelerations due to defaults) occur on debt instruments will be affected by a variety of factors including the prevailing level of interest rates and spreads as well as economic, demographic, tax, social, legal and other factors. Generally, obligors tend to prepay their fixed rate obligations when prevailing interest rates fall below the coupon rates on their obligations. Similarly, floating rate issuers and borrowers tend to prepay their obligations when spreads narrow. In general, "premium" securities (securities whose market values exceed their principal or par amounts) are adversely affected by faster than anticipated prepayments, and "discount" securities (securities whose principal or par amounts exceed their market values) are adversely affected by slower than anticipated prepayments. Since many fixed rate obligations will be discount instruments when interest rates and/or spreads are high, and will be premium instruments when interest rates and/or spreads are low, such debt instruments may be adversely affected by changes in prepayments in any interest rate environment.

The adverse effects of prepayments may impact a Fund's portfolio in two ways. First, particular investments may experience outright losses, as in the case of an interest-only instrument in an environment of faster actual or anticipated prepayments. Second, particular investments may underperform relative to hedges that Empery may have constructed for these investments, resulting in a loss to the Fund's overall portfolio. In particular, prepayments (at par) may limit the potential upside of many instruments to their principal or par amounts, whereas their corresponding hedges often have the potential for unlimited loss.

Derivative Instruments. Certain swaps, options and other derivative instruments may be subject to various types of risks, including market risk, liquidity risk, credit risk, legal risk and operations risk. The regulatory

and tax environment for derivative instruments in which a Fund may participate is evolving, and changes in the regulation or taxation of such instruments may have a material adverse effect on a Fund.

Call and Put Options. A Fund may incur risks associated with the sale and purchase of call options and put options. Under a conventional cash-settled option, the purchaser of the option pays a premium in exchange for the right to receive upon exercise of the option (i) in the case of a call option, the excess, if any, of the reference price or value of the underlier (as determined pursuant to the terms of the option) above the option's strike price or (ii) in the case of a put option, the excess, if any, of the option's strike price above the reference price or value of the underlier (as so determined). Under a conventional physically-settled option structure, the purchaser of a call option has the right to purchase a specified quantity of the underlier at the strike price, and the purchaser of a put option has the right to sell a specified quantity of the underlier at the strike price.

A purchaser of an option may suffer a total loss of premium (plus transaction costs) if that option expires without being exercised. An option's time value (i.e., the component of the option's value that exceeds the in-the-money amount) tends to diminish over time. Even though an option may be in-the-money to the purchaser at various times prior to its expiration date, the purchaser's ability to realize the value of an option depends on when and how the option may be exercised. For example, the terms of the transaction may provide for the option to be exercised automatically if it is in-the-money on the expiration date. Conversely, the terms may require timely delivery of a notice of exercise, and exercise may be subject to other conditions (such as the occurrence or non-occurrence of certain events, such as knock-in, knock-out or other barrier events) and timing requirements, including the "style" of the option.

Uncovered option writing (i.e., selling an option when the seller does not own a like quantity of an offsetting position in the underlier) exposes the seller to potentially significant loss. The potential loss of uncovered call writing is unlimited. The seller of an uncovered call may incur large losses if the reference price or value of the underlier increases above the exercise price by more than the amount of any premiums earned. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The seller of an uncovered put option bears a risk of loss if the reference price or value of the underlier declines below the exercise price by more than the amount of any premiums earned. Such loss could be substantial if there is a significant decline in the value of the underlier.

Credit Default Swaps. Credit default swaps can be used to implement Empery's view that a particular credit, or group of credits, will experience credit improvement or deterioration. In the case of expected credit improvement, a Fund may sell credit default protection in which it receives a premium to take on the risk. In such an instance, the obligation of the Fund to make payments upon the occurrence of a credit event creates leveraged exposure to the credit risk of the referenced entity. A Fund may also buy credit default protection with respect to a referenced entity if, in Empery's judgment, there is a high likelihood of credit deterioration. In such instance, the Fund will pay a premium regardless of whether there is a credit event.

Futures Contracts. The value of futures contracts depends upon the price of the securities, such as commodities, underlying them. The prices of futures contracts are highly volatile, and price movements of futures contracts can be influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, as well as national and international political and economic events and policies. In addition, investments in futures contracts are also subject to the risk of the failure of any of the exchanges on which a Fund's positions trade or of its clearing houses or counterparties. Futures positions may be illiquid because certain 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 particular futures contract has increased or decreased by an amount equal to the daily limit, positions in that contract can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. This could prevent a Fund from promptly liquidating unfavorable positions and subject the Fund to substantial losses or prevent it from entering into desired trades. Also, low margin or premiums normally required in such trading may

provide a large amount of leverage, and a relatively small change in the price of a security or contract can produce a disproportionately larger profit or loss. In extraordinary circumstances, a futures exchange or the CFTC could suspend trading in a particular futures contract, or order liquidation or settlement of all open positions in such contract.

Forward Contracts. A Fund may enter into forward contracts and options thereon, including nondeliverable forwards, which are currently not traded through clearinghouses, although this is expected to change. The principals who deal in the forward contract market are not required to continue to make markets in such contracts. There have been periods during which certain participants in forward markets have refused to quote prices for forward contracts or have quoted prices with an unusually widespread between the price at which they were prepared to buy and that at which they were prepared to sell. The imposition of credit controls or price risk limitations by governmental authorities may limit such forward trading to less than that which Empery would otherwise recommend, to the possible detriment of a Fund. In its forward trading, a Fund will be subject to the risk of the failure of, or the inability or refusal to perform with respect to its forward contracts by, the principals with which the Fund trades. Fund assets on deposit with such principals will also generally not be protected by the same segregation requirements imposed on certain regulated brokers in respect of customer funds on deposit with them. Empery may order trades for a Fund in such markets through agents. Accordingly, the insolvency or bankruptcy of such parties could also subject the Fund to the risk of loss.

Exotic Options. Exotic options are typically, but not always, traded over-the-counter. OTC contracts may not trade in a liquid market and pricing may be opaque. The illiquidity of these markets can be exacerbated in times of market stress. A Fund may incur substantial costs entering into and exiting positions that could have a material impact on performance. Exotic options may be subject to a higher degree of pricing risk as demonstrated by instances in which different counterparties in the market employ different valuation and pricing methodologies to the same exotic option. Because exotic options can often be highly customized, there is lower visibility with respect to the pricing and valuation of these instruments. Exotic options may be subject to high levels of price volatility. For example, in the case of barrier options, as the price of the asset underlying the option trades closer to a barrier level, the delta of the option (i.e., the ratio of the change in the price of the underlying asset to the corresponding change in the price of the option) and the gamma of the option (i.e., the rate of change of the delta with respect to the underlying asset's price) may become very high. Exotic options may be subject to higher levels of model risk than commonly traded options because standard models are not able to adequately capture or predict the risks associated with the exotic options. Exotic options may be "path dependent". This means that their terminal value (at exercise or expiration) depends upon the value of the underlying asset, not only at the time of exercise or expiration, but also at prior points in time. In this sense, the option's terminal value depends upon the "path" taken by the underlying asset over the life of the option. For example, a barrier option's value at expiration depends upon both the value of the underlying asset at expiration and whether the past value of the underlying asset ever satisfied a barrier condition. In contrast, a vanilla option (e.g., a call option) is not path dependent. Its value at exercise or expiration depends on the value of the underlying asset only at that point in time. The additional features incorporated by exotic options require additional judgments regarding the likelihood of certain conditions being satisfied, any one of which can result in loss if made incorrectly. An OTC option may be closed out only with the counterparty, although either party may engage in an offsetting transaction that puts that party in the same economic position as if it had closed out the option with the counterparty; however, the exposure to counterparty risk may differ. OTC options generally involve greater credit and counterparty risk than exchange-traded options.

Distressed Obligations. The obligations of issuers in weak financial condition, experiencing poor operating results, having substantial capital needs or negative net worth, facing special competitive or product obsolescence problems (including companies involved in bankruptcy or other reorganization and liquidation proceedings) are likely to be particularly risky investments although they also may offer the potential for correspondingly high returns. Among the risks inherent in investments in troubled entities is the risk that it frequently may be difficult to obtain information as to the true condition of such issuers. Such investments may also be adversely affected by laws relating to, among other things, fraudulent

transfers and other voidable transfers or payments, lender liability and the bankruptcy court's power to disallow, reduce, subordinate, recharacterize debt as equity or disenfranchise particular claims. Such companies' obligations may be considered speculative, and the ability of such companies to pay their debts on schedule could be affected by adverse interest rate movements, changes in the general economic climate, economic factors affecting a particular industry or specific developments within such companies. In addition, there is no minimum credit standard that is a prerequisite to a Fund's investments in any security. Obligations in which a Fund invests may be less than investment grade. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There is no assurance that value of the assets collateralizing a Fund's investments will be sufficient or that prospects for a successful reorganization or similar action will become available. In any reorganization or liquidation proceeding relating to a company in which a Fund invests, the Fund may lose its entire investment, may be required to accept cash or securities with a value less than its original investment and/or may be required to accept payment over an extended period of time. Under such circumstances, the returns generated from a Fund's investments may not compensate investors adequately for the risks assumed. In addition, under certain circumstances, payments and distributions may be disgorged if any such payment is later determined to have been a fraudulent conveyance or a preferential payment. In liquidation (both in and out of bankruptcy) and other forms of corporate reorganization, there exists the risk that the reorganization either will be unsuccessful (due to, for example, failure to obtain requisite approvals), will be delayed (for example, until various liabilities, actual or contingent, have been satisfied) or will result in a distribution of cash or a new security the value of which will be less than the purchase price to a Fund of the security in respect to which such distribution was made.

Equity Securities Generally. The value of equity securities of public and private, listed and unlisted companies and equity derivatives generally varies with the performance of the issuer and movements in the equity markets. As a result, a Fund may suffer losses if it invests in equity instruments of issuers whose performance diverges from Empery's expectations or if equity markets generally move in a single direction and the Fund has not hedged against such a general move. A Fund also may be exposed to risks that issuers will not fulfill contractual obligations such as, in the case of convertible securities or private placements, delivering marketable common stock upon conversions of convertible securities and registering restricted securities for public resale.

Illiquid Securities. Certain securities may be illiquid because, for example, they are subject to legal or other restrictions on transfer or there is no liquid market for such securities. Valuation of such securities may be difficult or uncertain because there may be limited information available about the issuers of such securities. The market prices, if any, for such securities tend to be volatile and may not be readily ascertainable, and a Fund may not be able to sell them when it desires to do so or to realize what it perceives to be their fair value in the event of a sale. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. A Fund may not be able to readily dispose of such illiquid investments and, in some cases, may be contractually prohibited from disposing of such investments for a specified period of time. As a result, a Fund may be required to hold such securities despite adverse price movements. Even those markets which Empery expects to be liquid can experience periods, possibly extended periods, of illiquidity. Occasions have arisen in the past where previously liquid investments have rapidly become illiquid.

Initial Public Offerings. Investments in initial public offerings (or shortly thereafter) may involve higher risks than investments issued in secondary public offerings or purchases on a secondary market due to a variety of factors, including the limited number of shares available for trading, unseasoned trading, lack of investor knowledge of the issuer and limited operating history of the issuer. In addition, some companies in initial public offerings are involved in relatively new industries or lines of business, which may not be widely understood by investors. Some of these companies may be undercapitalized or regarded as developmental stage companies, without revenues or operating income, or the near-term prospects of

achieving them. These factors may contribute to substantial price volatility for such securities and, thus, for the value of a Fund.

Preferred Stock. Investments in preferred stock involve risks related to priority in the event of bankruptcy, insolvency or liquidation of the issuing company and how dividends are declared. Preferred stock ranks junior to debt securities in an issuer's capital structure and, accordingly, is subordinate to all debt in bankruptcy. Preferred stock generally has a preference as to dividends. Such dividends are generally paid in cash (or additional shares of preferred stock) at a defined rate, but unlike interest payments on debt securities, preferred stock dividends are payable only if declared by the issuer's board of directors. Dividends on preferred stock may be cumulative, meaning that, in the event the issuer fails to make one or more dividend payments on the preferred stock, no dividends may be paid on the issuer's common stock until all unpaid preferred stock dividends have been paid. Preferred stock may also be subject to optional or mandatory redemption provisions.

Risk of Early Stage Companies. Investments in the private equity of companies at an early stage of development involves a high degree of business and financial risk. Early-stage companies with little or no operating history may require substantial additional capital to support expansion or to achieve or maintain a competitive position, may produce substantial variations in operating results from period to period or may operate at a loss. Such companies may face intense competition, including competition from companies with greater financial resources, more extensive development, better marketing and service capabilities and a larger number of qualified management and technical personnel. Such risks may adversely affect the performance of such investments and result in substantial losses.

Control Issues. Although Empery may seek protective provisions, including, possibly, board representation, in connection with certain of its private equity investments, to the extent a Fund takes minority positions in companies in which it invests, Empery may not be in a position to exercise control over the management of such companies, and, accordingly, may have a limited ability to protect its position in such companies. In addition, if representatives of Empery were deemed to exercise control of an issuer, it may become subject to periods of trading restrictions based on possession of material non-public information.

Highly Leveraged Companies. Investments in equity of highly leveraged companies involve a high degree of risk. The use of leverage may increase the exposure of such companies to adverse economic factors such as downturns in the economy or deterioration in the conditions of such companies or their respective industries. In the event any such company cannot generate adequate cash flow to meet debt service, a Fund may suffer a partial or total loss of capital invested in the company, which, depending on the size of the Fund's investments, could adversely affect the return on the capital of the Fund.

Undervalued Securities. The identification of investment opportunities in undervalued securities is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. While investments in undervalued securities offer the opportunity for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from Fund's investments may not adequately compensate for the business and financial risks assumed.

Unlisted Securities. Unlisted securities may involve higher risks than listed securities. Because of the absence of any trading market for unlisted securities, it may take longer to liquidate, or it may not be possible to liquidate, positions in unlisted securities than would be the case for publicly traded securities. Companies whose securities are not publicly traded may not be subject to public disclosure and other investor protection requirements applicable to publicly traded securities.

When-Issued and Forward Commitment Securities. The purchase of securities on a "when-issued" basis involves a commitment by a Fund to purchase or sell securities at a future date (typically one or two months later). No income accrues on securities that have been purchased on a when-issued basis prior to delivery to the Fund. When-issued securities may be sold prior to the settlement date. If a Fund disposes of the

right to acquire a when-issued security prior to its acquisition, it may incur a gain or loss. In addition, there is a risk that securities purchased on a when-issued basis may not be delivered to a Fund. In such cases, the Fund may incur a loss.

Non-U.S. Exchanges. A Fund may trade on exchanges or markets located outside the U.S. Trading on such exchanges or markets is not regulated by the SEC and the CFTC and may, therefore, be subject to more risks than trading on U.S. exchanges, such as the risks of exchange controls, expropriation, burdensome taxation, moratoria and political or diplomatic events. Risks in investments in non-U.S. securities may also include reduced and less reliable information about issuers and markets, less stringent accounting standards, illiquidity of securities and markets, higher brokerage commissions and custody fees.

Non-U.S. Investments. Investing in the securities of companies (and, from time to time, governments) outside of the United States involves certain considerations not usually associated with investing in securities of U.S. companies or the U.S. government, including political and economic considerations, such as greater risks of expropriation, nationalization, confiscatory taxation, imposition of withholding or other taxes on interest, dividends, capital gains, other income or gross sale or disposition proceeds, limitations on the removal of assets and general social, political and economic instability; the relatively small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; the evolving and unsophisticated laws and regulations applicable to the securities and financial services industries of certain countries; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict a Fund's investment opportunities. In addition, accounting and financial reporting standards that prevail outside of the U.S. generally are not as high as U.S. standards and, consequently, less information is typically available concerning companies located outside of the U.S. than for those located in the U.S. As a result, a Fund may be unable to structure its transactions to achieve the intended results or to mitigate all risks associated with such markets. It may also be difficult to enforce a Fund's rights in such markets. For example, securities traded on non-U.S. exchanges and the non-U.S. persons that trade these instruments are not subject to the jurisdiction of the SEC or the CFTC or the securities and commodities laws and regulations of the U.S. Accordingly, the protections accorded to a Fund under such laws and regulations are unavailable for transactions on non-U.S. exchanges and with non-U.S. counterparties.

Item 9. DISCIPLINARY INFORMATION

There are no legal or disciplinary events that are material to a client's or prospective client's evaluation of Empery's advisory business or the integrity of its management.

Item 10. OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS

Empery GP, LLC, the General Partner, is an affiliate and related person of Empery. The General Partner serves as the general partner of the Domestic Funds. Any person acting on behalf of the General Partner is subject to the supervision and control of Empery in connection with any investment advisory activities. The General Partner invests directly in the Funds and Empery's principals and employees also invest directly in the Funds. Investments made by such parties are generally not subject to the Management Fee and Performance Fee.

Empery is not engaged in any business other than providing investment advice to the Funds. Neither Empery nor any of its management persons 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 adviser or associated person of any of the foregoing.

Item 11. CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING

Code of Ethics

Empery has adopted a Code of Ethics designed to comply with Rule 204A-1 under the Advisers Act (the “Code”). The Code applies to Empery’s “Supervised Persons,” which includes directors, officers, members and partners of Empery and its General Partner, employees of Empery, and any other person who provides investment advice on behalf of Empery and is subject to Empery’s supervision and control. Supervised Persons includes all “Access Persons,” which includes any partner, officer or director of Empery and any employee or other supervised person of Empery who, in relation to clients: (i) has access to non-public information regarding any purchase or sale of securities, or non-public information regarding securities holdings; or (ii) is involved in making securities recommendations, executing securities recommendations or has access to such recommendations that are non-public. All of Empery’s principals, employees and consultants are deemed to be Supervised Persons and Access Persons.

The Code requires Supervised Persons to comply with applicable federal securities laws and to promptly bring violations of the Code to the attention of Empery’s Chief Compliance Officer (“CCO”). All Supervised Persons are provided with a copy of the Code and are required to acknowledge receipt of the Code on at least an annual basis. Any individual not in observance of the Code may be subject to discipline or termination.

The Code sets out a standard of business conduct that recognizes that Empery is a fiduciary to its clients and that requires Empery and Supervised Persons to place the interests of clients above their own interests. The Code and accompanying policies and procedures describe Empery’s fiduciary duties and responsibilities to its clients and establishes, among other things, Empery’s practices for monitoring the personal securities transactions of Supervised Persons.

To supervise compliance with the provisions in the Code regarding personal securities transactions, Empery requires that Supervised Persons provide, or cause to be provided, to the CCO securities holdings reports upon becoming an Supervised Person and at least annually thereafter, and transaction reports at least quarterly, regarding their personal securities holdings and transactions and those of certain family members. Empery also requires Supervised Persons to receive approval from the CCO prior to making certain types of personal securities transactions, including, but not limited to, investments in any initial public offerings or private placements. Personal trading requests are denied if they could be reasonably expected to have any adverse impact on a Fund.

The Code also includes a summary of Empery’s policy prohibiting the use of material non-public information. In order to prevent inappropriate securities transactions by Empery’s employees, the CCO maintains a list of restricted securities. The restricted securities list is updated regularly and includes all securities where Empery has, or believes it has, come into possession of material non-public information about the issuers of such securities. Supervised Persons are strictly prohibited from trading on behalf of Empery or themselves in restricted securities.

Investors or prospective investors may obtain a copy of Empery’s Code of Ethics by contacting Empery’s Chief Compliance Officer at compliance@emperyam.com or by calling 212-608-3300.

Participation or Interest in Client Transactions; Personal Trading

The fact that Empery, its employees, affiliates or their related persons have financial ownership interests in one or more of the Funds creates a potential conflict in that it could cause Empery to make different investment decisions than if they did not have such financial ownership interests. Further, Empery charges management fees to certain Funds based on a percentage of assets under management. Such an asset-based

fee is payable without regard to the overall success or income earned by the Funds and therefore may create an incentive on the part of Empery to raise or otherwise increase assets under management to a higher level than would be the case if Empery were receiving a lower or no management fee. The receipt of performance-based compensation may create an incentive for Empery to make investments that are riskier or more speculative than would be the case in the absence of a performance-based fee structure. Accordingly, Empery has adopted the Code which requires Empery's employees to place the interests of clients above their own, and Empery has adopted policies and procedures to regularly monitor Fund investments for consistency with each Fund's investment strategies and objectives.

Empery manages investments on behalf of multiple Funds and certain Funds have investment programs that are similar or overlap and may, therefore, participate with each other in investments. A potential conflict of interest may arise due to the fact that Empery and its employees may have investments in some Funds but not in others, or may have different levels of investments in the Funds, and therefore may have financial or other incentives to favor certain Funds over others. Empery has adopted policies and procedures that are designed to ensure that the allocation of investment opportunities among Funds is fair and equitable over time. In addition, because employees have duties in connection with multiple Funds, such individuals may have conflicts of interest in the allocation of responsibilities, services and functions among the Funds. Empery believes that it will continue to have sufficient personnel and resources for employees to perform all of their duties with respect to all of the Funds.

Empery, its employees and its affiliates may invest in the same or related securities that Empery recommends for investment by the Funds. But for the policies and procedures referenced below, this could present a potential conflict of interest where, because of the information of which Empery is aware, Empery and its employees would be in a position to trade in a manner that could adversely affect a Fund (e.g., place trades on behalf of employees before or after trades are executed on behalf of a Fund, in order to benefit from any price movements due to the trades executed on behalf of the Fund). In addition to affecting Empery's objectivity, a Fund could also be harmed by an adverse effect on the price at which its trades are executed.

In an effort to minimize this conflict, as set out above, Empery requires its employees to pre-clear personal securities transactions with the CCO. Personal trading requests are denied if they could be reasonably expected to have any adverse economic impact on a Fund. Empery's employees also provide or arrange for delivery of copies of trade confirmations and brokerage statements that contain details of personal securities transactions in which they or certain family members engage and an annual certification with respect to brokerage accounts. In addition, the Code prohibits Empery and its employees from trading in any securities on its restricted list, which is a list of all securities where Empery has, or believes it has, come into possession of material non-public information about the issuers of such securities.

Empery and its employees are prohibited from engaging in principal transactions except as permitted by the Advisers Act. A principal transaction occurs when an adviser or individuals associated with an adviser buy securities for the adviser or for themselves from a client; or sell securities owned by the adviser or the individuals to a client. The Advisers Act makes it unlawful for any investment adviser, directly or indirectly, acting as principal for its own account, to knowingly sell any security to, or purchase any security from, a client without disclosing to the client in writing the capacity in which the adviser is acting and obtaining the client's consent to the transaction. This rule may apply to certain transactions involving accounts in which investment advisers have interests, such as private fund investments by the adviser's owners, principals or employees. The SEC has indicated that when an investment adviser and/or its controlling persons own more than 25% of a fund's outstanding securities, it would be effectively treated as a principal transaction if such an account were to engage in a trade with another client account or fund. Empery has adopted policies and procedures for monitoring the level of proprietary ownership in each Fund and for obtaining the requisite consent before engaging in a transaction that would be considered a principal transaction under applicable SEC guidance.

Empery and its employees are prohibited from engaging in agency cross transactions. An agency cross transaction occurs when the adviser acts as an investment adviser in relation to a transaction in which any person controlled by or under common control with the adviser acts as broker for both the advisory client and for another person on the other side of the transaction.

As further described in Item 12, Empery may cause one or more Funds to engage in “cross trades” via the purchase or acquisition of a security from, or the sale or transfer of a security to, another Fund, provided that the transfer is consistent with Empery’s fiduciary obligations to each Fund participating in the cross trade.

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

Item 12. BROKERAGE PRACTICES

As investment adviser to the Funds, Empery has discretionary authority to determine which securities and the amounts of securities that are bought or sold. When performing investment advisory services, Empery generally has complete discretion in deciding which brokers and dealers to use for Fund transactions and in negotiating the commissions or other compensation payable to such brokers and dealers.

In addition to using brokers as “agents” and paying trading commissions, Empery may buy or sell securities directly from or to dealers acting as principal at prices that include markups or markdowns, and may buy securities from underwriters or dealers in public offerings at prices that include compensation to underwriters and dealers.

As Empery’s clients are private investment funds, Empery selects all broker-dealers and does not permit clients to direct any brokerage decisions.

Selection Criteria

Portfolio transactions for the Funds will be allocated to brokers and dealers on the basis of numerous factors and not necessarily lowest pricing. Brokers and dealers may provide other services that are beneficial to Empery and/or certain Funds, but not beneficial to all Funds. Subject to best execution, in selecting brokers and dealers (including prime brokers) to execute transactions, provide financing and securities on loan, hold cash and short balances and provide other services, Empery may consider, among other factors that are deemed appropriate to consider under the circumstances, the following: the ability of the brokers and dealers to effect the transaction; the brokers’ or dealers’ facilities, reliability and financial responsibility; the price of the security and the broker’s commission rates; the perceived ability to achieve the best price considering experience and execution history; access to deal flow; confidentiality of orders; order size and liquidity; research, custodial and other services; and the provision by the brokers of capital introduction, talent introduction, marketing assistance, consulting with respect to technology, operations and equipment, commitment of capital, and access to company management.

Accordingly, the prices and commission rates (or dealer markups and markdowns arising in connection with riskless principal transactions) charged to the Funds by brokers or dealers in the foregoing circumstances may be higher than those charged by other brokers or dealers that may not offer other services. Empery need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost or spread. Generally, neither Empery nor the Funds separately compensates any broker or dealer for any of these other services.

Empery maintains policies and procedures to review the quality of executions, including periodic reviews by its investment professionals.

Research and Other Soft Dollar Benefits

While Empery does not currently do so, from time to time it may pay a broker-dealer commissions (or markups or markdowns with respect to certain types of riskless principal transactions) for effecting Fund transactions in excess of that which another broker-dealer might have charged for effecting the same transaction in recognition of the value of the brokerage and research services provided by the broker-dealer (“soft dollars”). Empery will effect such transactions, and receive such brokerage and research services, only to the extent that they fall within the safe harbor provided by Section 28(e) of the Exchange Act and subject to prevailing guidance provided by the SEC regarding Section 28(e).

Also, consistent with Section 28(e), research products or services obtained with “soft dollars” generated by a Fund may be used by Empery to service one or more other Funds, including Funds that may not have paid for the soft dollar benefits. Empery will not seek to allocate soft dollar benefits to accounts in proportion

to the soft dollar credits the accounts generate. Where a product or service obtained with soft dollars provides both research and non-research assistance to Empery (i.e., a “mixed use” item), Empery will make a good faith allocation of the cost which may be paid for with soft dollars. In making good faith allocations of costs between administrative benefits and research and brokerage services, a conflict of interest may exist by reason of Empery’s allocation of the costs of such benefits and services between those that primarily benefit Empery and those that primarily benefit the Funds.

If Empery were to use brokerage commissions (or markups or markdowns) generated by any Funds to obtain research or other products or services, Empery would receive a benefit because it does not have to produce or pay for such products or services. While Empery is obligated to seek best execution for each Fund, the fact that Empery can obtain or receive such products or services may create an incentive for it to select or recommend a particular broker-dealer based on Empery’s interests, to the exclusion of another broker-dealer that offers certain business terms that may be more favorable to one or more Funds.

If Empery were to use soft dollars, at least annually it would consider the amount and nature of research and research services provided by broker-dealers, as well as the extent to which such services are relied upon, and attempt to allocate a portion of the brokerage business of its accounts on the basis of that consideration. Broker-dealers may suggest a level of business they would like to receive in return for the various products and services they provide. Actual brokerage business received by any broker-dealer may be less than the suggested allocation, but could exceed the suggested level, because total brokerage is allocated on the basis of all of the considerations described above. In no case will Empery make binding commitments as to the level of brokerage commissions it will allocate to a broker-dealer, nor will it commit to pay cash if any informal targets are not met. A broker-dealer will not be excluded from receiving business because it has not been identified as providing research products or services.

Allocation of Investment Opportunities and Order Aggregation

As noted above, Empery manages investments on behalf of multiple Funds, and certain Funds have investment programs that are similar or overlap and may, therefore, participate with each other in investments. Empery has adopted policies and procedures that are designed to ensure that the allocation of investment opportunities among Funds is fair and equitable over time. The allocation of investment opportunities will be determined by taking into consideration relevant factors, including but not limited to each Fund’s investment objective and overall holdings, liquidity or cash availability, total assets, and any regulatory restrictions or limitations.

If Empery determines that the purchase or sale of a security is appropriate with regard to multiple Funds at or near the same time, Empery may, but is not obligated to, purchase or sell such a security on behalf of such Funds with an aggregated order, for the purpose of reducing transaction costs, to the extent permitted by applicable laws. When an aggregated order is filled through multiple trades at different prices on the same day, each participating Fund will receive the average price, with transaction costs generally allocated pro rata based on the size of each Fund’s participation in the order (or allocation in the event of a partial fill) as determined by Empery. In the event of a partial fill, allocations may be modified on a basis that Empery deems to be appropriate, including, for example, to avoid odd lots. When orders are not aggregated, trades generally will be processed in the order that they are placed with the broker or counterparty selected by Empery. As a result, certain trades in the same security for one Fund (including a Fund in which Empery and its employees may have a direct or indirect interest) may receive more or less favorable prices or terms than another Fund, and orders placed later may not be filled entirely or at all, based upon the prevailing market prices at the time of the order or trade. In addition, some opportunities for reduced transaction costs and economies of scale may not be achieved.

From time to time, a Fund could be disadvantaged because of activities conducted by Empery and its affiliates for other Funds as a result of, among other things, the difficulty of liquidating an investment for more than one Fund when the market cannot absorb the sale of the combined positions or Empery’s determination that a particular investment is not appropriate for a particular Fund.

Trade Errors

While Empery endeavors at all times to enter trades correctly, errors may sometimes occur. It is Empery's policy and practice to seek to identify and correct trade errors promptly. Should Empery discover a trade error attributable to the gross negligence, willful misconduct or bad faith of Empery or its employees, it is Empery's policy to correct the error so as to place a Fund in as good a position as it would have been had the error not occurred. Trade errors that are not attributable to the gross negligence, willful misconduct or bad faith of Empery or its employees shall be borne by the Fund. Should correction of a trade error result in any profit, all such profits are retained by the applicable Fund.

Cross Trades

Empery has determined and may in the future determine that it would be in the best interests of a Fund and one or more other Funds to transfer a security from one to another ("cross trade") for a variety of reasons, including, without limitation, tax purposes, liquidity purposes, to rebalance the portfolios of the Funds or to reduce transaction costs that may arise in an open market transaction. When Empery decides to engage in a cross trade, it will determine that the trade is in the best interests of both Funds involved and take steps to ensure that the transaction is consistent with its duty to obtain best execution for each Fund.

Empery may execute cross trades with the assistance of a broker-dealer who executes and books the transaction at the close of the market on the day of the transaction, or as an "internal cross," where Empery instructs the custodian for the Funds to book the transaction at the price determined in accordance with Empery's valuation policy. If Empery effects an internal cross, it will not receive any fee in connection with the completion of the transaction.

Item 13. REVIEW OF ACCOUNTS

The Funds' portfolios are under continuous review and their performance is analyzed daily by Empery's Chief Investment Officer, Chief Operating Officer, portfolio manager and other personnel. Empery's investment and finance personnel are responsible for ensuring the accuracy of trade confirmations and related documents, and they perform a daily position reconciliation between Empery's portfolio accounting and the records of the prime broker to the Funds. In addition, the Chief Compliance Officer, with the assistance of other employees, periodically reviews Empery's practices to ensure consistency with applicable laws and regulations.

A review of a Fund may also be triggered by any unusual activity or special circumstances.

Generally, investors will receive the following written reports: (i) monthly unaudited, estimated net asset value statements and quarterly reports of the performance of the Funds along with a commentary by Empery; and (ii) annual audited financial statements for the Funds. Empery may also provide certain investors with information on a more frequent and detailed basis if requested by the investor and agreed to by Empery.

Some investors in a Fund may receive additional and/or different information about the Fund than other investors, which is in addition to information provided in a Fund's regular reports to investors, and such information may provide such investors with greater insight into the Fund's activities. This may enhance those investors' ability to make investment decisions with respect to the Fund and possibly affect their decision to request a redemption from, or make an additional subscription to, the Fund.

Item 14. CLIENT REFERRALS AND OTHER COMPENSATION

Empery does not receive economic benefits from non-clients for providing investment advice and other advisory services.

Neither Empery nor any related person directly or indirectly compensates any person who is not a supervised person, including third-party solicitors or placement agents, for referring prospective clients or investors to Empery. Empery reserves the right to enter into arrangements in the future to compensate certain third-party placement agents and/or others for referring prospective clients to Empery.

Item 15. CUSTODY

Empery is deemed to have custody of the Funds' assets pursuant to Rule 206(4)-2 under the Advisers Act (the "Custody Rule") by virtue of: (i) its access to the Funds' assets and authority to deduct fees and other expenses from a Fund's account; and (ii) services provided by Empery and its affiliate, the General Partner, to the Funds.

While Empery is subject to the Custody Rule, it is not required to comply (or is deemed to have complied) with certain requirements of the Custody Rule with respect to each Fund because it will comply with the provisions of the so-called "Pooled Vehicle Annual Audit Exception," which, among other things, requires that each Fund be subject to audit at least annually by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and requires that each Fund distribute its audited financial statements to all investors within 120 days of the end of its fiscal year.

Item 16. INVESTMENT DISCRETION

Subject to the investment objectives, policies and restrictions of each Fund as set forth in the offering memorandum and other governing documents of such Fund, Empery will have discretionary authority to determine the type, amount and price of securities and investments to be bought and sold on behalf of each Fund, including the selection of, and commissions paid to, broker-dealers. Empery is provided with this authority pursuant to an investment management agreement with the Funds.

Item 17. VOTING CLIENT SECURITIES

As applicable, Empery has the authority pursuant to the governing documents of the Funds to vote proxies solicited by the issuers of securities held by the Funds. Empery has adopted written policies and procedures governing the voting of such proxies. According to such policies, Empery will vote proxies in the best interests of the Funds, generally with the goal of maximizing value for the Funds.

Empery believes that taking the following guidelines into consideration in voting proxies is in the best interests of the Funds:

- Generally, Empery will vote for routine corporate housekeeping proposals, including election of directors (where no corporate governance issues are implicated), selection of auditors, and increases in authorized shares of common stock or reclassification of common stock.
- Generally, Empery will vote against proposals that make it more difficult to replace members of the issuer's board of directors, including proposals to stagger the board, cause management to be overrepresented on the board, introduce cumulative voting, introduce unequal voting rights, and create supermajority voting.
- For specific proposals, Empery will determine whether a proposal is in the best interests of the Funds and may take into account the following factors, among others: the potential effect of the vote on the value of the client's investments; whether the proposal was recommended by management and Empery's opinion of management; whether the proposal acts to entrench existing management; whether the proposal fairly compensates management for past and future performance; and other factors particular to the issuer and the matter under consideration.

When Empery receives proxy voting materials with respect to an investment, the proxy is provided to the investment professional who will consider how to vote the proxy. If no material conflict of interest has been identified, the investment professional will vote the proxy.

In certain circumstances, Empery may refrain from voting if it determines that refraining from voting is in the best interests of the applicable Funds. For example, Empery may determine not to vote if the costs associated with voting outweigh the benefits to a Fund, or if the circumstances make such an abstention or withholding otherwise advisable and in the best interest of a Fund. Empery may also determine not to vote proxies relating to securities in which Funds have no position as of the receipt of the proxy (for example, when Empery has sold, or has otherwise closed, a Fund position after the proxy record date but before the proxy receipt date).

The Chief Compliance Officer will examine any conflicts that may exist between the interests of Empery and the Funds with respect to proxy voting. This examination will include a review of the relationship of Empery, its employees and its affiliates with the issuer of the security and any of the issuer's affiliates to determine if the issuer is a client or affiliate of Empery or has some other relationship with Empery, its employees or the Funds. If a material conflict of interest is identified, a meeting will be convened of senior management, the relevant investment professional and the Chief Compliance Officer. This group will determine the course of action believed to be in the best interests of the Funds, which may include voting in accordance with the general voting guidelines or some other method.

Clients may obtain a copy of Empery's proxy voting policies and procedures and information about how Empery voted a client's proxies by contacting Empery's Chief Compliance Officer at compliance@emperyam.com or by phone at 212-608-3300.

It is Empery's policy to consider whether to participate in class action lawsuits on behalf of the Funds on a case-by-case basis. When Empery receives a notification of a class action claim, the applicable investment

professional will determine whether any Funds are eligible to participate and evaluate the claim based on the nature of the claim, prospects for recovery, resources required to pursue the claim, and other relevant factors pertaining to the particular claim.

Item 18. FINANCIAL INFORMATION

Empery is not required to provide a balance sheet for its most recent fiscal year, does not have a financial condition that is reasonably likely to impair its ability to meet contractual commitments to clients, and has not been the subject of any bankruptcy petition at any time during the past ten years.