



**FORM ADV  
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION  
PART 2A: FIRM BROCHURE**

**ACRES CAPITAL, LLC  
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UNIONDALE, NEW YORK 11556  
PHONE: (516) 535-0015**

**DATE OF BROCHURE: MARCH 28, 2024**

**WWW.ACRESCAP.COM**

This Brochure provides information about the qualifications and business practices of ACRES Capital, LLC (“ACRES”) and certain of its subsidiaries and affiliates that are either (a) considered “relying advisers” in accordance with Form ADV’s General Instructions or (b) organized as general partners or managing members of its collective investment vehicle clients and are relying on ACRES’ registration as an investment adviser in accordance with the Letter dated December 8, 2005 from the United States Securities and Exchange Commission (the “SEC”) to the American Bar Association Subcommittee on Private Investment Entities and Form ADV’s General Instructions (all such subsidiaries and affiliates, together with ACRES, collectively, “ACRES”). If you have any questions about the contents of this Brochure, please contact Jaclyn Jesberger, ACRES’ Chief Compliance Officer, directly at (516) 882-1662 or by e-mail at [jjesberger@acrescap.com](mailto:jjesberger@acrescap.com).

The information in this Brochure has not been approved or verified by the SEC or by any state securities authority.

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

Registration as an investment adviser does not imply a certain level of skill or training.



## ITEM 2: MATERIAL CHANGES

This Brochure updates ACRES' previous Brochure dated June 7, 2023, as follows:

1. Updates ACRES' client assets under management as of December 31, 2023. (Item 4.E.)
2. Updates to certain risk factors related to the replacement of LIBOR with SOFR. (Item 8.B.)
3. Includes additional risk factors related to ACR and any guarantees of debt and contingent obligations of its subsidiaries or joint venture partners. (Item 8.B.)
4. Includes additional risk factors related to ACR and additional capital for debt facilities used to finance its investments. (Item 8.B.)
5. Includes additional risk factors related to ACR and investments in mezzanine debt, preferred equity, and mezzanine or subordinated CMBS tranches. (Item 8.B.)
6. Includes additional risk factors related to ACR and preferred equity investments. (Item 8.B.)
7. Updates certain risk factors for COVID-19. (Item 8.B.)
8. Removes ACRES Commercial Mortgage Holdings, LLC and ACRES Commercial Mortgage, LLC as financial industry affiliates. (Item 10.C.)

*The information set forth in this Brochure is qualified in its entirety by reference to a Client's Governing Documents (as defined herein) and/or offering documents. In the event of a conflict between the information set forth in this Brochure and the information set forth in a Client's Governing Documents and/or offering documents, the Client's Governing Documents and/or offering documents shall take precedence.*



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## ITEM 4: ADVISORY BUSINESS

### A. BACKGROUND

ACRES Capital, LLC (“ACRES”), a New York limited liability company, is an SEC-registered investment adviser that began providing investment advisory services in 2012. ACRES is wholly-owned by ACRES Capital Corp. (“ACRES Parent”), a Delaware corporation. ACRES Parent was formed in 2018 and owns a number of operating entities (in addition to ACRES) that are engaged in originating, structuring, underwriting and managing middle market commercial real estate debt investments.

### B. TYPES OF ADVISORY SERVICES OFFERED

ACRES serves as investment manager to ACRES Mortgage Fund, LTD. (“AMF”), a private fund, and various separately managed accounts that invest in commercial mortgage loan investments, commercial real estate and related assets.

ACRES also serves as investment manager to ACRES Commercial Realty Corp. (“ACR”), a publicly-traded real estate investment trust (“REIT”) (NYSE: ACR) that focuses on originating, holding and managing commercial real estate mortgage loans and other commercial real estate-related debt investments. Greater detail regarding ACR, its portfolio holdings, and risks associated with those investments may be found on ACR’s website, [www.acresreit.com](http://www.acresreit.com), or on the SEC’s website, [www.sec.gov](http://www.sec.gov).

#### ***RELYING ADVISERS***

Certain affiliates of ACRES (each, a “**Relying Adviser**”) also provide investment advisory services, as follows:

- (a) ACRES Collateral Manager, LLC (“**ACRES Collateral Manager**”), a wholly-owned subsidiary of ACRES, serves as collateral manager for various issuers of collateralized loan obligations (each, a “**CLO**”).

The Relying Adviser (i) comprises the ACRES group of “Relying Advisers,” (ii) provides, is deemed to provide or has the authority to provide investment advisory services through ACRES’ single advisory business and (iii) is relying on ACRES’ registration with the SEC, in accordance with Form ADV’s General Instructions. See also “Miscellaneous; Additional Information” below.

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Each reference herein to “ACRES” shall include ACRES and ACRES Collateral Manager. Each reference herein to “**Fund**” shall include the existing private fund and any private fund formed in the future for which ACRES serves as investment manager, investment adviser or other similar role. Each reference herein to “**Separate Account**” shall include the existing separately managed accounts and any separately managed accounts formed in the future for which ACRES serves as investment manager, investment adviser or other similar role. Each reference herein to “**Client**” shall include a Fund, a Separate Account, a CLO and ACR.



## C. CLIENT INVESTMENT GUIDELINES AND PARAMETERS

### *AMF*

ACRES serves as investment manager to AMF pursuant to an investment management agreement (the “**Investment Management Agreement**”) between AMF and ACRES. ACRES also operates in accordance with the terms set forth in the articles of association (together with the Investment Management Agreement and, as applicable, any side letter agreements negotiated with investors in AMF, the “**Fund Governing Documents**”) of AMF, which includes specific information concerning the operation and management of AMF. ACRES has the authority to recommend all investment decisions for AMF, subject to compliance with the investment criteria set forth in the Fund Governing Documents. Such criteria generally include, among other things, (i) approval by the applicable AMF’s board of directors, limited partners, advisory committee or independent representative(s) (as applicable) with respect to any affiliate transaction between AMF, on the one hand, and ACRES, one of its affiliates or a Client, on the other hand. See also Item 16 below.

ACRES identifies investment opportunities for AMF and participates in the acquisition, management, monitoring and disposition of AMF’s investments. Except for the initial determination as to a prospective investor’s qualifications for investment in AMF, the individual needs of the limited partners or members in AMF are not considered in the management of AMF and are not the basis of investment decisions by ACRES. Investment advice is provided directly to AMF, and not individually to the investors in AMF.

ACRES Parent or an affiliate may organize a Fund in the future that may offer its interests or investors may purchase interests in a Fund in a secondary transaction. Interests in a Fund are offered only to persons that are (i) “accredited investors,” as defined in Regulation D under the Securities Act of 1933, as amended (the “**Securities Act**”) and (ii) either “qualified purchasers” or “knowledgeable employees,” each as defined in the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), and the rules thereunder.

### *SEPARATE ACCOUNTS*

ACRES serves as investment manager to each Separate Account pursuant to an investment management agreement (each, a “**Separate Account Agreement**”) between each Separate Account and ACRES. Each Separate Account has a unique investment strategy and the Separate Account Agreement for each Separate Account sets forth the investment criteria for such Separate Account. ACRES identifies investment opportunities for each Separate Account and participates in the management and monitoring of such Separate Account’s investments.

### *ACR*

ACRES provides investment advisory services to ACR in accordance with a management agreement (the “**ACR Management Agreement**”) between ACRES and ACR. The ACR Management Agreement sets forth the specific services that will be provided by ACRES on behalf of ACR. The ACR Management Agreement requires ACRES to manage the business affairs of ACR in conformity with the policies and investment guidelines established by ACR’s board of directors. ACRES’ role as manager is under the supervision and direction of ACR’s board of directors. Pursuant to the ACR Management Agreement, ACRES is responsible for the selection, purchase and sale of portfolio investments, ACR’s financing activities, and providing ACR with



investment advisory services. Investment advice is provided directly to ACR, and not individually to its shareholders.

#### ***CLOs***

ACRES Collateral Manager serves as collateral manager for each CLO pursuant to a collateral management agreement among each CLO, its trustee and ACRES Collateral Manager (each, a “**CLO Management Agreement**”). As collateral manager, ACRES Collateral Manager has the authority to make all investment decisions for each CLO, subject to compliance with the investment criteria set forth in the indenture, pooling and servicing agreement and/or other governing documents for the particular CLO (together with each CLO Management Agreement, the “**CLO Governing Documents**”). Such criteria generally includes, among other things, in the case of an acquisition of an investment asset by a CLO, (i) approval by such CLO’s advisory committee, advisory management committee or investment management committee, as applicable, with respect to any affiliate transaction between the CLO and ACRES Collateral Manager or an affiliate and (ii) receipt of a no-downgrade confirmation by one or more rating agencies. See also Item 16 below.

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The Fund Governing Documents, the Separate Account Agreements, the ACR Management Agreement and the CLO Governing Documents are collectively referred to herein as the “**Governing Documents**.”

#### **D. WRAP FEE PROGRAMS**

ACRES does not participate in wrap programs.

#### **E. CLIENT ASSETS UNDER MANAGEMENT**

As of December 31, 2023, ACRES manages twelve Client accounts with regulatory assets under management of \$3,648,691,083, as follows:

- (a) ACRES manages four Client accounts on a discretionary basis with regulatory assets under management of \$3,497,478,321.
- (b) ACRES manages eight Client accounts on a non-discretionary basis with regulatory assets under management of \$151,212,762.

### **ITEM 5: FEES AND COMPENSATION**

#### **A. COMPENSATION**

ACRES is compensated pursuant to the terms set forth in the Fund Governing Documents, Separate Account Agreements and ACR Management Agreement. ACRES’ fees are paid (i) with respect to AMF, directly by AMF, (ii) with respect to each Separate Account, directly by the owner of the Separate Account, and (iii) with respect to ACR, directly by ACR.



### ***AMF***

As compensation for investment supervisory services rendered to AMF, ACRES receives from AMF an advisory fee (a “**Management Fee**”). Management Fees paid by AMF are indirectly borne by investors in AMF.

For AMF, ACRES is entitled to receive a Management Fee, based upon Net Asset Value (as defined in AMF’s Fund Governing Documents). Fees range from 0% to 2.75%. Information about the fees paid by each class of investor is set forth in AMF’s Fund Governing Documents.

AMF also pays a servicing fee to ACRES Capital Servicing, LLC (“**ACRES Capital Servicing**”), a wholly-owned subsidiary of ACRES (a “**Servicing Fee**”), payable quarterly in arrears on the first business day of each calendar quarter, calculated monthly as of the last day of each month of the prior calendar quarter, and calculated as follows: with respect to all Sub-Classes, 15 basis points (0.15%) per annum of Net Asset Value (as defined in AMF’s Fund Governing Documents).

Certain investors in AMF may pay no (or a reduced) Management Fee, Servicing Fee or carried interest in connection with their investment in AMF. Notwithstanding that these investors will pay no (or a reduced) Management Fee, Servicing Fee or carried interest, these investors will bear their pro rata share of Fund expenses.

ACRES is responsible for its own operating expenses incurred in the performance of its obligations under the Investment Management Agreement. ACRES is entitled to reimbursement by AMF for operating expenses of AMF (as described below under “Additional Fees and Expenses”) paid by ACRES.

The Investment Management Agreement may be terminated by either ACRES or AMF upon ninety (90) days’ prior written notice to the other party.

### ***SEPARATE ACCOUNTS***

For the Separate Accounts, ACRES is generally entitled to a Management Fee and Servicing Fee for servicing, management and origination services. Such fees are generally based on a percentage of the aggregate amount invested at cost for the investments made for the account. Fees are individually negotiated and may be different than the terms and conditions that apply to other Clients.

ACRES is also entitled to an incentive fee from certain Separate Accounts in the event performance hurdles set forth in such Separate Account’s Separate Account Agreement are achieved. Please refer to Item 6 for additional information regarding performance-based compensation.

Each Separate Account Agreement sets forth the fees to be paid to ACRES by a Separate Account. ACRES is responsible for its own operating expenses incurred in the performance of its obligations under each Separate Account Agreement. ACRES is entitled to reimbursement by the owner of a Separate Account for the operating expenses of such Separate Account paid by ACRES.

Each Separate Account Agreement sets forth the termination right(s) of ACRES and the owner of a Separate Account.



## **ACR**

For ACR, ACRES receives a monthly base management fee (the “**Base Management Fee**”), calculated and paid monthly in arrears, equal to 1/12th of the amount of ACR’s Equity (as defined in the ACR Management Agreement) as of the end of such month, multiplied by 1.50%. provided, however that for each calendar month from July 31, 2020 through July 31, 2022, such fee shall be equal to the greater of (A) \$442,000 and (B) the Base Management Fee.

ACRES also charges a quarterly performance fee (the “**Incentive Fee**”) to ACR, calculated quarterly through the fiscal quarter ending September 30, 2022 as follows: (A) 20% of the amount by which ACR’s Earnings Available for Distribution (as defined in the ACR Management Agreement) for a quarter exceeds the product of (i) the weighted average of (x) the book value divided by 10,293,783 and (y) the per share price (including the conversion price, if applicable) paid for common shares in each offering (or issuance upon the conversion of convertible securities) by ACR subsequent to September 30, 2017, multiplied by (ii) the greater of (x) 1.75% and (y) 0.4375% plus one-fourth of the ten-year U.S. Treasury Rate for such quarter; multiplied by (B) the weighted average number of common shares outstanding during such quarter; subject to adjustment (a) to exclude events pursuant to changes in generally accepted accounting principles (“**GAAP**”) or the application of GAAP as well as non-recurring or unusual transactions or events, after discussion between ACRES and ACR’s independent directors and approval by a majority of the independent directors in the case of non-recurring or unusual transactions or events, and (b) to deduct an amount equal to any fees paid directly by a taxable REIT subsidiary (a “**TRS**”) (or any subsidiary thereof) to employees, agents and/or affiliates of ACRES with respect to profits of such TRS (or subsidiary thereof) generated from the services of such employees, agents and/or affiliates, the fee structure of which shall have been approved by a majority of ACR’s independent directors and which fees may not exceed 20% of the net income (before such fees) of such TRS (or subsidiary thereof). With respect to each fiscal quarter commencing with the quarter ending December 31, 2022, the Incentive Fee is calculated as follows: (A) *for the first full calendar quarter ending December 31, 2022*, the product of (i) 20% and (ii) the excess of (1) ACR’s Earnings Available for Distribution (as defined in the ACR Management Agreement) for such calendar quarter, over (2) the product of (a) ACR’s Book Value Equity (as defined in the ACR Management Agreement) as of the end of such calendar quarter, and (b) 7% per annum; (B) *for each of the second, third and fourth full calendar quarters following the calendar quarter ending December 31, 2022*, the excess of (i) the product of (1) 20% and (2) the excess of (a) ACR’s Earnings Available for Distribution (as defined in the Management Agreement) for the calendar quarter(s) following September 30, 2022, over (b) the product of (x) ACR’s Book Value Equity (as defined in the ACR Management Agreement) in the calendar quarter(s) following September 30, 2022, and (y) 7% per annum, over (ii) the sum of any Incentive Fee paid to ACRES with respect to the prior calendar quarter(s) following September 30, 2022 (other than the most recent calendar quarter); and (C) *for each calendar quarter thereafter*, the excess of (i) the product of (1) 20% and (2) the excess of (a) ACR’s Earnings Available for Distribution (as defined in the Management Agreement) for the previous 12-month period, over (b) the product of (x) ACR’s Book Value Equity (as defined in the ACR Management Agreement) in the previous 12-month period, and (y) 7% per annum, over (ii) the sum of any Incentive Fee paid to ACRES with respect to the first three calendar quarters of such previous 12-month period; provided, however, that no Incentive Fee shall be payable with respect to any calendar quarter unless ACR’s Earnings Available for Distribution (as defined in the ACR Management Agreement) for the twelve most recently completed calendar quarters (or such lesser number of completed calendar quarters from September 30, 2022) in the aggregate is greater than zero.





In addition, ACR may refinance an investment that was previously held by another ACRES Client. In such cases, ACRES and its affiliates are entitled to receive an incentive fee upon the payoff of the initial loan. Each such investment opportunity will be subject to the approval of ACR's independent investment committee.

ACRES and its affiliates are also reimbursed from ACR for ACRES' expenses for (i) personnel of ACRES or its affiliates for their services in connection with the making of fixed-rate commercial real estate loans by ACR, in an amount equal to one percent of the principal amount of each such loan made, (ii) out-of-pocket expenses and certain other costs incurred by ACRES and its affiliates that relate directly to ACR and ACR's operations, and (iii) the wages, salaries and benefits of ACR's Chief Financial Officer and a portion of the wages, salaries and benefits of accounting, finance, tax and investor relations professionals, in proportion to such personnel's percentage of time allocated to ACR's operations. Please refer to Item 5.C. below for other costs and expenses payable by ACR.

For a more detailed discussion of ACRES' fees and compensation with respect to ACR, please refer to a copy of ACR's SEC Form 10-K for the fiscal year ended December 31, 2023.

### ***CLOs***

ACRES Collateral Manager, in its capacity as collateral manager for the CLOs, has waived any Collateral Manager Fees payable to it or any of its affiliates for so long as it or any of its affiliates acts in the capacity as collateral manager for the CLOs and is also the manager of ACR.

For a more detailed discussion of ACRES Collateral Manager's fees and compensation with respect to the CLOs, please refer to the CLO Governing Documents.

## **B. PAYMENT OF FEES**

AMF pays ACRES its Management Fee as set forth in the applicable Fund Governing Documents described above. Each Separate Account pays ACRES its Management Fee as set forth in the applicable Separate Account Agreement described above. ACR pays ACRES its Management Fee and Incentive fee as set forth in the ACR Management Agreement described above. The CLOs do not pay fees to ACRES, as set forth in the CLO Governing Documents described above.

## **C. ADDITIONAL FEES AND EXPENSES**

### ***AMF & SEPARATE ACCOUNTS***

Other costs and expenses payable by AMF generally include (i) costs and expenses incurred in connection with the initial offering of interests and the formation and organization of AMF, any subsidiaries, any alternative investment or special purpose vehicles and any other entities formed to facilitate the investment objectives of AMF, subject to limits in the Fund Governing Documents, and (ii) costs and expenses of operating AMF, which include, among other items, the following fees and expenses relating to the business and investment activities of AMF: (a) administrative expenses related to the operation of AMF, including the fees and expenses of accountants, lawyers, directors, administrators, auditors and other professionals and service providers incurred in connection with AMF's annual audit, data processing, investment-level management and servicing, recordkeeping, legal, compliance, financial reporting, legal opinions, tax planning, tax projections, tax strategy and tax return preparation, as well as the expenses associated with the preparation and



distribution of reports; (b) management fees, servicing fees and all other fees payable in exchange for services to AMF; (c) fees, costs and expenses, if any, incurred in evaluating, negotiating, structuring, underwriting, acquiring, appraising, financing, refinancing or otherwise dealing with investments pursued for AMF (whether or not AMF actually acquires such investments), including certain travel costs, and any legal, market data services, due diligence, investment banking, financing costs, reporting, projections, valuation, tax and accounting expenses and other fees and out-of-pocket costs related thereto (to the extent such costs are not borne by the underlying borrower); (d) fees, costs and expenses, if any, with respect to rendering financial assistance to or arranging for financing for AMF, any subsidiary thereof or AMF's investments; (e) fees, costs and expenses, if any, incurred in relation to the acquisition, holding, developing, monitoring, management, appraising, financing, refinancing, disposing of or otherwise dealing with investments, including certain travel and any legal, audit, market data services, financing, appraisal, insurance consulting, custodial, brokerage, inspection, indemnification and accounting expenses and other fees and out-of-pocket expenses related thereto; (f) interest expenses, making temporary investments, brokerage commissions and other investment costs incurred by or on behalf of AMF; (g) fees, costs and expenses incurred in organizing, forming and maintaining any alternative investment vehicles or subsidiaries or any other entity formed to facilitate AMF's investment objective and all fees, costs and expenses incurred in connection with the offering of shares following the initial closing date; (h) taxes, fees and other equivalent government charges levied against AMF, any investment or the income thereof, fees of auditors, counsel and other advisors of AMF, premiums for insurance protecting AMF, ACRES (in its capacity as investment manager for AMF), and any other indemnified parties (as defined in AMF's Fund Governing Documents) and any litigation costs of AMF; (i) indemnification expenses incurred by AMF and any other extraordinary administrative or operating fees or expenses; (j) the costs of compliance with applicable laws and regulations of governmental and self-regulatory bodies; and (k) other customary expenses. ACRES generally expects to allocate operating expenses among shareholders on a pro-rata basis.

Information regarding a Fund's fees and expenses, and other important information regarding an investment in such Fund, are set forth in the documents provided to such Fund's eligible prospective investors.

Other costs and expenses payable by a Separate Account are generally determined on a case-by-case basis and are generally set forth in a Separate Account's Separate Account Agreement.

#### ***ACR***

Other costs and expenses payable by ACR include, but are not limited to (a) expenses in connection with the issuance and transaction costs incident to the acquisition, disposition and financing of investments; (b) costs of legal, tax, accounting, consulting, auditing, administrative and other similar services rendered for ACR by providers retained by ACRES or, if provided by the employees of ACRES or its affiliates, in amounts which are no greater than those which would be payable to outside professionals or consultants engaged to perform such services pursuant to agreements negotiated on an arm's-length basis; (c) per loan underwriting and review fees in connection with valuations of and potential investments in certain subordinate commercial mortgage pass-through certificates, in amounts approved by a majority of ACR's independent directors from time to time; (d) the compensation and expenses of ACR's directors and the cost of liability insurance to indemnify ACR's directors and officers; (e) costs associated with the establishment and maintenance of any credit facilities and other indebtedness of ACR (including



commitment fees, accounting fees, legal fees, closing and other costs) or any securities offerings of ACR; (f) expenses connected with communications to holders of securities of ACR or its subsidiaries and other bookkeeping and clerical work necessary in maintaining relations with holders of such securities and in complying with the continuous reporting and other requirements of governmental bodies or agencies, including, without limitation, all costs of preparing and filing required reports with the SEC, the costs (including transfer agent and registrar costs) in connection with the listing and/or trading of ACR's securities on any exchange or inter-dealer quotation system, the fees to any such exchange or inter-dealer quotation system in connection with its listing, costs of complying with the rules, regulations or policies of such exchange or inter-dealer quotation system, costs of preparing, printing and mailing ACR's annual report to its stockholders and proxy materials with respect to any meeting of the stockholders of ACR; (g) the allocable costs associated with any computer software or hardware, electronic equipment or purchased information technology services from third party vendors that is used for ACR; (h) expenses incurred by managers, officers, employees and agents of ACRES and its affiliates for travel on ACR's behalf and other out-of-pocket expenses incurred by managers, officers, employees and agents of ACRES and its affiliates in connection with the purchase, financing, refinancing, sale or other disposition of an investment or establishment and maintenance of any credit facilities and other indebtedness or any securities offerings of ACR; (i) the allocable costs and expenses incurred with respect to market information systems and publications, research publications and materials, and settlement, clearing and custodial fees and expenses; (j) compensation and expenses of ACR's custodian and transfer agent, if any; (k) the costs of maintaining compliance with all federal, state and local rules and regulations or any other regulatory agency; (l) all taxes and license fees; (m) all insurance costs incurred in connection with the operation of ACR's business except for the costs attributable to the insurance that ACRES elects to carry for itself and its employees; (n) costs and expenses incurred in contracting with third parties, including affiliates of ACRES, for the servicing and special servicing of assets of ACR; (o) all other costs and expenses relating to ACR's business and investment operations, including, without limitation, the costs and expenses of acquiring, owning, protecting, maintaining, developing and disposing of Investments, including appraisal, reporting, audit and legal fees; (p) expenses relating to any office(s) or office facilities, including but not limited to disaster backup recovery sites and facilities, maintained for ACR or its investments separate from the office or offices of ACRES; (q) expenses connected with the payments of interest, dividends or distributions in cash or any other form authorized or caused to be made by ACR's board of directors to or on account of the holders of securities of ACR or its subsidiaries, including, without limitation, in connection with any dividend reinvestment plan; (r) any judgment or settlement of pending or threatened proceedings (whether civil, criminal or otherwise) against ACR or any subsidiary, or against any trustee, director or officer of ACR or of any subsidiary in his or her capacity as such for which ACR or any subsidiary is required to indemnify such trustee, director or officer by any court or governmental agency, or settlement of pending or threatened proceedings or by the charter and bylaws of ACR; (s) the allocable portion of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of ACRES and its affiliates required for ACR's operations; and (t) expenses for personnel of ACRES or its affiliates for their services in connection with the making of fixed-rate commercial real estate loans by ACR or a subsidiary, in an amount equal to one percent (1%) of the principal amount of each such loan made; and (u) all other expenses actually incurred by ACRES or its affiliates which are reasonably necessary for the performance by ACRES of its duties and functions under the ACR Management Agreement.

ACRES may retain, for and on behalf, and at the sole cost and expense, of ACR, such services of accountants, legal counsel, appraisers, insurers, brokers, transfer agents, registrars, developers,



investment banks, financial advisors, banks and other lenders and others as ACRES deems necessary or advisable in connection with the management and operations of ACR. Notwithstanding anything contained in the ACR Management Agreement to the contrary, ACRES shall have the right to cause any such services to be rendered by its employees or affiliates. ACR shall pay or reimburse ACRES or its affiliates performing such services for the cost thereof; provided, that such costs and reimbursements are no greater than those which would be payable to outside professionals or consultants engaged to perform such services pursuant to agreements negotiated on an arm's-length basis.

Costs and expenses for which ACR is responsible are set forth in the ACR Management Agreement. All such expenses incurred by ACRES on behalf of ACR must be documented and submitted to ACR on a monthly basis.

### ***CLOs***

Other costs and expenses payable by a CLO include, but are not limited to: (i) organizational and structuring fees and expenses, including the legal fees and expenses of counsel to ACRES Collateral Manager, (ii) reasonable expenses and costs of (a) independent accountants, consultants and other advisers retained by a CLO or by ACRES Collateral Manager on behalf of a CLO in connection with the services provided by ACRES Collateral Manager pursuant the CLO Governing Documents (b) legal advisers retained by a CLO or by ACRES Collateral Manager on behalf of a CLO in connection with the services provided by ACRES Collateral Manager pursuant to the CLO Governing Documents, and (c) reasonable travel expenses (including airfare, meals, lodging and other transportation) undertaken in connection with the performance by ACRES Collateral Manager of its duties pursuant to the CLO Governing Documents and for an allocable share of the cost of certain credit databases used by ACRES Collateral Manager in providing services to a CLO under the CLO Governing Documents.

Costs and expenses applicable to a particular Client (e.g., legal, insurance, audit, tax, reporting or consulting) are generally paid by such Client, provided the Client's Governing Documents permit the payment of such fees and expenses. Certain fees, costs and expenses (e.g., research services, valuation, insurance, technology expenses and the cost of financial modeling and services) may be incurred for the benefit of more than one Client, or a Client and ACRES, and are allocated (and may in the future be allocated) to more than one Client, or to a Client (or more than one Client) and to ACRES or its affiliates, in each case in a manner that ACRES believes to be fair and equitable, subject to any requirements or restrictions provided in the Clients' Governing Documents regarding the allocation and payment of such fees, costs and expenses.

### **D. REFUNDS FOR FEES CHARGED IN ADVANCE**

ACRES does not receive fees in advance from its Clients.

### **E. SUPERVISED PERSONS**

Neither ACRES nor any of its Supervised Persons accept compensation for the sale of securities or other investment products, including asset-based sales charges or other fees from the sale of mutual funds.



#### **ITEM 6: PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

Any performance-based compensation ACRES is entitled to receive from AMF is calculated and paid as set forth in the Fund Governing Documents. Performance-based compensation is paid in conformity with Rule 205-3 promulgated under the Advisers Act as applicable.

ACRES is entitled to receive performance-based compensation with respect to the management of certain Separate Accounts as set forth in such Separate Account's Separate Account Agreement. Performance-based compensation is paid in the form of an incentive fee with respect to certain Separate Accounts and is paid in conformity with Rule 205-3 promulgated under the Advisers Act as applicable.

ACRES is entitled to receive performance-based compensation with respect to the management of ACR as set forth in the ACR Management Agreement. Performance-based compensation is paid in the form of an Incentive Fee (as described in Item 5.A. above) and is paid in conformity with Rule 205-3 promulgated under the Advisers Act.

Any performance-based compensation ACRES Collateral Manager is entitled to receive from a CLO is calculated and paid as set forth in the CLO Governing Documents. Performance-based compensation is paid in conformity with Rule 205-3 promulgated under the Advisers Act as applicable.

ACRES provides concurrent advisory services to its Clients for which the compensation and fee arrangements differ between Clients.

Performance-based compensation arrangements may create an incentive for (i) ACRES to recommend, or a Fund's general partner or managing member to approve, investments that are riskier or more speculative than those that would be recommended or approved under a different fee arrangement and (ii) ACRES to favor Client accounts paying performance-based compensation at a higher rate (or a higher effective rate) over other accounts in the allocation of investment opportunities, either of which would create a conflict of interest for ACRES and its affiliates. ACRES and each Client's investment committee (to the extent applicable) consider such potential conflicts in recommending and approving such investment (see Item 13).

#### **ITEM 7: TYPES OF CLIENTS**

ACRES provides investment advisory services to its Clients. If applicable, the minimum capital commitment for each Client or each investor in a Client is set forth in the Client's Governing Documents and other documents provided to Clients or eligible prospective investors.

For a Client that is a Fund or a CLO, interests in such Client are offered only to persons that are (i) "accredited investors," as defined in Regulation D under the Securities Act and (ii) either "qualified purchasers" or "knowledgeable employees," each as defined in the Investment Company Act and the rules thereunder. For a Client that is a Separate Account, the owner of the Separate Account will satisfy similar requirements. The investors in a Client (or in the case of a Client that is separate account, the owner of the separate account) include pension funds, high net worth individuals, insurance companies, investment banks, banks, trusts, family offices, foundations, endowments, fund-of-funds, and other similar institutions, as well as other collective investment vehicles in which the foregoing invest.

For a Client that is a Fund or a CLO, an investor in such Client executes agreements with the applicable Client (either directly or by executing a subscription agreement for such Client) in connection with its



investment. An investor is generally not permitted to withdraw or redeem from a Client prior to its dissolution, except as provided in the Fund or CLO's Governing Documents.

For a Client that is a Separate Account, the Separate Account will execute a Separate Account Agreement with ACRES. The Separate Account Agreement will set forth the terms by which the owner of a Separate Account may withdraw funds from such Separate Account.

ACRES (either on its own behalf and/or on behalf of a Fund), without any act, approval or vote of any other Fund investor, has (and in the future may) enter into letter agreements or other similar agreements (each, a “Side Letter”) with one or more Fund investors that has the effect of establishing rights under, or altering or supplementing the terms of, a Fund's Governing Documents. Any rights established, or any terms of such Fund Governing Document altered or supplemented, in a Side Letter with a Fund investor govern, notwithstanding any other provision of such Fund's Governing Documents. As a result of Side Letters, certain investors in a Fund may receive additional benefits that other Fund investors will not receive, which may include different fee structures and other preferential economic rights (such as, rights to reduced or waived management fees or performance-based compensation), information and reporting rights, excuse or exclusion rights, waiver of certain confidentiality obligations, co-investment rights, certain rights or terms necessary in light of particular legal, regulatory or policy requirements of a particular investor, additional obligations and restrictions with respect to structuring particular investments in light of the legal and regulatory considerations applicable to a particular investor, veto rights and liquidity or transfer rights. Except as otherwise agreed to with an investor in a Fund, ACRES will not be required to notify any other investor in the Fund of the existence of any Side Letter or any of the rights, terms or provisions thereof, and ACRES will not be required to offer such additional or different rights or terms to any other Fund investor. No Investor in a Fund will have recourse against such Fund, ACRES or any of their respective affiliates in the event that one or more investors in the Fund receive additional or different rights or terms pursuant to any Side Letter. For more information regarding Side Letters please see Item 8.B. below.

ACR is a publicly-traded REIT that is traded on the New York Stock Exchange (NYSE: ACR). Greater detail regarding ACR may be found on ACR's website, [www.acresreit.com](http://www.acresreit.com), or on the SEC's website, [www.sec.gov](http://www.sec.gov).

## **ITEM 8: METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

Investing in securities involves risk of loss that Clients should be prepared to bear.

### **A. METHODS OF ANALYSIS AND INVESTMENT STRATEGIES**

ACRES provides investment advisory services with respect to middle market commercial real estate debt investments. ACRES' investment strategy involves originating and/or acquiring loans to qualified commercial real estate borrowers in the U.S. middle market while preserving capital, with a focus on senior mortgage loans secured by an individual property or a portfolio of properties.

For each prospective investment, ACRES performs a ground-up analysis of the prospective investment's credit risk. ACRES utilizes financial models to evaluate prospective investments and monitor existing investments. ACRES reviews and incorporates inputs received from its finance, capital markets, credit and legal teams, as well as from various third parties, including credit providers. The due diligence performed by ACRES with respect to an investment opportunity may or may not reveal or highlight all relevant facts that may be necessary or helpful in evaluating such investment opportunity and such evaluation will not necessarily result in the investment being successful.





ACRES' underwriting process focuses on understanding the borrower and sponsor and their ability to execute the intended business plan, as well as structuring investments so that the appropriate controls and rights are in place while satisfying the needs of Clients.

ACRES actively manages the investments of Client portfolios starting from each investment's closing through its final repayment. ACRES' asset management team monitors the performance of collateral and maintains regular contact with borrowers and servicers.

ACRES expects to pursue transactions with one or more of the following characteristics:

- Properties that are poised for transition or repositioning and that have owners/developers that require funding in order to maximize property value prior to acquiring long-term permanent debt.
- Dislocated opportunities in the commercial real estate industry.
- Value enhancement opportunities that involve underperforming assets with correctable defects.

With respect to ACR, ACRES' objective is to provide ACR and its stockholders with total returns over time, including quarterly distributions and capital appreciation, while seeking to manage the risks associated with ACR's investment strategies. ACR finances a substantial portion of its portfolio investments through borrowing strategies seeking to match the maturities and repricing dates of its financings with the maturities and repricing dates of its investments, and, historically, ACR has sought to mitigate interest rate risk through derivative investments.

ACR's investment strategy targets the following commercial real estate credit investments, including:

- Floating first mortgage loans (*i.e.*, whole loans);
- First priority interests in first mortgage loans (*i.e.*, A-notes);
- Subordinated interests in first mortgage loans (*i.e.*, B-notes);
- Mezzanine debt related to commercial real estate that is senior to a borrower's equity position but subordinated to other third-party debt;
- Preferred equity investments related to commercial real estate that are subordinate to first mortgage loans and are not collateralized by the property underlying the investment; and
- Commercial real estate investments.

ACR generates income primarily from the spread between the revenues ACR receives from its assets and the cost to finance the ownership of those assets, including corporate debt and from hedging interest rate risks.

For all investments, ACRES utilizes its proprietary database and subscriptions to various third-party data sources containing real estate-related information, consultations with real estate investors, operators, experts and other professionals, supported by experts and professionals in related fields.



For a more detailed discussion of ACRES' investment strategies for the Funds and Separate Accounts, please refer to the applicable Governing Documents for such Client. For a more detailed discussion of ACRES' investment strategies for ACR, please refer to a copy of ACR's SEC Form 10-K filed on March 7, 2024 available on ACR's website, [www.acresreit.com](http://www.acresreit.com), or on the SEC's website, [www.sec.gov](http://www.sec.gov).

## **B. MATERIAL RISKS**

Investments by a Client, or investments in a Client, are speculative and involve a high degree of risk.

Below is a summary of certain risks associated with investments by a Client, and an investment in a Client. Clients, and investors in Clients, should refer to the risk factors in each Client's offering memorandum, subscription agreement, Governing Documents or other documents provided to eligible prospective Clients and investors in Clients for a more complete description of the risks associated with investing or with an investment in such Client. The risks described below and in each Client's offering memorandum, subscription agreement, Governing Documents or other documents provided to eligible prospective Clients and investors in Clients could adversely affect a Client's (or an investor in a Client's) business, the value of a Client's (or an investor in a Client's) investments and the return to a Client or an investor in a Client. No guarantee or representation is made that a Client or an investor in such Client will achieve its or their investment objectives, goals or targeted returns, or that a Client or an investor in a Client, will receive a return of its capital. There is no certainty of return with respect to any such investment and a Client or a prospective investor in a Client should be able to withstand a total loss of its investment. The following discussion does not purport to be an exhaustive explanation of all of the risks and significant considerations involved, and each prospective Client or investor in a Client should consult with its own advisors.

### ***NATURE OF INVESTMENTS***

Investments by a Client, or investments in a Client, are speculative and generally require a long-term commitment with no certainty of return.

A Client may make investments in real estate and/or real estate-related assets that are experiencing or are expected to experience severe financial difficulties that may never be overcome. Because a Client will only make a limited number of investments and because many of the investments will involve a high degree of risk, poor performance by a few of the investments could severely affect the total returns to a Client and the investors in a Client. Although an investment by a Client may generate some current income, the return of capital and the realization of gains, if any, from such investment generally will occur (i) in the case of a debt investment, when the borrower repays the related loan (at maturity or sooner) or (ii) in the case of an equity investment, when the Client sells the investment. Although an investment may be sold or the related loan repaid at any time, it is not expected that this will occur for a substantial period of time, and in many cases several years, after the investment is acquired. Therefore, there may be little or no near-term cash flow available to the Client or the investors in a Client. Because a Client may only make a limited number of investments and because many of the investments involve a high degree of risk, poor performance by a few Client investments could severely affect the total returns to the Client and the investors in such Client. Generally, a Client's investments will be selected and funded after an offering of interests in a Client is completed or, in the case of a Separate Account, after a Separate Account Agreement has been executed, and a prospective Client and the prospective investors in a Client will not have





the opportunity to analyze a Client's portfolio of investments before investing or investing in such Client.

### ***REAL ESTATE INVESTMENTS***

#### ***General***

The performance of a Client's real estate and real estate-related investments will be significantly affected by fluctuations in the value of the underlying properties (including properties collateralizing the loans held by a Client) and the cash flows generated by those properties. If the underlying properties do not generate revenues sufficient to meet operating expenses, a Client's cash flow (and, in the case of a Client that is not a separate account, the ability to make distributions to such Client's investors) will be adversely affected. The factors affecting the cash flows generated by the underlying properties (including properties collateralizing the loans held by a Client) and the values of those properties include:

- national and local economic conditions;
- changes in supply of, and demand for, competing properties in an area (including the consequences of overbuilding);
- changes in real property tax rates;
- changes in interest rates and the availability of mortgage funds (including changes that render the sale or refinancing of properties difficult or impracticable);
- financial resources of tenants;
- changes in building, environmental and other laws or government regulations;
- quality of management and maintenance of the properties; and
- changes in tax policies and legislation, including, in particular, tax rules in jurisdictions in which investments are made or fund entities are organized.

#### ***Real Estate Market Conditions***

A Client's strategy may be based, in part, upon the premise that interests in real estate businesses and assets will be available for purchase by the Client at prices that ACRES considers favorable. Further, a Client's strategy may rely, in part, upon market recoveries continuing during the term of the Fund. No assurance can be given that interests in real estate businesses and assets can be acquired at favorable prices or that the market for such assets will recover or continue to improve, as the case may be, since this will depend, in part, upon events and factors outside the control of ACRES.

#### ***Declines in Real Estate Values***

Risks associated with investing in real estate and real estate-related investments are likely to be more severe during periods of economic slowdown or recession, especially if such periods are accompanied by declining real estate values. Further, declining real estate values significantly



increase the likelihood of losses on real estate and real estate-related investments acquired by a Client in the event of default, as the value of the underlying real estate and the value of the loans collateralized by such real estate may be insufficient to pay amounts owed in respect of such investments and result in a loss to a Client. Low recovery on real estate or real estate-related investments might result in a loss on the investment. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect the income received by a Client from its real estate and real estate-related investments, which would reduce the amount it has available for distribution. Furthermore, the underlying properties may be suffering varying degrees of financial distress or may be located in economically distressed areas.

In the case of real estate debt investments, adverse changes in the real estate market increase the probability of default, as the incentive of the borrower to retain equity in the property declines. In addition, loans may become non-performing for a wide variety of reasons and may require a substantial amount of workout negotiations and/or restructuring, which may entail, among other things, a substantial reduction in the interest rate, capitalization of interest payments and a substantial write-down of the principal of the loan. However, even if such restructuring were successfully accomplished, a risk exists that upon maturity of such mortgage loan, replacement “take-out” financing will not be available, which could ultimately impact the value of the related investments.

#### ***Ownership of Properties***

A Client that owns a real estate asset, or becomes the owner of a real estate asset as a result of the resolution of a defaulted debt investment, is responsible for the operation of such real estate investment.

#### ***Type and Use of Properties; Alternative Use of Properties***

Additional risks are presented by the type and use of a particular commercial property. For instance, commercial properties that operate as hospitals and nursing homes present special risks to lenders due to the significant governmental regulation of the ownership, operation, maintenance and financing of health care institutions. Hotel and motel properties often are operated pursuant to franchise, management or operating agreements which may be terminable by the franchisor or operator; and the transferability of a hotel’s operating, liquor and other licenses upon a transfer of the hotel, whether through purchase or foreclosure, is subject to local law requirements.

Furthermore, a commercial property may not readily be converted to an alternative use in the event that the operation of such commercial property for its original purpose becomes unprofitable. In such cases, the conversion of the commercial property to an alternative use would generally require substantial capital expenditures. Thus, if a borrower becomes unable to meet its obligations under the related commercial mortgage loan, the liquidation value of any such commercial property may be substantially less, relative to the amount outstanding on the related commercial mortgage loan, than would be the case if such commercial property were readily adaptable to other uses.

#### ***Availability of Suitable Investments***

Investors in a newly-organized Client will be relying on the ability of ACRES to identify, acquire and manage investments using the proceeds of such Client’s offering. Although ACRES has been successful in locating investments of the type suitable for its Clients in the past, there can be no assurance that it will be able to identify a sufficient number of suitable investment opportunities



for a newly-organized Client, or that a newly-organized Client will be successful in acquiring a sufficient number of suitable investments. As a consequence, the aggregate returns of a newly-organized Client may be substantially adversely affected by the unfavorable performance of even a single investment.

### ***Uninsured Losses***

A Client may invest directly or indirectly in real property, including by investing in debt secured by real property. If any of the holders of the property underlying the Client's investments fails to comply with applicable insurance requirements and an uninsured loss occurs, the consequences may be adverse for the Client. If a Client, or any applicable borrower, fails to adequately insure any of the applicable properties and an uninsured loss occurs, the consequences may be adverse for such Client.

Uninsured losses, whether because the owner of the property fails to maintain insurance adequate and appropriate under the circumstances or because certain types of losses of a catastrophic nature (including, without limitation, wars, natural disasters, terrorist attacks and other similar events) are uninsurable or insurable only on commercially unrealistic or unacceptable terms, may create a risk of loss to a Client. In general, losses related to terrorism are becoming more difficult and more expensive to insure against. Most insurers are excluding terrorism coverage from their all-risk policies. In some cases, insurers are offering significantly limited coverage against terrorist acts for additional premiums, which can greatly increase the total cost of casualty insurance for a property. As a result, some or all of a Client's investments in real property, or properties that collateralize a Client's debt investments, may not be insured against terrorism.

A Client may hold investments concentrated in markets where natural disasters, including earthquakes, floods and hurricanes are prone to occur. For example, real properties located in California may be more susceptible to certain hazards, such as earthquakes or widespread fires, than properties in other parts of the country, and real properties located in coastal states generally may be more susceptible to hurricanes than properties in other parts of the country. Hurricanes (most recently Hurricane Harvey and Hurricane Irma) and related windstorms, floods and tornadoes have caused extensive and catastrophic physical damage in and to coastal and inland areas located in the Gulf Coast region of the United States and certain other parts of the southeastern United States, including Florida particularly. A Client may hold investments concentrated in these markets and may suffer significant uninsured losses if a natural disaster were to occur. Although a Client intends to maintain comprehensive insurance on each investment in real property (including requiring borrowers to maintain comprehensive insurance on each property underlying its debt investments), there is a possibility that such Client may suffer uninsured or uninsurable losses from a natural disaster notwithstanding its maintenance of comprehensive insurance policies. Exclusions in insurance policies (such as flood exclusions in areas highly susceptible to such event) can result in losses to the Client. In general, losses related to terrorism are becoming harder and more expensive to insure against. Most insurers are excluding terrorism coverage from their all-risk policies. In some cases, insurers are offering significantly limited coverage against terrorist acts for additional premiums, which can greatly increase the total costs of casualty insurance for a property. As a result, some or all of a Client's investments in real property, or properties that collateralize a Client's debt investments, may not be insured against terrorism.

Additionally, the Client may be unable to obtain insurance proceeds even if it is adequately covered by insurance policies if the insurance carrier's financial condition suffers materially as a result of a natural disaster or other catastrophic event. Deductibles may be significant, resulting in the Client



incurring higher costs with respect to investments even in the event insurance is in place. Finally, even if a Client can obtain appropriate insurance to rebuild or repair its properties following a natural disaster, such Client's ability to obtain insurance proceeds covering interruption to its business and operations during the period in question could be materially and adversely affected by the same conditions described above or other conditions outside of the Client's control.

Even if insurance is in place and an insured loss is paid, inflation, changes in building codes and ordinances, environmental considerations and other factors may make it infeasible to use the insurance proceeds to repair or replace a property if it is damaged or destroyed. Should an uninsured loss or a loss in excess of insured limits occur with respect to a Client's real estate investment (or the collateral underlying a Client's investment), such Client could lose the value of its investment, as well as the anticipated future revenue from such investment and, in the case of debt that is recourse to a Client, such Client would remain obligated for any mortgage debt or other financial obligations related to such investment. It is also possible that the lack of available insurance coverage for such risks in the future may adversely affect the ability to obtain conventional financing for commercial properties. Any such loss could adversely affect the financial condition, results of operations and cash flow of a Client.

#### ***COMMERCIAL MORTGAGE LOANS; LOAN ORIGINATION***

##### ***General***

Certain Client investments include (and may include in the future) interests in commercial mortgage loans. Commercial mortgage loans are generally viewed as exposing a lender to a greater risk of loss through delinquency and foreclosure than residential mortgage loans on owner-occupied single-family residences. The ability of a borrower to repay a loan secured by commercial property primarily depends upon the successful operation and the operating income of that property (*i.e.*, the ability of tenants to make lease payments, the ability of a property to attract and retain tenants, and the ability of the owner to maintain the property, control operating expenses and comply with applicable zoning and other laws), rather than depending upon the existence of independent income or assets of the borrower. If the net operating income of the property deteriorates, the borrower's ability to repay the loan may be impaired. Net operating income of a commercial property can be affected by, among other things: tenant mix; success of tenant businesses; property management decisions; property location and condition; competition from comparable types of properties; changes in laws that increase operating expenses or limit rents that may be charged; any need to address environmental contamination at the property or the occurrence of any uninsured casualty at the property; changes in national, regional or local economic conditions and/or specific industry segments; declines in regional or local real estate values; declines in regional or local rental or occupancy rates; increases in interest rates; real estate tax rates and other operating expenses; changes in governmental rules, regulations and fiscal policies, including environmental legislation; and acts of God, pandemic, terrorist attacks, social unrest and civil disturbances. Most commercial mortgage loans provide recourse only to the mortgaged property, and not against the borrower's other assets or personal guarantees, other than customary non-recourse carve-outs.

There is a significant risk that a Client may experience losses on its debt investments because of a default by the applicable borrowers. The factors that may result in borrower defaults and losses on a Client's investments include (i) adverse changes in economic and real estate market conditions generally and in the sectors and geographic locations applicable to the specific investment or



underlying assets, (ii) the terms and structure of the mortgage loan and (iii) any specific limits on legal and financial recourse upon a default under the terms of the mortgage loan.

Most residential mortgage loans are fully self-amortizing (meaning that the periodic payments made by the borrower are sufficient over the life of the mortgage to pay all principal as well as interest). By contrast, most commercial mortgage loans do not fully amortize, so that at the maturity of the loan the borrower must repay a substantial principal balance. This loan feature frequently requires the borrower either to sell the property or to refinance the remaining principal balance at or prior to maturity of the mortgage loan. Accordingly, investors in commercial mortgage loans bear the risk that the borrower will be unable to sell, refinance or otherwise generate the funds required to repay the mortgage loan at maturity, thereby increasing the ultimate likelihood of a default on the borrower's obligation. Such a default may be more likely if the value of the encumbered real estate has declined in value or if market interest rates have significantly increased. A default on one or multiple loans could trigger losses on a Client's investments.

In the event of any default under a mortgage loan held directly by a Client, such Client will bear a risk of loss of principal to the extent of any deficiency between the value of the collateral and the principal and accrued interest of the mortgage loan, which could have a material adverse effect on the Client's cash flow from operations and limit amounts available for distribution to a Client's investors. In the event of the bankruptcy of a mortgage loan borrower, the mortgage loan to that borrower will be deemed to be secured only to the extent of the value of the underlying collateral at the time of bankruptcy (as determined by the bankruptcy court), and the lien securing the mortgage loan will be subject to the avoidance powers of the bankruptcy trustee or debtor-in-possession to the extent the lien is unenforceable under state law. Foreclosure of a mortgage loan can be an expensive and lengthy process that could have a substantial negative effect on a Client's anticipated return on the foreclosed mortgage loan.

As part of its investment program, certain Clients invest (and may in the future invest) in fixed-rate and/or floating-rate loans. Floating rate loan investments expose a Client to the risk of lower cash flow in the event that interest rates decrease from the date of investment. Fixed rate loan investments expose a Client to the risk of value deterioration in the event of interest rate increases. A Client's debt investments may be subject to early redemption features, refinancing options, prepayment options or similar provisions which, in each case, could result in the issuer repaying the principal on an obligation held by the Client earlier than expected, resulting in a lower return to the Client than projected. If market interest rates decline, it is likely that borrowers will seek to repay their loans prior to stated maturity in order to refinance at lower rates. If that happens, then, except as protected by any yield maintenance provisions, a Client will lose the benefit of the above-market interest rate payments it otherwise would receive on the repaid loans. In addition, certain of the mortgage loans in which a Client may invest may be structured so that all or a substantial portion of the principal will not be paid until maturity, which increases the risk of default at that time.

Moreover, in certain situations, because ACRES (on behalf of a Client) may, in the exercise of remedies or rights under loan documents, obtain contractual rights to participate in or to influence the management of a borrower's property, the likelihood is increased that a borrower may claim that ACRES or such Client interfered with the borrower's business, acted in bad faith in exercising its management rights or otherwise acted in a manner giving rise to a claim for lender liability. The exercise of rights or remedies may not be led or controlled by ACRES, but may be led or controlled by a holder of a different debt position that may have interests that are in conflict with the interests of the Client. As a lender, a Client may also be subject to penalties for violations of state usury



limitations; such penalties may be triggered by contracting for, charging or receiving usurious interest.

In the event of default and the exhaustion of any equity support, reserve fund or letter of credit support, a Client might not be able to recover all of its investment in the debt obligation acquired. A Client's investment in commercial real estate loans may involve workout negotiations, restructuring and/or the possibility of foreclosure. Even if a restructuring were successfully accomplished, there exists the risk of a substantial reduction in the interest rate and a substantial write-down of the principal of such loans. It is possible that ACRES may find it necessary or desirable to foreclose on collateral securing one or more real estate loans acquired by a Client.

#### ***Transitioning and not-yet-stabilized Collateralized Properties***

A Client's investments may be focused on not-yet-stabilized properties in need of short-term debt financing in order to transition to their next levels of operation. The management of these properties comes with its own set of risks that are above and beyond those generally faced by commercial real estate owners and developers. Transition properties face a number of issues, some of which cannot be anticipated or addressed by owners and developers. The actual cost of re-construction, development, expansion and/or rehabilitation has the potential of exceeding applicable budgets, and the physical work associated with such efforts can be substantially delayed through no fault of a borrower. A borrower's business plan and strategy in connection with a transition may not contemplate or otherwise address issues that may arise. Even where an owner or developer successfully implements its business plan on time and on budget, there is no guarantee that market conditions will tilt in an owner's favor and allow the owner to realize the anticipated financial rewards near or upon the completion of such transitioning activities. In the event a borrower does not realize the financial gains it projected under its business plan (especially in a non-amortizing, balloon payment context, whereby substantial loan repayments are due near maturity, the time borrowers expect collateralized properties to realize their greatest profits) such borrower may not be able to satisfy its debt obligations to a Client, which will have negative economic effects upon the Client and, if applicable, an investor in a Client.

#### ***Subordination of First Priority Mortgage Lien***

ACRES (on behalf of certain Clients) may require borrowers to grant a first priority mortgage lien over applicable collateralized property. In such cases, ACRES will generally seek to acquire, secure, perfect, and attach such senior priorities as to any and all collateralized properties in a timely fashion, and will maintain the right to receive the first set of distributions of liquidation proceeds. In spite of ACRES' efforts, however, the laws regarding the priority of liens can vary by jurisdiction, and circumstances may arise under which a court or other governing authority deems ACRES to possess a subordinate priority to one or more of a borrower's other creditors or lenders. In the event ACRES's senior priority lien to any collateralized property is not upheld or is in any way diminished in a court of law, a borrower's other creditors or lenders will have rights to liquidation proceeds over those of a Client, and any residue after proceeds are distributed to such other creditors and lenders may be insufficient to satisfy the balance of a borrower's outstanding debts to a Client. If ACRES (on behalf of a Client) is unable to maintain its first priority mortgage lien in a collateralized property, it may not be able to recoup amounts outstanding under a defaulted loan, and the consequences would be unfavorable to a Client and, if applicable, investors in a Client.





### ***Risks of Extending Credit***

The risks associated with originating loans include the possible invalidation of a transaction as a fraudulent conveyance under creditors' rights laws, lender-liability claims by the issuer of the obligations, environmental liabilities that may arise with respect to the collateral securing the obligations, and limitations on the ability of ACRES to directly enforce its rights with respect to borrowers.

A Client or ACRES may incur lender liability as a result of its lending activities. In recent years, a number of judicial decisions have upheld the right of borrowers to sue lending institutions on the basis of various evolving legal theories, collectively termed "lender liability." Generally, lender liability is founded on the premise that a lender has either violated a duty, whether implied or contractual, of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower resulting in the creation of a fiduciary duty owed to the borrower, its other creditors or shareholders or third parties harmed by the borrower. A Client or ACRES may be subject to allegations of lender liability, which could result in significant liability.

### ***Lower Credit Quality Loans***

There may be no restrictions on the credit quality of a Client's loans. Loans acquired by a Client may be deemed to have substantial vulnerability to default in payment of interest and/or principal. Certain loans may have large uncertainties or major risk exposures to adverse conditions, and may be considered to be predominantly speculative. Such loans may offer a higher potential return than better-quality loans, but involve greater volatility of price and greater risk of loss of income and principal. The market values of such loans also tend to be more sensitive to changes in economic conditions than better-quality loans.

### ***Fraud***

The possibility of material misrepresentation or omission on the part of a borrower or loan seller is of paramount concern in loan investments. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of ACRES (on behalf of a Client) to perfect or effectuate a lien on the collateral securing the loan. Under certain circumstances, payments to a Client may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

### ***Environmental Risks***

The underlying collateral of a Client's investments may also be subject to numerous statutes, rules and regulations relating to environmental protection. In the event of a foreclosure on the underlying collateral of a Client's investments, the foreclosing party may be liable for non-compliance with applicable environmental and health and safety requirements and for the costs of investigation, monitoring, removal or remediation of hazardous materials. A Client's investments may be exposed to substantial risk of loss from environmental claims arising in respect of such underlying collateral in the event of foreclosure.

### ***Risk of Eminent Domain***

Municipalities and other government subdivisions may, in certain circumstances, seek to acquire certain assets of a Client through eminent domain proceedings. While ACRES (on behalf of a



Client) may seek to contest these proceedings, which may be costly and may divert the attention of management from the operation of a Client, there can be no assurance that a municipality or other government subdivision will not succeed in acquiring assets of a Client. In such event, there is a risk that a Client will not receive adequate compensation for the assets acquired, or that ACRES (on behalf of a Client) will not be able to recover all charges associated with divesting these assets.

#### ***PARTICIPATION INTERESTS***

Certain Clients' debt investments are (and may in the future be) in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including credit risk, control and management risks, liquidity risk as well as the normal or typical risks of being a lender. The special risks associated with these obligations include the possible invalidation of a transaction as a fraudulent conveyance under creditors' rights laws, lender-liability claims by the issuer of the obligations. Participation interests in a commercial real estate loan typically result in a contractual relationship only with the holder of the related whole loan, not with the borrower. With respect to a Client's investments structured as participation interests, the Client generally would have no right either to enforce compliance by the borrower with the terms of the underlying loan or to set-off obligations that the Client may otherwise owe to the borrower and may only be able to enforce its rights through the holder of the related whole loan. Furthermore, the Client may not directly benefit from the collateral supporting the loan in which it holds the participation. As a result, the Client would assume the credit risk of both the borrower and the institution selling the participation. Investments in participation interests in commercial real estate loans raise many of the same risks as direct investments in commercial real estate loans and also carry risks of illiquidity and lack of control. It is possible that there will not be an active secondary market for participation rights of the kind that a Client might acquire.

#### ***SEASONED LOANS***

Certain mortgage loans have an established payment history and are considered "seasoned" loans. Seasoned loans may involve risks that are increased or different than those associated with more recently originated mortgage loans that have shorter payment histories. These risks may include fluctuations in property values, origination standards, the market for the business of a mortgaged property, the tenant or customer mix of a property, the financial performance of a borrower or mortgaged property, or the mortgaged property's environmental and engineering characteristics.

#### ***DISTRESSED ASSETS***

Certain Clients have (and may in the future make) investments in non-performing, underperforming or other troubled debt and equity real estate and real estate-related investments (including currently performing assets that may become non-performing or distressed in the future). These investments have or may in the future have legal and financial risks and are or may be experiencing or may be expected to experience severe financial difficulties that may never be overcome and there can be no assurance that a Client's return and/or cash multiple of invested capital objectives will be realized or that there will be any return of capital to the Client or its investors. Investments in borrowers or issuers that have become financially distressed involve significantly greater risks than investments in non-distressed borrowers or issuers. The level of analytical sophistication, both financial and legal, necessary for successful financings to companies or assets experiencing significant business and financial difficulties is unusually high.





Troubled companies and assets require active monitoring and may, at times, require participation in the borrower's business strategy or in reorganization proceedings by the Client. To the extent that a Client becomes involved in such proceedings, the Client may have a more active participation in the affairs of its investments than that generally assumed by an investor. In addition, involvement by a Client in reorganization proceedings could result in the imposition of restrictions limiting the Client's ability to liquidate its position.

### ***B-NOTES***

Certain Clients invest (and may in the future invest) in B-Notes, which are loans or participations therein that rank junior in priority to more senior debt secured by the same commercial real property or interests in the same commercial property. Inter-creditor, subordination and participation agreements generally provide that after the occurrence and during the continuation of certain events of default under the applicable loan documents, B-Notes are not entitled to receive any payments of interest or principal unless and until the senior debt has been paid in full. In addition, any losses and expenses, including losses of principal or interest, non-recoverable advances, interest on advances and special servicing compensation may be borne first by the B-Note and then by the related senior debt.

Further, B-Notes typically are secured by a single property, and so reflect the increased risks associated with a single property compared to a pool of properties. The higher risks associated with a subordinate position in a B-Note investment could subject a Client to an increased risk of loss.

Servicing of B-Notes is typically performed by a servicer or special servicer appointed pursuant to the documents governing the servicing of the related senior debt, subject to the provisions of the related inter-creditor, subordination or participation agreement. Although a Client may have the right to appoint the special servicer for the related whole loan and may have limited rights to consult with, and direct or approve certain servicing actions of, the servicer or special servicer appointed pursuant to the related senior debt, such rights will terminate if the principal balance of such B-Note is reduced below a specified percentage of its initial principal balance, as the result of principal write-downs or appraisal reductions. The shifting of such rights to a more senior debt holder would likely result in an adverse effect on a Client's B-Note investment.

A Client will not have the right to directly enforce compliance by the borrower under a B-Note with the terms of the loan documents or to waive enforcement thereof as the right to vote all claims in any bankruptcy of the borrower will have been granted to the holder of the related senior debt.

### ***MEZZANINE LOANS AND OTHER SUBORDINATED DEBT***

Certain Clients invest (and may in the future invest) in so-called "mezzanine loans," which are typically structured as a loan to a parent entity of the commercial mortgage borrower (with the parent mezzanine borrower typically contributing the loan proceeds to the subsidiary mortgage borrower) where the mezzanine borrower's repayment obligation is secured primarily by a pledge of its direct or indirect ownership interests in the mortgage borrower. If a Client makes an investment in a mezzanine loan, its ability to foreclose on the pledged ownership interests in the mortgage borrower will usually be constrained by inter-creditor arrangements with the mortgage lender that, for example, may require the Client to cure material defaults under the mortgage loan (and such curative action may be required) before being entitled to foreclose on its collateral. Foreclosure will also be limited by the rights of the mezzanine borrower under applicable law. Even if a Client is able to foreclose on its collateral, as the new direct or indirect owner of the mortgage



borrower, the Client will become the borrower, in effect, with respect to the underlying commercial mortgage loan and the owner (subject to the mortgage and any other senior mezzanine indebtedness) of the underlying property.

Moreover, a mezzanine loan may become unsecured as a result of a foreclosure by the senior lender. In the event of a bankruptcy of the entity providing the pledge of its ownership interests as security, a Client may not have full recourse to the assets of the property owning entity, or the assets of the entity may not be sufficient to satisfy such Client's mezzanine loan. If a borrower defaults on a Client's mezzanine loan or debt senior to the Client's mezzanine loan, or in the event of a borrower bankruptcy, such Client's mezzanine loan will be satisfied only after the senior debt is paid in full. As a result, a Client may not recover some or all of its mezzanine loan investment, which could result in losses.

Investments in mezzanine loans therefore involve not only the risks associated with subordination to the rights of senior mortgage lenders, but also the risks associated with ownership and management of the underlying property and the risks of being the borrower, in effect, with respect to a commercial mortgage loan that is in default.

In addition, a mezzanine loan may have a higher loan to value ratio than a conventional mortgage loan, resulting in less equity in the property and increasing the risk of loss of principal.

#### ***PORTFOLIO INVESTMENTS***

Certain Clients currently hold, and expect to hold in the future, portfolio investments that are not publicly traded. The fair value of securities and other investments that are not publicly traded may not be readily determinable. Such Clients value these investments quarterly at fair value as determined under the Client's relevant policies and procedures. Because such valuations are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, a Client's determinations of fair value may differ materially from the values that such Client would have obtained if a ready market for them existed. With respect to ACR, the value of ACR's common stock will likely decrease if ACR's determinations regarding the fair value of these investments are materially higher than the values that ACR ultimately realizes upon their disposal.

#### ***BANK LOANS, ABS AND CORPORATE BONDS***

Historically, certain Clients have invested in syndicated corporate loans, ABS and corporate bonds. Syndicated corporate loan investments, ABS investments or corporate bond investments, which are principally backed by small business and syndicated corporate loans, may not be secured by mortgages or other liens on assets or may involve higher loan-to-value ratios than a Client's real estate-related investments. Historically, certain Clients' syndicated corporate loan investments, ABS investments and corporate bond investments backed by loans have included loans that have an interest-only payment schedule or a schedule that does not fully amortize principal over the term of the loan, which makes repayment of loans dependent upon the borrowers' liquidity or ability to refinance the loans at maturity. Numerous factors affect a borrower's ability to repay or refinance loans at maturity, including national and local economic conditions, a downturn in a borrower's industry, loss of one or more principal customers and conditions in the credit markets. A deterioration in a company's financial condition or prospects may be accompanied by a deterioration in the collateral for the syndicated corporate loan or any ABS or corporate bond backed by such company's loans.



## ***OTHER RISKS RELATING TO CLIENT INVESTMENTS***

### ***Co-Investments and Co-Lending with Third Parties***

To the extent permitted by applicable law (including, if applicable, ERISA), certain Clients may co-invest or co-lend with third parties, ACRES, its subsidiaries or other Clients, through joint ventures, participation agreements, co-lending agreements or other entities and structures. Such investments may include risks in connection with such third-party involvement resulting in a negative impact on such investment, including the possibility that a third-party co-venturer may have financial difficulties, may have economic or business interests or goals that are inconsistent with those of a Client or may be in a position to take (or block) action in a manner contrary to a Client's investment objectives. In those circumstances where such third parties involve a management group, such third parties may receive compensation arrangements relating to such investments, including investment management fees and/or incentive compensation arrangements. Such compensation arrangements will reduce the return to participants in the investments. Such compensation will be charged to a Client, and as a result, the Client, and indirectly the investors in a Client, may bear multiple investment management fees, which may include incentive compensation arrangements, that in the aggregate would exceed the fees that would typically be incurred by an investment made by ACRES.

Certain loans may be subject to co-lender and participation arrangements in which a Client shares the control rights of the underlying loan with other lenders and/or participants. A Client may need the consent of these parties to exercise the Client's rights under such loans, including rights with respect to amendment of loan documentation, enforcement proceedings in the event of default and the institution of, and control over, foreclosure proceedings. Pursuant to one or more co-lender, participation or similar agreements, a holder, participant or a group of holders, of a mortgage loan or split loan structure may be granted various rights and powers that affect the mortgage loan, including, without limitation: (i) cure rights; (ii) a purchase option; (iii) the right to advise, direct or consult with the applicable servicer regarding various servicing matters affecting the underlying loan; (iv) the amendment of the loan documentation, forbearances or other workouts, (v) enforcement of the remedies under the loan documentation; (vi) liquidation of the collateral under the loan; and (vii) the right to replace the servicer. To the extent a Client has any of these rights, the exercise of such rights may be challenged or limited by other holders of the loan. A Client may be adversely affected by the lack of full control.

Under certain co-lender arrangements involving participations, *pari passu* notes or A/B structures, one or more co-lenders other than a Client may, in breach of the applicable loan documents, fail to fund an advance to the borrower, whether due to a failure to fund by a party providing financing to such co-lender or for any other reason. In such event, the Client, even though it did not default in its obligation to make an advance to the borrower, may be sued by the borrower or incur liability to it, and such failure to fund by a co-lender may harm a borrower's liquidity or credit profile to the detriment of the Client as one of the lenders to the borrower.

### ***Control Rights Held by ACRES***

In the case of a loan owned by a Client that is subject to a co-lender interest held by another Client, an affiliate of ACRES or a third party, ACRES may directly or indirectly hold the control rights of such loan even when the Client's interest in the loan is *pari passu* to all other interests in it. Under this scenario, ACRES may, directly or indirectly, have complete control over the exercise of rights and remedies under the loan. ACRES (directly or indirectly) may act on behalf of co-lenders whose



economic or business interests or goals are inconsistent with those of a Client, or take actions contrary to the interests of a Client (including decisions regarding amendments to the underlying loan documents, enforcement of remedies and workouts). In addition, a Client may be liable for actions, direct or indirect, of ACRES. Even when a Client's interest in the loan is *pari passu* to all other interests in the loan, the Client still may need the consent or authorization of its co-lenders before acting to enforce its security interest or any other rights under the loan. As a means to protect against ACRES, directly or indirectly, as the controlling holder of such loans, taking certain actions or receiving certain benefits to the detriment of a Client, the Client may have the right to purchase the other notes from the respective holders thereof. If available, this right may not be meaningful to a Client. For example, a Client may not have the capital available to consummate such purchase, or such purchase may alter the Client's overall portfolio and risk/return profile to the detriment of investors.

#### ***Underwriting by Co-Originators and Joint Venturers***

To the extent that a person or entity (including without limitation, ACRES or its subsidiaries, other Clients or third parties), co-originate any particular loan with a Client or enters into a joint venture with a Client to do so, that co-originator may employ underwriting and other diligence processes that delay a Client in originating such loan. It is unlikely that a Client will possess control over any such co-originator's internal evaluation process. The co-originator's diligence and underwriting practices may be so time consuming or impose such onerous standards or restrictions upon a Client or borrowers that the Client may, among other things, be delayed in closing loans, be forced to extend loans on less desirable terms than those afforded more rapidly closing loans, or miss certain lending opportunities.

#### ***Counterparty Risk***

Certain instruments in which a Client may invest may, in certain circumstances, bear credit risk with regard to other parties involved, as well as risk of settlement default. Moreover, transactions directly between two counterparties may not be afforded certain protections such as settlement, segregation and minimum capital requirements applicable to intermediaries and therefore expose the parties to the risk of counterparty default. To the extent a Client invests in assignments, in certain circumstances, the Client may take a credit risk with regard to parties with whom it trades and may also bear the risk of settlement default. These risks may differ materially from those entailed in exchange-traded transactions which generally are backed by clearing organization guarantees, daily marking-to-market and settlement, and segregation and minimum capital requirements applicable to intermediaries. Transactions entered directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of a counterparty default. It may not always be possible for the securities and other assets deposited with custodians or brokers to be clearly identified as being assets of a Client and, therefore, the Client may be exposed to a credit risk in those situations. In addition, there may be practical or time problems associated with enforcing a Client's rights to its assets in the case of an insolvency of any such party.

#### ***Enforcement of Rights against Borrower following Default***

If a borrower under the debt instrument comprising a Client's investment defaults in its obligations, such Client may seek to pursue the foreclosure and other remedies, if any, available under the terms of the related loan. Exercise of foreclosure and other remedies may involve lengthy delays and additional legal and other related expenses, which could adversely affect the value of the collateral



and thus the Client's investment. The foreclosure process varies from jurisdiction to jurisdiction and can be lengthy and expensive. Applicable laws in certain jurisdictions may provide borrowers with an array of rights to resist foreclosure actions by asserting numerous claims, counterclaims and defenses against the holder of a real estate loan including, without limitation, lender liability claims and defenses. In some jurisdictions, foreclosure actions can take several years or more to litigate. Foreclosure litigation can create a negative public image of the applicable property and may result in disruption of the ongoing leasing and management of the property. In certain circumstances, foreclosing mortgage creditors may also become liable, upon taking title to collateral, for environmental or structural damage at the property site. Because of the potential difficulties presented by the foreclosure process, in some cases instead of pursuing foreclosure or other remedies, a Client or senior lender may seek to negotiate with the borrower to restructure the debt. Although a restructuring may avoid the delay and expense of foreclosure, it is likely to have other adverse consequences for a Client. Any restructuring may involve a substantial reduction in the interest rate and/or a substantial write-down of the principal of the restructured loan, which will reduce the value of a Client's investment and may result in a loss on the investment. A restructuring could also delay the realization of a Client's investment. If any of the above occurs, a Client's ability to make anticipated distributions to its limited partners or members could be delayed or otherwise adversely affected.

#### ***Bankruptcy Considerations***

Claims on real estate assets operating in workout modes or under applicable bankruptcy laws could, if a Client inappropriately exercises control over the management and policies of the debtor, be subordinated or disallowed, and are, in certain circumstances, subject to additional potential liabilities that could exceed the value of the Client's original investment, including equitable subordination and/or disallowance of claims or lender liability. Furthermore, payments made to a Client in respect of such claims, and distributions by such Client, could be recovered if such payments or distributions are found to have been fraudulent conveyances or preferential payments or the equivalent under the laws of certain jurisdictions. Bankruptcy laws may delay the ability of a Client to realize on collateral for claims held by it or may adversely affect the priority of such claims through doctrines such as equitable subordination or may result in a restructuring of the debt through principles such as the "cramdown" provisions of the bankruptcy laws. In addition, there are other risks and uncertainties related to litigation, bankruptcy and other laws and regulations affecting the rights and remedies of a Client with respect to these assets that can create additional financial risks to such Client.

#### ***Diversification Risk***

There is no assurance as to the degree of diversification that will actually be achieved in a Client's portfolio of investments. A Client's Governing Documents may not impose any specific requirements as to diversification of such Client's investments. A Client may make only a limited number of investments and, as a consequence, the aggregate return of a Client may be substantially adversely affected by the unfavorable performance of even a single investment. If the commercial real estate market experiences any negative trends, the value of the Client's investments may be adversely affected.

If a Client makes an investment in multiple related assets in a single transaction with the intent of selling a portion of the investment, there is a risk that such Client will be unable to successfully complete such a sale. This concentration could lead to increased risk as a result of a Client having an unintended long-term investment and reduced diversification.



### ***Geographic Concentration***

Certain Clients may invest in concentrated geographic regions of the United States. From time to time, certain events cause positions in these markets to move in a highly correlated manner, eliminating any risk control benefits of diversification. Any regionally concentrated nature of the portfolio of a Client can create increased risk. Even if a Client has successfully structured a portfolio of non-correlated instruments, it is possible that, because of concerted political/economic activities across nations in a particular economic region, “domino effect” defaults could occur. This has occurred from time to time in the past.

### ***Prepayment Risk***

Certain commercial real estate loans are subject to prepayment. Prepayments on commercial mortgage loans comprising or underlying investments may be affected by a number of factors. If prevailing interest rates for similar mortgage loans fall below the interest rates on such mortgage loans, prepayment rates would generally be expected to increase. Conversely, if prevailing interest rates for similar mortgage loans (or interests therein) rise above the interest rates on such mortgage loans, prepayment rates would generally be expected to decrease. Certain commercial mortgage loans may have lockout periods and/or defeasance periods during which prepayment is prohibited or require prepayment penalties or premiums or defeasance features to be paid upon a prepayment. However, certain of such loans may permit prepayment after such lockout periods or the periods for such prepayment penalties or premiums have expired. Prepayments are also affected by the value of the related mortgaged property, the borrower’s equity in the mortgaged property, the financial circumstances of the borrower, fluctuations in the business operated by the borrower on the mortgaged property, competition, general economic conditions and other factors. There can be no assurance that such mortgage loans will repay at any particular rate. If the loans underlying the investments prepay at rates that are below the projected rates, the value of the investments may be impaired.

### ***LIBOR***

Historically, ACRES has utilized the London Interbank Offered Rate (“LIBOR”) as a benchmark interest rate for the pricing of its commercial real estate loans. In March 2021, the United Kingdom’s Financial Conduct Authority (“FCA”) announced that it would cease publication of the one-week and two-month USD LIBOR immediately after December 31, 2021 and cease publication of the remaining tenors immediately after June 30, 2023. The U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprising large U.S. financial institutions, has identified Secured Overnight Financing Rate (“SOFR”), a new index calculated by short-term repurchase agreements backed by U.S. Treasury securities, as its preferred alternative rate for LIBOR.

In connection with such recommendations and developments, all variable rate loans originated by ACRES beginning January 1, 2022 have been benchmarked to SOFR. In April 2022, ACRES amended its remaining loan and borrowing agreements that utilized LIBOR to transition to SOFR as the benchmark rate.

### ***Interest Rate Fluctuations***

The loans comprising or underlying a Client’s portfolio bear interest at fixed rates or at variable rates. Generally, if market interest rates fall, fixed rate investments will become more valuable,





whereas if market interest rates rise, fixed rate investments will become less valuable. The value of variable rate investments generally will be less affected by fluctuations in market interest rates, but the cash flow generated by floating rate investments will decline if market interest rates decline. A loan comprising or underlying a Client's investment may permit the borrower to repay prior to stated maturity and, if market interest rates decline, it is likely that the borrower will seek to prepay its loan in order to refinance at lower rates. If that happens, such Client will lose the benefit of the above-market interest rate payments it otherwise would have received on the prepaid loan. This scenario might occur on multiple loans underlying an investment, which could adversely affect the value of the investment.

### ***Valuation Risks***

Because ACRES does not expect there to be any liquid market, or only a limited liquid market, for certain Client investments, the fair value of such investments likely will not be readily determinable. To the extent required, ACRES or its affiliates will value a Client's investments as set forth in such Client's Governing Documents, which in certain circumstances include (and may in the future include) fair value, as and when determined by ACRES. The valuations used by ACRES for a substantial portion of a Client's investments may therefore not reflect the most recently available market information. The types of factors that ACRES considers in its determination of the fair value of a Client's investments include discounted cash flows, prevailing market conditions with respect to the location of a property, similar sales (in the case of a real estate equity investment) and other relevant factors. Because such valuations are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, ACRES' determination of fair value may differ materially from the actual results obtainable in arm's-length sales of investments to third parties.

### ***ERISA***

Certain Clients may accept subscriptions from Benefit Plan Investors (as defined by ERISA), such that, at times, 25% or more of the total value of one or more classes of equity interests in the Client might be held by Benefit Plan Investors. As a result, during such times, the assets of the Fund would be considered to be "plan assets" subject to the fiduciary provisions of ERISA and the prohibited transaction provisions of ERISA and/or Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"). During any period in which the assets of a Client are considered "plan assets" subject to the fiduciary provisions of ERISA and the prohibited transaction provisions of ERISA and/or Section 4975 of the Code, ACRES will be considered to be a fiduciary under ERISA and Section 4975 of the Code with respect to those assets and subject to the ERISA fiduciary provisions. During such period, a Client's investment activities may be subject to limitations due to the application of ERISA and/or Section 4975 of the Code (including, but not limited to, the fiduciary and prohibited transaction provisions of ERISA or the prohibited transaction provisions of Section 4975 of the Code).

### ***Forward-Looking Statements***

A Client's discussion materials contain forward-looking statements and descriptions of goals and objectives. Although these forward-looking statements and stated goals and objectives are based upon assumptions that are believed to be reasonable, actual results of operations and achievements may differ materially from the statements, goals and objectives set forth in the discussion materials.



## ***RISKS RELATED TO ACR'S INVESTMENTS***

### ***Financing Risks***

*Risks of Leverage.* ACR's portfolio has been financed in material part through the use of leverage, which may reduce the return on investments and cash available for distribution. ACR's portfolio has been financed in material part through the use of leverage and, as credit market conditions permit, ACRES will seek such financing in the future. Using leverage may subject ACR to risks associated with debt financing, including the risks that:

- the cash provided by ACR's operating activities will not be sufficient to meet required payments of principal and interest,
- the cost of financing may increase relative to the income from the assets financed, reducing the income ACR has available to pay distributions, and
- ACR's investments may have maturities that differ from the maturities of the related financing and, consequently, the risk that the terms of any refinancing ACR obtains will not be as favorable as the terms of existing financing.

If ACR is unable to secure refinancing of currently outstanding financing, when due, on acceptable terms, ACR may be forced to dispose of some of its assets at disadvantageous terms or to obtain financing at unfavorable terms, either of which may result in losses to ACR or reduce the cash flow available to meet its debt service obligations or to pay distributions.

Financing that ACR may obtain, and financing it has obtained through CRE debt securitizations, typically requires, or will require, ACR to maintain a specified ratio of the amount of the financing to the value of the assets financed. A decrease in the value of these assets may lead to margin calls or calls for the pledge of additional assets which ACR will have to satisfy. ACR may not have sufficient funds or unpledged assets to satisfy any such calls, which could result in ACR's loss of distributions from and interests in affected CRE debt securitizations, which would reduce ACR's assets, income and ability to make distributions.

*Credit Risk Related to Repurchase Agreements, Warehouse Facilities and other Short-term Financings.* If ACR accumulates assets for a CRE debt securitizations on a short-term credit facility and do not complete the CRE debt securitizations, or if a default occurs under the facility, the short-term lender will sell the assets and ACR would be responsible for the amount by which the original purchase price of the assets exceeds their sale price, up to the amount of ACR's investment or guaranty. ACR may lose money on its repurchase transactions if the counterparty to the transaction defaults on its obligation to resell the underlying security back to ACR at the end of the transaction term, or if the value of the underlying security has declined as of the end of the term or if ACR defaults on its obligations under the repurchase agreements.

*Repurchase Agreements.* ACR has entered into repurchase agreements and warehouse facilities and expects in the future to seek additional debt to finance its growth. Lenders typically have the right to liquidate assets securing or acquired under these facilities upon the occurrence of specified events, such as an event of default. ACR is exposed to loss if the proceeds received by the lender upon liquidation are insufficient to satisfy its obligation to the lender. ACR is also subject to the risk that the assets subject to such repurchase agreements, warehouse facilities or other debt might not be suitable for long-term refinancing or securitization transactions. If ACR is unable to





refinance these assets on a long-term basis, or if long-term financing is more expensive than ACR anticipated at the time of the acquisition of the assets to be financed, ACR may be required to liquidate assets.

*Counterparty Risk.* When engaged in repurchase transactions, ACR generally sells assets to the transaction counterparty and receives cash from the counterparty. The counterparty must resell the assets back to ACR at the end of the term of the transaction. Because the cash ACR receives from the counterparty when ACR initially sells the assets is less than the market value of those assets, if the counterparty defaults on its obligation to resell the assets back to ACR, ACR will incur a loss on the transaction. ACR will also incur a loss if the value of the underlying assets has declined as of the end of the transaction term, as it will have to repurchase the assets for their initial value but would receive assets worth less than that amount. If ACR defaults upon its obligation to repurchase the assets, the counterparty may liquidate them at a loss, which ACR is obligated to repay. Any losses ACR incurs on its repurchase transactions would reduce its earnings and cash available for distribution to its stockholders.

*Risks of Repurchasing Assets.* If any of the assets that ACR originates or acquires and sells or securitizes do not comply with representations and warranties that ACR makes about them, ACR may have to repurchase these assets from the commercial real estate debt securitization or securitization vehicle, or replace them. In addition, ACR may have to indemnify purchasers for losses or expenses incurred as a result of a breach of a representation or warranty. Any significant repurchases or indemnification payments could materially reduce ACR's liquidity, earnings and ability to make distributions.

*Risks of Financing REIT-Qualifying Assets.* ACR has entered into and intend to enter into, sale and repurchase agreements under which ACR nominally sells certain REIT-qualifying assets to a counterparty and simultaneously enters into an agreement to repurchase the sold assets. ACR believes that ACR will be treated for U.S. federal income tax purposes as the owner of the assets that are the subject of any such agreement, notwithstanding that ACR may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the Internal Revenue Service, or IRS, could assert that ACR did not own the assets during the term of the sale and repurchase agreement, in which case ACR's ability to qualify as a REIT would be adversely affected. If any of ACR's REIT-qualifying assets are subject to a repurchase agreement and are sold by the counterparty in connection with a margin call, the loss of those assets could impair ACR's ability to qualify as a REIT. Accordingly, unlike other REITs, ACR may be subject to additional risk regarding its ability to qualify and maintain its qualification as a REIT.

*CRE Debt Securitizations.* Historically, ACR has financed most of its investments through CRE debt securitizations in which ACR retains the equity interest. Depending on market conditions and credit availability, ACR intends to use CRE debt securitizations to finance its investments in the future. The equity interests of a CRE debt securitization are subordinate in right of payment to all other securities issued by the CRE debt securitization. The equity is usually entitled to all of the income generated by the CRE debt securitization after the CRE debt securitization pays all of the interest due on the debt securities and its other expenses. However, there may be little or no income available to the CLO equity if there are excessive defaults by the issuers of the underlying collateral which would significantly reduce the value of that interest. Reductions in the value of the equity interests ACR holds in CRE debt securitization, if ACR determines that they are other than temporary, would reduce ACR's earnings. In addition, the liquidity of the equity securities of CLOs is constrained and, because they represent a leveraged investment in the CRE debt securitization's



assets, the value of the equity securities will generally have greater fluctuations than the value of the underlying collateral.

ACR's CRE debt securitizations generally provide that the principal amount of their assets must exceed the principal balance of the related securities issued by them by a certain amount, commonly referred to as "over-collateralization." If delinquencies and/or losses exceed specified levels, based on the analysis by the rating agencies (or any financial guaranty insurer) of the characteristics of the assets collateralizing the securities issued by the CRE debt securitization issuer, the required level of over-collateralization may be increased or may be prevented from decreasing as would otherwise be permitted if losses or delinquencies did not exceed those levels. A failure by a CRE debt securitization to satisfy an over-collateralization test typically results in accelerated distributions to the holders of the senior debt securities issued by the CRE debt securitization entity, resulting in reduction or elimination of distributions to more junior securities until the over-collateralization requirements have been met or the senior debt securities have been paid in full.

ACR's equity holdings and, when ACR acquires debt interests in CRE debt securitizations, ACR's debt interests, if any, generally are subordinate in right of payment to the other classes of debt securities issued by the CRE debt securitization entity. Accordingly, if overcollateralization tests are not met, distributions on the subordinated debt and equity ACR holds in these CLOs will cease, resulting in a substantial reduction in ACR's cash flow. Other tests (based on delinquency levels, interest coverage or other criteria) may restrict ACR's ability to receive cash distributions from assets collateralizing the securities issued by the CRE debt securitization entity.

If any of ACR's CRE debt securitizations fails to meet collateralization or other tests relevant to the most senior debt issued and outstanding by the CRE debt securitization issuer, an event of default may occur under that CRE debt securitization. If that occurs, ACRES' ability to manage the CRE debt securitization likely would be terminated and ACR's ability to attempt to cure any defaults in the CRE debt securitization would be limited, which would increase the likelihood of a reduction or elimination of cash flow and returns to ACR in those CLOs for an indefinite time.

Any debt securities ACR may issue in the future will likely be governed by an indenture or other instrument containing covenants restricting ACR's operating flexibility. Holders of senior securities may be granted the right to hold a perfected security interest in certain of ACR's assets, to accelerate payments due under the indenture if ACR breaches financial or other covenants, to restrict distributions, and to require ACR to obtain their approval to sell assets. These covenants could limit ACR's ability to operate its business or manage its assets effectively. Additionally, any convertible or exchangeable securities that ACR issues may have rights, preferences and privileges more favorable than those of ACR's common stock. ACR, and indirectly ACR's stockholders, will bear the cost of issuing and servicing such securities.

Historically, ACR has financed a significant portion of its assets through the use of CRE debt securitizations, and have accumulated assets for these financings through short-term credit facilities, typically repurchase agreements or warehouse facilities. Depending upon market condition, and, consequently, the extent to which such financing is available to ACR, ACR expects to seek similar financing arrangements in the future. In addition to risks discussed above, these arrangements could expose ACR to other credit risks, including the following:

- An event of default under one short-term facility may constitute a default under other credit facilities ACR may have, potentially resulting in asset sales and losses to ACR, as well as increasing ACR's financing costs or reducing the amount of investable funds available to ACR.



- ACR may be unable to acquire a sufficient amount of eligible assets to maximize the efficiency of a CRE debt securitization issuance, which would require ACR to seek other forms of term financing or liquidate the assets. ACR may not be able to obtain term financing on acceptable terms, or at all, and liquidation of the assets may be at prices less than those ACR paid, resulting in losses to ACR.
- Using short-term financing to accumulate assets for a CRE debt securitization issuance may require ACR to obtain new financing as the short-term financing matures. Residual financing may not be available on acceptable terms, or at all. Moreover, an increase in short-term interest rates at the time that ACR seeks to enter into new borrowings would reduce the spread between the income on ACR's assets and the cost of ACR's borrowings. This would reduce returns on ACR's assets, which would reduce earnings and, in turn, cash available for distribution to ACR's stockholders.

*Guarantees of Debt and Contingent Obligations of Subsidiaries or Joint Venture Partners.* ACR may guarantee the performance of the obligations of ACR's subsidiaries, including credit and repurchase facilities, derivative agreements, unsecured indebtedness and indebtedness incurred by ACR's joint venture partners. Non-performance on such obligations may cause losses to ACR in excess of the capital invested in ACR's subsidiary or the relevant joint venture and there is no assurance that ACR will have sufficient capital to cover any such losses.

*Additional Capital for Debt Facilities Used to Finance Investments.* If the market value of the loans or investments pledged or sold by ACR to a funding source decline in value, ACR may be required by the lender to provide additional collateral or pay down a portion of the funds advanced. ACR may not have the funds available to pay down such future debt, which could result in defaults. Posting additional collateral to support these facilities would reduce ACR's liquidity and limit ACR's ability to leverage assets. In the event ACR does not have sufficient liquidity to meet such requirements, lenders can accelerate the indebtedness, increase interest rates and terminate ACR's ability to borrow. Further, lenders may require ACR to maintain a certain amount of uninvested cash or set aside unlevered assets sufficient to maintain a specified liquidity position. As a result, ACR may not be able to leverage ACR's assets as fully as ACR would choose, which could reduce ACR's return on assets. In the event that ACR is unable to meet these collateral obligations, ACR's financial condition could deteriorate rapidly.

### ***Interest Rate Risks***

A significant risk associated with ACR's investment in commercial real estate-related loans and other debt instruments is the risk that either or both of long-term and short-term interest rates increase significantly. If long-term rates increase, the market value of ACR's assets would decline. Even if assets underlying investments ACR may own in the future are guaranteed by one or more persons, including government or government-sponsored agencies, those guarantees do not protect against declines in market value of the related assets caused by interest rate changes. At the same time, with respect to assets that are not match-funded or that have been acquired with variable rate or short-term financing, an increase in short-term interest rates would increase ACR's interest expense, reducing ACR's net interest spread or possibly result in negative cash flow from those assets. This could result in reduced profitability and distributions or losses.



### ***Risks Related to Changes in Methods for Determining Benchmark Rates***

Historically, ACR has used LIBOR as the benchmark interest rate for its floating-rate whole loans and ACR has been exposed to LIBOR through its floating-rate borrowings. In March 2021, the U.K. FCA announced that it would cease publication of the one-week and the two-month USD LIBOR immediately after December 31, 2021, and cease publication of the remaining tenors immediately after June 30, 2023. In July 2021, the U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprising large U.S. financial institutions, identified SOFR as its preferred alternative rate for LIBOR. Following this announcement, ACR began to transition the contractual benchmark rates of existing floating-rate whole loans and borrowings to alternate rates. As of December 31, 2023, ACR's entire portfolio of floating rate whole loans and floating rate borrowings have transitioned to SOFR.

There can be no guarantee that existing or future provisions for alternative reference rates will include adequate methodologies for adjustments or that the alternative reference rates will be similar to or produce the economic equivalent of, or be more or less favorable than the current reference rate, particularly during times of economic stress. As such, the potential effect of any such event on ACR's cost of capital and net investment income cannot yet be determined and any changes to benchmark interest rates could increase ACR's financing costs or reduce interest income, which could impact ACR's results of operations, cash flows and the market value and liquidity of ACR's investments. There could be a mismatch between the timing of the transition to a replacement rate between ACR's investments and financing, or a mismatch between the replacement rate used by ACR's investments and financing. Changes or uncertainty resulting from the transition to a replacement rate, including any market dislocations and disruptions as a result thereof, could adversely affect ACR's business, reputation, increase the risk of litigation or other disputes, and increase transition-related expenses, among other adverse consequences.

### ***Risks of Mezzanine Debt, Preferred Equity, Mezzanine or Subordinated CMBS Tranches***

Subject to maintaining ACR's qualification as a REIT and exclusion from regulation under the Investment Company Act, ACR may invest in mezzanine debt, preferred equity and mezzanine or other subordinated tranches of CMBS. ACR currently has investments in mezzanine debt. These types of investments carry a higher degree of risk of loss than senior secured debt investments such as ACR's whole loan investments because, in the event of default and foreclosure, holders of senior liens will be paid in full before mezzanine investors. Depending on the value of the underlying collateral at the time of foreclosure, there may not be sufficient assets to pay all or any part of amounts owed to mezzanine investors. Moreover, mezzanine and other subordinate debt investments may have higher LTV than conventional senior lien financing, resulting in less equity in the collateral and increasing the risk of loss of principal. If a borrower defaults or declares bankruptcy, ACR may be subject to agreements restricting or eliminating ACR's rights as a creditor, including rights to call a default, cure a default, foreclose on collateral, and accelerate maturity or control decisions made in bankruptcy proceedings. In addition, the prices of lower credit quality securities are generally less sensitive to interest rate changes than more highly rated investments, but more sensitive to economic downturns or individual issuer developments because the ability of obligors of investments underlying the securities to make principal and interest



payments may be impaired. In such event, existing credit support relating to the securities' structure may not be sufficient to protect us against loss of ACR's principal.

### ***Risks of Preferred Equity Investments***

ACR may make preferred equity investments in entities that own or acquire CRE properties. Preferred equity investments involve a higher degree of risk than first mortgage loans due to a variety of factors, including the risk that, similar to mezzanine loans, such investments are subordinate to first mortgage loans and are not collateralized by property underlying the investment. Unlike mezzanine loans, preferred equity investments generally do not have a pledge of the ownership interests of the entity that owns the interest in the entity owning the property. Although as a holder of preferred equity ACR may enhance ACR's position with covenants that limit the activities of the entity in which ACR holds an interest and protect ACR's equity by obtaining an exclusive right to control the underlying property after an event of default, should such a default occur on ACR's investment, ACR would only be able to proceed against the entity in which ACR holds an interest, and not the property owned by such entity and underlying ACR's investment. As a result, ACR may not recover some or all of ACR's investment.

### ***Valuation Risks***

ACR currently holds, and will hold in the future, portfolio investments that are not publicly traded. The fair value of securities and other investments that are not publicly traded may not be readily determinable. These investments are valued quarterly at fair value as determined under policies approved by ACR's board of directors. Because such valuations are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, such determinations of fair value may differ materially from the values that would have obtained if a ready market for them existed. The value of ACR's common stock will likely decrease if ACR's determinations regarding the fair value of these investments are materially higher than the values that ACR ultimately realizes upon their disposal.

### ***Competition for Suitable Investments***

There are numerous REITs and other financial investors seeking to invest in the types of assets ACR targets. This competition may cause ACR to forgo particular investments or to accept economic terms or structural features that it would not otherwise have accepted, and it may cause ACR to seek investments outside of its currently targeted areas. Competition for investment assets may slow ACR's growth or limit its profitability and make distributions to ACR's stockholders.

### ***Control over Certain Loans and Investments***

The ability to manage ACR's portfolio of loans and investments may be limited by the form in which they are made. In certain situations, ACR may:

- acquire investments subject to rights of senior classes and servicers under inter-creditor or servicing agreements;
- acquire only a minority and/or non-controlling participation in an underlying investment;
- co-invest with third parties through partnerships, joint ventures or other entities, thereby acquiring non-controlling interests; or



- rely on independent third-party management or strategic partners with respect to the management of an asset.

Therefore, ACR may not be able to exercise control over the loan or investment. Such financial assets may involve risks not present in investments where senior creditors, servicers or third-party controlling investors are not involved. ACR's rights to control the process following a borrower default may be subject to the rights of senior creditors or servicers whose interests may not be aligned with ACR's. A third party partner or co-venturer may have financial difficulties resulting in a negative impact on such asset, may have economic or business interest or goals which are inconsistent with ACR's, or may be in a position to take action contrary to ACR's investment objectives. In addition, ACR may, in certain circumstances, be liable for the actions of ACR's third-party partners or co-venturers.

#### ***Geographic, Sector, Property-Type and Sponsor Concentrations***

ACR may have material geographic concentrations related to its direct or indirect investments in real estate loans and properties. ACR may also have material concentrations in the property types and industry sectors that are in its loan portfolio. Where ACR has any kind of concentration risk in its investments, ACR may be affected by sector-specific economic or other problems that are not reflected in the national economy generally or in more diverse portfolios. An adverse development in that area of concentration could reduce the value of ACR's investment and its return on that investment and, if the concentration affects a material amount of ACR's investments, impair its ability to execute its investment strategies successfully, reduce its earnings and ability to make distributions.

#### ***RISKS RELATED TO CLOS***

Structured finance securities such as CLOs entail a variety of unique risks. The performance of a CLO is affected by a variety of factors, including its priority in the capital structure of the issuer thereof, the availability of any credit enhancement, the level and timing of payments and recoveries on and the characteristics of the underlying receivables, loans or other assets that are being securitized, remoteness of those assets from the originator or transferor, the adequacy of and ability to realize upon any related collateral and the capability of the servicer of the securitized assets. The value of CLOs may be difficult to determine and generally will fluctuate with, among other things, the financial condition of the obligors or issuers of the underlying portfolio of assets of the related CLO, general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. CLOs are also subject to operational, credit, liquidity, and interest rate risks.

#### ***GENERAL MARKET RISKS***

##### ***General Economic, Political and Regulatory Conditions***

General economic, political or regulatory conditions may affect a Client's activities. Interest rates, general levels of economic activity, the price of securities, availability and terms of credit, changes in laws, regulatory interventions and changes in regulations, changes in fiscal policies, trade barriers, commodity prices, currency exchange rates and controls, national and international political circumstances and participation by other investors in the financial markets may affect the value and number of investments made by a Client or considered by a Client for prospective investments. A Client's investments can be expected to be sensitive to the performance of the





overall economy. A negative impact on economic fundamentals and consumer confidence would likely increase market volatility and reduce liquidity, both of which could have a material adverse effect on the performance of a Client's investments. No assurances can be given as to the effect of these economic, political or regulatory conditions on a Client's investment objectives.

### ***Pandemics and COVID-19***

Outbreaks of contagious diseases, such as COVID-19 or any future pandemic or epidemic, may have a material adverse impact on ACRES' financial condition, liquidity and results of operations and the market price of ACR's common stock and preferred stock. ACRES expects that while the direct impacts of COVID-19 have subsided, indirect impacts are likely to continue to some extent as the longer-term macro-economic effects of the pandemic continue.

The rapid development of the pandemic and the resulting economic effects have created uncertainty surrounding the ultimate impact of the COVID-19 pandemic on the global economy generally, and the CRE business in particular. As a result, ACRES cannot project the ultimate adverse impact of the COVID-19 pandemic on the global economy or ACRES' business, including ACRES' financial condition and performance. The extent of the impact of COVID-19 will depend on future developments, including new information that may emerge about the severity of the pandemic, the timing, scope and effectiveness of additional governmental responses to the pandemic, including the potential re-imposition of quarantines, states of emergencies, restrictions on travel and stay-at-home orders and the ensuing reactions by consumers, companies, governmental entities and global markets.

For a more detailed discussion of the COVID-19 pandemic and its impact on ACR, please refer to a copy of ACR's SEC Form 10-K for the most recently ended fiscal year.

### ***CYBERSECURITY RISK***

ACRES, the Clients' service providers and other market participants increasingly depend on complex information technology and communications systems to conduct business functions. These systems are subject to a number of different threats or risks that could adversely affect the investors in a Client, despite the efforts of ACRES and such service providers to adopt technologies, processes and practices intended to mitigate these risks and protect the security of their computer systems, software, networks and other technology assets, as well as the confidentiality, integrity and availability of information belonging to investors in a Client. For example, unauthorized third parties may attempt to improperly access, modify, disrupt the operations of, or prevent access to these systems of ACRES, the Clients' service providers, counterparties or data within these systems. Third parties may also attempt to fraudulently induce employees, customers, third-party service providers or other users of ACRES' systems to disclose sensitive information in order to gain access to ACRES' data or that of Clients or a Client's investors. A successful penetration or circumvention of the security of ACRES' systems could result in the loss or theft of a Client's or an investor's data or funds, the inability to access electronic systems, loss or theft of proprietary information or corporate data, physical damage to a computer or network system or costs associated with system repairs. Such incidents could cause ACRES, Clients, the investors of a Client or their service providers to incur regulatory penalties, reputational damage, additional compliance costs or financial loss.

ACRES maintains a cyber liability insurance policy that covers, among other things, media content, security and privacy liability, regulatory action liability, network interruption, event management



and cyber extortion. However, the coverage may not be adequate to compensate for all losses that may occur and no assurance can be given that such insurance will continue to be available on acceptable terms or will be available in sufficient amounts to cover one or more claims, or that ACRES' insurer will not deny or attempt to deny coverage as to any future claim.

#### ***LIMITED LIQUIDITY OF AN INVESTMENT IN A FUND***

Interests in a Fund (and, to a certain extent, a CLO) are generally illiquid and cannot be transferred or sold except as permitted in the Client's Governing Documents.

#### ***POSSESSION OF NONPUBLIC INFORMATION***

ACRES, its affiliates, employees and Supervised Persons may from time to time obtain nonpublic information regarding certain issuers or other investment opportunities.

ACRES has adopted and implemented policies and procedures for itself, its Clients and its employees and Supervised Persons with respect to purchasing and selling securities while in possession of nonpublic information. Nonetheless, a Client may face, as a result of securities laws prohibition on trading on the basis of material nonpublic information, certain restrictions on its ability to pursue a transaction. In addition, a Client may enter into a transaction involving securities, participations, assignments or other investments in which it may be deemed to be in possession of material nonpublic information.

#### ***RISK OF MANAGING MULTIPLE CLIENT ACCOUNTS IN THE SAME OR SIMILAR STRATEGY***

ACRES manages (and may in the future manage) multiple Client accounts in the same or similar strategy at the same time on a *pari passu* basis, notwithstanding that one Client may have different interests (including, among other things, different investment restrictions or limitations) than another Client. A Client's Governing Documents will set forth ACRES' duties and obligations to such Client. ACRES and ACRES Parent have adopted and implemented policies and procedures that, among other things, seek to ensure that investment opportunities are allocated in a manner that is consistent with the relevant Governing Documents and on an otherwise fair and equitable basis (collectively, the "**Allocation Policies and Procedures**").

#### ***CONFLICTS OF INTEREST***

##### ***Broad and Wide-Ranging Activities***

ACRES and its affiliates engage in a broad spectrum of activities, including, but not limited to, investment advisory services, underwriting, special and primary commercial loan servicing, managing and administering issuers of CLOs, managing private investment funds and separate accounts, real estate services and other activities. In the ordinary course of its business, ACRES engages in activities where its interests or the interests of its affiliates may conflict with the interests of its Clients. Throughout this Brochure, disclosure is made regarding conflicts relating to, among other things, the activities, ownership and relationship of ACRES and/or its affiliates.

##### ***Affiliate (Principal or Cross) Transactions***

ACRES and its affiliates have engaged (and may in the future engage) in principal, agency cross or cross transactions with or for a Client, consistent with the Advisers Act, SEC rules, the policies





and procedures set forth in ACRES' Compliance Manual and a Client's Governing Documents. A Client will only enter into a principal or cross transaction with ACRES or an affiliate to the extent permitted by applicable law (including, if applicable, ERISA), including if required or deemed appropriate by ACRES, by making appropriate disclosure and receiving appropriate consent in connection with a transaction. During any period that a Fund is subject to ERISA and/or Section 4975 of the Code, ACRES will not engage in any such principal transactions, cross trades or similar transactions unless it has determined that such transaction would not constitute a non-exempt violation of Section 406 of ERISA or Section 4975 of the Code. See Item 11 below for more information regarding such transactions.

#### ***Other Activities of ACRES***

Except as limited by a Client's Governing Documents, ACRES and its directors, members, partners, shareholders, officers, employees, agents and affiliates (collectively, the "**Affiliated Parties**") are conducting and may conduct any other business, whether or not such business is in competition with a Client. Without limiting the generality of the foregoing, the Affiliated Parties are, or may in the future act as, investment adviser or investment manager for others, are or may in the future manage funds, separate accounts or capital for others and are or may in the future serve as an officer, director, consultant, partner or stockholder of one or more investment funds, partnerships, securities firms or advisory firms (such other entities, "**Affiliated Investment Entities**"). Affiliated Investment Entities have, or may in the future have, investment objectives or implement investment strategies similar to (or different from) those of a Client and/or make the same type of investments as a Client. There is no limit to the number of Affiliated Investment Entities that may exist now or in the future.

The Affiliated Parties also have (or may in the future have) investments in their own names and in certain of the entities managed by the Affiliated Parties. The Affiliated Parties give advice or take action with respect to such other Affiliated Investment Entities (or may do so in the future) that differs from the advice given with respect to a Client. Furthermore, ACRES may determine, in its sole and absolute discretion, not to pursue certain transactions or potential investments on behalf of a Client because of its other businesses or relationships between one or more Affiliated Parties and Affiliated Investment Entities.

#### ***Transactions Involving Conflicts of Interest***

ACRES and its affiliates have the right to perform services for, and subject to applicable law (including, if applicable, ERISA), receive compensation from a Client, any special purpose or parallel investment vehicle of a Client, or any investments of a Client, and will have the right to enter into co-lending and participation arrangements with, to purchase investments or other assets from, to sell assets or lend funds to, or otherwise deal with a Client, any special purpose or parallel investment vehicle, or any investment. The terms of any such dealing (a) must be fair to a Client, any special purpose or parallel investment vehicle of a Client, or any investment of a Client, as applicable, and on terms comparable to those that would be obtained on an arm's-length basis, taking into account the nature of the transaction and the services provided; and (b) must otherwise not be in violation of any applicable Governing Documents or applicable law. In particular, the use of affiliates to provide services to a Client may create potential conflicts of interest as ACRES may favor its affiliates over other qualified service providers and/or agree to pay fees that are determined to be market-based and comparable but may be higher than fees charged by unaffiliated service providers.



Subject to applicable law (including, if applicable, ERISA), ACRES may cause a Client to enter into transactions and/or arrangements involving material conflicts of interest between the ACRES and its affiliates on the one hand and a Client and investors in a Client (as applicable) on the other, including, but not limited to, investments in assets in which ACRES or any of its affiliates have a financial or other interest and arranging cross transactions between a Client and other entities sponsored or advised by ACRES, including Affiliated Investment Entities as described above.

Any such transactions will be effected upon fair market terms, and no additional fees shall be paid to ACRES or any of its affiliates in connection with a cross transaction except to the extent such payments are permitted by applicable law (including, if applicable, upon making appropriate disclosures and receiving appropriate consent). A Client will only enter into a principal or cross transaction with ACRES or a related party to the extent permitted by applicable law (including, if applicable, ERISA), including if required or deemed appropriate by ACRES, by making appropriate disclosure and receiving appropriate consent in connection with the transaction.

#### *Allocation of Investment Opportunities to Clients*

It is the policy of ACRES and its affiliates to fairly and equitably allocate investment opportunities to its Clients in accordance with the Allocation Policies and Procedures. ACRES does not allocate investment opportunities on the basis of the amount of compensation or profits that are likely to be realized for ACRES and/or its Supervised Persons.

The allocation of investment opportunities to Clients is subject to the allocation provisions that are set forth in the Governing Documents of the applicable Client (each, an “**Investment Allocation Requirement**”). Such Investment Allocation Requirements include, but are not limited to, provisions that relate to exclusivity or priority to particular types of investments entered into during certain time periods, and specified exceptions thereto; permit certain types or categories of investments to be made by a Client, notwithstanding a conflicting Investment Allocation Requirement; limit investments to be made by a Client to investments with a specific purpose; limit the concentration of a Client in one or more particular categories of investments; specify expected interest rates, loan durations, distribution rates, anticipated cashflows, expected stability or volatility of cash flows and other features of the applicable investment opportunity and its impact on portfolio diversification; and concern allocations that could result in de minimis investments (including, without limitation, maintaining REIT qualifications). If and to the extent that any Investment Allocation Requirement requires that an investment opportunity to be allocated to a specific Client, such investment will generally be so allocated. To the extent the Governing Documents either do not include Investment Allocation Requirements or allow ACRES discretion in making allocation decisions between or among Clients, ACRES generally will allocate such investments in accordance with the Allocation Policies and Procedures then in effect.

To the extent any Clients have investment objectives or guidelines that overlap with those of another Client, in whole or in part, ACRES will allocate any investment that falls within such common investment objectives or guidelines to the Clients in accordance with the Allocation Policies and Procedures then in effect. As a result, in certain circumstances, a Client may receive a smaller or no allocation in, or inferior terms regarding, particular investments than it would otherwise have received if ACRES or its affiliates did not allocate opportunities amongst Clients.



***Allocation of Investment Opportunities Amongst ACRES (on behalf of ACR) and ACRES Loan Originations***

ACRES, in its capacity as external manager for ACR, and its subsidiary, ACRES Loan Origination LLC (“**ACRES Loan Origination**”), are engaged in the sourcing of commercial mortgage loans. ACRES Loan Origination is an operating company engaged in the origination of commercial mortgage loans for itself.

ACRES, as a registered investment adviser has a fiduciary with respect to its advisory clients and has an obligation to allocate investment opportunities to ACR and other investment programs managed by ACRES in a manner it determines to be fair and equitable. In addition, ACR’s management agreement with ACRES provides that (i) ACRES will equitably allocate investment opportunities amongst ACR and other investment programs managed by ACRES and (ii) neither ACRES nor any entity controlled by ACRES shall raise, sponsor or advise any new REIT that invests primarily in domestic mortgage-backed securities in the United States.

ACRES will face actual and potential conflicts of interest when allocating investment opportunities to ACR or ACRES Loan Origination, and also when allocating investment opportunities between ACR and ACRES Loan Origination (when such investment opportunities are suitable for both ACR and ACRES Loan Origination). It is the policy of ACRES and its affiliates to fairly and equitably allocate investment opportunities amongst its Clients in accordance with the Policies and Procedures for the Allocation of Investment Opportunities Involving Commercial Mortgage Loans (the “**Allocation Policy for Mortgage Originations**”), which establishes the procedure for allocating investment opportunities involving the origination of commercial mortgage loans amongst ACR and ACRES Loan Origination.

***Allocation of Investment Opportunities Involving Participation Interests to Fund and Separate Account Clients***

ACRES has been and may be engaged in the sale of participation interests in loans originated by ACRES Loan Origination to its Fund and Separate Account Clients. ACRES will face actual and potential conflicts of interest when allocating investment opportunities amongst the Funds and Separate Accounts or its affiliates. ACRES will act in a manner it considers to be fair, reasonable and equitable under the circumstances in allocating investment opportunities amongst its Funds and Separate Accounts or ACRES or its affiliates. If an investment opportunity is considered suitable and appropriate for more than one Fund or Separate Account or for ACRES or its affiliates, ACRES will afford each such party the opportunity to participate (and ACRES will determine whether and to what extent a Fund or Separate Account participates) (*i.e.*, to obtain a participation or co-lender interest) in such opportunity on a *pro rata* basis, based on, as applicable, investment objectives, loan allocation parameters and eligibility criteria set forth in the applicable governing documents and subject to relevant facts and circumstances, including (i) differences with respect to available capital, overall size and remaining life of a party’s account; (ii) differences in investment objectives or strategies; and (iii) potential conflicts of interest. Any investment by ACRES or any of its affiliates will be on economic terms no more favorable to ACRES or any of its affiliates than to the other investors. A Fund or Separate Account may not be entitled to investment priority as against another Fund or Separate Account and ACRES and its affiliates and may not necessarily participate in every investment opportunity. In cases where a limited amount of an investment is available for purchase, the allocation of such investment amongst a Fund, Separate Account, and ACRES and its affiliates will necessarily reduce the amount thereof available for purchase by a Fund or Separate Account.



***Conflicts of Interest Involving a Client's and ACRES' Investment Committees and/or the Allocation Committee***

A Client's and/or ACRES' Investment Committee and/or the Allocation Committee may be comprised of the same persons (or largely the same persons) who may also serve on the Investment Committee for ACRES' balance sheet, which may have investment objectives similar to those of a Client.

Members of a Client's and/or ACRES' Investment Committee and/or the Allocation Committee may have (i) direct investments in a Client, or have other direct or indirect financial incentives with respect to the performance of a Client, (ii) direct or indirect investments in ACRES Parent, or (iii) other direct or indirect financial incentives with respect to the performance of ACRES Parent. Moreover, members of a Client's and/or ACRES' Investment Committees and/or Allocation Committee receive compensation (including discretionary bonuses and other incentive compensation) from ACRES Parent that may be based, among other things, on the profitability of ACRES Parent and its affiliates and a Client. Accordingly, members of such Investment Committees and/or the Allocation Committee have conflicts of interest with respect to the acquisition, disposition, investment, management and/or allocation decisions for a Client, although Clients, ACRES and ACRES Parent maintain investment, allocation, conflicts of interest and other policies and procedures intended to mitigate such conflicts.

***Conflicts of Interest Involving ACR's Refinancing of Another Client's Investments***

ACRES and its affiliates may earn or share in incentive fees paid by ACR upon the refinancing of an investment that was previously held by another Client. ACRES has a material interest in causing the refinancing of such investments because ACRES and its affiliates are entitled to receive an incentive fee upon the payoff of the initial loan. Any incentive fees paid to ACRES and its affiliates in such cases will be in addition to any Management Fee or performance-based compensation paid by ACR to ACRES. Each such investment opportunity will be subject to the approval of ACR's independent investment committee.

***Conflicts of Interest Involving ACRES, ACRES Collateral Manager and its Affiliates***

ACRES, ACRES Collateral Manager and their affiliates and Clients (the "***Related Parties***") play numerous roles in managing the offering of interests in a CLO. Although ACRES Collateral Manager is required to perform its functions under each respective CLO's Governing Documents in accordance with (i) the degree of care, skill and attention required pursuant to such Governing Documents and (ii) the relevant provisions of the Advisers Act, conflicts of interest may nevertheless arise.

Under a CLO's Governing Documents, ACRES Collateral Manager is permitted to effect direct trades between the CLO and ACRES Collateral Manager or any of their respective affiliates, acting as principal, subject to the restrictions and approval requirements set forth in the CLO's Governing Documents. The Related Parties may have conflicting division of loyalties and responsibilities regarding any such principal transaction. In addition, conflicts of interest may arise between the Related Parties and a CLO's noteholders in the exercise of any rights held by the Related Parties under a CLO's Governing Documents.

In addition, various potential and actual conflicts of interest may arise from the overall advisory, investment and other activities of the Related Parties. The Related Parties may have equity and



other investments in, may be lenders to, and may have other ongoing relationships with, the borrowers under the loans and participation interests acquired by a CLO. In addition, the Related Parties may invest in or make loans that are senior or junior to, or otherwise have interests different from or adverse to, the loans and participation interests acquired by a CLO. Additionally, the Related Parties may have economic interests in, or other relationships with, issuers (or their servicers or managers) of loans and participation interests acquired by a CLO that are different than those of such CLO. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts. The Related Parties and their respective directors, officers, employees and agents may, among other things (a) serve as directors, partners, officers, employees, agents, nominees or signatories for an obligor of a loan or participation interest acquired by a CLO or have other ongoing relationships of various types with such obligors; (b) perform and receive fees for the performance of services rendered to the obligor of a loan or participation interest acquired by a CLO or any affiliate thereof, including acting as servicer, sub-servicer or special servicer with respect to a loan or participation interest acquired by a CLO; (c) be a secured or unsecured creditor of, or hold an equity interest in, an obligor of a loan or participation interest acquired by a CLO; (d) serve as a member of any “creditors’ board” or “creditors’ committee” with respect to a loan or participation interest acquired by a CLO that is or may become a defaulted mortgage asset (e) own or make loans to the borrower, or an affiliate of such borrower, under a loan or participation interest acquired by a CLO; and (f) make, hold or sell a note or participation interest that may be *pari passu* or junior in ranking to a loan or participation interest acquired by a CLO.

The Related Parties are permitted to take whatever action is in the best interest of the Related Parties regardless of the impact on a CLO’s noteholders. Subject to the restrictions in a CLO’s Governing Documents, the Related Parties have the right to originate and sell loans and/or participation interests to a CLO. For such transactions, ACRES Collateral Manager acts as an external advisor to ACRES and its affiliates. Although ACRES Collateral Manager is required to act in accordance with a CLO’s Governing Documents, a conflict of interest may nevertheless arise.

ACRES Collateral Manager is permitted to direct or require the special servicer of a loan or participation interest acquired by a CLO to enter into modifications of such loan or participation. In exercising such rights, ACRES Collateral Manager will have the right to act in the interests of itself and its affiliates notwithstanding any conflicting interests of the CLO’s noteholders.

The Related Parties may serve as sponsor, collateral manager, general partner, portfolio manager or investment adviser of other investment vehicles that are organized to invest in assets that may include or are similar to the assets held by a CLO. The Related Parties may from time to time seek to purchase, make decisions with respect to and/or dispose of any collateral for any investment entity or any other Related Party for which it serves in one of these capacities while simultaneously consulting with ACRES Collateral Manager, a CLO’s sponsor, servicer or special servicer in connection with a CLO’s assets. In connection with any such transaction, ACRES Collateral Manager may make investment recommendations and decisions that may be the same as or different from those made with respect to the CLO’s investments, in each case in accordance with applicable law.

The Related Parties may engage in any other business and furnish investment management and advisory services to others which may include, without limitation, serving as consultant or servicer for, investing in, lending to, or being affiliated with, other entities organized to issue securities similar to a CLO’s offered notes, and other trusts and pooled investment vehicles that acquire





interests in, provide financing to, or otherwise deal with real estate loans and participation interests that would be suitable investments for a CLO.

While managing the assets held by a CLO, including selecting the loans or participations to be acquired by a CLO, ACRES may consider its relationships with other Clients. While providing services to other Clients, ACRES may recommend activities that compete with or conflict with the interests of a CLO. Subject to a CLO's Governing Documents, in the case of ACRES Collateral Manager, and the servicing standard, in the case of a CLO's special servicer, the Related Parties will be permitted to take actions in their own best interests regardless of the impact on a CLO's noteholders. There can be no assurances that the Related Parties' provision of advisory services to Clients other than a CLO will not adversely affect the interests of a CLO's Noteholders.

Affiliates of ACRES Collateral Manager may retain certain notes and preferred shares of a CLO. The ownership of such interests may give ACRES Collateral Manager an incentive to take actions that may vary from the interests of the holders of a CLO's offered notes. At any given time, none of the Related Parties will be entitled to vote the retained notes or preferred shares held by any of the Related Parties with respect to the removal of ACRES Collateral Manager or termination or assignment of a CLO's Management Agreement. However, at any given time, except where noted otherwise, the Related Parties will be generally entitled to vote the retained notes or preferred shares (if any) held by them with respect to all other matters in accordance with the applicable Governing Documents.

#### ***Additional Compensation to ACRES and its Affiliates***

ACRES and its affiliates are engaged in a number of real estate and other services businesses. ACRES has caused (and may in the future cause) the designation of ACRES Capital Servicing as the servicer or special servicer of loans owned by Clients. ACRES has a material financial interest in causing these designations because ACRES Servicing is entitled to receive special servicing fees and other fees for services provided to those loans.

In addition, ACRES has caused (and may in the future cause) the designation of ACRES Development Management, LLC ("**ACRES DevCo**"), an affiliate of ACRES, to act as a co-developer or owner's representative for direct equity investments within ACRES portfolio. ACRES has a material financial interest in causing these designations because ACRES DevCo is entitled to receive development fees for services provided. Additionally, a borrower under a loan owned by a Client may retain ACRES DevCo to provide property-level services to the loan's underlying collateral for which ACRES DevCo would receive fees.

In addition, ACRES and its affiliates have (and may in the future) engage an affiliated service provider to provide services to a Client. When engaging an affiliated service provider, ACRES has an incentive to select the affiliate even if another person may be more qualified to provide the applicable services and/or can provide such services at a lesser cost. Any fees paid to affiliated service providers and associated reimbursements (as discussed above in Item 5) will be in addition to any Management Fee or performance-based compensation paid by a Client to ACRES. This creates a conflict of interest between ACRES and its affiliates, on the one hand, and the Clients and investors in the Funds, on the other hand, because the amounts of these fees and reimbursements may be substantial and the Clients and investors in the Funds generally do not have an interest in these fees and reimbursements. ACRES determines the amount of these fees and reimbursements in its own discretion, subject to agreements with service providers, sellers and buyers, and/or third





party co-investors in its transactions, and the amount of such fees and reimbursements often are not disclosed to investors in Funds. In many cases with respect to the implementation of the arrangements described above, there is not an independent third-party involved on behalf of the relevant Client, though in certain cases ACRES has retained an independent consultant to determine whether fees and other terms of ACRES and its affiliates for services are reasonable. Therefore, a conflict of interest exists in the determination of any such fees and other related terms in the applicable agreement with the Client.

#### ***Transactions with Strategic Investors***

ACRES and its affiliates, including Clients, have engaged (and may in the future engage) in transactions, including co-investment opportunities and joint venture arrangements with respect to real estate and real estate-related investments, with a Client, an investor in a Client, an investor in ACRES Parent or other affiliate, a joint venture partner in another real estate equity investment or others with which ACRES and/or its affiliates has (and may in the future have) a current or prior relationship (collectively, “**Strategic Investors**”). The nature of such transactions can be diverse and may include benefits relating to a Client and its respective investments. Examples may include the ability to co-invest alongside a Client, investments in another Client, sales of companies to limited partners and recommendations to underwriters for allocations in initial public offerings, loans to co-investors (or joint venture partners) by ACRES or a Client.

#### ***Conflicts of Interest Involving Unaffiliated Investors in a Client that Are Investors in ACRES Parent***

Certain unaffiliated investors in a Client may also be direct or indirect investors in ACRES Parent. These relationships may create a conflict of interest with other unaffiliated investors in a Client who do not have existing relationships with ACRES Parent or ACRES. Neither ACRES nor any of its affiliates will provide any undisclosed benefit(s) to any investor in a Client who has any other relationship with ACRES or its affiliates at the expense of other investors in such Client due to such other relationship with ACRES or its affiliates. Notwithstanding the foregoing, ACRES and the Client may, in accordance with the Client’s Governing Documents, provide additional rights to investors through Side Letters that do not result in any detriment to investors in such Client.

#### ***Gifts, Contributions, Donations and Events***

In order to provide quality service, ACRES establishes, maintains and enhances relationships with professionals in the real estate industry, such as attorneys, consultants, title companies, investors and other third parties with whom ACRES does business (including without limitation investment professionals who may, from time to time, provide Clients with investment opportunities) and other service providers and professionals (collectively, “**Relationship Parties**”). ACRES, its employees and affiliates may from time to time invite, or be invited by, Relationship Parties to participate in activities, such as meals, conferences, sporting events, concerts, golf and other outdoor outings and other entertainment and recreational activities, may give or receive gifts related to attendance or participation in such activities, and may be asked to make charitable, political or other contributions or donations to organizations or political officeholders or candidates for political office at the request of a Relationship Party or one of its executives (collectively, “**Events**”). ACRES’ subsequent selection and retention of such Relationship Parties as service providers or partners in an investment opportunity, as applicable, could be viewed as a form of reimbursement for attending such Events, and ACRES may have an incentive to select service providers or partners in an



investment opportunity based on the expectation of receiving gifts or invitations to future Events. Notwithstanding that potential conflict of interest, ACRES has adopted policies and procedures designed to help prevent any Event from influencing its decision to hire or retain a Relationship Party or to engage in any transaction on behalf of a Client. ACRES' policies and procedures require gifts and entertainment valued in excess of certain thresholds to be reported to and, in certain cases, pre-approved in writing by ACRES' Chief Compliance Officer.

For more information regarding policies, procedures, prohibitions, reporting obligations and pre-clearance requirements, please see Item 11 below.

#### ***Diverse Investor Base***

The investors in a Fund may have conflicting investment, tax and other interests with respect to their investments in a Fund. As a consequence, conflicts of interest arise in connection with decisions made by ACRES or its affiliates, including with respect to the nature or structuring of investments, that are more beneficial for one investor than for another investor, especially with respect to investors' individual tax situations. In selecting and structuring investments appropriate for a Fund, ACRES and its affiliates will consider the investment and tax objectives of the applicable Fund, not the investment, tax or other objectives of any investor individually.

#### ***Side Letter Agreements***

ACRES may enter into certain Side Letter arrangements with certain investors in a Fund that provide such investors with different or preferential rights or terms that other Fund investors are not entitled to receive, which may include different fee structures and other preferential economic rights, information and reporting rights, excuse or exclusion rights, waiver of certain confidentiality obligations, co-investment rights, certain rights or terms necessary in light of particular legal, regulatory or policy requirements of a particular investor, additional obligations and restrictions with respect to structuring particular investments in light of the legal and regulatory considerations applicable to a particular investor, veto rights and liquidity or transfer rights. Except as otherwise agreed with an investor, ACRES (or the applicable affiliate) is not required to disclose the terms of any Side Letter arrangement with other investors in the same Fund.

#### ***Relationships with Service Providers***

Employees of ACRES or its affiliates, and/or their family members or relatives, may have ownership, employment, or other interests in service providers selected by ACRES for its Clients. These relationships that ACRES may have with a service provider can influence ACRES in determining whether to select, or recommend such service provider to perform services for a Client or an investment. ACRES will have a conflict of interest with the Clients in recommending the retention or continuation of such a service provider to the Clients or an investment if such recommendation, for example, is motivated by a belief that the service provider will continue to invest in Clients or will provide ACRES information about markets and industries in which ACRES operates or is interested or will provide other services that are beneficial to ACRES. Although ACRES selects service providers that it believes will be beneficial for its Clients, there is a possibility that ACRES, because of family, financial, business interest, or other reasons, may favor such retention or continuation even if a better price and/or quality of service could be obtained from another person. While ACRES often does not have visibility or influence regarding advantageous service rates or arrangements, there will be situations in which ACRES receives more favorable service rates or arrangements than the Clients or investment. In order to mitigate such conflicts,



ACRES performs initial and ongoing due diligence for third-party service providers to ACRES and its Clients.

### ***Relationships with Placement Agents and Other Parties***

The personnel of ACRES or its affiliates may have board, advisory or other relationships with issuers, distributors, consultants and others that may have investments in a Client and/or related funds or that may recommend investments in a Client and/or related funds or distribute interests in a Client and/or related funds. To the extent permitted by applicable law, ACRES and its affiliates may make charitable contributions to institutions, including those that have relationships with investors or personnel of investors. As a result of such relationships and arrangements, placement agents, consultants, distributors and other parties may have conflicts associated with their promotion of a Client, or other dealings with a Client, that create incentives for them to promote a Client.

### ***Key Employees***

The success of a Client depends to a significant extent upon the experience of the senior management and other members of the management team of ACRES and its affiliates (the "**Key Employees**"), whose continued service is not guaranteed. Any of these individuals could be difficult to replace, and the loss of the services of one or more members of ACRES' senior management team could have a material and adverse effect on the operations of a Client. In addition, some of the investment professionals of a Client may devote some of their business time and attention to other businesses of affiliates of a Client. There are no means of predicting whether they will successfully implement a Client's investment strategy, especially during changing economic conditions.

The Key Employees are not under any obligation to devote their full time and attention solely to the business of a Client nor are any of them obligated to devote any particular portion of time to the affairs of a Client. They may work on other projects for ACRES or its affiliates. Consequently, conflicts of interest may arise in allocating management time, services or functions of Key Employees, as well as other officers and employees of ACRES and its affiliates to the extent they are needed for services or functions on behalf of a Client.

### ***Other Conflicts***

ACRES and its Clients often engage common legal counsel and other advisers in a particular transaction, including a transaction in which there may be conflicts of interest. Members of the law firms engaged to represent Client may also represent one or more investors in such Client. In the event of a significant dispute or divergence of interest between Clients, ACRES and/or its affiliates, the parties may engage separate counsel in the sole discretion of ACRES and its affiliates, and in litigation and other circumstances separate representation may be required. Additionally, ACRES and its Clients will, from time to time engage other common service providers, including but not limited to accountants and auditors. In certain circumstances, the service provider may charge varying rates or engage in different arrangements for services provided to ACRES and its Clients. This may result in ACRES receiving a more favorable rate on services provided to it by such a common service provider than those payable by the Clients, or ACRES receiving a discount on services even though the Clients receive a lesser, or no, discount. This creates a conflict of interest between ACRES, on the one hand, and the Clients, on the other hand, in determining whether to engage such service providers, including the possibility that ACRES will favor the engagement or



continued engagement of such persons if it receives a benefit from such service providers, such as lower fees, that it would not receive absent the engagement of such service provider by the Clients.

ACRES may, in its discretion, cause Clients to have ongoing business dealings, arrangements or agreements with persons who are former employees or executives of ACRES and its affiliates. Clients may bear, directly or indirectly, the costs of such dealings, arrangements or agreements. In such circumstances, there may be a conflict of interest between ACRES and the applicable Client in determining whether to engage in or to continue such dealings, arrangements or agreements, including the possibility that ACRES may favor the engagement or continued engagement of such persons even if a better price and/or quality of service could be obtained from another person.

*The foregoing risk factors and conflicts of interest do not purpose to be a complete explanation of the risks associated with an investment in a Client. Investors in ACR, the CLOs, AMF, or the owner of a Separate Account should refer to the applicable Governing Documents and are urged to consult with their own legal and tax advisors before making any investment decisions.*

*In no event should this Brochure be considered to be an offer of interests in AMF or the CLOs or relied on in determining to invest in AMF or the CLOs. It is also not an offer of, or agreement to provide, advisory services directly to any recipient of the Brochure. Rather, this Brochure is designed solely to provide information about ACRES for the purpose of compliance with certain obligations under the Advisers Act and, as such, responds to relevant regulatory requirements under the Advisers Act, which may differ from the information provided in the Governing Documents and/or offering documents for AMF or the CLOs.*

#### **ITEM 9: DISCIPLINARY INFORMATION**

Neither ACRES nor any of its management persons have been involved in any material legal or disciplinary events that would be material to your evaluation of ACRES' advisory business or the integrity of ACRES' management.

#### **ITEM 10: OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

##### **A. REGISTERED BROKER-DEALER OR REGISTERED REPRESENTATIVE**

N/A

##### **B. REGISTERED FUTURES COMMISSION MERCHANT; COMMODITY POOL OPERATOR, COMMODITY TRADING ADVISOR OR ASSOCIATED PERSON**

ACR, a publicly-traded REIT, is an exempt commodity pool operator.

Certain of ACRES' management persons or employees of ACRES' affiliates are providing (or may in the future provide) services for ACR.

##### **C. OTHER RELATIONSHIPS OR ARRANGEMENTS**

ACRES has other financial industry affiliations and activities (described below), and ACRES and its affiliates have entered into (and may in the future enter into) transactions directly with (to the extent permitted by applicable law), and/or on behalf of, a Client, which may present certain conflicts of interest as described below.



ACRES Collateral Manager, a wholly-owned subsidiary of ACRES and a Relying Adviser of ACRES, serves as collateral manager for various issuers of CLOs.

ACRES Parent, the parent company of ACRES, and/or its affiliates have served (and may in the future serve) as the sponsor of a Fund for which (a) ACRES has served (and may in the future serve) as investment manager, investment adviser or other similar capacity and (b) an affiliate has served (and may in the future serve) as general partner or managing member.

ACRES Capital Servicing, a wholly-owned subsidiary of ACRES, is a primary and/or special servicer of loans held by Clients. ACRES Capital Servicing provides various monitoring and advisory services in exchange for a Servicing Fee and certain expense reimbursements; including without limitation analyzing and monitoring loan compliance, cash flow and business plans of respective borrowers and conducting monthly reviews of the investments.

ACRES Loan Origination, a wholly-owned subsidiary of ACRES, is principally engaged in the origination of commercial real estate mortgage loans.

ACRES DevCo, LLC, a wholly-owned subsidiary of ACRES Parent, acts in various capacities as a co-developer or owner's representative for direct equity investments within the ACRES portfolio.

ACRES Permanent Lending, LLC a wholly-owned subsidiary of ACRES Parent, is principally engaged in the origination of commercial real estate mortgage loans.

Certain of ACRES' management persons or employees of ACRES' affiliates are providing (or may in the future provide) services for each of the ACRES affiliates mentioned above. For more information regarding the services provided by certain of the above ACRES affiliates, and the associated conflicts of interest, please see Items 5 and 8 above.

#### **D. RECOMMEND OTHER ADVISORS**

N/A

### **ITEM 11: CODE OF ETHICS, SUPERVISED PERSON CONDUCT, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

#### **A. CODE OF ETHICS**

ACRES strives to adhere to the highest industry standards of conduct based on principles of professionalism, integrity, honesty and trust. As such, ACRES has adopted a Code of Ethics (included in ACRES' Compliance Manual) for its officers, employees and other persons who provide investment advice and related services on behalf of ACRES (each, a "**Supervised Person**"), which describes ACRES' high standard of business conduct and fiduciary duty to each Client.

ACRES' Code of Ethics is designed to ensure that the activities and interests of each Supervised Person and the personal securities transactions of each Supervised Person that has access to information regarding a Client's investments or that are involved in making recommendations to a Client (or who have access to such recommendations) (each, an "**Access Person**") will not interfere with making and implementing decisions in the best interests of each Client, while at the same time allowing each Access Person to invest for his or her own account (consistent with applicable law,



rules and regulations and the Code of Ethics). As such, the Code of Ethics contains policies and procedures that, among other things:

- requires each Supervised Person to place the interests of each Client first and prohibits a Supervised Person from taking personal advantage of an opportunity that belongs to a Client;
- requires each Supervised person to participate in initial compliance training with a member of ACRES' compliance department and annual compliance training thereafter, logs on which will be maintained by the Chief Compliance Officer;
- requires each Access Person to conduct all personal investment transactions in compliance with the Code of Ethics and requires each Supervised Person to comply with the federal securities laws and all other applicable laws, rules and regulations;
- requires each Access Person to disclose upon hire and thereafter each personal securities account held by the Access Person or by such Access Person's spouse, minor children or others living in the Access Person's household;
- requires each Access Person to disclose upon hire and each quarter thereafter all securities holdings (other than those classes of securities designated as exempt) and securities transactions (i) by the Access Person or by such Access Person's spouse, minor children or others living in the Access Person's household and (ii) for which the Access Person has direct or indirect influence or control over investment decisions (including as a trustee or by providing discretionary advisory services);
- requires each Access Person to provide copies of monthly and/or quarterly account statements and trade confirmations for all securities transactions (other than transactions in those classes of securities designated as exempt) (i) by the Access Person or by such Access Person's spouse, minor children or others living in the Access Person's household and (ii) for which the Access Person has direct or indirect influence or control over investment decisions (including as a trustee or by providing discretionary advisory services);
- requires each Supervised Person to pre-clear any securities offered in an initial public offering or private placement (including investments in hedge funds, fund-of-funds, private equity funds, venture capital funds and other unregistered pooled investment vehicles);
- requires the Chief Compliance Officer to monitor the activities of each Supervised Person and Access Person to ensure compliance with the Code of Ethics and to prevent and detect violations of applicable law, violations of ACRES' Code of Ethics and conflicts of interest between ACRES and each Client; and
- requires each Supervised Person to acknowledge the terms of the Code of Ethics upon hire and annually (or as amended) thereafter and to certify annually as to his or her compliance with the Code of Ethics.

An investor or prospective investor may request a copy of ACRES' Code of Ethics by contacting Jaclyn Jesberger, ACRES' Chief Compliance Officer, at (516) 882-1662 or by e-mail at [jjesberger@acrescap.com](mailto:jjesberger@acrescap.com).





## **B. SUPERVISED PERSON CONDUCT**

ACRES' Compliance Manual contains additional policies, procedures, prohibitions, reporting obligations and pre-clearance requirements that are designed to prevent Supervised Persons from engaging in activities that may interfere with making and implementing decisions in the best interests of each Client, including:

- prohibiting each Supervised Person from trading on the basis of, or misappropriating, material nonpublic or proprietary information (*i.e.*, insider trading);
- prohibiting each Supervised Person from purchasing or selling securities of any issuer on ACRES' restricted issuers list;
- prohibiting each Supervised Person from engaging in certain prohibited transactions, including market manipulation, front-running and trading on rumors;
- requiring each Supervised Person to report and obtain the prior approval of the Chief Compliance Officer before engaging in any outside business activity;
- requiring each Supervised Person to report any gift or entertainment (given or received) and to obtain the prior written approval of the Chief Compliance Officer for any gift or entertainment (given or received) with an aggregate value in excess of \$500 (\$1,000 for Senior Executives) per recipient per year;
- prohibiting ACRES and each Supervised Person from making corrupt payments to any officer or employee of a foreign government, a public international organization or any department or agency thereof or any person acting in an official capacity for such government or organization to obtain or retain business, to secure any improper advantage or to act in violation of any lawful duty; and
- requiring each Supervised Person to obtain the prior approval of the Chief Compliance Officer before making any political contribution and to report each political contribution, and if a political contribution involves hosting a fundraising event, providing certain details about to fundraising event, and prohibiting certain political contributions in violation of applicable law, rule or regulation.

## **C. PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS**

ACRES and its affiliates have engaged (and may in the future engage) in principal, agency cross or cross transactions with or for a Client, consistent with the Advisers Act, SEC rules, the policies and procedures set forth in ACRES' Compliance Manual and a Client's Governing Documents.

ACRES and its affiliates have caused (and may in the future cause) a Client to purchase investments from another Client, or to sell investments to another Client. Such transactions create conflicts of interest because, by not exposing such buy and sell transactions to market forces, a Client may not receive the best price otherwise possible, or ACRES might have an incentive to improve the performance of one Client by selling underperforming assets to another Client in order, for example, to earn fees. In connection with such transactions, ACRES, its affiliates and/or their professionals (i) will, from time to time, have significant investments, or intentions to invest, in the



Client that is selling and/or purchasing such an investment or (ii) otherwise have a direct or indirect interest in the investment (such as through certain other participations in the investment). ACRES and its affiliates may receive management or other fees in connection with their management of the relevant Clients involved in such a transaction, and may also be entitled to share in the investment profits of the relevant Clients.

To address these conflicts of interest, in connection with effecting such transactions, ACRES will follow any investment allocation requirements set forth in the Governing Documents of the relevant Clients. To the extent such matters are not addressed in the Governing Documents, ACRES' Chief Compliance Officer and, in certain cases, a Client's board of directors, will be responsible for confirming that ACRES (i) considers its respective duties to each Client, (ii) determines whether the purchase or sale and price or other terms are comparable to what could be obtained through an arm's length transaction with a third party on commercially reasonable terms, and (iii) obtains any required approvals of the transaction's terms and conditions. The Client will not directly or indirectly receive any commission or other transaction-based compensation for effecting any such transaction, and ACRES will not effect any such transaction for any Client where ACRES is deemed to own more than 25% of the Client, unless such transaction complies with the requirements of ACRES' "principal transactions" policy, as described below.

Section 206 under the Advisers Act regulates "principal transactions" among an investment adviser and its affiliates, on the one hand, and the clients thereof, on the other hand. Very generally, if an investment adviser or an affiliate thereof proposes to purchase a security from, or sell a security to, a client (what is commonly referred to as a "principal transaction"), the adviser must make certain disclosures to the client of the terms of the proposed transaction and obtain the client's consent to the transaction. In connection with ACRES' management of its Clients, ACRES and its affiliates may engage in principal transactions. ACRES has established certain policies and procedures to comply with the requirements of the Advisers Act as they relate to principal transactions, including that disclosures required by Section 206 of the Advisers Act be made to the applicable Client(s) regarding any proposed principal transactions and that any required prior consent to the transaction be received.

The Chief Compliance Officer will, on not less than an annual basis, review and test the adequacy of the policies and procedures relating to the above transactions and the effectiveness of their implementation. The annual review shall also include a description of the need, if any, for revisions to these policies and procedures. The Chief Compliance Officer shall document such testing, which shall be maintained as a record of ACRES and each affected Client.

For information regarding the allocation of investment opportunities to ACRES that may be appropriate for one or more Clients, and the associated conflicts of interest, please see Item 8 above.

#### **D. INVESTING IN ASSETS RECOMMENDED OR HELD BY A CLIENT**

ACRES and its affiliates have invested (and may in the future invest) in the same (or related) assets that are held by, or recommended to, a Client.

#### **E. PURCHASE AND SALES OF SECURITIES BY RELATED PERSONS**

Please see the response to Item 11.C above.



## **ITEM 12: BROKERAGE PRACTICES**

### **A. SELECTING OR RECOMMENDING BROKER-DEALERS FOR CLIENT TRANSACTIONS**

Unless otherwise specified in a Client's Governing Documents, ACRES has the authority to determine for each Client, without obtaining specific Client consent (except as otherwise provided below), (a) the securities to be bought or sold, (b) the amount of the securities to be bought or sold, (c) the broker or dealer to be used and (d) if applicable, the commission rates paid. Limitations on ACRES' authority are guided by, among other things, (i) its responsibility to act as a fiduciary when handling a Client's account, (ii) its duty to seek to obtain "best execution," (iii) the investment strategies and objectives of each Client and (iv) a Client's Governing Documents. ACRES is required to obtain consent of a Client and/or its limited partners or members (or the consent of an independent representative or advisory committee, advisory management committee or investment management committee of the Client) for any principal transaction involving ACRES, an affiliate and one or more Clients and may be required to obtain consent of a Client and/or its limited partners or members (or the consent of an independent representative or advisory committee, advisory management committee or investment management committee of the Client) for any affiliate or cross transaction involving ACRES, an affiliate and one or more Clients.

In determining which broker or dealer to use, ACRES seeks to obtain "best execution" with respect to its securities transactions for its Clients. ACRES evaluates the character of the market for the security, including, but not limited to, the security's price, volatility and liquidity, as well as the size and type of transaction. Specifically, in making any such determination, ACRES considers a number of factors, including, but not limited to:

- the ability to effect prompt and reliable executions at favorable prices (including the applicable dealer spread or commission, if any);
- the operational efficiency with which transactions are effected and the efficiency of error resolution, taking into account the size of order and difficulty of execution;
- the financial strength, integrity and stability of the broker;
- special execution capabilities;
- clearance;
- settlement;
- reputation;
- on-line pricing;
- block trading and block positioning capabilities;
- willingness to execute related or unrelated difficult transactions in the future;
- order of call;



- on-line access to computerized data regarding each Client's account;
- custodial (and other) services provided by such brokers and/or dealers that may potentially enhance ACRES' general portfolio management capabilities;
- performance measurement data;
- financing terms;
- the quality, comprehensiveness and frequency of available research and related services considered to be of value (including economic forecasts, investment strategy advice, fundamental and technical advice on individual securities, valuation advice and market analysis);
- provision of the opportunity to participate in capital introduction events sponsored by the broker-dealer; and
- commission-sharing agreements that are in effect at the time of the transaction.

ACRES is not required to weigh any of these factors equally.

In selecting a broker-dealer to execute a transaction (or a series of transactions) and determining the reasonableness of the broker-dealer's compensation, ACRES is not required to solicit competitive bids and is not required to seek the lowest available commission cost. ACRES does not negotiate "execution only" commission rates; therefore, a Client may be deemed to be paying for research, brokerage or other services provided by a broker-dealer which are included in the commission rate (see below).

#### **1. RESEARCH AND OTHER SOFT DOLLAR BENEFITS**

ACRES may, from time to time, receive unsolicited market and industry research from broker-dealers. In no instance does ACRES seek to obtain research or other soft dollar benefits in exchange for directing client brokerage to the broker or bank producing such materials. All decisions related to selection of ACRES' trading counterparties and broker-dealers servicing client accounts are made based on best execution.

#### **2. BROKERAGE FOR CLIENT REFERRALS**

ACRES and its related persons do not receive client referrals from broker-dealers or third parties that provide order execution on behalf of Client accounts.

#### **3. DIRECTED BROKERAGE**

ACRES does not recommend, request or require that a Client direct it to execute transactions through a specified broker-dealer.

#### **4. AGGREGATE ORDERS FOR VARIOUS CLIENT ACCOUNTS**

Generally, Clients do not own, or contemplate the ownership of, the same security, although it may on occasion occur. However, in the event that ACRES determines to buy or sell the same



security on behalf of more than one Client, it may, but is under no obligation to (except as provided by the applicable Client Governing Documents), aggregate (to the extent permitted by applicable law, rule and regulation) the securities to be purchased or sold in order to seek more favorable prices, lower brokerage commissions or more efficient execution.

## **5. TRADE ERROR POLICY**

While it is the policy of ACRES to use the utmost care in making and implementing investment decisions on behalf of its Clients, trade errors may inevitably occur. ACRES views a trade error as involving an unintentional mistake in placing a trade or in making an investment decision that is not detected until after the trade is settled and for which ACRES is responsible. Trade errors include, but are not limited to: (a) purchasing an investment not legally permitted for a Client, or not within a Client's investment guidelines; (b) purchasing or selling the wrong investment for a Client; (c) purchasing or selling an investment for the wrong Client; (d) purchasing the wrong amount of an investment for a Client; or (e) allocating an investment to the wrong Client. A trade error does not include an intentional act, an error that is corrected prior to settlement or an error that is clearly the fault of an unaffiliated third party, such as an executing broker.

To the extent that a trade error occurs, it is the policy of ACRES to correct such error as soon as practicable and in such a manner whereby the Client incurs no loss. Because each trade error presents a unique set of facts, each will be resolved on a case-by-case basis. However, when correcting a trade error, ACRES shall not: (a) pass the cost of losses on to the Client; (b) use soft dollar credits with broker-dealers to cover losses; (c) use other Clients to correct errors; or (d) enter into an agreement with an executing broker to absorb any correction costs. Prior to the settlement of a trade, ACRES may reverse out a trade error. After settlement of a trade, ACRES must ensure that the guidelines detailed above are enforced.

## **ITEM 13: REVIEW OF ACCOUNTS**

### **A. CLIENT ACCOUNT REVIEWS**

ACRES has an investment committee, chief credit officer and/or portfolio manager for each Client. Client accounts are regularly reviewed by senior investment professionals. Senior investment professionals, with the assistance of other investment professionals, regularly review and discuss portfolio status, potential investments, performance, and related issues.

ACRES reviews the ACR portfolio consistently throughout the day, week and month. This review entails security position exposure, pricing and risk analysis. This review is conducted by various investment and accounting professionals of ACRES. ACR's portfolio and investments are also reviewed by the ACRES investment committee not less than annually.

### **B. CONTENT AND FREQUENCY OF REGULAR REPORTS**

An investor in a Fund generally receives quarterly and annual financial information for such Fund, including, for each quarter, a summary description of (a) each investment, (b) any material event or development regarding the Fund's investments and (c) each disposition of an investment, during such quarterly period. The specific timing and nature of reviews for a Fund are dictated by regulatory requirements and a Fund's Governing Documents. The custodian or Fund administrator delivers a quarterly report to each investor.



Separate Accounts generally receive quarterly and annual (or if requested, more frequent) statements indicating their capital balances and the accounts balance sheet and income statement. These materials are provided with a report highlighting the developments for the period.

ACRES provides reports to ACR as and when requested by ACR and its Board of Directors in order to assist ACR in its compliance with its governance, legal, regulatory, or other such requirements.

An investor in a CLO receives information as provided in such CLO's Governing Documents and other documents provided to such investors.

#### **ITEM 14: CLIENT REFERRALS AND OTHER COMPENSATION**

##### **A. COMPENSATION RECEIVED BY ACRES FOR CLIENT REFERRALS**

ACRES does not receive any compensation for the referral of clients or investors to any other managers for the provision of advisory services.

##### **B. COMPENSATION PAID BY ACRES OR RELATED PERSON FOR CLIENT REFERRALS**

ACRES' enters into solicitation agreements pursuant to which it compensates third-parties for client referrals that result in the provision of investment advisory services by ACRES. All agreements comply with Rules 206(4)-3 and 206(4)-5 under the Advisers Act and any applicable state laws and regulations. Third parties who introduce clients to ACRES may receive compensation from ACRES or its affiliates, including a percentage of introduced capital. Compensation is paid pursuant to a written agreement with the solicitor and generally may be terminated by either party from time to time.

#### **ITEM 15: CUSTODY**

Each Client's cash and securities are required to be maintained by a "qualified custodian" in such Client's name, unless the security is otherwise exempt from this requirement (*e.g.*, certain privately offered securities).

ACRES is deemed to have "custody" of the assets of AMF.

The financial statements of AMF are (a) prepared in accordance with GAAP, (b) audited by an independent accounting firm that is registered with, and subject to regular examination by, the Public Company Accounting Oversight Board ("PCAOB") and (c) distributed to the Fund's investors (i) within 120 days following AMF's fiscal year end and (ii) promptly after liquidation. Accordingly, ACRES is exempt from the requirements of certain aspects of Rule 206(4)-2 under the Advisers Act for AMF.

ACRES is deemed to have "custody" of the assets of ACR.

ACR is audited at least annually by an independent public accountant that is registered with, and subject to regular inspection by the PCAOB, and ACR files its audited financial statements, prepared in accordance with GAAP, with the SEC on an annual basis no later than 90 days after the end of its fiscal year. ACR is also subject to quarterly reviews by its auditors and files financial statements with the SEC on a quarterly basis. Accordingly, ACRES is exempt from the requirements of certain aspects of Rule 206(4)-2 under the Advisers Act for ACR.





ACRES is deemed to have “custody” of the assets of its Separate Accounts.

The financial statements for the Separate Accounts do not satisfy the above requirements. Accordingly, each Separate Account (i) has an independent accountant that is registered with, and subject to examination by, the PCAOB verify the cash and securities of each Separate Account by a surprise examination conducted on an annual basis pursuant to a written agreement, (ii) ensures that certain securities that would otherwise be exempt are held by a “qualified custodian,” (iii) provides notice containing certain information regarding each Separate Account’s “qualified custodian(s)” and (iv) has a reasonable basis, after due inquiry, for believing that a Separate Account’s “qualified custodian” sends an account statement, at least quarterly, to such Separate Account identifying the amount of cash and each security of the Separate Account held by such “qualified custodian” at the end of the period and each transaction by the Separate Account in such account during that period. The independent accountant makes certain disclosures with the SEC and notifies the SEC within one business day of any material discrepancies discovered during the course of the surprise custody examination. To the extent ACRES sends any statements directly to such Separate Account, such statements include a legend that cautions such Separate Account and its owners to compare the statements sent by ACRES with any statements sent by such Separate Account’s “qualified custodian(s).”

Rule 206(4)-2 is not applicable to ACRES with respect to the CLOs because neither ACRES nor any of its affiliates have “custody” (as that term is defined in Rule 206(4)-2) of the assets of a CLO.

#### **ITEM 16: INVESTMENT DISCRETION**

ACRES has the authority to recommend each investment decision for ACR and AMF, in accordance with the Allocation Policies and Procedures, and subject to compliance with the investment criteria, policy and guidelines contained in the Governing Documents of the relevant Client.

ACRES does not have investment discretion with regard to the Separate Accounts.

ACRES Collateral Manager has the authority to recommend each investment decision for a CLO, subject to any required approvals by a CLO’s advisory committee, with respect to any affiliate (principal or cross) transactions between a CLO, on the one hand, and ACRES, an affiliate or another Client, on the other hand, and (ii) receipt of a no-downgrade confirmation by one or more rating agencies.

ACRES also exercises other discretionary authority in connection with ongoing asset management, including loan modifications, of Client investments, subject to the relevant Client’s Governing Documents.

#### **ITEM 17: VOTING CLIENT SECURITIES**

Clients do not often receive proxies and, accordingly, ACRES is generally not called upon to vote proxies. If ACRES were to receive a proxy on behalf of a Client and is requested or required to vote a proxy, ACRES will consider, among other things, the financial interests of the applicable Client and the recommendation of management on the particular issue.

In reviewing the proxy statements, ACRES will seek to identify any potential conflict of interest with the company and determine, on a case-by-case basis, if the conflict is material. If material, ACRES will determine, in light of all the facts then currently available, the manner by which to proceed. This may, or may not include abstention from voting such proxy. ACRES will document its decision making process with respect to resolving material conflicts of interest.



ACRES has adopted Proxy Voting Policies and Procedures whereby it exercises discretion to vote proxies for Client securities. A copy of these policies and procedures, as well as a record of all proxy decisions and any documentation maintained with respect to proxy votes, is available to each existing and prospective Client and investor by contacting Jaclyn Jesberger, ACRES' Chief Compliance Officer, at (516) 882-1662 or by e-mail at [jjesberger@acrescap.com](mailto:jjesberger@acrescap.com).

#### **ITEM 18: FINANCIAL INFORMATION**

##### **A. PREPAYMENT**

ACRES does not require or solicit prepayment in advance.

##### **B. FINANCIAL CONDITION DISCLOSURES**

ACRES is not aware of any financial condition or commitment that is reasonably likely to impair its ability to satisfy its contractual and fiduciary commitments to each of its Clients.

##### **C. BANKRUPTCY**

ACRES has never been the subject of a bankruptcy proceeding.

#### **ITEM 19: REQUIREMENTS FOR STATE-REGISTERED ADVISERS**

Not applicable.

#### **MISCELLANEOUS: ADDITIONAL INFORMATION**

##### **A. BUSINESS CONTINUITY PLAN**

ACRES is covered under its Business Continuity Plan. ACRES' Business Continuity Plan is drafted with the expectation that in the event of a significant business disruption, ACRES and/or its affiliates shall, as quickly as practicable and to the extent reasonably feasible given the scope and severity of the significant business disruption: safeguard each Supervised Person and property; recover and resume business operations; make financial and operational assessments; protect its books and records, including Client and investor information; and assist investors to transact business.

##### **B. PRIVACY POLICIES AND PROCEDURES**

ACRES has adopted Privacy Policy and Procedures and distributes a Privacy Policy Notice to each existing and prospective Client and investor upon entering into an advisory relationship and annual thereafter that explains the manner in which ACRES and its affiliates collect, utilize and maintain non-public personal information about investors who are individuals, as required under federal and other applicable law. ACRES is committed to protecting Client's and each investor's privacy and maintaining the confidentiality and security of an investor's personal information and restricts access to personal account information to those Supervised Persons who need to know that information to provide ACRES' products and services. ACRES also maintains appropriate physical, electronic and procedural safeguards to guard each Client's and each investor's non-public personal information.



A copy of ACRES' Privacy Policy Notice is posted on ACRES' website at [www.acrescap.com](http://www.acrescap.com) and is available to each existing and prospective Client and investor by contacting Jaclyn Jesberger, ACRES' Chief Compliance Officer, at (516) 882-1662 or by e-mail at [jjesberger@acrescap.com](mailto:jjesberger@acrescap.com).