

**ITEM 1  
COVER PAGE**

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

**EMPYREAN CAPITAL PARTNERS, LP**

March 29, 2019

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Empyrean Capital Partners, LP  
10250 Constellation Boulevard, Suite 2950  
Los Angeles, California 90067  
Tel: (310) 843-3000  
Fax: (310) 843-3099  
Website: [www.empyrean.com](http://www.empyrean.com)

*This brochure (this “Brochure”) provides information about the qualifications and business practices of Empyrean Capital Partners, LP (“Empyrean”), an investment adviser registered with the United States Securities and Exchange Commission (the “SEC”) under the Investment Advisers Act of 1940, as amended (the “Advisers Act”). If you have any questions about the contents of this Brochure, please contact Empyrean’s Chief Compliance Officer at (310) 843-3000. The information in this Brochure has not been approved or verified by the SEC or by any state securities authority.*

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

*This Brochure contains certain material information in the manner and format promulgated by the SEC. Additional information, which must be read and considered with the information in this Brochure, may be found in other documents, including, as applicable, offering memoranda and/or investment management agreements, among others. Please read and understand the entire Brochure as responses to certain items may also respond to or provide additional or fuller information regarding the responses to other items.*

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

**ITEM 2**  
**MATERIAL CHANGES**

The most recent annual update to Empyrean's brochure was filed with the SEC on March 29, 2018. This Brochure amends the most recent annual update to incorporate certain changes and updates that Empyrean does not believe constitute material changes.

Clients and prospective Clients should carefully review this Brochure in its entirety.

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## ITEM 4 ADVISORY BUSINESS

### A. General Description of Advisory Firm.

Empyrean commenced operations in 2004. Amos Meron and Brian Joseph are the principal owners of Empyrean and its general partner, Empyrean Capital, LLC, a Delaware limited liability company (the “Empyrean General Partner”). Mr. Meron is the managing member of the Empyrean General Partner and controls Empyrean.

### B. Description of Advisory Services

Empyrean serves as the investment adviser with discretionary trading authority to private pooled investment vehicles, the securities of which are offered to Investors (as defined in Item 7) on a private placement or other basis (each, a “Fund” and collectively, the “Funds”). The Funds include (i) Empyrean Capital Overseas Fund, Ltd., a Cayman Islands exempted company (the “Offshore Fund”), (ii) Empyrean Capital Overseas ERISA Fund, Ltd, a Cayman Islands exempted company (the “ERISA Fund”), (iii) Empyrean Capital Overseas Master Fund, Ltd., a Cayman Islands exempted company (the “Master Fund”), (iv) Empyrean Capital Fund, LP, a Delaware limited partnership (the “Domestic Fund”), (v) Empyrean Capital Overseas Fund II, Ltd. (“ECOF II”) and, together with the Domestic Fund, the Offshore Fund, the ERISA Fund and the Master Fund, the “Empyrean Funds”) and (v) a co-investment vehicle comprised of (A) Empyrean LHMN Offshore SPV, LP, a Cayman Islands exempted limited partnership (the “Co-Invest Offshore Fund”) and (B) Empyrean LHMN SPV, LP, a Delaware limited partnership (the “Co-Invest Domestic Fund” and, together with the Co-Invest Offshore Fund, the “Co-Invest Funds”). The Domestic Fund, the Offshore Fund, the ERISA Fund and ECOF II invest all of their investable assets through a “master-feeder” structure in the Master Fund. The Co-Invest Offshore Fund invests all of its investable assets in the Co-Invest Domestic Fund through a “mini-master” structure. The Co-Invest Funds were formed for a single investment objective and are closed to new investors. While Empyrean is responsible for each of the Domestic Fund’s and the Co-Invest Funds’ investment activities, (i) with respect to the Domestic Fund, it is subject to the oversight of the general partner of the Domestic Fund, Empyrean Associates, LLC (the “Onshore General Partner”) and (ii) with respect to the Co-Invest Funds, it is subject to the oversight of the general partner of the Co-Invest Funds, Empyrean Associates II, LLC (the “Co-Invest General Partner”). Empyrean also serves as investment adviser for P EMP Ltd., a business company with limited liability formed under the laws of the British Virgin Islands. P EMP Ltd. is a private pooled investment vehicle that Empyrean manages as a separately managed account. “Client” or “Clients” generally refers to one or more of the Funds, P EMP Ltd. and any other existing or future fund, investment company, pooled-investment vehicle or managed account that Empyrean manages or may, from time to time, manage, as applicable.

Empyrean, on behalf of its Clients, generally employs a fundamentally-oriented, fully-integrated, multi-disciplinary approach to event-oriented investing. Empyrean believes that in order to fully exploit current event-oriented market opportunities, an investment manager requires an integrated combination of credit, equity and volatility expertise. Please see Item 8 for a more detailed description of Empyrean’s investment strategies. Investors may also ask Empyrean to, and Empyrean may, provide investment advice and advisory services and other services with respect to other investment securities and instruments as is consistent with each

respective Investor's investment objective, including through managed accounts, other investment partnerships, other funds or investment management companies that are registered with the SEC under the Investment Company Act of 1940. Such other funds and accounts may follow similar or different investment programs to that of the Empyrean Funds and P EMP Ltd.

This Brochure includes general information about Empyrean and its relationships with its Clients and affiliates. While much of this Brochure applies to all such Clients and affiliates, certain information included herein applies only to specific Clients or affiliates.

This Brochure does not constitute an offer to sell or solicitation of an offer to buy any securities.

C. Availability of Customized Services for Individual Clients

Empyrean has full discretionary authority with respect to investment decisions, and its advice is given in accordance with the investment objectives and guidelines as set forth in its Clients' respective offering memoranda. Empyrean tailors its advisory services to the specific needs of its Clients as agreed to in its investment management agreements.

From time to time, Empyrean offers co-investment opportunities, like the Co-Invest Funds, typically alongside the Empyrean Funds and P EMP Ltd.

D. Wrap Fee Programs

Empyrean does not offer or participate in wrap fee programs.

E. Assets Under Management

Empyrean manages, and has discretionary authority over approximately \$4,266,799,552 in assets as of January 31, 2019. Empyrean's regulatory assets under management on a discretionary basis were approximately \$5,828,758,920 as of January 31, 2019.

## ITEM 5 FEES AND COMPENSATION

### A. Advisory Fees and Compensation.

Empyrean generally receives management fees and performance-based compensation for its investment advisory services. Empyrean reduces or waives management fees and/or performance fees for certain affiliates and related persons of Empyrean, including employees or partners (including former) of Empyrean and/or its affiliates and their immediate family members, and accounts established for the benefit of such persons. Empyrean reserves the right to waive or impose different fees or otherwise modify the fee arrangements of an existing investor in a Client (or impose different fees on future investors in a Client). Certain series of certain classes of interests and shares of the Clients are subject to reduced management fees and/or lower performance-based fees. In addition, certain co-investment vehicles (for example, the Co-Invest Funds) may not be subject to a management fee, but are charged a performance-based fee.

#### 1. The Domestic Fund:

With respect to the Domestic Fund, Empyrean generally is paid quarterly in advance a management fee of (i) 0.375% (1.50% annualized), (ii) 0.3125% (1.25% annualized) or (iii) 0.25% (1.00% annualized) of the beginning value of each capital account (depending on the class and series of interests) of the limited partners of the Domestic Fund.

At the end of the Domestic Fund's fiscal year, the Onshore General Partner generally receives incentive allocations from the Domestic Fund of 20% of (i) the net capital appreciation (depending on the class and series of interests) of the Domestic Fund, less (ii) the management fee deducted from the limited partner capital account (but without reduction for any investor-related taxes). Net capital appreciation generally includes both realized gains and losses and unrealized appreciation and depreciation of securities held in the Domestic Fund's portfolio. Generally, any net capital depreciation in a fiscal year allocated to any limited partner of the Domestic Fund is carried forward so that no incentive allocation is charged to such limited partner unless the losses have been recouped, subject to certain adjustments.

The Onshore General Partner reserves the right to waive or impose different fees or otherwise modify the fee arrangements of an existing limited partner with the consent of such limited partner. Certain series of certain classes of interests are subject to reduced fees. In addition, the Domestic Fund reserves the right to impose different fees on future limited partners.

#### 2. The Offshore Fund:

With respect to the Offshore Fund, Empyrean generally is paid quarterly in advance a management fee of (i) 0.375% (1.50% annualized), (ii) 0.3125% (1.25% annualized) or (iii) 0.25% (1.00% annualized) of the net asset value ("NAV") of each series of each class of shares (depending on the share class and series) of the Offshore Fund.

At the end of the Offshore Fund's fiscal year, Empyrean generally receives incentive fees from the Offshore Fund of 20% of the net realized and unrealized appreciation in the NAV of each series of each class of shares (depending on the share class and series) of the Offshore Fund. An incentive fee will only be paid with respect to the net realized and unrealized

appreciation in the NAV of a series of a class of shares (appropriately adjusted for redemptions) in excess of the “Prior High NAV” of such series of such class of shares. The Prior High NAV of a series of a class of shares is the NAV of that series of that class immediately after the determination of a year-end incentive fee with respect to such series of such class. The Prior High NAV of a series of a class of shares will be reduced pro rata for interim year redemptions of shares of such series of such class and reduced by any investor-related taxes accrued or paid subsequent to either such date.

The board of directors of the Offshore Fund reserves the right to waive or impose different fees or otherwise modify the fee arrangements of an existing shareholder with the consent of such shareholder. Certain series of certain classes of shares are subject to reduced fees. In addition, the Offshore Fund reserves the right to impose different fees on future shareholders.

3. The ERISA Fund:

With respect to the ERISA Fund, Empyrean generally is paid quarterly in advance a management fee of (i) 0.375% (1.50% annualized), (ii) 0.3125% (1.25% annualized) or (iii) 0.25% (1.00% annualized) of the NAV of each series of each class of shares (depending on the share class and series) of the ERISA Fund.

At the end of the ERISA Fund’s fiscal year, Empyrean receives incentive fees from the ERISA Fund of 20% of the net realized and unrealized appreciation in the NAV of each series of each class of shares of the ERISA Fund. An incentive fee will only be paid with respect to the net realized and unrealized appreciation in the NAV of a series of a class of shares (appropriately adjusted for redemptions) in excess of the “Prior High NAV” of such series of such class of shares. The Prior High NAV of a series of a class of shares is the NAV of that series of that class immediately after the determination of a year-end incentive fee with respect to such series of such class. The Prior High NAV of a series of a class of shares will be reduced pro rata for interim year redemptions of shares of such series of such class and reduced by any investor-related taxes accrued or paid subsequent to either such date.

The board of directors of the ERISA Fund reserves the right to waive or impose different fees or otherwise modify the fee arrangements of an existing shareholder with the consent of such shareholder. Certain series of certain classes of shares are subject to reduced fees. In addition, the ERISA Fund reserves the right to impose different fees on future shareholders.

4. ECOF II:

With respect to ECOF II, Empyrean generally is paid quarterly in advance a management fee of (i) 0.375% (1.50% annualized), (ii) 0.3125% (1.25% annualized) or (iii) 0.25% (1.00% annualized) of the NAV of each series of shares (depending on the series) of ECOF II.

At the end of ECOF II’s fiscal year, Empyrean generally receives incentive fees from ECOF II of 20% of the net realized and unrealized appreciation in the NAV of each series of shares (depending on the series) of ECOF II. An incentive fee will only be paid with respect to the net realized and unrealized appreciation in the NAV of a series of shares (appropriately adjusted for redemptions) in excess of the “Prior High NAV” of such series of shares. The Prior High NAV of a series of shares is the NAV of that series immediately after the

determination of a year-end incentive fee with respect to such series. The Prior High NAV of a series of shares will be reduced pro rata for interim year redemptions of shares of such series and reduced by any investor-related taxes accrued or paid subsequent to either such date.

5. Other Clients

Empyrean negotiates and imposes on Clients, and reserves the right to impose on future Clients, fee arrangements that differ from those fee arrangements described above.

6. Side Letters

Empyrean and Clients have entered into agreements (“Side Letters”) with certain Investors that waive or modify the application of, or grant special or more favorable terms to such Investors than the terms applicable to other Investors in the Client to the extent permitted by applicable law. As a result of such Side Letters, certain Investors receive additional benefits which other Investors will not receive (e.g., lower fees or more frequent reporting or different withdrawal rights to accommodate the legal, regulatory, sovereign or tax requirements of particular investors).

B. Payment of Fees

Fees and compensation paid or allocated to Empyrean and/or the Onshore General Partner or the Co-Invest General Partner by Clients are generally deducted from the assets of such Clients. As discussed above, the management fees are generally deducted on a quarterly basis in advance and the performance compensation is generally deducted on an annual basis.

C. Additional Fees and Expenses

In addition to the management and incentive fees described above, Clients generally bear their own organizational, offering, operating and other expenses, including, without limitation, investment-related expenses (e.g., brokerage commissions, interest on margin accounts and other indebtedness, borrowing charges on securities sold short, custodial fees, clearing and settlement charges, arranger fees, interest expense and investment-related travel and lodging expenses – please see Item 12 of this Brochure for a discussion regarding brokerage practices); research-related expenses, including, without limitation, news and quotation equipment and services, statistical and market data, investment conferences, research-related software and software consulting; fees of the administrator; legal expenses (including internal counsel work relating to a Client); professional fees (including, without limitation, expenses of consultants and experts); regulatory filings specific to a Client or its portfolio holdings (e.g., Regulation D, Schedules 13D and 13G and Form 13F); auditing and tax preparation expenses; costs of printing and mailing reports and notices; expenses relating to obtaining insurance for the benefit of the Client, Empyrean and its affiliates from liabilities to third parties in connection with the Client’s and the Master Fund’s affairs (including liability premiums); corporate licensing fees and other professional fees; remuneration to members of the board of directors; fees and expenses (including director registration fees) of the Client’s and the Master Fund’s directors and officers (including any anti-money laundering officers appointed pursuant to applicable law in the Cayman Islands); bank service fees; withholding and transfer fees; taxes; other expenses related to the purchase, sale or transmittal of Client or Master Fund assets; expenses related to organizing and operating alternative investments or special purpose vehicles through which investments may be made; and extraordinary expenses and other similar expenses related to each Client. To the extent that expenses to be borne by a



Client are paid by Empyrean, the Onshore General Partner (in the case of the Domestic Fund) or the Co-Invest General Partner (in the case of the Co-Invest Funds), the Client will reimburse such party for such expenses. A portion of research-related expenses may be paid for using “soft dollars” (i.e., commission dollars and transaction fees generated through agency and certain riskless principal transactions). In addition, the Domestic Fund, the Offshore Fund, the ERISA Fund and ECOF II bear their pro rata share of the Master Fund’s expenses, and the Co-Invest Offshore Fund bears its pro rata share of the Co-Invest Domestic Fund’s expenses.

Any expense common to Clients typically will be paid pro rata by such Clients based on the size of the Client or the approximate size of the investment relating to such expense (or in any other manner deemed fair and equitable by Empyrean in its sole discretion).

Each Investor must review the applicable Client offering memoranda for a more detailed discussion and understanding of all the fees, expenses and other compensation Empyrean and other parties may obtain or receive from, or in connection with, Clients and Investors.

D. Prepayment of Fees

Generally, each Client pays Empyrean a management fee quarterly in advance based on the values of the capital accounts of Investors in the Client (in the case of the Domestic Fund) or the NAV of each Client (in the case of the Offshore Fund, the ERISA Fund, ECOF II and P EMP Ltd.). In the event that Investors’ capital accounts in a Client or a Client’s NAV is reduced in connection with a withdrawal or redemption by an Investor of such Client other than as of the last day of a quarter, Empyrean will pay such Client an amount equal to the pro rata portion of the management fee, based on the actual number of days remaining in such quarter, and such Client will distribute such amount to the Investor.

E. Additional Compensation and Conflicts of Interest

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

## **ITEM 6**

### **PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

Empyrean has agreed, and in the future may agree, to different performance-based compensation with respect to Clients. As generally described in Item 5, Empyrean currently accepts performance-based fees from all Clients. As a result, Empyrean does not face the conflicts of interest that may arise when an investment adviser accepts performance-based fees from some Clients, but not from other Clients. However, in the future, conflicts could arise if some Clients, but not others are charged performance-based fees. Further, Empyrean has agreed to different performance-based compensation among Clients, which could lead to a conflict of interest if Empyrean is viewed as being incentivized to manage such Clients differently due to such different compensation arrangements. The Compliance Manual (as defined below), including Empyrean's trade aggregation and allocation policies, and each of the Clients' respective offering documents address these and other conflicts of interest (including the conflicts discussed in Items 10 and 11 herein). As noted elsewhere in this Brochure, when a conflict of interest arises, Empyrean endeavors to ensure that the conflict is resolved fairly and in an equitable manner that is consistent with its fiduciary duties to its Clients.

## **ITEM 7**

### **TYPES OF CLIENTS**

Empyrean provides investment advice to Clients, the securities of which are offered to investors on a private placement or other basis, as described above.

Persons and entities that invest in Clients (“Investors”) may include individuals, pension and profit-sharing plans, fund-of-funds, insurance and financial institutions, private funds, pooled investment vehicles, family offices, pension consultants, state or local government plans, union plans, trusts, endowments, foundations, charitable organizations and other types of entities, including other investment advisers and hedge funds.

The minimum investment for an Investor in the Funds generally will be determined by Empyrean and/or the board of directors of the Fund, the Onshore General Partner or the Co-Invest General Partner, as applicable, and will generally be set out in the offering documents and/or investment management or other agreements. Such minimum investment amounts may be waived by Empyrean and/or the board of directors of the Fund, the Onshore General Partner or the Co-Invest General Partner, as applicable, if permissible under relevant law.

## ITEM 8

### METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS

#### A. Methods of Analysis and Investment Strategy:

The descriptions set forth in this Brochure of specific advisory services that Empyrean offers to Clients, and investment strategies pursued and investments made by Empyrean on behalf of its Clients, should not be understood to limit in any way Empyrean's investment activities. Empyrean may offer any advisory services, engage in any investment strategy and make any investment, including any not described in this Brochure, that Empyrean considers appropriate, subject to each Client's investment objectives and guidelines. For example, unlike Empyrean's other Clients, the Co-Invest Funds have a single investment objective. The investment strategies Empyrean pursues are speculative and entail substantial risks. There can be no assurance that the investment objectives of any Client will be achieved. In fact, the practices of short selling, employing leverage and other investment techniques which Empyrean may employ from time to time can, in certain circumstances, increase the adverse impact to which a Client's investment portfolio may be subject. Empyrean's risk management approach seeks to isolate and mitigate, not eliminate, risk and there may be certain risks which Empyrean determines should not be or cannot be hedged against. Accordingly, Empyrean's activities could result in substantial losses under certain circumstances.

Empyrean employs a fully integrated, multi-disciplinary investment approach to event-oriented investing. Its approach integrates credit, equity, volatility and event expertise in a single platform. Empyrean pursues its approach to event-oriented investing by maintaining portfolios that are concentrated generally in 20 to 35 core ideas diversified by industry, issuer, asset class and security, with a predominantly North American geographic focus. Clients generally maintain a single investment portfolio with no pre-determined asset allocation targets or securities biases. Instead, Empyrean seeks to identify companies going through transformative corporate events and securities exhibiting price dislocations and, after comprehensive analyses, invest in the most attractive securities and instruments regardless of asset class. The investment process is applied to the entirety of an issuer's capital structure, in addition to derivative and volatility instruments.

Empyrean seeks to limit downside exposure through the purchase of securities or instruments at discounts to intrinsic value or otherwise limit risk through favorable structural, contractual, collateral or valuation characteristics, as well as through a variety of credit, equity and volatility hedging strategies. Examples of the event-oriented investment opportunities that Empyrean will pursue include, but are not limited to, special situation equity and credit strategies, equity, convertible and capital structure arbitrage, and other volatility, derivative and option-based opportunities.

Empyrean seeks capital appreciation and current income through the purchase and sale (including short sales) of debt, equity, options and derivative instruments where inefficiencies and mispricings create opportunities to earn attractive risk-adjusted returns. Empyrean, on behalf of its Clients, generally invests, both long and short, in a variety of public and private primary and secondary market securities, instruments and obligations. Instruments may include, but are not limited to, trade claims, revolving and term loan credit facilities, public and private debt obligations, public and private convertible debt and convertible preferred stock, public and private common stock and other types of equity interests, futures, options, warrants and derivative instruments. Generally, Empyrean will invest in these securities and instruments

on a passive basis, although occasionally, Empyrean will assume a more active role. Empyrean, on behalf of its Clients, may sell securities short, purchase puts and calls, write uncovered puts and calls, purchase options on stock indices and bond indices and utilize other derivative instruments, including, without limitation, CDS, futures, forward contracts and swaps. Empyrean views the use of such hedging strategies both as independent profit opportunities for Clients and as an integral part of each Client's investment program. Empyrean may also use repurchase agreements in its investment program.

Empyrean's investment process consists of (i) opportunity identification; (ii) investment research; (iii) investment selection; and (iv) risk management. Opportunities are identified across asset classes and securities through Empyrean's deep presence and multi-product expertise within a variety of financial markets. Empyrean's research process is characterized by a rigorous "bottom-up" approach which combines fundamental cash flow and valuation analyses with volatility and event analyses in order to identify and quantify (i) disparities between intrinsic value and market value; (ii) the potential distribution of event outcomes and their impact on securities' valuation; and (iii) upside potential versus downside risk. Empyrean's fundamental research includes a thorough evaluation of a variety of aspects of an issuer and its securities including, but not limited to, its (i) industry position; (ii) business position; (iii) financial and accounting position; (iv) valuation; (v) legal and financial structure; and (vi) management and stakeholders. The investment selection process involves a risk-weighted evaluation of instruments within an issuer's capital structure and a comparison across alternative investment opportunities. Empyrean's risk management process is intended to balance a "bottom-up" approach to security selection by applying portfolio level risk filters, guidelines and limits and employing a variety of risk management tools. Empyrean also systematically applies position-level, asset class-level and portfolio-level hedging strategies through a variety of instruments in an effort to reduce market exposure.

**An investment in the Clients advised by Empyrean involves a high degree of risk, including the risk that the entire amount invested may be lost. The following list of risk factors (set forth in Section B and C of this Item 8) does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Clients advised by Empyrean. These risk factors only include those risks Empyrean believes to be material, significant or unusual and relate to particular investment strategies, types of securities or methods of analysis employed by Empyrean. In addition, as Empyrean's investment program develops and changes over time, an investment in the Clients advised by Empyrean may be subject to additional and different risk factors.**

**B. Material Risks Relating to Investment Strategies and Techniques:**

No Material Limitation on Strategies. Empyrean, on behalf of its Clients, will opportunistically implement whatever strategies or discretionary approaches it believes from time to time may be best suited to prevailing market conditions. There can be no assurance that Empyrean will be successful in applying any strategy or discretionary approach to its Clients' trading.

Securities Believed To Be Undervalued or Incorrectly Valued. Securities that Empyrean believes are fundamentally undervalued or incorrectly valued may not ultimately be valued in the capital markets at prices and/or within the time frame Empyrean anticipates. In such event, Clients may incur a substantial loss.

Event-Oriented Strategy. The success of the event-oriented investment strategy Empyrean implements on behalf of its Clients depends upon Empyrean's ability to make predictions about (i) the likelihood that an event will occur and (ii) the impact such event will have on the value of a company's securities. If the event fails to occur or it does not have the effect foreseen, losses can result. For example, the adoption of new business strategies, completion of asset dispositions or debt reduction programs by a company may not be valued as highly by the market as Empyrean had anticipated, resulting in losses. In addition, a company may announce a plan of restructuring that promises to enhance value, but fail to implement it, which can result in losses to investors. In liquidations and other forms of corporate reorganization, the risk exists that the reorganization either will be unsuccessful, will be delayed or will result in a distribution of cash or a new security, the value of which will be less than the purchase price to the Client of the security in respect of which such distribution was made. The consummation of mergers and tender and exchange offers can be prevented or delayed by a variety of factors, including: (i) opposition of the management or stockholders of the target company, which will often result in litigation to enjoin the proposed transaction; (ii) intervention of a U.S. federal or state regulatory agency; (iii) efforts by the target company to pursue a "defensive" strategy, including a merger with, or a friendly tender offer by, a company other than the offeror; (iv) in the case of a merger, failure to obtain the necessary stockholder approvals; (v) market conditions, such as industry weakness, resulting in material changes in securities prices; (vi) compliance with any applicable U.S. federal or state securities laws or antitrust restrictions; (vii) inability to obtain adequate financing; and (viii) political factors.

The success of the convertible arbitrage strategy Empyrean implements on behalf of its Clients depends upon Empyrean's ability to identify convertible securities that appear incorrectly valued relative to their theoretical value, and then to purchase (or sell short) such convertible security and sell short (or purchase) the underlying security for which the convertible security can be exchanged to exploit price differentials.

There can be no assurance that Empyrean will be able to identify convertible arbitrage opportunities or that changes in price differentials will not cause losses. Borrowing and lending against such investments involves substantial risks. The prices of these investments can be volatile, market movements are difficult to predict, and financing sources and related interest and exchange rates are subject to rapid change. Certain corporate securities may be subordinated (and thus exposed to the first level of default risk) or otherwise subject to substantial credit risks.

Identification and exploitation of opportunities within an issuer's capital structure (including, bank debt, convertible and non-convertible senior and subordinated debt and preferred and common stock) involve uncertainty. There can be no assurance that Empyrean will be able to locate investment opportunities or to correctly exploit price discrepancies. A reduction in the pricing inefficiency of the markets in which Empyrean seeks to invest on behalf of its Clients will reduce the scope for such Client's investment strategies. In the event that the perceived mispricings underlying each Client's positions fail to materialize, these investment strategies could be unsuccessful or result in losses.

Because of the inherently speculative nature of event-oriented investing, the results of a Client's operations may be expected to fluctuate from period to period. Accordingly, Investors should understand that the results of a particular period will not necessarily be indicative of results that may be expected in future periods.

Opportunistic Strategies. Opportunistic investment strategies generally use spread trades consisting of a long position in one security offset by a short position in another. Such offsetting positions are meant to neutralize or reduce risk. The portfolio profits if Empyrean's relative valuation leads to a rise in the value of the long position(s) and/or a decline in the value of the short position(s).

The success of the opportunistic investment strategy Empyrean implements on behalf of its Clients depends on Empyrean's ability to identify and exploit perceived inefficiencies in the pricing of securities, financial products, or markets. Identification and exploitation of such discrepancies involve uncertainty. There can be no assurance that Empyrean will be able to locate investment opportunities or to exploit pricing inefficiencies in the securities markets. Mispricings, even if correctly identified, may not be corrected by the market, at least within a timeframe over which it is feasible for Empyrean to maintain a position on behalf of its Clients. Even pure arbitrage positions can result in significant losses if Empyrean is not able to maintain both sides of the position until expiration/maturity. A reduction in the pricing inefficiency of the markets in which Empyrean seeks to invest on behalf of its Clients will reduce the scope for Empyrean's investment strategies. In the event that perceived mispricings underlying a Client's positions fails to converge toward, or diverges further from, relationships expected by Empyrean, the Client may incur losses. Even if the opportunistic investment strategy is successful, it may result in high portfolio turnover and, consequently, high transaction costs.

Diversification Policies. Generally, Clients have not imposed any limits on the concentration of their investments in particular industries or companies. Client portfolios have a predominantly North American geographic focus. The investment risk of a portfolio that is concentrated in particular industries or companies is greater than if the portfolio is invested in a more diversified manner among various industries or companies.

Financing Arrangements; Availability of Credit. When Empyrean utilizes leverage, it will depend on the availability of credit in order to finance the applicable Client's portfolio. There can be no assurance that Empyrean will be able to maintain adequate financing arrangements on behalf of its Clients under all market circumstances. As a general matter, certain of the dealers that provide financing to Clients can apply essentially discretionary margin, haircut, financing, security and collateral valuation policies. Changes by dealers in such financing policies, or the imposition of other credit limitations or restrictions, whether due to market circumstances or governmental, regulatory or judicial action, may result in large margin calls, loss of financing, forced liquidation of positions at disadvantageous prices, termination of swap and repurchase agreements and cross-defaults to agreements with other dealers. Any such adverse effects may be exacerbated in the event that such limitations or restrictions are imposed suddenly and/or by multiple market participants at or about the same time.

Trading and Investing Through Affiliates. Empyrean, on behalf of its current and future Clients, may pursue certain investment activities through special purpose vehicles ("SPVs"). An SPV may admit additional members. In certain cases, Clients may be issued participation rights by an SPV for investments made by the SPV based upon their pro rata participation in, and funding of, a particular investment. A creditor having a claim that relates to a particular investment held by the SPV may be able to satisfy such claim against all assets of the SPV, without regard to the rights of the Clients or other members of the SPV in the assets of the SPV.

Investment in Other Investment Vehicles. Empyrean, on behalf of its Clients, may pursue certain of its strategies by investing in other investment vehicles, including, but not limited to, for regulatory or tax purposes. As a result, Clients invested in such vehicles will have to bear the expenses and advisory fees associated with such investments. The combination of the management fee and performance-based fees charged by Empyrean with the expenses and advisory fees relating to such investments may result in higher fees and expenses than are associated with comparable investments or investment entities.

Short-term Market Considerations. Empyrean's trading decisions are sometimes made on the basis of short-term market considerations. Therefore, the portfolio turnover rate could result in significant trading-related expenses for its Clients.

Leverage; Interest Rates; Margin. Empyrean utilizes substantial leverage in its investment program, thereby maximizing its Clients' investment positions by borrowing funds to the fullest possible extent permitted by applicable regulations. As a result, the possibilities of profit and loss are increased. Borrowing money to take positions provides Clients with the advantages of leverage, but exposes them to greater market risks and higher current expenses. Any gain in the value of positions taken with borrowed money or income earned from these positions that exceeds interest paid on the amount borrowed would cause the applicable Client's assets to increase faster than would otherwise be the case. Conversely, any decline in the value of the positions taken would cause the applicable Client's assets to decrease faster than would otherwise be the case.

Leverage may take the form of trading on margin, investing in derivative instruments that are inherently leveraged, and entering into other forms of direct or indirect borrowings. The amount of leverage or borrowings which Empyrean may cause a Client to have outstanding at any time may therefore be large in relation to its capital. Consequently, the level of interest rates generally, and the rates at which Clients can borrow in particular, will affect their operating results.

In general, Empyrean's use of short-term margin borrowings on behalf of its Clients may result in certain additional risks to its Clients. For example, should the securities pledged to brokers to secure a Client's margin accounts decline in value, such Client could be subject to a "margin call," pursuant to which the Client must either deposit additional funds with the broker or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden precipitous drop in the value of a Client's assets, such Client might not be able to liquidate assets quickly enough to pay off its margin debt.

In the futures markets, margin deposits typically range between 1% and 15% of the value of the futures contracts purchased or sold. In the forward, equity, currency and certain other derivative markets, margin deposits may be even lower or may not be required at all. Such low margin deposits are indicative of the fact that any trading in these markets typically is accompanied by a high degree of leverage. Low margin deposits mean that a relatively small adverse price movement in a futures or forward contract may result in immediate and substantial losses to the investor. For example, if at the time of purchase 10% of the price of a futures contract is deposited as margin, a 10% decrease in the price of the futures contract would, if the contract is then closed out, result in a total loss of the margin deposit before any deduction for the brokerage commission. Thus, like other leveraged investments, any purchase or sale of a future, forward or other commodity contract may result in losses in excess of the amount invested.



In the United States, when Empyrean purchases an option on behalf of a Client, there is no margin requirement because the option premium is paid for in full. The premiums for certain options traded on foreign exchanges may be paid for on margin. When Empyrean sells on a futures contract on behalf of a Client, the Client may be required to deposit margin in an amount that may be determined by the margin requirement established for the futures contract underlying the option and, in addition, an amount substantially equal to the current premium for the option. The margin requirements imposed on the writing of options, although adjusted to reflect the probability that out-of-the-money options will not be exercised, can in fact be higher than those imposed in dealing in the futures markets directly. Whether any margin deposit will be required for over-the-counter options and other over-the-counter instruments, such as equity or currency forwards, swaps and certain other derivative instruments, will depend on the credit determinations and specific agreements of the parties to the transaction, which are individually negotiated.

There is no restriction on the amount of leverage that Empyrean may utilize on behalf of its Clients. The cumulative effect of the use of leverage with respect to any investment in a market that moves adversely to such investments could result in a substantial loss which would be greater than if the investments were not leveraged.

Loans. Empyrean may invest in loans on behalf of its Clients. If Empyrean is unable to sell, assign, or successfully close transactions for its Clients' participations in such loans, such Clients will be forced to hold their excess interest in such loans for an indeterminate period of time.

Short Selling. The success of the short selling investment strategy Empyrean implements on behalf of its Clients depends upon Empyrean's ability to identify and sell short securities that are overvalued. Short selling involves selling securities which are not owned by the short seller, and borrowing them for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the seller to profit from a decline in market price to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. The extent to which Empyrean engages in short sales on behalf of its Clients will depend upon Empyrean's investment strategy and opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to the Client of buying those securities to cover the short position. There can be no assurance that Empyrean will be able to maintain the ability to borrow securities sold short on behalf of its Clients. In such cases, the Client can be "bought in" (i.e., forced to repurchase securities in the open market to return to the lender). There also can be no assurance that the securities necessary to cover a short position will be available for purchase at or near prices quoted in the market. Purchasing securities to close out a short position can itself cause the price of the securities to rise further, thereby exacerbating the loss.

Short strategies can also be implemented synthetically through various instruments and be used with respect to indices or in the over-the-counter market and with respect to futures and other instruments. In some cases of synthetic short sales, there is no floating supply of an underlying instrument with which to cover or close out a short position and Empyrean may be entirely dependent on the willingness of over-the-counter market makers to quote prices at which the synthetic short position of its Clients may be unwound. There can be no assurance that such market makers will be willing to make such quotes. Short strategies can also be implemented on a leveraged basis. Lastly, even though Empyrean secures a "good borrow" of

the security sold short for a Client at the time of execution, the lending institution may recall the lent security at any time, thereby forcing Empyrean to purchase the security on behalf of such Client at the then-prevailing market price, which may be higher than the price at which such security was originally sold short.

Hedging Transactions. Empyrean, on behalf of its Clients, utilizes securities both for investment purposes and for risk management purposes in order to (i) protect against possible changes in the market value of its Clients' investment portfolios resulting from fluctuations in the markets and changes in interest rates; (ii) protect unrealized gains in the value of its Clients' investment portfolios; (iii) facilitate the sale of securities; (iv) enhance or preserve returns, spreads or gains on securities in its Clients' portfolios; (v) hedge against a directional trade; (vi) hedge the interest rate, credit or currency exchange rate on the securities in its Clients' portfolios; and (vii) protect against increases in the prices of securities Empyrean anticipates purchasing on behalf of its Clients at a later date, as well as for other reasons that Empyrean deems appropriate. Empyrean will not be required to hedge any particular risk in connection with a particular transaction or its Clients' portfolios generally. While Empyrean, on behalf of its Clients, generally enters into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for such Clients than if they had not engaged in any such hedging transaction. Moreover, the portfolios will always be exposed to certain risks that may not be hedged.

Broker or Dealer Insolvency. While great care is taken in selecting brokers or dealers who will maintain custody of certain of the assets of Clients, there is no guarantee that any of such brokers or dealers will not become insolvent. While both U.S. and foreign laws, such as the U.S. Bankruptcy Code and Securities Investor Protection Act of 1970 ("SIPA"), seek to protect customer property in the event of failure, insolvency or liquidation of a broker or dealer, there is no certainty that, in the event of a failure of a custodian, counterparty or prime broker with custody of Client assets, Clients will not incur losses due to their assets being unavailable for a period of time, their ultimate inability to recover less than the full amount of their assets, or both. Because a substantial portion of Client assets are in custody with such brokers or dealers, such losses would be very significant and would materially impair the ability of Clients to achieve their investment objective. Further, there may be practical or time problems associated with enforcing the rights of Clients to their respective assets in the case of an insolvency of any such party.

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

Empyrean, on behalf of its Clients, may effect transactions in the "over-the-counter" or "OTC" derivatives markets. The stability and liquidity of OTC derivatives transactions depends in large part on the creditworthiness of the parties to the transactions. In the OTC markets, Empyrean, on behalf of a Client, enters into a contract directly with dealer

counterparties which may expose the Client to the risk that a counterparty will not settle a transaction in accordance with its terms because of a solvency or liquidity problem with the counterparty. Delays in settlement may also result from disputes over the terms of the contract (whether or not bona fide). In addition, a Client may have a concentrated risk in a particular counterparty, which may mean that if such counterparty were to become insolvent or have a liquidity problem, losses would be greater than if it had entered into contracts with multiple counterparties. Certain OTC derivative contracts require that a Client post collateral.

If there is a default by a counterparty, Empyrean and/or the applicable Client, under most normal circumstances will have contractual remedies pursuant to the agreements related to the transaction. However, exercising such contractual rights may involve delays or costs which could result in the NAV of a Client being less than if the transaction had not been entered into. Furthermore, there is a risk that any of such counterparties could become insolvent and/or the subject of insolvency proceedings. In such case, the recovery of a Client's securities from such counterparty or the payment of claims therefor may be significantly delayed and the Client may recover substantially less than the full value of the securities entrusted to such counterparty. In addition, there are a number of proposed rules that, if they were to go into effect, may impact the laws that apply to insolvency proceeding and may impact whether Empyrean and/or a Client may terminate its agreement with an insolvent counterparty.

Collateral that a Client posts to its counterparties that is not segregated with a third party custodian may not have the benefit of customer-protected "segregation" of such funds. In the event that a counterparty were to become insolvent, a Client may become subject to the risk that it may not receive the return of its collateral or that the collateral may take some time to return.

In addition, Empyrean uses counterparties located in jurisdictions outside the United States. Such local counterparties usually are subject to laws and regulations in non-U.S. jurisdictions that are designed to protect customers in the event of their insolvency. However, the practical effect of these laws and their application to Client assets are subject to substantial limitations and uncertainties. Because of the range of possible factual scenarios involving the insolvency of a counterparty and the potentially large number of entities and jurisdictions that may be involved, it is impossible to generalize about the effect of such an insolvency on Clients and their assets. It should be assumed that the insolvency of any such counterparty would result in significant delays in recovering a Client's securities from or the payment of claims therefor by such counterparty and a loss to the Client, which could be material.

#### C. Material Risks Associated With Particular Types of Securities:

Markets for Debt Securities. The debt securities that Empyrean invests in on behalf of its Clients may or may not have an established trading market. In addition to a company's creditworthiness, many factors may materially adversely affect the trading market for, and market value of, these debt securities. These factors include, but are not limited to, the following:

- the time remaining to the maturity of these debt securities;
- the outstanding principal amount of debt securities with terms identical to these debt securities;
- the ratings assigned by national statistical ratings agencies;
- the general economic environment;

- the supply of such debt securities trading in the secondary market, if any;
- the redemption or repayment features, if any, of these debt securities;
- the level, direction and volatility of market interest rates generally; and
- market rates of interest higher or lower than rates borne by the debt securities.

There may be a limited number of buyers of these debt securities if and when Empyrean decides to sell such debt securities on behalf of its Clients. This too may materially adversely affect the value of the debt securities or the trading market for the debt securities.

Interest Rates. General interest rate fluctuations may have a substantial negative impact on a Client's investments and investment opportunities and, accordingly, may have a material adverse effect on a Client's investment objective and rate of return. Trading prices for debt that pays a fixed rate of return tend to fall as interest rates rise. Trading prices tend to fluctuate more for fixed-rate securities that have longer maturities. In the past, Empyrean has entered into certain hedging transactions on behalf of its Clients, such as interest rate swap agreements, to mitigate a Client's exposure to adverse fluctuations in interest rates, and it may do so again in the future. In addition, Empyrean may increase a Client's floating rate investments to position the portfolio for rate increases. However, there is no assurance that such transactions will be successful in mitigating Clients' exposure to interest rate risk. Hedging transactions may also limit Clients' ability to participate in the benefits of lower interest rates with respect to their investments.

Although there is no policy governing the maturities of Client investments, under current market conditions Clients expect that Empyrean will invest in debt that may have a longer maturity. This means that a Client is subject to greater risk (other things being equal) than a fund invested solely in shorter-term or more liquid securities, including the risk that it may be more difficult for Empyrean to sell such investments on behalf of its Clients if the need arises. In addition, if Empyrean is required to liquidate all or a portion of a Client's portfolio quickly, such Client could realize significantly less than the value at which it had recorded these investments.

Convertible Securities, Rights and Warrants. Empyrean, on behalf of its Clients, invests in hybrid securities that may be exchanged for, converted into or exercised to acquire a predetermined number of shares of an issuer's common stock at the option of the holder during a specified time period (such as convertible preferred stocks, convertible debentures, stock purchase rights, and warrants). Convertible securities generally pay interest or dividends and provide for participation in the appreciation of the underlying common stock but at a lower level of risk because the yield is higher and the security is senior to common stock. Convertible debt securities purchased for a Client that are acquired for their equity characteristics are not subject to minimum rating requirements.

The value of a convertible security is a function of its "investment value" (determined by its yield in comparison with the yields of other securities of comparable maturity and quality that do not have a conversion privilege) and its "conversion value" (the security's worth, at market value, if converted into the underlying common stock). The credit standing of the issuer and other factors may also affect the investment value of a convertible security. If the conversion value is low relative to the investment value, the price of the convertible security is governed principally by its investment value. To the extent the market price of the underlying common stock approaches or exceeds the conversion price, the price of the convertible security

is increasingly influenced by its conversion value. Convertible securities may also include warrants, often publicly traded, that give a holder the right to purchase at any time during a specified period a predetermined number of shares of common stock at a fixed price but that do not pay a fixed dividend. Their value depends primarily on the relationship of the exercise price to the current and anticipated price of the underlying securities.

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

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

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

Stock Index Options. Empyrean, on behalf of its Clients, also purchases and sells indices, as well as call and put options on indices. An index or index option fluctuates with changes in the market values of the stocks included in the index. Because the value of an index or index option depends upon movements in the level of the index rather than the price of a particular instrument, whether a Client will realize gains or losses from the purchase or writing of options on indices depends upon movements in the level of instrument prices in the instrument market generally or, in the case of certain indices, in an industry or market segment, rather than movements in the price of particular instruments.

Highly Volatile Markets; FX Risk. Price movements of forwards, futures, derivative contracts and other securities in which Client assets are invested can be highly volatile and are influenced by, among other things, interest rates, changing supply and demand relationships,

trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. In addition, governments from time to time intervene in certain markets, directly and by regulation, particularly in currencies, futures and options. Such intervention is often intended to directly influence prices and may, together with other factors, cause some or all of these markets to move rapidly in the same direction. The effect of such intervention is often heightened by a group of governments acting in concert. Empyrean makes certain speculative investments on behalf of its Clients in currencies which it believes to be undervalued; however, there are no assurances that the currencies purchased will in fact be undervalued. In addition, Clients may be required to hold such currencies for a substantial period of time before realizing their anticipated value. During this period, a portion of such Clients' assets will be committed to the currencies purchased, thus possibly preventing Empyrean from investing in other opportunities on their behalf.

Commodity Futures Contracts. Empyrean, on behalf of its Clients, invests in commodity futures contracts (and options on futures). Trading in commodity interests may involve substantial risks. The low margin or premiums normally required in such trading may provide a large amount of leverage, and a relatively small change in the price of a security or contract can produce a disproportionately larger profit or loss. There is no assurance that a liquid secondary market will exist for commodity futures contracts or options purchased or sold, and Clients may be required to maintain a position until exercise or expiration, which could result in losses.

The value of futures contracts depends upon the price of the securities, such as commodities, underlying them. The prices of futures contracts are highly volatile, and price movements of futures contracts can be influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, as well as national and international political and economic events and policies. In addition, investments in futures contracts are also subject to the risk of the failure of any of the exchanges on which Clients' positions trade or of its clearing houses or counterparties. Futures positions may be illiquid because, for example, most U.S. commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as "daily price fluctuation limits" or "daily limits." Under such daily limits, during a single trading day no trades may be executed at prices beyond the daily limits. Once the price of a contract for a particular future has increased or decreased by an amount equal to the daily limit, positions in the future can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. Futures contract prices on various commodities or financial instruments occasionally have moved the daily limit for several consecutive days with little or no trading. Similar occurrences could prevent Empyrean from promptly liquidating unfavorable positions on behalf of its Clients and subject such Clients to substantial losses. In addition, Empyrean may not be able to execute futures contract trades on behalf of its Clients at favorable prices if trading volume in such contracts is low. It is also possible that an exchange or the CFTC may suspend trading in a particular contract, order immediate liquidation and settlement of a particular contract or order that trading in a particular contract be conducted for liquidation only. In addition, the CFTC and various exchanges impose speculative position limits on the number of positions that may be held in particular commodities. Trading in commodity futures contracts and options are highly specialized activities that may entail greater than ordinary investment or trading risks.

The price of stock index futures contracts may not correlate perfectly with the movement in the underlying stock index because of certain market distortions. First, all

participants in the futures market are subject to margin deposit and maintenance requirements. Rather than meeting additional margin deposit requirements, investors may close futures contracts through offsetting transactions that would distort the normal relationship between the index and futures markets. Secondly, from the point of view of speculators, the deposit requirements in the futures market are less onerous than margin requirements in the securities market. Therefore, increased participation by speculators in the futures market also may cause temporary price distortions. Successful use of stock index futures contracts is subject to Empyrean's ability to correctly predict movements in the direction of the market.

Swap Agreements. Empyrean, on behalf of its Clients, from time to time enters into swap agreements and options on swap agreements ("swaptions"). These agreements can be individually negotiated and structured to include exposure to a variety of different types of investments, asset classes or market factors. For instance, Empyrean, on behalf of its Clients, may enter into swap agreements with respect to interest rates, credit defaults, currencies, securities, indexes of securities and other assets or other measures of risk or return. Depending on their structure, swap agreements may increase or decrease a Client's exposure to, among other things, equity securities, long-term or short-term interest rates, foreign currency values and credit spreads. Swap agreements can take many different forms and are known by a variety of names. Empyrean is not limited to any particular form of swap agreement if consistent with its Clients' investment objectives.

Whether Empyrean's use of swap agreements or swaptions will be successful will depend on its ability to select appropriate transactions for its Clients. Swap transactions may be highly illiquid and may increase or decrease the volatility of a Client's portfolio. Moreover, Clients bear the risk of loss of the amount expected to be received under a swap agreement in the event of the default or insolvency of its counterparty. Clients will also bear the risk of loss related to swap agreements, for example, for breaches of such agreements or the failure of a Client to post or maintain required collateral. Many swap markets are relatively new and still developing. It is possible that developments in the swap markets, including potential government regulation, could adversely affect Empyrean's ability to terminate existing swap transactions on behalf of its Clients and such Clients' ability to realize amounts to be received under such transactions.

Total Return Swaps. From time to time, Empyrean, on behalf of its Clients, invests in total return swaps. As a buyer of total return swaps, a Client will be obligated to make certain periodic payments in exchange for the total return on a referenced asset, including coupons, interest and the gain or loss on such asset over the term of the swap. A Client may be required to maintain collateral with the total return swap counterparty. If a Client fails to fulfill its payment obligations or fail to post any required collateral under a total return swap, the total return swap counterparty may declare an event of default and, as a result, the Client may be required to pay swap breakage fees, suffer the loss of the amounts paid to the counterparty and forego the receipts from the counterparty of further total return swap payments.

Credit Default Swaps. Empyrean, on behalf of its Clients, invests in credit default swaps. Credit default swaps can be used to implement Empyrean's view that a particular credit, or group of credits, will experience credit improvement or deterioration. In the case of expected credit improvement, Empyrean, on behalf of its Clients, may sell credit default protection in which such Clients receive a premium to take on the risk. In such an instance, the obligation of the Clients to make payments upon the occurrence of a credit event creates leveraged exposure to the credit risk of the referenced entity. Empyrean, on behalf of its Clients, also buys credit

default protection with respect to a referenced entity if, in Empyrean's judgment, there is a high likelihood of credit deterioration that is greater than implied by the market. In such an instance, Clients will pay a premium regardless of whether there is a credit event. The credit default swap market in high-yield securities is comparatively new and rapidly evolving compared to the credit default swap market for more seasoned and liquid investment-grade securities, creating the risk that the newer markets will be less liquid, and making it potentially more difficult to exit or enter into a particular transaction.

As a buyer of credit default swaps, a Client will be subject to certain risks in addition to those described elsewhere herein. In circumstances in which a Client does not own the debt securities that are deliverable under a credit default swap, such Client will be exposed to the risk that deliverable securities will not be available in the market, or will be available only at unfavorable prices, as would be the case in a so-called "short squeeze." While the credit default swap market auction protocols reduce this risk, it is still possible that an auction will not be organized or will not be successful. In certain instances of issuer defaults or restructurings (for those credit default swaps for which restructuring is specified as a credit event), it has been unclear under the standard industry documentation for credit default swaps whether or not a "credit event" triggering the seller's payment obligation had occurred. The creation of the ISDA Credit Derivatives Determination Committee (the "Determination Committee") is intended to reduce this uncertainty and create uniformity across the market, although it is possible that the Determination Committee will not be able to reach a resolution or do so on a timely basis. In either of these cases, a Client would not be able to realize the full value of the credit default swap upon a default by the reference entity.

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

Counterparty risk is always present in credit default swaps. The market for credit default swaps on distressed securities is not liquid (compared to the market for credit default swaps on investment grade corporate reference entities). In the event that current interest rate spreads over LIBOR (or over the applicable United States Treasury Benchmark) widen or the prevailing credit premiums on credit default swaps increase, the amount of a termination or assignment payment upon a termination or assignment of a transaction due from a Client to the credit default swap counterparty could increase by a substantial amount.

Forward Contracts. Empyrean, on behalf of its Clients, may enter into over-the-counter forward contracts for the trading of certain futures interests, such as currencies and interest rates, through U.S. and non-U.S. national or local banks and currency and rates dealers. A forward contract is a contractual obligation to buy or sell a specified quantity of a security or commodity at or before a specified date in the future at a specified price and, therefore, is similar to a futures contract. Banks and dealers act as principals in such markets. Banking authorities generally do not regulate trading in forward contracts. The principals who deal in the forward contract market are not required to continue to make markets in such contracts. There have been periods during which certain participants in forward markets have refused to



quote prices for forward contracts or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. The imposition of credit controls or price risk limitations by governmental authorities may limit such forward trading to less than that which Empyrean would otherwise recommend, to the possible detriment of a Client. With respect to forward trading, a Client will be subject to the risk of the failure of, or the inability or refusal to perform with respect to its forward contracts by, the principals with which such Client trades. A Client's assets on deposit with such principals will also generally not be protected by the same segregation requirements imposed on certain regulated brokers in respect of customer funds on deposit with them. Empyrean may order trades for a Client in such markets through agents. Accordingly, the insolvency or bankruptcy of such parties could also subject a Client to the risk of loss.

Other Derivative Instruments. Empyrean, on behalf of its Clients, may take advantage of opportunities with respect to certain other derivative instruments that are not presently contemplated for use or that are currently not available, but that may be developed, to the extent such opportunities are both consistent with the investment objective of the applicable Clients and legally permissible. Special risks may apply to such instruments that can only be determined at the time such instruments are developed or invested in. Certain swaps, options and other derivative instruments may be subject to various types of risks, including market risk, liquidity risk, the risk of non-performance by the counterparty (e.g., due to the financial soundness and creditworthiness of the counterparty), legal risk and operations risk.

Distressed Securities. Empyrean, on behalf of its Clients, from time to time invests in "below investment grade" securities and obligations of domestic and non-U.S. issuers in weak financial condition, experiencing poor operating results, having substantial capital needs or negative net worth, facing special competitive or product obsolescence problems, including companies involved in bankruptcy or other reorganization and liquidation proceedings. These securities may be particularly risky investments although they also may offer the potential for correspondingly high returns. Among the risks inherent in investments in troubled entities is the fact that it frequently may be difficult to obtain information as to the true condition of such issuers. Such investments also may be adversely affected by laws relating to, among other things, fraudulent transfers and other voidable transfers or payments, lender liability and the bankruptcy court's power to disallow, reduce, subordinate or disenfranchise particular claims. Such companies' securities may be considered speculative, and the ability of such companies to pay their debts on schedule could be affected by adverse interest rate movements, changes in the general economic climate, economic factors affecting a particular industry, or specific developments within such companies. In addition, there is no minimum credit standard that is a prerequisite to Clients' investment in any instrument, and a significant portion of the obligations and preferred stock in which Empyrean invests on behalf of its Clients may be less than investment grade. Any one or all of the issuers of the securities in which Empyrean may invest on behalf of its Clients may be unsuccessful or not show any return for a considerable period of time. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There is no assurance that Empyrean will correctly evaluate the value of the assets collateralizing Clients' loans or the prospects for a successful reorganization or similar action. In any reorganization or liquidation proceeding relating to a company in which Clients are invested, such Clients may lose their entire investment, may be required to accept cash or securities with a value less than their original investment and/or may be required to accept payment over an extended period of time. Under such circumstances, the returns generated from these investments may not compensate such Clients adequately for the risks assumed.

In liquidation (both in and out of bankruptcy) and other forms of corporate reorganization, there exists the risk that the reorganization either will be unsuccessful (due to, for example, failure to obtain requisite approvals), will be delayed (for example, until various liabilities, actual or contingent, have been satisfied) or will result in a distribution of cash or a new security the value of which will be less than the purchase price of the security in respect to which such distribution was made.

In certain transactions, the Client's investment may not be "hedged" against market fluctuations, or, in liquidation situations, may not accurately value the assets of the company being liquidated. This can result in losses, even if the proposed transaction is consummated.

Bank Loans. Empyrean's investment program includes investments in bank loans and participations. These obligations are subject to unique risks, including: (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws; (ii) so-called lender-liability claims by the issuer of the obligations; (iii) environmental liabilities that may arise with respect to collateral securing the obligations; and (iv) limitations on the ability of the Client to directly enforce its rights with respect to participations. In analyzing each bank loan, Empyrean compares the relative significance of the risks against the expected benefits of the investment. Successful claims by third parties arising from these and other risks will be borne by the applicable Clients.

As secondary market trading volumes increase, new loans are frequently adopting standardized documentation to facilitate loan trading which may improve market liquidity. There can be no assurance, however, that future levels of supply and demand in loan trading will provide an adequate degree of liquidity or that the current level of liquidity will continue. Because of the provision to holders of such loans of confidential information relating to the borrower, the unique and customized nature of the loan agreement, and the private syndication of the loan, loans are not as easily purchased or sold as a publicly traded security, and historically the trading volume in the loan market has been small relative to the high-yield debt market.

Bankruptcy Claims. Empyrean's investment program includes investments in debt and equity of financially distressed companies. In the event that the issuer files for bankruptcy protection, Empyrean will likely be unable to sell its Clients' claims without such Clients realizing a significant loss and may be unable to recover current interest on such claims during the course of the bankruptcy case. The markets in U.S. bankruptcy claims are generally not regulated by U.S. federal securities laws or the SEC. To the extent a debt investment is unsecured (i.e., has no collateral securing repayment), such claims may have a lower priority than secured claims (which have first recourse to the collateral securing such claim). In addition, the debt of an issuer in bankruptcy may be adversely affected by an erosion of the issuer's business and overall value. Accordingly, there can be no guarantee that a debtor will be able to satisfy all of its liabilities or that a Client will be able to recover the entire amount of its bankruptcy claim.

Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to appear and be heard, there can be no assurance that a bankruptcy court would not approve actions that may be contrary to the interests of Empyrean's Clients (in their role as a creditor). Furthermore, there are instances where creditors lose their priority under Title 11 of the United States Code (the "Bankruptcy Code") (i.e., are equitably subordinated) if, for example, they have engaged

in misconduct that harms other creditors. In those cases where a Client is found to have engaged in such misconduct, such Client may lose its priority.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, the approval of the plan by creditors and confirmation of the plan by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and a Client; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the issuer may not be able to reorganize and may be required to sell its assets either as a going concern or as part of a liquidation. As a result, even in those circumstances where a Client may recover the entire amount of its bankruptcy claim, it may be adversely impacted by any costs incurred by it in representing its interests in a debtor's bankruptcy case. U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for the purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that a Client's influence with respect to a class of securities can be lost by virtue of the size of its claim relative to the claims of the entire class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for certain taxes, wages and trade claims) may impair the recovery of an investment in a bankruptcy claim.

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

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

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

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

Corporate Debt Obligations and High-Yield Securities. Empyrean, on behalf of its Clients, may invest in corporate debt obligations and high-yield securities. The market value of debt securities generally tends to decline as interest rates increase and, conversely, increase as interest rates decline. Debt obligations are subject to the risk of an issuer's inability to meet principal and interest payments on the obligations (*i.e.*, credit risk). High-yield securities are generally not exchange traded and, as a result, these instruments may trade in a smaller secondary market than exchange-traded bonds. In addition, Empyrean, on behalf of its Clients, may invest in bonds of issuers that do not have publicly traded equity securities, making it more difficult to hedge the risks associated with such investments. High-yield securities that are below investment grade or unrated face ongoing uncertainties and exposure to adverse business, financial or economic conditions that could lead to the issuer's inability to meet timely interest and principal payments. The market values of certain lower-rated and unrated debt securities tend to reflect individual corporate developments to a greater extent than do higher-rated securities, which react primarily to fluctuations in the general level of interest rates, and tend to be more sensitive to economic conditions than are higher-rated securities. Companies that issue such securities are often highly leveraged and may not have available to them more traditional methods of financing. It is possible that a major economic recession could disrupt severely the market for such securities and may have an adverse impact on the value of such securities. In addition, it is possible that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default of such securities.

Empyrean, on behalf of its Clients, may invest in obligations of issuers that are generally trading at significantly higher yields than had been historically typical of the applicable issuer's obligations. Such investments may include debt obligations that have a heightened probability of being in covenant or payment default in the future or that are currently in default and are generally considered speculative. The repayment of defaulted obligations is subject to significant uncertainties. Defaulted obligations might be repaid only after lengthy workout or bankruptcy proceedings, during which the issuer might not make any interest or other payments. Typically such workout or bankruptcy proceedings result only in partial recovery of cash payments or an exchange of the defaulted security for other debt or equity securities of the issuer or its affiliates, which may in turn be illiquid or speculative.

Non-U.S. Investments. Empyrean, on behalf of its Clients, invests in securities of non-U.S. companies and countries and in non-U.S. currencies. Investing in the securities of such companies and countries involves certain considerations not usually associated with investing in securities of U.S. companies or the U.S. Government, including political and economic considerations, such as greater risks of expropriation and nationalization, confiscatory taxation, the potential difficulty of repatriating funds, general social, political and economic instability and adverse diplomatic developments, the possibility of imposition of withholding or other taxes on dividends, interest, capital gain, other income or gross sale proceeds, the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility, fluctuations in the rate of exchange between currencies and costs associated with currency conversion, and certain government policies that may

restrict investment opportunities. In addition, accounting and financial reporting standards that prevail in foreign countries generally are not equivalent to United States standards and, consequently, less information is available to investors in companies located in such countries than is available to investors in companies located in the United States. As a result, Empyrean may be unable to structure each of its Client's transactions to achieve the intended results or to mitigate all risks associated with such markets. It may also be difficult to enforce a Client's rights in such markets. Moreover, an issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other. There is also less regulation, generally, of the securities markets in foreign countries than there is in the United States. For example, securities traded on non-U.S. exchanges and the non-U.S. persons that trade these instruments are not subject to the jurisdiction of the SEC or the CFTC or the securities and commodities laws and regulations of the U.S. Accordingly, the protections accorded to Clients under such laws and regulations are unavailable for transactions on non-U.S. exchanges and with non-U.S. counterparties.

Currencies. Empyrean from time to time invests a portion of its Clients' assets in non-U.S. currencies, or in instruments denominated in non-U.S. currencies, the prices of which are determined with reference to currencies other than the U.S. dollar. Empyrean, however, values its Clients' securities and other assets in U.S. dollars. Empyrean may or may not seek to hedge all or any portion of its Clients' foreign currency exposure. To the extent a Client's investments are not hedged, the value of such Client's assets will fluctuate with U.S. dollar exchange rates as well as the price changes of such Client's investments in the various local markets and currencies. Thus, an increase in the value of the U.S. dollar compared to the other currencies in which investments are made will magnify the effects of increases and decreases in the value of Client positions in their local markets. Conversely, a decrease in the value of the U.S. dollar will have the opposite effect on a Client's non-U.S. dollar securities. Empyrean utilizes options and forward contracts to hedge against currency fluctuations, but there can be no assurance that such hedging transactions will be effective, and such techniques entail additional risks.

Illiquid Portfolio Investments. Empyrean, on behalf of its Clients, from time to time invests in securities that are subject to legal or other restrictions on transfer or for which no liquid market exists. Valuation of such securities may be difficult or uncertain because there may be limited information available about the issuers of such securities. The market prices, if any, for such securities tend to be volatile and Empyrean may not be able to sell them for its Clients when it desires to do so or to realize what Empyrean perceives to be fair value in the event of a sale. In addition, Clients may be contractually prohibited from disposing of certain illiquid securities for a specified period of time. Accordingly, Empyrean may be forced to sell its Clients' more liquid positions at a disadvantageous time, resulting in a greater percentage of the portfolio consisting of illiquid securities. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over the counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale. Even those markets which Empyrean expects to be liquid can experience periods, possibly extended periods, of illiquidity. Occasions have arisen in the past where previously liquid investments have rapidly become illiquid.

Restricted Securities. Empyrean may be prevented from buying or selling certain securities on behalf of its Clients if Empyrean (i) acquires material, non-public information with respect to the applicable company, (ii) is in a position to acquire such information as a result of a special relationship between Empyrean or its personnel and the applicable company, or (iii) deems it advisable in order to satisfy applicable legal requirements (e.g., securities filing obligations). In such cases, the applicable securities will be placed on a “restricted securities list” maintained by Empyrean and will not be traded or removed without the approval of Empyrean’s Chief Compliance Officer. Accordingly, a Client may be disadvantaged due to its inability to participate in investments that would otherwise be suitable for it or to liquidate existing investments during favorable market conditions.

ABS and MBS Generally. Empyrean, on behalf of its Clients, from time to time may invest in ABS or MBS (each defined below). The investment characteristics of asset-backed securities (“ABS”) and mortgage-backed securities (“MBS”) differ from traditional debt securities. Among the major differences are that interest and principal payments are made more frequently, usually monthly, and that the principal may be prepaid at any time because the underlying loans or other assets generally may be prepaid at any time.

*ABS and MBS Subordinated Securities.* Investments in subordinated MBS and ABS involve greater credit risk of default than the senior classes of the issue or series. Default risks may be further pronounced in the case of MBS and ABS secured by, or evidencing an interest in, a relatively small or less diverse pool of underlying loans. Certain subordinated securities absorb all losses from default before any other class of securities is at risk, particularly if such securities have been issued with little or no credit enhancement or equity. Such securities, therefore, possess some of the attributes typically associated with equity investments.

*Commercial MBS.* Mortgage loans on commercial properties often are structured so that a substantial portion of the loan principal is not amortized over the loan term but is payable at maturity and repayment of the loan principal thus often depends upon the future availability of real estate financing from the existing or an alternative lender and/or upon the current value and salability of the real estate. Therefore, the unavailability of real estate financing may lead to default.

Most commercial mortgage loans underlying MBS are effectively nonrecourse obligations of the borrower, meaning that there is no recourse against the borrower’s assets other than the collateral. If borrowers are not able or willing to refinance or dispose of encumbered property to pay the principal and interest owed on such mortgage loans, payments on the subordinated classes of the related MBS are likely to be adversely affected. The ultimate extent of the loss, if any, to the subordinated classes of MBS may only be determined after a negotiated discounted settlement, restructuring or sale of the mortgage note, or the foreclosure (or deed in lieu of foreclosure) of the mortgage encumbering the property and subsequent liquidation of the property. Foreclosure can be costly and delayed by litigation and/or bankruptcy. Factors such as the property’s location, the legal status of title to the property, its physical condition and financial performance, environmental risks, and governmental disclosure requirements with respect to the condition of the property may make a third party unwilling to purchase the property at a foreclosure sale or to pay a price sufficient to satisfy the obligations with respect to the related MBS. Revenues from the assets underlying such MBS may be retained by the borrower and the return on investment

may be used to make payments to others, maintain insurance coverage, pay taxes or pay maintenance costs. Such diverted revenue is generally not recoverable without a court appointed receiver to control collateral cash flow.

**ITEM 9**  
**DISCIPLINARY INFORMATION**

There are no legal or disciplinary events that are material to a current or prospective Client's evaluation of Empyrean's advisory business or the integrity of Empyrean's management.



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

**A. Broker-Dealer Registration Status**

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

**B. Futures Commission Merchant, Commodity Pool Operator or Commodity Trading Adviser Registration Status**

Empyrean and its management persons are not registered as, and do not have any application to register as, futures commission merchants, commodity pool operators, commodity trading advisors or associated persons of the foregoing entities.

**C. Material Relationships or Arrangements with Certain Related Persons**

Empyrean, its affiliates and their respective management persons and other personnel serve as investment advisers to multiple Clients, some of which may be considered their related persons due to the fact that they could be deemed to be under common control. Such persons may have conflicts in allocating their time and services among Clients. Such persons will devote as much time to the activities of each Client as they deem necessary and appropriate for Empyrean to perform its duties in accordance with its management agreements, and the amount of time devoted to different Clients may vary. In addition, the general partners of certain Clients are also related persons of Empyrean. When a conflict of interest arises, Empyrean endeavors to ensure that the conflict is resolved fairly and in an equitable manner that is consistent with its fiduciary duties to its Clients.

Certain Clients may have investment objectives, programs, strategies and positions that are similar to or may conflict with those of other Clients, or may compete with or have interests adverse to other Clients. Such conflicts could affect the prices and availability of securities in which Clients invest. Even if a Client has investment objectives, programs or strategies that are similar to those of another Client, Empyrean may give advice or take action with respect to the investments held by, and transactions of, such other Client that may differ from the advice given or the timing or nature of any action taken with respect to the investments held by, and transactions of, the first Client due to a variety of reasons, including, without limitation, differences between the investment strategy, financing terms, regulatory treatment and tax treatment of such Clients. As a result, Clients may have substantially different portfolios and investment returns. Conflicts of interest may also arise when Empyrean makes decisions on behalf of a Client with respect to matters where the interests of such Client differs from the interests of Empyrean or one or more other Clients.

Other present and future activities of Empyrean, its affiliates and their respective management persons and other personnel and/or their respective related persons may give rise to conflicts of interest. As noted above, in the event that a conflict of interest arises, Empyrean will attempt to resolve such conflicts in a fair and equitable manner that is consistent with its fiduciary duties to its Clients.

D. Material Conflicts of Interest Relating to Other Investment Advisers

Empyrean does not recommend or select other investment advisers for its Clients.

## **ITEM 11**

### **CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

Empyrean strives to adhere to the highest industry standards of conduct based on principles of professionalism, integrity, honesty and trust. In seeking to meet these standards, Empyrean has adopted a Manual of Compliance Policies and Procedures and Code of Ethics (the “Compliance Manual”), which contains a code of ethics and a Personal Trading Accounts Policy (the “Personal Trading Accounts Policy”) that together comprise the code of ethics required by Rule 204A-1 under the Advisers Act (the “Code”). Compliance personnel monitor compliance with the Code, review and, if applicable, revise the Code, to ensure compliance with applicable securities laws and regulations. Current and prospective Clients may request a copy of the Code by contacting Empyrean at the address or telephone number listed on the first page of this document.

The Compliance Manual, including the Code and the Personal Trading Accounts Policy, addresses, among other things, the following issues:

- Standards of Business Conduct, including general fiduciary duties of Empyrean’s personnel;
- Private Investments and Outside Activities;
- Conflicts of Interest;
- Treatment of Confidential Information;
- Compliance with Federal Securities Laws;
- Insider Trading;
- Personal Trading Accounts;
- Acceptance or Provision of Gifts and Entertainment; and
- Political Contributions.

The Code is based on the notion that Empyrean’s personnel must act in the best interests of Clients and should avoid engaging in business activities that create or appear to create a conflict of interest, and is intended to prevent and detect such actual or potential conflicts of interest. Empyrean personnel are required to periodically (at least annually) certify in writing that they have received, and have read and understand, the Code.

#### Participation or Interest in Client Transactions

Empyrean does not buy or sell securities for its own account. However, certain affiliates and related persons of Empyrean, including eligible employees or partners (including former) of Empyrean and/or its affiliates and their family members, and accounts established for the benefit of such persons, may hold, either directly or indirectly through the general partner, financial interests in certain of the Clients. Such persons are not required to invest in all Clients and generally do not pay any fees to Empyrean in respect of such investments. Potential conflicts may arise due to such persons having interests in some Clients, but not in others, or such persons having different levels of interests in various Clients.

Subject to applicable restrictions under Empyrean’s policies and procedures, Empyrean may effect rebalancing or internal cross transactions between certain Clients. In such cases, one Client will purchase securities held by another Client. Empyrean endeavors to effect these transactions based on a fair, current market price consistent with its valuation and other policies

and procedures, and generally utilizes cross transactions solely for rebalancing purposes. Such cross transactions generally will be made without brokerage commissions being charged. When effecting cross transactions between Clients, if Empyrean, its affiliates and their respective personnel have an ownership interest in one or more of the participating Clients, such persons will have potentially conflicting division of loyalties and responsibilities with respect to each participating Client.

In addition, to the extent that a cross transaction may be viewed as a principal transaction due to the ownership interest in a Client by Empyrean, its affiliates or their respective related persons, Empyrean will comply with the requirements of Section 206(3) of the Advisers Act, including that Empyrean will notify the Client (or an independent representative of the Client) in writing of the transaction and obtain the consent of the Client (or an independent representative of the Client). With respect to the Domestic Fund, the limited partners of the Domestic Fund have authorized the Onshore General Partner to, on their behalf, select one or more persons unaffiliated with the Onshore General Partner to serve on a committee, the purpose of which will be to consider, and on behalf of the limited partners of the Domestic Fund, approve or disapprove, to the extent required by applicable law, any such principal transaction.

In the event that a conflict of interest arises due to any of the circumstances described above, Empyrean will attempt to resolve such conflicts in a fair and equitable manner that is consistent with its fiduciary duties to its Clients.

#### Personal Trading

Empyrean's affiliates and their respective personnel ("access persons") may from time to time invest on behalf of themselves in securities and other instruments that would be appropriate for, are held by, or fall within the investment guidelines of a Client. Such persons may take action for their own accounts that may differ from, conflict with or be adverse to action taken for a Client. While unlikely, these activities may adversely affect the prices and availability of other securities or instruments held by or potentially considered for Clients. The Compliance Manual and the Personal Trading Accounts Policy generally limit the extent to which such access persons (including such access persons' related or associated person, such as spouses, domestic partners, and minor children) may acquire or sell securities or otherwise make investments by, among other things, requiring pre-clearance of certain types of transactions (including the acquisition of any security in an initial public offering or in a limited offering) and disclosure of holdings and transactions to Empyrean. In addition, generally, access persons, without pre-clearance by Empyrean's Chief Compliance Officer (or her designee), may not transact in any securities other than (i) open-end mutual funds and CDs, (ii) closed-end mutual funds and exchange-traded funds where the value of no one individual holding represents 5% or more of the portfolio, and (iii) closed-end mutual funds and exchange-traded funds on the exempt security list approved by Empyrean's Chief Compliance Officer. These limitations and pre-clearance requirements do not apply to transactions in investments held in "managed accounts," or accounts over which neither the access person nor a related/associated person has any authority, directly or indirectly, to influence, direct or effect specific investment decisions with respect to the assets held in the account. Notwithstanding Empyrean's approval of a transaction, and whether or not transaction did not require pre-approval, access persons may under no circumstances acquire or dispose of a security when in possession of material, non-public information or "inside information" concerning that security.

### Gifts and Business Entertainment

In order to address conflicts of interest that may arise when personnel of Empyrean accept or give a gift, favor, entertainment, special accommodation, or other items of value, the Code provides for formal policies and procedures requiring reporting and pre-approval of these items when above the de minimis amounts set forth therein.

### Outside Activities

Pursuant to the Code, personnel must obtain the prior approval of Empyrean's Chief Compliance Officer and Chief Operating Officer of certain outside activities, including, but not limited to, activities that involve (a) a time commitment that would prevent the individual from performing his or her duties for Empyrean, (b) active participation in any business in the financial services industry or otherwise in competition with the Empyrean, or (c) serving as an employee, officer, director or consultant in any company, business, venture, charitable organization or nonprofit organization. In granting any such approval, consideration will be given to whether the outside activity will have the potential to lead to conflicts of interest and insider trading problems, or otherwise interfere with personnel duties to Empyrean. As of the date hereof, none of Empyrean, its affiliates or their respective management persons or other personnel or their respective related persons serve on the boards of any public company, the securities of which are held by a Client.

### Political Contributions

Empyrean and its personnel are prohibited from making any contributions to any elected official with authority or influence regarding a public plan's selection of an adviser or investment pool without the pre-approval of Empyrean's Chief Compliance Officer. Political contributions are permitted only in compliance with Rule 206(4)-5 under the Advisers Act (relating to pay-to-play activities), corresponding local laws and regulations and the Code.

### Client Investments and Contemporaneous Trading

It is the policy of Empyrean to allocate investment opportunities for all Clients fairly and equitably, to the extent possible, over a period of time. Empyrean, however, will have no obligation to purchase, sell or exchange any security or financial instrument for one Client which Empyrean may purchase, sell or exchange for another Client if Empyrean believes in good faith at the time the investment decision is made that such transaction or investment would be unsuitable, impractical or undesirable for a particular Client. Please see Item 10 for more information.

Empyrean generally allocates investment opportunities so that each position held by the Clients following the same or substantially similar investment strategy is held on a *pari passu* basis. When an order is aggregated for such Clients, it will be allocated using calculated trade allocation ratios that attempt to achieve, as closely as possible, each Client's target allocation position ratio (which is based on the size of each Client's account). For the avoidance of doubt, aggregated orders (i) with respect to newly initiated positions and (ii) made at a time when the proportion of the Clients' holdings in a position are equal to the target allocation position ratios, in each case, will be allocated pro rata based on the size of each such Client's account. Full liquidating orders, regardless of how much is filled, are allocated based on the Client's ownership of that position. Notwithstanding the foregoing, an aggregated order may be

allocated on a different basis that Empyrean deems to be equitable. Reasons for allocating on a basis different from that specified in the preceding paragraph include, among other reasons, a Client's investment guidelines and restrictions, available cash, liquidity requirements, relative historical participation in the investment, ability to borrow and financing costs, tax or legal reasons, relative size and cash availability of the applicable strategy within a Client, round-lot minimum share quantities, avoidance of odd-lots or cases when a pro rata allocation would result in a de minimis allocation to one or more Clients. With respect to allocations of limited investment opportunities, such as privately placed securities and initial public offerings of securities, Empyrean will determine which Clients are eligible to participate in those opportunities. Limited investment opportunities will generally be allocated among all eligible Clients in proportion to their relative account size in accordance with the procedures discussed herein. Clients without sufficient available capital will not participate. Certain Investors are limited in their participation in the profits and losses attributable to investments by the Clients in "new issues," as such term is defined under FINRA Rule 5130. Currently, these restricted Investors are allocated profits and losses from new issue proceeds in accordance with the de minimis exception to FINRA Rule 5130 (up to 10%). Empyrean reserves the right to vary its policy with respect to the allocation of profits and losses attributable to "new issues" as it deems appropriate for its Clients as a whole, in light of, among other things, existing interpretations of, and amendments to FINRA Rule 5130 and practical considerations, including administrative burdens and principles of fairness and equity. Allocations of new issues are based on each Client's eligible gross assets (i.e., assets attributable to unrestricted Investors).

Empyrean manages investments on behalf of Clients that do not have the same or substantially similar investment strategies, but nevertheless have investments that, from time to time, have overlapped, or may overlap in the future. In certain circumstances, taking into account the Clients' investment programs and guidelines and Empyrean's view that the investment's characteristics make it appear suitable for more than one Client, Empyrean will allocate an investment to more than one Client in the first instance or over time. Empyrean strives to provide all Clients with meaningful investment allocations over time, although each and every Client will not receive an allocation of each and every profitable investment. The allocation methodology applicable to orders aggregated and allocated between current and future Clients that have investment strategies that are not substantially similar will be set forth in separate policies and procedures implemented by Empyrean at the time it begins providing investment advice to such Clients (and which may be amended when Empyrean deems it advisable in order to prevent one Client from being favoured over another Client). Any aggregation and allocation of orders between such Clients shall be made in good faith in a manner to ensure all accounts receive fair and equitable treatment, in accordance with applicable laws and regulations and the provisions of the applicable Client offering documents, and taking into account a variety of factors, including but not limited to the following: a Client's existing position in a particular security or issuer, the available capital (or liquidity) of the Clients, the Client's investment objectives, guidelines and restrictions, relevant risk considerations, tax or regulatory implications, anticipated investment horizons, position duration and borrowing/financing costs. For example, when a Client is in its investment or ramp-up phase, is seeking to rebalance its portfolio or has received a capital infusion or withdrawal request, preference may be given to the Client so that it reaches its desired position in a timely manner.

Empyrean may also make an investment on behalf of a Client in a position which is already held by another Client or a position that is subordinated or senior to or otherwise adverse to a position held by another Client. For example, a Client may own debt of a portfolio

company while another Client owns equity in the same portfolio company. It is possible that the activities or strategies used for these Clients could conflict and affect the prices and availability of the securities and instruments in which other Clients invest. For example, in a situation where Empyrean, on behalf of a Client, invests in debt securities of a company in which another Client holds or is contemporaneously acquiring equity securities, questions may arise as to whether payment obligations and covenants should be enforced, modified or waived, or whether debt should be refinanced. Decisions about what action should be taken in a troubled situation, including whether or not to enforce claims, whether or not to advocate or initiate a restructuring or liquidation inside or outside of bankruptcy, and the terms of any work-out or restructuring, raise conflicts of interest. If additional capital is necessary as a result of financial or other difficulties, Empyrean, on behalf of a particular Client, may or may not provide such additional capital as it determines in its sole discretion. A Client may have an interest in structuring debt securities and instruments that have financial terms (such as interest rates, repayment terms, seniority, covenants and events of default) that are more restrictive than the terms that another Client would seek to negotiate. Empyrean will seek to resolve such conflicts of interest in a fair and equitable manner. Conflict resolution may result in one or more Clients each receiving more or less consideration than it may have otherwise received in the absence of such a conflict of interest. Allocation to a particular Client is not based on the amount or structure of fees for such Client.

From time to time, Empyrean may also become aware of investment opportunities with capacity such that, after a Client has invested up to its desired allocation, as determined by Empyrean, there may be remaining capacity that Empyrean may choose to make available to select persons, including certain Investors. However, no Investor should have any expectation or entitlement to be offered an opportunity to participate in such investments except to the extent of their participation through the Client. Furthermore, Empyrean's activities with respect to offering co-investment opportunities to third parties may reduce the amount of business time spent by its partners, officers and employees on Client investment activities and may pose greater risks to Empyrean.

## **ITEM 12**

### **BROKERAGE PRACTICES**

#### **A. Factors Considered in Selecting or Recommending Broker-Dealers for Client Transactions**

Empyrean seeks to act in the best interest of its Clients when entering into transactions on their behalf, and will obtain best execution for such transactions. Best execution is not determined by “lowest possible commission costs,” but by best “qualitative execution.” Therefore, Empyrean’s efforts to obtain best execution depend substantially on its judgment, knowledge and experience in evaluating each broker-dealer’s reliability and capability. Empyrean seeks to execute securities transactions in such a manner that the client’s total cost or proceeds in each transaction are most favorable under the circumstances. In making this determination, the Empyrean evaluates each broker-dealer by considering a combination of, among others, the following factors:

- Quality of execution with respect to different types and sizes of transaction orders and available market makers (ability to achieve prompt and reliable executions at favorable prices);
- The commissions charged by the broker-dealer, which may be a function of the size of the order, the price of the security, and whether the receipt of products or services is involved;
- Whether the broker-dealer provides Empyrean with services and research that it uses in making investment decisions for Clients in exchange for Empyrean conducting transactions with such broker-dealer;
- Overall cost of trade (including commissions, mark-ups, mark-downs, spreads and other costs) and competitiveness of costs in comparison with other brokers satisfying the Firm’s other selection criteria (i.e., comparable products and services); and
- Responsiveness and reliability.

Other factors Empyrean may consider include:

- Whether the broker-dealer can accommodate third-party soft dollar arrangements and step-outs;
- Reputation, ongoing reliability and responsiveness to the Empyrean’s requests for trade data and other financial information, including during volatile markets;
- Financial strength, integrity and stability of broker-dealer;
- Block trading and block positioning capabilities;
- Willingness and ability to execute difficult transactions;
- Willingness and ability to commit capital (i.e. loss ratios);
- Access to underwritten offerings (initial and follow-on public offerings) and secondary markets; and
- The ability of the broker-dealer to handle complex, difficult and variable number and size of trades.
- Statistics or other information on the relative quality of executions/financial services by each broker-dealer;
- Desired timing of the transaction;



- Confidentiality of trading activity;
- Market intelligence;
- Idea generation;
- Availability of stocks to borrow;
- Sourcing of investment opportunities by the broker and its affiliates;
- Quality and timeliness of market information provided;
- Whether the broker-dealer is equipped to handle electronic trade entry and reporting links with Empyrean;
- The value of privacy considerations, liquidity, price improvement, and lower commission rates on Electronic Communications Networks;
- The costs associated with the opportunity to work with a major broker-dealer that may offer a wide variety of products and services or a “boutique” firm that only deals with specialized products; and
- The adequacy of the broker-dealer’s back office staff to efficiently handle trading activity, especially in volatile or high volume markets.

Accordingly, the commissions charged by any such broker or dealer may be greater than the amount another firm might charge if Empyrean determines in good faith that the amount of such commissions is reasonable in relation to the value of the brokerage services and research information provided by such brokers or dealers.

Although Empyrean may have an incentive to select or recommend a broker or dealer based on its interest in receiving the research or other products or services, Empyrean seeks to obtain best execution and, consistent with the requirements of best execution, brokerage commissions may be directed to brokers, dealers or other parties, either directly or indirectly, in recognition of, among other things, investment research and information furnished for services rendered in the execution of orders by such brokers, or dealers. By allocating transactions in this manner, Empyrean is able to supplement its research and analysis with the views and information of brokerage and other firms.

Empyrean maintains policies and procedures for the review of quality of executions, including pre-approval of new broker-dealers and periodic reviews by its Trading & Research Committee and Trade Oversight Committee.

#### 1. Research and Other Soft Dollar Benefits:

From time to time, Empyrean may pay a broker-dealer commissions (or markups or markdowns with respect to certain types of riskless principal transactions) for effecting a Client’s transactions in excess of that which another broker-dealer might have charged for effecting the transaction in recognition of the value of the brokerage and research services provided by the broker-dealer. Empyrean may have an incentive to select a broker-dealer based on its interest in receiving brokerage and research services from that broker-dealer. Empyrean will effect such transactions, and receive such brokerage and research services, only to the extent that they fall within the safe harbor provided by Section 28(e) of the Securities Exchange Act of 1934, as amended. Empyrean benefits from such transactions as it receives valuable brokerage and research services that it would otherwise have to pay for. Empyrean believes it is important to its investment decision-making processes and beneficial to all Clients to have access to the independent research provided by broker-dealers in this manner.

In the last year, research services provided by broker-dealers has included information on the economy, industries, groups of securities, individual companies, statistical information, accounting and tax law interpretations, political developments, legal developments affecting portfolio securities, technical market action, pricing and appraisal services, credit analysis, risk measurement analysis, performance analysis, and analysis of corporate responsibility issues. Such research services are received primarily in the form of written reports, telephone contacts, and personal meetings with security analysts. In addition, such research services may be provided in the form of access to various computer-generated data, computer hardware and software, and meetings arranged with corporate and industry spokespersons, economists, academicians, and government representatives. In some cases, research services are generated by third parties but are provided to Empyrean by or through broker-dealers.

Also, consistent with Section 28(e), research products or services obtained with “soft dollars” generated by one or more Clients may be used by Empyrean to service one or more other Clients. Empyrean does not seek to allocate soft dollar benefits to Client accounts in proportion to the soft dollar credits the Client accounts generate. Where a product or service obtained with soft dollars provides both research and non-research assistance to Empyrean (i.e., a “mixed use” item), Empyrean will make a good faith allocation of the cost which may be paid for with soft dollars. In making good faith allocations of costs between administrative benefits and research and brokerage services, a conflict of interest may exist by reason of Empyrean’s allocation of the costs of such benefits and services between those that primarily benefit Empyrean and those that primarily benefit the Clients.

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

Empyrean maintains policies and procedures for the review of soft dollar arrangements, including pre-approval of formal soft dollar arrangements and periodic reviews by its Trading & Research Committee and Trade Oversight Committee.

## 2. Brokerage for Client Referrals

Neither Empyrean nor any related person receives client referrals from any broker-dealer or third party. However, as discussed above, subject to best execution, Empyrean may consider, among other things, capital introduction and marketing assistance with respect to Investors in the Clients in selecting or recommending broker-dealers for the Clients.

Empyrean has entered into agreements on behalf of the Clients with certain brokers-dealers that act as prime brokers on behalf of the Clients. From time to time, Empyrean’s personnel may speak at conferences and programs for potential investors interested in investing in hedge funds which are sponsored by those prime brokers. These conferences and programs

may be a means by which Empyrean can be introduced to potential investors. Currently, neither Empyrean, nor any of the Clients, compensate prime brokers for organizing such “capital introduction” events or for any investments ultimately made by prospective investors attending such events (although either may do so in the future). While such events and other services provided by a prime broker may influence Empyrean in deciding whether to use such prime broker in connection with brokerage, financing and other activities of the Clients (subject to its obligation to seek best execution on behalf of its Clients), Empyrean will not commit to allocate a particular amount of brokerage to a broker-dealer in any such situation.

### 3. Directed Brokerage

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

#### B. Order Aggregation

In managing the Clients’ portfolios, Empyrean may, but is not obligated to, aggregate trades, subject to its duty to obtain best execution and the terms of the investment guidelines and restrictions for each Client for which trades are being aggregated. Aggregation, or “bunching,” describes a procedure whereby an investment adviser combines the orders of two or more Clients into a single order for the purpose of obtaining better prices and lower execution costs. Aggregation opportunities for Empyrean generally arise when more than one Client is capable of purchasing or selling a particular security based on investment objectives, available cash and other factors.

If Empyrean determines that the purchase or sale of the same security is in the best interest of more than one Client, Empyrean may, but is not obligated to, aggregate orders in order to reduce transaction costs to the extent permitted by applicable law. Empyrean will not aggregate orders unless aggregation is consistent with its duty to obtain best execution and the terms of the investment guidelines and restrictions for each Client for which trades are being aggregated. No Client will be favored over any other Client when aggregating orders and each Client that participates in an aggregated order will participate at the average price for all of Empyrean’s transactions in that security on a given business day, with transaction costs shared pro rata based on each Client’s participation in the transaction.

See “Client Investment and Contemporaneous Trading” in Item 11 for more information, including with respect to the allocation of aggregated orders.

## **ITEM 13**

### **REVIEW OF ACCOUNTS**

**A. Frequency and Nature of Review of Client Accounts or Financial Plans**

Empyrean performs various daily, weekly, monthly, quarterly and periodic reviews of each Client's portfolios. Such reviews are conducted by Empyrean's Chief Investment Officer, partners, principals, and other members of Empyrean's investment team, with the benefit of back-office resources (such as the law & compliance department, which reviews for regulatory compliance). In addition, Empyrean uses an independent third party to conduct annual financial audits of the accounts of the Funds. Empyrean's Trade Oversight Committee also conducts a periodic review of each Client's portfolio.

**B. Factors Prompting Review of Client Accounts Other than a Periodic Review**

In addition to reviews in the ordinary course of business, a review of a Client account may be triggered by any unusual activity or special circumstances, including, but not limited to: changes in market, economic, or legal or regulatory conditions, changes in information or other factors regarding a particular investment, purchase or sales of investments, and other similar developments and events.

**C. Content and Frequency of Account Reports to Clients**

Clients and Investors in the Funds receive monthly unaudited reports from Empyrean documenting the performance of the Client, although Empyrean may provide certain Investors with information on a more frequent and detailed basis if agreed to by Empyrean. In addition, with respect to the Funds, an independent third-party administrator conducts independent monthly verification of Empyrean's pricing of its investments held by the Funds. The independent third-party administrator provides a monthly report to Investors in the Empyrean Funds (and quarterly with respect to the Investors in the Co-Invest Funds) that confirms capital balances, and a quarterly transparency report to Investors in the Empyrean Funds, that includes among other items, the percentage (if any) of the relevant Empyrean Fund's investments for which the independent third party was unable to verify prices. Empyrean also issues to Investors in the Funds tax reports (where applicable) and audited financial statements concerning their respective Fund within 90 days of the end of such Fund's fiscal year or as soon thereafter as is reasonably possible. P EMP Ltd. receives monthly reports from its administrator and should receive monthly or quarterly reports from the qualified custodians that hold and maintain its investment assets.

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

Empyrean does not receive economic benefits from non-Clients for providing investment advice and other advisory services. Neither Empyrean nor any related person directly or indirectly compensates any person who is not a supervised person, including placement agents, for Client referrals.

Empyrean may execute Client transactions with prime brokers that sponsor events, meetings or other communications between potential investors and Empyrean. These capital introduction services are provided incidental to other brokerage services. Empyrean is not compelled to engage broker-dealers that sponsor these capital introduction programs in order to be included at these events. However, these capital introduction events are typically sponsored by prime brokers that provide necessary services to certain Clients and they may create the appearance of using the execution services of these broker-dealers in order to be invited to their capital introduction programs.

Empyrean does not pay to participate in these programs and does not cause Clients to execute transactions or pay higher commissions or other transaction costs in connection with these programs or services. However, Empyrean does pay to attend certain conferences, seminars and other events that are attended by prospective investors, but are not specifically designed as capital introduction events. Furthermore, broker-dealers or their affiliates may introduce Empyrean to prospective investors and will continue to have business relationships with, and execute brokerage transactions on behalf of, Clients.

## **ITEM 15 CUSTODY**

All Client assets are maintained with qualified custodians. Empyrean is deemed to have custody of funds and securities held by the Funds because it has the authority to obtain possession of such funds or securities, for example, by deducting advisory fees from a Fund's account or otherwise withdrawing funds from a Fund's account. Empyrean does not take physical custody of P EMP Ltd.'s funds and/or securities, and does not have the ability to deduct advisory fees from P EMP Ltd.'s account or otherwise withdraw client assets from such account. Account statements related to Clients are sent by qualified custodians to Clients. P EMP Ltd. should receive monthly or quarterly reports from the qualified custodians that hold and maintain its investment assets. Clients should carefully review account statements for accuracy and compare these statements to the reports provided to them by Empyrean.

Empyrean is subject to Rule 206(4)-2 under the Advisers Act (the "Custody Rule"). However, it is not required to comply (or is deemed to have complied) with certain requirements of the Custody Rule with respect to each Fund because it complies with subsection (b)(4) of the Custody Rule which, among other things, requires that each Fund be subject to audit at least annually by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and requires that each Fund distribute its audited financial statements to all of its Investors within 120 days of the end of its fiscal year.

**ITEM 16**  
**INVESTMENT DISCRETION**

Empyrean serves as the investment adviser with discretionary trading authority to each Client. Empyrean's investment decisions and advice with respect to each Client are subject to each Client's investment objectives and guidelines, as set forth in its offering documents and as agreed to in an investment management agreement, or similar agreement, with each Client prior to assuming discretionary trading authority.

Empyrean may provide other advisory or sub-advisory services on a discretionary basis, which would be provided in an advisory or sub-advisory contract, respectively, with each Client at the onset of such relationship.

## **ITEM 17**

### **VOTING CLIENT SECURITIES**

The Securities and Exchange Commission adopted Rule 206(4)-6 under the Advisers Act, which requires registered investment advisers that exercise voting authority over Client securities to implement proxy voting policies. In compliance with such rules, Empyrean has adopted proxy voting policies and procedures (the “Policies”). The general policy is to vote proxy proposals, amendments, consents or resolutions relating to Client securities, including interests in private investment funds, if any (collectively, “proxies”), in a manner that serves the best interests of the Client, as determined by Empyrean in its discretion, taking into account the following factors: (i) the impact on the value of the investments; (ii) the anticipated associated costs and benefits; (iii) the effect on liquidity; and (iv) customary industry and business practices. In limited circumstances, Empyrean may refrain from voting proxies where it believes that voting would be inappropriate taking into consideration the cost of voting the proxy and the anticipated benefit to the Client, or a legal restriction on trading could result from exercising the proxy. Conflicts of interest may arise between the Clients’ interests and Empyrean’s interests. If Empyrean determines it may have a conflict when voting proxies, Empyrean will vote in accordance with its Policies. A copy of the Policies and the proxy voting record relating to a Client may be obtained by contacting Empyrean.

In order to facilitate the proxy voting process, Empyrean has engaged Glass, Lewis & Co., an independent proxy voting service (the “Proxy Service”), to vote proxies for the Clients on Empyrean’s behalf. The Proxy Service provides Empyrean with proxy analysis and voting recommendations in accordance with Empyrean’s Policies.



**ITEM 18**  
**FINANCIAL INFORMATION**

Empyrean does not believe it has any financial commitments that impair its ability to meet contractual commitments to Clients.