

# **Pinnacle Associates Ltd.**

SEC File Number: 801 – 20841

## **Pinnacle Associates Ltd.**

### **Brochure**

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**This brochure provides information about the qualifications and business practices Pinnacle Associates Ltd. (the “Registrant”). If you have any questions about the contents of this brochure, please contact us at (212) 652-3200 or [gmannix@pinnacle-ny.com](mailto:gmannix@pinnacle-ny.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.**

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

**References herein to Pinnacle Associates Ltd. as a “registered investment adviser” or any reference to being “registered” does not imply a certain level of skill or training**

## **Item 2           Material Changes**

There have been no material changes made to Pinnacle Associates Ltd.'s disclosure statement since last year's Annual Amendment filing on March 31, 2010.

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#### Item 4            Advisory Business

- A. Pinnacle Associates Ltd. (the “Registrant”) is a corporation formed on January 26, 1984 in the state of New York. The Registrant became registered as an Investment Adviser Firm in March 1984. The Registrant is principally owned by Thomas Passios. Mr. Passios is the Registrant’s President.
- B. As discussed below, the Registrant offers to its clients (individuals, investment companies, investment limited partnerships, pension and profit sharing plans, business entities, trusts, estates and charitable organizations, etc.) investment advisory services. The Registrant **does not** hold itself out as providing financial planning, estate planning or accounting services.

#### **INVESTMENT ADVISORY SERVICES**

The client can determine to engage the Registrant to provide discretionary investment advisory services on a *fee* basis. The Registrant’s annual investment advisory fee is based upon a percentage (%) of the market value of the assets placed under the Registrant’s management (between negotiable and 1.50%) as follows:

<u>Assets Under Management</u>	<u>Range of Fees (Annual)</u>
Initial \$5 Million	1.25% to 1.50%
Next \$5 Million	1.00% to 1.25%
All additional assets	0.75% to 1.00%

#### **MISCELLANEOUS**

**Limited Consulting/Implementation Services.** Although the Registrant does not hold itself out as providing financial planning, estate planning or accounting services, to the extent specifically requested by the client, the Registrant *may* provide limited consultation services to its investment management clients on investment and non-investment related matters, such as estate planning, tax planning, insurance, etc. Registrant shall not receive any separate or additional fee for any such consultation services. Neither the Registrant, nor any of its representatives, serves as an attorney, accountant, or licensed insurance agent, and no portion of the Registrant’s services should be construed as same. To the extent requested by a client, the Registrant may recommend the services of other professionals for certain non-investment implementation purposes (i.e. attorneys, accountants, insurance, etc.), including certain representatives of the Registrant in their individual capacities as registered representatives of a broker-dealer. The client is under no obligation to engage the services of any such recommended professional. **Please Note:** If the client engages any such recommended professional, and a dispute arises thereafter relative to such engagement, the client agrees to seek recourse exclusively from and against the engaged professional. **Please Also Note:** It remains the client’s responsibility to promptly notify the Registrant if there is ever any change in his/her/its financial situation or investment objectives for the purpose of reviewing/evaluating/revising Registrant’s previous recommendations and/or services.

**Private Investment Funds.** The Registrant currently serves as investment adviser and/or General Partner of certain investment limited partnerships (i.e., the “*Partnership(s)*”). The *Partnerships* rely on an exemption from registration under The Investment Company Act of 1940 which is available to investment limited partnerships that generally have less than 100 investors or less than 500 investors depending on the exemption. The *Partnerships* include:

1. Pinnacle Equity Fund, L.P. – a Delaware limited partnership that seeks long-term growth of capital by primarily investing in equity securities of small to medium-sized companies that are believed to be undervalued and offer opportunities for above-average market performance;
2. Pinnacle International Partners, L.P. – a Delaware limited partnership that seeks to achieve capital appreciation primarily by investing in equity securities of foreign (i.e., non-U.S.) companies;
3. Pinmar Investors, L.P. – a Delaware limited partnership that seeks to achieve annual rates of return in excess of the S&P 500 stock index by utilizing a disciplined investment style of purchasing the equity securities of undervalued domestic (i.e., U.S.) companies. Registrant is the Co-General Partner of Pinmar. The other General Partner is Metronome Associates, L.L.C., which is principally owned by Peter N. Marron, a Senior Vice President of the Registrant;
4. Pinnacle Opportunity Fund, L.P. – a Delaware limited partnership that seeks long-term growth of capital primarily by investing in equity securities of domestic and foreign (i.e., non-U.S.) companies;
5. Pinnacle International Small Cap Partners, L.P. - a Delaware limited partnership that seeks long-term growth of capital primarily by investing in the equity securities of foreign (i.e. non-U.S.) small companies; and

To the extent certain of Registrant’s individual advisory clients qualify, they will be eligible to participate as limited partners of the *Partnerships*. All relevant information, terms and conditions relative to the *Partnerships*, including the compensation to be received by the Registrant as the General Partner, suitability, risk factors, and potential conflicts of interest, are set forth in the Confidential Private Offering Memorandum (the “*Memorandum*”), Limited Partnership Agreement (the “*Agreement*”), and Subscription Agreement, which each limited partner is required to receive and/or execute prior to being accepted as a limited partner of any of the *Partnerships*.

As General Partner, the Registrant, pursuant to the terms of each specific *Memorandum*, shall receive a quarterly basic management fee. In addition, the Registrant, in accordance with the terms and conditions specifically set forth in the *Memorandum* and *Agreement*, may also receive performance related compensation in accordance with the requirements under Rule 205-3 of the Investment Advisers Act of 1940.

*Partnership* funds are held by a qualified custodian and no fees, allocations, distributions or other payments will be made to the Registrant as General Partner by such custodian until calculated by Registrant’s Limited Partnership Administrator and the calculation verified by Registrant’s Controller. Relative to payments to be received by the Registrant for its

investment management services to the *Partnership*, the Registrant does not maintain custody or possession of *Partnership* assets within the meaning of Rule 206(4)-2 under the Investment Advisers Act of 1940.

Registrant will devote its best efforts with respect to its management of both the *Partnerships* and its individual client accounts. Given the above discussion relative to the objectives, suitability, risk factors, and qualifications for participation in the *Partnerships*, the Registrant may give advice or take action with respect to the *Partnerships* that differs from that for individual client accounts. To the extent that a particular investment is suitable for both the *Partnerships* and certain individual client accounts, such investments will be allocated between the *Partnerships* and the individual client accounts pro-rata based on the assets under management or in some other manner which the Registrant determines is fair and equitable under the circumstances to all of its clients.

**Please Note:** Private investment funds generally involve various risk factors, including, but not limited to, potential for complete loss of principal, liquidity constraints and lack of transparency, a complete discussion of which is set forth in each fund's offering documents, which will be provided to each client for review and consideration. Unlike other liquid investments that a client may maintain, private investment funds do not provide daily liquidity or pricing. Each prospective client investor will be required to complete a Subscription Agreement, pursuant to which the client shall establish that he/she is qualified for investment in the fund, and acknowledges and accepts the various risk factors that are associated with such an investment.

**Please Also Note: Valuation.** In the event that the Registrant references private investment funds owned by the client on any supplemental account reports prepared by the Registrant, the value(s) for all such private investment funds shall reflect either the initial purchase and/or the most recent valuation provided by the fund sponsor. If the valuation reflects the initial purchase price (and/or a value as of a previous date), the current value(s) (to the extent ascertainable) could be **significantly more or less** than the original purchase price.

**Please Note (Wrap/Managed Account programs):** In the event that Registrant is engaged to provide investment management services as part of an unaffiliated wrap-fee program, Registrant will be unable to negotiate commissions and/or transaction costs. Under a wrap program, the wrap program sponsor arranges for the investor participant to receive investment advisory services, the execution of securities brokerage transactions, custody and reporting services for a single specified fee. Participation in a wrap program may cost the participant more or less than purchasing such services separately. In the event that Registrant is engaged to provide investment management services as part of an unaffiliated managed account program, Registrant will likewise be unable to negotiate commissions and/or transaction costs. If the program is offered on a non-wrap basis, the program sponsor will determine the broker-dealer through which transactions must be effected, and the amount of transaction fees and/or commissions to be charged to the participant investor accounts.

**Please Note: Cash Positions.** At any specific point in time, depending upon perceived or anticipated market conditions/events (there being **no guarantee** that such anticipated market conditions/events will occur), the Registrant *may* maintain cash positions for

defensive purposes. All cash positions (money markets, etc.) shall be included as part of assets under management for purposes of calculating the Registrant's advisory fee. **The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above fee billing practice.**

**Cross Transactions.** In limited circumstances, the Registrant may engage in cross-transaction pursuant to which the Registrant may effect transactions between two of its managed client accounts (i.e., arranging for the clients' securities trades by "crossing" these trades when the Registrant believes that such transactions are beneficial to its clients). For all such transactions, neither the Registrant, nor any affiliate will be acting as a broker, and will not receive any commission or transaction-based compensation. The client may revoke Registrant's cross-transaction authority at any time upon written notice to the Registrant.

**Client Obligations.** In performing its services, Registrant shall not be required to verify any information received from the client or from the client's other professionals, and is expressly authorized to rely thereon. Moreover, each client is advised that it remains his/her/its responsibility to promptly notify the Registrant if there is ever any change in his/her/its financial situation or investment objectives for the purpose of reviewing/evaluating/revising Registrant's previous recommendations and/or services.

**Disclosure Statement.** A copy of the Registrant's written Brochure as set forth on Part 2A of Form ADV shall be provided to each client prior to, or contemporaneously with, the execution of the *Investment Advisory Agreement*. Any client who has not received a copy of Registrant's written Brochure at least 48 hours prior to executing the *Investment Advisory Agreement* shall have five business days subsequent to executing the agreement to terminate the Registrant's services without penalty.

- C. The Registrant shall provide investment advisory services specific to the needs of each client. Prior to providing investment advisory services, an investment adviser representative will ascertain each client's investment objective(s). Thereafter, the Registrant shall allocate and/or recommend that the client allocate investment assets consistent with the designated investment objective(s). The client may, at anytime, impose reasonable restrictions, in writing, on the Registrant's services.
- D. Registrant does not offer a wrap fee program for its investment advisory services. However, Registrant is a participating investment adviser in certain unaffiliated wrap and managed account fee programs. There is no significant difference between how the Registrant manages wrap fee accounts and non-wrap fee accounts. **Please Note:** When managing a client's account on a wrap fee basis, the Registrant shall receive as payment for its investment advisory services, the balance of the wrap fee after all other costs incorporated into the wrap fee have been deducted.
- E. As of December 31, 2010, the Registrant had \$5,011,000,000.00 in assets under management on a discretionary basis.

## Item 5            Fees and Compensation

- A. The client can determine to engage the Registrant to provide discretionary investment advisory services on a *fee* basis.

### INVESTMENT ADVISORY SERVICES

If a client determines to engage the Registrant to provide discretionary investment advisory services on a *fee* basis, the Registrant's annual investment advisory fee shall be based upon a percentage (%) of the market value and type of assets placed under the Registrant's management (between negotiable and 1.50%) as follows:

<u>Assets Under Management</u>	<u>Range of Fees (Annual)</u>
Initial \$5 Million	1.25% to 1.50%
Next \$5 Million	1.00% to 1.25%
All additional assets	0.75% to 1.00%

- B. Clients may elect to have the Registrant's advisory fees deducted from their custodial account. Both Registrant's *Investment Advisory Agreement* and the custodial/ clearing agreement may authorize the custodian to debit the account for the amount of the Registrant's investment advisory fee and to directly remit that management fee to the Registrant in compliance with regulatory procedures. In the limited event that the Registrant bills the client directly, payment is due upon receipt of the Registrant's invoice. The Registrant shall deduct fees and/or bill clients quarterly in advance or arrears, based upon the market value of the assets on the last business day of the previous quarter.
- C. As discussed below, unless the client directs otherwise or an individual client's circumstances require, the Registrant shall generally recommend that Charles Schwab and Co., Inc. ("*Schwab*"), Matrix Capital Group, Inc. ("*Matrix*"), Chase Manhattan Bank ("*Chase*") Citigroup, TD Ameritrade ("*Ameritrade*"), Fidelity Investments ("*Fidelity*") and/or Morgan Stanley Smith Barney ("*Morgan Stanley*") serve as the broker-dealer/custodian for client investment management assets. Broker-dealers such as *Schwab*, *Matrix*, *Chase*, *Citigroup*, *Ameritrade*, *Fidelity* and *Morgan Stanley* charge brokerage commissions and/or transaction fees for effecting certain securities transactions (i.e. transaction fees are charged for certain no-load mutual funds, commissions are charged for individual equity and fixed income securities transactions). In addition to Registrant's investment management fee, brokerage commissions and/or transaction fees, clients will also incur, relative to all mutual fund and exchange traded fund purchases, charges imposed at the fund level (e.g. management fees and other fund expenses. When beneficial to the client, individual fixed-income and/or equity transactions may be effected through broker-dealers with whom Registrant and/or the client have entered into arrangements for prime brokerage clearing services, including effecting certain client transactions through other SEC registered and FINRA member broker-dealers (in which event, the client generally will incur both the transaction fee charged by the executing broker-dealer and a "tradeaway" fee charged by the account custodian).
- D. Registrant's annual investment advisory fee shall be prorated and paid quarterly, in

advance or arrears, based upon the market value of the assets on the last business day of the previous quarter. The Registrant generally requires a \$1,000,000 minimum asset level for investment advisory services. The Registrant, in its sole discretion, may reduce its investment management fee and/or reduce or waive its minimum asset requirement based upon certain criteria (i.e. anticipated future earning capacity, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.).

The *Investment Advisory Agreement* between the Registrant and the client will continue in effect until terminated by either party by written notice in accordance with the terms of the *Investment Advisory Agreement*. Upon termination, the Registrant shall either refund the pro-rated portion of the advanced advisory fee paid based upon the number of days remaining in the billing quarter or debit the account for the pro-rated portion of the unpaid advanced advisory fee based upon the number of days that services were provided during the billing quarter.

- E. **Securities Commission Transactions.** In the event that the client desires, the client can engage certain of Registrant's representatives, in their individual capacities, as registered representatives of Matrix Capital Group, Inc., an SEC registered and FINRA member broker-dealer, to implement investment recommendations on a commission basis. In the event the client chooses to purchase investment products through *Matrix*, *Matrix* will charge brokerage commissions to effect securities transactions, a portion of which commissions *Matrix* shall pay to Registrant's representatives, as applicable. The brokerage commissions charged by *Matrix* may be higher or lower than those charged by other broker-dealers. In addition, *Matrix*, as well as Registrant's Representatives, relative to commission mutual fund purchases, may also receive additional ongoing 12b-1 trailing commission compensation directly from the mutual fund company during the period that the client maintains the mutual fund investment.
1. **Conflict of Interest:** The recommendation that a client purchase a commission product from Registrant's representatives presents a *conflict of interest*, as the receipt of commissions may provide an incentive to recommend investment products based on commissions to be received, rather than on a particular client's need. No client is under any obligation to purchase any commission products from Registrant's representatives. **The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above conflict of interest.**
  2. **Please Note:** Clients may purchase investment products recommended by Registrant through other, non-affiliated broker dealers or agents.
  3. The Registrant does not receive more than 50% of its revenue from advisory clients as a result of commissions or other compensation for the sale of investment products the Registrant recommends to its clients.
  4. When Registrant's representatives sell an investment product on a commission basis, the Registrant does not charge an advisory fee in addition to the commissions paid by the client for such product. When providing services on an advisory fee basis, the Registrant's representatives do not also receive commission compensation for such advisory services (except for any ongoing 12b-1 trailing commission compensation that may be received as previously

discussed). **However**, a client may engage the Registrant to provide investment management services on an advisory fee basis and separate from such advisory services purchase an investment product from Registrant's representatives on a separate commission basis.

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

Rule 205-3 of the Investment Advisers Act of 1940 permits a registered investment adviser to enter into a performance fee agreement with certain sophisticated clients who have the capacity to bear the potential additional risks of such a fee arrangement. An adviser can rely on Rule 205-3 only if the performance fee agreement is with "eligible" clients. Eligible clients are defined in the Rule as natural persons and companies that have *either* at least \$750,000.00 under management with the Registrant immediately after entering into a performance fee agreement *or* a net worth at the time the agreement is entered into in excess of \$1.5 Million (i.e. a natural person's net worth may include assets held jointly with a spouse).

Consistent with the parameters of Rule 205-3 of the Investment Advisers Act of 1940 (to the extent Rule 205-3 is applicable), the Registrant (and/or Registrant's affiliated entities) may also receive, both for managed accounts and for the *Partnerships*, incentive or performance fee compensation on a fully disclosed written basis. Because Registrant and its representatives manage client accounts that charge both an asset-based fee and/or a performance based fee, this arrangement creates a **conflict of interest**, as Registrant and its representatives have an incentive to favor investments where Registrant receives both an asset-based fee and a performance fee. **The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions regarding this conflict of interest.**

## **Item 7                    Types of Clients**

The Registrant's clients shall generally include individuals, investment companies, investment limited partnerships, pension and profit sharing plans, business entities, trusts, estates and charitable organizations. The Registrant generally requires a \$1,000,000 minimum asset level for investment advisory services. The Registrant, in its sole discretion, may reduce its investment management fee and/or reduce or waive its minimum asset requirement based upon certain criteria (i.e. anticipated future earning capacity, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.).

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

- A. The Registrant may utilize the following methods of security analysis:
- Fundamental - (analysis performed on historical and present data, with the goal of making financial forecasts)

The Registrant may utilize the following investment strategies when implementing investment advice given to clients:

- Long Term Purchases (securities held at least a year)
- Short Sales (contracted sale of borrowed securities with an obligation to make the lender whole)
- Options (contract for the purchase or sale of a security at a predetermined price during a specific period of time)

**Please Note: Investment Risk.** Different types of investments involve varying degrees of risk, and it should not be assumed that future performance of any specific investment or investment strategy (including the investments and/or investment strategies recommended or undertaken by the Registrant) will be profitable or equal any specific performance level(s).

- B. The Registrant's methods of analysis and investment strategies do not present any significant or unusual risks.

However, every method of analysis has its own inherent risks. To perform an accurate market analysis the Registrant must have access to current/new market information. The Registrant has no control over the dissemination rate of market information; therefore, unbeknownst to the Registrant, certain analyses may be compiled with outdated market information, severely limiting the value of the Registrant's analysis. Furthermore, an accurate market analysis can only produce a forecast of the direction of market values. There can be no assurances that a forecasted change in market value will materialize into actionable and/or profitable investment opportunities.

The Registrant's primary investment strategy- Long Term Purchases- is a fundamental investment strategy. However, every investment strategy has its own inherent risks and limitations. For example, longer term investment strategies require a longer investment time period to allow for the strategy to potentially develop. Shorter term investment strategies require a shorter investment time period to potentially develop but, as a result of more frequent trading, may incur higher transactional costs when compared to a longer term investment strategy.

In addition to the fundamental investment strategies discussed above, the Registrant may also implement and/or recommend – short selling and/or options transactions. Each of these strategies has a high level of inherent risk. (*See discussion below*).

Short selling is an investment strategy with a high level of inherent risk. Short selling, involves the selling of assets that the investor does not own. The investor borrows the assets from a third party lender (i.e. Broker-Dealer) with the obligation of buying identical assets at a later date to return to the third party lender. Individuals who engage in this activity shall only profit from a decline in the price of the assets between the original date of sale and the date of repurchase. Conversely, the short seller will incur a loss if the price of the assets rises. Other costs of shorting may include a fee for borrowing the assets and payment of any dividends paid on the borrowed assets.

The use of options transactions as an investment strategy involves a high level of inherent risk. Option transactions establish a contract between two parties concerning the buying or selling of an asset at a predetermined price during a specific period of time. During the term of the option contract, the buyer of the option gains the right to demand fulfillment by the seller. Fulfillment may take the form of either selling or purchasing a security

depending upon the nature of the option contract. Generally, the purchase or the recommendation to purchase an option contract by the Registrant shall be with the intent of offsetting/"hedging" a potential market risk in a client's portfolio. **Please Note:** Although the intent of the options-related transactions that may be implemented by the Registrant is to hedge against principal risk, certain of the options-related strategies (i.e. straddles, short positions, etc), may, in and of themselves, produce principal volatility and/or risk. Thus, a client must be willing to accept these enhanced volatility and principal risks associated with such strategies. In light of these enhanced risks, client may direct the Registrant, in writing, not to employ any or all such strategies for his/her/their/its accounts.

- C. Currently, the Registrant primarily allocates client investment assets among various individual equity (stocks), debt (bonds) and fixed income securities, and, to a much lesser extent, among no load and load-waived mutual funds, on a discretionary basis in accordance with the client's designated investment objective(s).

## **Item 9           Disciplinary Information**

The Registrant has not been the subject of any disciplinary actions.

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

- A. **Registered Representatives of Matrix Capital Group, Inc.** As disclosed above in Item 5.E, certain of Registrant's representatives are also registered representatives of *Matrix*, an SEC registered and FINRA member broker-dealer.
- B. Neither the Registrant, nor its representatives, are registered or have an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or a representative of the foregoing.
- C.
1. **Broker Dealer.** As disclosed above in Item 5.E, certain of Registrant's representatives are registered representatives of *Matrix*, an SEC Registered and FINRA member broker-dealer. Clients can choose to engage certain of Registrant's representatives, in their individual capacities, to effect securities brokerage transactions on a commission basis.
    - **Conflict of Interest:** The recommendation by certain of Registrant's representatives that a client purchase a securities commission product presents a ***conflict of interest***, as the receipt of commissions may provide an incentive to recommend investment products based on commissions to be received, rather than on a particular client's need. No client is under any obligation to purchase any commission products from Registrant's representatives. Clients are reminded that they may purchase securities products recommended by Registrant through other, non-affiliated broker-dealers. **The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above conflict of interest.**
  2. **Private Investment Funds.** As disclosed it Item 4.B above, the Registrant currently

serves as investment adviser and/or General Partner of certain investment limited partnerships (i.e., the “*Partnership(s)*”). To the extent certain of Registrant’s individual advisory clients qualify, they will be eligible to participate as limited partners of the *Partnerships*. All relevant information, terms and conditions relative to the *Partnerships*, including the compensation to be received by the Registrant as the General Partner, suitability, risk factors, and potential conflicts of interest, are set forth in the Confidential Private Offering Memorandum (the “*Memorandum*”), Limited Partnership Agreement (the “*Agreement*”), and Subscription Agreement, which each limited partner is required to receive and/or execute prior to being accepted as a limited partner of any of the *Partnerships*. As General Partner, the Registrant, pursuant to the terms of each specific *Memorandum*, shall receive a quarterly basic management fee. In addition, the Registrant, in accordance with the terms and conditions specifically set forth in the *Memorandum* and *Agreement*, may also receive performance related compensation in accordance with the requirements under Rule 205-3 of the Investment Advisers Act of 1940.

Please Note: Private investment funds generally involve various risk factors including, but not limited to, potential for complete loss of principal, liquidity constraints and lack of transparency, a complete discussion of which is set forth in each offering documents, which will be provided to each client for review and consideration. Unlike other liquid investments that a client may maintain, private investment funds do not provide daily liquidity or pricing. Each prospective client investor will be required to complete a Subscription Agreement, pursuant to which the client shall establish that he/she is qualified for investment in the fund, and acknowledges and accepts the various risk factors that are associated with such an investment.

**Please Also Note: Valuation.** In the event that the Registrant references private investment funds owned by the client on any supplemental account reports prepared by the Registrant, the value(s) for all such private investment funds shall reflect either the initial purchase and/or the most recent valuation provided by the fund sponsor. If the valuation reflects the initial purchase price (and/or a value as of a previous date), the current value(s) (to the extent ascertainable) could be **significantly more or less** than the original purchase price.

**Please Also Note:** Because the Registrant *may* earn compensation from the *Partnerships* that may exceed the fee that the Registrant would earn under its standard “assets under management” fee schedule referenced at Item 4.B above, the recommendation that a client become a *Partnership(s)* investor presents a **conflict of interest**. No client is under any obligation to become a *Partnership(s)* investor. **The Registrant’s Chief Compliance Officer, Gail C. Mannix, remains available to address any questions regarding this conflict of interest.**

- D. The Registrant does not receive, directly or indirectly, compensation from investment advisors that it recommends or selects for its clients.

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

- A. The Registrant maintains an investment policy relative to personal securities transactions. This investment policy is part of Registrant's overall Code of Ethics, which serves to establish a standard of business conduct for all of Registrant's Representatives that is based upon fundamental principles of openness, integrity, honesty and trust, a copy of which is available upon request.

In accordance with Section 204A of the Investment Advisers Act of 1940, the Registrant also maintains and enforces written policies reasonably designed to prevent the misuse of material non-public information by the Registrant or any person associated with the Registrant.

- B. As disclosed in Item 4.B above, the Registrant currently serves as investment adviser and/or General Partner of certain investment limited partnerships (i.e., the "*Partnership(s)*"). To the extent certain of Registrant's individual advisory clients qualify, they will be eligible to participate as limited partners of the *Partnerships*. All relevant information, terms and conditions relative to the *Partnerships*, including the compensation to be received by the Registrant as the General Partner, suitability, risk factors, and potential conflicts of interest, are set forth in the Confidential Private Offering Memorandum (the "*Memorandum*"), Limited Partnership Agreement (the "*Agreement*"), and Subscription Agreement, which each limited partner is required to receive and/or execute prior to being accepted as a limited partner of any of the *Partnerships*. As General Partner, the Registrant, pursuant to the terms of each specific *Memorandum*, shall receive a quarterly basic management fee. In addition, the Registrant, in accordance with the terms and conditions specifically set forth in the *Memorandum* and *Agreement*, may also receive performance related compensation in accordance with the requirements under Rule 205-3 of the Investment Advisers Act of 1940.

**Please Note:** Because the Registrant *may* earn compensation from the *Partnerships* that may exceed the fee that the Registrant would earn under its standard "assets under management" fee schedule referenced at Item 4.B above, the recommendation that a client become a *Partnership(s)* investor presents a **conflict of interest**. No client is under any obligation to become a *Partnership(s)* investor. **The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions regarding this conflict of interest.**

- C. The Registrant and/or representatives of the Registrant *may* buy or sell securities that are also recommended to clients. This practice may create a situation where the Registrant and/or representatives of the Registrant are in a position to materially benefit from the sale or purchase of those securities. Therefore, this situation creates a potential conflict of interest. Practices such as "scalping" (i.e., a practice whereby the owner of shares of a security recommends that security for investment and then immediately sells it at a profit upon the rise in the market price which follows the recommendation) could take place if the Registrant did not have adequate policies in place to detect such activities. In addition, this requirement can help detect insider trading, "front-running" (i.e., personal trades executed prior to those of the Registrant's clients) and other potentially abusive practices.

The Registrant has a personal securities transaction policy in place to monitor the personal securities transactions and securities holdings of each of the Registrant's

“Access Persons”. The Registrant’s securities transaction policy requires that an Access Person of the Registrant must provide the Chief Compliance Officer or his/her designee with a written report of their current securities holdings within ten (10) days after becoming an Access Person. Additionally, each Access Person must provide the Chief Compliance Officer or his/her designee with a written report of the Access Person’s current securities holdings at least once each twelve (12) month period thereafter on a date the Registrant selects; provided, however that at any time that the Registrant has only one Access Person, he or she shall not be required to submit any securities report described above.

- D. The Registrant and/or representatives of the Registrant *may* buy or sell securities, at or around the same time as those securities are recommended to clients. This practice creates a situation where the Registrant and/or representatives of the Registrant are in a position to materially benefit from the sale or purchase of those securities. Therefore, this situation creates a potential conflict of interest. As indicated above in Item 11.C, the Registrant has a personal securities transaction policy in place to monitor the personal securities transaction and securities holdings of each of Registrant’s Access Persons.

## **Item 12 Brokerage Practices**

- A. In the event that the client requests that the Registrant recommend a broker-dealer/custodian for execution and/or custodial services (exclusive of those clients that may direct the Registrant to use a specific broker-dealer/custodian), Registrant generally recommends that investment management accounts be maintained at *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley*. Prior to engaging Registrant to provide investment management services, the client will be required to enter into a formal *Investment Advisory Agreement* with Registrant setting forth the terms and conditions under which Registrant shall manage the client's assets, and a separate custodial/clearing agreement with each designated broker-dealer/custodian.

Factors that the Registrant considers in recommending *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley* (or any other broker-dealer/custodian to clients) include historical relationship with the Registrant, financial strength, reputation, execution capabilities, pricing, research, and service. Although the commissions and/or transaction fees paid by Registrant's clients shall comply with the Registrant's duty to obtain best execution, a client may pay a commission that is higher than another qualified broker-dealer might charge to effect the same transaction where the Registrant determines, in good faith, that the commission/transaction fee is reasonable in relation to the value of the brokerage and research services received. In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of a broker-dealer’s services, including the value of research provided, execution capability, commission rates, and responsiveness. Accordingly, although Registrant will seek competitive rates, it may not necessarily obtain the lowest possible commission rates for client account transactions. The brokerage commissions or transaction fees charged by the designated broker-dealer/custodian are exclusive of, and in addition to, Registrant's investment management fee. The Registrant’s best execution responsibility is qualified if securities that it purchases for client accounts are mutual funds that trade at net asset value as determined at the daily market close.

1. Schwab Referrals

Registrant receives client referrals from Charles Schwab & Co., Inc. ("*Schwab*") through Registrant's participation in Schwab Advisor Network™ ("the Service"), designed to help investors find an independent investment advisor. Schwab is a broker-dealer independent of and unaffiliated with Registrant. Schwab does not supervise Registrant and has no responsibility for Registrant's management of clients' portfolios or Registrant's other advice or services. Registrant pays Schwab fees to receive client referrals through the Service. Registrant's participation in the Service may raise potential conflicts of interest described below.

Registrant pays *Schwab* a Participation Fee on all referred clients' accounts that are maintained in custody at Schwab and a Non-Schwab Custody Fee on all accounts that are maintained at, or transferred to, another custodian. The Participation Fee paid by Registrant is a percentage of the fees owed by the client to Registrant or a percentage of the value of the assets in the client's account, subject to a minimum Participation Fee. Registrant pays *Schwab* the Participation Fee for so long as the referred client's account remains in custody at Schwab. The Participation Fee is billed to Registrant quarterly and may be increased, decreased or waived by *Schwab* from time to time. The Participation Fee is paid by Registrant and not by the client. Registrant has agreed not to charge clients referred through the Service fees or costs greater than the fees or costs Registrant charges clients with similar portfolios (pursuant to Registrant's standard fee schedule as in effect from time to time) who were not referred through the Service.

Registrant generally pays *Schwab* a Non-Schwab Custody Fee if custody of a referred client's account is not maintained by, or assets in the account are transferred from *Schwab*, unless the client was solely responsible for the decision not to maintain custody at *Schwab*. The Non-Schwab Custody Fee is a one-time payment equal to a percentage of the assets placed in custody other than at Schwab. The Non-Schwab Custody Fee is higher than the Participation Fees Registrant generally would pay in a single year. Thus, Registrant will have an incentive to recommend that client accounts be held in custody at *Schwab*.

The Participation and Non-Schwab Custody Fees will be based on assets in accounts of Registrant's clients who were referred by *Schwab* and those referred clients' family members living in the same household. Thus, Registrant will have incentives to encourage household members of clients referred through the Service to maintain custody of their accounts and execute transactions at *Schwab* and to instruct *Schwab* to debit Registrant's fees directly from the accounts.

For accounts of Registrant's clients maintained in custody at *Schwab*, *Schwab* will not charge the client separately for custody but will receive compensation from Registrant's clients in the form of commissions or other transaction-related compensation on securities trades executed through *Schwab*. *Schwab* also will receive a fee (generally lower than the applicable commission on trades it executes) for clearance and settlement of trades to be executed through *Schwab* rather than another broker-dealer. Registrant nevertheless acknowledges its duty to seek best execution of trades for client accounts. Trades for client accounts held in custody at *Schwab* may be executed through a different broker-dealer than trades for

Registrant's other clients. Thus, trades for accounts custodied at *Schwab* may be executed at different times and different prices than trades for other accounts that are executed at other broker-dealers.

**The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding conflict of interest such arrangement may create.**

#### Ameritrade AdvisorDirect

Registrant may receive client referrals from *Ameritrade* through its participation in *Ameritrade* AdvisorDirect (the "*AdvisorDirect*"). In addition to meeting the minimum eligibility criteria for participation in *AdvisorDirect*, Registrant may have been selected to participate in *AdvisorDirect* based on the amount and profitability to *Ameritrade* of the assets in, and trades placed for, client accounts maintained with *Ameritrade*. *Ameritrade* is a discount broker-dealer independent of and unaffiliated with Registrant and there is no employee or agency relationship between them. *Ameritrade* has established the referral program as a means of referring its brokerage customers and other investors seeking fee-based personal investment management services or financial planning services to independent investment advisors. *Ameritrade* does not supervise Registrant and has no responsibility for Registrant's management of client portfolios or Registrant's other advice or services. Registrant pays *Ameritrade* an on-going fee for each successful client referral. This fee is usually a percentage (not to exceed 25%) of the advisory fee that the client pays to Registrant ("Solicitation Fee"). Registrant will also pay *Ameritrade* the Solicitation Fee on any advisory fees received by Registrant from any of a referred client's family members, including a spouse, child or any other immediate family member who resides with the referred client and hired Registrant on the recommendation of such referred client. Registrant will not charge clients referred through *AdvisorDirect* any fees or costs higher than its standard fee schedule offered to its clients or otherwise pass Solicitation Fees paid to *Ameritrade* to its clients.

Registrant's participation in *AdvisorDirect* raises potential conflicts of interest. *Ameritrade* will most likely refer clients through *AdvisorDirect* to investment advisors that encourage their clients to custody their assets at *Ameritrade* and whose client accounts are profitable to *Ameritrade*. Consequently, in order to obtain client referrals from *Ameritrade*, Registrant may have an incentive to recommend to clients that the assets under management by Registrant be held in custody with *Ameritrade* and to place transactions for client accounts with *Ameritrade*. In addition, Registrant has agreed not to solicit clients referred to it through *AdvisorDirect* to transfer their accounts from *Ameritrade* or to establish brokerage or custody accounts at other custodians, except when its fiduciary duties require doing so. Registrant's participation in *AdvisorDirect* does not diminish its duty to seek best execution of trades for client accounts.

In addition, Registrant may receive additional benefits from participation in *AdvisorDirect*. There is no direct link between Registrant's participation in the program and the investment advice it gives to its clients, although Registrant receives economic benefits through its participation in the program that are typically not available to *Ameritrade* retail investors. These benefits include the receipt of duplicate client statements; access to a trading desk serving adviser participants;

access to block trading (which provides the ability to aggregate securities transactions for execution and then allocate the appropriate shares to client accounts); the ability to have advisory fees deducted directly from client accounts; access to an electronic communications network for client order entry and account information; access to mutual funds with no transaction fees and to certain institutional money managers; and discounts on compliance, marketing, research, technology, and practice management products or services provided to Registrant by third party vendors. The benefits received by Registrant or its personnel through participation in the program do not depend on the amount of brokerage transactions directed to *Ameritrade*. As part of its fiduciary duties to clients, Registrant endeavors at all times to put the interests of its clients first. Clients should be aware, however, that the receipt of economic benefits by Registrant or its representatives creates a conflict of interest.

**The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding conflict of interest such arrangement may create.**

#### Fidelity Wealth Advisor Solutions

Registrant may receive client referrals from *Fidelity* through its participation in the *Fidelity Wealth Advisor Solutions* program (the "*Program*"). The Registrant does not currently pay a fee to *Fidelity* for any referrals. Registrant's participation in the Program raises potential conflicts of interest. *Fidelity* will most likely refer clients through the Program to investment advisors that encourage their clients to custody their assets at *Fidelity* and whose client accounts are profitable to *Fidelity*. Consequently, in order to obtain client referrals from *Fidelity*, Registrant may have an incentive to recommend to clients that the assets under management by Registrant be held in custody with *Fidelity* and to place transactions for client accounts with *Fidelity*. Registrant's participation in *Program* does not diminish its duty to seek best execution of trades for client accounts.

**The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding conflict of interest such arrangement may create.**

#### Research and Additional Benefits

Although not a material consideration when determining whether to recommend that a client utilize the services of a particular broker-dealer/custodian, Registrant may receive from *Schwab*, *Matrix*, *Chase*, *Citigroup*, *Ameritrade*, *Fidelity* and/or *Morgan Stanley* (or another broker-dealer/custodian) without cost (and/or at a discount) support services and/or products, certain of which assist the Registrant to better monitor and service client accounts maintained at such institutions. Included within the support services that may be obtained by the Registrant may be investment-related research, pricing information and market data, software and other technology that provide access to client account data, compliance and/or practice management-related publications, discounted or gratis consulting services, discounted and/or gratis attendance at conferences, meetings, and other educational and/or social events, marketing support, computer hardware and/or software and/or other products used by Registrant in furtherance of its investment advisory business operations.

As indicated above, certain of the support services and/or products that *may* be received may assist the Registrant in managing and administering client accounts. Others do not directly provide such assistance, but rather assist the Registrant to manage and further develop its business enterprise.

Registrant's clients do not pay more for investment transactions effected and/or assets maintained at *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley* as a result of this arrangement. There is no corresponding commitment made by the Registrant to *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley* or any other entity to invest any specific amount or percentage of client assets in any specific mutual funds, securities or other investment products as a result of the above arrangement.

**The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding perceived conflict of interest such arrangement may create.**

2. As set forth above, Registrant may receive client referrals from *Schwab, Ameritrade* and/or *Fidelity*.

**The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding perceived conflict of interest such arrangement may create.**

3. The Registrant will accept directed brokerage arrangements (when a client requires that account transactions be effected through a specific broker-dealer). In such client directed arrangements, the client will negotiate terms and arrangements for their account with that broker-dealer, and Registrant will not seek better execution services or prices from other broker-dealers or be able to "batch" the client's transactions for execution through other broker-dealers with orders for other accounts managed by Registrant. As a result, client may pay higher commissions or other transaction costs or greater spreads, or receive less favorable net prices, on transactions for the account than would otherwise be the case.

**Please Note:** In the event that the client directs Registrant to effect securities transactions for the client's accounts through a specific broker-dealer, the client correspondingly acknowledges that such direction may cause the accounts to incur higher commissions or transaction costs than the accounts would otherwise incur had the client determined to effect account transactions through alternative clearing arrangements that may be available through Registrant.

**The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above arrangement.**

- B. To the extent that the Registrant provides investment management services to its clients, the transactions for each client account generally will be effected independently, unless

the Registrant decides to purchase or sell the same securities for several clients at approximately the same time. The Registrant may (but is not obligated to) combine or “bunch” such orders to obtain best execution, to negotiate more favorable commission rates or to allocate equitably among the Registrant’s clients differences in prices and commissions or other transaction costs that might have been obtained had such orders been placed independently. Under this procedure, transactions will be averaged as to price and will be allocated among clients in proportion to the purchase and sale orders placed for each client account on any given day. The Registrant shall not receive any additional compensation or remuneration as a result of such aggregation.

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

- A. For those clients to whom Registrant provides investment supervisory services, account reviews are conducted on an ongoing basis by the Registrant’s Principals and/or representatives. All investment supervisory clients are advised that it remains their responsibility to advise the Registrant of any changes in their investment objectives and/or financial situation. All clients (in person or via telephone) are encouraged to review financial planning issues (to the extent applicable), investment objectives and account performance with the Registrant on an annual basis.
- B. The Registrant *may* conduct account reviews on an other than periodic basis upon the occurrence of a triggering event, such as a change in client investment objectives and/or financial situation, market corrections and client request.
- C. Clients are provided, at least quarterly, with written transaction confirmation notices and regular written summary account statements directly from the broker-dealer/custodian and/or program sponsor for the client accounts. The Registrant may also provide a written periodic report summarizing account activity and performance.

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

- A. As referenced in Item 12.A.1 above, the Registrant may receive an indirect economic benefit from *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley*. The Registrant, without cost (and/or at a discount), may receive support services and/or products from *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley*.

Registrant’s clients do not pay more for investment transactions effected and/or assets maintained at *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley* as a result of this arrangement. There is no corresponding commitment made by the Registrant to *Schwab, Matrix, Chase, Citigroup, Ameritrade, Fidelity* and/or *Morgan Stanley* or any other entity to invest any specific amount or percentage of client assets in any specific mutual funds, securities or other investment products as a result of the above arrangement.

**The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding perceived conflict of interest any such arrangement may create.**

- B. If a client is introduced to the Registrant by either an unaffiliated or an affiliated solicitor, Registrant *may* pay that solicitor a referral fee in accordance with the requirements of Rule 206(4)-3 of the Investment Advisers Act of 1940, and any corresponding state securities law requirements. Any such referral fee shall be paid solely from the Registrant's investment management fee, and shall not result in any additional charge to the client. If the client is introduced to the Registrant by an unaffiliated solicitor, the solicitor, at the time of the solicitation, shall disclose the nature of his/her/its solicitor relationship, and shall provide each prospective client with a copy of the Registrant's written Brochure with a copy of the written disclosure statement from the solicitor to the client disclosing the terms of the solicitation arrangement between the Registrant and the solicitor, including the compensation to be received by the solicitor from the Registrant.

## **Item 15      Custody**

The Registrant shall have the ability to have its advisory fee for each client debited by the custodian on a quarterly basis. Clients are provided, at least quarterly, with written transaction confirmation notices and regular written summary account statements directly from the broker-dealer/custodian and/or program sponsor for the client accounts. The Registrant may also provide a written periodic report summarizing account activity and performance.

**Please Note:** To the extent that the Registrant provides clients with periodic account statements or reports, the client is urged to compare any statement or report provided by the Registrant with the account statements received from the account custodian. **Please Also Note:** The account custodian does not verify the accuracy of the Registrant's advisory fee calculation.

## **Item 16      Investment Discretion**

The client can determine to engage the Registrant to provide investment advisory services on a discretionary basis. Prior to the Registrant assuming discretionary authority over a client's account, the client shall be required to execute an *Investment Advisory Agreement*, naming the Registrant as the client's attorney and agent in fact, granting the Registrant full authority to buy, sell, or otherwise effect investment transactions involving the assets in the client's name found in the discretionary account.

Clients who engage the Registrant on a discretionary basis may, at anytime, impose restrictions, **in writing**, on the Registrant's discretionary authority (i.e. limit the types/amounts of particular securities purchased for their account, exclude the ability to purchase securities with an inverse relationship to the market, limit or proscribe the Registrant's use of margin, etc.).

## **Item 17          Voting Client Securities**

- A. Registrant utilizes the services of two (2) outside proxy firms, Proxy Edge and ISS Proxy, for domestic and international proxies, respectively. In addition, Registrant may utilize a third-party service to assist it in voting client proxies. Unless the client directs otherwise in writing, the Registrant is responsible for voting client proxies (**However**, the client shall maintain exclusive responsibility for all legal proceedings or other type events pertaining to the account assets, including, but not limited to, class action lawsuits.). The Registrant shall vote proxies in accordance with its Proxy Voting Policy, a copy of which is available upon request. The Registrant shall monitor corporate actions of individual issuers and investment companies consistent with the Registrant's fiduciary duty to vote proxies in the best interests of its clients. Although the factors which Registrant will consider when determining how it will vote differ on a case by case basis, they may, but are not be limited to, include the following: a review of recommendations from issuer management, shareholder proposals, cost effects of such proposals, effect on employees and executive and director compensation. With respect to individual issuers, the Registrant may be solicited to vote on matters including corporate governance, adoption or amendments to compensation plans (including stock options), and matters involving social issues and corporate responsibility. With respect to investment companies (e.g., mutual funds), the Registrant may be solicited to vote on matters including the approval of advisory contracts, distribution plans, and mergers. The Registrant shall maintain records pertaining to proxy voting as required pursuant to Rule 204-2 (c)(2) under the Advisers Act. Copies of Rules 206(4)-6 and 204-2(c)(2) are available upon written request. In addition, information pertaining to how the Registrant voted on any specific proxy issue is also available upon written request. Requests should be made by contacting the Registrant's Chief Compliance Officer, Gail C. Mannix.
- B. As set forth in Item 17.A above, the Registrant votes client proxies.

## **Item 18          Financial Information**

- A. The Registrant does not solicit fees of more than \$1,200, per client, six months or more in advance.
- B. The Registrant is unaware of any financial condition that is reasonably likely to impair its ability to meet its contractual commitments relating to its discretionary authority over certain client accounts.
- C. The Registrant has not been the subject of a bankruptcy petition.

**ANY QUESTIONS: The Registrant's Chief Compliance Officer, Gail C. Mannix, remains available to address any questions that a client or prospective client may have regarding the above disclosures and arrangements.**