

**Item 1 – Cover Page**

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March 29, 2013

This Brochure provides information about the qualifications and business practices of McCarthy Capital Corporation (“McCarthy Capital”, “us”, “we” or “our”). If you have any questions about the contents of this Brochure, please contact us at 402.932.8600 and/or [tmerc@mcCarthyCapital.com](mailto:tmerc@mcCarthyCapital.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.

We are a registered investment adviser. Registration of an investment adviser does not imply any level of skill or training. The oral and written communications presented to you by an investment adviser provide you with information which you may use to determine to hire or retain the adviser or invest in its managed funds.

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

**Item 2 – Material Changes**

No specific material changes have been made to this Brochure since our last delivery or posting on the SEC's public disclosure website.

Currently, our Brochure may be requested by contacting Teri Mercer, our Chief Compliance Officer, at (402) 991-8430 or [tmercerc@mccarthycapital.com](mailto:tmercerc@mccarthycapital.com). You can always receive the most recent version of this Brochure through the SEC's public disclosure website (IADP) at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

Additional information about our Firm is available via the SEC's web site [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

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#### **Item 4 – Advisory Business**

McCarthy Capital is based in Omaha, Nebraska, and has been in business since 2002. McCarthy Capital is a wholly owned subsidiary of MGI Holdings, Inc. MGI Holdings, Inc. is 100% owned by McCarthy Group, LLC.

McCarthy Capital provides general investment advisory and management services to several privately offered funds that invest in private equity investments. The funds are closed and generally have a term of 10 years. These funds are marketed primarily to institutional investors and high net worth individuals. These investors purchase interests in our client funds, and investments are made at the fund level, not for individual investors in the fund. The minimum subscription for an interest in one of our client funds, unless waived, reduced or increased in our discretion, was \$2,500,000. All of our current client funds are closed to new investors.

We do not offer customized services for individual clients. Our clients are funds or, in one case, a corporation. McCarthy Capital has been appointed investment manager to some of these clients, and manages those clients' investments. In other cases, McCarthy Capital serves as an adviser to a fund's general partner. In the case of the fund clients, the duration of our appointment as investment adviser lasts for the duration of the funds.

For our client funds, the investment advice we provide is based on specific investment objectives and criteria set forth in each fund's offering memorandum, limited partnership or operating agreement and management or advisory agreement. We do not vary our advice from the terms of these agreements.

We specialize in providing investment advice to pooled investment vehicles that invest in private equity investments. When managing pooled investment vehicles, we are assisted by affiliated entities and certain of their personnel, but we are generally responsible for the day-to-day management of each client, the identification of investment opportunities for the client and the acquisition, management and disposition of the client's investments.

We serve as the sole or primary investment adviser for the following funds:

- Fulcrum Growth Partners, LLC. This fund is a private equity fund organized in Delaware and includes institutional investors. This fund was formed in 1999. This fund is fully invested and is currently in the process of liquidating its remaining investments.
- Fulcrum Growth Partners II, LP. This fund is a private equity fund organized in Delaware and includes both high net worth and institutional investors. This fund was formed in December 2004. This fund is fully invested and is currently in the process of liquidating its remaining investments.
- Fulcrum Growth Partners III, LLC. This fund is a private equity fund organized in Delaware and includes institutional investors. This fund was formed in 2007 and is closed to new investments.

- Fulcrum Growth Partners IV, LP. This fund is a private equity fund organized in Delaware and includes both high net worth and institutional investors. This fund was formed in 2009 and is closed to new investments.

In addition, McCarthy Capital provides investment management or advisory services to two additional clients. These entities are related to us that invest in or alongside the funds described above.

As of December 31, 2012, we managed \$650.9 million of assets on a discretionary basis.

## **Item 5 – Fees and Compensation**

For our services to the clients we manage or advise we receive management fees, the amount of which varies depending on the client. Management fees are generally negotiated with prospective clients or with investors in a client fund over the course of the fund's private offering of limited partnership interests. In certain instances, the investment advisory fees payable by a limited partner in one of our client funds may be reduced or waived. Each of our client funds maintains for each investor in the fund a capital account that is adjusted to reflect the performance-based carried interest or allocation, the management fee and other fund expenses, capital contributions, and other similar changes during the term of the particular fund.

For all of our clients, our management fees are payable quarterly during the term of the fund, or during the term of our engagement in the case of non-fund clients, usually in advance but in some cases in arrears.

For each fund client, for the period from the fund's initial closing through the end of the investment period for the fund (generally 4 years), management fees are based on the greater of (1) 1.0% of the total capital commitments made to the fund by, and (2) 1.5% of the net asset value of the remaining assets in the fund as determined on December 31 of the prior year. Thereafter, through the term of the management agreement, the management fee equals 1.5% of the net asset value of the remaining assets in the fund as determined on December 31 of the prior year. The net asset value is determined by each portfolio company manager and then approved by a valuation committee

In all cases involving a fund client, management fees are billed to each fund or its general partner and paid by the fund or its general partner from the fund's assets. To obtain cash for the payment of management fees, the general partner of the fund may draw down on the investors' capital commitments. Management fees are exclusive of other expenses incurred by the fund, which are borne by and payable out of the assets of the fund and not by us, including costs associated with its organization and the offering of interests to investors, certain annual and recurring including legal and external audit expenses, meeting expenses, and extraordinary expenses such as litigation and indemnification, in all cases as described in each fund's offering memorandum, limited partnership or operating agreement and management or advisory agreement.

Any portion of the management fees paid to us on account of one of our affiliate's interests in a client fund as an investor, or one or more of our affiliates' indirect interest in that fund held through the

general partner, will be paid to us. The effective result of this is that our affiliates will not pay a management fee on their direct or indirect investment in our client funds.

In the event that we receive any fees or other remuneration directly from any portfolio company of a client (such as board of director fees), those fees reduce the management fees otherwise payable by the relevant client in the following quarter.

In addition, we continue to receive a fixed fee of approximately \$90,000 per year that is related to a legacy advisory relationship that is no longer in effect.

#### **Item 6 – Performance-Based Fees and Side-By-Side Management**

The limited partnership and operating agreements of the funds generally provide a distribution waterfall in which the net proceeds realized by the fund are shared between the general partner and the limited partners (on a 15:85 or 10:90 basis, depending on the fund) after the limited partners have received their contributed capital and received at least an agreed upon preferred return on their investment.

Each of our client funds maintains for each investor in the fund a capital account that is adjusted to reflect the performance-based carried interest or allocation, the management fee and other fund expenses, capital contributions, and other similar changes during the term of the particular fund.

The general partners of the funds are all affiliates of McCarthy Capital, and our affiliates and employees maybe be members of the affiliated entities that receive these performance distributions from the funds.

Performance based fee arrangements may create an incentive for us to recommend investments which may be riskier or more speculative than those which would be recommended under a different fee arrangement. Such fee arrangements also create an incentive to favor higher fee paying funds over lower fee paying funds, however, this conflict only arises where two or more funds with capital available for investment have the overlapping investment profiles and the potential investments are suitable for two or more of these funds. Generally, the funds we manage that are actively seeking new investments either (1) do not have the same investment objectives, or (2) are prohibited from investing in a portfolio company alongside another client fund, and therefore we are not often called upon to allocate investment opportunities among multiple funds with different terms. However, a conflict of interest may arise, for instance, when a successor fund is introduced during the investment period of a predecessor fund, or where an investment is to be made by a successor fund in a security that constitutes a follow-on investment for the predecessor fund. Generally, the limited partnership agreements of the successor fund or the predecessor fund prohibits us from sharing investment opportunities between the predecessor and successor funds. A conflict may also arise where different clients with different investment objectives have overlapping investment profiles. In such cases, the basis for sharing may be set forth in their limited partnership or operating agreement and management or advisory agreement, or, if not, the approval of each client may be required.

Any performance-based compensation allocated to the general partner of a fund on account of one of our affiliate's interest in that fund as an investor, or one or more of our affiliates' indirect interest in that fund held through the general partner, will be specially allocated to one or more of our affiliates pursuant to the terms of the general partner's operating agreement. The effective result of this special allocation is that our affiliates will not be charged any performance-based compensation on their direct and indirect investment in our client funds.

#### **Item 7 – Types of Clients**

We provide investment management and investment advisory services to pooled investment funds. The investors in these funds consist of institutional investors and high net worth individuals. We require that each investor in a fund be an "accredited investor" as defined in Regulation D under the Securities Act of 1933 or a "qualified purchaser", within the meaning of 2(a)(51) of the Investment Company Act of 1940, as amended. We also require that each investor in a fund that is a U.S. resident be a "qualified client" within the meaning of Rule 205-3 of the Investment Advisers Act of 1940, as amended.

Investors are generally required to commit at least \$2,500,000 million to an investment in a fund, subject to the right of the fund's general partner to waive the minimum investment mount.

All of the client funds that we currently manage are closed to new investors.

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

Our fund clients typically invest equity and equity-related securities of private operating companies in negotiated transactions. Our client funds make both control and non-control investments, and in both cases requires there to be significant ownership from company management. For each client fund, we make investment recommendations in accordance with the investment strategies described in the fund's offering memorandum, limited partnership and operating agreements and management or advisory agreement.

Potential fund investments are subjected to an analysis that begins with intensive "bottom up" due diligence, cash flow modeling and valuation, and terminates with an investment recommendation by our investment committee comprised of our Chairman and Managing Partners. Each investment opportunity is initially analyzed by a team of investment professionals. In all cases at least one partner leads the analysis of a new investment. The teams undertake a thorough analysis of the company, analyzing such things as past and expected future performance, multiples, expected exit timing, business description, and assessing key indicators of the company's market environment (i.e. market comparables, exit comparables, market growth rates and key trends). This analysis forms the basis of a memorandum which then must be reviewed and approved by the investment committee before the investment can be made.

## **Business Risks**

Our client's investment portfolios will consist primarily of securities issued by privately-held companies, and operating results in a specified period will be difficult to predict. Such investments involve a high degree of business and financial risk which can result in substantial losses. Among those risks are the general risks associated with investing in companies at an early stage of development and/or with operating losses and/or with significant variations in operating results. In many cases, these companies will require substantial capital to support expansion plans to achieve and maintain a competitive position. Such companies also will likely face intense competition from established companies with greater resources and capabilities.

Investments in more mature companies in the expansion or profitable stage also involve substantial risks. The companies typically have obtained capital in the form of debt and/or equity to expand rapidly, reorganize operations, acquire a business or develop new products and markets. These activities by definition involve a significant amount of change in a company and could give rise to significant problems in sales, manufacturing and general management of these activities. Development-stage companies often experience unexpected problems in the areas of product development, manufacturing, marketing, financing and general management, which, in some cases, cannot be adequately solved. In addition, such companies may require substantial amounts of financing which may not be available through institutional private placements or the public markets. The percentage of companies which survive and prosper can be small.

## **Investors in Our Client Funds May Not Receive Distributions**

There can be no assurance that the operations of any of our fund clients will be profitable, that any fund will be able to avoid losses or that cash from any fund's investments will be sufficient to enable it to make distributions to its investors. Our fund clients will have no source of funds from which to pay distributions to their investors other than income and gain received from investments and the return of capital. There is no assurance of any distribution to any fund's investors prior to or upon liquidation of the fund. Further, the general partner of a fund may distribute the publicly traded securities of a portfolio company to the investors in that fund; any such distribution could exert downward pressure on the market price of such issuer's securities.

## **Investment in Junior Securities; Minority Holdings**

The securities in which our fund clients may invest may be among the most junior in a portfolio company's capital structure and, thus, subject to the greatest risk of loss. Generally, there will be no collateral to protect an investment by one of our client funds once made. Our funds will generally take stakes in privately held companies and may also invest directly in publicly traded companies. Therefore, a fund may at times hold minority equity stakes in public companies, such as might occur if portfolio companies are taken public. As is the case with minority holdings in general, such minority stakes that a fund may hold will have neither the control characteristics of majority stakes nor the valuation premiums accorded majority or controlling stakes.



### **Concentration of Investments**

Our fund clients will participate in a limited number of investments and may seek to make several investments in one industry or one industry segment. As a result, any particular fund's investment portfolio could become highly concentrated, and its aggregate return may be affected substantially by the performance of a few holdings. Furthermore, to the extent that the capital raised is less than the targeted amount, a fund may invest in fewer portfolio companies and thus be less diversified.

### **Lack of Sufficient Investment Opportunities**

While we expect that many attractive investments of the type in which our fund clients intend to invest are currently available, there can be no assurance that such investments will be available when those funds are ready to make investments, or that available investments will meet any particular fund client's investment criteria. The marketplace for private equity investing has become increasingly competitive. Involvement by financial intermediaries has increased, substantial amounts of funds have been dedicated to making investments, and the competition for investment opportunities is at high levels. Our fund clients will compete for investments with other funds and companies, some of which have greater resources than our funds. There can be no assurances that we will locate an adequate number of attractive investment opportunities. It is possible that a fund will never be fully invested if enough sufficiently attractive investments are not identified. However, investors in the funds will be required to pay annual management fees during the investment period based on the entire amount of their commitments.

### **Changes in Environment**

Our client funds' investment programs are intended to extend over a period of years, during which the business, economic, political, regulatory, and technology environment within which each fund operates may undergo substantial changes, some of which may be adverse to the fund. The general partner of each fund has the exclusive right and authority (within limitations set forth in that fund's limited partnership or operating agreement and management or advisory agreement) to determine the manner in which the fund shall respond to such changes, and investors in that fund will generally have no right to withdraw from the fund or to demand specific modifications to the fund's operations in consequence thereof.

The investment sourcing, selection, management, and liquidation strategies and procedures exercised by us in the past may not be successful, or even practicable, during any particular client fund's term. Within the limitations set forth in each fund's limited partnership or operating agreement and management or advisory agreement, the general partner of that fund will have the right and authority to cause the fund's investment sourcing, selection, management and liquidation strategies and procedures to change over time. Investors in that fund will have no right or power to take part in the management of the fund, its assets, or its portfolio investments. All aspects of the fund's management are entrusted to the general partner of that fund and, indirectly, to us. Investors in our client funds will invest greater amounts and receive a proportionately smaller interest in the profits of the funds than any particular fund's general partner.

General economic conditions beyond our control may affect the performance of our fund clients. Interest rates, general levels of economic activity, performance of the public securities markets and participation by other investors in the financial markets may affect the value of the portfolio companies or companies being considered for prospective investments. Legal, tax and regulatory changes could occur during the term of a fund that may adversely affect that fund and its investors.

### **Management Fee Will Be Paid Regardless of Fund Performance**

Whether or not suitable investment opportunities are available to a particular fund client, and regardless of whether the fund experiences net losses in a particular year or over its term, investors in that fund will be required to make payments to the fund to cover management fees and to reimburse us for certain expenses.

### **Illiquidity; Lack of Current Distributions**

An investment in any of our client funds should be viewed as illiquid. It is uncertain as to when profits, if any, will be realized. Losses on unsuccessful investments may be realized before gains on successful investments are realized. The return of capital and the realization of gains, if any, will generally occur only upon the partial or complete disposition of an investment. While an investment may be sold at any time, it is not generally expected that this will occur for a number of years after the initial investment. Prior to such time, there may be no current return on the investments. Furthermore, the expenses of operating a fund (including annual management fees) may exceed its income, thereby requiring that the difference be paid from the fund's capital.

### **Leveraged Investments; Bridge Loans**

Some of our fund clients may make use of leverage by incurring debt to finance a portion of its investment in a given portfolio company, or a fund may make equity investments in leveraged portfolio companies. Leverage generally magnifies both the fund's opportunities for gain and its risk of loss from a particular investment. The use of leverage will also result in interest expense and other costs to the fund that may not be covered by distributions made to the fund or appreciation of its investments. In addition, this portfolio company leverage could accelerate and magnify declines in the value of the fund's investments in the leveraged portfolio companies in a down market. It is possible that a leveraged portfolio company in which a fund invests will not have sufficient cash flow to pay its current debt service obligations as they become due or will not be able to refinance its outstanding indebtedness on favorable terms, or at all, upon maturity. It is anticipated that certain portfolio companies of one or more of our client funds will have outstanding variable rate debt. An increase in interest rates could impact such portfolio companies' ability to meet current debt service obligations. If a portfolio company is unable to timely meet its payment obligations or fails to satisfy applicable financial covenants, the portfolio company's lenders typically will have the ability to exercise a variety of remedies under the relevant credit documents, including foreclosing on the assets of the portfolio company that are used to secure the underlying debt. Any rights of our fund client as an equity holder will be junior to the rights of the portfolio company's lenders, whether the underlying debt is secured or not. If a portfolio company is liquidated or sold, there may be no assets remaining for equity holders.

after the portfolio company's creditors are paid. In addition, one or more of our client funds may lend to portfolio companies on a short-term, unsecured basis in anticipation of a future issuance of equity or long-term debt. Such bridge loans would typically be convertible into a more permanent, long-term security; however, for reasons not always in the fund's control, such long-term securities may not issue and such bridge loans may remain outstanding. In such event, the interest rate on such loans may not adequately reflect the risk associated with the unsecured position taken by the fund.

### **Limited Transferability of Interests in a Client Fund**

An investment in any of our fund clients is a long-term commitment. The transferability of interests will be restricted by each fund's limited partnership or operating agreement and management or advisory agreement and by U.S. federal and state, as well as foreign, securities laws. The interests are highly illiquid and have no public market. Voluntary withdrawals or redemption of interests are not permitted, except in limited instances when necessary to comply with laws or regulations applicable to an investor in a client fund, including, but not limited to, ERISA regulations. There will be no public market for the interests in any of our client funds, and none is expected to develop.

### **Restricted Nature of Investment Positions**

Generally, there will be no readily available market for a substantial number of any of our client funds' investments, and hence, most of our funds' investments will be difficult to value. Consequently, a fund may not be able to dispose of an investment when its general partner desires to do so. Certain investments may be distributed in kind to the investors in that fund.

### **Reliance on the General Partners of Our Fund Clients and Our Employees**

Control over the operation of each fund will be vested entirely with the general partner of that fund, and the fund's future profitability will depend largely upon our business and investment acumen. The loss of service of one or more of our investment professionals could have an adverse impact on our client funds' ability to realize their investment objectives. No assurances can be given that each member of the general partners of our client funds, or each member of our investment professional staff will continue to be affiliated with our client funds throughout their various terms. Except as specifically provided in the limited partnership or operating agreement and management or advisory agreement of a fund, the members of the general partner of that fund will not be required to devote their time and attention exclusively to that fund. Additional members may be admitted to the general partner of any fund following that fund's initial closing and the investors in that fund will have no power to prevent any specific person from being admitted to the general partner of the fund. Within the general partner of each fund the economic, voting and other rights of the individual members of the general partner will be determined by agreement among such members and will be subject to change, without notice to the investors in that fund. Some of the members of the general partner of a particular fund client or employees of McCarthy Capital may have limited experience working together.

Notwithstanding any prior experience that members of the general partner of any particular fund or employees McCarthy Capital may have in making investments of the type expected to be made by our client funds, any such prior experience necessarily was obtained under different market conditions and

with different technologies at the forefront of development. There can be no assurance that members of the general partner of any particular client fund or employees of McCarthy Capital will be able to duplicate prior levels of success.

The general partner of each fund may appoint or admit certain persons to advisory or other committees or boards intended to assist the general partner by providing advice, industry contacts, deal flow, technical expertise or other benefits to the fund. Under most circumstances, such persons will have no contractual or other obligation to continue as members of such committees or boards or to provide any particular benefits.

### **Reliance on Portfolio Company Management**

Our task of identifying investment opportunities, managing such investments and realizing a significant return for our client funds is difficult. Many organizations operated by persons of competence and integrity have been unable to make, manage and realize such investments successfully. Although we will monitor the performance of each investment by our client funds, it will primarily be the responsibility of each portfolio company's management team to operate the portfolio company on a day-to-day basis. Although we intend to have our fund clients invest in companies with strong management, there can be no assurance that the existing management of such companies will continue to operate a company successfully. Ultimately the profitability of any of our funds will depend on our ability to select and retain good management for such portfolio company, and the ability of that management to carry out the company's plan.

### **Investments by a Fund May Not Be In the Best Interests of Some Limited Partners**

The investors in a particular client fund may have conflicting interests that stem from differences in investment preferences, domicile, tax status and regulatory status. We will attempt to consider the objectives of each fund and its respective investors as a whole when making decisions with respect to the selection, structuring and sale of portfolio investments, but it is inevitable that such decisions may be more beneficial for some investors in a fund over others.

### **Capital Commitments May Not Be Fully Drawn Down**

Investors in a fund may be called upon to make capital contributions at any time during the fund's investment period and, subject to limited exceptions, after the investment period. While it is in the interest of the general partner of the fund to draw upon all available commitments to the fund, to increase the general partner's potential return from that fund, there can be no assurance that commitments in any particular fund will be fully drawn down.

### **Inability to Invest if Commitments are not Met**

If one or more investors in a fund fail to fund their commitments, the capital available to that fund may be insufficient to meet its investment objectives.

## **Material Non-Public Information**

By reason of their responsibilities in connection with their other activities, certain of our employees may acquire confidential or material non-public information or be restricted from initiating transactions in certain securities. Therefore, our client funds will not be free to act upon any such information. Due to these restrictions, a fund may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it otherwise might have sold.

## **Projections**

There generally will be little or no publicly available information regarding the status and prospects of portfolio companies. Many of our investment decisions will be dependant upon the ability of our employees and agents to obtain relevant information from non-public sources, and we may be required to make decisions without complete information or in reliance upon information provided by third parties that is impossible or impractical to verify. Projected operating results of a company in which one of our client funds invests normally will be based primarily on financial projections prepared by each company's management. In all cases, projections are only estimates of future results that are based upon assumptions made at the time the projections are developed. There can be no assurance that the results set forth in the projections will be attained, and actual results may be significantly different from the projections. Also, general economic factors, which are not predictable, can have a material impact on the reliability of projections.

## **Need for Follow-On Investments**

Following its initial investment in a given portfolio company, a fund may decide to provide additional funds to such portfolio company or may have the opportunity to increase its investment in a successful portfolio company. There is no assurance that any fund will make follow-on investments or that the fund will have sufficient funds to make all or any of such investments. Any decision by a fund not to make follow-on investments or its inability to make such investments may have a substantial negative impact on a portfolio company in need of such an investment or may result in a lost opportunity for the fund to increase its participation in a successful operation.

## **Reserves**

In managing our client funds, we will establish reserves for follow-on investments in portfolio companies, operating expenses (including reimbursements of expenses), fund liabilities and other matters. Estimating the amount necessary for such reserves is difficult, particularly because follow-on investment opportunities are directly tied to the success and capital needs of portfolio companies. Inadequate or excessive reserves could have a material adverse effect on the investment returns to the investors in that fund. For example, if reserves are inadequate, a client fund may be unable to take advantage of attractive follow-on or other investment opportunities or to protect its existing investments from dilutive or other punitive terms associated with a "pay-to-play" or similar investment round. If reserves are excessive, a fund may decline attractive investment opportunities or hold unnecessary amounts of capital in money market or similar low-yield accounts.

### **Funds May Face Competition From Other Similar Funds**

The business of investing in the industries that our client funds invest in is competitive. Any number of new funds with similar investment objectives may be formed by other parties at any time and well established funds with more generalized investment capabilities may enter into the industries that our client funds invest in at any time. Therefore, competition for suitable investment opportunities may become more intense in the future. This may adversely affect the terms upon which a fund makes investments and may decrease the number of suitable investment opportunities.

### **A Fund's Investments May be Subject to Litigation and Claims**

Each fund, the members of its general partner, and our employees will be subject to the risk of litigation in connection with our ongoing business activities, particularly claims and suits brought against directors and controlling persons of a fund's portfolio companies. Generally, it is anticipated that investments made by our client funds will be structured to require that the portfolio company provide indemnification for any claims or suits brought against the fund, its affiliates and our employees. However, there can be no assurance that such indemnification will be sufficient to fully cover all such liabilities and costs. The limited partnership or operating agreement and management or advisory agreement of each fund provides that the general partner of the fund and our employees will not be liable to the fund or to any investor for any loss or damage sustained in connection with the fund's business, including errors in judgment or other acts or omissions reasonably believed to be within the authority granted under the limited partnership or operating agreement and management or advisory agreement, unless such loss or damage is the result of gross negligence or willful misconduct. As a result, investors in a fund effectively may have a more limited right of action against the general partner of the fund and us than they would otherwise have absent such provisions. The limited partnership or operating agreement and management or advisory agreement of each fund also provides for indemnification of the general partner of the fund and us against liability arising out of any act or omission in connection with the business of the fund if such act or omission does not constitute gross negligence or willful misconduct.

### **Investments Longer than Term**

Our fund clients may invest in investments which may not be advantageously disposed of prior to the date that a particular fund will be dissolved, either by expiration of the fund's term or otherwise. Although we expect that investments will be either disposed of prior to dissolution or be suitable for in-kind distribution at dissolution, a fund may have to sell, distribute or otherwise dispose of investments at a disadvantageous time as a result of dissolution.

### **Cash Distributed to Investors in Fund Clients May Not be Sufficient to Pay Taxes**

Under certain circumstances, the investors in a fund could be required to recognize taxable income in a taxable year for U.S. federal income tax purposes, even if that fund has not made distributions in an amount to cover the federal, state and local income taxes that might result from such taxable income.

## **Tax Risks**

We attempt to structure our funds in a manner that is tax-efficient for U.S. investors. However, there can be no assurance that such structure will be tax-efficient for any particular investor or that any particular tax result will be achieved. Furthermore, in general, tax laws, rules and procedures are extremely complex and are subject to change, which in some cases may have retroactive effect. We structure our client fund's investments in a manner that is intended to achieve each fund's investment objectives, but there can be no assurance that the structure of any investment will be tax efficient for any particular investor or that any particular tax result will be achieved. In addition, tax reporting requirements may be imposed on investors under the laws of the jurisdictions in which investors are liable for taxation or in which a fund makes portfolio investments. Furthermore, a fund's returns in respect of its investments may be reduced by withholding or other taxes imposed by jurisdictions in which the fund's portfolio companies are organized.

## **Significant Default Penalties**

The limited partnership or operating agreement and management or advisory agreement of each fund contain significant penalties in the event an investor in the fund defaults on its capital commitment or other payment obligations. In addition to losing its right to potential distributions from the fund, a defaulting investor may be subject to a variety of adverse consequences including the forced transfer of its interest for an amount that is less than the fair market value of such interest and that may be paid over a period of years, without interest.

## **Director Liability**

Our fund clients will often obtain the right to appoint a representative to the board of directors of the companies in which it invests. Serving on the board of directors of a portfolio company exposes the fund's representatives (typically our employees), and ultimately the fund, to potential liability. Although portfolio companies often have insurance to protect directors and officers from such liability, such insurance may not be obtained by all portfolio companies and may be insufficient if obtained.

## **Potential Liabilities on Exit**

In connection with the disposition of an investment in a portfolio company, a fund may be required to make representations about the business and financial affairs of such company typical of those made in connection with the sale of a business. The fund may be required to indemnify the purchasers of such investment to the extent that any such representations are inaccurate. These arrangements may result in the incurrence of contingent liabilities for which the general partner of the fund may establish reserves and escrows. In that regard, distributions to the investors in that fund may be delayed or withheld until such reserve is no longer needed or the escrow period expires.

## **General Conflicts of Interest**

There are potential conflicts of interest in each funds structure and operation, particularly with respect to activities of the members of the general partner of that fund outside of their activities on behalf of

the fund (including with respect to their activities on behalf of others of our client funds). Furthermore, we are permitted in the future to organize, offer interests in and provide services to, as well as invest in, other funds that may or may not be in the same investment field as any of our existing client funds, which activities may conflict with our duties to or interest with respect to, existing funds. Our existing client funds will have no interest in these activities. As a result of the foregoing, we may be engaged in substantial activities other than on behalf of any particular client fund, may have differing economic interests in respect of such activities, and our employees may have conflicts of interest in allocating their time and activity between and among our current and future client funds.

Provisions contained within each fund's limited partnership or operating agreement and management or advisory agreement authorize the general partner of the fund or its members to engage in investment, management or other activities outside, or alongside, our client funds, or to cause one or more of our client funds to make investments in respect of which our employees or members of a fund's general partner have conflicting interests, will override common law and statutory fiduciary duties that would apply in the absence of such provisions. Each fund's limited partnership or operating agreement and management or advisory agreement contain certain provisions for investors in that fund to address conflicts of interest faced by the general partner of the fund and its members, but will not purport to address all types of conflicts that may arise. Moreover, as a practical matter, it may be difficult for investors in a fund to subject the behavior of the general partner and its members to close scrutiny.

Under the limited partnership or operating agreement and management or advisory agreement of each fund, certain transactions that involve conflicts of interest between the general partner of the fund and the fund may be submitted to a committee comprised of investors in that fund for resolution. However, this committee will not necessarily represent the interests of all the investors in that fund, and the members of the committee may themselves be subject to various conflicts of interest (including as investors in other fund clients). In general, the investors in a fund will not be entitled to control the selection of members on this committee, or to review the actions or deliberations of the committee. During a fund's term, many different types of conflicts of interest may arise and investors in a client fund will ultimately be heavily dependent upon our good faith and the good faith of the general partner of the fund and its members.

While it is our intention that investment opportunities will be apportioned among our clients on a fair and reasonable basis and in compliance with the limited partnership or operating agreement and management or advisory agreement of each fund, there is no assurance that any particular fund will be offered any specific investment opportunities that come to our attention or that any particular fund will be permitted to invest the full amount it desires to invest in any such opportunity that is made available.

#### **Certain Risks for Investors in Our Client Funds**

If any fund should become insolvent, the investors in that fund may be required to return with interest any distributions representing a return of capital, repay any distributions wrongfully made to them and forfeit any undistributed profits.



The capital contributions of our affiliates to any fund will represent only a small portion of each fund's capital. Investors in each fund will invest greater amounts and receive a proportionately smaller interest in the profits of each than its general partner.

In accordance with common industry practice, the general partner of each fund may enter into one or more "side letters" or similar agreements with certain investors in that fund pursuant to which the general partner grants to those investors specific rights, benefits or privileges that are not made available to investors in that fund generally. Such agreements will be disclosed only to those actual or potential investors in a fund that have separately negotiated with the general partner of the fund the right to review such agreements.

### **Freedom of Information Disclosures**

Under "freedom of information", "sunshine", "public records" and similar laws, certain governmental or other regulated entities such as state universities and pension funds may be required to publicly disclose confidential information regarding a fund or its portfolio companies, notwithstanding contractual obligations (such as those contained in the limited partnership or operating agreement and management or advisory agreement of each fund) to the contrary. Any such disclosure could have a material adverse effect upon the fund or its portfolio companies, and it could even expose the fund, the general partner of the fund, the members of the general partner of the fund, or our employees to claims for damages brought by portfolio companies or other persons related thereto. Nevertheless, the limited partnership or operating agreement and management or advisory agreement of each fund will not prohibit such entities from being an investor in one or more of our client funds.

### **Breaches of Confidentiality**

Although investors in our client funds are subject to confidentiality provisions, confidential information of a fund, its portfolio companies and other investors may be inadvertently or intentionally disclosed, causing harm to such persons.

### **Delayed Schedule K-1's**

One or more of our funds may not be able to provide final Schedule K-1s to its investors for any given fiscal year until after April 15 of the following year. We will use reasonable efforts to provide investors with estimates of the taxable income or loss allocated to their investment in a client fund on or before such date, but final Schedule K-1s may not be available before such date for various reasons. Investors in one or more of our client funds may be required to obtain extensions of the filing dates for their federal, state, and local income tax returns.

### **Relationships**

We and our affiliates have existing and will develop additional relationships with a significant number of corporations, institutions and high net worth individuals. We may face conflicts of interest with respect to such relationships, on the one hand, and one or more of our client funds, the investors in those funds, or the companies in which those funds have invested, on the other hand. In addition, these

relationships may present conflicts of interest in determining whether to offer certain investment opportunities to any particular fund.

#### **Item 9 – Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to your evaluation of us or the integrity of our management. We have no information applicable to this Item.

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

We are a registered investment adviser with the United States Securities and Exchange Commission. We also have a relationship with another registered investment advisor, McCarthy Partners Management, LLC. The two entities do not have any common ownership, but do have relationships between them that allow each to leverage the talents of certain investment professionals, including Michael McCarthy, Patrick Duffy, and Robert Emmert. These three individuals make up the Investment Committee and have the ability to sell certain investments. This relationship does not create a material conflict of interest with our clients.

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

We have adopted a Code of Ethics for all employees of the firm describing our high standard of business conduct, and fiduciary duty to our clients. The Code of Ethics includes provisions relating to the confidentiality of client information, a prohibition on insider trading, and personal securities trading procedures, among other things. Our employees must certify at least annually their receipt, understanding and compliance with our Code of Ethics.

Except for two of our clients, we do not as a general practice recommend that our clients invest in other client funds or companies in which we or our affiliates have a material ownership interest. Two of our clients invest in our other client funds on a regular basis. In their capacities as investors or members of the general partners of certain of our client funds, we or our affiliates share in the profits and losses generated by the investments of those funds.

These and other operating relationships among our affiliates and clients have the potential for creating conflicts of interest. In situations where actual or potential conflicts of interest between us and our affiliates and the client funds are identified, procedures contained in the limited partnership or operating agreements or management or advisory agreements of the affected clients generally provide for submission of the proposed transaction to an investor committee for review and resolution. The specific procedures for each fund we advise are set forth in the private placement memoranda and limited partnership or operating agreement or management or advisory agreement of the fund.

Our Code of Ethics is designed to assure that the personal securities transactions, activities and interests of our employees will not interfere with our ability to make decisions and complete transactions in the best interest of our clients.

Our Code of Ethics requires all employees to obtain pre-approval for private placements and IPOs, and prohibits insider trading.

Employee trading is monitored (i.e., trade pre-approvals, quarterly trade reporting and annual holdings reports) under our Code of Ethics in order to reasonably prevent conflicts of interest between us or our employees and our client funds and to prevent an employee from using inside information obtained through their position for their own benefit.

A copy of our Code of Ethics will be provided upon request to any investor in one of our client funds. Such a request can be made by contacting Teri Mercer at [tmercerc@mccarthycapital.com](mailto:tmercerc@mccarthycapital.com) or (402) 991-8430.

### **Item 12 – Brokerage Practices**

The investments made by our client funds generally do not require the use of a broker-dealer. On certain occasions, however, an investment by a fund or disposition of securities held by a fund will require that we select a broker-dealer to execute a transaction. In that case, we will use a broker-dealer whom we have determined will provide the best execution for the transaction. Generally speaking, best execution means the broker's ability to obtain the best qualitative and quantitative execution reasonably available in the circumstances.

We attempt to achieve these results by choosing broker-dealers to execute transactions based on a range of considerations, including:

- The price and size of the order
- The trading characteristics of the securities involved
- The value of any research provided
- The broker's execution capabilities
- Commission rates
- Financial responsibility
- Responsiveness

We do not take the availability of soft dollars into consideration as it is our policy not to accept research or services in exchange for soft dollars.

### **Item 13 – Review of Accounts**

We review the performance of the investments of each client fund on a day-to-day basis, including reviewing various market conditions and investment situations.

We provide the following reports to investors in each of our client funds:

On an annual basis:

- Audited financial statements
- Tax information necessary for the completion of tax returns

On a quarterly basis:

- Unaudited financial statements
- Capital account summary
- Portfolio company overviews

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

We do not receive any economic benefit from any person that is not a client for providing advisory and management services to our clients.

We may from time to time enter into agreements that provide for cash compensation to solicitors who secure investors for the client funds sponsored by us or our affiliates. The agreements generally provide for compensation equal to a specified percentage of the capital commitments of the clients referred by the solicitor.

#### **Item 15 – Custody**

The client funds we manage are privately offered limited partnerships that are annually audited by a PCAOB registered independent accounting firm in accordance with Rule 206(4)-2 under the Investment Advisers Act of 1940. The audited financial statements are subsequently distributed to all investors within 120 days of year end.

#### **Item 16 – Investment Discretion**

We have discretionary authority over six of our seven clients, including all of the client funds mentioned by name in response to Item 4 above. The exercise of discretionary authority, however, is subject to and must be exercised in a manner consistent with, the limited partnership or operating agreement and management or advisory agreement for each fund. The one client that we have non-discretionary authority over is no longer a client as of January 1, 2012.

#### **Item 17 –Voting Client Securities**

To the extent matters arise that call for the vote or consent of the investors in a portfolio company of a client fund for whom we have discretionary authority (five of our seven clients), we exercise the voting rights on behalf of the client fund in question. It is our policy to vote all proxies in a manner that best serves the interests of the applicable client fund. For the other two clients, the proxies are forwarded to an authorized representative of the client who votes the proxies. A copy of our Proxy Policy will be provided upon request to any investor in one of our client funds by contacting Teri Mercer at [tmercerc@mccarthycapital.com](mailto:tmercerc@mccarthycapital.com) or (402) 991-8430.

#### **Item 18 – Financial Information**

We have no financial commitment that impairs our ability to meet contractual and fiduciary commitments to our clients and we have not been the subject of a bankruptcy proceeding.

**Item 19 – Requirements for State-Registered Advisors**

We have no state registrations.