

# Apex Capital, LLC Part 2A of Form ADV Brochure

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This brochure provides information about the qualifications and business practices of Apex Capital, LLC (“Apex”). If you have any questions about the contents of this brochure, please contact us at (925) 253-1800. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority.

Apex is a registered investment adviser. Registration as an investment adviser does not imply any level of skill or training.

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

## **Item 2. Material Changes**

Apex revised its brochure in June 2013. This brochure contains the following updates:

Item 4 reflects updated assets under management as of June 2013.

Item 5 was updated for additional disclosures regarding fee waivers.

### Item 3. Table of Contents

|  |    |
|--|----|
| Item 1. Cover Page .....   | 1  |
| Item 2. Material Changes .....   | 2  |
| Item 3. Table of Contents .....  | 3  |
| Item 4. Advisory Business.....   | 4  |
| Item 5. Fees and Compensation.....   | 5  |
| Item 6. Performance-Based Fees and Side-by-Side Management .....                                 | 7  |
| Item 7. Types of Clients .....   | 7  |
| Item 8. Methods of Analysis, Investment Strategies and Risk of Loss .....                        | 7  |
| Item 9. Disciplinary Information.....  | 12 |
| Item 10. Other Financial Industry Activities and Affiliations.....                               | 12 |
| Item 11. Code of Ethics, Participation or Interest in Client Transactions and Personal Trading.. | 12 |
| Item 12. Brokerage Practices.....  | 13 |
| Item 13. Review of Accounts .....  | 17 |
| Item 14. Client Referrals and Other Compensation .....   | 17 |
| Item 15. Custody .....   | 18 |
| Item 16. Investment Discretion .....   | 18 |
| Item 17. Voting Client Securities .....  | 19 |
| Item 18. Financial Information.....  | 20 |
| Item 19. Requirements for State-Registered Advisers .....  | 20 |

## Item 4. Advisory Business

### Firm History and Principal Owners

Founded in 1995, Apex Capital, LLC (“Apex”) is a California limited liability company that is primarily owned and controlled by Sanford Colen, Chief Investment Officer. As of June 1, 2013, Apex managed approximately \$1,045,024,667 on a discretionary basis on behalf of approximately 13 private pooled investment funds (each “Fund”) and individually managed accounts (“IMAs” and collectively with the Funds, “Clients”).

### Services Provided

Apex only manages assets on a discretionary basis.

Apex invests principally in equity and equity-related securities, mostly domestic, but is authorized to enter into any type of investment transaction that it deems appropriate under the terms of the Client’s partnership or other account agreement.

The investors in the Funds that Apex manages have no opportunity to select or evaluate any Fund investments or strategies. Apex selects all Fund investments and strategies.

Apex typically does not tailor its services to the individual needs of IMAs but manages each such account according to the strategy selected by that Client. Apex’s discretionary authority is limited, however, as described in Item 16.

Generally, Apex offers two main investment strategies:

- *Long-biased hedged* for investors seeking an opportunistic long/short exposure
- *Non-directional hedged* for investors seeking reduced net exposure

Apex’s approach to investing at a high level incorporates the following:

- Fundamental style (bottom-up, research-driven approach)
- Company and industry expertise (sector-specific)
- Investment oriented (with opportunistic trading)
- GARP bias (growth at a reasonable price)
- Price discrimination (selective entry and exit price points)
- Anti-momentum (buy/cover weakness, sell/short strength)
- Independent thinking and analysis (contrarian)

## **Item 5. Fees and Compensation**

Compensation to be provided to Apex is negotiable and varies but typically consists of the following components.

### Investment Management Fee

Apex typically charges an annual management fee of 1% to 2% of assets under management, which amount is generally payable in monthly or quarterly installments at the beginning or end (depending on the provisions of each Client's account agreement) of each period based on the net market value of the Client's account at the close of the market on the date the fee accrues and becomes payable.

Apex maintains discretion to modify or waive entirely the annual management fee for certain Client accounts or investors in a Fund.

### Performance Fee

In addition, Apex typically receives from each IMA a performance fee equal to 10% or 20% of net profits of the account (including both realized and unrealized gains and losses). Apex is typically allocated or paid from each investor in a Fund a performance allocation or fee equal to 10% or 20% of net profits (including both realized and unrealized gains and losses) otherwise allocable to that investor.

Performance fees and performance allocations are assessed in arrears on a quarterly or annual basis and are only applied to profits that exceed the cumulative losses previously incurred by or allocated to the respective IMA or Fund investor. Apex complies with Rule 205-3 under the Investment Advisers Act of 1940 to the extent required by applicable law.

Performance allocations and fees may create an incentive for Apex to make more risky and speculative investments than it would otherwise make.

### General Information on Fees

Apex typically deducts management fees and performance allocations and fees directly from IMA accounts but may bill an IMA for such amounts on request.

Apex believes that its fees are competitive with fees charged by other investment advisers for comparable services. Comparable services may be available, however, from other sources for lower fees.

### Expenses

Each Client account, including both IMAs and Funds, is responsible for its own costs and may be subject to the following: (i) third-party legal and accounting fees and expenses associated with offerings and sales of shares or interests (including costs and expenses associated with creating any new class of shares, or otherwise changing the structure or any term to accommodate any

shareholder or limited partner); (ii) trading costs and expenses (such as, for example, brokerage commissions and charges, clearing and settlement charges, and custodial and service fees); (iii) interest and commitment fees on loans and debit balances (on margin or otherwise) and other obligations; (iv) due diligence costs and expenses (including research conference fees) associated with investigating securities markets or issuers of securities; (v) costs and expenses of negotiating and entering into contracts and arrangements and making investments (such as brokerage, legal, accounting, investment banking, appraisal and other professional and consulting fees and expenses arising from particular investments and potential investments) and similar expenses in terminating those contracts and arrangements and disposing investments; (vi) costs and expenses incurred in attempting to protect or enhance the value of investments (including the costs and expenses of instituting and defending lawsuits), (vii) income taxes, withholding taxes, transfer taxes and other governmental and self-regulatory agency charges and duties, (viii) fees and charges of custodians, clearing agencies and banks, (ix) third-party bookkeeping, recordkeeping, legal, accounting, auditing, tax preparation and other professional, expert and consulting fees and expenses (including fees and expenses of counsel), (x) fees and expenses related to regulatory reporting (including, but not limited to, Form PF), such as third party consulting and legal fees, software, license, data production and implementation fees, and related charges, (xi) costs of contracts related to on-line research, trade order management systems, transaction cost analysis, risk reporting, portfolio management, and quotation services and equipment (including computer hardware and software related thereto), (xii) fees and expenses of the administrator or any similar service provider, (xiii) fees, costs and expenses of communicating with shareholders or limited partners (including, without limitation, the costs of establishing and maintaining a website for such communications), (xiv) costs and expenses of investing assets indirectly, such as through a master fund, (xv) to the extent permitted under applicable law, premiums and other costs and expenses of insurance policies as Apex considers appropriate, insuring the Clients, the investment adviser and their affiliates against liabilities that may arise, but only to the extent that any such policy complies with the provisions of section 410(b)(1) of ERISA to the extent that Client assets are treated as “plan assets” (for purposes of ERISA), (xvi) costs and expenses of proxy voting and class action services, (xvii) costs of maintaining the Fund’s registered offices in the Cayman Islands or any other jurisdiction and the costs of having the management shares held by a third party; (xviii) costs of maintaining any appropriate registrations; (xix) fees and reimbursement for out-of-pocket expenses of the unaffiliated directors, registrar, transfer agent and corporate secretary; and (xx) any extraordinary expenses (such as litigation expenses).

Apex bears its own operating, general, administrative and overhead expenses, other than the expenses described above. Certain expenses may be paid by securities brokerage firms to which Apex directs securities trades. Based on the advice of external legal counsel and other independent third parties qualified to opine on such matters, such payments fall within the safe harbor of section 28(e) of the Securities Exchange Act of 1934.

### Termination

The holder of an IMA may typically terminate the account by giving 30 days’ written notice unless other terms have been negotiated. Apex’s relationships with the domestic Funds are terminable only on expiration of the term of the Fund, dissolution of the Fund pursuant to the terms of its partnership agreement, or Apex’s withdrawal as a general partner. The offshore Funds may typically terminate their investment adviser agreement with Apex on 60 days’ written notice.

Investors in the Funds are able to withdraw from a Fund on the last business day of each month on specified prior written notice.

In all cases, expenses, the pro rata portion of the management fee and the performance fee or allocation through the date of termination are charged to the Client or investor. All prepaid but unearned advisory fees are refunded to the Client on termination of an account. An investor who withdraws from a Fund on a date other than the last day of a management fee calculation period, however, does not receive a refund of any management fee previously paid.

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

Apex currently manages only Client accounts that pay performance-based compensation as described in Item 5.

As noted in Item 5, the fact that Apex is compensated based on Clients' trading profits may create an incentive for Apex to make investments on behalf of Clients that are riskier or more speculative than would be the case in the absence of such compensation. In addition, the performance-based compensation received by Apex is based primarily on realized and unrealized gains and losses. As a result, some performance-based compensation may be based on unrealized gains that Clients do not realize.

Apex's fee arrangements also create an incentive to favor higher fee paying Client accounts over other accounts in the allocation of investment opportunities. Typically, a Client account that does not pay performance-based compensation pays a higher asset-based fee. Regardless, Apex has a conflict of interest if, in any time period, one fee structure would cause higher fees to Apex than the other fee structure because Apex would have an incentive to favor the Client account that would pay the higher fees. To address this conflict, Apex typically allocates all investment opportunities within each strategy on a pro rata basis based on each account's assets. In addition, Apex has policies and procedures to review Client account investment allocations on a regular basis.

## **Item 7. Types of Clients**

Apex provides investment supervisory services to IMAs and Funds.

Apex generally requires a minimum initial investment of \$1,000,000 for investors in the Funds. Apex generally requires a minimum investment of \$50,000,000 to open an IMA. These minimums may be waived by Apex in its discretion.

Apex generally requires Fund investors to either have a net worth that exceeds \$1,500,000 or invest at least \$750,000 and to make representations concerning their sophistication as investors and their ability to bear the risk of loss of their entire investment under Apex's management.

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

Apex's investment philosophy is organized around the belief that comprehensive securities analysis will yield superior investment results. This discipline, and Apex's ability to hedge its portfolio, makes the investment opportunity one that is less dependent on the direction of the overall market than some other strategies. Apex seeks to initiate fundamental long and short positions, which results in a portfolio that reflects its investment opinions on specific securities rather than market bias.

As a traditional hedge fund manager, Apex seeks to achieve capital appreciation principally through purchasing and selling common stocks, both long and short. Momentum investing and arbitrage trading of options and derivatives that are generally unrelated to the investment fundamentals of individual companies increase the volatility of securities. Apex seeks to utilize this volatility to continually assess the risk-reward ratio of individual securities, making trading and investment decisions that it believes provide asymmetrical risk versus return opportunities.

Apex seeks to make investment decisions based on a thorough understanding of the financial, strategic and competitive dynamics of individual companies and industries. The process consists of quantitative and qualitative analysis and includes meetings and conversations with company management, reviews of financial filings, Wall Street inputs, and independent research as primary sources of information.

Apex focuses almost exclusively on equities, mostly U.S., and allocates funds in long and short positions to fundamentally undervalued or overvalued situations. Although the primary investment focus is on companies located within the U.S., Apex pursues attractive foreign investments on an opportunistic basis.

Apex's portfolio managers and analysts each focus on specific industries, including the consumer, healthcare, technology, financial and energy sectors. As a result, Client accounts may hold concentrated positions in companies and industries.

The investment strategies summarized above represent Apex's current intentions, are general in nature and are not exhaustive. Except as specified by particular Clients, there are no limits on the types of securities in which Apex may take positions on behalf of its Clients, the types of positions that it may take, the concentration of its investments or the amount of leverage that it may use. Apex may use any trading or investment techniques, whether or not contemplated by the expected investment strategies described above. In addition, there are limitations in describing any investment strategy due to its complexity, confidentiality and indefinite nature. Depending on conditions and trends in securities and commodities markets and the economy generally, Apex may pursue any objectives or use any techniques that it considers appropriate and in Clients' interests.

The management style offered by Apex may be deemed speculative and is not intended as a complete investment program. It is designed for sophisticated investors who fully understand and are capable of bearing the risk of such an investment. No guarantee or representation is made that Clients will achieve their investment objectives.



## Risk Factors

Investing in securities involves risk of loss that Clients should be prepared to bear. Below are some of the risks that investors should consider before investing in any account that Apex manages. Any or all of such risks could materially and adversely affect investment performance and the value of any account or any security held in an account and could cause investors to lose substantial amounts of money. Below is only a brief summary of some of the risks that a holder of an IMA or an investor in a Fund may encounter. Potential investors in a Fund should review such Fund's offering circular or private offering memorandum carefully and in its entirety. All prospective Clients should consult with their professional advisers before deciding to invest. A potential client should discuss with Apex's representatives any questions that such person may have before opening an account or investing in a Fund.

- Client accounts may not achieve their investment objectives. A strategy may not be successful and investors may lose some or all of their investment.
- Investor sentiment on the market, an industry or an individual stock, fixed income or other security is not predictable and can adversely affect an account's investments.
- An account may hold stocks that disappoint earnings expectations and decline and may short stocks that beat earnings expectations and rise.
- Apex may not be able to obtain complete or accurate information about an investment and may misinterpret the information that it does receive. Apex also may receive material, non-public information about an issuer that prevents it from trading securities of that issuer for a Client when the Client could make a profit or avoid losses.
- Apex may take positions in securities of small or unseasoned companies that are less actively traded and more volatile than those of larger companies.
- Apex may engage in hedging, which may reduce profits, increase expenses and cause losses. Price movement in a hedging instrument and the security hedged do not always correlate, resulting in losses on both the hedged security and the hedging instrument. Apex is not obligated to hedge a Client's portfolio positions, and it frequently may not do so.
- An account may have higher portfolio turnover and transaction costs than a similar account managed by another investment adviser. These costs reduce investments and potential profit or increase loss.
- Apex sells securities short, resulting in a theoretically unlimited risk of loss if the prices of the securities sold short increase.
- Management and stockholders of an issuer may sue short sellers to prevent short sales of the issuer's securities. Apex could be subject to such actions, even if they are baseless, and Clients could incur substantial costs defending them.

- Apex may use leverage by borrowing on margin, selling securities short and trading derivatives, which increases volatility and risk of loss. These instruments can be difficult to value. An incorrect valuation could result in losses.
- Apex may sell covered and uncovered options on securities. The sale of uncovered options could result in unlimited losses.
- Apex may invest in debt instruments, whose values may vary unpredictably with shifts in interest rates, issuers' ability to pay principal and interest and issuers' defaults.
- Counterparties such as brokers, dealers, custodians and administrators with which Apex does business on behalf of Clients may default on their obligations. For example, a Client may lose its assets on deposit with a broker if the broker, its clearing broker or an exchange clearing house becomes bankrupt.
- Apex may cause a Client to enter into repurchase agreements or reverse repurchase agreements. These instruments can have effects similar to margin trading and leveraging strategies.
- Apex may cause Clients to invest in securities of non-U.S. private and government issuers. The risks of these investments include political risks, economic conditions of the country in which the issuer is located, limitations on foreign investment in any such country, currency exchange risks, withholding taxes, limited information about the issuer, limited liquidity and limited regulatory oversight.
- Changes in economic conditions can adversely affect investment performance. At times, economic conditions in the U.S. and elsewhere have deteriorated significantly, resulting in volatile securities markets and large investment losses. Government actions responding to these conditions could lead to inflation and other negative consequences to investors.
- Some of an account's positions may be or become illiquid, in which case Apex may not be able to sell such positions.
- An account's investments may not be diversified. Therefore, a loss in any one position, industry or sector in which an account has invested may cause significant losses.
- Apex determines the value of securities held in Client accounts, whether or not a public market exists for such instruments. If Apex's valuation is inaccurate, it might receive more compensation than that to which it is entitled, a new investor in a Fund might receive an interest that is worth less than the investor paid and an investor that is withdrawing assets might receive more than the amount to which the investor is entitled, to the detriment of other investors.
- Apex and its affiliates and agents generally are not responsible to any Client or investor for losses incurred in an account unless the conduct resulting in such loss breached Apex's fiduciary duty to the Client or investor.

- There is not and will not be an active market for Fund interests. It may be impossible to transfer any such interests, even in an emergency.
- A Fund may not be able to generate the cash necessary to satisfy investor withdrawals and redemptions. Substantial withdrawals and redemptions in a short period could force Apex to liquidate investments too rapidly and may so reduce the size of a Fund that it cannot generate returns or reduce losses.
- A Fund may limit or suspend withdrawals or redemptions of an investor's assets from the Fund.
- A Fund may establish a reserve for contingencies if Apex considers it appropriate. Investors may not withdraw or redeem assets covered by that reserve until it is lifted.
- If the assets that Apex manages grow too large, it may adversely affect performance because it is more difficult for Apex to find attractive investments as the amount of assets that it must invest increases.
- No Client or investor has been represented by separate counsel. The attorneys who represent Apex or its manager do not represent Clients or investors. Clients and investors must hire their own counsel for legal advice and representation.
- A Fund may dissolve or expel any investor at any time, even if such actions adversely affect one or more investors.
- Apex, an administrator or any government agency may freeze assets that any of them believes a Client holds in violation of anti-money laundering laws or rules or on behalf of a suspected terrorist and may transfer such assets to a government agency. None of Apex, a Fund or an administrator will be liable for losses related to actions taken in an effort to comply with anti-money laundering regulations.
- The Funds do not intend to make distributions but intend instead to reinvest substantially all income and gain. Therefore, an investor may have taxable income from a Fund without a cash distribution to pay the related taxes.
- Federal, state and international governments may increase regulation of investment advisers, private investment funds and derivative securities, which may increase the time and resources that Apex must devote to regulatory compliance to the detriment of investment activities.
- Apex is not registered with the SEC as a broker-dealer. The equity interests in the Funds are not registered under the Securities Act of 1933, and the Funds are not registered investment companies under the Investment Company Act of 1940. Apex believes that none of these registrations is required because exemptions are available under applicable law. If a regulatory authority deems that any of these registrations is required, Apex and any Fund could be subject to expensive legal action and potential termination. In addition,

investors in the Funds do not have certain regulatory protection that they would have if these registrations were in place.

- Apex's activities could cause adverse tax consequences to Clients and investors, including liability for interest and penalties.
- Apex's activities may cause an account that is subject to the Employee Retirement Income Security Act of 1974 to engage in a prohibited transaction under that act.
- If a limited partnership Client becomes insolvent, investors may be required to return with interest any distributions and forfeit any undistributed profits.
- Apex and its affiliates may spend time on activities that compete with a Fund or IMA without accountability to investors, including investing for other Clients and their own accounts. If Apex receives better compensation and other benefits from managing other assets or Client accounts compared to managing a Fund or IMA, it has incentive to allocate more time to those other activities. These factors could influence Apex not to make investments on a Client's behalf even if such investments would benefit the Client.
- Apex may provide certain investors or Clients more frequent or detailed reports, special compensation arrangements and withdrawal or redemption rights that it does not provide to other investors or Clients.

The above is only a brief summary of some of the important risks that a Client or investor may encounter. Before deciding to invest in a Fund that Apex manages, potential clients should consider carefully all of the risk factors and other information in the Fund's offering circular or private offering memorandum.

## **Item 9. Disciplinary Information**

Not applicable.

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

Not applicable.

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

Apex has adopted a Code of Ethics in compliance with Rule 204A-1 under the Investment Advisers Act of 1940, which establishes standards of conduct for its employees. The Code of Ethics includes general requirements that Apex employees comply with their fiduciary obligations to Clients and applicable securities laws and specific requirements relating to, among other things, personal trading, insider trading, conflicts of interest and confidentiality of Client information. It requires employees to report their personal securities transactions and holdings monthly to the Chief Compliance Officer or his designee and requires the Chief Compliance Officer or his

designee to review those reports. It also requires employees to report any violations of the Code of Ethics promptly to the Chief Compliance Officer. Employees must also report their outside business activities. Each employee receives a copy of the Code of Ethics and any amendments to it and must acknowledge in writing having received the materials. Annually, each employee must certify that he or she complied with the Code of Ethics during that year.

Clients and prospective clients may obtain a copy of the Code of Ethics by contacting Justin Gould, Apex's Chief Compliance Officer, at (925) 253-1800.

Apex and its officers, manager and employees may personally invest in securities of the same classes as are purchased for Clients, and they may own securities of classes that are subsequently purchased for Clients. This practice creates a conflict of interest in that any of such persons can use his or her knowledge about actual or proposed securities transactions and recommendations for a Client account to profit personally by the market effect of such transactions and recommendations. To address this conflict, Apex and its officers, manager and employees are required to pre-clear transactions in securities designated as "Reportable Securities," and Apex will only grant approval to trade so long as the security is not being contemplated for trading for a Client or has otherwise been restricted. Apex and its officers, manager and employees may also buy or sell a specific security for their own accounts based on personal investment considerations, which Apex does not deem appropriate to buy or sell for Clients. The performance of the personal accounts of Apex and its officers, manager and employees may be more favorable at times than that of Clients' accounts.

Apex solicits investors who may or may not be Apex's Clients to invest in its Funds. Apex has an incentive to cause a Client to invest in Fund instead of an IMA because of the reduced expenses and administrative burdens of managing a Fund compared to an IMA, Apex's performance compensation from a Fund receives more favorable tax treatment than that from an IMA, and Fund investors have less transparency and liquidity than IMAs. In addition, if a Fund investor also has an IMA with Apex that uses an investment strategy that is similar to that of the Fund, the investor may use knowledge of the other account's portfolio to decide if and when to make an additional investment or withdraw or redeem assets from the Fund at times when other Fund investors would have made similar decisions had they had similar transparency. Apex discloses these conflicts of interest to Clients and investors.

In the normal course of business, Apex and its officers, manager and employees may provide gifts and gratuities to various individuals or entities such as clients, vendors, consultants and service providers. These gifts, gratuities and contributions are not premised upon any specific client referrals or any expectation of any other type of benefit to Apex. Apex has adopted detailed procedures requiring preapproval and recordkeeping of gifts and gratuities. Apex and its officers, manager and employees may also make political contributions to persons who may serve or seek to serve in elected capacities with certain public entities. These political contributions are permitted only in compliance with the SEC's rule prohibiting pay-to-play activities adopted under Rule 206(4)-5 of the Investment Advisers Act of 1940.

## **Item 12. Brokerage Practices**

Apex has complete discretion over the selection of the broker to be used and the commission rates to be paid. In selecting a broker for any transaction or series of transactions, Apex may consider a number of factors, including, for example,

- opportunity for price improvement,
- transaction costs,
- anonymity,
- liquidity,
- expertise with difficult securities (i.e., illiquid trades),
- speed of execution,
- trading style and strategy (taking market conditions into consideration),
- frequency of errors,
- access to new issues,
- financial strength and stability,
- special execution capabilities,
- willingness to execute related or unrelated difficult transactions in the future,
- order of call (refers to the order in which the broker calls a client vs. its other clients to share information),
- information accuracy and timeliness,
- ability to minimize market impact,
- availability of derivative securities,
- capital commitment,
- perceived integrity and reputation,
- morning/intraday flow call, and
- quality of and access to research (including sales coverage, investment ideas, research seminars and ability to facilitate meetings with corporate executives).

Apex may also purchase from a broker or allow a broker to pay for certain goods and services, (“soft dollar relationships”), including

- certain research services, including economic and market information, portfolio strategy advice, industry and company comments, technical data, recommendations, research conferences, general reports, periodical subscription fees and consultants' fees;
- performance, risk and exposure measurement data;
- trade execution analytics;
- on-line pricing;
- news wire charges and certain data processing charges;
- quotation services; and
- computer software (such as trade order management systems and software that facilitates the analyzing of the availability and rates for stock borrows from different brokers and related matters) or aggregated performance, risk and exposure measurement across the Client accounts and stock portfolios within one or more of the Client accounts.

Apex may direct a brokerage firm that executes transactions to share some of its commissions with a brokerage firm that provides soft dollar benefits to Apex. With respect to certain computer software used for both research/brokerage and non-research/brokerage purposes, Apex may allocate the costs of such products between their research/brokerage and non-research/brokerage uses and will use soft dollars to pay only for the portion allocated to research/brokerage uses.

Apex may select a broker (which may be the prime broker for a Client account) to act as a trading broker for that Client. In such case, Apex or the trading broker may select the executing broker, and the trading broker would then place or manage the order. The Client compensates trading brokers (through commissions or otherwise) for this trading service in addition to the commissions the Client pays to the executing brokers. As with all soft dollar arrangements, using a trading broker in this manner may cause Clients to pay brokerage commissions, markups and other transaction costs that are higher than might otherwise be available if brokers were selected based solely on lowest execution cost. In addition, using a trading broker (rather than an employee of Apex) to provide those services may result in lowering Apex's personnel expenses.

Apex may cause a Client account to pay a brokerage commission in excess of that which another broker might charge for effecting the same transaction in recognition of the value of the brokerage, research and other services and soft dollar relationships. Although Apex believes that Clients benefit from services obtained with soft dollars generated by their accounts' trading, Apex and its affiliates also derive direct or indirect benefits from some or all of these services, particularly to the extent that Apex uses "soft" or commission dollars to pay expenses that it would otherwise be required to pay itself.

Section 28(e) of the Securities Exchange Act of 1934 provides a "safe harbor" to investment advisers who use commission dollars of their advised accounts to obtain investment research and brokerage services that provide lawful and appropriate assistance to the adviser in performing investment decision-making responsibilities. Conduct outside of the safe harbor of section 28(e) is

subject to the traditional standards of fiduciary duty under state and federal law. Apex uses commission dollars to pay only for products and services that it reasonably believes, based on the advice of external legal counsel or other independent third parties qualified to opine on such matters, fall within the safe harbor of 28(e).

Apex generally considers the amount and nature of research, execution and other services provided by brokers, as well as the extent to which the Client accounts rely on such services, and attempts to allocate a portion of the brokerage transactions of Client accounts based on that consideration. Apex believes that allocating brokerage transactions in this manner helps obtain research and execution capabilities and provides other benefits to the Client accounts. Apex may use the investment information and other services received from brokers in servicing all of its accounts, but it may not use all such information and services for any particular Client account.

The relationships with brokerage firms that provide soft dollar services to Apex and its affiliates influence Apex's judgment in allocating brokerage transactions and create a conflict of interest in using the services of those brokers to execute Client brokerage transactions. Client transactions executed through these firms or any other brokerage firm may or may not be at the best prices otherwise available. Apex has an incentive to select a broker based on Apex's interest in receiving soft dollar services rather than Clients' interest in receiving the most favorable execution. These conflicts of interest are particularly strong when Apex uses soft dollars to pay expenses it would otherwise be required to pay itself. Prospective investors who consider Apex's soft dollar practices material to their investment decision should request Apex's most recent information on soft dollar practices.

Apex addresses these conflicts of interest by annually evaluating the trade execution services that Apex receives from the brokers that it uses to execute trades for clients. Such evaluation includes comparing those services to the services available from other brokers. Apex considers, among other things, alternative market makers and market centers, the quality of execution services, the value of continuing with various soft dollar services and adding or removing brokers, increasing or decreasing targets for each broker and the appropriate level of commission rates.

Multiple prime brokers have been retained to serve as prime brokers and custodians for the Clients' assets. Apex may replace these firms, or appoint additional prime brokers and custodians, at any time. The services that the prime brokers provide include custody, margin financing, cash sweep and other cash management services, clearing, settlement, stock borrowing, capital introduction services, various client portfolio reporting and information management, trade execution analytics and business and information technology consulting and related services. The Clients pay the prime brokers for some of these services, such as stock borrowing, but many of the services are provided without charge. While a number of the services provided by the prime brokers benefit both the Clients and Apex, some of the services, such as capital introduction services and client portfolio reporting used for marketing purposes, primarily benefit Apex. Apex believes that the services it receives from the prime brokers are generally comparable to those services provided by many prime brokers to other similarly situated investment advisers. If Apex did not receive these services from its prime brokers, it would be required to pay for all or some portion of them. Apex is not required to continue to use any particular prime broker (unless directed to do so by the Client) or direct a particular number of trades to the prime brokers. Apex



has an incentive, however, to maintain the relationship with the prime brokers based on such firms' prior and continued provision of services.

If a Client directs Apex to use a specific broker, Apex may not be able to negotiate the terms and conditions (including, but not limited to, commission rates) relating to the services provided by such broker. In such situations, Apex does not have any responsibility for obtaining for the Client from any such broker the best prices or particular commission rates with or through any such broker. Also, the Client may not obtain rates as low as it might otherwise obtain if Apex had discretion to select broker-dealers other than those chosen by the Client. The Client may not be able to participate in aggregate securities transactions as described below, and the Client may trade after such aggregate transactions and receive less favorable execution.

Apex may aggregate sale and purchase orders of securities held by Client accounts with similar orders being made simultaneously for other Client accounts if, in its judgment, such aggregation is reasonably likely to result in an overall economic benefit to all such accounts, in the aggregate, based on an evaluation that such accounts will benefit from relatively better purchase or sale prices, lower commission expenses or beneficial timing of transactions or a combination of these and other factors. In many instances, Apex purchases or sells securities for multiple Clients. Such transactions may be at slightly different prices because of the volume of securities purchased or sold. In such event, a participating Client may be charged or credited, as the case may be, the average transaction price of all securities purchased or sold in such transactions. As a result, the price may be less favorable to any single Client than it would be if similar transactions were not executed concurrently for other Clients.

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

Sanford J. Colen and/or other Apex personnel review the portfolios' performance and activity for all Client accounts at least weekly. Those reviews take into account such matters as asset allocation, cash management, the prospects of individual securities, changes in issuer earnings, industry outlook, market outlook and price levels.

Clients and investors in the Funds have access to monthly reporting from the administrator. All IMAs and investors in Funds receive at least quarterly performance results from Apex. Investors in a Fund also receive a general quarterly newsletter and the Fund's annual audited financial statements.

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

The prime brokers for the Client accounts provide a variety of services in addition to custody services. These include capital introduction services. Apex is not required to direct any volume of business in return for these services. However, it has an incentive to maintain relationships with these firms based on their prior and continued services.

Apex does not currently but may in the future engage solicitors to whom Apex will pay cash or a portion of the advisory fees paid by Clients referred by those solicitors. In such cases, this practice will be disclosed in writing to the Client, and Apex will comply with the other requirements of

Rule 206(4)-3 under the Investment Advisers Act of 1940 to the extent required by applicable law.

## **Item 15. Custody**

All Client assets are held in custody by unaffiliated broker-dealers or banks. The Funds are subject to an annual audit and the audited financial statements are distributed to each investor. The audited financial statements are prepared in accordance with generally accepted accounting principles and distributed within 120 days of the end of the Funds' fiscal years.

## **Item 16. Investment Discretion**

Apex has discretionary authority to manage investment accounts on behalf of Clients pursuant to a grant of authority in each Fund's limited partnership agreement or a limited power of attorney in each IMA's account agreement. Except for Apex's limited partnership Clients, such discretion is limited by the requirement that Clients advise Apex of

- the investment objectives of the account,
- any changes or modifications to those objectives, and
- any specific investment restrictions relating to the account.

A Client must promptly notify Apex in writing if the Client considers any investments recommended or made for the account to violate such objectives or restrictions. A Client may at any time direct Apex to sell any securities or take such other lawful actions as the Client may specify to cause the account to comply with the Client's investment objectives. In addition, a Client may notify Apex at any time not to invest any funds in the Client's account in specific securities or specific categories of securities.

Because Apex manages more than one account, there may be conflicts of interest over its time devoted to managing any one account and allocating investment opportunities among all accounts that it manages. For example, Apex selects investments for each Client based solely on the investment strategy being pursued for that Client. Different Clients may have differing investment strategies and expected levels of trading. Apex may buy or sell a security for one type of Client but not for another or may buy (or sell) a security for one type of Client while simultaneously selling (or buying) the same security for another type of Client. Apex attempts to resolve all such conflicts in a manner that is generally fair to all of its Clients. Apex may give advice to, and take action on behalf of, any of its Clients that differs from the advice that it gives or the timing or nature of action that it takes on behalf of any other Client so long as it is Apex's policy, to the extent practicable, to allocate investment opportunities to its Clients fairly and equitably over time. Apex is not obligated to acquire for any account any security that Apex or its manager or employees may acquire for its or their own accounts or for any other client if, in Apex's absolute discretion, it is not practical or desirable to acquire a position in such security for that account.

Apex may cause a Client account to buy or sell securities directly from or to another Client (a "cross trade") if the Client's investment management agreement and/or organizational documents

do not prohibit cross trades and Apex determines that a cross trade is in the interests of both Clients. Cross trades may be effected for various reasons, including adjusting exposures between Clients managed with the same general strategy, raising cash for the selling Client, liquidating the selling Client account, accommodating withdrawals, realizing a tax gain or loss for the selling Client account, building a position in the security for the purchasing Client account, crossing a former “new issue” from a “new issue” account to a non-new issue account and lowering the tax basis in the security for the purchasing Client account. Apex determines the buying and selling Clients to a cross trade based on an evaluation of which Clients’ strategies and particular needs are best served by the cross. Apex crosses at a determined price, which is generally at the market price and within the day’s trading range, with minimal (or no) commissions charged on both sides of the trade. Cross trades raise certain conflicts of interest; for example, when effecting a cross trade between two Clients with different fee structures, Apex has an interest in improving the returns on the account that pays a higher performance-based fee to it. Apex recognizes its fiduciary duty to all Clients and monitors all cross trades to ensure that they are effected only in the best interests of the affected Clients. Apex’s policies require the approval by its Chief Compliance Officer of all cross trades.

## **Item 17. Voting Client Securities**

Proxies are assets of Apex’s Clients that must be voted with diligence, care and loyalty. Apex will determine whether to and how to vote each proxy in accordance with its fiduciary duty to its Clients. However, Apex will document and abide by any specific proxy voting instructions conveyed by a Client with respect to that Client’s securities. The Chief Compliance Officer coordinates Apex’s proxy voting and has retained Glass Lewis & Co. (“Glass Lewis”) to assist the firm. The Chief Compliance Officer manages Apex’s relationship with Glass Lewis and ensures all proxies are voted accordance with Clients’ specific instructions and Apex’s general guidance. Glass Lewis will also retain certain required documentation associated with proxy voting.

Absent specific Client instructions, Apex has adopted the following proxy voting procedures designed to ensure that proxies are properly identified and voted, and that any conflicts of interest are addressed appropriately:

- The Chief Compliance Officer will ensure that each Client custodian is notified that Glass Lewis will be acting as proxy voting agent and that all proxies should be directed to them.
- The Chief Compliance Officer will visit Glass Lewis’ website periodically to monitor corporate actions, upcoming proxy votes and Glass Lewis’ voting recommendations regarding positions held by Apex’s Clients.
- Absent specific Client instructions, the Chief Compliance Officer will continue to direct Glass Lewis to vote Client proxies according to Glass Lewis’ proxy voting guidelines. Any deviations from these recommendations must be approved in writing by the Chief Compliance Officer.

- Apex may determine that it is in the best interest of its Clients to depart from Glass Lewis' proxy voting guidelines when voting a particular proxy. In this case, the Chief Investment Officer will decide how to vote the proxy, providing the Chief Compliance Officer with the reason for deviating from Glass Lewis' proxy voting guidelines and identifying any known conflicts of interest. The Chief Compliance Officer will also conduct a review to determine if there are any conflicts of interest related to the issuer. If no material conflicts of interest are identified, the Chief Compliance Officer will direct Glass Lewis to vote the proxy as recommended by the Chief Investment Officer. If a material conflict of interest is identified, deviation from Glass Lewis' recommendation will not be permitted.
- In general, because the Company will vote proxies according to Glass Lewis' proxy voting guidelines, conflicts of interest should not arise between Apex and its Clients. While Apex does not neglect its proxy voting responsibilities, it may abstain from voting if it deems that abstinence is in its Clients' best interests.

The Chief Compliance Officer will periodically review Glass Lewis' voting records to ensure that proxies were voted according to Apex's instructions and its policies. Apex Clients may obtain a copy of these proxy voting policies and procedures or records of all proxy votes cast on their behalf upon request.

## **Item 18. Financial Information**

Not applicable.

## **Item 19. Requirements for State-Registered Advisers**

Not applicable.