

# **MIDSUMMER CAPITAL, LLC**

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## **BROCHURE PART 2A November 8, 2011**

<b>ITEM 1: COVER PAGE</b>
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This brochure provides information about the qualifications and business practices of Midsummer Capital, LLC. If you have any questions about the contents of this brochure, please contact us at (212) 624-5030. 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.

Midsummer Capital, LLC is a registered investment adviser. Registration of an Investment Adviser does not imply any level of skill or training.

Additional information about Midsummer Capital, LLC also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

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#### ITEM 4: ADVISORY BUSINESS

The investment manager of the Funds is Midsummer Capital, LLC (“Midsummer”), a New York, U.S.A. limited liability company, organized in November 1995 that commenced operations in November 1995 as a private consulting vehicle and became investment adviser to the Midsummer family of funds in May 2002. Midsummer has been registered as an investment adviser with SEC since January 2006. Michel A. Amsalem and Joshua A. Thomas are the Principals and Portfolio Managers of Midsummer.

Midsummer provides advisory services on a discretionary basis to its clients, which are private pooled investment vehicles (“Funds”) intended for sophisticated investors and institutional investors.

Midsummer does not generally tailor its advisory services to the individual needs of investors in the Funds and does not accept Fund investor-imposed investment restrictions.

Midsummer may in the future establish, separate accounts for particular clients. These accounts may be subject to investment objectives, guidelines, and restrictions, and fee arrangements and other terms that are individually negotiated with each such client. These account relationships may involve significant account minimums.

As of July 31, 2011, Midsummer managed the following client assets:

Non-Discretionary Client Assets:	US\$	0.00
Discretionary Client Assets:	US\$	105,166,189
Total Assets under Management:	US\$	105,166,189

#### ITEM 5: FEES AND COMPENSATION

##### Advisory Fees and Compensation

Midsummer charges each Fund an asset-based investment management fee based on the value of the client’s assets under management. In addition, the Funds also pay Midsummer a performance-based fee or incentive allocation. These fees/allocation are compensation to Midsummer that is based on a share of capital gains on or capital appreciation of the assets of a Fund. Fund investors are subject to these management fees and incentive fees/allocation, as applicable, indirectly through their investment in a Fund. Midsummer’s fees are deducted from each Fund account by the client’s administrator upon Midsummer’s proper instructions.

Management fees are charged monthly in advance based on the value of the relevant assets as of the first day of the month. The range of annual management fees is generally from 1.75% to 2.00% of each Fund's assets under management. For its closed-end funds, annual management fees are generally 0%. While it is unlikely that an investor may withdraw mid-month, Midsummer will refund the unearned portion of any pre-paid management fees if a withdrawal is made from a Fund before the end of a billing period. The Adviser generally determines the

amount of the relevant refund on a pro rata basis, based upon the portion of the relevant period during which it provided services.

Midsummer generally charges performance-based compensation to applicable Fund accounts in an amount ranging from 15%-20% of the net profits (including realized and unrealized gains and losses) on an annual basis. However, for its closed-end funds, upon liquidation of assets and after the receipt by investors of a 12% return, Midsummer receives performance-based compensation in an amount equal to 30% of the total net profits realized (including a portion of the 12% return).

Some Fund investors may pay more or less than other Fund investors for the same management services, depending, for example, on when a Fund investor subscribes (e.g., at a Fund's inception date), number of related investment accounts or total client assets under management with Midsummer.

In this regard, Midsummer may waive or modify fees for Fund Investors that are large or strategic investors.

In general, the Funds bear other expenses including, expenses related to legal, compliance, audit, accounting (including third party accounting and valuation services), Director fees; tax preparation expenses, corporate licensing fees and third party administrator fees and expenses; professional fees (including, without limitation, expenses of consultants and experts) relating to investments; organizational expenses; investment expenses such as commissions, and research fees and expenses; interest on margin accounts and other indebtedness; custodial fees; applicable Bermuda government fees; research-related travel expenses, bank service fees, withholding and transfer fees, taxes, clearing and settlement charges; expenses related to the purchase, sale, preservation or transmittal of Fund investments (whether or not consummated); and any extraordinary expenses as determined by the Fund in its sole discretion.

<b>ITEM 6: PERFORMANCE BASED FEES AND SIDE-BY-SIDE MANAGEMENT</b>
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Midsummer and its investment personnel provide investment management services to multiple investment portfolios for multiple Funds. As described in Item 5, Midsummer may receive performance-based compensation from the Funds. In addition, certain Fund accounts may have higher management fees or performance-based compensation arrangements more favorable to Midsummer than other accounts engaging in the same or similar investment activities. Midsummer's investment personnel are also typically compensated on a basis that includes a performance-based component. As a result, the potential exists for Midsummer or its investment personnel to seek to favor one Fund over another Fund in allocating investment opportunities or otherwise. In particular, Midsummer and its investment personnel may have a greater incentive to favor Funds that pay Midsummer (and indirectly its investment personnel) higher performance-based compensation or otherwise pay higher fees, or in which Midsummer personnel have more significant investments.

Midsummer has adopted and implemented policies and procedures intended to address conflicts of interest relating to the management of multiple accounts, including accounts with different fee arrangements. Midsummer reviews investment decisions for all Funds on a regular basis in order to ensure that all accounts with substantially similar investment objectives are treated equitably. The performance of similarly managed accounts is also regularly compared to determine whether there are any unexplained significant discrepancies. In addition, Midsummer has implemented a detailed investment allocation policy and Midsummer regularly reviews its trade allocations to ensure they are made in a manner that is fair and equitable to all Funds (as described in Item 12).

#### ITEM 7: TYPES OF CLIENTS

Midsummer clients consist of private funds.

With respect to each Fund, any initial investment minimums are disclosed in the offering documents for the Fund.

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

Midsummer invests primarily with a long bias in a wide range of financial instruments, including restricted securities, whose theoretical values are perceived by Midsummer to be above their purchase prices. In this regard, Midsummer may, in seeking to maximize opportunities and conserve capital, invest in a wide variety of securities and securities derivatives, both long and short, and use a wide variety of special investment techniques.

Midsummer seeks to implement its strategy primarily by investing in equity, equity-related and debt and debt-related securities, which may be listed or unlisted and rated or unrated, of companies that Midsummer believes are undervalued and, conversely, by selling or selling short those securities that Midsummer believes are overvalued.

This investment strategy and method of operation involves the risk of loss to clients and clients should be prepared to bear the loss of their entire investment.

#### **Material Risks Related to Investment Strategies:**

**Market Risks.** The profitability of a significant portion of Midsummer's investment program depends to a great extent upon correctly assessing the future course of price movements of specific securities. There can be no assurance that Midsummer will be able to predict accurately these price movements.

**Hedging.** There can be no assurances that a particular hedge is appropriate, or that certain risk is measured properly. Further, while Midsummer may enter into hedging transactions to seek to reduce risk, such transactions may result in poorer overall performance and increased (rather than reduced) risk for Midsummer's investment portfolios than if Midsummer did not engage in any such hedging transactions.

**Issuer-Specific Changes.** Changes in the financial condition of an issuer or counterparty, changes in specific economic or political conditions that affect a particular type of security or issuer, and changes in general economic or political conditions can increase the risk of default by an issuer or counterparty, which can affect a security's or instrument's value. The value of securities of smaller, less well-known issuers can be more volatile than that of larger issuers. Smaller issuers can have more limited product lines, markets, or financial resources.

**Leverage.** Performance may be more volatile if a client's account employs leverage.

**Short Selling Risk.** Midsummer's investment program may include short selling. Short selling transactions expose Midsummer to the risk of loss in an amount greater than the initial investment, and such losses can increase rapidly and without effective limit. There is the risk that the securities borrowed by Midsummer in connection with a short sale would need to be returned to the securities lender on short notice. If such request for return of securities occurs at a time when other short sellers of the subject security are receiving similar requests, a "short squeeze" can occur, wherein Midsummer might be compelled, at the most disadvantageous time, to replace the borrowed securities previously sold short with purchases on the open market, possibly at prices significantly in excess of the proceeds received earlier.

**Derivatives.** Swaps, and certain options and other custom derivative or synthetic instruments are subject to the risk of nonperformance by the counterparty to such instrument, including risks relating to the financial soundness and creditworthiness of the counterparty. In addition, investments in derivative instruments have an underlying high degree of leverage, meaning the overall contract value (and, accordingly, the potential for profits or losses in that value) is much greater than the modest deposit used to buy the position in the derivative contract. Derivative securities can also be highly volatile. The prices of derivative instruments and the investments underlying such derivative instruments may fluctuate rapidly and over wide ranges and may reflect unforeseeable events or changes in conditions, none of which can be controlled by the client or Midsummer. Furthermore, transactions in derivative instruments are not undertaken on recognized exchanges, and will expose the client's account to greater risks than regulated exchange transactions that provide greater liquidity and more accurate valuation of securities.

**Equity Securities.** The value of equity securities fluctuates in response to issuer, political, market, and economic developments. Fluctuations can be dramatic over the short as well as long term, and different parts of the market and different types of equity securities can react differently to these developments. For example, large cap stocks can react differently from small cap stocks, and "growth" stocks can react differently from "value" stocks. Issuer, political, or economic developments can affect a single issuer, issuers within an industry or economic sector or geographic region, or the market as a whole. Changes in the financial condition of a single issuer can impact the market as a whole. Terrorism and related geo-political risks have led, and may in the future lead, to increased short-term market volatility and may have adverse long-term effects on world economies and markets generally.

**Lack of Diversification.** The client's portfolio may not be diversified among geographic areas or types of securities. Further, the portfolio may not be diversified among a wide range of issuers. Accordingly, the investment portfolio may be subject to more rapid change in value

than would be the case if Midsummer were required to maintain a wide diversification among investment areas, types of securities and issuers.

**For a more detailed discussion of risk factors related to a Fund, please see the offering documents of the Fund.**

#### ITEM 9: DISCIPLINARY INFORMATION

There are no disciplinary actions.

There is one legal action pending as follows:

Midsummer, Midsummer Ventures Ltd. ("Ventures"), a closed end fund managed by Midsummer and Michel Amsalem ("Amsalem"), as director of Ventures and principal of Midsummer (together "the Defendants") have been sued in the Supreme Court of the State of New York on October 17, 2011 by Pentagon Dollar Satellite Fund, Ltd. ("Pentagon"), a defaulting investor of Ventures.

Pentagon is suing Midsummer, Ventures and Amsalem claiming a portion of the profits made on an October 2009 investment (the "Investment"). The Investment was made well after the date of Pentagon's default using funds that were contributed to Ventures by non-defaulting investors.

Pentagon alleges, among other things, that (i) the Investment was linked to a prior investment made before its default, (ii) it was not provided with material non-public information on the Investment that other investors received and (iii) the Defendants benefited from Pentagon defaulting on its capital commitment.

The Defendants believe that these charges are totally groundless. Pentagon defaulted on a capital call breaching its absolute and unconditional promise to Ventures. The Defendants did not have material non-public information, and did not disseminate information in a selective manner. In addition, Midsummer maintains that Pentagon's treatment as a defaulting limited partner was within the purview and spirit of Venture's governing documents.

The Defendants intend to defend themselves vigorously against what they believe to be completely groundless and meritless charges.

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

Midsummer is not registered as a broker-dealer.

Midsummer is not registered as a commodity pool operator or a commodity trading adviser.

Midsummer does not have material relationships or arrangements with any related persons that are financial industry participants.

Midsummer does not recommend or select other investment advisers for its clients.

<b>ITEM 11: CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS &amp; PERSONAL TRADING</b>
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Midsummer has adopted a Code of Ethics (the "Code") that sets forth Midsummer's standard of business conduct that takes into account Midsummer's status as a fiduciary. The Code generally requires Midsummer and its "Supervised Persons" to place the interests of the Funds and Fund investors above their own interests and the interests of Midsummer. The Code requires Supervised Persons to comply with applicable federal securities laws. Further, Supervised Persons are required to promptly bring violations of the Code to the attention of Midsummer's Chief Compliance Officer (the "Chief Compliance Officer"). All Supervised Persons are provided with a copy of the Code and are required to acknowledge receipt of the Code upon hire and on at least an annual basis thereafter. Supervised Persons include, generally, any officer, director, partner or employee of Midsummer and any other person who provides advice on behalf of Midsummer and is subject to Midsummer's control and supervision.

The Code also requires Access Persons to comply with certain reporting requirements with respect to personal securities transactions. Access Persons include a Supervised Person that (1) has access to nonpublic information regarding any clients' purchase or sale of securities, or nonpublic information regarding the portfolio holdings of a "reportable fund" (as defined in the Code), or (2) is involved in making securities recommendations to clients, or has access to such recommendations that are nonpublic. Access Persons includes portfolio management personnel and any client service representative who communicates investment advice to clients.

The Code also sets forth certain reporting and pre-clearance requirements with respect to personal trading by Access Persons. Access Persons must provide the Chief Compliance Officer with a list of their personal accounts and an initial holdings report within 10 days of becoming an Access Person. In addition, Access Persons must provide annual holdings reports and quarterly transaction reports in accordance with Advisers Act Rule 204A-1.

Midsummer and its personnel may have conflicts in allocating their time and services among the clients. Midsummer will devote as much time to each of its clients as it deems appropriate to perform its duties in accordance with its investment management agreements. In addition, Midsummer, its affiliates and employees may conduct outside business activities with the prior approval of Michel Amsalem and the Chief Compliance Officer.

The Code also seeks to ensure the protection of nonpublic information about the activities of the clients. Funds, Fund investors, prospective clients, and prospective Fund investors may obtain a copy of the Code by contacting the Chief Compliance Officer at [gc@midsummercapital.com](mailto:gc@midsummercapital.com) or (212) 624-5030.

The employees of Midsummer or its related persons may invest in the same securities (or related securities, e.g., warrants, options or futures) that Midsummer or a related person recommends to clients. Such practices present a conflict where, because of the information an



employee has, the employee is in a position to trade in a manner that could adversely affect clients (e.g., place his or her own trades before or after client trades are executed in order to benefit from any price movements due to the clients' trades). In addition to affecting the employee's objectivity, these practices by the employee may also harm clients by adversely affecting the price at which the clients' trades are executed. The procedures described above are designed to resolve the potential conflicts related to personal trading.

#### **ITEM 12: BROKERAGE PRACTICES**

Midsummer considers a number of factors in selecting a broker-dealer to execute transactions (or series of transactions) and determining the reasonableness of the broker-dealer's compensation. In selecting brokers or dealers to execute transactions, Midsummer is not required to solicit competitive bids and does not have an obligation to seek the lowest available commission. Midsummer will seek to obtain best execution for its clients, taking into account the following factors:

- the ability to effect prompt and reliable executions at favorable prices (including the applicable dealer spread or commission, if any);
- the operational efficiency with which transactions are effected, taking into account the size of the order and difficulty of execution;
- the financial strength, integrity and stability of the broker;
- the broker's risk in positioning a block of securities; and
- access to instruments that Midsummer wants to invest in and the competitiveness of commission rates in comparison with other counterparties satisfying Midsummer's other selection criteria.

Subject to the objective of seeking best execution, Midsummer also may take into consideration research and other brokerage services provided by the broker executing trades which are included in the commission rate. When Midsummer uses client brokerage commissions (or markups or markdowns) to obtain research or other products or services, it receives a benefit because it does not have to produce or pay for the research, products or service, and these benefits provide an incentive for Midsummer to select a broker-dealer based on its interest in receiving such products or services, rather than on clients' interest in receiving best execution.

Section 28(e) of the Securities Exchange Act of 1934, as amended, is a "safe harbor" that permits an investment manager to use commissions or "soft dollars" to obtain research and brokerage services that provide lawful and appropriate assistance in the investment decision-making process. Except for services that would be a Fund expense or as otherwise described below, Midsummer will limit the use of "soft dollars" to obtain research and brokerage services to services which constitute research and brokerage within the meaning of Section 28(e). Midsummer does not have and has historically never had any soft dollar accounts with its brokers. However, in the past year, research and related services furnished by brokers

included, among other things, written information and analyses concerning specific securities, companies or sectors; market, financial and economic studies and forecasts; financial publications; and statistical and pricing services, as well as discussions with research personnel.

In some instances, Midsummer could receive a product or service that may be used only partially for functions within Section 28(e). In such instances, Midsummer will make a good faith effort to determine the relative proportion of the product or service used to assist Midsummer in carrying out its investment decision-making responsibilities and the relative proportion used for administrative or other purposes outside Section 28(e). The proportion of the product or service attributable to assisting Midsummer in carrying out its investment decision-making responsibilities will be paid through brokerage commissions generated by client transactions and the proportion attributable to administrative or other purposes outside Section 28(e) will be paid for by Midsummer from its own resources.

Research and brokerage services obtained by the use of commissions arising from certain of its clients accounts' portfolio transactions may be used by Midsummer in its other investment activities and for other clients and thus clients may not necessarily, in any particular instance, be the direct or indirect beneficiary of the research or brokerage services provided.

Although Midsummer will make a good faith determination that the amount of commissions paid is reasonable in light of the products or services provided by a broker, commission rates are generally negotiable and thus, selecting brokers on the basis of considerations that are not limited to the applicable commission rates may result in higher transaction costs than would otherwise be obtainable. The receipt of such products or services and the determination of the appropriate allocation in the case of "mixed use" products or services create a potential conflict of interest between Midsummer and the clients.

In selecting brokers to execute transactions on behalf of the accounts of certain of its clients, Midsummer may place transactions with a broker or dealer that (i) provides Midsummer with the opportunity to participate in capital introduction events sponsored by the broker-dealer; or (ii) refers investors to a Fund, if otherwise consistent with seeking best execution. While Midsummer recognizes that it may have an incentive to favor broker-dealers that provide capital introduction services to Midsummer or otherwise refer prospective clients or Fund investors, Midsummer does not select broker-dealers in recognition of the opportunity to participate in such capital introduction events or the referral of investors.

Midsummer addresses the potential conflicts of interest in connection with its brokerage practices through its best execution review process. Midsummer's best execution review process includes an analysis of overall performance of broker-dealers in light of the amount of business directed to such broker-dealers.

When appropriate, Midsummer may, but is not required to, aggregate client orders to achieve more efficient execution or to provide for equitable treatment among accounts. Clients participating in aggregated trades will generally be allocated securities based on the average price achieved for such trades.

Midsummer will act in a fair and equitable manner in allocating investment and trading opportunities among the clients. In furtherance of the foregoing, Midsummer will consider participation in all appropriate opportunities within the purpose and scope of each client's objectives, and Midsummer will evaluate such factors as it considers relevant in determining whether a particular situation or strategy is suitable and feasible for each client (which factors may include the investment restrictions and objectives of each client, diversification, relative size of the client, available cash flow, the nature of the opportunity in the context of the client's other positions at the time, risk tolerance, liquidity requirements, required credit ratings, duration targets and/or constraints, existing asset allocation targets, minimum investment size, maximum investment size, tax implications, legal, contractual or regulatory constraints). Midsummer is not obligated to purchase or sell for each client every security which Midsummer or its employees may purchase or sell for other clients, if such a transaction or investment appears unsuitable, impractical or undesirable for the client; provided that Midsummer, to the extent within its control, will not favor itself in any way to a client's detriment and will act in a manner that over the long term is fair and equitable to all its clients. Notwithstanding the foregoing, it should be noted that Midsummer (for a variety of reasons) may allocate trades solely to one client and/or may allocate trades on a non-pro rata basis.

In the event that an investment opportunity is appropriate for more than one client but is not allocated between such clients on a pro rata basis, the Portfolio Manager, or a designee, will document the reasons why such opportunity was not allocated pro rata between the clients.

#### ITEM 13: REVIEW OF ACCOUNTS

Each client account is generally reviewed daily by Michel Amsalem, Alan Benaim, Joshua Thomas and Logan Sugarman, in light of trading activity, significant corporate developments and other activities which may dictate a change in portfolio positions. The Clients' accounts are reviewed periodically from the standpoint of the specific investment objective of the Funds and as particular situations may dictate.

Significant market events affecting the prices of one or more securities in client accounts may trigger reviews of client accounts on other than a periodic basis.

Investors in the Funds are provided with reports pursuant to the terms of each Fund's offering documents. These reports generally include a monthly performance report and statements of account, annual audited financial statements within 120 days after the financial year end, and annual tax reports.

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

As discussed in **Item 12 – Brokerage Practices** Midsummer may receive certain research or other products or services from broker-dealers through "soft-dollar" arrangements. These "soft-dollar" arrangements create an incentive for Midsummer to select or recommend broker-dealers based on Midsummer's interest in receiving the research or other products or services and may result in the selection of a broker-dealer on the basis of considerations that are not

limited to the lowest commission rates and may result in higher transaction costs than would otherwise be obtainable by Midsummer on behalf of its clients. Please see **Item 12 – Brokerage Practices** for further information on Midsummer’s “soft-dollar” practices, including Midsummer’s procedures for addressing conflicts of interest that arise from such practices.

Midsummer does not receive any economic benefit from any person who is not a client for providing investment advice or other advisory services to Midsummer’s clients, other than from broker-dealers in the form of soft dollars as described above.

The Adviser makes cash payments to third-party solicitors for referrals. When applicable, cash payments for client solicitations will be structured to comply fully with the requirements of Rule 206(4)-3 under the Advisers Act and related SEC staff interpretations.

#### ITEM 15: CUSTODY

This Item is not applicable.

#### ITEM 16: INVESTMENT DISCRETION

Midsummer provides investment advisory services on a discretionary basis to clients.

Prior to assuming full discretion in managing a client’s assets, Midsummer enters into an investment management agreement or other agreement that sets forth the scope of its discretion.

Midsummer has the authority to determine (i) the securities to be purchased and sold for the client account (subject to restrictions on its activities set forth in the applicable investment management agreement and any written investment guidelines) (ii) the amount of securities to be purchased or sold for the client account.

If it appears that a trade error has occurred, Midsummer will review the relevant facts and circumstances to determine an appropriate course of action. To the extent that trade errors and breaches of investment guidelines and restrictions occur, Midsummer's error correction procedure is to ensure that clients are treated fairly. Midsummer has discretion to resolve a particular error in any appropriate manner that is consistent with the above stated policy. As a general matter, a client account will be placed in the same position as if the trading error had not occurred. A written record of the error and its resolution will be prepared and retained.

#### ITEM 17: VOTING CLIENT SECURITIES

To the extent Midsummer has been delegated proxy voting authority on behalf of its clients, Midsummer complies with its Proxy Voting Policies and Procedures (the “Procedures”) that are designed to ensure that Midsummer votes proxies with respect to client securities in the best interests of its clients. In voting proxies, Midsummer will vote primarily with management as long as management’s interests are aligned with those of the Funds. Midsummer has established a committee to resolve all conflict of interest issues prior to voting. Midsummer

maintains copies of all proxy statements received, records of the votes cast, records of requests for proxy voting information, a concise summary of Midsummer's Procedures and any other document prepared or obtained that was material to Midsummer making a decision on how to vote.

Because Midsummer provides investment advice to commingled investment entities, individual investors in the Funds will not be able to direct Midsummer on how to cast a proxy vote.

Clients may obtain a copy of the Midsummer's Procedures and information about how Midsummer voted a client's proxies by contacting the Chief Compliance Officer at (212) 624-5030.

<b>ITEM 18: FINANCIAL INFORMATION</b>
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This Item is not applicable.

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