



## Mittleman Investment Management, LLC

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This brochure ("Brochure") provides information about the qualification and business practices of Mittleman Investment Management, LLC ("MIM" or the "Firm"). If you have any questions about the contents of this Brochure, please contact us at 516-686-6200, or via email at [compliance@mittlemanbrothers.com](mailto:compliance@mittlemanbrothers.com). 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. **MIM is an SEC-registered investment adviser. Registration as an investment adviser does not imply any level of skill or training.**

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

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

There have been no material changes in respect of the disclosures set forth in our brochure since May 4, 2016 (the date of our last amendment). Since the date of our last brochure, we have appointed a new Chief Compliance Officer and Chief Financial Officer, Stephen G. Bondi, effective as of July 5, 2016. This Brochure, dated July 15, 2016, contains certain clarifying changes relating to the disclosures set forth herein, in addition to a change to our assets under management and certain other non-material changes.

MIM's Brochure is available free of charge by contacting us at 516-686-6200, or via email at [compliance@mittlemanbrothers.com](mailto:compliance@mittlemanbrothers.com).

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## **ITEM 4      ADVISORY BUSINESS**

MIM is a limited liability company formed under the laws of the State of New York. When using the terms “we,” “us” and “our” in this Brochure, we are referring to MIM.

We began providing discretionary portfolio management and advisory services with a focus on domestic and foreign equity securities in 2005. MIM is a privately-held, wholly-owned subsidiary of Mittleman Brothers, LLC (“Mittleman”), a holding company domiciled in the State of New York. 100% of the voting interests of Mittleman are owned by its three Managing Partners: Christopher P. Mittleman, Managing Partner and Chief Investment Officer (“CIO”); Philip C. Mittleman, Chief Executive Officer & President and Managing Partner; and David J. Mittleman, Managing Partner and Chief Client Relationship Officer. Approximately 83% of the economic interest of Mittleman is owned by the three Managing Partners and the remaining approximate 17% of the non-voting economic interest in Mittleman is owned by a small group of our long-standing clients and/or investors in our Private Funds in addition to certain employees of MIM.

MIM serves as an investment adviser and provides asset management services to high-net-worth individuals and various types of institutional clients described below in “*Item 7 – Types of Clients.*” The Firm conducts research, makes investment decisions for client accounts, and generally selects the broker-dealers for the execution of client transactions. Additional details are provided below in “*Item 12 – Brokerage Discretion.*”

We managed approximately \$410 million in assets on a discretionary basis, and did not manage any assets on a non-discretionary basis, as of June 30, 2016.

### **A. SEPARATELY MANAGED ADVISORY ACCOUNTS**

Separately managed accounts (“SMAs”) are managed in accordance with the terms, conditions, guidelines, and limitations contained in Investment Advisory Agreements or Investment Management Agreements (collectively, “IMAs”) between the Firm and the corresponding client(s). In general, we do not tailor our asset management strategy to the individual requests of our clients. However, under certain circumstances, if acceptable investment guidelines are requested by an institutional investor, we may approve client guidelines and restrictions on a case-by-case basis.

### **B. PRIVATE FUNDS (AFFILIATED WITH AND MANAGED BY MIM)**

MIM has four affiliated private investment funds: (1) Precog Capital Partners, L.P. (“Precog”), (2) Mittleman Brothers Master Fund, Ltd. (the “Master Fund”), and the Master Fund’s two feeder funds (the “Feeder Funds”), (3) Mittleman Brothers Fund, LP, (the “Onshore Feeder”), and (4) Mittleman Brothers Offshore Fund, Ltd. (the “Offshore Feeder” and collectively with Precog, the Master Fund and the Onshore Feeder, the “Private Funds”). We manage the Private Funds in accordance with the objectives and investment strategies described in such Private Funds’ applicable offering documents. The terms, conditions, risks, and fees pertaining to an investment in one of the Private Funds, are outlined in the corresponding Private Placement Memoranda. Our clients are under no obligation to consider, or make, an investment in the Private Funds. The Master Fund and Offshore Feeder are controlled by a Board of Directors, which is comprised of the owners of Mittleman, who also serve as executive officers of MIM. See additional details regarding conflicts of interest below in “*Item 8 - Methods of Analysis, Investment Strategies & Risk of Loss*” and “*Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.*”

Investing in private investment funds involves various risk factors, including but not limited to, the potential for complete loss of principal, liquidity constraints, and a lack of transparency. Unlike liquid investments that a client may maintain, the Private Funds do not provide daily liquidity or pricing. Each prospective investor interested in investing in a Private Fund is required to complete a Subscription Agreement in which the prospective investor attests to whether or not such prospective investor meets the qualifications to invest in the Private Fund and further acknowledges and accepts the various risk factors associated with such an investment.

MIM serves as the investment manager to the Private Funds and provides investment advice thereto in accordance with the investment objectives, policies, and guidelines set forth in the respective offering documents, and not in accordance with the individual needs or objectives of any particular investor therein. Investors are not permitted to impose restrictions or limitations. However, MIM may enter into side letter agreements with one or more investors that may alter, modify or change the terms of the interest(s) held by the investor(s). Additionally, certain early investors in the Private Funds have been issued one or more separate classes of “Founders’ Shares”, which provide certain preferable investment terms as compared with the interests in such Private Funds that are currently being offered.

Although the Private Funds may be deemed advisory account clients of MIM, throughout this Brochure, any discussions of the Private Funds are separated from our SMA clients, except where such separation is unnecessary because the Private Funds and our SMA clients are treated in the same manner.

### **C. CONFLICT OF INTEREST**

Since MIM and our affiliates can earn compensation from the Private Funds that may exceed the fee that we would earn under our standard asset-based and performance-based fees described below in “**Item 5 – Fees and Compensation**,” the recommendation that a client become an investor in any of the Private Funds presents a potential conflict of interest. No client is under an obligation to invest in any of the Private Funds.

## **ITEM 5 FEES AND COMPENSATION**

Generally, MIM is compensated for investment advisory services by clients based upon the value of the assets in their SMA and by Private Funds based upon the value of the net assets in the Private Fund (without double counting assets in the Feeder Funds and Master Fund). We may also receive compensation from performance-based fees in accordance with Rule 205-3 of the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder (“Advisers Act”).

MIM acts as investment adviser to the Private Funds and SMAs. We receive fees for our services based on a percentage of the value of the assets in the clients’ account(s). These are referred to as “asset-based fees.” We also receive performance fees or allocations for our investment advisory services based on performance. These are referred to as “performance-based fees.” Asset-based fees and performance-based fees payable by clients are described in each Private Fund’s offering memorandum, which is provided to investors in such funds, and in each SMA account holder’s IMA. A performance-based fee may create an incentive to make riskier, more speculative investments than would be the case under a solely asset-based fee arrangement. However, regardless of the fee arrangements, when we manage accounts according to the same investment strategy, we expect that those accounts will have the same investment opportunities and be invested in the same securities with similar position weighting. See “**Item 6 - Performance-Based Fees and Side-by-Side Management**” and “**Item 12 - Brokerage Practices**.”

### **A. SEPARATELY MANAGED ACCOUNTS (“SMAS”)**

SMA clients are billed an annual asset-based management fee, which may be up to 2.0% of the market value of the assets managed by the Firm. We may also receive a performance-based fee, which may be up to 20% of cumulative net positive annual performance in excess of the S&P 500 Total Return Index for SMA relationships under \$10 million dollars. MIM has the ability to waive performance-based fees or agree to other financial arrangements. SMA relationships of \$10 million dollars and above are not subject to performance-based fees. The minimum asset level required for new SMA relationships is \$5,000,000. However, in our sole discretion, we may

charge a lesser investment management fee, and reduce and/or waive our minimum asset requirement, based upon certain criteria, including but not limited to, anticipated future additional assets inflows, the dollar amount of assets to be managed, account relationships, account composition, and individual negotiations with a client. As of the date of this filing, no client pays less than our 1.5% annual management fee.

Generally, IMAs executed between MIM and our clients, in addition to custodial agreements, authorize the custodian to debit our management fees directly from the clients' custodial account(s) in compliance with applicable regulations. In certain cases, based upon the specific request of a client, we bill the client directly, in which case, payment is due upon receipt. Asset-based management fees are billed quarterly, in advance, and are calculated on the last business day of the prior quarter.

IMAs between MIM and our client(s) will remain in effect until terminated in writing, by either party, as set forth in the terms of the applicable agreement. Upon termination, MIM will refund the pro-rated portion of the advanced, asset-based management fee(s) paid. Refunded fees are calculated based upon the number of calendar days remaining in the billing quarter.

Unless the client directs otherwise or the circumstances of an individual require, MIM recommends that Pershing, LLC ("Pershing") serve as the custodian for SMAs, although we may recommend one or more other broker-dealers/custodians in the future. Broker-dealers such as Pershing charge brokerage commissions and transaction fees for effecting certain securities transactions (i.e., transaction fees are charged for certain no-load mutual funds, commissions are charged for individual equity and fixed income securities transactions). Additionally, we have entered, or may enter, into arrangements for prime brokerage clearing services with other broker-dealers to effect client transactions in individual equity and/or fixed-income securities and these broker-dealers may effect certain client transactions through other broker-dealers. In these instances, the client will generally incur both the transaction fee charged by the executing broker-dealer and a "trade-away" fee charged by the prime broker. See "**Item 12 - Brokerage Practices.**"

Neither MIM, its affiliates, nor any of their supervised persons accept compensation from the purchase or sale of securities or other investment products.

## **B. PRIVATE FUNDS**

### *Precog Capital Partners, L.P.*

MIM receives compensation from Precog in the form of a 2% annual management fee and a performance allocation equal to 20% of the net realized and unrealized appreciation in the value of each investor's capital account, made only with respect to the appreciation in the value of the capital account in excess of 10% annually, a "hurdle rate" that resets at the beginning of each year, and is subject to a high water mark.

Management fees are payable by investors quarterly, in advance, as of the beginning of each calendar quarter and are deducted directly from the investor's capital account. Management fees payable by any investor for any incomplete or partial fiscal quarter will be prorated over the applicable period of such fiscal quarter. The performance fee or allocation, to the extent applicable, will be allocated as of the close of business on, the last day of each calendar year, the date of any withdrawal of capital by any investor at any time, or the date of winding-up and termination of Precog. Management fees shall be refunded proportionately as of the date of withdrawal with respect to any investor permitted or required to withdraw as of any time other than the end of a performance period.

In addition to management fees and performance allocation (as applicable), unless otherwise determined by MIM Precog bears (and the limited partners therein will bear their pro rata share of) the following costs and expenses:

(i) all operating expenses, including, but not limited to, cost of purchasing or disposing investments (e.g. brokerage commissions), office facilities and overhead, administrative services, internet, dues and subscriptions, telephone, office supplies, postage, accounting, filing fees, registration fees and similar fees, legal fees, data processing, insurance, travel and entertainment, and investment research services, (ii) organizational expenses, tax preparation fees, auditors' fees and extraordinary expenses as well as regulatory filing fees, investment banking fees, consulting fees, travel expenses, proxy solicitation expenses and all investment related expenses incurred by it, including commissions, custodial fees, clearing fees, stock borrow fees and similar expenses; (iii) taxes and other governmental charges; (iv) all expenses (including reasonable attorneys' fees) incurred in connection with any threatened, pending or anticipated litigation, Internal Revenue Service examination or audit, or similar audit or examination by any state or local taxing authority, or other proceeding; and (v) all other expenses and liabilities incurred in connection with or arising out of the business of Precog, including legal fees, auditing and accounting expenses and other professional fees and extraordinary or non-recurring charges. All of the aforementioned expenses, if billed, would be billed separate and apart from the Management Fee. Precog's General Partner shall be entitled to obtain reimbursement from Precog for all such costs and expenses borne by it or its affiliates on behalf of Precog. While prior to May 1, 2016, Precog paid MIM, or otherwise reimbursed MIM for, a portion of MIM's office facility fees, which amounted to approximately \$2,500 on a monthly basis (the "Office Facilities Fees Portion") and was in addition to management fees paid to MIM by Precog, and while MIM is still entitled to such Office Facilities Fees Portion pursuant to Precog's applicable governing and operational documents, effective May 1, 2016, MIM has waived its right to receive such Office Facilities Fees Portion. Precog also generally will pay any other fees and expenses of Precog deemed appropriate by Precog's General Partner. Precog will also be charged its pro rata share of fees and expenses if such fees and expenses are incurred by MIM or an affiliate thereof as part of an overall investment program that includes other client accounts. To the extent that any such fees or expenses are solely attributable to one of the Private Funds, such Private Fund will bear the entire portion of such fees and expenses.

*Mittleman Brothers Master Fund, Ltd. and the Feeder Funds*

On behalf of the Feeder Funds, MIM receives compensation from the Master Fund in the form of a 1.5% annual asset-based management fee. As the holder of certain Allocation Class Shares, we are also entitled to receive a performance allocation equal to 20% of cumulative net positive annual performance in excess of the S&P 500 Total Return Index for all underlying feeder fund investors with investments below \$10 million dollars. Investments of, or those attributable to relationships of, \$10 million dollars or above are not subject to the performance allocation. Certain Limited Partners/Shareholders, as applicable, may be assessed a higher/lower management fee or no management fee with the consent of the Board of Directors of the Offshore Feeder or General Partner of the Onshore Feeder, as applicable, and MIM; though as of the date of this filing, no investor in the Feeder Funds pays less than the 1.5% annual management fee. The performance allocation, to the extent applicable, will be calculated on each of the following dates: (i) as of the end of each fiscal year and (ii) the effective date of a Limited Partner/Shareholder's withdrawal/redemption in respect of the applicable underlying feeder fund.

Management fees are payable by the Master Fund on behalf of the Feeder Funds and their investors quarterly, in advance, as of the beginning of each calendar quarter. Notwithstanding anything to the contrary in the offering documents, for the purpose of calculating management fees, the NAV of the Master Fund and the Feeder Funds on behalf of their investors shall not be reduced by the amount of any performance allocation that has not yet become distributable. Management fees are refunded proportionately as of the date of withdrawal with respect to any investor permitted or required to withdraw as of any time other than the end of a performance period.



In addition to management fees and performance allocations (as applicable), the Master Fund bears (and the Feeder Funds, and, indirectly, the underlying shareholders and limited partners of the Feeder Funds, bear their pro rata portions of) the following costs and expenses: (i) organizational and offering expenses (including travel expenses), which were reimbursed to MIM, and which are being amortized over a five year period from the Fund's launch date, and (ii) operating and other expenses, including, without limitation, expenses incurred in order to hold, protect, purchase, sell, deliver, receive and value assets and expenses otherwise related to or arising in connection with any assets or liabilities, brokerage commissions, borrowing charges, other indebtedness, and bank and service fees, fees of MIM, any administrator and prime broker, custodians and other service providers, all external legal fees and expenses, fees and expenses for accounting services (including an annual or more frequent audit) and for tax preparation and consulting services, expenses incurred in connection with the preparation of any reports and any additional programming or research costs (including the costs of Bloomberg, live market feeds, line charges, data storage and backup, pricing and valuation data and services, on-line research and research-related travel), director and officer, errors and omissions and fidelity bond insurance premiums related to or for the benefit of the funds or MIM (including any allocable portion of such premiums incurred by an affiliate of MIM), stamp duty and all other costs and expenses incurred for the actual or proposed acquisition or disposition of investments, including securities, all withholding or other taxes payable, expenses involved in inspecting, evaluating and monitoring investments, expenses incurred in connection with the organization, administration and maintenance of, and legal compliance by, such fund, fees and expenses with respect to any member of the Board of Directors who is independent of MIM, payment of liabilities for indemnification, other professional fees on behalf of such fund, travel expenses incurred in connection with investments, whether consummated or not (including, without limitation, investment-related travel expenses of consultants and experts), in the event that there is no administrator for a period of time, and only during such period of time, all direct costs of administration services provided by MIM including, without limitation, the cost of facilities, equipment and personnel necessary to discharge such duties, all costs, fees and expenses in connection with liquidation, and all other costs and expenses as set forth in the applicable Private Placement Memorandum of such funds. If any such operating costs are incurred by MIM on behalf of one or more of the funds and any other account managed by MIM, such costs will be borne pro rata by such accounts based on the amounts invested by such funds and other accounts at the time such costs are incurred or in such other equitable manner as MIM determines. The Master Fund and the Feeder Funds as investors in the Master Fund also will be charged their pro rata share of fees and expenses if such fees and expenses are incurred by MIM or an affiliate thereof as part of an overall investment program that includes other client accounts.

All management expenses incurred by MIM during each fiscal year are charged to and paid by MIM, and not by the Master Fund or any underlying feeder fund thereof. Such management expenses include, but are not limited to MIM's office rent, utilities (other than line charges), furniture and fixtures, office supplies, secretarial services, internal administration services, printing, stationery, premiums for standard employee insurance, payroll taxes, data processing expenses and usual and regular legal fees and other expenses which are not payable by the funds as described above.

The Private Funds are responsible for, and pay all their own brokerage and custodial fees and expenses. See "***Item 12 - Brokerage Practices.***"

In certain instances, the Private Funds and their investors may bear expenses that may also benefit MIM or our other SMA clients. For more information regarding the fees charged by, and the expenses incurred by, the Private Funds, please refer to the applicable fund offering documents.



## **ITEM 6**      **PERFORMANCE-BASED FEES & SIDE-BY-SIDE MANAGEMENT**

MIM receives performance-based fees and allocations, as applicable, from both SMA clients and Private Fund investors on a fully disclosed written basis.

Performance-based fees and allocations could motivate MIM to make investment decisions that are riskier or more speculative than would be the case if these arrangements were not in place. In addition, because performance-based fees and allocations with respect to the Private Funds may be calculated on a basis that includes both realized and unrealized appreciation in portfolios based upon values that in certain circumstances may be assigned by MIM, the Firm faces a conflict of interest in valuing those portfolios. Individual employees of the Firm and its affiliates, who are compensated to some extent based upon investment profits for which they are responsible, face the same potential conflict. MIM addresses these conflicts through: disclosure in the applicable governing account and/or offering documents and/or this Brochure, imposing a Code of Ethics and policies and procedures governing the conduct of our Supervised Persons and Access Persons (collectively “Associates”), and through internal policies and procedures which include a Trade Allocation Policy.

Since MIM and our Associates manage client accounts that charge both asset-based fees and performance-based fees and allocations, as applicable, the potential exists for a conflict of interest. Both MIM and our Supervised Persons have an incentive to favor and devote more time and effort to managing investments where we would receive performance-based fees and allocations or to favor accounts where we would receive higher performance-based fees or allocations or higher management or related fees over accounts in respect of which we would receive lower or no performance-based fees or allocations or management or similar fees. We address this conflict through disclosure in the applicable governing account and/or offering documents and/or this Brochure, imposing a Code of Ethics and policies and procedures governing the conduct of our Associates and through internal policies and procedures which include a Trade Allocation Policy.

We may simultaneously manage the Private Funds and SMAs according to the same or a similar investment strategy (i.e., side-by-side management). The simultaneous management of these different investment products creates certain conflicts of interest, as the fees for the management of certain types of products may be higher than others. When managing the assets of client accounts, we have an affirmative duty to treat all such client accounts fairly and equitably over time, and we have adopted policies and procedures that are designed and implemented to satisfy this duty. Allocations of investment opportunities are not necessarily made on a pro rata basis as our clients may pursue distinct investment strategies. Rather, we make independent allocation decisions with respect to each client. Allocations of investment opportunities among the clients are based on a variety of considerations, including: potentially different or conflicting investment objectives and strategies, the life cycle of various portfolios, risk parameters (including, without limitation, the use of leverage), cash and liquidity availability (e.g., allocation size may vary depending on a client’s cash availability, the other liquidity obligations of the applicable client or commitments made to other investments), follow-on investments (e.g., such investments may be allocated in accordance with the allocation of the original investment), investment time frames, and legal, tax, and regulatory considerations.

## **ITEM 7**      **TYPES OF CLIENTS**

- A. SMAS -** Generally, our clients include high-net-worth individuals and various institutional clients including, but not limited to corporations, endowments (public and private), ERISA plans, foundations, other investment advisers, small businesses, and pooled investment vehicles. In the future, MIM may elect to provide investment advisory and asset management services to other types of clients. Beginning on October 1, 2014, MIM required a minimum asset level of \$5,000,000 to open new SMA relationships, although we have the discretion to accept investable assets below \$5,000,000.

## **B. PRIVATE FUNDS**

The Private Funds are not registered under the Investment Company Act of 1940, as amended, in reliance on the exemptions provided in Sections 3(c)(1) and 3(c)(7) thereunder, as applicable. Additionally, the interests or shares (whichever applies) are not registered under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the “Securities Act”) pursuant to an exemption from registration under Regulation D of the Securities Act.

**Precog** – The minimum initial capital contribution for an investment in Precog is \$500,000, subject to waiver at MIM’s discretion. To invest in Precog, investors must be, among other things, “accredited investors” as defined in Rule 501(a) of Regulation D under the Securities Act and “qualified clients” as defined in Rule 205-3 under the Advisers Act, as amended.

**Onshore Feeder** – The minimum initial capital contribution for an investment in the Onshore Feeder is \$1,000,000, subject to waiver at MIM’s discretion. Capital contributions of lesser amounts may be accepted. To invest in the, Onshore Feeder, investors must be, among other things, “accredited investors” as defined in Rule 501(a) of Regulation D under the Securities Act and “qualified clients” as defined in Rule 205-3 under the Advisers Act.

**Offshore Feeder** – The minimum initial capital contribution required for an investor in the Offshore Feeder is \$1,000,000. Nevertheless, capital contributions of lesser amounts may be accepted at MIM’s discretion. To invest in the Offshore Feeder, investors must be, among other things, “accredited investors” as defined in Rule 501(a) of Regulation D under the Securities Act and “qualified clients” as defined in Rule 205-3 under the Advisers Act.

## **ITEM 8 METHODS OF ANALYSIS, INVESTMENT STRATEGIES & RISK OF LOSS**

MIM pursues superior returns through long-term investments in what it deems to be extremely undervalued securities, while maintaining a focus on limiting risk. The Firm seeks to mitigate risk, which we define as the probability of the long-term loss of capital, by investing in businesses that we believe are proven franchises with durable economic advantages, evidenced by a well-established track record of substantial free cash flow generation over complete business cycles, and only when the very low valuation at which the investment is made provides a significant “margin of safety.” MIM employs a concentrated, long-term investment approach, typically holding between 10 and 20 securities. Investments are made globally, with foreign holdings historically representing an average of 35% of our portfolios, although this percentage could be higher or lower, depending on the investment opportunities we deem attractive. Unconstrained by capitalization parameters, MIM tends to gravitate towards smaller market capitalization companies where we have identified the greatest disparities between market price and our estimate of fair value. MIM buys stock in large capitalization companies as well, but only when we believe those companies are priced attractively enough to warrant inclusion in our portfolios. The Firm believes that our ability to go wherever the best risk/reward ratios appear to be available, in companies small and large, domestic and international, gives MIM an advantage over other investment managers, who we believe often operate within a more constrained investment universe.

Precog offers its limited partners investment strategies that are similar to those employed by MIM for our SMA clients, but more concentrated and thus potentially more volatile than the average portfolio that the Firm would administer in respect of most of our SMA clients. MIM may also employ one or more techniques to leverage its assets (e.g., margin transactions).

MIM has full discretion in respect of the types of securities in which the Private Funds invest.

MIM generally utilizes the fundamental method of security analysis, performing analyses on historical and present data, with the goal of making financial forecasts.

MIM may utilize the following investment strategies when implementing investment advice given to our clients:

- Long-term purchases (securities held at least one year),
- Short-term purchases (securities sold within one year),
- Trading (securities sold within 30 days), and
- Margin transactions (use of borrowed assets to purchase financial instruments).

For a more detailed description of the investment strategies applicable to each of the Private Funds, please refer to the offering documents of the applicable Private Fund.

Different types of investments involve varying degrees of risk that clients should be prepared to bear, and it should not be assumed that future performance of any specific investment or investment strategy (including the investments and/or investment strategies recommended or undertaken by MIM) will be profitable or equal any specific performance level(s).

There can be no assurance that clients or investors will achieve their investment objectives or that investments made by MIM will be successful. Our investment strategies involve a substantial degree of risk, including the complete loss of capital. Nothing in this Brochure is intended to imply, and no one is or will be authorized to represent, that MIM's investment strategies are either low risk or risk free. The Firm's investment strategies are appropriate only for sophisticated persons who fully understand and are capable of bearing the risks of our investment strategy. The various risks outlined below are not the only risks associated with our investment strategies and processes and may not necessarily apply to each client or investor. With respect to the Private Funds, the following risks are qualified in their entirety by the risks set forth in the applicable offering documents.

## **KEY RISK AREAS ASSOCIATED WITH MIM'S INVESTMENT PROCESSES AND STRATEGIES**

### **General Economic and Market Conditions**

MIM's success in investment activities will be affected by general economic and market conditions, such as changes in interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of clients' investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of our clients' investments. Volatility and/or illiquidity could impair the profitability of our clients' assets or result in losses. Our clients could incur material losses even if we react quickly to difficult market conditions, and there is no guarantee that clients will be protected from suffering material losses and other adverse effects from broad and rapid changes in market conditions in the future. Clients should realize that markets for the financial instruments in which we seek to invest can, at times, correlate strongly with each other or in ways that are difficult to predict. Even a well-analyzed approach may not protect our clients from significant losses under certain market conditions.

### **Market Analysis Limitations**

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

### Data Sources

MIM subscribes to external data sources used to screen for compliance with investment restrictions and to assist in making investment decisions. We also use external software and systems to analyze performance attribution and, in various situations, for trading purposes, to assist in investment decision making and for investment research. As a result, if information that MIM receives from a third party data source is incorrect, the desired result(s) may not be achieved. Although the third party data sources are generally reliable, we typically receive these services on an “as is” basis and cannot guarantee that the data received from these sources is accurate.

### Risks Associated with MIM’s Primary Investment Strategies

Our primary investment strategies - Long Term Purchases, Short Term Purchases, and Trading - are fundamental investment strategies. However, every investment strategy has its own inherent risks and limitations. For example, longer term investment strategies require a longer investment time period to allow for the strategy to potentially develop. Shorter term investment strategies require a shorter investment time period to potentially develop but, as a result of more frequent trading, may incur higher transactional costs when compared to a longer term investment strategy. Trading, an investment strategy that requires the purchase and sale of securities within a 30 day investment time period, involves a very short investment time period, but will incur higher transaction costs when compared to a short term investment strategy and substantially higher transaction costs than a longer term investment strategy. We may employ varying combinations of investment strategies detailed above, but Long-Term Purchases (and associated sales) are utilized most often.

### Margin Risks

MIM may also implement the use of leverage through margin loans in certain client accounts that have authorized us to use margin. Margin entails a higher level of risk. A margin transaction occurs when an investor uses borrowed funds to purchase financial instruments, or withdraws funds from a previously unleveraged investment account in excess of actual, non-margin cash available. The investor obtains the borrowed funds from the custodian brokerage firm by using other securities in the account as collateral for the borrowed sum. The effect of utilizing margin is to magnify any gains or losses in the portfolio holdings in relation to the net equity value of the account, or to provide for liquidity needs of the client. Our use of leverage in an attempt to enhance account returns is extremely limited, and on the rare occasions when margin is used, it is primarily employed on a transitory basis to provide funds to satisfy client withdrawal demands that would otherwise result in the premature liquidation of longer term investments.

### Potential for Fraud

In spite of our desire to invest in reputable and trustworthy companies, there is a risk that MIM may invest clients’ assets in an issuer that engages in fraud. As recent cases regarding Ponzi schemes have shown instances of fraud can be particularly difficult to detect and prevent. To the extent that MIM invests in a company that engages in fraud, a client or an investor could lose all or a substantial portion of its investment and such fraud could have a materially adverse effect on the client’s financial condition and results of operations.

### Investment and Trading Risks Generally

All investments risk the loss of capital. No guarantee or representation is made that MIM’s investment strategies will be successful. Our investment strategies involve, without limitation, risks associated with limited diversification, equity risks, interest rates, currencies, illiquidity, volatility, tracking risks in hedged positions, security borrowing risks in short sales, credit deterioration or default risks, systems risks and other risks inherent in such activities. Certain investment techniques may, in certain circumstances, substantially increase the impact of adverse market movements to which clients’ investments may be subject. In addition, our clients’ investments may be materially affected by conditions in the financial markets and overall economic conditions occurring globally or in markets where MIM invests clients’ assets.

The Firm’s methods of minimizing such risks may not accurately predict future risk exposures. Risk management techniques are based, in part, on the observation of historical market behavior, which may not predict market divergences

that are larger than historical indicators. Also, information used to manage risks may not be accurate, complete or current, and such information may be misinterpreted.

### Equity Risks

As noted above, MIM invests primarily in equity and equity-linked securities. The value of these securities generally varies with the performance of the issuer and movements in the broader equity markets. As a result, clients may suffer losses if the Firm invests in equity securities of issuers whose performance diverges from its expectations or if equity markets generally move in a single direction and MIM has not hedged against such a general move. Our clients also may be exposed to risks that issuers will not fulfill contractual obligations such as, in the case of convertible securities or private placements, delivering marketable common stock upon conversions of convertible securities and registering restricted securities for public resale. In some cases, the issuers of equity securities may be highly leveraged or subject to other risks such as limited product lines, markets or financial resources. Some of the small and mid-cap issuers of equity securities in which the Firm invests may be more vulnerable than larger capitalization issuers to adverse business or market developments, have limited markets or financial resources and lack experienced management. In addition, some equity securities for micro-cap and small-cap companies could have substantially less liquidity. MIM may acquire a significant portion of the outstanding public float of a particular company, creating additional illiquidity, especially in the event that we wish to entirely dispose of, or reduce our position in such company by selling shares into the market over a relatively short period of time. Due to perceived or actual illiquidity or investor concerns regarding leveraged capitalization, certain equity securities often trade at significant discounts to otherwise comparable investments, or are not readily tradable. Such securities generally do not produce current income for clients and may also be speculative. In addition, actual and perceived accounting irregularities may cause dramatic price declines in the equity securities of companies reporting such irregularities or that are rumored to be subject to accounting irregularities.

### Relative Value and Directional Investments

MIM's investment strategies depend on our ability to accurately predict future price movements of securities or, the convergence of market prices toward the theoretical values expected by it. Any such attempts to predict future price movements are inherently risky and inaccurate. Often, price movements will be determined by unanticipated factors, and our analysis of known factors may prove incorrect, in each case potentially leading to substantial losses for clients.

### Market Capitalization Risks

MIM invests in the securities of companies with market capitalizations ("cap(s)") ranging from small to large. While we believe such securities provide significant potential for appreciation, securities of certain companies, particularly small-cap companies, involve higher risks in some respects than investments in large-cap securities. For example, prices of small-cap and mid-cap securities are often more volatile than prices of large-cap securities, and the risk of bankruptcy or insolvency of small/mid-cap companies (which could result in client losses) is higher than for large-cap or "blue-chip" companies. In addition, due to thin trading in the securities of some small-cap companies, an investment in those companies may be illiquid.

### Short Selling

MIM's clients' investment portfolios do not currently, but could in the future, include short positions, unless the client has specifically restricted the use of short-selling in an IMA. Short selling involves selling securities which may or may not be owned and borrowing the same securities for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from a decline in the price of a particular security to the extent that such decline exceeds the transaction costs and the costs of borrowing the securities. In the event the Firm elects to engage in short selling, the extent to which the Firm engages in short sales would depend upon its investment strategy and opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to clients of buying those securities to cover the short position.



There can be no assurance that we would be able to maintain the ability to borrow securities sold short. In such cases, clients can be “bought in” (*i.e.*, forced to repurchase securities in the open market to return to the lender).

There also can be no assurance that the security necessary to cover a short position would be available for purchase at or near prices quoted in the market. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss.

#### Market Volatility

The prices of financial instruments in which MIM invests may be volatile. Price movements of the financial instruments in which MIM invests are influenced by, among other things, interest rates, changing supply and demand relationships, and trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. Our clients are subject to the risk of failure of any of the exchanges on which their positions trade or of their clearing houses. In addition, governments from time-to-time may intervene in certain markets, both directly and by regulation, particularly in currencies, futures and options. Such intervention is often intended to directly influence prices and may, together with other factors, cause some or all of these markets to move rapidly in the same direction. The effect of such intervention is often heightened by a group of governments acting in concert.

#### Investments in Unlisted Securities

MIM may invest in unlisted securities of companies. Because of the absence of any trading market for these investments, it may take longer to liquidate, or it may not be possible to liquidate, these positions than would be the case for publicly-traded securities. Although these securities may be resold in privately negotiated transactions, the prices realized on these sales could be less than those originally paid by clients. Further, companies whose securities are not publicly-traded may not be subject to public disclosure and other investor protection requirements applicable to publicly-traded securities. In the event there is no trading market for these investments, MIM values such investments in accordance with the Firm’s Valuation Policy.

#### Convertible Securities

MIM may invest in convertible securities. Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted into or exchanged for a specified amount of common stock of the same or different issuer within a particular period of time at a specified price or formula.

The value of a convertible security is a function of its “investment value” (determined by its yield in comparison with the yields of other securities of comparable maturity and quality that do not have a conversion privilege) and its “conversion value” (the security’s worth, at market value, if converted into the underlying common stock). The investment value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors may also have an effect on the convertible security’s investment value. The conversion value of a convertible security is determined by the market price of the underlying common stock. If the conversion value is low relative to the investment value, the price of the convertible security is governed principally by its investment value. To the extent the market price of the underlying common stock approaches or exceeds the conversion price, the price of the convertible security will be increasingly influenced by its conversion value. A convertible security generally will sell at a premium over its conversion value by the extent to which investors place value on the right to acquire the underlying common stock while holding a fixed-income security. Generally, the amount of the premium decreases as the convertible security approaches maturity.

A convertible security may be subject to redemption, at the option of the issuer, based on a price established in the convertible security’s governing instrument. If a convertible security held by MIM is called for redemption, we will be

required to permit the issuer to redeem the security, convert it into the underlying common stock or sell it to a third party. Any of these actions could have an adverse effect on MIM's ability to achieve our investment objective.

#### *Concentration of Investments and Risk Management Failures*

MIM typically invests client funds in a limited number of small-cap, mid-cap and large-cap issuers and generally has no formal guidelines relating to the diversification of clients' assets related to market capitalization. As a result, clients' portfolios may be concentrated in a limited number of issuers, types of financial instruments, industries, sectors, strategies, countries, or geographic regions, and any such concentration of risk may increase losses suffered by clients. This limited diversity could expose clients to losses disproportionate to market movements in general. Even when we attempt to control such risks, risks associated with different assets may be correlated in unexpected ways, with the result that clients face concentrated exposure to certain risks. In addition, many other investment managers pursue similar strategies which create the risk that many funds would be forced to liquidate positions at the same time thus reducing liquidity, increasing volatility and exacerbating losses. Although we attempt to identify, monitor and manage significant risks, these efforts cannot take all risks into account and there is no assurance that these efforts will be effective. Many risk management techniques are based upon observed historical market behavior, but future market behavior may be entirely different. Any inadequacy or failure in the Firm's risk management efforts could result in material losses for our clients.

#### *Non-U.S. Investments*

MIM may invest in financial instruments of non-U.S. corporations and governments. Investing in the financial instruments of companies (and, from time-to-time, governments) outside of the U.S. involves certain considerations not usually associated with investing in financial instruments of U.S. companies or the U.S. government, including: political and economic considerations, such as greater risks of expropriation, nationalization, confiscatory taxation, imposition of withholding, or other taxes on, interest, dividends, capital gains or other income limitations on the removal of assets and general social, political and economic instability, the relatively small size of the securities markets in such countries, and the low volume of trading, resulting in potential lack of liquidity, and in price volatility, the evolving and unsophisticated laws and regulations applicable to the securities and financial services industries of certain countries, fluctuations in the rate of exchange between currencies and costs associated with currency conversion, and certain government policies that may restrict clients' investment opportunities. In addition, accounting and financial reporting standards that prevail outside of the U.S. generally are not as high as U.S. standards and, consequently, less information is typically available concerning companies located outside of the U.S. than for those located in the U.S. As a result, we may be unable to structure transactions that achieve the intended results or to mitigate all risks associated with non-U.S. markets. Finally, it could be difficult to enforce clients' rights in non-U.S. markets.

#### *Corporate Debt*

MIM may invest in bonds, notes and debentures issued by corporations. These instruments may pay fixed, variable or floating rates of interest, and may include zero coupon obligations. The Firm may also invest in corporate debt instruments that have experienced or are contemplated to experience ratings downgrades, or other instruments that have low quality ratings or are unrated. Credit ratings evaluate the safety of the principal and interest payments, not the market value risk of lower-rated instruments, but do not reflect macroeconomic or systemic risk, which includes the risk of increased illiquidity in the credit markets. It is possible that rating agencies might not change the rating of a particular issue on a timely basis and, as a result, outstanding ratings may not reflect the issuer's current credit standing. Conversely, rating agencies may re-rate an instrument which could cause substantial loss as the ratings are downgraded. MIM's clients' investments may experience significant credit rating volatility. In addition, clients may be paid interest-in-kind in connection with investments in corporate debt and related financial instruments (e.g., the principal owed to clients in connection with a debt investment may be increased by the amount of interest due on such debt investment). Such investments may experience greater market value volatility than debt obligations that provide for regular payments of interest in cash and, in the event of a default, clients may experience substantial losses.



### Competition

The markets in which MIM participates are extremely competitive. There is no assurance that our ability to identify or successfully pursue attractive investment opportunities in this environment will continue. Clients should expect that their investments will involve substantially more company-specific and market risk and associated volatility in the future than in the past. We compete with firms that have greater financial resources, more favorable financing arrangements, larger research staffs and more securities traders than are available to MIM.

### Less Liquid Instruments

Under certain market conditions, such as during volatile markets or when trading in an instrument or market is otherwise impaired, the liquidity of clients' portfolio positions may be reduced. In addition, our clients may hold large positions with respect to a specific type of instrument, further reducing liquidity. During such times, the Firm may be unable to dispose of certain assets, which would adversely affect our ability to rebalance clients' portfolio(s) or accommodate withdrawal requests. Such circumstances could force MIM to dispose of clients' assets at reduced prices, thereby adversely affecting performance. If there are other market participants seeking to dispose of similar assets at the same time, we may be unable to sell such assets or prevent losses relating to such assets. Furthermore, if clients incur substantial trading losses, the need for liquidity could rise sharply while our access to liquidity could be impaired. In conjunction with a market downturn, clients' counterparties could incur losses of their own, thereby weakening their financial condition and increasing clients' credit risk to them.

MIM may also invest in securities that are subject to legal or other restrictions on transfer. We may be contractually prohibited from disposing of such investments for a specified period of time. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale. The market prices, if any, for such investments tend to be volatile and may not be readily ascertainable and we may not be able to sell them when we desire to do so or to realize what we perceive to be the fair value in the event of a sale.

### Default and Credit Risks

MIM may invest in debt obligations of both government and corporate issuers. These financial instruments involve the risk that the obligor either cannot or will not fulfill its obligations under the terms of the financial instrument. The Firm's clients also assume the credit risk to their brokers, custodians and other counterparties in connection with brokerage arrangements, derivatives and other contractual relationships. In evaluating credit risk, MIM is often dependent upon information provided by the obligor, which may be materially inaccurate or fraudulent. Any actual default, or any circumstances that increase the possibility of default, could have a materially adverse effect on our clients.

### Interest Rate Risks

MIM's investment strategies may include investments in debt securities of government and corporate issuers. These and various other assets, as well as clients' borrowings, subject clients to risks associated with movements in interest rates. For example, MIM may be required to manage both curve risk, which is the risk that the slope of the yield curve will vary from the slope assumed in MIM's strategy, and credit spread risk, which is the risk that the spreads between yields of differently rated issuers will change in a manner that adversely affects clients' portfolio.

### Litigation

MIM's investment activities may subject its clients to the risks of becoming involved in litigation with third parties. The expense of defending against claims against its clients by third parties and the payment of any amounts pursuant to settlements or judgments would be borne by clients and reduce the net asset value of their investment. MIM and its affiliates will generally be indemnified by clients in connection with any such litigation, subject to certain conditions.

### Trading Decisions

Trading decisions made by MIM are based on fundamental and other analysis. Any factor that would lessen the prospect of major trends occurring in the future (e.g., increased governmental control of, or participation in, the financial markets) may reduce the prospect that a particular trading method or strategy will be profitable in the future. In the past, there have been periods without discernable trends and, presumably, such periods will continue to occur in the future. Moreover, any factor that would make it more difficult to execute trades at desired prices in accordance with the signals of the trading method or strategy (e.g., significant decrease of liquidity in a particular market) would also be detrimental to profitability. Further, many advisers' trading methods utilize similar analyses in making trading decisions. Therefore, bunching of buy and sell orders can occur, which makes it more difficult for a position to be taken or liquidated. No assurance can be given that MIM's strategies will be successful under all or any market conditions.

### "Widening" Risk

For reasons not necessarily attributable to any of the risks set forth herein (e.g., supply/demand imbalances or other market forces), the prices of the financial instruments in which MIM invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even more "undervalued" levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

### Technology and Cyber Security Risks

MIM depends heavily on its, and certain of its service providers', telecommunication, information technology and other operational systems (e.g., custodians, transfer agents and other parties to which we outsource certain services or business operations). These systems may fail to operate properly or become disabled as a result of events or circumstances wholly or partly beyond our control. Despite our best efforts to implement security measures, our information technology and other systems, and those of others, could be subject to physical or electronic break-ins, unauthorized tampering or other security breaches, resulting in a failure to maintain the security, availability, integrity and confidentiality of data assets. Technology failures or cyber security breaches, whether deliberate or unintentional, including those arising from use of third-party service providers, as well as failures or breaches suffered by the issuers of securities in which our strategy invests, could delay or disrupt MIM's ability to do business and service our clients, harm the Firm's reputation, result in a violation of applicable privacy and other laws, require additional compliance costs, subject MIM to regulatory inquiries or proceedings and other claims, lead to a loss of clients and revenues or financial loss to our clients or otherwise adversely affect MIM's business, clients and/or investors.

### Counterparty Risks

MIM has established, and may establish, additional relationships to obtain prime brokerage and other brokerage or custody related services, however, there can be no assurance that it will be able to maintain such relationships or establish such relationships. An inability to establish or maintain such relationships would limit MIM's trading activities and could create losses, preclude it from engaging in certain transactions and prime brokerage services and prevent it from trading at optimal rates and terms. Moreover, a disruption in the prime brokerage services provided by any such relationships before MIM establishes additional relationships could have a significant impact on its business due to its reliance on such counterparties. Furthermore, there is a risk that any of MIM's counterparties could become insolvent and/or the subject of insolvency proceedings. If one or more of MIM's counterparties were to become insolvent or the subject of insolvency proceedings, there exists the risk that the recovery of clients' securities and other assets from MIM's prime brokers or broker-dealers will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker or broker-dealer. MIM is not restricted from dealing with any particular counterparty or from concentrating any or all of its clients' transactions with a single counterparty. Moreover, our internal credit function, which evaluates the creditworthiness of its counterparties, may prove insufficient. Our ability to transact business with any one or more counterparties, the lack of complete and "foolproof" evaluation of the financial capabilities of its counterparties, and the absence of a regulated market to facilitate settlement - may increase the potential for losses by clients.

### Dependence of Clients and Investors in the Private Funds on MIM/Fund Manager

All investment and business decisions on behalf of all clients invested in SMAs and all investors of the Private Funds will be made by MIM, the manager of the Private Funds. Accordingly, no person should invest in the Private Funds unless he/she is willing to entrust all aspects of the management of the Private Funds to MIM and its Chief Investment Officer, Christopher P. Mittleman, as we have full discretion in the types of securities in which the Private Funds will invest. The Private Funds are dependent upon the skill, judgment and expertise of the Firm and its Associates.

The Partnership Agreement for Precog allows the Limited Partners to remove MIM as the General Partner (“GP”), only for “cause,” which is defined as fraud, gross negligence, or reckless or intentional misconduct by the GP in carrying out its duties as GP which has caused materially adverse consequences to Precog’s Limited Partners.

Although Christopher P. Mittleman and MIM will devote a significant amount of their time to the interests of the SMAs and the Private Funds, they may engage in other business activities, including certain activities that may be competitive with those of the SMAs and the Private Funds. Christopher P. Mittleman is not subject to an employment contract, and may decide to engage in entirely separate or competing activities at some time in the future.

### Side Letters

MIM has the discretion to waive or modify the application of certain provisions or grant special or more favorable rights with respect to one or more investors in the Private Funds. MIM may enter into side letters or similar separate agreements with one or more such investors that may alter the terms and conditions described in the applicable Private Fund documents with respect to such investors (including, without limitation, with respect to the payment of management fee, performance fees or allocations, withdrawals, transfers and notices).

### Conflicts of Interest

Various conflicts of interests may exist between MIM, our investment team and our affiliates with respect to our clients and the investors in the Private Funds. MIM’s Associates may serve as directors, officers or committee members of both public and private companies and their activities on behalf of those other companies may present actual and/or potential conflicts of interest, including conflicting fiduciary duties. In particular, the Firm’s Associates could face conflicts of interest between discharging their duties as in their capacity as directors, officers or committee members, of such companies and acting in the best interest of MIM’s clients. See “*Item 6 - Performance-Based Fees & Side-by-Side Management*,” “*Item 10 - Other Financial Industry Activities & Affiliations*,” “*Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading*” and “*12 - Brokerage Practices*.”

**THE FOREGOING RISK FACTORS DO NOT PURPORT TO BE A COMPLETE DESCRIPTION OF ALL OF THE RISKS ASSOCIATED WITH MIM’S INVESTMENT STRATEGIES. PROSPECTIVE CLIENTS AND INVESTORS SHOULD READ THIS BROCHURE AND ALL OTHER APPLICABLE DISCLOSURE MATERIALS IN THEIR ENTIRETY BEFORE MAKING ANY INVESTMENT DECISIONS.**

Currently, MIM primarily allocates SMA client investment assets among various individual equity securities, on a discretionary basis in accordance with the terms, conditions, guidelines and limitations set forth in the IMA between the Firm and each of our SMA clients. To date, the Private Funds have generally invested in publicly traded domestic and international company stock, although MIM has full discretion in the types of securities in which the Private Funds may invest. See “*Item 8 - Methods of Analysis, Investment Strategies & Risk of Loss*.”

## **ITEM 9      DISCIPLINARY INFORMATION**

Neither MIM nor any member of our management team has been involved in any legal or disciplinary events in the past ten years (and, to the best of our knowledge and belief, in years preceding that ten-year period) that would be material to a client's or prospective client's or Private Fund investor's or prospective Private Fund investor's evaluation of our advisory business or the integrity of our management.

## **ITEM 10      OTHER FINANCIAL INDUSTRY ACTIVITIES & AFFILIATIONS**

Neither MIM, nor any of our management persons is registered or has an application pending to register as a broker-dealer, a registered representative of a broker-dealer, a futures commission merchant ("FCM"), a commodity pool operator ("CPO") or a commodity trading advisor ("CTA"). In addition, neither MIM nor any of our management persons is an associated person of an FCM, a CPO and/or a CTA.

Mittleman Brothers Fund GP, LLC, whose sole managing member is Mittleman Brothers, LLC, is the general partner of the Onshore Feeder (Mittleman Brothers Fund, LP). In addition to our serving as investment manager for the Private Funds, we act as the General Partner of Precog. In addition, certain control persons of MIM may have financial interests in the Private Funds and certain control persons intend to maintain significant investments in the Private Funds. These relationships present certain potential conflicts of interest, including but not limited to, those described below:

- To the extent certain of MIM's individual SMA clients qualify, they will be eligible to participate as members of the Private Funds. Some of our SMA clients are solicited to invest in the Private Funds where MIM deems such investments as suitable, but no SMA client is ever obligated to invest in the Private Funds. Since the Firm's principals can earn compensation from the Private Funds that may exceed the asset-based fees and performance-based fees, as applicable, the recommendation that a client become an investor in any of the Private Funds *may* present a conflict of interest. We address this conflict through disclosure to clients and operating in accordance with our Code of Ethics and fiduciary duties. See "***Item 5 - Fees and Compensation***" and "***Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.***"
- MIM may receive, for both the Private Fund and the SMA relationships below \$10 million dollars, performance-based fees on a fully disclosed written basis. Since the performance-based fees for SMA clients is waived for relationships of \$10 million dollars or above, this arrangement may create a conflict of interest as MIM and its representatives may have an incentive to favor and devote more time and effort to managing the investments of the Private Funds. We address this conflict of interest through disclosure to clients and operating in accordance with our Code of Ethics and fiduciary duties. See "***Item 5 - Fees and Compensation***" and "***Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.***"
- The participation of persons related to MIM as investors in the Private Funds may also create a conflict of interest, as MIM and our Associates may have an incentive to favor and devote more time and effort to managing investments of the Private Funds. The Firm may also have an incentive to recommend that SMA clients participate in the Private Funds if we perceive that such additional investment will benefit the Private Funds overall. We address this conflict through disclosure to clients and by operating in accordance with our Code of Ethics and fiduciary duties. See "***Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.***"

MIM's CCO remains available to address any questions that a client or a prospective client may have regarding the above relationship(s) and any corresponding potential conflict of interest that any and all such relationships may create.

MIM does not receive, directly or indirectly, compensation from other investment advisers that we recommend or select for our clients nor do we have any other business relationships with any such advisers that could create a material conflict of interest.

## **ITEM 11 CODE OF ETHICS, PARTICIPATION OF INTEREST IN CLIENT TRANSACTIONS & PERSONAL TRADING**

MIM has adopted and implemented a Code of Ethics (“COE”) that defines the standards of business conduct for our Associates. The COE is primarily designed to educate Associates about MIM’s philosophy regarding ethics and professionalism, emphasizes the Firm’s fiduciary duties to our clients, and requires Associates to comply with applicable laws, such as, preventing misuse of material non-public information, circulation of rumors and other forms of market abuse, and addresses conflicts of interest that could occur related to personal securities transactions. MIM imposes certain restrictions on our Associates relating to the purchase or sale of securities for their own accounts and the accounts of certain affiliated persons. Associates are required to submit quarterly reports disclosing personal securities transactions and annual reports disclosing personal securities holdings. These reports are reviewed by MIM’s CCO. The Firm also maintains certain policies and procedures designed to prevent Associates from misusing material non-public information. A copy of our COE will be provided to clients and investors upon request.

MIM may recommend that clients buy or sell securities or other investment products in which we or a person related to our Firm have a financial interest. In particular, we may recommend that certain of our SMA clients invest in one or more of the Private Funds. In addition, certain control persons of MIM may have financial interests in the Private Funds. In general, MIM’s control persons intend to maintain significant investments in the Private Funds. See “*Item 10 - Other Financial Industry Activities & Affiliations.*”

In limited circumstances, MIM may “arrange” for and/or “facilitate” a cross-transaction between client accounts when MIM believes that such a transaction is beneficial to its clients. These transactions will generally occur in a situation when a client needs to liquidate a specific position that is suitable for another client. In so doing, MIM will arrange for the custodian to effect the transaction between two of MIM’s client accounts. However, for any such transaction, neither MIM nor any person or entity associated with MIM, will act as a broker, or receive any commission or transaction-based compensation.

Associates of MIM may serve on the Board of Directors of other companies or non-profit entities provided such permission to do so has been granted by the CCO pursuant to MIM’s Compliance Manual and Code of Ethics. Service by persons related to MIM as a(n) director, officer or committee member, or on the Board of companies that issue securities or that could engage our advisory services, could create a direct conflict of interest. We review the activities of our Associates to mitigate potential conflicts. Additional relationships of this type could occur in the future.

The Private Funds may co-invest with third parties or otherwise participate in pooled investment vehicles with others if we determine that such investments or arrangements represent the best way to access a particular investment opportunity. MIM or our Associates may also manage or have direct investments in the pooled investments. We intend to address any such conflict(s) through disclosure to clients and adherence to our COE and fiduciary duties to clients.

Subject to various restrictions set forth in our COE, MIM’s Associates may purchase for themselves, securities purchased for, or recommended to, our clients. Allowing Associates to purchase these securities may motivate them and/or our affiliates to engage in potentially manipulative practices. In order to prevent this, MIM’s CCO monitors the investments made by our Associates. The Firm has a personal trading policy that outlines certain procedures that Associates are required to follow. In certain situations we restrict Associates from trading in securities purchased for, or recommended to, our clients and investors when we believe the personal securities transactions could conflict with MIM’s fiduciary duties to our clients.



From time to time, MIM and its Associates may acquire or may be in a position to potentially acquire material non-public and/or confidential information that may restrict by law, internal policies or otherwise MIM from purchasing securities or other assets, or selling securities or other assets for clients or otherwise using or receiving such information for the benefit of the client accounts. For example, in certain cases, an Associate may serve as a member of the board of directors of an issuer and come into possession of material non-public and/or confidential information through such board membership.

## **ITEM 12      BROKERAGE PRACTICES**

In the event that MIM's SMA clients request that we recommend a broker-dealer/custodian for execution and/or custodial services (exclusive of those clients that may direct us to use a specific broker-dealer/custodian), MIM generally recommends that SMAs be maintained at Pershing, LLC, although we may recommend one or more other broker-dealer/custodians in the future. Prior to engaging MIM to provide investment advisory services, the client is required to enter into a formal IMA with the Firm setting forth the terms, conditions, guidelines and limitations under which we will manage the client's assets, and a separate account/custodial/clearing or other agreement with each designated broker-dealer/custodian.

In general, MIM has authority to determine the brokers and other counterparties to be used for the Private Funds' transactions and to negotiate commission rates and other monies paid by the Private Funds. Generally, the Private Funds use Pershing, although they may use one or more other broker-dealer/custodians in the future.

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

MIM has not, although could in the future, use soft dollars generated by client accounts to pay for certain research and/or related services provided by brokers described above. The term "soft dollars" refers to the receipt by an investment manager of products and services (including research) provided by brokers without any cash payment by the investment manager, based on the volume of revenues generated from brokerage commissions for transactions executed for clients of the investment manager. The products and services available from brokers include both internally generated items (such as research reports prepared by employees of the broker) as well as items acquired by the broker from third parties (such as quotation equipment).

Using soft dollars to obtain investment research and/or related services creates a conflict of interest between MIM and our clients. Soft dollars may be used to acquire products and services that are not exclusively for the benefit of the clients that paid the commissions and that may primarily or exclusively benefit the Firm. If we are able to acquire these products and services without expending our own resources (including management fees paid by clients), the use of soft dollars would tend to increase profitability. Further, MIM may have an incentive to select or recommend brokers based on our interest in receiving research or other products or services, rather than on our clients' interest in receiving most favorable execution.

We could also cause clients to pay commissions (e.g., markups or markdowns) higher than those charged by other brokers in return for soft dollar benefits.

If MIM accepted soft dollar benefits in the future, we believe the benefits would generally be used to service all of our clients. We would seek to allocate soft dollar benefits among client accounts in a fair and equitable manner under the circumstances, but there is no assurance that we would be successful in this regard.

In selecting or recommending brokers, MIM does not consider whether we or our related persons receive client or investor referrals from such brokers.

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

MIM may, and generally attempts to, combine or “bunch” orders when possible to, obtain best execution, negotiate more favorable commission rates or allocate transactions equitably among our clients, reduce differences in prices and/or commissions or other transaction costs that might have been obtained had such orders been placed independently in accordance with the Firm’s Trade Allocation Policy. We will not receive any additional compensation or remuneration as a result of such aggregation.

MIM generally allocates investment opportunities among our clients in a fair and equitable manner. Typically, if participating clients received less than their target (full) allocation of an order, the participating client(s) will generally receive(s) a pro rata portion of the next executed order. Under certain circumstances, we have discretion to utilize alternative allocation procedures provided that we treat all participating clients fairly and equitably. We generally prioritize the allocation of buys to accounts with the highest percentage of cash but we may prioritize orders differently, for example, based on an accounts being underweight with regard to a particular security. Generally, the allocation of sells are to accounts with the highest percentage weighting in the security being sold but they may also be based on other fair allocation methods, for example, based on accounts with the lowest cash percentage weighting if we anticipate soon needing cash for another investment.

## **ITEM 13**      **REVIEW OF ACCOUNTS**

- A. SMAS -** MIM’s CIO completes periodic reviews of the SMAs on an ongoing basis. These reviews include, but are not limited to: trade activity, fees charged and other account activity to ensure accurate execution of trades as well as client requested transactions (i.e. contribution and withdrawals) and to monitor for potential suspicious or fraudulent activity. On a quarterly basis, the Director of Administration & Operations reviews the SMAs to confirm management fees have been accurately billed to or debited from client accounts and remitted directly to MIM in compliance with regulatory procedures. Events that trigger a non-periodic review include, but are not limited to a market correction, a client request to update account information, a client request to terminate their IMA, and/or any suspicion of fraudulent activity.

Clients are provided with confirmation notices corresponding to each transaction placed in their SMA as they are executed. Clients also may have the option to select quarterly notification of all transactions executed during the period, if so desired. The broker-dealer/custodian and/or program sponsor for the client accounts also provide monthly account statements directly to the client. The Firm also provides a quarterly written report summarizing



account performance which includes a disclosure that the custodial statements received from the broker-deal/custodian are the official records of their account balances.

- B. PRIVATE FUNDS** - The CIO also conducts periodic reviews of the Private Funds on an ongoing basis. These reviews include, but are not limited to: trade activity, fees charges, and other account activity to ensure accurate execution of trades as well as monitor for potential suspicious or fraudulent activity. On a monthly basis, an Associate in Trading & Operations will review the custodial statements issued by the broker-dealer/custodian, the month-end reports issued by the Private Funds' Administrator, SS&C Technologies, Inc., and the monthly investor statements issued by the Administrator. On a quarterly basis, the Director of Administration & Operations reviews the activity for the Private Funds to ensure the *Funds* were billed directly for the management fees and that the management fee was directly remitted to MIM in compliance with regulatory procedures.

Investors in the Private Funds are provided with a monthly statement from the Administrator, which includes a written report from MIM summarizing month-to-date and year-to-date performance.

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

Except as otherwise described in this Brochure, the Firm does not receive any economic benefit, from any person who is not a client, for providing investment advice or other services to clients.

If a client is introduced to us by either an unaffiliated or an affiliated solicitor, we may pay that solicitor a referral fee in accordance with the requirements of Rule 206(4)-3 under the Advisers Act and/or any corresponding state securities law(s). Any such referral fee is payable by MIM from any investment management fees and performance allocations received by us, and shall not result in an additional charge to the client. If the client is introduced to us by an unaffiliated solicitor, with whom we have a written solicitation agreement, in accordance with Rule 206(4)-3 under the Advisers Act, the solicitor, at the time of the solicitation, shall disclose the nature of his/her/its solicitor relationship, and shall provide each prospective client with a copy of MIM's written Brochure that contains the written disclosure statement from the solicitor to the client disclosing the terms of the solicitation arrangement between the Firm and the solicitor, including the compensation to be received by the solicitor from MIM.

#### **ITEM 15**      **CUSTODY**

- A. SMAS** - Although MIM does not have physical custody of SMA client assets, we are deemed to have custody due to our ability to directly debit client fees from the custodial accounts. All client assets are placed with an independent, qualified custodian that sends monthly statements directly to the clients. To ensure accuracy, reports provided by MIM should be compared to the statements provided by the qualified custodian.
- B. PRIVATE FUNDS**- MIM is deemed to have custody of the Private Funds due to our capacity as General Partner or affiliates of MIM serving in the capacity as General Partner to such Private Funds or to our capacity to otherwise have authority to obtain possession of the assets of such Private Funds. The cash and securities held by the Private Funds are held with one or more qualified custodians.
- The Master Fund, and the Feeder Funds undergo annual financial statement audits by an independent accounting firm which is registered with the PCAOB and is subject to PCAOB inspection on an annual basis.
  - Precog undergoes annual financial statement audit by an independent accounting firm which is registered with the PCAOB and is subject to random PCAOB inspection. In addition, Precog undergoes an annual surprise custody examination.

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

- A. SMAS** - Upon execution of an IMA between MIM and a client, we accept discretionary authority to manage the account(s) on behalf of the client. The Firm generally does not accept any restrictions/limitations a client may request to impose on the discretionary authority granted to MIM. However, under certain circumstances, we may approve investment restrictions and or limitations on a case-by-case basis as set forth in an IMA.
- B. PRIVATE FUNDS** - Subject to the guidelines and objectives set forth in the applicable offering documents, MIM has discretionary authority over the types of financial instruments to be bought or sold, as well as the amount to be bought or sold on behalf of the Private Funds. Investors are not permitted to impose restrictions/limitations on the management of the Private Funds. However, we may enter into side letter agreements with one or more investors in the Private Funds that alter, modify, or change the terms of the interests held by those investors.

## **ITEM 17**      **VOTING CLIENT SECURITIES**

Unless the client directs otherwise in writing, MIM is responsible for voting proxies, which includes voting proxies on behalf of both SMA clients and the Private Funds. MIM votes proxy proposals, amendments, consents or resolutions in a manner that we believe will serve the best, long-term economic interests of our clients, as determined under our discretion, and in accordance with our Proxy Voting Policy (copy available upon written request to the CCO).

MIM maintains records pertaining to proxy voting as required under Rule 204-2(c)(2) of the Advisers Act. We utilize the services of a third party vendor for voting administrative services that provides for the receipt of and tracking of ballots, the option to implement specific proxy voting guidelines, acceptance and recording of MIM's voting instructions, recordkeeping, and reporting. Generally, the Firm relies on either the issuer of the securities or our clients' custodians to forward any material concerning shareholder meetings directly to the vendor.

Conflicts of interest may arise related to proxy voting and if we identify any actual or potential conflict of interest between our Firm and our clients, we will disclose that conflict in advance, in an effort to obtain the client's consent to proceed before voting the proxy.

- A. SMAS** – The SMA client maintains exclusive responsibility for all legal proceedings or other types of events pertaining to the account assets, including but not limited to, class action lawsuits.
- B. PRIVATE FUNDS** - MIM generally has the authority to vote proxies of securities owned by the Private Funds. Investors generally may not direct or otherwise influence our vote with respect to any particular proxy solicitation.

Information pertaining to how we voted specific proxies is available upon written request. All requests should be directed to the Firm's Director of Administration & Operations who oversees the administration of our proxy voting procedures.

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

The Firm is unaware of any financial condition that is reasonably likely to impair our ability to meet our contractual commitments relating to our discretionary authority over client accounts.

MIM has not been the subject of a bankruptcy petition.

### **ADDITIONAL DISCLOSURES**

MIM has a Disaster Recovery & Business Continuity Plan in place that is included in its Compliance Manual, a copy of which is available upon request.

A copy of the Firm's Privacy Notice is also available upon request. All requests should be directed to our CCO.