

**Form ADV Part 2A: Firm Brochure**

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**Fir Tree Capital Management LP**

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**This brochure provides information about the qualifications and business practices of Fir Tree Capital Management LP (formerly known as Fir Tree Inc.). If you have any questions about the contents of this brochure, please contact us at (212) 599-0090. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.**

**Additional information about Fir Tree Capital Management LP also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

**Fir Tree Capital Management LP is registered as an investment adviser with the SEC. Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.**

**This Brochure is not an offering or solicitation of interest the funds managed by Fir Tree Capital Management LP or its affiliates.**

**Item 2. Material Changes**

Not Applicable

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#### **Item 4.        Advisory Business**

Fir Tree Capital Management LP (“Fir Tree”) is a Delaware limited partnership and is located in New York, NY (HQ), Katonah, NY, and Miami, FL. Fir Tree provides investment advisory services to private-pooled investment vehicles (the “Funds”). Fir Tree was founded in 1994 as Fir Tree Inc. by Jeffrey Tannenbaum. On December 29, 2017, Fir Tree Inc. converted from a New York S corporation to a Delaware limited partnership and was renamed Fir Tree Capital Management LP, and David Sultan and Clinton Biondo joined Mr. Tannenbaum as principals of Fir Tree and its newly-formed general partner, FTGM GP LLC. Mr. Biondo will assist Mr. Sultan in managing the investment team and day-to-day operations of Fir Tree. While Mr. Tannenbaum will continue in his role as Chairman, it is anticipated that Messrs. Biondo and Sultan will together assume control of Fir Tree over time. It is expected that around mid-2020, Mr. Biondo and Mr. Sultan will assume full leadership of Fir Tree and Mr. Tannenbaum will transition to a Chairman Emeritus role, while continuing to maintain a material ownership interest in Fir Tree. In addition to Messrs. Tannenbaum, Sultan and Biondo, certain employees of Fir Tree, responsible for investment and operation decisions of the Funds, have economic ownership in Fir Tree affiliates listed under Item 10 of this brochure.

Fir Tree is a private investment firm that manages assets on behalf of endowments, foundations, public and private pension funds and other institutional and private investors. Fir Tree invests worldwide in public and private companies, real estate across a wide variety of sectors and securities, and sovereign debt.

Titan Grove Holdings LLC, an affiliate of Fir Tree, sources private investments for affiliates of Fir Tree or the Funds. The Funds have the right of first offer on all Titan Grove sourced investments that meet appropriate size, duration, and liquidity criteria for the Funds.

Fir Tree adheres to the investment strategy set forth in each Fund’s offering document and does not generally modify its securities recommendations to the Funds based on the particular interests of the Funds’ underlying investors. Except for any restrictions set forth in the Funds’ offering documents, neither the Funds nor their underlying investors may impose restrictions on investing in certain securities or types of securities.

Fir Tree may determine that the size of the available investment opportunity of an investment being made by a Fund meaningfully exceeds the amount that is appropriate for such Funds (taking into consideration the relevant provisions of the Funds’ governing documents). Fir Tree may form one or more co-investment vehicles specifically to take up such excess opportunity. In such cases, Fir Tree may offer one or more persons (including, but not limited to, investors in the relevant Funds) the opportunity to participate in such co-investment vehicles.

Fir Tree will determine the person(s) to whom it offers any such opportunity, and the relative amounts offered to each such person, taking into account such factors as Fir Tree determines appropriate based on the relevant facts and circumstances, which may include one or more of the following: (i) the ability of an investor to commit to invest in a short period of time, in light of the timing constraints applicable to such investment; (ii) the ability of an investor to commit to a significant portion of such opportunity; (iii) the size of an investor’s commitment to a Fund; (iv) whether and to what extent an investor has accepted prior co-investment opportunities offered to

it; or (v) such other factors as Fir Tree deems relevant, which may include subjective determinations such as working relationships and strategic benefits to Fir Tree or to Fir Tree's Funds. In all cases, allocation of co-investment opportunities will be subject to the provisions of the governing documents of the relevant Fund.

As of December 31, 2017, the total net asset value of the Funds that Fir Tree manages on a discretionary basis was approximately \$8 billion. Fir Tree manages all assets on a discretionary basis. These numbers are based on estimated and unaudited information and are therefore subject to change.

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

Fir Tree (or one of its affiliates) typically receives two types of compensation from investors in its Funds—an asset-based management fee and performance-based compensation. Generally, each year, Fir Tree charges investors in the Funds an asset-based management fee ranging from 0.75% to 2.00% of each investor's assets that Fir Tree manages through the Funds and performance-based compensation ranging from 10% to 20% of each investor's share of the profits of the Funds. Dependent on the structure of the specific Fund, Fir Tree's performance-based compensation is taken as either a carried interest or an annual allocation. A more detailed description of Fir Tree's asset-based fees and performance-based compensation is set forth in the offering memorandum for each Fund.

Fir Tree's performance-based compensation for two of its Fund complexes (Fir Tree Value and Fir Tree Capital Opportunity) is subject to a rolling high water mark limitation. Thus, if losses occur that result in the capital account of an investor in one of these Fund complexes being lower than the highest level of cumulative net profits achieved by that investor through the close of any year since admission, then the performance-based compensation applicable to that investor will be one-half of Fir Tree's normal share of net profits, if any, until such time as that investor's capital account is equal to its previous high water mark plus an amount equal to 150% of the losses incurred by that investor. Thereafter, the performance-based compensation reverts back to the original percentage applicable to that investor.

Fir Tree's performance-based compensation for one of its longer duration Fund complexes (Fir Tree Capital Opportunity III) is calculated by (i) subtracting the value of what an investor's investment in the Fund would have been if the investor's investment had a rate of return equal to a percentage of the rate of return of a well-known index for the applicable performance period from the actual value of the investor's investment in the Fund for that performance period and then (ii) multiplying the difference by 30%. The calculation of Fir Tree's performance-based compensation for that same Fund complex includes a mechanism whereby the asset-based management fees paid by an investor are subtracted out of the final performance-based compensation attributable to that investor.

Fir Tree has the general discretion to waive or reduce all or a portion of the asset-based management fee and/or the performance-based compensation for certain investors of the Funds, and has done so on a limited basis for large investors or in exchange for longer lock-ups or other reduced liquidity. Fir Tree has entered into and will continue to enter into arrangements with certain investors in the Funds that have the effect of altering or supplementing the terms of such

investors' investment in the Funds, including, without limitation, arrangements with respect to waivers or reductions relating to fees, liquidity and transparency and any other provisions of the Fund's Limited Partnership Agreements with respect to such investor or any other matter deemed appropriate by Fir Tree without obtaining the consent of any other investor (other than an investor whose contractual rights as an investor would be materially and adversely changed by such waiver, modification or creation of new terms) and without entitling any other investor to such waiver, modification or new term(s). Such arrangements will generally be based on such factors as the size of an investor's investment, an investor's existing relationships with Fir Tree or any particular regulatory or legal considerations applicable to an investor, but Fir Tree may enter such arrangements for any reason it deems necessary, advisable, desirable or convenient. As a result, returns may vary from investor to investor depending on arrangements applicable to a given investor's investment and may result in adverse consequences to the Funds or other investors. Investments in the Funds made by Fir Tree's employees, certain former employees and its affiliates are not subject to any asset-based or performance-based fees.

Fir Tree's asset-based management fee is generally calculated quarterly in advance and deducted from the Funds' accounts at the end of each month. If an investor withdraws from a Fund prior to the end of a quarter, that investor pays a pro rata portion of the asset-based management fee earned through the withdrawal date.

Fir Tree's performance-based annual allocation is generally deducted from the Funds' accounts at the end of each year or when investors make a withdrawal (but only with respect to the amount withdrawn). However, some of the Funds are subject to a carried interest and, generally, Fir Tree deducts its performance-based carried interest allocation on a yearly basis. Fir Tree is entitled to receive distributions of the carried interest allocation from these Funds only after 100% of capital contributions have been distributed to investors (and in the case of a particular series of interests of one Fund, after investors have also been distributed a particular "hurdle" amount).

Generally, except as otherwise required by law, each Fund bears all costs and expenses of its operations and investment activities, including the costs of identifying and evaluating proposed investments, expenses relating to investment transactions (including expenses with respect to the acquisition, management and disposition of the investments and other temporary investments, whether or not consummated, as well as expenses attributable to trade errors that are determined not to be the result of the Fir Tree's gross negligence), as well as legal, accounting and consulting fees and any taxes, fees or other government charges levied against the Fund and all costs and expenses related to the offering of Fund Interest (including government filing fees and printing and mailing expenses).

Additionally, Fir Tree generally receives reimbursement of certain expenses from the Funds, as is described in the offering memorandum of the Funds. These reimbursements are for expenses deemed by Fir Tree, in its discretion, to be beneficial to the Funds. These expenses include, but are not limited to, costs for accounting, legal, regulatory filings, consultancy arrangements, research, investment related subscriptions in software and publications, investment related travel, computer software, maintenance agreements and other information technology including computer, telephone systems and information technology consultants, certain marketing and client services, errors and omissions and fidelity insurance, and valuation services. The reimbursement for these certain expenses incurred by Fir Tree, which Fir Tree has deemed beneficial to the Funds,

could be viewed as additional compensation to Fir Tree. The allocation of these expenses to each Fund may or may not be proportionate to the benefit received by the Fund versus the benefit received by Fir Tree. However, these expenses are allocated on what Fir Tree believes is a fair and equitable basis among the accounts Fir Tree manages. For more information on brokerage transactions and costs, please see Item 12. Brokerage Practices.

Neither Fir Tree nor any of its principals or employees receives any transaction-based compensation for the sale of securities or other investment products.

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

Generally, except as described in Item 5, Fir Tree (or one of its affiliates) receives performance-based compensation from the Funds each year. All of the Funds managed by Fir Tree pay performance-based compensation.

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

Fir Tree primarily provides advice to the Funds, which are private-pooled investment vehicles sponsored by Fir Tree.

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

**Please refer to the Funds' Offering Documents for a more detailed discussion of our investment strategy and related risks.**

Fir Tree uses a value approach to investing, with a focus on long term capital appreciation. We focus on long oriented investments that we believe are offered below their "fundamental value", short oriented investments offered above their "fundamental value" and arbitrage investments. We define an asset's "fundamental value" as the price at which a rational long-term oriented investor would invest in the asset.

The Funds' investments are generally not constrained by geography, industry, or security type. We generally will employ one or more of the following strategies with respect to each Fund in an effort to achieve long-term capital appreciation on behalf of the Funds: (1) investments in undervalued or distressed assets; (2) investments having a credit and/or capital structure arbitrage component (3) investments in real estate or real-estate related assets and (4) sovereign investments we believe are mispriced.

We may attempt to enhance a Fund's performance or hedge a Fund's portfolio by the use of leverage, short sales, options, futures and other derivative instruments.

Despite Fir Tree's research and analysis and investment strategies, investing in any security involves a risk of loss that the Funds and all of the investors in the Funds must be prepared to bear. There can be no assurance that Fir Tree's investment objective will be achieved.

All investors in the Funds should consult their own legal, tax and financial advisors prior to investing in one of the Funds. Certain risks associated with an investment in any Fund that Fir Tree advises include:

- *General Investment Risks.* All investments risk the loss of capital. The profitability of a significant portion of the Funds' investment programs depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that Fir Tree will be able to predict accurately these price movements. With respect to the investment strategies utilized by the Funds, there is always some, and occasionally a significant, degree of market risk. No guarantee or representation is made that Funds' investment programs will be successful.
- *Business and Regulatory Risks of Private Investment Funds.* Legal, tax and regulatory changes could occur that may adversely affect the Funds. The regulatory environment for hedge funds is evolving, and changes in the regulation of hedge funds may adversely affect the value of investments held by the Funds and the ability of the Funds to obtain the leverage they might otherwise obtain or to pursue their trading strategies. The Securities and Exchange Commission and other regulators and self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies. The regulation of derivatives transactions and funds that engage in such transactions is an evolving area of law and is subject to modification by government and judicial action. The effect of any future regulatory change on Fir Tree, the Funds or Fir Tree's affiliates could be substantial and adverse.
- *Trade Errors.* The Funds' transactions may be effected on occasion in a manner that differs from what was intended. We review all trade errors that we discover, on a case-by-case basis, and decide what corrective steps to take, if any, after reviewing the error. Except as otherwise required by law, the Funds bears all costs and expenses attributable to trade errors that are determined not to be the result of the Fir Tree's gross negligence.
- *Diverse Membership.* The direct and indirect investors in the Funds include (a) taxable and tax-exempt persons and entities and (b) entities and persons organized or domiciled in various U.S. and foreign jurisdictions, each of which is subject to various different tax and regulatory regimes. Such diverse investors have conflicting investment, tax and other interests, relating to, among other things, the nature of investments made by the Funds, the structuring of the acquisition of such investments and the timing of disposition of such investments. As a result, conflicts of interest will arise in connection with decisions made by Fir Tree with respect to the Funds' investments, including conflicts of interest related to the nature or structure of investments that would be more beneficial for one type of investor (including investors affiliated with Fir Tree) than for another type of investor. The results of the Funds' activities will affect individual investors differently depending upon their individual financial and tax situations because, for instance, of the timing of an event of realization of gain or loss and its characterization as long-term or short-term gain or loss. In selecting, structuring and managing investments appropriate for the Funds, Fir Tree will generally consider the investment and tax objectives of each Fund as a whole but will also consider the investment, tax, or other objectives of the various groups of investors, as well. In certain circumstances, an investment result will be more advantageous to some investors than to other investors. Despite the foregoing, expenses for those investments will still be borne pro rata by all of the underlying investors. In addition, Fir Tree's

time and attention will, from time to time, be disproportionately spent focusing on investments that would be more advantageous to one group of investors than on investments advantageous to another group of investors.

- *Tax Positions; Tax Risks.* The Funds may be subject to a variety of tax and regulatory regimes in a number of jurisdictions. Although the Funds will endeavor to comply with the requirements of all such regimes, the treatment of the Funds and their investment activities is often uncertain, and may frequently depend on determinations of fact and interpretations of complex provisions of law and regulation for which there may be no clear precedent or authority. Where no clear precedent or authority is available, the Funds may employ standard industry practice or conventions to guide their compliance efforts. There can be no assurance, however, that such practice or conventions ultimately will be considered compliant, and as a result, the Funds, despite their efforts, may be exposed to liability, possibly on a retroactive basis, as practice or conventions change or are challenged or the procedures for compliance with the regimes to which the Funds are subject become clearer. The Funds may take positions with respect to certain tax issues that depend on legal conclusions not yet addressed by the courts. Should any such positions be successfully challenged by any applicable taxing authority, there could be material adverse effects on the Funds, and an investor in one of the Funds might be found to have a different tax liability for a particular year than the liability reported on the investor's tax return.
- *Cybersecurity Risks.* Fir Tree's information and technology systems may be vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. Although Fir Tree has implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time or cease to function properly, Fir Tree and/or the Funds may have to make a significant investment to fix or replace them. The failure of these systems and/or the disaster recovery/business continuity plans for any reason could cause significant interruptions in Fir Tree's and/or the Funds' operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors (and the beneficial owners of investors). Such a failure could harm Fir Tree's and/or the Funds' reputation, subject them to legal claims and otherwise affect their business and financial performance.

The following is a description of the various strategies and certain risks of the investments that Fir Tree utilizes in advising the Funds and some important risks associated with each strategy and instrument. The following explanation of certain risks is not exhaustive, but rather highlights some of the more significant risks involved in Fir Tree's investment strategies. The offering documents for each of the Funds contain a more thorough list of the risks associated with an investment in that particular Fund. Fir Tree does not use every strategy listed below when managing each Fund's assets, but rather Fir Tree uses various combinations of strategies that depend on each Fund's circumstances and investment goals.



- *Borrowing.* Fir Tree finances certain of the Funds' operations with secured and unsecured borrowing. Like other forms of leverage, the use of borrowing can enhance the risk of capital loss in the event of adverse changes in the level of market prices of the assets being financed with the borrowings. In addition, interest on borrowings will be a portfolio expense of those Funds that utilize leverage. Consequently, the level of interest rates generally and the rates at which the Funds can borrow will affect the operating results of those Funds.

In general, Fir Tree's anticipated use of short-term margin borrowings for certain of the Funds will result in certain additional risks to those Funds. For example, should the securities pledged to brokers to secure a Fund's margin account decline in value, that Fund could be subject to "margin calls." In the event of a margin call, the Fund must either deposit additional funds with its brokers or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden large drop in the value of a Fund's assets, we might not be able to liquidate assets of that Fund quickly enough to pay off its margin debt.

- *Short Sales.* Fir Tree may effect short sales on behalf of the Funds. Short selling is the practice of selling investments which are not owned by the seller. Short selling generally occurs when the seller anticipates a decline in the price of the investments or for hedging purposes. To complete a short sale, the seller must borrow the investments from a third party in order to make delivery to the buyer. The seller generally will be required to pay a brokerage commission or interest which will increase the cost to the seller of selling the investments. The proceeds of the short sale plus additional cash or investments must be deposited as collateral with the lender of the investments to the extent necessary to meet margin requirements. The amount of the required deposit will be adjusted periodically to reflect any change in the market price of the investments which the seller is required to return to the lender. The seller generally will be entitled to receive payments from the lender with respect to the short sale proceeds and additional cash on deposit with the lender, at negotiated rates typically based on the lender's short-term borrowing costs. The seller will be obligated to return the investments equivalent to those borrowed at any time on demand of the lender of the investments borrowed by purchasing them at the market price at the time of replacement. Until the investments are replaced, the seller will be required to pay to the lender amounts equal to any dividends or interest which accrue during the period of the loan of the investments. Due to regulatory or legislative action taken by regulators around the world as a result of recent volatility in the global financial markets, taking short positions on certain securities has been restricted and/or more onerous disclosure requirements in respect of short positions have been implemented. The levels of restriction and disclosure vary across different jurisdictions and are subject to change in the short to medium term. Such restrictions and/or disclosure requirements have made it difficult and in some cases impossible for numerous market participants either to continue to implement their investment strategies or to control the risk of their open positions and in some cases have increased the risk for such participants to do so. Accordingly, Fir Tree may not be in a position to fully express its negative views in relation to certain securities, companies or sectors and the ability of Fir Tree to fulfill the investment objectives of the Funds may be constrained.

- *Use of Swaps and Other Derivatives.* Fir Tree may cause certain of the Funds to make use of swaps and other forms of derivative contracts. In general, a derivative contract typically involves leverage (*i.e.*, it provides exposure to potential gain or loss from a change in the level of the market price of a security, currency or commodity (or a basket or index) in a notional amount that exceeds the amount of cash or assets required to establish or maintain the derivative contract). Consequently, an adverse change in the relevant price level can result in a loss of capital that is more exaggerated than would have resulted from an investment that did not involve the use of leverage inherent in the derivative contract. Some of the derivative contracts Fir Tree uses may be privately negotiated in the over-the-counter market. These contracts also involve exposure to credit risk, since contract performance depends in part on the financial condition of the counterparty. These transactions are also expected to involve significant transaction costs.
- *Options.* Fir Tree may enter into option contracts on behalf of certain of the Funds. There are risks associated with the sale and purchase of call options. The seller (writer) of a call option which is covered (*e.g.*, the writer holding the underlying security) assumes the risk of a decline in the market price of the underlying security below the purchase price of the underlying security less the premium received. The seller of a covered call option gives up the opportunity for gain on the underlying security above the exercise price of the option. The seller of an uncovered call option assumes the risk of a theoretically unlimited increase in the market price of the underlying security above the exercise price of the option. The buyer of a call option assumes the risk of losing its entire investment in the call option.

There are risks associated with the sale and purchase of put options. The seller (writer) of a put option which is covered (*e.g.*, the writer has a short position in the underlying security) assumes the risk of an increase in the market price of the underlying security above the sales price (received to establish the short position) of the underlying security if the market price rises above the exercise price of the option. The seller of an uncovered put option assumes the risk of decline in the market price of the underlying security below the exercise price of the option. The buyer of a put option assumes the risk of losing its entire investment in the put option.

- *Arbitrage Trading.* The trading operations of certain of the Funds may involve arbitraging between a security and its announced buy-out price (or other forms of “risk arbitrage”), between, for example, two securities, between the equity and equity options markets, between futures and securities and/or options, and/or any combination of the above. This means, for example, that certain of the Funds may purchase (or sell) securities (*i.e.*, on a current basis) and take offsetting positions in the options market in the same or related securities. To the extent the price relationships between these positions remain constant, no gain or loss on the positions will occur. These offsetting positions entail substantial risk that the price differential could change unfavorably causing a loss to the position.
- *Concentration of Investments.* A Fund may take substantial positions in particular securities or other assets. Such an occurrence may tend to result in more rapid changes

in the value of the portfolio of such Fund, upward or downward, than would be the case with greater diversification with the result that a loss in any such position could have a material adverse impact on the capital of the Fund.

- *Illiquidity of Investments.* Certain investments made by the Funds are very illiquid, and consequently the Funds may not be able to sell such investments at a particular time at prices that reflect Fir Tree's assessment of their value or at the amount paid for such investments by the Funds. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale by the Funds and other factors. Furthermore, the nature of certain of the Funds' investments, especially those in financially distressed companies, may require a long holding period prior to profitability. Therefore, no assurance can be given that, if a Fund decides to dispose of a particular investment, it will be able to dispose of such investment at the prevailing market price. In addition, Fir Tree will oftentimes not have access to readily-ascertainable market prices when establishing monthly valuations of such illiquid investments. While Fir Tree will endeavor to determine and establish valuations based on its estimate of the market values of such investments and underwriting principles it considers to be sound (sometimes using more subjective methods such as fair value pricing as a result of the illiquidity of such investments), Fir Tree can provide no assurance that any given investment could be sold at a price equal to the market value ascribed to it in connection with Fir Tree's valuation of such investment.
- *Investment in Small Companies.* There is no limitation on the size or operating experience of the companies in which certain of the Funds may invest. Some small companies in which a Fund may invest may lack management depth or the ability to generate internally or obtain externally the funds necessary for growth. Companies with new products or services could sustain significant losses if projected markets do not materialize. Further, these companies may have, or may develop, only a regional market for products or services and may be adversely affected by purely local events. These companies may be small factors in their industries and may face intense competition from larger companies and entail a greater risk than investment in larger companies.
- *Investments in Undervalued Assets.* Fir Tree may cause certain of the Funds to invest in undervalued assets. The identification of investment opportunities in undervalued assets is a difficult task, and there is no assurance that these opportunities will be successfully recognized or acquired. While investments in undervalued assets offer the opportunity for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from a Fund's investments in undervalued assets may not adequately compensate investors for the business and financial risks assumed.

A Fund may be forced to sell, at a substantial loss, assets that are not, in fact, undervalued. In addition, a Fund may be required to hold these assets for a substantial period of time before realizing their anticipated value. During this period, a portion of the Fund's funds would be committed to the assets purchased, possibly preventing that Fund from investing in other opportunities. In addition, a Fund may finance these

purchases with borrowed funds and thus will have to pay interest on the borrowed funds during any waiting period.

- *Investments in Real Estate.* From time to time, certain of the Funds may invest a portion of their assets directly in real estate that Fir Tree believes is undervalued, in non-recourse mortgages where the mortgagor is not a significant operating company and in the securities or obligations of single purpose companies whose primary asset is real estate. In addition, Funds making this type of investment may acquire a direct interest in real estate as the result of foreclosure or other enforcement actions. Special risks associated with these types of investments include changes in the general economic climate or local conditions (such as an oversupply of space or a reduction in demand for space), competition based on rental rates, attractiveness and location of the properties, changes in the financial condition of tenants, and changes in operating costs. Real estate values are also affected by factors such as government regulations (including those governing usage, improvements, zoning and taxes), interest rate levels, the availability of financing and potential liability under changing environmental and other laws.
- *Non-Marketable Investments.* With respect to certain of the Funds, Fir Tree has broad discretion to designate certain investments as “non-marketable investments”. In certain of the Funds, once an investment has been designated as a “non-marketable investment” capital attributable to that investment is no longer available for withdrawal and the profit and loss attributable to that investment is not taken into account for purposes of calculating the performance-based compensation to be allocated to Fir Tree’s affiliate until the occurrence of certain events. In certain circumstances, Fir Tree would be incentivized to use its discretion to classify particular investments as “non-marketable investments” so that the corresponding capital cannot be withdrawn from the applicable Fund and, with respect to investments with poor performance, in order to prevent the investment from impacting the particular Fund’s performance for purposes of allocating performance-based compensation.
- *Reorganizations.* Fir Tree may cause certain of the Funds to invest in companies undergoing significant economic and corporate change. Because of the inherently speculative nature of this activity, the results of a Fund’s operations may fluctuate from month to month and from period to period. The returns generated from this type of an investment program may not adequately compensate investors for the business and financial risk assumed.

If Fir Tree causes a Fund to purchase securities in anticipation of reorganization, and if the reorganization does not in fact occur, that Fund may eventually sell the securities at a loss.

Fir Tree may cause certain of the Funds to invest in securities or other assets of issuers which are in, or ultimately become the subject of, bankruptcy proceedings. The value of those Funds’ investments may be adversely affected by legal principles affecting the priority of claims against the bankrupt estate, by the application of laws concerning preferential transfers and fraudulent conveyances and by other provisions of the U.S.

Bankruptcy Code and relevant state law. The duration of bankruptcy proceedings and reorganizations outside of bankruptcy can only be roughly estimated. These proceedings and transactions are subject to unpredictable and potentially lengthy delays. This passage of time may have an adverse impact on the Funds' return on their investment in the obligations and other securities or financially troubled companies. Although Fir Tree intends to purchase securities and other assets that it believes have significant liquidation values, there can be no assurance that the projected liquidation values will, in fact, be realized.

- *Non-U.S. Investments.* Fir Tree may cause the Funds to make investments in non-U.S. securities. Investments in non-U.S. securities involve certain factors not typically associated with investing in U.S. securities, such as risks relating to (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar (the currency in which the books of the Funds are maintained) and the various non-U.S. currencies in which a Fund's portfolio securities may be denominated from time to time; (ii) differences between the U.S. and non-U.S. securities markets, including the absence of uniform accounting, auditing and financial reporting standards and disclosure requirements, and less government supervision and regulation (all of which could result in less information being available to investors in companies located in foreign countries than is available to investors in companies located in the United States); (iii) political, social or economic instability (including greater risks of expropriation, nationalization or other government policies that may restrict a Fund's investment opportunities); (iv) the small size of the securities markets in some countries and the low volume of trading, resulting in potential lack of liquidity and price volatility and (v) the extension of credit, especially in the case of sovereign debt.
- *Currency, Convertibility and Exchange Rates.* A significant portion of certain of the Funds' assets may be invested in securities denominated in currencies other than U.S. dollars. The value of these securities and the income from them, as measured in U.S. dollars, may be affected by fluctuations in currency rates (which may include significant devaluations, as against the U.S. dollar) and uncertainties such as changes in the policies regarding foreign investment, taxation and restrictions on currency conversion and repatriation. Their value may also be affected by other developments in the laws and regulations of the economies in which these Funds will invest.

Fir Tree may attempt to mitigate the risks associated with currency fluctuations by entering into forward, futures and options contracts to purchase or sell the currency of denomination of any investment held by the Funds and any other currencies held by the Funds, to the extent such contracts are available on terms which Fir Tree deems acceptable to the Funds. However, Fir Tree is not required to do so.

- *Conflicts Relating to Equity and Debt Ownership by the Funds.* In certain circumstances, the Funds may invest in securities or other instruments of the same issuer (or affiliated group of issuers) that have a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests of the different Funds insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to

be unable) to satisfy the claims of all classes of its creditors and security holders and the Funds may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for Fir Tree to reconcile the conflicting interests of the Funds in a way that protects each Fund's interests. Additionally, Fir Tree or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain Funds in that such votes or actions may favor the interests of one Fund over another Fund. Furthermore, Fir Tree's fiduciary responsibilities in these capacities might conflict with the best interests of the Funds.

- *MBS and ABS—Generally.* Fir Tree may cause certain of the Funds to invest in mortgage-backed securities ("MBS") and asset-backed securities ("ABS"). The investment characteristics of MBS and ABS differ from traditional debt securities. Among the major differences are that interest and principal payments are made more frequently, usually monthly, and that principal may be prepaid at any time because the underlying mortgage loans or other assets generally may be prepaid at any time.

When market interest rates increase, the market values of MBS decline. At the same time, however, mortgage refinancings and prepayments slow, which lengthens the effective maturities of these securities. As a result, the negative effect of the rate increase on the market value of MBS may be more pronounced than it is for other types of fixed-income securities.

- *Risks Associated with Commercial Mortgage-Backed Securities.* Fir Tree may cause certain of the Funds to invest in commercial mortgage-backed securities ("CMBS") and other MBS, including subordinated tranches of these types of securities. CMBS are, generally, securities backed by obligations (including certificates of participation in obligations) that are principally secured by mortgages on real property or interests in that property having a multifamily or commercial use, such as regional malls, other retail space, office buildings, industrial or warehouse properties, hotels, nursing homes and senior living centers. CMBS are subject to particular risks, including lack of standardized terms, shorter maturities than residential mortgage loans and payment of all or substantially all of the principal only at maturity rather than regular amortization of principal. Additional risks may be presented by the type and use of the underlying real estate portfolio.

Some or all of the CMBS contemplated to be acquired by the Funds may not be rated, or may be rated lower than investment-grade securities, by one or more nationally recognized statistical rating organizations. Lower-rated or unrated CMBS, or "B-pieces," in which the Funds may invest have speculative characteristics and can involve substantial financial risks as a result. The prices of lower credit quality securities have been found to be less sensitive to interest rate changes than more highly rated investments, but more sensitive to adverse economic or real estate market conditions or individual issuer concerns. Securities rated lower than "B" by the rating organizations can be regarded as having extremely poor prospects of ever attaining any real investment standing and may be in default. Existing credit support and the owner's equity in the property may be insufficient to protect the Funds from loss. Investors in

subordinated CMBS, in particular, will be first in line among debt holders to bear the risk of loss from delinquencies and defaults experienced on the collateral.

The Funds may acquire subordinated tranches of CMBS issuances. In general, subordinated tranches of CMBS are entitled to receive repayment of principal only after all principal payments have been made on more senior tranches and also have subordinated rights as to receipt of interest distributions. These subordinated tranches are subject to a greater risk of nonpayment than are senior tranches of CMBS or CMBS backed by third-party credit enhancement. In addition, an active secondary market for these subordinated securities is not as well-developed as the market for certain other MBS. Accordingly, these subordinated CMBS may have limited marketability and there can be no assurance that a more efficient secondary market will develop.

The value of CMBS and other MBS in which the Funds may invest will generally vary inversely with changes in prevailing interest rates. Accordingly, if interest rates rise, the value of these securities will decline. In addition, to the extent that the mortgage loans which underlie specific MBS are prepayable, the value of these mortgage securities may be negatively affected by increasing prepayments, which generally occur when interest rates decline. Extension, or slower prepayments of the underlying mortgage loans, would extend the time it would take to receive cash flows and would generally compress the yield on CMBS and other MBS. Typically, commercial mortgage loans are not prepayable or are subject to prepayment penalties or interest rate adjustments, while the principal on most residential mortgage loans generally may be prepaid at any time without penalty.

- *ABS.* Through the use of trusts and special purpose corporations, various types of assets, primarily automobile, manufactured housing and credit card receivables, are securitized in pass through structures. Certain of the Funds may invest either directly or indirectly, through collateralized debt obligations (“CDOs”), in these and other types of ABS that may be developed in the future.

ABS present certain risks that are not presented by MBS. Primarily, these financial instruments do not have the benefit of the same security interest in the related collateral. Credit card receivables, for example, are generally unsecured and the debtors are entitled to the protection of a number of state and federal consumer loan laws, many of which give these debtors the right to set off certain amounts owed on the credit cards, thereby reducing the balance due. Most issuers of ABS backed by automobile receivables permit the servicers to retain possession of the underlying obligations. If the servicer were to sell these obligations to another party, there is a risk that the purchaser would acquire an interest superior to that of the holders of the related ABS. In addition, because of the large number of vehicles involved in a typical issuance and technical requirements under state laws, the trustee for the holders of the ABS may not have a proper security interest in all of the obligations backing the ABS. Therefore, there is a possibility that recoveries on repossessed collateral may not, in some cases, be available to support payments on these securities. The risk of investing in ABS is ultimately dependent upon payment of consumer loans by the debtor.

The collateral supporting ABS is of shorter maturity than mortgage loans and is less likely to experience substantial prepayments. As with MBS, ABS are often backed by a pool of assets representing the obligations of a number of different parties and use credit enhancement techniques such as letters of credit, guarantees or preference rights. The value of an ABS is affected by changes in the market's perception of the asset backing the security and the creditworthiness of the servicing agent for the loan pool, the originator of the loans or the financial institution providing any credit enhancement, as well as by the expiration or removal of any credit enhancement.

- *General Risks of CDO Investments.* The value of CDOs generally will fluctuate with, among other things, the financial condition of the obligors or issuers of the underlying portfolio of assets of the related CDO ("CDO Collateral"), general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. Consequently, holders of CDOs must rely solely on distributions on the CDO Collateral or proceeds from the sale of CDO Collateral. If distributions on the CDO Collateral are insufficient to make payments on the CDOs, no other assets will be available for payment of the deficiency and following realization of the CDOs, the obligations of an issuer to pay any deficiency generally will be extinguished.

Issuers of CDOs may acquire interests in loans and other debt obligations by way of sale, assignment or participation. The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to the loan or debt obligation. However, the purchaser's rights can be more restricted than those of the assigning institution.

CDO Collateral may consist of high-yield debt securities, loans, ABS and other instruments, which often are rated below investment grade (or of equivalent credit quality). High-yield debt securities generally are unsecured (and loans may be unsecured) and may be subordinated to certain other obligations of the issuer of the debt securities. The lower ratings of high yield securities and below investment grade loans reflect a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of the related issuer or obligor to make payments of principal or interest. These investments may be speculative.

- *Credit Default Swaps.* Fir Tree may cause certain of the Funds to enter into credit derivative contracts such as credit default swap ("CDS") contracts, loan credit default swap ("LCDS") contracts, contracts on the credit default swap index ("CDX") and contracts on the loan credit default swap index ("LCDX"). The typical CDS and LCDS contract requires the seller to pay to the buyer, in the event that a particular reference entity experiences specified credit events, the difference between the notional amount of the contract and the value of a portfolio of securities or loans issued by the reference entity that the buyer delivers to the seller. In return, the buyer agrees to make periodic and/or upfront payments equal to a fixed percentage of the notional amount of the contract. Fir Tree may cause certain of the Funds to also purchase or sell credit default swaps on a basket of reference entities or an index, that is, CDX and LCDX contracts.



In circumstances in which a Fund does not own the debt or loans that are deliverable under a credit default swap, that Fund will be exposed to the risk that deliverable securities or loans will not be available in the market, or will be available only at unfavorable prices, as would be the case in a so-called “short squeeze.” In certain instances of issuer defaults or restructurings, it has been unclear under the standard industry documentation for credit default swaps whether or not a “credit event” triggering the seller's payment obligation had occurred. In either of these cases, a Fund would not be able to realize the full value of the credit default swap upon a default by the reference entity. As a seller of credit default swaps, a Fund incurs leveraged exposure to the credit of the reference entity and is subject to many of the same risks it would incur if it were holding debt securities or loans issued by the reference entity. However, the Funds making these types of investments will not have any legal recourse against the reference entity and will not benefit from any collateral securing the reference entity's debt obligations. In addition, the credit default swap buyer will have broad discretion to select which of the reference entity's debt obligations to deliver to the Fund following a credit event and will likely choose the obligations with the lowest market value in order to maximize the payment obligations of the Fund. Settlement of CDS contracts may also be delayed beyond the time frame originally anticipated by counterparties. Such delays may adversely impact a Fund's ability to otherwise productively deploy any capital that is committed with respect to these contracts.

- *Bank Loans and Participations.* Fir Tree may cause certain of the Funds to invest in bank loans and participations of real estate or mortgage-related companies. The special risks associated with these obligations include (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws, (ii) so-called lender-liability claims by the issuer of the obligations, (iii) environmental liabilities that may arise with respect to collateral securing the obligations, (iv) limitations on the ability of the Funds to directly enforce their rights with respect to participations, and (v) equitable subordination to other creditors. Fir Tree will balance the magnitude of these risks against the potential investment gain prior to entering into each investment. Successful claims by third parties arising from these and other risks, absent bad faith by Fir Tree or its affiliates, will be borne by the Funds investing in these types of investments.
- *Interest-Only Mortgage Loans.* Fir Tree may cause certain of the Funds to invest in interest-only mortgage loans. Interest-only mortgage loans permit the borrowers to make monthly payments of only accrued interest for the first 60 or 120 months following origination. After the interest-only period, the borrower's monthly payment will be recalculated to cover both interest and principal so that the mortgage loan will amortize fully prior to its final payment date. The long-term performance characteristics of these loans are largely unknown. If the monthly payment increases, the related borrower may not be able to pay the increased amount and may default or may refinance the related mortgage loan to avoid the higher payment. Interest-only mortgage loans reduce the monthly payment required by borrowers during the interest-only period and consequently the monthly housing expense used to qualify borrowers. As a result, the interest-only mortgage loans may allow some borrowers to qualify for a mortgage loan who would not otherwise qualify for a fully amortizing mortgage loan

or may allow them to qualify for a larger mortgage loan than otherwise would be the case.

- *Risks Associated with Commercial Mortgage Loans.* Certain of the Funds may invest in commercial mortgage loans. The value of a Fund's commercial mortgage loans will be influenced by the rate of delinquencies and defaults experienced on the commercial mortgage loans and by the severity of loss incurred as result of these defaults. The factors influencing delinquencies, defaults and loss severity include (i) economic and real estate market conditions by industry sectors (e.g., multifamily, retail, office, etc.); (ii) the terms and structure of the mortgage loans; and (iii) any specific limits to legal and financial recourse upon a default under the terms of the mortgage loan.

Commercial mortgage loans are generally viewed as exposing a lender to a greater risk of loss through delinquency and foreclosure than lending on the security of single family residences. The ability of a borrower to repay a loan secured by income-producing property typically is dependent primarily upon the successful operation and operating income of such property (i.e., the ability of tenants to make lease payments, the ability of a property to attract and retain tenants and the ability of the owner to maintain the property, minimize operating expenses and comply with applicable zoning and other laws) rather than upon the existence of independent income or assets of the borrower. Many commercial mortgage loans provide recourse only to specific assets, such as the property and not against the borrower's other assets or personal guarantees.

Exercise of foreclosure and other remedies may involve lengthy delays and additional legal and other related expenses in addition to potentially declining property values. In certain circumstances, the creditors may also become liable upon taking title to an asset for environmental or structural damage existing at the property.

- *Investments in Special Purpose Acquisition Companies.* Fir Tree may cause certain of the Funds to invest in “special purpose acquisition companies” (“SPACs”). A SPAC is a development stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies, other entity, or person. Because SPACs have broad discretion to select potential business combinations (subject to industry, geographic or other limitations, if any), it is not possible for us to ascertain the merits or risks of investing in a particular SPAC. Fir Tree generally intends to select for investment securities of SPACs with strong structures and those headed by management teams with proven track records, but may not always do so if there is a limited number of these types of offerings or for other reasons. A Fund will be dependent upon the integrity, skill and judgment of the management team of each SPAC in which that Fund invests. There is no guarantee that a SPAC Fir Tree selects for investment by a Fund will be able to effect a business combination with an operating entity. SPACs may encounter intense competition from other entities having similar business objectives, such as venture capital funds, leveraged buy-out funds and other private equity entities, as well as operating businesses competing for acquisitions. If a Fund invests in a SPAC that is unable to effect a business combination, that Fund will receive its share of the proceeds held in trust, subject to reduction if third party claims are made against the SPAC or

escrow. If a Fund were to acquire warrants in a dual deal structure, that Fund may lose the entire value of those warrants if a business combination cannot be effected by that SPAC.

- *Fixed Income Securities; Interest Rates.* Fir Tree may cause certain of the Funds to invest in fixed-income securities. The price of most fixed-income securities moves in the opposite direction of the change in interest rates. For example, as interest rates rise, the price of fixed-income securities falls. If a Fund holds a fixed-income security to maturity, the change in its price before maturity will have little impact on that Fund's performance; however, if that Fund has to sell the fixed-income security before the maturity date, an increase in interest rates will result in a loss to that Fund.
- *Default and Credit Risks.* Fir Tree may cause certain of the Funds to invest in different types of debt instruments. Investments in debt involves the risk that the obligor either cannot or will not fulfill its obligations. In evaluating credit risk, Fir Tree will generally attempt to reach conclusions regarding the obligor's assets, liabilities, income and prospects, its management, the priority of a Fund's claims against the obligor, the value of any collateral, the process for enforcing rights and realizing value from collateral and many other factors, each of which is likely to involve numerous assumptions and uncertainties. In addition, Fir Tree will often be dependent upon information provided by the obligor, which may be materially inaccurate or fraudulent. As a result, there is no assurance that Fir Tree will correctly evaluate the credit risks associated with its investments. Any actual default, or any circumstance that increases the possibility of a default, could have a material adverse effect on a Fund.
- *Limitations on the Enforcement of Creditor's Rights.* For those Funds that have made investments in debt, any attempt by those Fund to enforce their rights against the obligor or to realize value from any security interests in connection with a credit investment will be subject to numerous risks, delays and uncertainties, including those related to the validity or enforceability of these Funds' claims, the maintenance of the anticipated priority and perfection of any security interests, the effect of any bankruptcy or insolvency laws, disputes among different classes of creditors, the possibility of counterclaims or defenses, practical difficulties and costs in litigating and enforcing claims in foreign jurisdictions, unfriendly venues for litigation and many others. As a result, there can be no assurance that these Funds will be able to enforce its legal rights to the extent expected.
- *Inflation.* For those Funds that have made investments in debt, inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if a Fund purchases a 5-year bond in which it can realize a coupon rate of 5%, but the rate of inflation is 6%, then the purchasing power of the cash flow has declined. For all but adjustable bonds or floating rate bonds, that Fund is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk.

- *Risks Related to the Energy Industry Generally.* Certain of the Funds invest in energy-related investments. Investments in the energy industry are subject to a variety of risks, not all of which can be foreseen or quantified. For example, the success of many of the Funds' energy-related investments is likely to be affected by factors such as the following: (i) the amount, nature, and timing of property acquisitions or capital expenditures; (ii) the market for oil and gas acreage or properties; (iii) drilling of wells and other planned exploitation activities; (iv) timing and amount of future production of oil or gas; (v) quantities of discovered or probable, potential or proved reserves of oil or gas; (vi) marketing of and market prices for oil, gas or oil or gas properties generally or in any particular location; (vii) operating costs such as lease operating expenses, administrative costs and other expenses; (viii) cash flow and anticipated liquidity; (ix) the timing, success and cost of exploration and exploitation activities; (x) governmental and environmental regulation of the oil and gas industry; (xi) environmental liabilities; (xii) industry competition, conditions, performance and consolidation; (xiii) the availability of drilling rigs and other oilfield equipment and services; and (xiv) natural events. These factors may impact an energy company's ability to service its debts, which is of particular concern for certain of the Funds.
- *Convertible Securities.* The Funds may from time to time invest in convertible securities, including convertible bonds, convertible preferred stocks, and other fixed income instruments that have conversion features. Convertible securities and preferred stock combine the fixed income characteristics of bonds with some of the potential for capital appreciation of equities, and thus may be subject to greater risk than pure fixed income instruments. Unlike bonds, some preferred stocks and some convertible securities do not have a fixed par value at maturity, and in this respect may be considered riskier than bonds.

Convertible debt securities and preferred stocks may depreciate in value if the market value of the underlying equity security declines or if rates of interest increase. In addition, although debt securities are liabilities of a corporation which the corporation is generally obligated to repay at a specified time, debt securities, particularly convertible debt securities, are often subordinated to the claims of some or all of the other creditors of the corporation.

- *Investing in Privately-held Companies.* The Funds may invest a portion of their capital in the debt and equity of privately-held companies, which may be subject to higher risk than investments in publicly-traded companies. Generally, little public information exists about these companies, and the Funds are required to rely on the ability of Fir Tree to obtain adequate information to evaluate the potential risks and returns involved in investing in these companies. If Fir Tree is unable to uncover all material information about such companies, it may not make a fully-informed decision and may lose some or all of the money invested. These factors could subject the Funds to greater risk than investments in publicly-traded companies, negatively affect the Funds' investment returns and cause the loss of all or part of an investor's investment in a Fund.

- *Distressed Securities.* The Funds may purchase, directly or indirectly, the debt securities and other obligations of companies that are experiencing significant financial or business distress, including companies involved in bankruptcy or other reorganization and liquidation proceedings. Although such purchases may result in significant returns, they involve a substantial degree of risk and may not show any return for a considerable period of time. In fact, many of these debt securities and investments ordinarily remain unpaid unless and until the company reorganizes and/or emerges from bankruptcy proceedings, and as a result may have to be held for an extended period of time. A wide variety of considerations, including, for example, the possibility of litigation between the participants in a reorganization or liquidation proceeding or a requirement to obtain mandatory or discretionary consents from various governmental authorities or others may affect the value of these securities and investments. The uncertainties inherent in evaluating such investments may be increased by legal and practical considerations which limit the access of Fir Tree to reliable and timely information concerning material developments affecting a company, or which cause lengthy delays in the completion of the liquidation or reorganization proceedings. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial distress is unusually high. There is no assurance that Fir Tree will correctly evaluate the nature and magnitude of the various factors that could affect the prospects for a successful reorganization or similar action. In any reorganization or liquidation proceeding relating to the company in which the Funds invest, the Funds may lose their entire investment or may be required to accept cash or securities with a value less than the Funds' original investments.

Fir Tree does not generally recommend any single type of security. The Funds typically hold a diverse range of investments, yet Fir Tree still encourages their investors to consider all of the risk factors Fir Tree has described above and those risk factors contained in the Funds' offering documents. Any investment can be risky and the Funds and investors in the Funds must be prepared to assume any potential loss.

## **Item 9. Disciplinary Information**

There are no legal or disciplinary events that are material to an investor's or prospective investor's evaluation of Fir Tree's advisory business or the integrity of our management.

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

Fir Tree, FTCM GP LLC, FTCM Holdings Inc. and their affiliates, Fir Tree, LLC, Camellia Advisors, LLC, Camellia Partners, LLC, Fir Tree II, LLC, Fir Tree REF III, LLC, Fir Tree Capital Participation, LLC, Fir Tree Value Participation, LLC, Fir Tree International Value Funds GP, Ltd., Fir Tree Capital Opportunity Funds GP, Ltd., Fir Tree SOF IV, LLC, Fir Tree SOF V, LLC, Fir Tree SOF VI, LLC, Fir Tree Capital Opportunity Fund III GP, LTD, Fir Tree Capital Opportunity Participation III, LLC, Fir Tree COF III, LLC, Fir Tree SOF VII GP, LTD and Fir Tree SOF VII, LLC have sponsored clients that Fir Tree manages. Certain of these clients have affiliated and subsidiary entities that serve as holding companies for certain investments made by the clients that Fir Tree manages. Each of Fir Tree's affiliates listed above also serves as the

general partner to at least one of the Funds, and in some instances, more than one of the Funds. The Funds do not have independent management, and the Funds that are offshore investment funds do not have a completely independent board of directors, as one of their directors is an employee of Fir Tree and Fir Tree hires and retains their other directors. Although this arrangement may give Fir Tree heightened control and discretion over the Funds, Fir Tree manages any potential conflicts of interest by disclosing these relationships and adhering to the investment strategy in each Fund's applicable offering document.

Certain investment professionals provide services to us through our wholly-owned subsidiary, Fir Tree (Florida), LLC and affiliate Titan Grove Holdings LLC. Fir Tree (Florida), LLC and Titan Grove Holdings LLC, its employees and the persons acting on its behalf are subject to Fir Tree's supervision and control. The activities of Fir Tree (Florida), LLC and Titan Grove Holdings LLC are subject to the Investment Advisers Act of 1940 (the "Advisers Act") and Fir Tree, Fir Tree (Florida), LLC and Titan Grove Holdings LLC operate under a unified compliance program administered by a single compliance officer in accordance with the Advisers Act.

Fir Tree does not recommend or select other investment advisers for the Funds.

Effective January 1, 2013, Fir Tree registered as a commodity pool operator ("CPO") with the Commodity Futures Trading Commission ("CFTC") and became a member of the National Futures Association ("NFA"). Generally, Fir Tree provides its services exclusively to "qualified eligible persons" under CFTC Rule 4.7 or to Funds operating pursuant to CFTC Rule 4.13(a)(3).

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

Fir Tree strives to adhere to the highest industry standards of conduct based on principles of professionalism, integrity, honesty and trust. In seeking to meet these standards, Fir Tree has adopted a Code of Ethics (the "Code"). The Code incorporates the following general principles that all employees are expected to uphold:

- employees must at all times place the interests of the Funds first;
- all personal securities transactions must be conducted in a manner consistent with the Code and any actual or potential conflicts of interest or any abuse of an employee's position of trust and responsibility must be avoided;
- avoid any actual or potential conflict of interest;
- employees must not take any inappropriate advantage of their positions at Fir Tree;
- information concerning the identity of securities and financial circumstances of the Funds, including the Funds' investors, must be kept confidential; and
- independence in the investment decision-making process must be maintained at all times.

Fir Tree recognizes the inherent conflict of employees personally trading the same securities as the Funds trade and has implemented restrictions to address this conflict. With respect to these restrictions on personal securities transactions, with limited exception, Fir Tree does not permit employees to conduct personal securities transactions, including exchange-traded funds (“ETFs”). Employees are permitted to engage in “exempt” transactions which include investments in money-market funds, unaffiliated non-ETF open-end mutual funds, certificates of deposit, bankers’ acceptances and direct obligations of the U.S. government.

On a pre-approval basis, employees are permitted to maintain non-discretionary managed accounts, as approved by the CCO. Employees may also invest in private investments that do not conflict with Fir Tree’s investments, as approved by the CCO.

Except for extremely limited circumstances (e.g., liquidating legacy positions, transactions in a dependent’s account, or investments in un-affiliated limited partnerships), employees are prohibited from transacting in corporate debt, common and preferred stock, warrants, convertibles, options on securities, futures, interests in investment clubs, IPOs or limited offerings, municipal bonds and commercial paper. Employees must be granted approval for disposing of legacy positions, investments in a dependent’s account or investments in un-affiliated limited partnerships. When requesting to transact prohibited investments, employees must submit a trade pre-approval request which requires the pre-approval of Fir Tree’s Chief Compliance Officer. Employees are generally prohibited from transacting in an issuer if Fir Tree holds or is planning on holding a position in the issuer through the Funds.

Upon hire, employees are required to submit to the Chief Compliance Officer a report disclosing all personal accounts over which they exercise influence, control or discretion, and any permitted or prohibited investments held in those accounts. On a quarterly and annual basis, all employees must submit reports disclosing all permitted and prohibited personal investment transactions.

Investors may request a copy of the Code by contacting Fir Tree at the address or telephone number listed on the cover page of this document. The Code includes Material Non-Public Information Policies and Procedures (the “MNPI Policy”) that are designed to prevent the misuse of material, non-public information. Fir Tree’s personnel are required to certify to their compliance with the Code, including the MNPI Policy, on a periodic basis.

Although Fir Tree generally does not effect cross transactions between the Funds, in certain circumstances, Fir Tree may engage in cross transactions when it does not believe it is disadvantageous to the Funds (e.g., for rebalancing of portfolios). A cross trade may permit Fir Tree to execute trades without impacting the market price of securities, can save brokerage commissions and, in certain cases, related transaction costs like custody expenses and transfer taxes. In the event Fir Tree engages in a cross trade, the cross trade will be transacted in accordance with Fir Tree’s policies and procedures. All cross trades must be approved by Fir Tree’s Chief Compliance Officer.

## **Item 12. Brokerage Practices**

In placing portfolio transactions, Fir Tree seeks to obtain the best execution available for the Funds, 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 order and difficulty of execution;
- the financial strength, integrity and stability of the broker;
- the firm's block trading and block positioning capabilities;
- the quality, comprehensiveness and timeliness of market information provided and the provision of research or brokerage services, and other similar services considered to be of value;
- and the overall costs of a trade including commissions, mark-ups, mark-downs or spreads in the context of Fir Tree's knowledge of negotiated commission rates currently available and other current transaction costs with respect to other brokers satisfying Fir Tree's other selection criteria.

Fir Tree utilizes research and other "soft dollar" benefits. Fir Tree is authorized by the Funds to pay higher prices for the purchase of securities from or accept lower prices for the sale of securities to brokerage firms that provide Fir Tree with investment and research information or to pay higher commissions to these firms if Fir Tree determines their prices or commissions are reasonable in relation to the overall services provided. Research services furnished by brokers may include (i) written information and analyses concerning specific securities, companies or sectors; (ii) market, financial and economic studies and forecasts; (iii) statistics and pricing or appraisal services; (iv) discussions with research personnel; and (v) invitations to attend conferences or meetings with management or industry consultants. Fir Tree is not required to weigh any of these factors equally. Information so received is in addition to and not in lieu of services required to be performed by Fir Tree, and Fir Tree's asset-based management fee is not reduced as a consequence of the receipt of this supplemental research information. Research services provided by broker-dealers used by the Funds may be utilized by Fir Tree or its affiliates in connection with their investment services for other Funds. Since commission rates are negotiable, selecting brokers on the basis of considerations which are not limited to applicable commission rates may at times result in higher transaction costs than would otherwise be obtainable.

In addition to research services, Fir Tree may be offered other non-monetary "soft dollar" benefits by broker-dealers that Fir Tree may engage to execute securities transactions on behalf of the Funds. These benefits may take the form of payment of all or a portion of Fir Tree's costs and expenses of operation to the extent that Fir Tree, in its reasonable discretion, determines that any of these costs and expenses are reasonably related to the investment decision-making process. These benefits may be available for use by Fir Tree in connection with transactions in which one or more of the Funds will not participate. The availability of these benefits may influence Fir Tree to select one broker rather than another to perform services for a Fund. Nevertheless Fir Tree attempts to assure either that the fees and costs for services provided to the Funds by brokers offering these benefits are not materially greater than they would be if the services were performed



by equally capable brokers not offering these services or that the Funds will also benefit from the services.

Fir Tree intends for its use of “soft dollar” benefits to fall within the safe harbor of Section 28(e) of the United States Securities Exchange Act of 1934, as amended (the “Exchange Act”), which provides a “safe harbor” to investment managers who use “soft dollars” generated by their advised accounts to obtain investment research and brokerage services that provide lawful and appropriate assistance to the investment manager in the performance of investment decision-making responsibilities. This safe harbor protects financial advisers from liability for a possible breach of fiduciary duty to their clients for engaging in “soft dollar” arrangements for certain services at other than the lowest transaction costs if they make a good faith determination that the amount of the commission was reasonable in relation to the value of the services received. Although Fir Tree intends to use “soft dollars” only for costs and expenses for brokerage services or other costs and expenses reasonably related to its investment decision-making responsibilities, some of these uses of “soft dollars” may not be within this safe harbor. Some items are deemed “mixed use” in that they are partially within the “safe harbor” and partially outside. For those items, Fir Tree will use its discretion and best efforts to allocate the expenses according to what is deemed within and outside of the “safe harbor.”

Fir Tree only uses “soft dollars” to pay for expenses that would otherwise be borne by the Funds. The use of “soft dollars” can create a conflict of interest. Using client transactions to obtain research and other benefits creates incentives that result in conflicts of interest between advisers and their clients. When Fir Tree uses Fund “soft dollars” to obtain research products and services, it receives a benefit because Fir Tree does not have to produce or pay for the research products and services. The availability of these benefits may influence Fir Tree to select one broker-dealer rather than another to perform services for the Funds, based on Fir Tree’s interest in receiving the products and services instead of on the Funds’ interest in receiving the best execution prices. Obtaining these benefits may cause the Funds to pay higher fees than those charged by other broker-dealers.

Although Fir Tree is permitted to allocate transactions to brokers who assist in the distribution of Fund interests, it is Fir Tree’s policy not to do so. However, Fir Tree is not prohibited from using the services of a broker-dealer that has made a referral of potential investors or with which Fir Tree or its principals have other business dealings so long as the dealings are disclosed to the Chief Compliance Officer and the broker-dealer provides best execution. Subject to the foregoing, Fir Tree may have an incentive to select or recommend a broker based on investor referrals, rather than just best execution.

Sometimes Fir Tree decides that some or all of the Funds should participate in the same investment opportunity. In this case, Fir Tree aggregates the purchase or sale of the securities for the various Fund accounts. Fir Tree then allocates the securities purchased (or sold) among the participating Funds so that each Fund receives the same terms. Fir Tree also seeks to execute orders for all participating Funds on an equitable basis. If Fir Tree decides to invest at the same time for more than one of the Funds, Fir Tree will, to the extent practicable, generally place combined orders for all the accounts simultaneously, and, if all the orders are not filled at the same price, Fir Tree will generally average the prices paid in a manner consistent with Fir Tree’s internal policies. Similarly, if an order on behalf of more than one account cannot be fully executed under current

market conditions, Fir Tree will generally allocate the trade among the different accounts on a basis that it considers equitable. Ultimately, the Funds can benefit when Fir Tree aggregates trades because Fir Tree gets volume discounts on execution costs. On the other hand, situations may occur where a Fund could be disadvantaged because of the investment activities Fir Tree conducts for other Funds.

Fir Tree may, from time to time, purchase equity or debt securities in initial or secondary public offerings on behalf of the Funds when such securities become available. These securities are typically allocated among the Funds based on the investment objectives of the relevant Funds and the circumstances giving rise to the opportunity to participate in the initial or secondary public offering.

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

Generally, Fir Tree's investment professionals perform various reviews of the Funds on a daily, weekly, monthly and quarterly basis. These reviews are designed to monitor and analyze transactions, positions and investment levels.

Fir Tree provides investors in the Funds with written reports, at least quarterly, that contain performance information about the Fund in which they have invested. Fir Tree also provides investors in the Funds with written annual reports that contain audited financial statements and tax information.

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

Fir Tree may receive certain economic benefits from broker-dealers and prime brokers which Fir Tree conducts business with that might not be received otherwise. These benefits may include, but are not limited to: access to an electronic communication network for order entry and account information; proprietary research; and participation in sponsored research and capital introduction conferences. While these services are generally provided at no additional cost, Fir Tree may select certain broker-dealers due to receipt of such services. Fir Tree understands that the benefits received through these relationships generally do not depend upon the amount of transactions directed to or the amount of assets custodied.

Except as provided for in Item 10 and Item 12, Fir Tree does not, nor does any of its principals or employees, compensate any person for client referrals.

### **Item 15. Custody**

While it is Fir Tree's practice not to maintain physical possession of any of the Funds' securities or funds, Fir Tree may be deemed to have constructive custody of certain client assets as a result of fee payments or the service of certain affiliates as general partners to its clients. Actual custody of client assets, however, is ordinarily at a broker-dealer, bank or trust company, not with Fir Tree. In the rare, extraordinary situation where Fir Tree takes physical possession of a security on behalf of a client, Fir Tree delivers such security to a broker-dealer, bank or trust company as soon as reasonably practicable. Accounts are reconciled daily, via statements provided by the counterparties, internal Fir Tree proprietary systems and the Funds' administrator (Citco Fund Services). Any breaks are resolved as soon as possible. We review our use of prime brokers and

qualified custodians periodically and may change them without notice. As such, investors receive capital account statements on a monthly basis directly from the Funds' administrator. Investors should carefully review all account statements.

Fir Tree also (1) engages an outside auditor (PricewaterhouseCoopers LLP) to audit the Funds at the end of each fiscal year and (2) distributes the results of the audit in audited financial statements that are prepared in accordance with generally accepted accounting principles to all investors in the Funds generally within 120 days after the end of the fiscal year.

#### **Item 16. Investment Discretion**

Fir Tree has discretionary authority to manage the Funds' securities accounts. Essentially, this means that Fir Tree has the authority to determine, without obtaining specific Fund consent, which securities to buy or sell and the amount of securities to buy or sell. Despite this broad authority, Fir Tree is committed to adhering to the investment strategy and program set forth in each of the Funds' offering documents.

Before accepting their subscriptions for interests, Fir Tree provides all investors in the Funds with an offering document and governing documents of the relevant Fund that sets forth the relevant Fund's investment strategy and program. By completing the subscription documents to acquire an interest in one of the Funds, investors give Fir Tree complete authority to manage their assets invested with Fir Tree in accordance with the applicable Fund's governing documents and the offering document they each received.

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

Fir Tree has sole authority to vote the Funds' securities, and we adhere to an internal proxy voting policy that governs our practices in exercising this voting authority. Fir Tree's policy is to vote the Funds' proxies in the interest of maximizing shareholder value.

Votes on all proxy matters are determined on a case-by-case basis. Fir Tree may choose not to participate in a particular proxy, to take no action or not vote if it concludes that the effect on shareholders' economic interest or the value of the Funds' holdings is indeterminable or insignificant, the potential benefit of voting is outweighed by the cost, or when it is not in the Fund's best interest to vote.

If a proxy vote creates a material conflict between the interests of Fir Tree and the Funds, Fir Tree will resolve the conflict before voting the proxies. In most cases, Fir Tree will engage the services of an outside proxy voting service who will provide an independent recommendation on the direction in which Fir Tree should vote on the proposals. Fir Tree may also use the independent recommendations of the proxy voting service for de minimus Fund positions.

Records of proxy materials and votes are maintained in our offices. A complete copy of our proxy voting policies, procedures and prior voting history are available to investors upon request.

#### **Item 18. Financial Information**

This section is not applicable to Fir Tree.