



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

### **NMS Capital Services, LLC**

February 2012

#### **Principal Office**

NMS Capital Services, LLC  
77 Water Street 26<sup>th</sup> Floor  
New York, NY 10005  
(212) 422-7099  
[www.nms-capital.com](http://www.nms-capital.com)

This brochure provides information about the qualifications and business practices of NMS Capital Services, LLC and its affiliates (“NMS”). If you have any questions about the contents of this Brochure, please contact our Chief Compliance Officer, Jim Wilson, at 214-871-8362 or email [jwilson@nms-capital.com](mailto:jwilson@nms-capital.com).

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

NMS is registered as an investment adviser with the United States Securities and Exchange Commission (the “SEC”) under the Investment Advisers Act of 1940 (the “Advisers Act”). Registration as an investment adviser with the SEC does not imply a certain level of skill or training. In addition, the information in this Brochure has not been approved or verified by the SEC or by any state securities authority.

## Item 2: Material Changes

In February 2012, NMS filed its initial application to register as an investment adviser with the SEC. Accordingly, pursuant to disclosure rules under the Advisers Act, this is the first Brochure compiled by NMS.

In the future, this Item will identify and discuss the material changes that have been made to the content of this Brochure since the last annual update.

## Item 3: Table of Contents

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

## Item 4: Advisory Business

NMS is a limited liability company organized under the laws of the State of Delaware and is controlled by New MainStream Capital Management Holding, LLC (“New MainStream Holding”). NMS Management, LP (“NMS Management”) is a Delaware limited partnership that is also controlled by New Mainstream Holding and has an advisory agreement with the Fund (defined below). New MainStream Holding is owned and controlled by limited liability companies that are in turn owned by Martin Chavez and Kevin Jordan, NMS’ Managing Partners. NMS, New Mainstream Holding, and NMS Management were founded in 2010.

NMS, or through its affiliated management entities, provides discretionary advisory services to NMS Fund, LP (the “Fund”), a private investment partnership. The Fund’s general partner is NMS GP, LP (the “General Partner”). NMS offers the Fund advice with respect to private equity investments in lower middle market companies primarily based in North America, managing, supervising and disposing of such investments, and engaging in such other activities as the General Partner deems reasonably necessary. NMS will invest the Fund’s capital in lower middle market companies, with particular concentration on companies in the healthcare service, consumer

products and specialized business service markets. NMS has taken both minority as well as control equity positions in the investments that it has made for the Fund. As of November 30, 2011 NMS managed \$199.4 million of assets on behalf of the Fund. All assets are managed on a discretionary basis.

NMS formulates its investment advice based on the Fund's investment objectives. As part of its advisory services, NMS directs and manages the investment and reinvestment of the Fund's assets, and provides reports to Investors (defined below). Investment advice is provided directly to the Fund and not individually to the limited partners of the Fund (the "Investors" or "Limited Partners"). NMS manages the assets of the Fund in accordance with the terms of the Fund's limited partnership agreements ("Limited Partnership Agreement"). All terms are generally established at the time of the formation of a Fund, and are only terminable once the Fund is dissolved, wound up, and terminated. Limited Partners are not permitted to withdraw from the Fund prior to the Fund's dissolution, except in limited circumstances.

## **Item 5: Fees and Compensation**

### General

NMS and its affiliates receives compensation from the Fund in the form of a fixed management fee, carried interest allocations, and certain other fees or expenses related to transactions (see below). The recipients of this Brochure should refer to the detailed information found in the Fund's Limited Partnership Agreement for specific information about the fees earned by NMS and its affiliates or the General Partner and the expenses to be paid by the Fund and, indirectly, by the Limited Partners.

### Management Fees

The Limited Partnership Agreement provides for the Fund to pay a pre-determined management fee on an annual basis to NMS' affiliates for managing the affairs of the Fund. The management fee is paid by the Fund quarterly in advance. Any fees payable in advance will be prorated and reimbursed to an Investor to the extent an Investor is required to withdraw pursuant to the terms set forth under the Limited Partnership Agreement.

### Carried Interest Allocations

The Fund is also subject to a carried interest of up to 20% of profits on distributions derived from the disposition of investments or securities (following a preferred return of 8% to Investors), which is paid to affiliates of NMS.

### Other Fees

NMS and/or its employees may also receive fee income paid by portfolio companies or other third parties, including monitoring fees, consulting fees, directors' fees (whether in the form of cash, securities, or otherwise), break-up fees, transaction fees, or other similar fees received with respect to investments or proposed investments by NMS, the General Partner, or any affiliate of the foregoing (collectively, "Other Fees"). Under the terms of the Limited Partnership Agreement, management fees are reduced by an amount equal to 80% of Other Fees received by any persons of NMS during the previous quarter. Since such fees are not always based on the exit or sale of a Fund investment, NMS and its affiliated parties may receive the benefit of Other Fees

even when a Fund does not ultimately profit from an investment. Any unused Other Fees are carried forward and applied against future management fees.

#### Other Expenses Charged to the Fund

In addition to management fees and carried interest, the Limited Partners will pay or reimburse NMS or its affiliated parties the fees and expenses charged to the Fund. Those fees and expenses typically include, among other things: fees and expenses incurred in connection with the purchase of certain existing private equity investments from a third party seller in a secondary transaction and all fees, costs, and expenses incurred in connection with the organization, funding and start-up of the Fund, fees associated with the acquisition, holding and disposition of investments, all litigation and indemnification expenses, judgments and settlements, financing, appraisal and filing fees, operating expenses, registration expenses, brokerage finders' fees, custodial and other fees, broken deal expenses, broken disposition fees, auditing, insurance, consulting, and accounting fees and expenses, interest on fees and expenses arising out of all borrowings made by the Fund, and expenses of the advisory boards for the Fund and meetings of the Limited Partners.

#### Overhead Expenses

NMS and the General Partner will pay all of their respective ordinary overhead expenses in managing Fund investments, including salaries, rent, travel, and equipment expenses.

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

As described in Item 5, NMS or its affiliates receive performance-based compensation in the form of "carried interest", which calculation is based on the profits generated on the sale or disposition of Fund assets. The fact that a significant portion of the Advisor's compensation (and its affiliates and investment professionals compensation) is directly computed on the basis of profits generated by the sale or disposition of Fund assets may create an incentive for NMS to make investments on behalf of the Fund that are riskier or more speculative than would be the case in the absence of such compensation. NMS seeks to address these conflicts through careful vetting of investment opportunities by its investment professionals, and by disclosure of investments to Limited Partners by way of capital call notices and periodic reports. In addition, the governing documents of the Fund contain "clawback" provisions applicable in the event of over payment of carried interest distributions.

### **Item 7: Types of Clients**

NMS provides discretionary management and advisory services to the Fund (which is a private pooled investment vehicle) directly, subject to the direction and control of the General Partner. Investors in the Fund include high net worth individuals, other pooled investment vehicles, and trusts.

Investors will be required to meet certain suitability qualifications, such as being an "accredited investor" within the meaning set forth in Rule 501(a) of Regulation D under the Securities Act and "qualified purchasers" within the meaning of the Investment Company Act of 1940, as amended. Details concerning applicable Investor suitability criteria are set forth in the Fund subscription materials, which are furnished to each Investor.

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

### Investment Strategy

NMS' investment strategy is to invest in growth companies primarily located in North America. NMS seeks to acquire solid businesses in partnership with management, and aims to improve profitability and drive growth, both organically and through selective acquisitions. NMS implements its investment strategy through a disciplined adherence to its targeted core investment attributes, carefully selecting investments from its deal flow sourcing and structured diligence process, and the implementation of a "hands-on" approach to managing each portfolio company.

### Methods of Analysis

NMS employs a structured investment review and approval process driven by extensive industry and company specific analysis. NMS focuses its initial assessment of potential investments against its targeted core investment attributes: (i) strong underlying growth characteristics, (ii) high operating margins with strong free cash flows, (iii) experienced management teams focused on generating growth, and (iv) market share leadership or opportunities for industry consolidation.

NMS generally avoids investments that are (i) excessively sensitive to recessionary or commodity business cycles, (ii) capital intensive, (iii) susceptible to a high degree of technological obsolescence, or (iv) subject to the threat of inequitable overseas competition.

If the investment opportunity merits further investigation, two or more members of NMS will be more specifically devoted to pursuing the opportunity on an on-going basis. NMS employs a comprehensive due diligence process that is intended to identify risks and opportunities associated with potential investments. To the extent necessary, NMS utilizes appropriate internal resources and will engage third party consultants, attorneys and accountants. Upon completion of detailed due diligence, and prior to the consummation of an investment, a written investment review memorandum is prepared describing the investment thesis, diligence results, the proposed transaction structure and other relevant matters.

### Associated Risks

All investing involves a risk of loss and the investment strategy offered by NMS could lose money over short or even long periods. An investment in the Fund may be deemed a speculative investment and is not intended as a complete investment program. It is designed for sophisticated Investors who fully understand and are capable of bearing the risk of an investment in the Fund. No guarantee or representation is made that the Fund will achieve its investment objective or that Limited Partners will receive a return of their capital.

Identifying and participating in portfolio company investments and assisting in building successful enterprises is challenging. Many investment decisions made by NMS will be dependent upon the ability of its members to obtain relevant information predominantly from non-public sources, and reliance upon information provided by third parties that is impossible or impractical to verify. The marketability and value of each investment will depend upon many factors beyond NMS' control.

The descriptions contained below are a brief overview of the material risks related to NMS' investment strategy; however, it is not intended to serve as an exhaustive list or a comprehensive description of all risks and conflicts that may arise in connection with the management and operation of the Fund.

Investing in the Fund involves a risk of loss all Limited Partners should be prepared to bear.

#### General Business and Management Risk

Investments in portfolio companies subject the Fund to the general risks associated with the underlying businesses, including, among other things, market conditions, changes in regulatory requirements, reliance on management at the company level, interest rate and currency fluctuations, general economic downturns, domestic and foreign political situations and other factors. With respect to management at the portfolio company level, many portfolio companies rely on the services of a limited number of key individuals, the loss of any one of whom could significantly adversely affect the portfolio company's performance. While in all cases NMS will monitor portfolio company management, management of each portfolio company will have day-to-day responsibility for the operations of such portfolio company.

#### Highly Competitive Market for Investment Opportunities

The activity of identifying, completing and realizing attractive investments is highly competitive and involves a high degree of uncertainty. The Fund faces competition from numerous competitors in all fields of activity. The Fund will be competing for investments with a variety of other investment vehicles, as well as individuals, financial institutions and other institutional Investors. Additional funds with similar investment objectives may be formed in the future by other unrelated parties. There can be no assurance that a Fund will be able to locate and complete investments which satisfy the investment objectives or that it will be able to invest fully its available capital.

#### Unspecified Investments

The Fund must rely upon the ability of the General Partner to identify, structure and implement investments consistent with the Fund's investment objectives and policies. The Fund, however, may be unable to find a sufficient number of attractive opportunities to meet its investment objectives. The success of the Fund will depend on the ability of NMS to identify suitable investments, to negotiate and arrange the closing of appropriate transactions and to arrange the timely disposition of such investments. Furthermore, to the extent the investment strategy of the Fund relies upon the recovery, stabilization or improvement of market and economic conditions and such events do not occur for an extended period of time, the Fund may not be able to invest a significant portion of its capital commitments during the investment period of the Fund.

#### Lower Middle Market Companies

A significant component of the Fund's investment objectives is to invest in lower middle market companies. The Fund's focus on "lower middle market companies" will generally include companies with enterprise values ranging from \$50 million to \$300 million. Although investments in lower middle market companies may present greater opportunities for growth, such investments may also entail larger risks than are customarily associated with investments in larger companies. Lower middle market companies may have relatively limited product lines, markets,

and financial and other resources. As a result, such companies may be more vulnerable to general economic trends and to specific changes in markets and technology. In addition, future growth may be dependent on additional financing, which may not be available on acceptable terms when required. Further, there is ordinarily a more limited marketplace for the sale of interests in smaller, private companies, which may make realizations of gains more difficult. In addition, the relative illiquidity of private equity investments generally, and the somewhat greater illiquidity of private investments in middle market companies, could make it difficult for the Fund to react quickly to negative economic or political developments.

#### Debt Investments in Portfolio Companies

The Fund may make investments in debt or convertible debt securities. Such debt may be unsecured and structurally or contractually subordinated to substantial amounts of senior indebtedness, all or a significant portion of which may be secured. Moreover, such debt investments may not be protected by financial covenants or limitations upon additional indebtedness and there is no minimum credit rating for such debt investments. Other factors may materially and adversely affect the market price and yield of such debt investments, including, investor demand, changes in the financial condition of the applicable issuer, government fiscal policy and domestic or worldwide economic conditions.

#### Financial Leverage

The Fund expects to maintain financial leverage within each of its portfolio companies and may re-leverage a portfolio investment in order to achieve this goal. Such leverage may be substantial. Utilization of leverage will result in fees, expenses and interest costs to the Fund. If the Fund is unable to refinance a portfolio company in order to maintain the desired amount of financial leverage, the Fund may realize lower than expected returns from the relevant portfolio investment and may hold a larger than expected equity investment in that portfolio investment. Although NMS will seek to use financial leverage in a manner that it believes to be appropriate, the leveraged capital structure of such portfolio companies and portfolio investments may significantly increase their exposure to adverse economic factors, such as rising interest rates, downturns in the economy or deterioration in the condition of such portfolio companies or portfolio investments or their respective industries. If a portfolio company cannot generate adequate cash flow to meet debt obligations, for example, the Fund may suffer a partial or total loss of capital invested in the portfolio company.

#### Portfolio Concentration

Although generally no more than 20% of the Fund's capital will be invested in any single portfolio company (not including any bridge financings), diversification is not a requirement of the Fund. Accordingly, the Fund's portfolio investments may include a small number of large positions. While this portfolio concentration may enhance total returns to the Limited Partners, if any large position has a material loss, then returns to the Limited Partners may be lower than if they had invested in a well-diversified portfolio. Poor performance by even a single portfolio company could severely affect the total returns to Limited Partners. Investors have no assurance as to the degree of diversification of the Fund's investments, either by geographic region, asset type or sector. To the extent the Fund concentrates portfolio investments in a particular issuer, security or geographic region, its portfolio investments will become more susceptible to

fluctuations in value resulting from adverse economic or business conditions with respect thereto. Additionally, the securities in which the Fund will invest may be among the most junior in a portfolio company's capital structure and, therefore, may be subject to the greatest risk of loss.

#### Illiquid and Long-Term Investments

It is anticipated that there will be a significant period of time before the Fund will have completed its investments in Portfolio Companies. Such investments may take several years from the date of initial investment to reach a state of maturity when realization of the investment can be achieved. Although portfolio investments by the Fund occasionally may generate some current income, private investment transaction structures typically will not provide for liquidity of the Fund's investment prior to that time. The return of capital and the realization of gains, if any, from a portfolio investment will generally occur only upon the partial or complete disposition or refinancing of such portfolio investment. In light of the foregoing, it is likely that no significant return from the disposition of the Fund's investments will occur for a substantial period of time from the commencement of the Fund's operations. It is unlikely that there will be a public market for the securities held by the Fund at the time of their acquisition. The Fund generally will not be able to sell its securities publicly unless the issuer has consummated a public offering of its securities and such offered securities are registered under applicable securities laws, unless an exemption from such registration requirements is available. In addition, in some cases, the Fund may be prohibited by contract from selling certain securities for a period of time and, as a result, may not be permitted to sell a portfolio investment at a time it might otherwise desire to do so. Further, disposition of such investments may require a lengthy time period or may result in distributions in kind to investors.

#### Investments in Restructurings or Underperforming Companies

The Fund may have investments in companies that are experiencing or are expected to experience financial difficulties, which such companies may never overcome. Such investments could, in certain circumstances, subject the Fund to additional potential liabilities, which may exceed the value of the Fund's original investment therein. Such investments of the Fund could also be subject to federal bankruptcy law and state fraudulent transfer laws, which may vary from state to state, if the securities relating to such investments were issued with the intent of hindering, delaying or defrauding creditors or, in certain circumstances, if the issuer receives less than reasonably equivalent value or fair consideration in return for issuing such securities. If such investments constitute debt and such debt is used for a buyout of shareholders, this risk is greater than if the debt proceeds are used for day-to-day operations or organic growth. If a court were to find that the issuance of the securities was a fraudulent transfer or conveyance, the court could void the payment obligations under the securities, further subordinate the securities to other existing and future indebtedness of the issuer or require the Fund to repay any amounts received by it with respect to the securities. In the event of a finding that a fraudulent transfer or conveyance occurred, the Fund may not receive any repayment on the securities.

Under the Bankruptcy Code, a lender that has inappropriately exercised control of the management and policies of a company may have its claims against the company subordinated or disallowed, or may be found liable for damages suffered by parties as a result of such actions. In addition, under certain circumstances, payments to the Fund and distributions by the Fund to the Limited Partners may be reclaimed if any such payment or distribution is later determined to have



been a fraudulent conveyance or a preferential payment. Such debt may also be disallowed or subordinated to the claims of other creditors if the Fund is found to have engaged in other inequitable conduct resulting in harm to other parties. The Fund's investment may be treated as equity if it is deemed to be a contribution to capital, or if the Fund attempts to control the outcome of the business affairs of a company prior to its filing under the Bankruptcy Code. While the Fund will attempt to avoid taking the types of action that would lead to such liability, there can be no assurance that such claims will not be asserted or that the Fund will be able successfully to defend against them.

#### Control Position Risk

Although non-control investments may also be made, the Fund intends to make certain investments that allow the Fund to acquire control or exercise influence over management and the strategic direction of a portfolio investment. The exercise of control over a company imposes additional risks of liability for environmental damage, product defects, pension liabilities, failure to supervise management and other types of liability in which the limited liability characteristic of business operations may be ignored. The exercise of control over a portfolio investment could expose the assets of the Fund to claims by such the portfolio companies underlying such investments, its security holders and its creditors. While NMS intends to manage the Fund to minimize exposure to these risks, the possibility of successful claims cannot be precluded.

#### Additional Capital; Follow-On Investments

Certain of the Fund's portfolio companies, especially those in a development phase, may require additional financing to satisfy their working capital requirements. The amount of the additional financing needed will depend upon the maturity and objectives of the particular portfolio company. Each such round of financing (whether from the Fund or other investors) is typically intended to provide a company with enough capital to reach its next major corporate milestone. If the funds provided are not sufficient, a company may have to raise additional capital at a price unfavorable to its existing investors, including the Fund. In addition, the Fund may make additional debt and equity investments or exercise rights under warrants, options or convertible securities that were acquired in the initial investment in such company in order to preserve the Fund's proportionate ownership when a subsequent financing is planned, or to protect the Fund's investment when such portfolio company's performance does not meet expectations.

The availability of capital is generally a function of capital market conditions that are beyond the control of the Fund or any portfolio company. There can be no assurance that the portfolio companies will be able to predict accurately future capital requirements necessary for success or that additional funds will be available from any source. The Fund may be called upon to provide follow-on funding for its investments or have the opportunity to increase its investment in such a portfolio company. There can be no assurance that the Fund will make follow-on investments or that it will have sufficient funds or the ability to do so. Any decision by the Fund not to make a follow-on investment or its inability to make such an investment may have a substantial negative impact on a portfolio company in need of such an investment or may diminish the Fund's ability to influence the portfolio company's future development.

### Bridge Financings

From time to time, the Fund may provide interim financing in order to facilitate a portfolio investment on a short-term, unsecured basis in anticipation of a future issuance of equity or long-term debt securities or refinancing. Such bridge loans would typically be convertible into a more permanent, long-term security; however, for reasons not always in the Fund's control, such long-term debt securities may not be issued and such bridge loans may remain outstanding. In such an event, the interest rate on such loans may not adequately reflect the risk associated with the unsecured position taken by the Fund.

### Hedging Policies/Risks

The Fund may employ hedging techniques in connection with the acquisition, holding, financing, refinancing or disposition of portfolio investments and portfolio companies themselves may also utilize hedging techniques in order to enhance returns. While such transactions may reduce certain risks, such transactions themselves may entail certain other risks, such as counterparty default, bankruptcy or insolvency, convergence and other risks all related with derivative instruments. Thus, while the Fund may benefit from the use of these hedging mechanisms, unanticipated changes in interest rates, securities prices, commodity prices, currency exchange rates and/or other events relating to such hedging transactions may result in a poorer overall performance for the Fund than if it or its portfolio companies had not entered into such hedging transactions.

### Valuation of Assets

Most of the securities owned by the Fund are not publicly traded and are required to be fair valued by NMS. When estimating fair value, NMS will apply a methodology based on its best judgment that is appropriate in light of the nature, facts and circumstance of the investments. Valuations are subject to multiple levels of review for approval and ensuring that portfolio investments are fairly valued is an important focus of NMS.

### Dependence on Key Personnel

The success of the Fund will be highly dependent on the expertise and performance of the investment professionals. There can be no assurance that the investment professionals will continue to be associated with NMS or any of its affiliates throughout the life of the Fund, as they are under no contractual obligation to remain with NMS or any of its affiliates for all or any portion of the term of the Fund. The loss of the services of one or more of these individuals could have a material adverse effect on the performance of the Fund. Furthermore, although investment professionals employed by NMS will commit a significant amount of their business efforts to the Fund, they are not required to devote all of their business time to the Fund's affairs. They may manage newly created partnerships.

### Material, Non-Public Information

NMS, the General Partner, and/ or their affiliates may acquire confidential or material non-public information and therefore be restricted from initiating transactions in certain securities. Disclosure of such information to the General Partner's or NMS' personnel responsible for the affairs of the Fund will be on a need-to-know basis only, and the Fund may not be free to act upon any such information. Therefore, the Fund may not have access to material non-public information in the possession of NMS which might be relevant to an investment decision to be

made by the Fund, and the Fund may initiate a transaction or sell a portfolio investment which, if such information had been known to it, may not have been undertaken. Due to these restrictions, the Fund may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell a portfolio investment that it otherwise might have sold.

## **Item 9: Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to an Investor's evaluation of NMS or the integrity of NMS's management. Neither NMS nor any of its officers, directors, employees or other management persons, have been involved in any legal or disciplinary events in the past 10 years that would require disclosure in response to this Item.

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

### Pooled Investment Vehicles

The General Partner has organized and sponsors the Fund, which is a private investment company. This Fund is managed by NMS but is controlled by the affiliated General Partner. NMS and the General Partner will be responsible for all decisions regarding portfolio transactions of the Fund and have full discretion over the management of the Fund's investment activities. While the General Partner is not separately registered as an investment adviser with the SEC, all of its investment advisory activities are subject to the Investment Advisers Act of 1940, as amended (the "Advisers Act") and the rules thereunder.

### Consulting Services

NMS currently permits two of its management persons to devote a limited amount of time providing consulting services to their former employer in connection with two portfolio company assets managed by such persons' during their former employment. The economic benefits received by the management persons in connection with delivery of such services will terminate on June 1, 2012.

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

Pursuant to Rule 204A-1 of the Advisers Act, NMS has adopted a written Code of Ethics (the "Code") predicated on the principal that NMS owes a fiduciary duty to the Fund and its Investors. The Code is designed to address and avoid potential conflicts of interest and is applicable to all officers, directors, members, partners or employees of NMS (the "Employees"), each Employee's spouse, minor children and other family members living in his or her household (the "Related Persons"), as well as any other individuals designated by the CCO as being subject to all or a portion of the compliance procedures or policies adopted by NMS (collectively the "Covered Persons"). NMS requires its Employees to act in the Fund's best interests, abide by all applicable regulations and avoid any action that is, or could even appear to be, legally or ethically improper.

Certain transactions in which NMS engages may require, for either business or legal reasons that no Covered Persons trade in the subject securities for specified time periods. Such securities will appear on a list (the "Restricted List"). No Covered Persons may engage in any sort of trading activity with respect to a security or a derivative thereof on the Restricted List without obtaining

prior written approval from the Chief Compliance Officer. The Code also requires Covered Persons to obtain pre-clearance before purchasing an IPO or limited offering (i.e., private placement); requires periodic reporting of Covered Persons' personal securities transactions and all holdings; and requires prompt internal reporting of Code violations. NMS endeavors to maintain current and accurate records of all personal securities accounts of its Covered Persons in an effort to monitor all such activity. A copy of NMS' Code is available upon request.

NMS' Employees and their related entities have investments in the Fund's General Partner. The General Partner participates in the Fund's investment program by agreeing to commit a certain amount of capital commitments to the Fund. Therefore, Employees and their related entities participate in transactions effected for the Fund and have a direct financial interest in the transactions of the Fund. While such arrangements are intended to align the interests of NMS and the Limited Partners, it also has the potential to create conflicts of interest. To address such conflicts, the investment arrangements are described and agreed upon in the governing documents of the Fund. Generally, investments are made and disposed on the same economic terms for all Investors, including NMS' related parties, so that no one receives more favorable terms or greater exposure to a particular investment.

#### Portfolio Company Representation

Employees of NMS may serve as directors and officers of certain portfolio companies and, in that capacity, will be required to make decisions that consider the best interests of such portfolio companies and their respective shareholders. In certain circumstances, for example in situations involving bankruptcy or near-insolvency of a portfolio company, actions that may be in the best interests of the portfolio company may not be in the best interests of the Fund, and vice versa. Accordingly, in these situations, there will be conflicts of interest between such individual's duties as an employee of NMS and such individual's duties as a director or officer of such portfolio company.

### **Item 12: Brokerage Practices**

NMS is generally prohibited from investing in publicly traded securities, unless it obtains consent from the Advisory Board of the Fund. To the limited extent NMS transacts in public securities, or other non-private equity investments, NMS will seek to obtain best execution. NMS intends to select brokers based upon the broker's ability to provide best execution for the Fund.

NMS does not participate in any soft dollar arrangements outside of receiving research available to other institutional investors. Research services received from broker dealers or other third parties are supplemental to NMS' own research effort. To the best of NMS' knowledge, these services are generally made available to all similar institutional investors doing business with such broker-dealers. NMS does not separately compensate such broker-dealers for the research and does not believe that it "pays-up" for such broker-dealers' services.

### **Item 13: Review of Accounts**

All investments are carefully reviewed and approved by NMS' investment team, which includes the Managing Partners. The portfolio companies are reviewed on a continuous basis and the investment personnel meet regularly to discuss investment ideas, economic developments, industry outlook and other issues related to current portfolio holdings and potential investment

opportunities. Employees of NMS also serve on the boards of directors of portfolio companies and thereby exercise oversight of the Fund's investments on a continual basis.

NMS provides each Limited Partner with the following reports in accordance with the terms of the Limited Partnership Agreement: (i) audited annual financial statements including a statement showing the Limited Partners closing capital account balance; (ii) unaudited quarterly financial statements for the Fund and for such quarter showing the Limited Partner's closing capital account balance as of the end of such quarter; and (iii) annual tax information necessary to complete any applicable tax returns. NMS also holds an annual meeting, which may be telephonic, with the Limited Partners.

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

NMS or its affiliates may charge portfolio companies Other Fees. Also, employees of NMS who serve on the board of directors of portfolio companies may receive compensation (in the form of cash, stock options or other equity awards) in their capacity as directors. A portion of the direct and indirect compensation received by an employee of NMS in his or her capacity as a member of the board of directors of a portfolio company will be applied as a reduction of the Fund's future management fees in accordance with the Limited Partnership Agreement.

### **Item 15: Custody**

NMS has access to client accounts (i.e., the Fund) since it or an affiliate serves as the General Partner of the Fund. Limited Partners will not receive statements from any custodians. Instead, the Fund is subject to an annual audit by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and the audited financial statements are distributed to each Limited Partner. The audited financial statements will be prepared in accordance with generally accepted accounting principles and distributed within 120 days of the Fund's fiscal year end.

### **Item 16: Investment Discretion**

In accordance with the terms and conditions of the Limited Partnership Agreement, and subject to the direction and control of the General Partner of the Fund, NMS generally has discretionary authority to determine, without obtaining specific consent from the Fund or its Limited Partners, the securities and the amounts to be bought or sold on behalf of the Fund, and to perform the day-to-day investment operations of the Fund. NMS' investment discretion is subject to the Fund's governing documents and any side letters it executes with investors.

### **Item 17: Voting Client Securities**

In accordance with its fiduciary duty to clients and Rule 206(4)-6 of the Advisers Act, NMS has adopted and implemented written policies and procedures governing the voting of client securities.

The Fund is primarily invested in privately-held portfolio company investments which typically do not issue proxies. In general, the Fund may not directly invest in publicly traded securities unless it has Advisory Board approval. However, upon the rare occasion in which NMS might need to execute a proxy in connection with any publicly traded securities or portfolio companies, NMS' policy is to exercise the proxy vote in the best interest of the Fund, taking into

consideration all relevant factors, including without limitation, acting in a manner that NMS believes will (i) maximize the economic benefits to the Fund and (ii) promote sound corporate governance by the issuer.

NMS will seek to avoid material conflicts of interest between its own interests on the one hand, and the interests of the Fund on the other. However, as is typical with private equity investing, NMS seeks and accepts the election of a NMS representative to serve on the board of directors on behalf of the Fund and will typically, but not always, vote in favor of board recommendations. In situations where NMS is required to vote the proxy for a company in which employees of NMS serve on the board of directors, NMS has determined that this does not inherently present a conflict of interest, as the sole purpose of this representation is to maximize the return on the Fund's investment in such portfolio company. Accordingly, while NMS is generally, but not automatically, fully supportive of recommendations made by a portfolio company's board of directors with respect to proxy votes related to that issuer, it will review all proxies in accordance with its proxy voting guidelines and may or may not vote in favor of the board's recommendation.

All conflicts of interest will be resolved in the interests of the Fund. In situations where NMS perceives a material conflict of interest, NMS may seek approval from the Advisory Board to resolve the conflict of interest

All proxies that NMS receives will be treated in accordance with these policies and procedures. A copy of NMS' written proxy voting policies and procedures, as well as a record of how NMS has voted in the past, will be maintained and available for review upon written request.

## **Item 18: Financial Information**

A balance sheet is not required to be provided as NMS (i) does not solicit fees more than six months in advance, (ii) does not have a financial condition that is likely to impair its ability to meet contractual commitments to clients or (iii) has not been subject to any bankruptcy proceeding during the past 10 years.