



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

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

March 2014

#### **Principal Office**

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This brochure provides information about the qualifications and business practices of NMS Capital Services, LLC and its affiliates (öNMSö). If you have any questions about the contents of this Brochure, please contact our Chief Compliance Officer, James 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 öSECö) under the Investment Advisers Act of 1940 (the öAdvisers Actö). 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.

This Brochure does not constitute an offer to sell or the solicitation of an offer to purchase any securities of any investment fund. Any such offer or solicitation will be made solely to qualified investors by means of a private placement memorandum and related subscription materials.

## Item 2: Material Changes

This Brochure is an update to the Form ADV Part 2A that NMS filed on March 28, 2013. There have been no material changes to the content of this Brochure since NMS last submitted the Form ADV Part 2A in March 2013

## Item 3: Table of Contents

Item 2: Material Changes .....	2
Item 3: Table of Contents.....	2
Item 4: Advisory Business .....	<b>Error! Bookmark not defined.</b>
Item 5: Fees and Compensation .....	3
Item 6: Performance Based Fees and Side-by-Side Management.....	5
Item 7: Types of Clients.....	5
Item 8: Methods of Analysis, Investment Strategies and Risk of Loss .....	5
Item 9: Disciplinary Information.....	12
Item 10: Other Financial Industry Activities and Affiliations .....	12
Item 11: Code of Ethics, Participation or Interest in Client Transactions and Personal Trading ..	12
Item 12: Brokerage Practices .....	13
Item 13: Review of Accounts.....	14
Item 14: Client Referrals and Other Compensation .....	14
Item 15: Custody .....	14
Item 16: Investment Discretion .....	15
Item 17: Voting Client Securities .....	15
Item 18: Financial Information.....	15

## 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 (õNew MainStream Holdingö). New MainStream Holding is owned and controlled by limited liability companies that are in turn owned by Martin Chavez and Kevin Jordan, NMSø Managing Partners. NMS Management, LP (õNMS Managementö) is a Delaware limited partnership that is also controlled by New Mainstream Holding and has an advisory agreement with the Funds (defined below). NMS, New Mainstream Holding, and NMS Management were founded in 2010.

NMS, directly or through its affiliated management entities, provides discretionary advisory services to NMS Fund, LP, and NMS Fund II, LP (each, a õFundö and collectively, the õFundsö), both of which are private investment partnerships. As used throughout this Brochure, the term õclientö, generally refers to each Fund. The general partner of NMS Fund, LP is NMS GP, LP, and the general partner of NMS Fund II, LP is NMS II GP, LP (each, a õGeneral Partner,ö and collectively, the õGeneral Partnersö). NMS offers the Funds 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 Partners deem reasonably necessary. NMS will invest the Funds' capital in lower middle market companies, with particular concentration on companies in the healthcare service, consumer products and business service markets. NMS has taken both control as well as minority equity positions in the investments that it has made for the Funds. As of December 31, 2013 NMS managed \$173 million of assets on behalf of the Funds. All assets are managed on a discretionary basis.

NMS formulates its investment advice based on the Funds' investment objectives. As part of its advisory services, NMS directs and manages the investment and reinvestment of the Funds' assets, and provides reports to Investors (defined below). Investment advice is provided directly to the Funds and not individually to the limited partners of the Funds (the "Investors" or "Limited Partners"). NMS manages the assets of the Funds in accordance with the terms of the Funds' limited partnership agreements (each, a "Limited Partnership Agreement" and collectively, the "Limited Partnership Agreements"). 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 Funds prior to the Funds' dissolution, except in limited circumstances.

On occasion, the Funds may form co-investment vehicles managed by NMS or its affiliates to invest alongside the Funds in portfolio companies. Such co-investment vehicles may pay management fees and/or carried interest to NMS.

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

### General

NMS or one of its affiliates typically receives compensation from the Funds in the form of management fees, 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 Funds' Limited Partnership Agreement for specific information about the fees earned by NMS and its affiliates or the General Partners and the expenses to be paid by the Funds and, indirectly, by the Limited Partners.

### Management Fees

The Limited Partnership Agreements provide for the Funds to pay a management fee to NMS or affiliates for managing the affairs of the Fund. In the case of NMS Fund, LP, the management fee is a pre-determined annual amount, and in the case of NMS Fund II, LP, the management fee per annum is equal to 2.0% of the Limited Partners' capital commitments or actively invested capital. The management fee is paid by the Funds 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 Agreements.

### Carried Interest Allocations

The Funds are 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 Partners, or any affiliate of the foregoing (collectively, "Other Fees").

Under the terms of the Limited Partnership Agreement for NMS Fund, LP, management fees are reduced by an amount equal to 80% of NMS Fund's share of Other Fees received by any persons of NMS during the previous quarter. Under the terms of the Limited Partnership Agreement for NMS Fund II, LP, management fees are reduced by an amount equal to 100% of NMS Fund II's share 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.

Typically, co-investment vehicles or certain other persons co-investing alongside the Funds will be allocated a pro-rata share (relative to capital invested) of Other Fees. With respect to certain co-investments, or other persons, NMS or its related persons may retain relevant transaction fees or portfolio monitoring fees, earn carried interest and receive a management fee that will not reduce the compensation paid to NMS by the Funds or co-investment vehicles. Co-investment entities and co-investors may present conflicts of interest. At the discretion of NMS, co-investment opportunities may be offered to third parties and/or Limited Partners of the Funds or co-investment vehicles. Expenses borne by the Funds or co-investment vehicles are allocated among any parallel funds, co-investment vehicle, and other entities that comprise the Funds or co-investment vehicles that shared in the activities generating such expenses.

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 Funds. Those fees and expenses typically include, among other things: fees, costs, and expenses incurred in connection with the organization and start-up of the Funds, expenses associated with the acquisition, holding and disposition of investments, third-party costs incurred in connection with the carrying or management of investments, expenses incurred in connection with preparation and issuance of the Funds' financial statements and tax returns, fees of attorneys, accountants and fund administrators relating to Fund matters, taxes incurred by the Funds, litigation and indemnification expenses, judgments and settlements, financing, appraisal and filing fees, 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 Funds, and expenses of the advisory boards for the Funds and meetings of the Limited Partners.

Overhead Expenses

NMS and the General Partners will pay all of their ordinary administrative and overhead expenses in managing Funds' investments, including salaries, rent, supplies, 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 the Funds' 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 the Funds' assets may create an incentive for NMS to make investments on behalf of the Funds 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 Funds 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 directly and through related persons to privately offered funds that invest primarily in private equity. Investors in the Funds include state retirement systems, other pooled investment vehicles, high net worth individuals, and trusts.

All 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 certain investors will also be required to be "qualified purchasers" within the meaning of the Investment Company Act of 1940, as amended.

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

### Investment Strategy

NMS' investment strategy is to invest in growing, lower middle market companies primarily located in North America. NMS seeks to acquire solid businesses in partnership with management, then improving profitability and driving 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 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 Funds 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 Funds. No guarantee or representation is made that the Funds will achieve their investment objectives 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's control.

The descriptions contained below are a brief overview of the material risks related to NMS's 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 Funds.

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

#### Operating and Financial Risks of Portfolio Companies

Portfolio companies in which the Funds invests could deteriorate as a result of, among other factors, an adverse development in their business, a change in their competitive environment, or an economic downturn. As a result, portfolio companies that NMS expected to be stable may operate at a loss or have significant variations in operating results, may require substantial additional capital to support their operations or to maintain their competitive positions, or may otherwise have a weak financial condition or be experiencing financial distress. In some cases, the success of the Funds's investment strategy and approach will depend, in part, on the ability of NMS to effect improvements in the operations of a portfolio company and/or recapitalize its balance sheet. The activity of identifying and implementing operating improvements and/or recapitalization programs at portfolio companies entails a high degree of uncertainty. There can be no assurance that the NMS will be able to successfully identify and implement such operating improvements and/or recapitalization programs.

### Additional Capital; Follow-On Investments

Certain of the Fundsø 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 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 Funds. In addition, the Funds 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 Fundsø proportionate ownership when a subsequent financing is planned, or to protect the Fundsø investment when such portfolio companyø performance does not meet expectations.

The availability of capital is generally a function of capital market conditions that are beyond the control of the Funds 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 Funds 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 Funds will make follow-on investments or that it will have sufficient funds or the ability to do so. Any decision by the Funds 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 Fundsø ability to influence the portfolio companyø future development.

### Illiquid and Long-Term Investments

It is anticipated that there will be a significant period of time before the Funds 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 Funds occasionally may generate some current income, private investment transaction structures typically will not provide for liquidity of the Fundsø 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 Fundsø investments will occur for a substantial period of time from the commencement of the Fundsø operations. It is unlikely that there will be a public market for the securities held by the Funds at the time of their acquisition. The Funds 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 Funds 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 Longer than Term

The Funds may invest in investments which may not be advantageously disposed of prior to the date that the Funds will be dissolved, either by expiration of the Funds' term or otherwise. Although the General Partners expects that investments will either be disposed of prior to dissolution or be suitable for in-kind distribution at dissolution, the Funds may have to sell, distribute or otherwise dispose of investments at a disadvantageous time as a result of dissolution.

### Investments in Less Established Companies

The Funds may invest a portion of its assets in the securities of less established companies, or early stage companies. Investments in such early stage companies may involve greater risks than those generally associated with investments in more established companies. For instance, less established companies tend to have smaller capitalizations and fewer resources and, therefore, are often more vulnerable to financial failure. Such companies also may have shorter operating histories on which to judge future performance and in many cases, if operating, will have negative cash flow. In the case of start-up enterprises, such companies may not have significant or any operating revenues. In addition, less mature companies could be more susceptible to irregular accounting or other fraudulent practices. Furthermore, to the extent there is any public market for the securities held by the Funds, securities of less established companies may be subject to more abrupt and erratic market price movements than those of larger, more established companies.

Some of the portfolio investments expected to be made by the Funds should be considered highly speculative and may result in the loss of the Funds' entire investment therein. There can be no assurance that any such losses will be offset by gains (if any) realized on the Funds' other investments.

### Lower Middle Market Companies

A significant component of the Funds' investment objectives is to invest in lower middle market companies. The Funds' focus on "lower middle market companies" will generally include companies with revenues ranging from \$25 million to \$500 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 lower middle market companies, could make it difficult for the Funds to react quickly to negative economic or political developments.

### Financial and Other Fraud

Instances of fraud and other deceptive practices committed by senior management or owners of portfolio companies in which the Funds invests may undermine NMS' due diligence efforts with respect to such companies and, if such fraud is discovered, negatively affect the valuation of the



Fundsø investments. In addition, when discovered, financial fraud may contribute to overall market volatility that can negatively impact the Fundsø investment program. In the event of fraud by any company in which the Funds invests, the Funds may suffer a partial or total loss of capital invested in that company.

#### Debt Investments in Portfolio Companies

The Funds 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 Funds 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 Funds. If the Funds are unable to refinance a portfolio company in order to maintain the desired amount of financial leverage, the Funds 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 the General Partners and NMS will seek to use financial leverage in a manner that they believe 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 Funds may suffer a partial or total loss of capital invested in the portfolio company.

The Fundsø assets, including any investments made by the Funds and any capital held by the Funds, may be available to satisfy all liabilities and other obligations of the Funds. If the Funds or a portfolio company defaults on secured indebtedness, for example, the lender may foreclose and the Funds could lose its entire investment in the security for such loan. If the Funds become subject to a liability, parties seeking to have the liability satisfied may have recourse to the Fundsø assets generally and will not be limited to any particular asset, such as the investment giving rise to the liability. In addition, there can be no guarantee that debt facilities will be available at commercially attractive rates throughout the term of the Funds or when due for refinancing such that the Funds or the applicable a portfolio company will be exposed to less favorable terms or rates upon a refinancing, or that any facilities negotiated will be fully utilized. Borrowings may be secured by assignment of the obligations of the Limited Partners to make capital contributions to the Funds and a security interest in investments. This may limit the Investorsø ability to use their interests in the Funds as collateral for other indebtedness. In addition, the inability of the Funds to repay borrowings under a credit facility secured by the commitments of Limited Partners

could enable a lender to take action against any Limited Partner to the extent of its then remaining commitment in the Funds.

#### Changes in Credit Markets

Certain of the firm's previous investments have benefited from favorable borrowing conditions in the debt markets, which historically have been cyclical. However, a decrease in the availability of financing (or an increase in the interest cost) for leveraged transactions (e.g., due to adverse changes in economic or financial market conditions or a decreased appetite for risk by lenders) could impair, potentially materially, the Funds' ability to consummate or profit from these transactions. The deterioration of the global debt markets (particularly the U.S. debt markets), the failure of certain U.S. financial services companies and a significant rise in market perception of counterparty default risk could significantly reduce investor demand and liquidity for investment grade, high yield and senior bank debt, which in turn can lead some investment banks and other lenders to be unwilling or significantly less willing to finance new investments or to only offer committed financing for investments on less favorable terms. An economic downturn could adversely affect the financial resources of the Funds' portfolio companies and their ability to make principal and interest payments on, or refinance, outstanding debt when due. In the event of such defaults, the Funds could lose both invested capital in and anticipated profits from the affected portfolio investment. Such a marketplace may impair the Funds' ability to consummate certain transactions or cause the Funds to enter into certain transactions on less attractive terms. The Funds' ability to generate attractive investment returns for its Limited Partners may be adversely affected to the extent its portfolio companies are unable to obtain favorable financing terms for their investments.

#### Investments in Restructurings or Underperforming Companies

The Funds may make 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 Funds to additional potential liabilities, which may exceed the value of the Funds' original investment therein. Such investments of the Funds 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 Funds 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 Funds 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 Funds and distributions by the Funds 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 Funds are found to have engaged in other inequitable conduct resulting in harm to other parties. The Funds' investment may be treated as equity if it is deemed to be a contribution to capital, or if the Funds attempt to control the outcome of the business affairs of a company prior to its filing under the Bankruptcy Code. While the Funds 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 Funds will be able successfully to defend against them.

#### Non-Control Investments and/or Investments with Third Parties in Joint Ventures and Other Entities

While the Funds intend to take control positions in portfolio companies, the Funds may hold a non-controlling interest in certain portfolio companies and, therefore, may have a limited ability to protect its position in such portfolio companies. Further, the Funds may have no right to appoint a director and a limited ability to protect its interests in such companies and to influence such companies' management. Similarly, the Funds may co-invest with third parties through an investment fund, joint ventures or other entities, thereby acquiring non-controlling interests in certain investments. In such cases, the Funds will be significantly reliant on the existing management and board of directors of such companies, which may include representation of other financial investors with whom the Funds are not affiliated and whose interests may conflict with the interests of the Funds. Moreover, in the case where the Funds may co-invest, such investments may involve risks not present in investments where a third party is not involved, including the possibility that a third party partner or co-venturer may have financial difficulties resulting in a negative impact on such investment, may have economic or business interests or goals which are inconsistent with those of the Funds, or may be in a position to take (or block) action contrary to the Funds' interests or goals. In addition, the Funds may in certain circumstances be liable for the actions of its third party partners or co-venturers. Investments made with third parties in joint ventures or other entities also may involve carried interests and/or other fees payable to such third party partners or co-venturers. Although the Funds may not have control over these investments and, therefore, may have a limited ability to protect its position therein, the Funds generally expects that appropriate minority investor rights will be obtained to protect its interests to the extent possible. There can be no assurance that such minority investor rights will be available, however, or that such rights will provide sufficient protection of the Funds' interests.

#### Control Position Risk

Although non-control investments may also be made, the Funds intend to make certain investments that allow the Funds 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 Funds to claims by such the portfolio companies underlying such investments, its security holders and its creditors. While the General Partners intend to manage the Funds to minimize exposure to these risks, the possibility of successful claims cannot be precluded.

### Non-United States Investments

The Funds may invest in companies domiciled outside of the United States. Non-U.S. securities involve certain risks not typically associated with investing in U.S. securities, including risks relating to: (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar and the various non-U.S. currencies in which the Funds' non-U.S. investments are denominated, and costs associated with the conversion of investment principal and income from one currency into another; (ii) differences between U.S. and non-U.S. securities markets, including potential price volatility in, and relative illiquidity of, some foreign securities markets; (iii) the absence of uniform accounting, auditing and financial reporting standards, practices and disclosure requirements and less government supervision and regulation in some countries; (iv) certain economic, social and political risks, including potential exchange control regulations and restrictions on foreign investment and repatriation of capital, the risks of political, economic, or social instability and the possibility of confiscatory taxation or expropriation; (v) the possible imposition of non-U.S. taxes on income and gains recognized with respect to such securities and (vi) less developed corporate laws regarding, among other things, fiduciary duties and the protection of investors. The General Partners and the management company will analyze risks in applicable countries before making such investments, but no assurance can be given that a political or economic climate, or that particular legal or regulatory risks might not adversely affect an investment by the Funds.

## **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 Partners have organized and sponsor the Funds, which are private investment companies. These Funds are managed by NMS but are controlled by the affiliated General Partners. On occasion, the Funds may form co-investment vehicles managed by NMS or its affiliates to invest alongside the Funds in portfolio companies. NMS and the General Partners will be responsible for all decisions regarding portfolio transactions of the Funds and have full discretion over the management of the Funds' investment activities. While the General Partners are 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.

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

NMS has adopted a written Code of Ethics (the "Code") predicated on the principal that NMS owes a fiduciary duty to the Funds 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"). NMS requires its Employees to act in the Funds' best interests, abide by all applicable regulations and avoid any action that is, or could even appear to be, legally or ethically improper.

The Code requires Employees to obtain pre-clearance before purchasing an IPO or limited offering (i.e., private placement); requires periodic reporting of Employees' 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 activities of its Employees in an effort to monitor all Employees' trading activity. A copy of NMS' Code is available upon request.

NMS' Employees and their related entities have investments in the Funds' General Partners. The General Partners participate in the Funds' investment program by agreeing to commit a certain amount of capital commitments to the Funds. Therefore, Employees and their related entities participate in transactions effected for the Funds and have a direct financial interest in the transactions of the Funds. 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 Funds. 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. Also, with respect to conflicts of any nature, where available, the Fund can consult with an Advisory Board of Investors of the applicable Fund.

#### 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 Funds, and vice versa. Accordingly, in these situations, there will be conflicts of interest between such individuals' duties as an employee of NMS and such individuals' duties as a director or officer of such portfolio company.

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

NMS will generally not make investments in publicly traded securities. However, to the 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 Funds.

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's 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 Funds's investments on a continual basis.

NMS provides each Limited Partner with the following reports in accordance with the terms of the Limited Partnership Agreements: (i) audited annual financial statements including a statement showing the Limited Partners closing capital account balance; (ii) unaudited quarterly financial statements for the Funds 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**

We sponsor the formation of each Fund and we do not engage or compensate third party referral agents to solicit new clients for us. In the event that we engage, and will make a cash payment to, any solicitor of clients, we will do so in accordance with Rule 206(4)-3 under the Investment Advisers Act of 1940, as amended.

NMS Management, LP may periodically engage in third party placement agents (i.e., solicitors) to introduce prospective investors to the Funds. The fees and expenses of any third party placement agents will be paid by the Funds, but will be reimbursed by NMS Management, LP by offsetting all or a portion of the management fees.

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 percentage of the direct and indirect compensation received by an employee of NMS in his or her capacities in a portfolio company will be applied as a reduction of the Funds's future management fees in accordance with the terms of the Limited Partnership Agreements.

### **Item 15: Custody**

NMS has access to client accounts (i.e., the Funds) since it or an affiliate serves as the General Partners of the Funds or it is deemed to have custody because of its ability to withdraw its fees directly from the Funds. Limited Partners will not receive statements from any custodians. Instead, the Funds are 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 Funds'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 Partners of the Funds, NMS generally has discretionary authority to determine, without obtaining specific consent from the Funds or its Limited Partners, the securities and the amounts to be bought or sold on behalf of the Funds, and to perform the day-to-day investment operations of the Funds. NMS's investment discretion is subject to the Funds'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 Funds are primarily invested in privately-held portfolio company investments which typically do not issue proxies. NMS will generally not make investments in publicly traded securities. 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's policy is to exercise the proxy vote in the best interest of the Funds, taking into consideration all relevant factors, including without limitation, acting in a manner that NMS believes will (i) maximize the economic benefits to the Funds 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 Funds 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 Funds 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 Funds'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 Funds. In situations where NMS perceives a material conflict of interest, NMS may seek approval from the Funds's Advisory Boards 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's 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.