



## **VENOR CAPITAL MANAGEMENT LP**

7 Times Square, Suite 3505  
New York, New York 10036

Telephone: (212) 703-2100  
[www.venorcapital.com](http://www.venorcapital.com)

### **FORM ADV PART 2A: FIRM BROCHURE**

**March 28, 2013**

Venor Capital Management LP is an investment adviser that is registered with the U.S. Securities and Exchange Commission. Registration with U.S. Securities and Exchange Commission does not imply a certain level of skill or training.

**This brochure provides information about the qualifications and business practices of Venor Capital Management LP. If you have any questions about the contents of this brochure, please contact us at (212) 703-2100. The information in this brochure has not been approved or verified by the U.S. Securities and Exchange Commission or by any state securities authority.**

**Additional information about Venor Capital Management LP also is available on the Securities and Exchange Commission's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

**Material Changes**

There have been no material changes to this Form ADV Part 2A firm brochure since its last annual update on March 26, 2012.

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

Venor Capital Management LP, a Delaware limited partnership founded in July 2005, is an investment advisory firm with its principal place of business in New York, New York. Venor Capital Management GP LLC, a Delaware limited liability company, is the general partner of Venor Capital Management LP. Jeffrey A. Bersh and Michael J. Wartell are the co-founders and Co-Chief Investment Officers of Venor Capital Management LP and the co-founders and co-managing members of each of Venor Capital Management GP LLC and Venor Capital GP LLC, a Delaware limited liability company that serves as the general partner of certain of our clients. In addition, Mr. Bersh and Mr. Wartell each own greater than 25% of each of Venor Capital Management LP, Venor Capital Management GP LLC and Venor Capital GP LLC. As such, Mr. Bersh and Mr. Wartell control our firm.

Our firm provides investment advisory services to private investment funds and separately managed accounts. Our private fund clients consist of:

- Venor Capital Master Fund Ltd., which is structured as a master-feeder fund and which (together with its feeder funds) we refer to in this brochure as our “client fund” and through which we advise its feeder funds; and
- GS Raven Holdings, L.P., which we refer to in this brochure as our “special purpose client fund,” and that generally is limited to investing in longer-term, special situations investments, which are typically also held in the portfolio of our client fund.

In providing advisory services, we formulate the investment objective for each client, direct and manage the investment and reinvestment of each client’s assets, and provide periodic reports to investors in each private fund client. Generally, our clients share the investment objective of identifying investments with attractive prospective risk-adjusted return characteristics in order to achieve superior overall investment returns, primarily through capital appreciation, while also concentrating on the preservation of capital. Our clients invest in value and event-driven opportunities across the corporate capital structure with a preference for investments higher in the capital structure, such as corporate bonds, bank loans, and other fixed-income securities, but also have the flexibility to invest in equities, credit derivatives, busted convertibles, trade/lease claims, preferred stock, liquidating trusts, rescue funding and other financial obligations. Our clients are focused on investment opportunities primarily in the U.S. and Western Europe, but may also invest in companies based in other countries in North America, other OECD countries and Latin America.

Our firm tailors our advisory services to each client’s needs and investment mandates as disclosed in its offering document, organizational agreement or managed account agreement. We manage the assets of each client in accordance with the governing documents applicable to the specific client. Restrictions on the types of securities in which we invest for our clients vary from client to client as disclosed in the client’s governing documents. We describe investment strategies our firm employs on behalf of our clients in greater detail below in Item 8.

Our firm does not participate in wrap fee programs.

As of December 31, 2012, our firm managed \$1,119,707,351 of client assets on a discretionary basis and managed no client assets on a non-discretionary basis.

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

### ***Fees***

Our firm, or an affiliate of our firm, typically receives compensation from our clients based on the percentage of assets we manage and by receiving performance-based compensation.

The management fee is typically between 1.0% and 1.5% per year of the client's net assets, and typically determined and payable monthly in advance for our private fund clients. Management fees on managed accounts depend on each individual arrangement, but they are determined and payable monthly in arrears on our currently existing managed account client. Our clients generally do not obtain a refund of a pre-paid management fee because the advisory contract cannot be terminated before the end of the billing period.

With respect to our client fund, the incentive allocation is between 15% and 20% of the net realized and unrealized appreciation in the client fund's net assets. We typically determine and allocate the incentive allocation on an annual basis, but will determine and allocate it for shorter periods under certain circumstances (such as with respect to amounts withdrawn or redeemed from our client fund). The incentive allocation is subject to a loss carryforward or high water mark provision that generally requires that any losses suffered by the client fund (adjusted to reflect withdrawals and redemptions) be offset by subsequent net profits before our firm is entitled to subsequent incentive allocations from the client fund. Our managed account client pays a similarly calculated performance fee of 20% of the net realized and unrealized appreciation in the account.

Our special purpose client fund makes investments over a series of separate, sequential investment periods. Investors in our special purpose client fund pay 10% carried interest after (i) a return of capital contributions made for portfolio investments during the applicable investment period, all management fees and expenses, and realized investments from other investment periods, and (ii) accounting for unrealized losses from other investment periods.

Our fees are deducted from the accounts of the investors in our client fund and from the special purpose client fund and managed account client, although with respect to our special purpose client fund the investment partner may elect to have our fees billed directly to the investment partner. Our fees are generally not negotiable, though the fees applicable to managed accounts depend on each individual arrangement. Our firm may waive, reduce or otherwise modify the management fee and/or incentive allocation for any investor in our client fund, including affiliates of our firm. In addition, we occasionally enter into side letter arrangements with certain investors in our client fund, in which we grant such investors preferential terms.

The details of how the management fee and incentive allocation are calculated for our client fund can be found in the organizational and offering documents of our client fund, which are provided to investors and potential investors in our client fund. The details of how the management fee and carried interest are calculated for the special purpose client fund are included in our investment management agreement with, and in the organizational documents of, the special purpose client fund. The details of how the management fee and performance fee are calculated for the managed account client are included in our investment advisory agreement with the managed account client.

### ***Expenses***

Generally, each of our clients bears its own operating and other expenses, including, but not limited to:

- The management fee;

- Fees to the administrator;
- Investment expenses (i.e., expenses related to the investment of our client fund's assets, including, without limitation, brokerage commissions, interest expense, professional and consulting fees relating to particular investments and expenses related to the purchase and sale of securities, investment-related travel and lodging expenses and research-related expenses, including, without limitation, news and quotation equipment and services);
- Legal expenses (including costs associated with regulatory compliance);
- Accounting, audit and tax preparation expenses
- Taxes;
- Other expenses associated with the operation of our client fund; and
- All extraordinary expenses.

Neither our firm nor any of our supervised persons receives any transaction-based compensation for the sale of securities or other investment products.

A description of the brokerage and other transaction costs that will be borne by our clients is in Item 12 (Brokerage Practices) of this brochure.

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

As described in Item 5 above, our firm receives part of its compensation from each client in the form of performance-based compensation. Our firm does not manage any funds or accounts that do not pay performance-based compensation.

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

Our firm generally provides investment advice to our clients, and not individually to the investors in our clients. Investors in our clients may include high net worth individuals, trusts, estates, corporate and public pension and profit sharing plans, endowments, charitable organizations, funds of hedge funds and family offices.

The current minimum initial investment in our client fund is \$5,000,000. However, we may waive or reduce the minimum initial investment in certain circumstances, subject to statutory limitations.

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

### ***Methods of Analysis and Investment Strategies***

Generally, our clients share the investment objective of identifying investments with attractive prospective risk-adjusted return characteristics in order to achieve superior overall investment returns, primarily through capital appreciation, while also concentrating on the preservation of capital. Our clients invest in value and event-driven opportunities across the corporate capital structure with a preference for investments higher in the capital structure, such as corporate bonds, bank loans, and other fixed-income securities, but also have the flexibility to invest in equities, credit derivatives, busted convertibles, trade/lease claims, preferred stock, liquidating trusts, rescue funding and other financial

obligations. Our clients are focused on investment opportunities primarily in the U.S. and Western Europe, but may also invest in companies based in other countries in North America, other OECD countries and Latin America.

Our clients seek to achieve their objectives through a combination of process-driven bottom-up research and disciplined trading and risk management procedures. The difference between the investment objective of our client fund and our special purpose client fund is that our special purpose client generally is limited to investing in longer-term, special situations investments, which are typically also held in the portfolio of our client fund. The investment objective of the managed account client is substantially similar to the investment objective of our client fund. The particular strategy employed with respect to a particular group of investments may change over time.

Despite our firm's research and analysis, investing involves a risk of loss that any clients and investors in our clients must be prepared to bear. Please see the "Risks" section below for a detailed explanation of the investment strategies our firm employs and some of the significant risks associated with them.

### ***Risks***

The investment strategy we use entails substantial risks, including, but not limited to, those listed below. Further risk factors are listed in the offering documents of our client fund.

#### **General Risk Factors**

**Dependence on Key Individuals and Allocation of Resources.** Investors in our client fund have no authority to make decisions on behalf of our client fund, and the owners of our special purpose client fund and managed account client have very limited authority to make decisions on behalf of our special purpose client fund and managed account client, respectively. The success of our clients depends upon the ability of our firm, particularly those of Mr. Bersh and Mr. Wartell, to develop and implement investment strategies that achieve our clients' investment objective. If our clients were to lose the services of either of Mr. Bersh or Mr. Wartell, the consequence to our clients could be material and adverse and could lead to, for example, the premature termination of our private fund clients. Although the officers and employees of our firm, including Mr. Bersh and Mr. Wartell, devote as much of their time to the business of our clients as they believe is necessary to assist them in achieving their investment objectives and to administer our client's operations, they are not required to devote substantially all or any specific portion of their working time to the affairs of any one of our clients.

**Absence of Regulatory Oversight.** While our private fund clients may be considered similar to investment companies, no private fund client is required to, nor does it intend to, register as an investment company under the Investment Company Act or the laws of any jurisdiction and, accordingly, the provisions of such statutes (which may provide certain regulatory safeguards to investors) are not applicable.

**"Master-Feeder" Structure.** Our client fund generally invests through a "master-feeder" structure, which presents certain unique risks to investors in our client fund. For example, a smaller feeder fund investing in the master fund may be materially affected by the actions of a larger feeder fund investing in the master fund. Also, if a larger feeder fund withdraws from the master fund, the remaining feeder fund may experience higher pro rata operating expenses, thereby producing lower returns. A master fund may become less diverse due to a withdrawal by a larger feeder fund, resulting in increased portfolio risk.

**Limited Liquidity.** An investment in our private fund clients or a managed account is suitable only for certain sophisticated investors that have no need for immediate liquidity in their investment. An investment in a private fund provides limited liquidity because interests in private funds cannot be

transferred freely. In addition, our firm may suspend withdrawal rights, in whole or in part, under certain circumstances. These limitations on liquidity must be considered significant.

**Effect of Withdrawals.** A significant withdrawal of capital by investors from our client fund may cause a temporary imbalance in our other clients' portfolios or on our client fund's portfolio which may adversely affect our other clients or the remaining investors in our client fund.

**In-Kind Distributions.** Although our client fund will endeavor to pay all withdrawals in cash, an investor withdrawing from our client fund may, in the discretion of our firm, receive securities owned by our client fund directly or via the distribution of interests in a liquidating account or vehicle in lieu of, or in combination with, cash. The value of securities distributed may increase or decrease before the securities can be sold, and such withdrawing investor will incur transaction costs in connection with the sale of such securities. Additionally, securities distributed with respect to a withdrawal by an investor in our client fund may not be readily marketable. The risk of loss and delay in liquidating these securities will be borne by such withdrawing investor, with the result that such withdrawing investor may receive less cash than it would have received on the date of withdrawal.

**Execution Risks and Investment Manager Error.** The execution of the trading and investment strategies employed by our firm can often require complex trades, difficult to execute trades, the use of negotiated terms with counterparties, and the execution of trades involving less common or novel instruments. In each case, our firm seeks best execution through the efforts of our staff and service providers to execute, settle and clear such trades. However, in light of the complexity and global diversity involved, some errors and miscommunications with brokers and counterparties are inevitable and may result in losses to our clients. Our firm will evaluate the merits of potential claims for damage against brokers and counterparties who are at fault, and to the extent practicable, will seek to recover losses from those parties. Our firm may choose to forego pursuing claims against brokers and counterparties on behalf of our clients for any reason including, but not limited to, the cost of pursuing claims relative to the likely amount of any recovery and the maintenance of their business relationships with brokers and counterparties. In addition, our firm's own execution and operational staff may be solely or partly responsible for errors in placing, processing and settling trades that result in losses to our clients, as our clients generally bear the costs of trade errors in the absence of our firm's bad faith, willful misconduct or gross negligence.

**Business and Regulatory Risks of Hedge Funds.** Legal, tax and regulatory changes could occur during the term of our clients that may adversely affect our clients and/or investors in our clients. The regulatory environment for hedge funds and similarly situated investment vehicles and accounts is evolving, and changes in such regulation may adversely affect the value of investments held by our clients. In addition, securities markets are subject to comprehensive statutes and regulations. The U.S. Securities and Exchange Commission, other regulators and self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies. The effect of any future regulatory change on our clients could be substantial and adverse.

#### Conflict of Interest Risks

**Management of More than One Client.** Certain inherent conflicts of interest arise from the fact that our firm and its affiliates provide investment management services to each private fund client and managed account. Our firm is not required to accord exclusivity or priority to one client over another in the event of limited investment opportunities. The portfolio strategies employed by one or more of our clients could conflict with the transactions and strategies employed by our firm in managing one or more of our other clients and may affect the prices and availability of the securities and instruments in which a client invests, and vice versa. Participation in specific investment opportunities may be appropriate, at times, for more than one of our clients. In such case, participation in such opportunities will be allocated on an



equitable basis, taking into account such factors as the relative amounts of capital available for new investments, size of existing positions in the same or similar investment(s), relative exposure to short-term market trends, leverage, the tax situation and the respective investment programs and portfolio positions of our clients for which participation is appropriate. Orders may be combined for all such clients, and if any order is not filled at the same price, they may be allocated on an average price basis. Similarly, if an order on behalf of one client cannot be fully executed under prevailing market conditions, our firm may allocate the trades among our clients on a basis that we consider equitable. Such considerations may result in allocations of certain investments among our clients on other than a *pari passu* basis. The use of a master-feeder structure also may create a conflict of interest in that different tax considerations among the feeder funds of our client fund may cause the master fund of our client fund to structure or dispose of an investment in a manner that is more advantageous to one feeder fund.

Our firm is not required to assure equality of treatment among all of our advisory clients and, therefore, there can be no assurance that a purchase or sale opportunity that would be suitable for one client will not be allocated to another client, with certain clients being unable to participate in such purchase or sale opportunity. Although our clients pursue investment objectives that are similar to each other's, the portfolios of our clients may differ as a result of purchases and withdrawals being made at different times and in different amounts, as well as because of different tax and regulatory considerations. It is possible, for example, that one client may have a long position in (or be a buyer of) a security in which one or more other clients of our firm or its affiliates have a short position (or are sellers). Situations may occur where one client could be disadvantaged because of the various other activities conducted by our firm.

**Conflicts Relating to Equity and Debt Ownership by our Clients and Affiliates.** In certain circumstances, our clients may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests of our clients insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and our clients may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for our firm to reconcile the conflicting interests of our clients in a way that protects all of their interests. Additionally, our firm or our nominees may hold board or creditors' committee memberships which may require us to vote or take other actions in such capacities that might be conflicting with respect to certain clients managed by our firm in that such votes or actions may favor the interests of one client over another client. Furthermore, our firm's fiduciary responsibilities in these capacities might conflict with the best interests of our client funds' investors.

**Management Fee and Performance-Based Compensation.** The management fee and the performance-based compensation arrangements for our private fund clients have not been negotiated at arm's-length. The existence of performance-based compensation may create an incentive for our firm to make more speculative investments on behalf of our clients than it would otherwise make in the absence of such performance-based compensation. Such performance-based compensation may result in compensation to our firm that may be greater than performance-based compensation allocable to other managers for similar services. In addition, because the incentive allocation for our client fund and managed account client is allocated based upon both realized and unrealized gains, there can be no assurance that such unrealized gains will ultimately be realized.

**Related Party Transactions.** Our firm may recommend that our client fund purchase securities or other assets from or sell securities or other assets to, or engage in other transactions (including entering into derivative contracts and participation agreements) with, our other clients when we believe such transactions are appropriate and in the best interests of our client fund and such other clients. In such an event our firm may recommend that such transaction(s) be effected by directing the legal transfer of the

securities or other assets between our clients directly or by transferring the economic return of the securities or other assets between clients through swaps or other derivatives. Our firm may have a potentially conflicting division of loyalty and responsibility regarding both parties to such related party transactions.

**Selection of Brokers and Dealers.** At this time, our firm makes no use of soft dollar credits, but there is nothing that precludes our firm from using soft dollar credits in the future. If our firm decides to use soft dollar credits, certain brokers and dealers retained provide or may agree to provide our firm with soft dollar credits which our firm may use to purchase certain research and statistical services. These services would otherwise only be available to our firm for a cash payment. To the extent that our firm utilizes commissions to obtain items that would otherwise be an expense of our firm, such use of commissions could be viewed as additional compensation to our firm. As a result of receiving such services, our firm would have an incentive to use, and to continue to use, such brokers and dealers to effect transactions for the accounts over which our firm or our firm's affiliates exercise trading discretion so long as such brokers and dealers continue to provide such soft dollar credits to our firm.

In addition, from time to time, representatives of our firm may speak at conferences and programs which are sponsored by prime brokers for investors interested in investing in hedge funds. These conferences and programs may provide opportunities by which our firm is introduced to potential investors in our client funds. Generally, the prime brokers are not compensated by our firm, our client funds, or potential investors in our client funds for providing such "capital introduction" opportunities. In addition, prime brokers may provide financing and other services to our client funds and our firm. Consequently, such additional services by a prime broker may influence our firm in deciding whether to use the services of such prime broker in connection with the activities of our clients.

**Side Letters.** Our client fund has the absolute discretion to enter into side letters or similar agreements with certain investors in our client fund which may have the effect of establishing rights, terms or conditions (including, without limitation, reductions in management fees and/or incentive allocation or other terms relating to liquidity, transparency or access to co-investment opportunities) with respect to such investors that are more favorable than the rights, terms and conditions established in favor of other investors in our client fund without obtaining the consent of any other investor in our client fund (other than those whose rights are materially and adversely changed by such waiver or notification).

### Tax Risks

**Phantom Income.** Each investor subject to U.S. tax that invests in a client that is treated as a partnership for U.S. federal income tax purposes will be required to take into account its distributive share of all items of such client's income, gain, loss, deduction and credit, whether or not distributed. Our client fund does not expect to make regular cash distributions to its investors. Further, as a result of certain operating limitations, an investor in our client fund cannot be certain that it will be permitted to withdraw all or a portion of its interest in our client fund in order to generate cash distributions sufficient to satisfy its tax liability with respect to its share of our client fund's profits. Accordingly, each investor in our client fund should ensure that it has sufficient cash flow from other sources to pay all tax liabilities resulting from such investor's ownership of its interest in our client fund.

**Unrelated Business Taxable Income for Certain Tax-Exempt Investors.** Pension and profit-sharing plans, Keogh plans, individual retirement accounts and other tax-exempt investors may realize "unrelated business taxable income," also known as UBTI, as a result of an investment in a client that is treated as a partnership for U.S. federal income tax purposes. Our clients may elect to participate in investments that give rise to UBTI through entities that are treated as partnerships for U.S. federal income tax purposes. Because of the "flow-through" principles applicable to partnerships, if UBTI is earned by client that is

treated as a partnership for U.S. federal income tax purposes, a tax-exempt investor in such client will realize UBTI.

**Other Tax Risks.** Changes in existing tax laws or regulations and their interpretation may occur and could alter the income tax consequences of an investment in any of our clients. In addition, our clients may take positions with respect to certain tax issues that depend on legal and other interpretive conclusions. If the U.S. Internal Revenue Service or other applicable taxing authority successfully challenges any of these positions, an investor in such client may be found to have a different tax liability for that year than that reported on his or its U.S. federal income tax return. An audit of one of our clients may result in an audit of the returns of some or all of its investors, which examination could result in adjustments to the tax consequences initially reported by such client and affect items not related to an investment in such client. If such adjustments result in an increase in an investor's U.S. federal income tax liability for any year, such investor may also be liable for interest and penalties with respect to the amount of underpayment.

The taxation of our clients and their respective investors is complex. In addition, with respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of our clients, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities or other investment instruments may be domiciled in a country other than the country in whose currency the security or instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

Any of the foregoing legal, regulatory and tax risks could give rise to material liabilities in periods after the occurrence of the transactions or other events giving rise to the claim. Consequently, such liabilities could be borne by investors who were not investors in our client fund at the time of such transactions and who did not derive any financial returns associated with such transactions.

#### Investment and Trading Risks

**General Investments Risks.** An investment in any of our clients involves a high degree of risk, including the risk that the entire amount invested may be lost. Our clients may invest in debt and equity securities and other financial instruments using investment techniques with significant risk characteristics. We make no guarantee that our clients' investment program will be successful. Our clients' investment program may utilize such investment techniques as short sales, options, swaps and other derivatives investments which techniques can, in certain circumstances, maximize the adverse impact to which our clients may be subject.

**Liquidity of Investments.** Our clients may invest in securities or other assets which are subject to legal or other restrictions on transfer or for which no liquid market exists. Our clients may not be able to sell such securities or other assets when it desires to do so or to realize what it perceives to be their fair value in the event of a sale.

**Recent Developments in Financial Markets.** Recent developments in the global financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty. These developments have heightened the risks associated with the investment activities and operations of hedge funds, including without limitation, those resulting from a substantial reduction in the availability of credit and the increased cost of short-term credit, a decrease in market liquidity, an increased risk of insolvency of prime brokers and other counterparties, and regulatory changes that may have an adverse effect on hedge funds generally, and in particular, on our clients' ability to achieve their investment objectives. In addition, U.S. governmental action concerning the recent instability in the U.S. financial

markets could have a significant impact on the financial services industry. In particular, on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, also known as the Dodd-Frank Act, was signed into law by President Obama. The Dodd-Frank Act dramatically increases regulation of U.S. and non-U.S. private fund advisers and promises to make major changes in the world of securities enforcement and regulation. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory, or governmental action and developments such financial markets and the broader U.S. and global economy could have an adverse effect on our client funds' businesses, operations and performance. In light of such recent market turmoil and the overall weakening of the financial services industry, our firm, our clients, their respective prime brokers' and other financial institutions' financial condition may be adversely affected and they may become subject to legal, regulatory, reputational and other unforeseen risks that could have a material adverse effect on our clients' business and operations.

**Financial Markets and Regulatory Change.** In addition to specific business and regulatory risks of hedge funds listed above, the laws and regulations affecting businesses in general continue to evolve in an unpredictable manner. Laws and regulations, particularly those involving taxation, investment and trade, applicable to our clients' activities can change quickly and unpredictably, and may at any time be amended, modified, repealed or replaced in a manner adverse to the interests of our clients. Our clients and our firm may be, or may become, subject to unduly burdensome and restrictive regulation. In particular, in response to significant recent events in international financial markets, governmental intervention and certain regulatory measures have been or may be adopted in certain jurisdictions. The extent to which the underlying causes of these recent events are pervasive throughout global financial markets and have the potential to cause further instability is not yet clear. These recent events, and their underlying causes, are likely to be the catalyst for changes in global financial regulation for some time, and may result in major and unavoidable losses to our clients.

On July 1, 2011, a new directive, known as the AIFM Directive, aimed at introducing a harmonized regulatory framework for managers of alternative investment funds was published in the Official Journal of the European Union. The AIFM Directive provides for the introduction of a regulatory and supervisory framework applicable to managers of alternative investment funds as well as the alternative investment funds themselves. According to the preamble of the AIFM Directive, the AIFM Directive aims to address a number of risks that have been identified in relation to the activities of the managers of alternative investment funds. The AIFM Directive aims at addressing these risks by subjecting the managers of alternative investment funds to certain regulations. While the impact of the implementation cannot currently be fully assessed, our clients may become subject to further regulation, at an additional cost to their investors. Our firm will monitor the implementation process of the AIFM Directive and inform our clients and investors in our private fund clients accordingly.

**Political, Economic and Other Conditions.** Our clients' investments may be adversely affected by changes in economic conditions or political events that are beyond its control. For example, a stock market break, continued threats of terrorism, the outbreak of hostilities involving the United States, the death of a major political figure, or the overthrow or replacement of a current ruling body may have significant adverse effects on our clients' investment results. Additionally, a serious pandemic, such as avian influenza, or a natural disaster, such as a hurricane, could severely disrupt the global, national and/or regional economies and/or markets. Other factors, such as changes in federal or state tax laws, federal or state securities laws, bank regulatory policies or accounting standards, may make corporate acquisitions less desirable. Similarly, legislative acts, rulemaking, adjudicatory or other activities of the U.S. Congress, the SEC, the Federal Reserve Board, the New York Stock Exchange, the Financial Industry Regulatory Authority or other governmental or quasi-governmental bodies, agencies and regulatory organizations may make the business of our clients less attractive. A negative impact on economic fundamentals and consumer confidence may negatively impact market value, increase market

volatility and cause credit spreads to widen, each of which could have an adverse effect on the investment performance of our clients.

**Risks Associated with Investments in Distressed Securities.** Our clients may invest in securities and/or other investment instruments of issuers that are experiencing significant financial or business difficulties, including issuers involved in bankruptcy or other reorganization and liquidation proceedings. Although such investments may result in significant returns to our clients, they may involve a substantial degree of risk.

Troubled company and other asset-based investments require active monitoring and may, at times, require participation in business strategy or reorganization proceedings by our firm. To the extent that our firm becomes involved in such proceedings, our clients may have a more active participation in the affairs of the issuer than that assumed generally by an investor. In addition, involvement by our firm in an issuer's reorganization proceedings could result in the imposition of restrictions limiting our clients' ability to liquidate their positions in the issuer.

Our clients may invest in bonds or other fixed income instruments, including, without limitation, "higher yielding" (and, therefore, higher risk) debt securities, when our firm believes that such investments offer opportunities for capital growth. Such investments may be below "investment grade" and face ongoing uncertainties and exposure to adverse business, financial or economic conditions which could lead to the issuer's inability to meet timely interest and principal payments. The market values of certain of these lower rated debt instruments tend to reflect individual corporate developments to a greater extent than do higher rated securities, which react primarily to fluctuations in the general level of interest rates. It is likely that a major economic recession could have a materially adverse impact on the value of such investments. In addition, adverse publicity and investor perceptions, whether or not based on fundamental analysis, may also decrease the value and liquidity of investments rated below investment grade.

**Lender Liability Considerations and Equitable Subordination.** In recent years, a number of judicial decisions in the United States have upheld the right of borrowers to sue lending institutions on the basis of various evolving legal theories (collectively termed "lender liability"). Generally, lender liability is founded upon the premise that an institutional lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower resulting in a creation of a fiduciary duty owed to the borrower or its other creditors or shareholders. While believed to be unlikely, because of the nature of certain of our clients' investments, our clients could be subject to allegations of lender liability. In addition, under common law principles that in some cases form the basis for lender liability claims, if a lending institution (a) intentionally takes an action that results in the undercapitalization of a borrower to the detriment of other creditors of such borrower, (b) engages in other inequitable conduct to the detriment of such other creditors, (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (d) uses its influence as a stockholder to dominate or control a borrower to the detriment of other creditors of such borrower, a court may elect to subordinate the claim of the offending lending institution to the claims of the disadvantaged creditor or creditors, a remedy called "equitable subordination." Because of the nature of certain of our clients' investments, our clients could be subject to claims from creditors or shareholders of an obligor that our clients' investments issued by such obligor that are held by our clients should be equitably subordinated. A significant number of our clients' investments may involve investments in which our clients would not be the lead creditor. Accordingly it is possible that lender liability or equitable subordination claims affecting our clients' investments could arise without the direct involvement of our clients.

**Risks Associated with Bankruptcy Cases.** Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions

which may be contrary to the interests of our clients. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such when they take over management and functional operating control of a debtor. In those cases where our clients, by virtue of such action, are found to exercise “domination and control” of a debtor, our clients may lose its priority if the debtor can demonstrate that its business was adversely impacted or other creditors and equity holders were harmed by our clients.

Generally, the duration of a bankruptcy case can only be roughly estimated. Unless our clients’ claim in such case is secured by assets having a value in excess of such claim, no interest will be permitted to accrue and, therefore, our clients’ return on investment can be adversely affected by the passage of time during which the plan of reorganization of the debtor is being negotiated, approved by the creditors, and confirmed by the bankruptcy court. It should also be noted that reorganizations outside of bankruptcy are also subject to unpredictable and potentially lengthy delays.

U.S. bankruptcy law permits the classification of “substantially similar” claims in determining the classification of claims in a reorganization for purposes of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that our clients’ influence with respect to a class of investment instruments can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class.

The administrative costs in connection with a bankruptcy proceeding are frequently high and will be paid out of the debtor’s estate prior to any return to creditors (other than out of assets or proceeds that are subject to valid and enforceable liens and other security interests) and equity holders. In addition, certain claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

Our firm, on behalf of any of our clients, may elect to serve on creditors’ committees or other groups to ensure preservation or enhancement of such client’s position as a creditor. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If our firm concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to such client, it will resign from that committee or group or take other appropriate steps to adequately address the conflict, and such client may not realize the benefits, if any, of participation on the committee or group. In addition, if any of our clients is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of its investments in such company while it continues to be represented on such committee or group.

Our clients may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchases could be disallowed by a bankruptcy court if such court were to determine that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

**Potential Involvement in Litigation.** As a result of our clients’ activities generally, including investments in distressed investments and the possibility that our firm may participate in restructuring activities, it is possible that our clients may become involved in litigation, including litigation respecting creditor disputes and similar issues among classes of claimants. Litigation entails expense and the possibility of counterclaims against our clients and our firm and ultimately judgments may be rendered against our clients for which our clients do not carry insurance.

**Trade and Other General Unsecured Claims.** Our clients may acquire interests in claims of trade creditors and other general unsecured claim holders of a debtor. Trade claims generally include, but are not limited to, claims of suppliers for goods delivered and not paid, claims for unpaid services rendered,

claims for contract rejections and claims related to litigation. Trade claims are typically unsecured and may, in unusual circumstances, be subordinated to other unsecured obligations of the debtor. The repayment of trade claims is subject to significant uncertainties, including potential set-off by the debtor as well as the other uncertainties with respect to other distressed securities. A trade claim may be transferred or assigned before or after a petition in bankruptcy is filed, including after a proof of claim has been filed. Our clients' investments in trade claims and high risk receivables may also entail special risks including, but not limited to, fraud on the part of the assignor of the trade claim as well as logistical and mechanical issues which may affect the ability of our clients' or their agent(s) to collect the claim in whole or in part.

**Bank Loans.** Our clients' investment program may include investments in significant amounts of bank loans either by assignment or participation. These obligations are subject to unique risks, including, but not limited to (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws; (ii) lender liability claims by the issuer of the obligations; (iii) environmental liabilities that may arise with respect to collateral securing the obligations; and (iv) limitations on the ability of our clients to directly enforce their rights with respect to participations. In analyzing each bank loan or participation therein, our firm compares the relative significance of the risks against the expected benefits of the investment. Successful claims by third parties arising from these and other risks will be borne by our clients.

**Loan Participations and Assignments.** Our clients may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including, but not limited to, credit risk, interest rate risk, liquidity risk, and the risks of being a lender. Participations in commercial loans may be secured or unsecured. Loan participations typically represent direct participation in a loan to a corporate borrower, and generally are offered by banks or other financial institutions or lending syndicates. When purchasing loan participations, our clients assume the credit risk associated with the corporate borrower and may assume the credit risk associated with an interposed bank or other financial intermediary, and may only be able to enforce their rights through the lender, and may assume the credit risk of the lender in addition to the borrower. The participation interests in which our clients invest may not be rated by any nationally recognized rating service.

Investments in loans through a direct assignment of a financial institution's interests with respect to the loan may involve additional risks. For example, if a loan is foreclosed, our clients could become part owner of any collateral, and would bear the costs and liabilities associated with owning and disposing of the collateral. In addition, it is conceivable that, under emerging legal theories of lender liability, our clients could be held liable as a co-lender. It is unclear whether loans and other forms of direct indebtedness offer securities laws protections against fraud and misrepresentation. In the absence of definitive regulatory guidance, our clients rely on our firm's research in an attempt to avoid situations where fraud or misrepresentation could adversely affect our clients.

**Relative Value Strategies.** Relative value strategies involve taking offsetting long and short positions in comparable securities which have either an economic or mathematical relationship to each other and where a distortion exists between either the historical price or the fair value of that relationship. These strategies may include merger arbitrage, convertible arbitrage, intra-industry pairs trades, cross-holdings and capital structure trades. Although there is an economic or mathematical relationship between such long and short positions, there is no guarantee that our firm's assessment of that relationship will be correct. Furthermore, because our clients' strategies may involve short selling, there is a risk that our clients will not be able to maintain their ability to borrow securities that have been sold short.

**Investments in Undervalued Equity Securities.** One of the objectives of our clients is to invest in the equity securities of undervalued companies. The identification of investment opportunities in undervalued securities is a difficult task, and our firm cannot assure that such opportunities will be successfully recognized or acquired. While investments in undervalued securities offer the opportunities for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. In addition, our clients may be required to hold such securities for a substantial period of time before realizing their anticipated value. During this period, a portion of our clients' capital would be committed to the securities purchased, thus possibly preventing our clients from investing in other opportunities.

**Forward Trading.** Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardized; rather banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and "cash" trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by our clients due to unusually high trading volume, political intervention or other factors. The imposition of controls by governmental authorities might also limit such forward (and futures) trading to less than that which our firm would otherwise recommend, to the possible detriment of our clients. Market illiquidity or disruption could result in major losses to our clients.

**Leverage and Financing Risk.** Generally, leverage may be utilized on an opportunistic basis when warranted under the circumstances as determined by our firm. Accordingly, our clients may pledge their securities in order to borrow additional funds for investment purposes. Our clients may also leverage their investment return with options, commodity futures contracts, short sales, swaps, forwards and other derivative instruments. The amount of borrowings which our clients may have outstanding at any time may be substantial in relation to their capital.

While leverage presents opportunities for increasing our clients' total return, it has the effect of potentially increasing losses as well. Accordingly, any event which adversely affects the value of an investment by our clients would be magnified to the extent our clients are leveraged. The cumulative effect of the use of leverage by our clients in a market that moves adversely to our clients' investments could result in a substantial loss which would be greater than if no leverage were utilized.

In the futures and forward markets, margin deposits are typically low relative to the value of the futures contracts purchased or sold. Such low margin deposits are indicative of the fact that any futures or forward contract trading is typically accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a contract may result in immediate and substantial losses to the investor.

In general, the use of short-term margin borrowings results in certain additional risks to our clients. For example, should the securities pledged to brokers to secure our clients' margin accounts decline in value, our clients could be subject to a "margin call," pursuant to which our clients must either deposit additional funds or securities with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden drop in the value of our clients' assets, our clients might not be able to liquidate assets quickly enough to satisfy margin requirements.



**Hedging Transactions.** Our firm is not required to attempt to hedge portfolio positions in our clients and, for various reasons, may determine not to do so. Furthermore, our firm may not anticipate a particular risk so as to hedge against it. Our clients may utilize financial instruments, both for investment purposes and for risk management purposes in order to: (i) protect against possible changes in the market value of our clients' investment portfolios resulting from fluctuations in the securities markets and changes in interest rates; (ii) protect the unrealized gains in the value of our clients' investment portfolios; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in our clients' portfolios; (v) hedge the interest rate or currency exchange rate on any of our clients' liabilities or assets; (vi) protect against any increase in the price of any securities our clients anticipate purchasing at a later date; or (vii) for any other reason that our firm deems appropriate.

The success of the hedging strategy of our clients will be subject to our firm's ability to correctly assess the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the investments in the portfolios being hedged. Because the characteristics of many investment instruments change as markets change or time passes, the success of our clients' hedging strategy will also be subject to our firm's ability to continually recalculate, readjust, and execute hedges in an efficient and timely manner. While our clients may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for our clients than if it had not engaged in any such hedging transactions. For a variety of reasons, our firm may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Such imperfect correlation may prevent our clients from achieving the intended hedge or expose our clients to risk of loss. The successful utilization of hedging and risk management transactions requires skills complementary to those needed in the selection of our clients' portfolio holdings.

**Short Selling.** Short selling involves selling securities which are not owned and borrowing them for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from declines in market prices to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. The extent to which our clients engage in short sales will depend upon our firm's investment strategy and opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to our clients of buying those securities to cover the short position.

In the second half of 2008, a number of jurisdictions, including the United States, adopted temporary bans on short sales and enacted regulations aimed at greater disclosure of short selling of certain equity securities. In addition, certain jurisdictions have continued to extend the effectiveness of such short sale bans. In the United States, there are legislative and regulatory initiatives that could lead to the restoration of certain restrictions on short selling that were lifted several years ago. There can be no assurance that regulation would not be adopted to curb any short sale activity. Any such limitation on short selling can have a material adverse impact on our clients' investment programs.

**Certain Derivative Investments.** Our clients may purchase and sell ("write") options on securities, currencies and commodities on U.S. and non-U.S. exchanges and over-the-counter markets. The seller of a put option assumes the risk of a decline in the market price of the underlying instrument below the exercise price of the option. The buyer of a put option assumes the risk of losing its entire investment in the put option. If the buyer of the put holds the underlying instrument, the loss on the put will be offset in whole or in part by any gain on the underlying instrument.

The writer of a call option which is covered (e.g., the writer has a long position in the underlying instrument) gives up the opportunity for gain on the underlying instrument above the exercise price of the option. The seller of an uncovered call option assumes the risk of a theoretically unlimited increase in the

market price of the underlying instrument above the exercise price of the option. The buyer of a call option assumes the risk of losing its entire investment in the call option.

Options may be cash settled, settled by physical delivery or by entering into a closing purchase transaction. In entering into a closing purchase transaction, our clients may be subject to the risk of loss to the extent that the premium paid for entering into such closing purchase transaction exceeds the premium received when the option was written. Swaps and certain options and other custom instruments are subject to the risk of non-performance by the swap counterparty, including risks relating to the creditworthiness of the swap counterparty.

**Futures Contracts.** Nothing precludes our clients from trading in futures contracts and at any time our clients may start trading in futures contracts (and options on futures). Futures positions may become illiquid. For example, most commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as “daily price fluctuation limits” or “daily limits.” Under such daily limits, during a single trading day no trades may be executed at prices beyond the daily limits. Once the price of a contract for a particular future has increased or decreased by an amount equal to the daily limit, positions in the future can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. Futures contract prices on various commodities or financial instruments occasionally have moved the daily limit for several consecutive days with little or no trading. Similar occurrences could prevent our clients from promptly liquidating unfavorable positions and subject our clients to substantial losses. In addition, our clients may not be able to execute futures contract trades at favorable prices if trading volume in such contracts is low. It is also possible that an exchange or a regulator (such as the U.S. Securities and Exchange Commission or the U.S. Commodity Futures Trading Commission) may suspend trading in a particular contract, order immediate liquidation and settlement of a particular contract or order that trading in a particular contract be conducted for liquidation only. In addition, the U.S. Commodity Futures Trading Commission and various exchanges impose speculative position limits on the number of positions that may be held in particular commodities. Trading in futures contracts and options are highly specialized activities that may entail greater than ordinary investment or trading risks.

**Margin on Futures and Leverage.** In futures markets, margin deposits are typically low relative to the nominal value of the futures contracts purchased or sold. In the forward, currency and certain other derivative markets, margin deposits may be even lower or may not be required at all. Such low margin deposits are indicative of the fact that any futures contract trading typically is accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a futures contract may result in immediate and substantial losses to the investor. Thus, like other leveraged investments, any purchase or sale of a futures contract may result in losses in excess of the amount invested.

**Swap Transactions.** Depending on their structure, swap agreements may increase or decrease our clients’ exposure to equity securities, long-term or short-term interest rates, foreign currency values, corporate borrowing rates or other reference assets. Depending on how they are used, swap agreements may increase or decrease the overall volatility of our clients’ portfolios. The most significant factors in the performance of swap agreements is the change in the individual equity values, the specific interest rate, the currency value and other reference assets that determine the amounts of payments due to our clients. If a swap agreement calls for payments by our clients, our clients must be prepared to make such payments when due. In addition, if a counterparty’s creditworthiness declines, the value of swap agreements with such counterparty can be expected to decline, potentially resulting in losses by our clients.

Swap transactions are not traded on exchanges and are not subject to the same type of government regulation as exchange markets. As a result, many of the protections afforded to participants on organized exchanges and in a regulated environment are not available in connection with these transactions.

Trading in swaps and other derivative instruments can permit a high degree of synthetic leverage. Accordingly, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by our clients and could cause our clients' net asset value to be subject to wider fluctuations than would be the case if our clients did not use derivative instruments that provide leverage. Thus, like other leveraged investments, a derivatives trade may result in losses in excess of the amount invested. Any increase in the amount of leverage applied in trading will increase the risk of loss by the amount of additional leverage applied.

**Enhanced Regulation of Swaps.** The recently enacted Wall Street Transparency and Accountability Act of 2010, also known as the WSTAA, will, subject to exceptions for certain hedgers, (1) require swaps accepted for clearing by a derivatives clearing organization or for trading through a designated contract market or swaps-execution facility to be so cleared and traded, (2) require margin for almost all swap transactions, (3) subject traders with a "substantial position" in swaps to registration and regulation requirements as a "major swap participant" or "swap dealer" and (4) impose position limits on swaps either individually or in the aggregate with respect to positions in commodity-futures contracts. Due to the new requirements imposed by the WSTAA, our clients may experience increased transaction costs to pay for the clearing, execution and segregation obligations. In addition, margin requirements may increase once margin is set by derivatives clearing organizations with input from the CFTC, which may limit our clients' ability to engage in leverage and limit their returns. The application of position limits to swap contracts may also limit our clients' ability to concentrate in any particular contract or exposure to an underlying commodity and may negatively impact their ability to take advantage of current market trends or conditions. Any tightening in the market for swaps may significantly impact our clients and their returns. In addition, if our clients were deemed to be a swap dealer or a major swap participant under WSTAA, they may be required to register with the CFTC and would be subject to a number of regulatory requirements that would significantly impact their legal obligations and returns.

**Enhanced Regulation of Short Sales and Credit Default Swaps.** Short sales and credit default swaps will, from November 2012, be subject to the provisions of the EU Regulation on Short Selling and certain aspects of Credit Default Swaps, which was published in the Official Journal of the European Union on March 24, 2012. This short selling regulation introduces restrictions and disclosure requirements for persons taking short positions in EU shares and sovereign bonds, and prohibits entering into uncovered credit default swaps in relation to EU sovereign debt (i.e., where the investor does not have an exposure that it is seeking to hedge either to the sovereign debt itself or to assets or liabilities whose value is correlated to the sovereign debt). In addition, this short selling regulation permits the competent authorities of EU Member States to prohibit or restrict short sales, limit sovereign credit default swaps and impose emergency disclosure requirements, among other things, during times of stressed markets. Competent authorities may also restrict short sales of individual financial instruments which have suffered a significant fall in price in a single day. The provisions of this short selling regulation may hinder our clients' investment programs by preventing them from taking positions that our firm considers favorable. They may also result in overvaluations of certain financial instruments due to restrictions on market efficiency. In addition, the emergency powers granted to competent authorities during times of stressed markets and with respect to individual financial instruments may adversely affect our clients by preventing them from taking hedging positions or other positions that our firm considers to be in its best interests. The imposition of emergency measures under this short selling regulation could, therefore, result in substantial losses to our clients.

**Credit Default Swaps.** Our clients may invest in credit default swaps. Credit default swaps can be used to implement our firm's view that a particular credit, or group of credits, will experience credit improvement or deterioration. In the case of expected credit improvement, our firm may sell on behalf of our clients credit default protection in which it receives a premium to take on the risk. In such an instance, the obligation of our clients to make payments upon the occurrence of a credit event creates leveraged exposure to the credit risk of the referenced entity. Our clients may also buy credit default protection with respect to a referenced entity if, in the judgment of our firm, there is a high likelihood of credit deterioration. In such instance, our clients will pay a premium regardless of whether there is a credit event. The credit default swap market in high-yield securities is comparatively new and rapidly evolving compared to the credit default swap market for more seasoned and liquid investment-grade securities, creating the risk that the newer markets will be less liquid, and making it potentially more difficult to exit or enter into a particular transaction.

**Counterparty and Custody Risk.** Some of the markets in which our clients may effect transactions are "over-the-counter" or "interdealer" markets. The participants in such markets are typically not subject to credit evaluation and regulatory oversight as are members of "exchange-based" markets. This exposes our clients to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not *bona fide*) or because of a credit or liquidity problem, thus causing our clients to suffer a loss.

In addition, there are risks involved in dealing with the custodians or brokers who settle our clients' trades. Securities and other assets deposited with custodians or brokers may not be clearly or constantly identified as being assets of our clients, and hence our clients may be exposed to a credit risk with regard to such parties. In some jurisdictions, our clients may only be an unsecured creditor of their brokers in the event of bankruptcy or administration of such brokers. Further, there may be practical or time problems associated with enforcing our clients' rights to their assets in the case of an insolvency of any such party. Recent apparently significant losses incurred by many hedge funds in relation to the bankruptcy and/or administration of Lehman Brothers Holdings and its affiliates illustrate the risks incurred in both derivatives trading and custody/brokerage arrangements. Many Lehman Brothers customers had their accounts frozen, and the inability to access these funds or positions has led to losses as well as extraordinary actions by such hedge funds.

**Bankruptcy Rules.** Any cash and securities maintained by our clients in accounts at U.S. broker-dealers registered with the U.S. Securities and Exchange Commission and Financial Industry Regulatory Authority are protected to a limited degree by the U.S. Securities Investor Protection Corporation. In the event of the bankruptcy of a broker-dealer, if sufficient funds are not available in the broker-dealer's customer accounts to satisfy claims, the reserve funds of the U.S. Securities Investor Protection Corporation will be used to supplement the distribution, up to a ceiling of \$500,000 per customer, including a maximum of \$100,000 for cash claims. Therefore, our clients could be at risk of loss for any amounts in excess of the limit listed above. In addition, if our clients trades in futures contracts, bankruptcy law applicable to all U.S. futures commission merchants, also known as futures commission merchants, requires that, in the event of the bankruptcy of such a futures commission merchant, all property held by the futures commission merchant, including certain property specifically traceable to a customer, will be returned, transferred or distributed to the futures commission merchant's customers only to the extent of each customer's pro rata share of all property available for distribution to customers. If any futures commission merchant holding our clients' assets were to become bankrupt, it is possible that our clients would be able to recover none or only a portion of its assets held by such futures commission merchant. Furthermore, in the event of an insolvency of a futures commission merchant or other counterparty which is not regulated by the U.S. Commodity Futures Trading Commission, the U.S. Commodity Futures Trading Commission's segregation protections would not be available to our clients. Other custodians and counterparties may have similar types of risks. Assets held outside the United States

may be subject to different and/or diminished protection in the event of a counterparty failure located in such jurisdiction.

## **Item 9. Disciplinary Information**

Neither our firm nor any of our directors, officers or principals have been involved in any criminal or civil actions in a domestic, foreign or military court.

Neither our firm nor any of our directors, officers or principals have been involved in any administrative proceedings before the U.S. Securities and Exchange Commission, any other federal regulatory agency, any state regulatory agency or any foreign financial regulatory authority.

Neither our firm nor any of our directors, officers or principals have been involved in any self-regulatory organization proceedings.

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

### ***Material Financial Industry Affiliations of the Firm***

Neither our firm nor any of our directors, officers or principals is registered, or has an application pending to register, as a broker-dealer, registered representative of a broker-dealer, futures commission merchant, commodity pool operator, commodity trading advisor, or is an associated person of any of the above.

Neither our firm nor any of our directors, officers or principals has a related person among any of the categories listed in Item 10(C) of Form ADV Part 2A other than Venor Capital GP LLC, a Delaware limited liability company affiliated with our firm, that serves as the general partner of two of our client fund's feeder funds and our special purpose client fund.

Finally, our firm does not recommend or select other investment advisers for its clients for which our firm receives compensation directly or indirectly from those advisers that creates a material conflict of interest, nor does our firm have other business relationships with advisers that create material conflicts of interest.

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

### ***Code of Ethics***

We have adopted a Code of Ethics in accordance with U.S. Securities and Exchange Commission requirements. The purpose of our Code of Ethics is to identify the ethical and legal framework in which our firm and its personnel are required to operate and to highlight some of the guiding principles and mechanisms for upholding our firm's standard of business conduct. Our Code of Ethics is designed to ensure that all applicable personnel are aware of and adhere to our firm's policies and procedures. The description below is summary only. We will provide a complete copy of our Code of Ethics to clients and prospective clients, as well as investors and prospective investors in our client fund, upon request.

***Standard of Business Conduct.*** Our firm and its personnel have a fiduciary duty to our clients, and, in this fiduciary capacity, we must place the interests of our clients before our own interests.

**Basic Principles.** Our Code of Ethics is based on a few basic principles: (i) our firm and its personnel must place the interests of our clients above their own; (ii) the professional activities and personal investment activities of our firm's personnel must be consistent with our Code of Ethics and avoid any actual or potential conflict between the interests of clients and those of our firm or its personnel; (iii) the activities of our firm's personnel must be conducted in a way that avoids any abuse of any such person's position of trust with and responsibility to our firm and clients; (iv) our employees must not take any inappropriate advantage of their positions at our firm; (v) we must maintain independence in our investment decision-making process; and (vi) our firm's personnel may not engage in any act, practice or course of conduct that would violate the provisions of Rule 204A-1 of the Investment Advisers Act of 1940, as amended, and other applicable securities laws.

**Conflicts of Interest.** As a fiduciary, our firm has an affirmative duty of care, loyalty, honesty and good faith to act in the best interests of clients. Our firm makes every effort to avoid conflicts of interest and fully disclose all material facts concerning any conflict of interest that may arise with respect to any client. Our firm stresses that individuals subject to our Code of Ethics must try to avoid situations that have even the appearance of conflict or impropriety.

**Insider Trading.** Our firm's personnel may not trade, either personally or on behalf of another, on material non-public information or communicate material non-public information to another person in violation of the law. This policy applies to all of our firm's personnel and extends to their activities both within and outside their duties for our firm. Our firm has also implemented policies and procedures designed to detect and prevent insider trading.

**Personal Securities Transactions.** All personnel must comply with our firm's policy on personal trading. Except with respect to certain securities (including, indices, mutual funds, exchange-traded funds and certain government securities) and with respect to certain accounts for which a person does not exercise investment discretion, personal securities transactions by our firm's personnel must be pre-approved by our firm's Chief Compliance Officer.

**Holdings and Transactions Reports.** Every employee and access person must submit both initial and annual holdings reports to our firm's Chief Compliance Officer that disclose all covered securities held in any personal account. Every employee and access person must also submit a quarterly transaction report to the Chief Compliance Officer for each covered securities transaction in any personal account.

**Service as a Director.** Our firm's employees are prohibited from serving on the boards of directors of any outside company, unless the service (i) would be in the best interests of our firm or our clients, and (ii) has been approved in writing by our firm's Chief Compliance Officer; provided that our employees will not be required to obtain prior written approval for service on the boards of directors of charitable or civic organizations. In addition, any employee serving on the board of a private company which is about to go public may be required to resign either immediately or at the end of the current term.

**Reporting of Violations.** Our firm has implemented policies and procedures whereby our firm's personnel are required to report any violation, apparent violation or potential violation of our Code of Ethics to our firm's Chief Compliance Officer.

**Review and Enforcement.** Our firm's Chief Compliance Officer is responsible for ensuring adequate supervision over the activities of all persons who act on our behalf in order to prevent and detect violations of our Code of Ethics by such persons.

## **Conflicts of Interest**

Neither our firm nor any related person of our firm recommends to clients, or buys or sells for client accounts, securities in which our firm or a related person of our firm has a material financial interest.

Our firm and related persons of our firm generally do not invest in the same securities (or related securities, e.g., warrants, options or futures) that our firm or a related person of our firm recommends to clients. In addition, our firm and related persons of our firm generally do not recommend securities to clients, or buys or sells securities for client accounts, at or about the same time that our firm or a related person buys or sells the same securities for our firm's own (or the related person's own) account. However, exceptions may be made on a limited basis

Our firm maintains lists of companies about which a determination has been made that it is prudent to restrict or limit trading activity based on the possibility that our firm and employees have access to material nonpublic information. Our Restricted List contains the names of such companies of which the equity and/or debt securities are publicly traded. Our Watch List contains the names of such companies of which no equity or debt security is publicly traded.

As a general rule, trades will not be allowed for clients, or for the personal accounts of employees, in the securities of an issuer appearing on the Restricted List, except with the pre-approval of our firm's Chief Compliance Officer. Trades will not be allowed for clients, or for the personal accounts of employees, in the securities of an issuer appearing on the Watch List unless the employee executing such trade has first reconfirmed that the issuer has not issued any publicly traded equity or debt securities. Restrictions and limitations with regard to securities on the Restricted List or Watch List are also considered to extend to options, rights or warrants relating to those securities and any securities convertible into those securities.

## **Item 12. Brokerage Practices**

### ***Selection of Brokers***

Our firm has full authority to select broker-dealers to execute our clients' investment transactions, and has appointed brokerage firms to act as "prime brokers" for each client. A firm appointed as a client's prime broker has certain administrative responsibilities, including the issuance of account statements and information with respect to securities transactions affected through other broker-dealers. A prime broker may be allocated a portion of our clients' securities transactions, subject to principles of best execution. Our firm may, in its discretion, change its selections of one or more prime brokers for our clients.

Our firm allocates a portion of each client's brokerage business to additional brokers on the basis of certain considerations, which may include:

- The amount of commission;
- The quality of execution;
- Reputation, financial strength and stability;
- Block trading and block positioning capabilities;
- Willingness to execute difficult transactions;
- Willingness and ability to commit capital;
- Access to underwritten offerings and secondary markets
- Ongoing reliability

- Overall costs of a trade
- Nature of the security and the available market makers
- Desired timing of the transaction and size of trade
- Confidentiality of trading activity; and/or
- Market intelligence regarding trading activity.

### ***Research and Soft Dollars***

The commissions paid to brokers will not necessarily represent the lowest commission rates available, but will reflect our firm's evaluation of the research and other brokerage related services supplied by such brokers, without cost and unrelated to the execution of securities transactions, and which benefit the client, either alone or together with other clients. In each case, our firm will make a determination that the amount of any increased commission costs on account of such research or other services is reasonable relative to the value of services so provided.

At this time our firm is not a party to, and does not anticipate entering into, any formal "soft dollar" arrangements. However, our firm has the option to use "soft dollars" generated by our clients to pay for the research related services. In the event that our firm utilizes allocations of commission dollars, it will do so solely to pay for products or services that qualify as "research and brokerage services" within the "safe harbor" of Section 28(e) of the U.S. Securities Exchange Act of 1934, as amended.

### ***Aggregation of Orders***

Our firm may place as an aggregated order for execution orders for publicly traded securities at the same time for the accounts of two or more of our clients. This practice may enable our firm's clients to seek more favorable executions and net prices for the combined order. If the order cannot be executed in full at the same price or time, the securities actually purchased or sold by the close of each business day shall generally be allocated pro rata among the participating clients in accordance with the initial amounts ordered by each client. However, the pro rata allocation may be adjusted to avoid having odd amounts of shares held in any client's account or to avoid deviations from any pre-determined minimum/maximum holdings limits established for any client. Each client that participates in the order shall do so at the average price for all the transactions and shall share in commissions or other transaction costs on a pro rata basis.

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

Jeffery A. Bersh and Michael J. Wartell, in their capacities as our firm's Co-Chief Investment Officers, review client portfolios on a continuous basis.

Our firm provides to investors in each private fund client such respective private fund client's audited financial statements on an annual basis and unaudited monthly performance data on a monthly basis.

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

Our firm does not, nor do any principals or employees of our firm, receive any economic benefit from non-clients for providing advisory services to our clients.



Our firm is not a party to any arrangement to pay employees or third parties for the referral or solicitation of clients or investors in our private fund clients, though we may enter into such arrangements in the future. Our firm will not enter into any such arrangement without the prior approval of Mr. Bersh or Mr. Wartell. In the event that our firm engages a third party to solicit clients or investors in our private fund clients on its behalf, appropriate disclosures regarding the arrangement and any fees associated with the arrangement will be made to such prospective clients and investors.

#### **Item 15. Custody**

Although our firm does not custody certificated securities (which are typically custodied by our clients' prime brokers), our firm is deemed to have custody over certain of the assets of our private fund clients according to the custody rule set forth in Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended. Our firm complies with such custody rule by providing audited financial statements of each private fund client to investors in such private fund client within 120 days of the end of the fiscal year to satisfy the reporting requirement.

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

Our firm is provided with discretionary authority to manage the securities accounts of each of our clients as set forth in, and limited by, the terms and conditions of the relevant organizational documents or investment advisory agreement with such client. Our firm does not provide advisory services directly to the investors in our clients. Generally, our firm assumes such authority by receiving a power of attorney through the execution of our advisory agreement.

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

Our firm has the authority to vote proxies relating to securities in client accounts. Accordingly, our firm has adopted policies and procedures governing the voting of proxies that include the following elements:

**General Policy.** The general policy is to vote proxies, which includes proxy proposals, amendments, consents or resolutions relating to client securities, including interests in private investment funds, if any, in a manner that serves the best interests of the investing client(s), as determined by our firm in its discretion, and taking into account relevant factors, including, but not limited to:

- The impact on the value of the securities;
- The anticipated costs and benefits associated with the proposal;
- The effect on liquidity; and
- Customary industry and business practices.

**Specific Policies.** Specific policies set forth in our firm's policies and procedures include:

- Routine matters are typically proposed by company's management, directors, general partners, managing members or trustees and (i) do not measurably change the structure, management, control or operation of the company; (ii) do not measurably change the terms of, or fees or expenses associated with, an investment in the company; and (iii) are consistent with customary industry standards and practices, as well as the laws of the state of incorporation applicable to the company. For routine matters, we will vote in accordance

with the recommendation of the company's management, directors, general partners, managing members or trustees, as applicable, unless, in our firm's opinion, such recommendation is not in the best interests of the investing client(s).

- Non-routine matters involve a variety of issues and may be proposed by a company's management or beneficial owners, and may involve (i) a measurable change in the structure, management, control or operation of the company; (ii) a measurable change in the terms of, or fees or expenses associated with, an investment in the company; or (iii) a change that is inconsistent with industry standards and/or the laws of the state of incorporation applicable to the company. We have specific proxy voting policies for non-routine matters, and in some cases, our firm votes on a case-by-case basis.

**Abstaining from Voting or Affirmatively Not Voting.** Our firm will abstain from voting (which generally requires submission of a proxy voting card) or affirmatively decide not to vote if our firm determines that abstaining or not voting is in the best interests of the investing client(s). In making such a determination, we will consider various factors including, but not limited to, (i) the costs associated with exercising the proxy (e.g., translation or travel costs); and (ii) any legal restrictions on trading resulting from the exercise of a proxy. Furthermore, our firm will not abstain from voting or affirmatively decide not to vote merely to avoid a conflict of interest.

**Conflicts of Interest.** At times, conflicts may arise between the interests of the investing client(s), on the one hand, and the interests of our firm or its affiliates, on the other hand. If our firm determines that it has, or may be perceived to have, a conflict of interest when voting a proxy, our firm will address matters involving such conflicts of interest as follows:

- If a proposal is addressed by the specific policies in these procedures, our firm will vote in accordance with such policies.
- If our firm believes it is in the best interest of the investing client(s) to depart from the specific policies provided for in these procedures, our firm will be subject to the requirements of the third and fourth bullet points below, as applicable.
- If the proxy proposal is (i) not addressed by the specific policies, or (ii) requires a case-by-case determination by our firm, our firm may vote such proxy as it determines to be in the best interest of the investing client(s), without taking any action described in the fourth bullet point below, provided that such vote would be against our firm's own interest in the matter (i.e., against the perceived or actual conflict). Our firm will memorialize the rationale of such vote in writing.
- If the proxy proposal is (i) not addressed by the specific policies, or (ii) requires a case-by-case determination by our firm, and (iii) our firm believes it should vote in a way that may also benefit, or be perceived to benefit, its own interest, then our firm must take one of the following actions in voting such proxy:
  - Delegate the voting decision for such proxy proposal to an independent third party;
  - Delegate the voting decision to an independent committee of partners, members, directors or other representatives of the investing client, as applicable;
  - Inform the investing client (and investors in client fund and/or special purpose client fund if the client fund and/or special purpose client fund is the investing client) of the conflict of interest and obtain consent to (majority consent in the case of the client fund) vote the proxy as recommended by our firm; or

- Obtain approval of the decision from the Chief Compliance Officer and third party legal advisors.

A complete copy of our firm's policies and procedures governing the voting of proxies, together with information regarding how our firm voted particular proxies, will be provided to clients and prospective clients upon request.

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

Our firm does not require, nor do we solicit, prepayment of more than \$1,200 in fees per client, six months or more in advance.

Item 18(B) is not applicable because our firm is in stable financial condition.

Venor Capital Management LP has never been the subject of a bankruptcy petition.