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

**EMINENCE CAPITAL, LLC**

**MARCH 31, 2013**

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*This brochure (this “Brochure”) provides information about the qualifications and business practices of Eminence Capital, LLC (the “Investment Adviser,” “Eminence Capital,” we or us). If you have any questions about the contents of this Brochure, please contact us at (212) 418-2100. The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (the “SEC”) or by any state securities authority.*

*The Investment Adviser is registered as an investment adviser with the SEC. Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.*

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

*This Brochure does not constitute an offer to sell or the solicitation of an offer to purchase any securities of any entities described herein. The securities of the funds are offered and sold on a private placement basis under exemptions promulgated under the Securities Act of 1933, as amended (the “Securities Act”), and other exemptions of similar import under U.S. state laws and the laws of other jurisdictions where any offering may be made. Any offer or solicitation will be made solely to qualified investors by means of a private placement memorandum and related subscription materials.*

## **Item 2 – Material Changes**

The Investment Adviser is required to identify and discuss any material changes made to its Brochure since its last filing, which was filed on February 13, 2012. Since its last filing, the Investment Adviser has not made any material updates to its Brochure; however it has updated some sections of its Brochure. Please review this Brochure carefully and in its entirety.

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#### **Item 4 – Advisory Business**

Eminence Capital, LLC, a New York limited liability company, was launched in January 1999 with a single investment strategy that continues to be our primary investment focus – fundamental long/short equity investing.

Eminence Capital's members, officers and employees are located in New York City. Our total assets under management were approximately \$3,281,600,000 as of January 1, 2013. All such managed assets are managed on a discretionary basis.

Ricky Sandler is the founder, sole Managing Member and Senior Portfolio Manager of Eminence Capital. He has a significant majority ownership of the Investment Adviser.

Our flagship funds are referred to as classic Eminence long/short ("Classic"). We also have funds that generally replicate the portfolios of our Classic funds, but with each position size multiplied by approximately 1.5x that of our Classic exposure. Those funds are referred to as our "Leveraged Classic" funds. We have recently formed "Long" funds with portfolios that generally replicate the long positions held in the Classic and Leveraged Classic funds. Collectively, we refer to the Classic funds, the Leveraged Classic funds and the Long funds as the "Funds," and each a "Fund".

We also provide investment advisory services to the owner of a separately managed account ("SMA") that is an entity. The portfolio of the SMA is made up primarily of a subset of the long positions of the portfolios of the Classic and Leveraged Classic Funds.

The Funds are:

##### ***Eminence Classic Funds***

- Eminence Partners, L.P. ("Eminence Partners"), a New York limited partnership;
- Eminence Partners II, L.P. ("Eminence Partners II"), a New York limited partnership; and
- Eminence Fund, Ltd. and Eminence Fund Master, Ltd.
  - Eminence Fund, Ltd. ("Eminence Fund") is an exempted company incorporated under the laws of the Cayman Islands. Eminence Fund invests substantially all of its assets in Eminence Fund Master, Ltd. ("Eminence Fund Master"), an exempted company incorporated under the laws of the Cayman Islands.

##### ***Eminence Leveraged Classic Funds***

- Eminence Partners Leveraged, L.P. ("Partners Leveraged"), a Delaware limited partnership; and
- Eminence Fund Leveraged, Ltd. and Eminence Fund Leveraged Master, Ltd.
  - Eminence Fund Leveraged, Ltd. ("Fund Leveraged." and, together with Eminence Fund, the "Feeder Funds," and each a "Feeder Fund") is an exempted company incorporated under the laws of the Cayman Islands. Fund Leveraged invests

substantially all of its assets in Eminence Fund Leveraged Master, Ltd., an exempted company incorporated under the laws of the Cayman Islands (“Leveraged Master”, and together with Eminence Fund Master, the “Master Funds,” and each a “Master Fund”).

### ***Eminence Long Funds***

- Eminence Partners Long, L.P. (“Partners Long”, and together with Eminence Partners, Eminence Partners II and Partners Leveraged, the “Partnerships”, and each a “Partnership”); and
- Eminence Fund Long, Ltd. (“Fund Long”) is an exempted company incorporated under the laws of the Cayman Islands.

The Investment Adviser serves as the management company to, and has discretionary trading authority with respect to, the Partnerships and the Master Funds. The Investment Adviser has overall responsibility for the investment strategy and has discretionary trading authority with respect to Fund Long. Eminence GP, LLC, an affiliate of the Investment Adviser that is controlled by Ricky Sandler (“Eminence GP”), has overall responsibility for the investment strategy of each Partnership and the Master Funds (and with respect to the Master Funds, subject to the policies and control of the board of directors of each such Master Fund). With respect to the Partnerships, Eminence GP is referred to as the “General Partner” and, with respect to the Master Funds, the “Manager.” Eminence GP is a person associated with the Investment Adviser that provides investment advisory services to each Partnership and Master Fund. Eminence GP is not separately registered as an investment adviser with the SEC, but instead relies on the Investment Adviser’s registration with the SEC in not registering in accordance with the *American Bar Association, Business Law Division* (Jan. 18, 2012) no-action letter.

The interests in Eminence Partners II are offered on a private placement basis, and in reliance on Section 3(c)(1) of the Investment Company Act of 1940, as amended (the “Company Act”), to persons who generally are “accredited investors” as defined under the Securities Act and subject to certain other conditions, which are set forth in the offering documents for Eminence Partners II. The interests in Eminence Partners, Partners Leveraged and Partners Long are offered on a private placement basis, and in reliance on Section 3(c)(7) of the Company Act, to persons who generally are “accredited investors” as defined under the Securities Act and “qualified purchasers” as defined under the Company Act, and who are subject to certain other conditions, which are set forth in the offering documents for Eminence Partners, Partners Leveraged and Partners Long.

Shares in Eminence Fund, Fund Leveraged and Fund Long are generally offered to persons (x) who are not “U.S. Persons,” as defined under Regulation S of the Securities Act, or who are tax-exempt U.S. Persons (or entities substantially comprised of tax-exempt U.S. Persons) on a private placement basis, and (y) who are subject to certain

other conditions, which are fully set forth in the offering documents for Eminence Fund, Fund Leveraged and Fund Long.

The Funds are authorized to issue shares and limited partner interests, as determined from time to time by the board of directors or the General Partner, as applicable, which may differ in terms of, among other things, redemption/withdrawal rights, redemption/withdrawal fees, voting rights and minimum initial and additional subscription amounts.

As used herein, the term “client” generally refers to each Fund and the SMA.

*This Brochure generally includes information about the Investment Adviser and its relationships with its clients and affiliates. While much of this Brochure applies to all such clients and affiliates, certain information included herein applies to specific clients or affiliates only.*

## **Item 5 – Fees and Compensation**

The fees applicable to each Fund are set forth in detail in each Fund's offering documents and the SMA's investment advisory agreement. A brief summary of such fees is provided below.

### ***THE CLASSIC FUNDS***

#### **Management Fees**

Generally, each fiscal quarter, each of the Classic Funds pays (other than Eminence Fund Master, in which case Eminence Fund pays) the Investment Adviser a management fee in advance equal to 0.3125% of the aggregate net asset value of the fee-paying investors in the respective fund as of the first day of that calendar quarter. The annualized rate is one and a quarter percent (1.25%). The management fee is calculated and paid in advance but is amortized by each Classic Fund over the quarter for which the management fee is paid. In addition, a pro rata portion of the management fee is paid to the Investment Adviser out of any contributions made to any Classic Fund by new or existing investors on any date that does not fall on the first day of a fiscal quarter, based on the actual number of days remaining in such partial quarter. In the case of a withdrawal or redemption by an investor in any of the Classic Funds other than as of the last day of a fiscal quarter, a pro rata portion of the management fee (based on the actual number of days remaining in such partial quarter) would be repaid by the Investment Adviser to the relevant Fund and distributed to the withdrawing or redeeming investor. The Investment Adviser may, in its sole discretion, waive all or part of the management fee otherwise due, with respect to any investor. Eminence GP, the Investment Adviser and their respective members, officers, employees and agents are not subject to the management fee.

#### **Performance Allocations**

##### **Eminence Partners and Eminence Partners II**

Subject to high water mark provisions described in detail in Eminence Partners' and Eminence Partners II's confidential offering memorandum and limited partnership agreement, as of the last business day of each calendar year, 20% of the aggregate net capital appreciation (net of all expenses, including the management fee) credited to a capital account of a limited partner for such calendar year is reallocated to the Eminence GP capital account. If a limited partner makes a withdrawal from its capital account prior to the last business day of a calendar year, the incentive allocation is calculated and then allocated to the Eminence GP at the time of such withdrawal with respect to such amounts withdrawn.

Eminence GP, in its sole discretion, may waive all or part of the incentive allocation otherwise allocable with respect to any limited partner's investment. Eminence GP, the

Investment Adviser and their respective members, officers, employees and affiliates are not subject to the incentive allocation.

#### Eminence Fund and Fund Master

Subject to high water mark provisions described in detail in the Eminence Fund confidential offering memorandum an amount equal to 20% of the net realized and unrealized appreciation in the net asset value of each series of shares of Fund Master corresponding to a series of shares of Eminence Fund during each fiscal year is reallocated from the net asset value of each such series of the Fund Master to the net asset value of the Class M Shares of the Fund Master. Class M shares are held by Eminence GP. The net asset value of each corresponding series of shares is reduced as a result of the incentive allocation. Class M Shares are participating voting shares in Fund Master and carry the right to receive the incentive allocation. The incentive allocation will be made at times other than at the end of each fiscal year to account for complete or partial redemptions of shares. No additional incentive compensation is made at the Eminence Fund.

Eminence GP may elect to reduce, waive or calculate differently the incentive allocation with respect to any shareholder. Eminence GP and the Investment Adviser and their respective members, officers, employees and affiliates are not subject to the incentive allocation.

### ***THE LEVERAGED CLASSIC FUNDS***

#### **Management Fees**

Generally, for investments made on or after November 1, 2012, each fiscal quarter, each of the Leveraged Funds pays (other than Fund Leveraged, in which case Fund Leveraged Master pays) the Investment Adviser a management fee in advance equal to 0.46875% of the aggregate net asset value of the fee-paying investors in the respective fund as of the first day of that calendar quarter. The annualized rate is 1.875%. The management fee is calculated and paid in advance but is amortized by each Leveraged Classic Fund over the quarter for which the management fee is paid. In addition, a pro rata portion of the management fee is paid to the Investment Adviser out of any contributions made to any Leveraged Classic Fund by new or existing investors on any date that does not fall on the first day of a fiscal quarter, based on the actual number of days remaining in such partial quarter. In the case of a withdrawal or redemption by an investor in any of the Classic Leveraged Funds other than as of the last day of a fiscal quarter, a pro rata portion of the management fee (based on the actual number of days remaining in such partial quarter) would be repaid by the Investment Adviser to the relevant Leveraged Classic Fund and distributed to the withdrawing or redeeming investor. The Investment Adviser may, in its sole discretion, waive all or part of the management fee otherwise due, with respect to any investor. Eminence GP, the Investment Adviser and their respective members, officers, employees and affiliates are not subject to the management fee.



## **Performance Allocations**

### **Partners Leveraged**

Subject to high water mark provisions described in detail in Partners Leveraged's confidential offering memorandum and limited partnership agreement, as of the last business day of each calendar year, 20% of the aggregate net capital appreciation (net of all expenses, including the management fee) credited to a capital account of a limited partner for such calendar year is reallocated to the Eminence GP capital account. If a limited partner makes a withdrawal from its capital account prior to the last business day of a calendar year, the incentive allocation is calculated and then allocated to the Eminence GP at the time of such withdrawal with respect to such amounts withdrawn.

Eminence GP, in its sole discretion, may waive all or part of the incentive allocation otherwise allocable with respect to any limited partner's investment. Eminence GP, the Investment Adviser and their respective members, officers, employees and affiliates are not subject to the incentive allocation.

### **Fund Leveraged and Leveraged Master**

Subject to high water mark provisions described in detail in Fund Leveraged's confidential offering memorandum an amount equal to 20% of the net realized and unrealized appreciation in the net asset value of each series of shares of Leveraged Master corresponding to a series of shares of the Leveraged Fund during each fiscal year is reallocated from the net asset value of each such series of Leveraged Master to the net asset value of the Class M Shares of Leveraged Master. Class M shares are held by Eminence GP. The net asset value of each corresponding series of shares is reduced as a result of the incentive allocation. Class M Shares are participating voting shares in Leveraged Master and carry the right to receive the incentive allocation. The incentive allocation will be made at times other than at the end of each fiscal year to account for complete or partial redemptions of shares. No additional incentive compensation is made at Eminence Fund.

Eminence GP may elect to reduce, waive or calculate differently the incentive allocation with respect to any shareholder. Eminence GP and the Investment Adviser and their respective members, officers, employees and affiliates are not subject to the incentive allocation.

## ***EMINENCE LONG FUNDS***

### **Management Fees**

The Long Funds have two (2) classes of fee-paying interests or shares, Class A and Class B. Generally, each month each of the Long Funds pays the Investment Adviser a management fee in advance equal to (i) 0.0625% (0.75% annualized) of the aggregate net asset value of the Class A investors and (ii) 0.125% (1.50% annualized) of the aggregate net asset value of the Class B investors in the respective Long Fund as of the first day of

that month. In the case of a withdrawal or redemption by an investor in any of the Long Funds other than as of the last day of a month, a pro rata portion of the management fee (based on the actual number of days remaining in such partial month) would be repaid by the Investment Adviser to the relevant Long Fund and distributed to the withdrawing or redeeming investor. The Investment Adviser may, in its sole discretion, waive all or part of the management fee otherwise due, with respect to any investor. Eminence GP, the Investment Adviser and their respective members, officers, employees and affiliates are not subject to the management fee.

## **Performance Fees**

### **Partners Long**

Subject to high water mark provisions described in detail in Partners Long's confidential offering memorandum and limited partnership agreement, at the end of each fiscal year of the Partnership, Partners Long pays the Investment Adviser an incentive fee equal to 20% of the amount by which the net capital appreciation (net of all expenses, including the management fee) credited to the capital account of each Class A limited partner for such fiscal year exceeds the benchmark amount (described in detail in Partner Long's confidential offering memorandum). If a Class A limited partner makes a withdrawal from its capital account prior to the last business day of a fiscal year, the incentive fee is calculated and paid to the Investment Adviser at the time of such withdrawal with respect to such amounts withdrawn.

The Investment Adviser, in its sole discretion, may elect to reduce, waive or calculate differently the incentive fee with respect to any Class A limited partner, including any principal, employee or affiliate of the General Partner or the Investment Adviser or any family member of such person.

### **Fund Long**

Subject to high water mark provisions described in detail in Fund Long's confidential offering memorandum an amount equal to 20% of the amount the net realized and unrealized appreciation in the net asset value of each series of Class A shares of Fund Long exceeds the benchmark amount (described in detail in Fund Long's confidential offering memorandum). The incentive fee will be paid at times other than at the end of each fiscal year to account for complete or partial redemptions of shares. No additional incentive compensation is made at Eminence Fund.

The Investment Adviser, in its sole discretion, may elect to reduce, waive or calculate differently the incentive fee with respect to any Class A shareholder, including any principal, employee or affiliate of the General Partner or the Investment Adviser or any family member of such person.

## **SMA**

The SMA pays the Investment Adviser a management fee equal to 0.041667% (0.50% annualized) of the beginning monthly net asset value of the SMA, which is accrued and billed quarterly in arrears. The management fee is pro-rated for any partial months commencing with the funding date based upon the actual number of days elapsed in such calendar month and is adjusted appropriately for any given month in which there are withdrawals of capital from or contributions of capital to the SMA.

Generally, subject to high water mark provisions described in detail in the SMA's investment advisory agreement, as of June 30<sup>th</sup> each year (or upon termination of the investment advisory relationship with the SMA), the SMA pays the Investment Adviser an incentive fee equal to 20% of the amount the net realized and unrealized appreciation exceeds the benchmark amount (described in detail in the SMA's investment advisory agreement). The client is billed for any performance fee due with respect to the SMA.

## **Expenses**

All ongoing costs and expenses associated with the administration and operation of the Funds and the SMA, including, but not limited to, investment expenses (e.g., brokerage commissions, clearing and settlement charges, custodial fees, interest on margin accounts, and interest expenses), legal expenses, research expenses, administrator fees and directors' fees (if applicable), insurance premiums, professional fees (including, without limitation, expenses of consultants and experts' fees relating to particular investments), auditing fees and expenses, fees relating to investments in pooled investment vehicles and sub-advisory fees (if any), and other service provider fees in relation to the affairs of the Funds and the SMA may be borne by the relevant Fund and/or the SMA. Expenses of any of the Funds (excluding the Management Fee) generally are shared pro rata by all investors. Any expenses common to some or all Funds and the SMA generally will be paid pro rata by such Funds and the SMA based on their respective amounts of capital under management. Fees and expenses that are identifiable with a particular share class (for offshore funds) or particular investor (for onshore funds) will be charged against such class or investor. The Investment Adviser and any affiliate retained by the Investment Adviser are reimbursed for all out-of-pocket expenses incurred on behalf of any of the Funds or the SMA.

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

Eminence Capital or Eminence GP accepts performance allocations or fees from all of its clients (other than the Feeder Funds). As a result, we and our affiliates do not face the conflicts of interest that may arise when an investment adviser accepts performance-based compensation from some clients, but not from other clients. See “Conflicts of Interest Created by Contemporaneous Trading” in Item 11 and “Trade Allocation and Aggregation Policies and Procedures” in Item 12.

## **Item 7 – Types of Clients**

The Investment Adviser provides advice to the Funds, which are private investment funds, as described above, and to an entity in connection with the SMA. Investors in the Funds may include some or all of the following: individuals, banks or thrift institutions, investment companies, pension and profit sharing plans, trusts, estates or charitable organizations, or corporations or business entities other than those listed previously, private investment funds or other entities.

Investors in the Funds are generally required to make minimum initial investments of at least \$1 million. The board of directors for each of the Feeder Funds or the General Partner for the Partnerships may waive the minimum initial investment amount, but in the case of the Feeder Funds in no event will it be less than the amount required by the Mutual Funds Law (as amended) of the Cayman Islands. Additional investments in the Funds by existing investors generally must be in the minimum amount of \$100,000.

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

*The descriptions set forth in this Brochure of specific advisory services that the Investment Adviser offers, and investment strategies pursued and investments made by the Investment Adviser on behalf of its clients, should not be understood to limit in any way the Investment Adviser's investment activities. The Investment Adviser may offer any advisory services, engage in any investment strategy and make any investment, including any not described in this Brochure, that the Investment Adviser considers appropriate, subject to each client's investment objectives and guidelines. The investment strategies the Investment Adviser pursues are speculative and entail substantial risks. Investors in the Funds should be prepared to bear a substantial loss of capital. There can be no assurance that the investment objectives of the SMA or any investor in a Fund will be achieved.*

*Please refer to each Fund's offering documents for a more detailed discussion of our investment strategy and related risks.*

Each of the Funds' and the SMA's investment objective is to seek above-average long-term capital appreciation through investments primarily in equity securities. In seeking to achieve the Fund's investment objective, we employ a research-driven, "quality value" investment strategy. This quality value strategy emphasizes the traditional elements of value investing coupled with a strong focus on investing in high quality businesses and avoiding or selling short low quality businesses.

Our investment diligence process is based on a combination of rigorous financial and qualitative analysis intended to help the Investment Manager determine the quality and durability of a business and determine the value of the business's security. In determining the quality of a business we analyze many factors, the most important of which are listed below:

<u>Business Characteristic</u>	<u>High Quality Business</u>	<u>Low Quality Business</u>
Barriers to entry	high	low
Threat of substitutes	low	high
Power of customers and suppliers	low	high
Capital requirements	low	high
Return on invested capital	high	low
Earnings predictability	high	low
Growth potential	high	low
Quality and depth of management	high	low
Rivalry among competitors	mild	intense

Competitive position	strong	weak
Quality of accounting	conservative	aggressive

In valuing a security, we typically undertake a two-part analysis. First, we determine a security's current intrinsic value. This entails analyzing the company's ability to generate cash flow, the growth potential of that cash flow, and the strategic value of the company's market position to a potential acquirer. The second part of the analysis entails determining the likelihood and magnitude of appreciation or depreciation in a security's future value. In this part of the analysis, we consider some less tangible factors, such as the use of the company's free cash flow, the quality and motivation of its management, changes in social or economic trends that affect the demand for the company's product or service and changes in the company's competitive position.

We execute our diligence and monitoring process in several ways including, but not limited to, construction of proprietary financial models and analysis; scrutiny of regulatory filings, management commentary and financial statements; evaluating third party company and industry information; performing qualitative field research to gain perspective on the industry and the company; meeting with senior management personnel and performing thesis-specific fieldwork on topics identified during completion of our diligence.

On the long side we attempt to identify those companies that are both high quality businesses and undervalued by the marketplace as purchase candidates. We tend to emphasize business quality; focus on businesses with stable to improving secular trends; seek to identify stocks whose prices represent a material discount to our view of value and avoid low quality businesses or secularly challenged but cheap stocks. For shorts, we seek to identify businesses or industries facing secular or structural challenges; have large gaps between reported earnings and our view of economic or sustainable earnings; and have underlying changes in their earnings profile not yet fully recognized by other investors.

We believe that maintaining a reasonably concentrated portfolio and focusing our research efforts on fewer companies afford the best opportunity to both accurately assess the quality and value of a business and provide the best opportunity to generate above average long-term capital appreciation.

On an ongoing basis, we evaluate the overall investment climate for equity securities by assessing the economic outlook, Federal Reserve policy and valuation levels for the overall stock market. The level of net exposure of each Fund's (other than the Long Funds) portfolio at any given time is a function of both our ability to identify attractive investments and our assessment of the overall investment environment. We intend to increase the net market exposure of each of the Classic Fund's and the Leveraged Classic Fund's portfolio when we believe the investment climate is, or will become, particularly good for equity securities and conversely, intend to reduce net market exposure when we believe the investment climate is, or will become, hostile for equity securities. We expect

that the net exposure of the Long Funds and the SMA will generally be at or close to 100%.

Each of the Funds and the SMA invests primarily in publicly-traded equity securities, but its investments may at any time include long or short positions in publicly-traded or privately negotiated (or restricted), common stocks, preferred stocks, stock warrants and rights, bonds, notes or other debentures or debt participation, convertible securities, partnership interests and other securities or financial instruments, including those of investment companies. Each Fund will not invest more than 20% (15% in the case of the SMA) of its net asset value (measured at the time of investment) in the securities of a single issuer (other than government securities, money market funds or similar cash equivalent instruments or exchange traded funds or other broad sector or market index products). Each Fund and the SMA may invest in “unseasoned” as well as mature companies. In addition, each Fund may buy, sell or write options of any or all types and may enter into equity swaps, contracts for differences, total return swaps or other over-the-counter derivative contracts. The Funds may also engage in short sales of securities, buy securities on margin and may arrange with banks, brokers and other financial institutions to borrow money against a pledge of securities in order to employ leverage when the Investment Adviser deems such action appropriate.

Each of the Funds (other than the Long Funds) generally leverages its assets under management, and each of the Funds is authorized to borrow for investment purposes or to fund redemption requests. For the Classic Funds and the Leveraged Classic Funds, the amount of gross leverage (*i.e.*, long positions plus short positions) may be substantial (*i.e.*, typically 150% or greater of the value of the Fund’s capital for the Classic Funds and 225% or greater of the value of the Fund’s capital for the Leveraged Classic Funds) and may be achieved through a number of methods, including, without limitation, the use of loans and derivatives. We do not expect to employ leverage in the ordinary course of managing the Long Funds’ and SMA’s portfolios, however leverage may be used from time to time. Loans generally may be obtained from securities brokers and dealers or from other financial institutions; such loans will be secured by securities or other assets of the relevant Fund pledged to such brokers or financial institutions. Each of the Funds pays interest at borrowing rates which are expected to be at a small premium over the federal funds rate, or other commonly-used benchmark rates (*e.g.*, LIBOR) or as determined by the Funds’ prime broker, as the case may be.

### **Material, Significant or Unusual Risks Relating to Investment Strategies**

*The following risk factors do not purport to be a complete list or explanation of the risks involved in an investment in the Funds. These risk factors include only those risks the Investment Adviser believes to be material, significant or unusual and relate to particular significant investment strategies or methods of analysis employed by the Investment Adviser.*

Risks of Investments in Securities Generally. An investment in any of the Funds involves risks, including the risk that the entire amount invested may be lost. The Funds and the SMA invest in and actively trade securities and other financial instruments using



investment techniques with certain risk characteristics, including, without limitation, risks arising from the volatility of the equity markets, the risks of borrowings, the potential illiquidity of securities and other financial instruments and the risk of loss from counterparty defaults. No guarantee or representation is made that the Funds' investment objectives will be achieved. The Funds and the SMA may utilize such investment techniques as leverage and margin transactions, limited diversification and options and derivatives trading, which practices can, in certain circumstances, increase the adverse impact to which the Funds and the SMA may be subject.

Equity Securities. The Funds' and the SMA's investment portfolios include equity and equity-related securities of U.S. and non-U.S. companies. Equity securities fluctuate in value in response to many factors, including the activities and financial condition of individual companies, the business market in which individual companies compete and industry market conditions and general economic environments. For example, beginning in September 2008, world financial markets experienced extraordinary market conditions resulting in extreme volatility in the global equity markets.

Nature of Certain Investments. There is no limitation on the size or operating experience of the companies in which the Funds and the SMA may invest. Some small companies in which the Funds and the SMA may invest may lack management depth or the ability to generate internally or obtain externally the funds necessary for growth. Companies with new products or services could sustain significant losses if projected markets do not materialize. Further, such companies may have, or may develop, only a regional market for products or services and may be adversely affected by purely local events. Such companies may be small factors in their industries and may face intense competition from larger companies and entail a greater risk than investment in larger companies.

Investment in Undervalued Securities. The Funds and the SMA may invest in securities of companies which the Investment Adviser believes to be undervalued. However, the identification of investment opportunities in undervalued securities is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired.

Investment Selection. The Investment Adviser may select investments on the basis of information and data filed by the issuers of such securities with the SEC or made directly available to the Investment Adviser by the issuers of the securities and other instruments or through sources other than the issuers. Although the Investment Adviser evaluates all such information and data and seeks independent corroboration when it considers it appropriate and when it is reasonably available, the Investment Adviser is not in a position to confirm the completeness, genuineness or accuracy of such information and data.

Limited Diversification. While the Investment Adviser does not expect to invest more than 20% of a Fund's (15% in the case of the SMA) net asset value in the security of a single issuer (other than government securities, money market funds or similar cash equivalent instruments, or exchange traded funds or other broad sector or market index products), there are no limits on the Investment Adviser's investment discretion. At any

given time, it is therefore possible that a Fund's or the SMA's portfolio could become significantly concentrated in any one issuer, industry, sector, strategy, country or geographic region, and such concentration of risk may increase the losses suffered by a Fund. In addition, it is possible that the Investment Adviser may select investments that are concentrated in a limited number or type of financial instruments. This limited diversity could expose the Funds or the SMA to losses disproportionate to market movements in general if there are disproportionately greater adverse price movements in those financial instruments.

Limitations Due to Regulatory Restrictions. The Funds and the SMA may seek to acquire a significant stake in certain issuers. In the event such stake exceeds certain percentage or value limits, the Funds and the SMA may be required to file a notification with one or more governmental agencies or comply with other regulatory requirements. Certain notice filings are subject to review that requires a delay in the acquisition of the securities. Compliance with such filing and other requirements may result in additional costs to the Funds and the SMA, and may delay the Funds' and the SMA's ability to respond in a timely manner to changes in the markets with respect to such securities.

Competition; Availability of Investments. Certain markets in which the Funds and the SMA may invest are extremely competitive for attractive investment opportunities and, as a result, there may be reduced expected investment returns. There can be no assurance that the Investment Adviser will be able to identify or successfully pursue attractive investment opportunities in such environments.

Short Selling. The Funds engage in short selling. Short selling involves selling financial instruments which are not owned and borrowing them for delivery to the purchaser, with an obligation to replace the borrowed financial instruments 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 financial instruments. The extent to which the Funds engage in short sales will depend upon the Investment Adviser's investment strategy and opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying financial instrument could theoretically increase without limit, thus increasing the cost to the Funds of buying those financial instruments to cover the short position. There can be no assurance that the Funds will be able to maintain the ability to borrow securities sold short. In such cases, the Funds can be "bought in" (i.e., forced to repurchase financial instruments in the open market to return to the lender). There also can be no assurance that the financial instruments necessary to cover a short position will be available for purchase at or near prices quoted in the market. Purchasing financial instruments to close out the short position can itself cause the price of the financial instruments to rise further, thereby exacerbating the loss.

Short strategies can also be implemented synthetically through various instruments and be used with respect to indices or in the over-the-counter market and with respect to futures and other instruments. In some cases of synthetic short sales, there is no floating supply of an underlying instrument with which to cover or close out a short position and the Funds may be entirely dependent on the willingness of over-the-counter market

makers to quote prices at which the synthetic short position may be unwound. There can be no assurance that such market makers will be willing to make such quotes. Lastly, even though the Funds secure a “good borrow” of the financial instrument sold short at the time of execution, the lending institution may recall the lent financial instrument at any time, thereby forcing a Fund or Funds to purchase the financial instrument at the then-prevailing market price, which may be higher than the price at which such financial instrument was originally sold short by the Fund.

Leverage; Interest Rates; Margin. The Funds use leverage by trading on margin and/or through other direct and indirect borrowings. The use of leverage has attendant risks and can substantially increase the adverse impact to which the Funds’ investment portfolio may be subject. In addition, the leverage used by the Funds will be subject to the risk that changes in the general level of interest rates may adversely affect expenses and operating results.

In general, the Funds’ use of short-term margin borrowings results in certain additional risks. For example, should the securities pledged to brokers to secure the portfolio’s margin accounts decline in value, the portfolio could be subject to a “margin call,” pursuant to which the portfolio must either deposit additional funds with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden precipitous drop in the value of the portfolio’s assets, the portfolio might not be able to liquidate assets quickly enough to pay off its margin debt.

When the Funds or the SMA purchase an option in the United States, there is no margin requirement because the option premium is paid for in full. The premiums for certain options traded on non-U.S. exchanges may be paid for on margin. Whether any margin deposit will be required for over-the-counter options and other over-the-counter instruments, will depend on the credit determinations and specific agreements of the parties to the transaction, which are individually negotiated.

Call Options. There are risks associated with the sale of call options. The seller (writer) of a call option which is covered (i.e., the writer holds the underlying security or currency) gives up the opportunity for gain on the underlying security above the exercise price of the option. The seller of an uncovered call option assumes the risk of a theoretically unlimited increase in the market price of the underlying security above the exercise price of the option.

Put Options. There are risks associated with the sale of put options. The seller (writer) of a put option which is covered (i.e., the writer has a short position in the underlying security or currency) gives up the opportunity for gain on the underlying security below the exercise price of the option. The seller of an uncovered put option assumes the risk of a decline in the market price of the underlying security below the exercise price.

Other Derivative Instruments. The Funds may enter into swaps and other derivative instruments. It may take advantage of opportunities with respect to certain derivative instruments that are not currently contemplated for use or that are currently not available, but that may be developed, to the extent such opportunities are both consistent with the

investment objective of the Funds and which we believe are legally permissible. Special risks may apply to instruments that are invested in by the Funds in the future that cannot be determined at this time or until such instruments are developed or invested in by the Funds. Certain swaps, options and other derivative instruments may be subject to various types of risks, including market risk, liquidity risk, the risk of non-performance by the counterparty, including risks relating to the financial soundness and creditworthiness of the counterparty, legal risk and operations risk.

Hedging Transactions. The Investment Adviser is not required to attempt to hedge portfolio positions in the Funds and generally it does not make investment decisions for the sole purpose of hedging another position. However, there may be instances where positions are structured for the sole purpose of acting as part of a hedge. Furthermore, the Investment Adviser may not anticipate a particular risk so as to hedge against it. The Funds may utilize a variety of financial instruments (including options and derivatives), both for investment purposes and for risk management purposes in order to: (i) protect against possible changes in the market value of the Funds' investment portfolio resulting from fluctuations in the securities markets and changes in interest rates; (ii) protect the unrealized gains in the value of the Funds' investment portfolio; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in the Funds' portfolio; (v) hedge the interest rate or currency exchange rate on any of the Funds' liabilities or assets; (vi) protect against any increase in the price of any securities the Funds anticipate purchasing at a later date; or (vii) for any other reason that the Investment Adviser deems appropriate.

Although the Investment Adviser generally does not hedge portfolio positions in the Funds, in the instances when it does, the success of the hedging strategy is subject to the Investment Adviser'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. Since the characteristics of many securities change as markets change or time passes, the success of the instances when the Investment Adviser hedges portfolio positions in the Funds is also subject to the Investment Adviser's ability to continually recalculate, readjust and execute hedges in an efficient and timely manner. While the Funds may enter into certain hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Funds than if they had not engaged in any such hedging transactions. For a variety of reasons, the Investment Adviser may not establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Such imperfect correlation may prevent the Funds from achieving the intended hedge or expose the Funds to risk of loss.

Liquidity Risks. Liquidity may be essential to the Funds' and the SMA's operation. Under certain market conditions, such as during volatile markets or when trading in a security or market is otherwise impaired, the liquidity of the Funds' and the SMA's portfolio positions may be reduced. During such times, the Funds and the SMA may be unable to dispose of certain assets, which would adversely affect the Funds' and the SMA's ability to rebalance their portfolio or to meet the Funds' redemption requests. In addition, such circumstances may force the Funds and the SMA to dispose of assets at

reduced prices, thereby adversely affecting the Funds' and the SMA's performance. If there are other market participants seeking to dispose of similar assets at the same time, the Investment Adviser may be unable to sell such assets or prevent losses relating to such assets. Furthermore, if the Funds incur substantial trading losses, the need for liquidity could rise sharply while its access to liquidity could be impaired. In addition, in conjunction with a market downturn, the Funds' counterparties could incur losses of their own, thereby weakening their financial condition and increasing the Funds' credit risk to them.

Illiquid Investments. The Funds and the SMA may invest in securities which are subject to legal or other restrictions on transfer or for which no liquid market exists. Privately offered equity securities have limited liquidity and may never become publicly traded or otherwise freely tradeable. The market prices, if any, for such securities tend to be volatile and may not be readily ascertainable, and the Funds may not be able to sell them when it desires to do so or to realize what it perceives to be their fair value in the event of a sale. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale. The Funds and the SMA may also be exposed to risk if an issuer of a private placement does not fulfill its contractual obligation to register restricted securities for public resale.

Investments in Initial Public Offerings. The Funds and the SMA may invest in initial public offerings. Such investments offer the opportunity for significant appreciation; however, they are speculative and involve a substantially higher degree of risk.

Repurchase and Reverse Repurchase Agreements. The Funds may enter into repurchase and reverse repurchase agreements. If the Funds were to enter into a repurchase agreement, it would "sell" securities to a broker-dealer or financial institution, and agree to repurchase such securities on a mutually agreed date for the price paid by the broker-dealer or financial institution, plus interest at a negotiated rate. In a reverse repurchase transaction, the Funds would "buy" securities issued from a broker-dealer or financial institution, subject to the obligation of the broker-dealer or financial institution to repurchase such securities at the price paid by the Funds, plus interest at a negotiated rate. The use of repurchase and reverse repurchase agreements by the Funds would involve certain risks. For example, if the seller of securities to the Funds under a reverse repurchase agreement were to default on its obligation to repurchase the underlying securities, as a result of its bankruptcy or otherwise, the Funds would seek to dispose of such securities, which action could involve costs or delays. If the seller became insolvent and subject to liquidation or reorganization under applicable bankruptcy or other laws, the Funds' ability to dispose of the underlying securities may be restricted. It is possible, in a bankruptcy or liquidation scenario, that the Funds would not be able to substantiate its interest in the underlying securities. Finally, if a seller were to default on its obligation to repurchase securities under a reverse repurchase agreement, the Funds would suffer a loss to the extent that it is forced to liquidate its position in the market, and proceeds from the sale of the underlying securities were less than the repurchase price.

agreed to by the defaulting seller. Similar elements of risk arise in the event of the bankruptcy or insolvency of the buyer.

Highly Volatile Markets. The prices of derivative instruments, including option prices, can be highly volatile. Price movements of derivative contracts in which the Funds' and the SMA's assets may be invested are influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. In addition, governments from time to time intervene, directly and by regulation, in certain markets, particularly those in currencies, financial instruments, futures and options. Such intervention often is intended directly to influence prices and may, together with other factors, cause all of such markets to move rapidly in the same direction because of, among other things, interest rate fluctuations. The Funds' portfolio is also subject to the risk of the failure of any exchanges on which its positions trade or of their clearinghouses.

Futures Contracts. Each of Eminence GP and the Investment Adviser is exempt from registration with the CFTC as a commodity pool operator under CFTC Rule 4.13(a)(3) (except with respect to Eminence Partners II, L.P.). Accordingly, Eminence GP and the Investment Adviser are not subject to certain regulatory requirements with respect to the Funds that would otherwise be applicable absent such an exemption. Futures positions may be illiquid because, for example, many 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 the Funds from promptly liquidating unfavorable positions and subject the Funds to substantial losses. In addition, the Funds 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 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, various exchanges impose speculative position limits on the number of positions that may be held in particular commodities. Trading in commodity futures contracts and options are highly specialized activities that may entail greater than ordinary investment or trading risks. Furthermore, low margin or premiums normally required in such trading may provide a large amount of leverage, and a relatively small change in the price of a security or contract can produce a disproportionately larger profit or loss.

Non-U.S. Investments. A portion of the Funds' and the SMA's assets are invested in securities and instruments of non-U.S. companies and non-U.S. sovereign issuers which are traded in non-U.S. markets. Investing in the securities and instruments of companies and sovereign issuers in non-U.S. countries involves certain considerations not usually

associated with investing in securities and instruments of U.S. companies or U.S. markets, which may include, without limitation,: political and economic considerations, such as greater risks of expropriation and nationalization, confiscatory taxation, the potential difficulty of repatriating funds, general social, political and economic instability and adverse diplomatic developments; the possibility of imposition of withholding or other taxes on dividends, interest, capital gain, other income or gross sale or disposition proceeds; the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies; and certain government policies that may restrict the portfolio's investment opportunities. In addition, accounting and financial reporting standards that prevail in such countries generally are not equivalent to U.S. standards and, consequently, less information is available to investors in companies located in such countries than is available to investors in companies located in the U.S. There is also less regulation, generally, of the securities markets in such countries than there is in the U.S.

Portfolio Turnover. The Funds' and the SMA's investment program may involve frequent trading, which may result in higher investment costs and charges to the Funds and the SMA.

Currency Exchange Exposure. The Funds and the SMA invest in securities denominated in non-U.S. currencies, the prices of which are determined with reference to currencies other than the U.S. dollar. The Funds' and the SMA's assets, however, are valued in U.S. dollars. The Funds the SMA may or may not hedge their non-U.S. currency exposure by entering into currency hedging transactions, such as maintaining balances in local currencies, forward contracts, futures contracts and cross-currency swaps. There can be no guarantee that securities suitable for hedging currency or market shifts will be available at the time when the Funds and the SMA wish to use them, or that hedging techniques employed by the Funds will be effective. Furthermore, certain currency market risks may not be fully hedged or hedged at all.

To the extent unhedged, the value of the Funds' and the SMA's positions in non-U.S. investments will fluctuate with U.S. dollar exchange rates as well as with the price changes of the investments in the various local markets and currencies. Such fluctuations may result in a loss to the Funds and the SMA.

Necessity for Counterparty Trading Relationships; Counterparty Risk. The Funds have and may establish additional relationships to obtain financing, access to derivative markets and prime brokerage services that permit the Funds to trade in any variety of markets or asset classes over time; however, there can be no assurance that the Funds will be able to maintain such relationships or establish new relationships. An inability to establish or maintain such relationships may limit the Funds' trading activities and could create losses and preclude the Funds from engaging in certain transactions or obtaining financing and prime brokerage services and prevent the Funds from trading at optimal rates and terms. Moreover, a disruption in the financing, access to derivative markets and prime brokerage services provided by any such relationships before the Funds can replace such relationships could have a significant impact on the Funds' business due to the Funds' reliance on such counterparties.

Some of the markets in which the Funds may effect transactions are not “exchange-based”, including “over-the-counter” or “interdealer” markets. The participants in such markets are typically not subject to the credit evaluation and regulatory oversight to which members of “exchange-based” markets are subject. The lack of evaluation and oversight of over-the-counter markets exposes the Funds 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 the Funds to suffer a loss. Such “counterparty risk” is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where the Funds have concentrated their transactions with a single or small group of counterparties. Generally, the Funds will not be restricted from dealing with any particular counterparties. The Investment Adviser’s evaluation of the creditworthiness of their counterparties may not prove sufficient. The lack of a complete and “foolproof” evaluation of the financial capabilities of the Funds’ counterparties and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Funds.

Counterparty Insolvency. The Funds’ assets are held in accounts maintained for the Funds by counterparties, including their prime brokers. There is a risk that any of such counterparties could become insolvent. The insolvency of the Funds’ counterparties is likely to impair the operational capabilities or the assets of the Funds. Although the Investment Adviser regularly monitors the financial condition of the counterparties it uses, if one or more of the Funds’ counterparties were to become insolvent or the subject of liquidation proceedings in the United States (either under the Securities Investor Protection Act or the United States Bankruptcy Code), there exists the risk that the recovery of the Funds’ securities and other assets from such prime broker or broker-dealer will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker or broker-dealer.

In addition, the Funds may use counterparties located in various jurisdictions outside the United States. Such local counterparties are subject to various laws and regulations in various jurisdictions that are designed to protect their customers in the event of their insolvency. However, the practical effect of these laws and their application to the Funds’ assets are subject to substantial limitations and uncertainties. Because of the large number of entities and jurisdictions involved and the range of possible factual scenarios involving the insolvency of a counterparty, it is impossible to generalize about the effect of their insolvency on the Funds and their assets. Investors should assume that the insolvency of any counterparty would result in a loss to the Funds, which could be material.

Fraud. Of paramount concern in investments is the possibility of material misrepresentation or omission on the part of a counterparty. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying an investment. The Investment Adviser will rely upon the accuracy and completeness of representations made by counterparties to the extent reasonable, but cannot guarantee such accuracy or completeness. Under certain circumstances, payments to the Funds or



the SMA may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

Debt Securities. The Funds and the SMA may invest in private and government debt securities and instruments. Debt instruments in which the Funds and the SMA invest may be unrated, and whether or not rated, the debt instrument may have speculative characteristics. The issuers of such instruments (including sovereign issuers) may face significant ongoing uncertainties and exposure to adverse conditions that may undermine the issuer's ability to make timely payment of interest and principal. Such instruments are regarded as predominantly speculative with respect to the issuer's capacity to pay interest and repay principal in accordance with the terms of the obligations and involve major risk exposure to adverse conditions. In addition, an economic recession could severely disrupt the market for most of these securities and may have an adverse impact on the value of such instruments. It is also likely that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default for such securities.

Preferred Stock. Investments in preferred stock involve risks related to priority in the event of bankruptcy, insolvency or liquidation of the issuing company and how dividends are declared. Preferred stock ranks junior to debt securities in an issuer's capital structure and, accordingly, is subordinate to all debt in bankruptcy. Preferred stock generally has a preference as to dividends. Such dividends are generally paid in cash (or additional shares of preferred stock) at a defined rate, but unlike interest payments on debt securities, preferred stock dividends are payable only if declared by the issuer's board of directors. Dividends on preferred stock may be cumulative, meaning that, in the event the issuer fails to make one or more dividend payments on the preferred stock, no dividends may be paid on the issuer's common stock until all unpaid preferred stock dividends have been paid. Preferred stock may also be subject to optional or mandatory redemption provisions.

Convertible Securities. A convertible security may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument. If a convertible security held by the Funds and the SMA is called for redemption, the Funds and the SMA will be required to permit the issuer to redeem the security, convert it into the underlying common stock or sell it to a third party. The Funds and the SMA also may be exposed to risks that a convertible issuer will not fulfill its contractual obligation to deliver marketable common stock upon conversion of its convertible securities. Any of these actions could have an adverse effect on the Funds' and the SMA's ability to achieve its investment objective.

Assumption of Business, Terrorism and Catastrophe Risks. Opportunities involving the assumption by the Funds and the SMA of various risks relating to particular assets, markets or events may be considered from time to time. The Funds' and the SMA's portfolios are subject to the risk of loss arising from exposure that it may incur, directly or indirectly, due to the occurrence of various events, including, without limitation, hurricanes, earthquakes, and other natural disasters, terrorism and other catastrophic events and events that could adversely affect the health or life expectancy of people.

These risks of loss can be substantial, could greatly exceed all income or other gains, if any, received by the Funds and the SMA in assuming these risks and, depending on the size of the loss, could adversely affect the return of the Funds and the SMA.

### **Item 9 – Disciplinary Information**

There are no legal or disciplinary events that are material to a client's or prospective client's evaluation of the Investment Adviser's advisory business or the integrity of the Investment Adviser's management.

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

The Investment Adviser and its management persons are not registered as broker-dealers and do not have any application pending to register with the SEC as a broker-dealer or registered representative of a broker-dealer.

Each of the Investment Adviser and Eminence GP are registered with the Commodities Futures Trading Commission as a commodity pool operator. Ricky Sandler is an associated person of the Investment Adviser and Eminence GP. In addition, Stephen Maresco, a Principal and Chief Operating Officer of the Investment Adviser, is an associated person of the Investment Adviser. The Investment Adviser and its management persons are not registered and do not have any application to register as, futures commission merchants, commodity pool operators, commodity trading advisors or associated persons of the foregoing entities.

The Investment Adviser does not recommend or select other investment advisers for its clients.

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

### Code of Ethics

Our Code of Ethics (“Code”) was adopted in an effort to assist us and our members, officers and employees (collectively, “Employees”) in meeting our obligations as a fiduciary.

Our Code is distributed to each employee at the time of hire. We also supplement the Code with training upon hire and periodically thereafter. Our Employees and Family Members (as defined below) are required to have duplicate copies of trade confirmations and account statements with respect to their brokerage accounts sent to the Investment Adviser.

Our Code generally prohibits our Employees from investing in publicly-traded equity securities other than mutual funds and exchange traded funds (“Covered Securities”) that comprise the vast majority of the investable universe of our clients. We believe that this prohibition effectively addresses the material potential conflict of interest with our clients that may arise as a result of personal trading activities. In addition, Employees and their immediate family members with whom they share the same household (“Family Members”) generally must pre-clear transactions of Covered Securities in their personal brokerage accounts with the Investment Adviser’s Chief Compliance Officer. We also monitor Employees’ and Family Members’ participation in private placements.

Employees may not serve on the board of directors of any outside company without the Investment Adviser’s prior approval.

Clients may obtain a copy of the Code by addressing a request to Eminence Capital’s Chief Compliance Officer, 65 East 55<sup>th</sup> Street, 25<sup>th</sup> Floor, New York, NY 10022.

### Rebalancing

From time to time, the Investment Adviser may determine that account sizes have materially changed such that the allocation of investments previously made to, and presently held by, participating accounts are no longer representative of the relative sizes of such accounts. In such event, the Investment Adviser may rebalance the portfolios of the Funds. In the case of securities, such rebalancing generally will be effected through open market transactions, as applicable, or through private transactions. In the context of such transactions, neither the Investment Adviser, nor any of its affiliates, will be, either individually or collectively, “acting as broker” within the meaning of Section 206(3) of the U.S. Investment Advisers Act of 1940, as amended (“Advisers Act”).

### Principal Transactions

The Funds have the authority to select one or more persons (including one or more independent directors) who are not affiliated with the Investment Adviser to serve on a committee to review and approve or disapprove principal transactions and certain other related party transactions to the extent required by applicable law.

### Conflicts of Interest Created by Contemporaneous Trading

The SMA's portfolio will generally be made up of a subset of the positions held in the long portfolio of the Funds. Investment decisions made on behalf of SMA may be made independently of investment decisions made on behalf of the Funds, and the Investment Adviser has discretion in determining the SMA's level of participation, if any, in an investment opportunity in which the Funds invest. When the Investment Adviser determines that the SMA and the Funds will participate in an investment opportunity, the Investment Adviser will seek to allocate the opportunity to all of the participating funds on an equitable basis taking into such factors as liquidity, the relative amounts of capital available for new investments, relative exposure to market sectors or investment themes.

## **Item 12 – Brokerage Practices**

The Investment Adviser is authorized by each of the Funds and the SMA to select brokers to effect transactions. Portfolio transactions for the Funds and the SMA are allocated to brokers on the basis of best execution and in consideration of such factors as: quality of execution – accuracy and timeliness of execution; block trading and block positioning capabilities; the ability to handle difficult trades; market intelligence regarding trading activity; the actual executed price of the security and the broker's commission rates; research and brokerage products and services (as described herein); financial stability and reputation of the broker; the operational facilities of the brokers and/or dealers involved (including back office efficiency); and confidentiality of trading activity. If the Investment Adviser determines in good faith that the amount of commissions charged by a broker is reasonable in relation to the value of the research and brokerage products and services provided by such broker, the Funds and the SMA may pay commissions to such broker in an amount greater than the amount another broker might charge.

### Soft Dollar Usage

Research and brokerage products and services provided by brokers through which portfolio transactions are executed, settled and cleared may include research reports on particular industries and companies, economic surveys and analyses, recommendations as to specific securities, access to management and other products and services providing lawful and appropriate assistance to the Investment Adviser in the performance of its investment decision-making responsibilities (collectively, “soft dollar items”).

Section 28(e) of the Exchange Act, permits the use of soft dollar items in certain circumstances, provided that the Funds do not pay a rate of commissions in excess of what is competitively available from comparable brokerage firms for comparable services, taking into account various factors, including commission rates, financial responsibility and strength and ability of the broker to efficiently execute transactions. Non-research products and “soft dollars” which are not generated through agency transactions in securities (with the exception of riskless principal transactions) are outside the parameters of Section 28(e)'s “safe harbor.”

The use of commissions or “soft dollars” to pay for research and brokerage products and services will fall within the safe harbor created by Section 28(e) of the Exchange Act. Also, consistent with Section 28(e), research products or services obtained with “soft dollars” generated by one or more Funds or the SMA may be used by the Investment Adviser to service other clients. The Investment Adviser does not seek to allocate soft dollar benefits to client accounts in proportion to the soft dollar credits the client accounts generate. If a product or service obtained with soft dollars were to provide both research and non-research assistance to the Investment Adviser (a “mixed use” item), the Investment Adviser would make a reasonable allocation of the cost which may be paid for with soft dollars. In making reasonable allocations of costs between administrative benefits and research and brokerage services, a conflict of interest would exist by reason

of the Investment Adviser's allocation of the costs of such benefits and services between those that primarily benefit the Investment Adviser and those that primarily benefit the Funds and the SMA.

When the Investment Adviser uses client brokerage commissions (or markups or markdowns) to obtain research or other products or services, the Investment Adviser receives a benefit because it does not have to produce or pay for such products or services. The Investment Adviser may have an incentive to select or recommend a broker-dealer based on the Investment Adviser's interest in receiving research or other products or services, rather than on its clients' interest in receiving most favorable execution.

From time to time, the Investment Adviser considers the amount and nature of research and research services provided by broker-dealers, as well as the extent to which such services are relied upon, and attempts to allocate a portion of the brokerage business of its clients on the basis of that consideration. Broker-dealers sometimes suggest a level of business they would like to receive in return for the various products and services they provide. Actual brokerage business received by any broker-dealer may be less than the suggested allocation, but can (and often does) exceed the suggested level, because transactions are allocated on the basis of all of the considerations described above. In no case will the Investment Adviser make binding commitments as to the level of brokerage commissions it will allocate to a broker-dealer, nor will it commit to pay cash if any informal targets are not met. A broker-dealer is not excluded from receiving business because it has not been identified as providing research products or services. The soft dollar disclosures in this section are a concise description of the procedures followed by the Investment Adviser in determining how to direct Fund transactions to a particular broker-dealer in return for soft dollar benefits received.

#### Additional Brokerage Considerations

The Funds' and the SMA's securities transactions can be expected to generate brokerage commissions and other compensation, all of which the Funds and the SMA, not the Investment Adviser, will be obligated to pay. The Investment Adviser has discretion in deciding what brokers and dealers the Funds and the SMA will use and in negotiating the rates of compensation the Funds and the SMA will pay. In addition to using brokers as "agents" and paying commissions, the Funds and the SMA may buy or sell securities directly from or to dealers acting as principals at prices that include markups or markdowns, and may buy securities from underwriters or dealers in public offerings at prices that include compensation to the underwriters and dealers.

Credit Suisse Securities (USA) LLC ("Credit Suisse"), Goldman, Sachs & Co. ("Goldman"), J.P. Morgan Clearing Corp. ("J.P. Morgan"), Morgan Stanley & Co., LLC ("Morgan") and UBS Securities LLC ("UBS") serve as the prime brokers for the Funds (together, the "Prime Brokers") and clear (generally on the basis of payment against delivery) the Funds' securities transactions that are effected through other brokerage firms. The Funds are not committed to continue their prime brokerage relationship with Credit Suisse, Goldman, J.P. Morgan, Morgan or UBS for any minimum period, and the



Investment Adviser may select other or additional brokers to act as prime broker(s) to the Funds.

Neither the Investment Adviser nor any related person receives client referrals from any broker-dealer or third party. However, from time to time, brokers (including prime brokers) may assist the Funds in raising additional funds from investors, and representatives of the Investment Adviser may speak at conferences and programs sponsored by such brokers for investors interested in investing in hedge funds. Through such “capital introduction” events, prospective investors would have the opportunity to meet with the Investment Adviser. Currently, none of the Funds or the Investment Adviser compensates any broker for organizing such events or for any investments ultimately made by prospective investors attending such events, nor do they anticipate doing so in the future. While such events and other services provided by a broker may influence the Investment Adviser in deciding whether to use such broker in connection with brokerage, financing and other activities of the Funds, the Investment Adviser will not commit to allocate a particular amount of brokerage to a broker in any such situation.

The Investment Adviser conducts periodic best execution reviews in an effort to identify and mitigate compliance risks associated with brokerage relationships, and to determine that the Investment Adviser is obtaining best execution for clients’ accounts.

#### Trade Allocation and Aggregation Policies and Procedures

In the absence of legal or other limitations or tax considerations, because all of the Classic and Leveraged Classic Funds and the long positions with respect to the Long Funds share the same investment program (other than the additional leverage used in the Leveraged Classic funds) trades for the Classic, Leveraged Classic Funds and Long Funds are typically aggregated and allocated parri-passu based upon each Fund’s net asset value (taking into account the additional leverage of the Leveraged Classic funds). To the extent the SMA is concurrently participating in the purchase or sale of the same position as the Funds, the SMA and each Fund participates in an aggregated order at the average price of the execution and shares the transaction costs pro rata based on its participation in the transaction. If an order is partially filled, then the Investment Adviser generally allocates the filled portion of the order pro rata in proportion to the size of the order placed for the SMA and each Fund.

#### Trade Errors

Pursuant to the exculpation and indemnification provisions in the investment management agreements, the Investment Adviser, Eminence GP and their respective affiliates will generally not be liable to the Funds for any act or omission absent bad faith, fraud, willful misconduct or gross negligence. As a result of these provisions, the Funds (and not the Investment Adviser, Eminence GP or their respective affiliates) will be responsible for any losses resulting from trading errors and similar human errors, absent bad faith, fraud, willful misconduct or gross negligence. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading

system or typographical or drafting errors related to derivatives contracts or similar agreements.

### **Item 13 – Review of Accounts**

Each of the portfolio positions are reviewed by the relevant portfolio manager and analysts on an ongoing basis, as is the sector exposure within the portfolio. The financial statements of each of the Funds are audited annually by independent public accountants.

Investors in the Funds receive weekly and month-end performance estimates via email. Additionally, investors receive monthly account statements and quarterly letters, which update investors on the Funds' performance as well as any notable developments at the Investment Adviser. Investors in the Funds receive the Fund's audited financial report within 120 days of the applicable client's fiscal year end and, if applicable, the information necessary for the investor to complete its annual federal income tax return. On a monthly basis, the Investment Adviser sends the entity that is the owner of the SMA account statements as well as preliminary and final monthly performance estimates.

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

The Investment Adviser does not receive economic benefits from non-clients for providing investment advice and other advisory services.

Neither the Investment Adviser nor any related person directly or indirectly compensates any person who is not a supervised person, including placement agents, for client referrals.

## **Item 15 – Custody**

An adviser has custody if it acts in any capacity that gives the adviser legal ownership of, or access to, the client funds or securities. We have custody of Fund assets because we or an affiliate either (1) acts as general partner or manager of a Fund with the authority to dispose of funds and securities in such Fund's account or (2) is deemed to have custody because of its ability to withdraw its fees directly from the Funds. We maintain all of the fund assets at a prime broker, custodial bank, or ISDA counterparty, all of whom are qualified custodians, as that term is defined under the Custody Rule under the Advisers Act. In lieu of providing the quarterly custodial reports required by the Custody Rule, and in order to qualify for the private securities exemption described above, we provide all fund investors with audited financial statements of the relevant Fund within 120 days of such Fund's fiscal year end.

### **Item 16 – Investment Discretion**

We have complete investment discretion over the portfolios of the Funds and the SMA, and are only limited by the investment restrictions set forth in each Fund's confidential offering memorandum and the investment advisory agreement relating to the SMA.

### **Item 17 – Voting Client Securities**

The SEC adopted Rule 206(4)-6 under the Advisers Act, which requires registered investment advisers that exercise voting authority over client securities to implement proxy voting policies. In compliance with such rules, the Investment Adviser has adopted proxy voting policies and procedures. We may vote proxies on the behalf of the Funds and the SMA and our policy is to do so in the best interests of our clients. We will generally vote in accordance with the recommendations of the issuer's management on routine corporate housekeeping proposals. We have not identified any conflicts of interest between our clients' interest and our own within the proxy voting process, but if we determine that one exists, the Chief Compliance Officer will consult with the Senior Portfolio Manager and outside counsel, if necessary, to resolve the conflict.

Clients may obtain a copy of the policy and information on how the Investment Adviser voted client securities by addressing a request for such policy or information to the Investment Adviser's Chief Compliance Officer, 65 East 55<sup>th</sup> Street, 25<sup>th</sup> Floor, New York, NY 10022.

### **Item 18 – Financial Information**

The Investment Adviser is not required to include a balance sheet for its most recent fiscal year, is not aware of any financial condition reasonably likely to impair its ability to meet contractual commitments to clients, and has not been the subject of a bankruptcy petition at any time during the past ten years.



**Item 19 – Requirements for State-Registered Advisers**

Not applicable.