



Form ADV  
Part 2A: Firm Brochure  
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This brochure provides information about the qualifications and business practices of Stockbridge Partners LLC. If you have any questions about the contents of this brochure, please contact us at (617) 227-0050 or [compliance@berkshirepartners.com](mailto:compliance@berkshirepartners.com). 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.

Additional information about Stockbridge Partners LLC also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). An investment adviser's registration with the SEC does not imply a certain level of skill or training.

**Item 2.**

Stockbridge Partners LLC is pleased to provide its clients with this Brochure, which is the firm's Form ADV Part 2A. This Brochure contains important information about the business practices of the Adviser (as defined below), as well as a description of potential conflicts of interest relating to the firm's advisory business that could affect a client's account with the Adviser. The Adviser has experienced no material changes since its last Form ADV submission. This Brochure includes clarifying information about fees, expenses, risks and conflicts of interest.

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

For purposes of this Brochure, the “Adviser” means Stockbridge Partners LLC, a Delaware limited liability company, together (where the context permits) with its affiliates that serve as general partners of the Funds (as defined below) and other affiliates that provide advisory services to and/or receive advisory fees from Clients. Such affiliates may or may not be under common control with Stockbridge Partners LLC but possess a substantial similarity of personnel and/or equity owners with Stockbridge Partners LLC. These affiliates are generally formed for tax, regulatory or other purposes in connection with the organization of the Funds (as defined below). The Adviser is wholly owned by BPSP, L.P., which is in turn wholly owned by Berkshire Partners Holdings LLC. Berkshire Partners LLC (together with its affiliates, including general partner entities, that provide advisory services to and/or receive fees from pooled investment vehicles advised by Berkshire Partners LLC, “Berkshire”), which is also wholly owned by BPSP, L.P., is an investment adviser and affiliate of Stockbridge Partners LLC and has prepared a separate brochure and Form ADV. For the avoidance of doubt, the term “Adviser” as used herein does not include Berkshire, and the term “Berkshire” does not include the Adviser.

The Adviser currently serves as the investment manager to certain funds organized in a side-by-side structure. In addition, the Adviser has organized and may also in the future organize and serve as general partner (or in an analogous capacity) to certain “feeder” vehicles (each such vehicle, a “Feeder Vehicle”) organized to invest exclusively in certain funds actually engaging in investment activity (any such funds, “Main Funds”). As of the date of this Brochure, the Adviser also advises one separate account and may, in the future, advise others (each, an “Account,” and the clients for whom such Accounts are maintained, “Separate Account Clients”). The Main Funds and Feeder Vehicles, together with any other funds that the Adviser may from time to time advise, are each referred to as a “Fund” and collectively referred to as the “Funds” and, together with the Separate Account Clients, the “Clients.”

The Funds are exempt from registration under the Investment Company Act of 1940, as amended (the “1940 Act”), and the Funds’ interests are not registered under the Securities Act of 1933, as amended (the “Securities Act”).

The Adviser’s services consist of identifying investment opportunities for Clients, and managing, monitoring and disposing of such investments. The Adviser seeks to invest Client assets primarily in companies that exhibit earnings sustainability and growth due to the characteristics of the industries in which they compete, their positions within those industries and the capabilities of their management teams to execute their business plans. The Adviser focuses on investments with the potential for long-term capital appreciation, with a primary geographic focus in the United States, although the Adviser also pursues international investments on behalf of its Clients. Although the Adviser, on behalf of its Clients, primarily makes relatively long-term investments in publicly traded equities, the Adviser’s strategy allows for strategic short sales to hedge certain risks or to capitalize on market misunderstandings of fundamentals.

Investment advice is provided directly to each Client, and not individually to investors in the Funds (in accordance with separate investment advisory, investment management or portfolio management agreements, as applicable (each, an “Advisory Agreement”), the

applicable governing agreement of a Fund (such as a limited partnership agreement or analogous organizational document (each, an “Organizational Document”)) and/or side letters with limited partners of a Fund (“Side Letters,” and together with the Advisory Agreements and the Organizational Documents, the “Governing Documents”). A Client (or underlying investors in a Fund) may generally negotiate to impose investment restrictions in the Governing Documents of the applicable Fund or Account with respect thereto at the time the Fund or Account is established.

The Adviser has been in business since 2006. As of December 31, 2016, the Adviser managed a total of \$2,339,725,007 of Client assets, all of which is managed on a discretionary basis.

The Adviser does not participate in wrap fee programs.

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

As provided in the Governing Documents with respect to the Funds or Accounts, the Adviser and/or its designee will receive from a Client both a monthly management fee at a specified rate and an annual incentive allocation and/or fee based upon the performance of the Funds or Accounts, as described further below. Although the Adviser has entered into agreements with Clients providing for the below allocations or fees, the Adviser has in the past and may in the future negotiate alternative fees or allocations on a Client-by-Client basis with other Funds or Accounts that it manages. The Adviser will consider different Client facts and circumstances in determining such fees or allocations, including a Client’s investment strategy, assets under management, account composition, reporting requirements, economies of scale, if any, and any other factors the Adviser deems relevant.

#### **Management Fee**

Generally, on the first day of each month, the Adviser deducts from the account (the “Capital Account”) corresponding to each investor in the applicable Main Fund a management fee (the “Management Fee”), calculated as a percentage of the net asset value of such investor’s Capital Account in the Funds.

In addition, Separate Account Clients also pay the Adviser a Management Fee (at a rate set forth in the Advisory Agreement with respect to the applicable Account) in advance on the first day of each month, for which the Adviser bills the applicable Separate Account Client.

In the case of an investor admitted to a Fund, or in the case of an Account established, after the first business day of the relevant calendar month, the Management Fee will be pro-rated based on the admission or establishment date. If Separate Account Clients contribute additional capital during the course of a month, the Management Fee is pro-rated based on the date of such contribution.

In the event an Advisory Agreement is terminated, the Management Fee will be pro-rated based on the ratio of the number of days in the period for which the Management Fee has been paid before and after the termination date, and the balance will be refunded or credited to the Client, as applicable.

Separate Account Clients generally negotiate the Management Fee at the time of establishing an Account, and each Fund negotiates the Management Fee at the time it enters into the applicable Advisory Agreement. Once established, a Fund's or Account's Management Fee is generally not negotiable. As described in Item 11 below, the Adviser is authorized to enter from time to time into Side Letters with one or more investors in a Fund which provide such investors with additional and/or different rights (including, without limitation, with respect to the Management Fee) than provided in the Governing Documents of such Fund. Further, the Adviser may, in its sole discretion, reduce or waive the Management Fee with respect to certain Funds or certain investors in a particular Fund. For example, the Adviser generally waives the Management Fee for investments by employees and principals of the Adviser and the general partners, and their related persons, including estate planning vehicles of such persons.

### **Incentive Fee or Allocation**

Except as provided below, for each fiscal year, the Adviser will be entitled to an incentive fee from the Accounts and an incentive allocation from the Funds (such fee or allocation, the "Incentive Allocation"), neither of which are negotiable after the establishment of the Fund or Account. As described in Item 11 below, the Adviser is authorized to enter from time to time into Side Letters with one or more investors in a Fund that provide such investors with additional and/or different rights (including, without limitation, with respect to Incentive Allocations) than provided in the Governing Documents of such Fund.

Subject to the applicable Governing Documents, the Incentive Allocation with respect to an Account or with respect to a Fund is based on the net performance of the Account or Fund for a fiscal year. The Adviser may, in its sole discretion, reduce or waive the Incentive Allocation with respect to any Fund or any investor in a Fund (or with respect to any Separate Account Client). For example, the Adviser generally waives the Incentive Allocation for investments by employees and principals of the Adviser and their related persons, including estate planning vehicles of such persons. The Incentive Allocation with respect to investors in Feeder Vehicles is generally allocated at the level of Main Funds.

The Adviser will bill Separate Account Clients for the Incentive Allocation and will allocate (or cause the appropriate Fund to allocate or pay) the Incentive Allocation with respect to investors in the Funds as of the close of each fiscal year (and as of each other date on which the Adviser determines it is appropriate or necessary to make a determination of the Incentive Allocation with respect to an investor, including a date on which an investor withdraws all or a portion of its investment).

### **Other Expenses**

The Adviser will bear operating expenses in connection with performing investment management services under the applicable Governing Documents (e.g., including compensation of its investment personnel, secretarial, clerical and other personnel, including benefits and related taxes, office space and utilities, telephone and certain computer equipment).

All other expenses with respect to Clients are borne by such Clients, which generally include, without limitation but subject to any restrictions in the applicable Governing Document: investment expenses (i.e., expenses related to the investment of the Fund's or Account's assets, including, without limitation, brokerage commissions and other transaction costs, expenses related to proxies, underwriting and private placements, custody fees, interest and commitment fees and other borrowing charges, borrowing charges on securities sold short, professional and legal expenses relating to investments or prospective investments and other fees and expenses (including, without limitation, travel expenses, which typically include expenses for first or business class or, on rare occasion, chartered travel, as well as meals, entertainment, lodging and other out-of-pocket costs) reasonably related to the investment decision and monitoring process, whether or not the investments to which they relate are consummated), expenses associated with activist investment activities (including public relations, tender offer, proxy solicitation expenses and private placement commitment fees), taxes, insurance premiums (including liability insurance for a Fund's general partner and the Adviser), legal expenses (including, without limitation, settlement costs and costs arising in connection with a litigation or regulatory investigation instituted against a Fund or its general partner in its capacity as such), governmental, regulatory, licensing, filing or registration fees and expenses, the costs of brokerage services and research (including, without limitation, portfolio risk analysis, quantitative analytics, portfolio optimization analysis, portfolio execution analysis, news, quotation, statistics and pricing services, hardware, software, databases and other technical and telecommunications services and equipment used in the investment management process); accounting, bookkeeping, audit and tax preparation expenses; consulting and other professional expenses (including, without limitation, fees and expenses of valuation firms and administration fees and other expenses charged by or relating to the services of third-party providers of administration services); fees payable to sub-advisors (if the Adviser determines that such an arrangement represents the best way to access a particular investment opportunity or a difficult to access market or otherwise makes available specialized investment expertise to a Client); fees and expenses in connection with any advisory board or committee; bank service, custodial and similar fees; entity-level taxes; fees and expenses relating to the offer and sale of interests in a Fund (including, without limitation, organizational fees and expenses, filing fees, accounting fees, printing costs, travel expenses and legal fees); all costs and expenses related to investor meetings; all costs and expenses related to reporting and providing information to existing and prospective Fund investors; other expenses associated with the operation of a Fund and all extraordinary expenses. With respect to a Fund, expenses directly attributable to certain illiquid investments are generally charged solely to the Capital Accounts corresponding to investors in such Fund participating in such illiquid investment.

Please also refer to the discussion of the Adviser's brokerage practices in Item 12 below.

In addition, on occasion, the Adviser and/or its Managing Directors on behalf of the Adviser have and may in the future serve on, and may receive options or other equity incentive compensation for serving on, boards of directors of companies in the investment portfolio of a Client ("Portfolio Companies"). To the extent such company is also a company in which a pooled investment vehicle advised by Berkshire is invested, a portion of such compensation, which is paid to the Adviser (or its affiliates) directly, may be credited against the fees payable to such Berkshire-advised funds, but the Adviser's Clients are not

entitled to receive a similar benefit. In the event of such a receipt of incentive compensation, the recipients or the Adviser, with respect to compensation received as a fee, may act in their or its own interests with respect to the options or other securities received and may determine to exercise or sell such securities or to hold the securities for such time as such recipients or the Adviser shall determine. The ability of such recipients or the Adviser to act in their or its own interests with respect to such incentive compensation creates a conflict of interest between the Adviser, as an adviser to the Clients, and its related persons, on the one hand, and the Clients, on the other. For a discussion of material conflicts of interest created by the receipt of such compensation, please see Item 11 below.

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

As disclosed above under Item 5, Fees and Compensation, the Adviser (or its designee) receives an Incentive Allocation based on the performance of the Funds or Accounts, as applicable. Clients pay Incentive Allocations calculated at different rates and subject to different terms, and there may also be waivers or reductions for certain investor accounts.

The payment of Incentive Allocations at varying rates creates a potential incentive for the Adviser to disproportionately allocate time, services or functions to a Client paying Incentive Allocations at a higher rate (or on terms more favorable to the Adviser), or allocate investment opportunities to such Client. Generally, and except as may be otherwise set forth in the Governing Documents of the Funds, this conflict is mitigated by the Adviser's policies and procedures, which set forth the specific discretionary allocation policies of investment opportunities that factor into the Adviser's consideration of allocations. Please also see Item 11 below regarding allocation for additional information relating to how the Adviser generally addresses conflicts of interest.

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

The Adviser currently provides investment advisory services to the Clients. Investment advice is provided directly to each Client, and not individually to investors in the Funds.

Interests in the Funds are offered pursuant to applicable exemptions from registration under the Securities Act and the 1940 Act. Investors in the Funds are generally "qualified purchasers" or "knowledgeable employees," each as defined in the 1940 Act (and rules promulgated thereunder), and include, among others, university endowments, public and private pensions, foundations, financial and other institutions, insurance companies and high net worth individuals.

The minimum initial investment in each Main Fund is \$5 million, and the minimum subsequent investment in each Main Fund is \$1 million, although the general partner or the board of directors, as applicable, of each Main Fund has in the past and may again in the future waive these minimum requirements in its or their sole discretion. The Adviser does not have a minimum size for any Fund.

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

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



The Adviser seeks to invest Client assets primarily in companies that exhibit earnings sustainability and growth due to the characteristics of the industries in which they compete, their positions within those industries and the capabilities of their management teams to execute their business plans. The Adviser's analysis generally focuses on a company's potential performance over two to five years and on the opportunity for significant capital appreciation over that time period. Companies with strong fundamentals and growth opportunities typically trade at premium valuations, so the Adviser seeks to invest at those times when short-term uncertainty leads to attractive valuations.

The Adviser generally focuses on investments with the potential for long-term capital appreciation. As such, a two-to-five-year investment holding period is typically expected to be the norm. In constructing and maintaining portfolios, the Adviser generally will not be focused on avoiding short-term volatility and will view price fluctuations more as opportunities than as risks.

The Adviser's pre-investment due diligence process and post-investment monitoring program require the commitment of substantial time and resources. Consequently, the Adviser expects its fully invested portfolio to be relatively concentrated. However, the Adviser seeks to manage this concentration to avoid excessive exposure to the same industries or macroeconomic variables. In addition, the Adviser has internal guidelines with respect to investing a certain percentage of a Client's assets in any single security. Notwithstanding the foregoing, there are no absolute limitations on the minimum or maximum number of positions held by a Client, and, as a result, a Client may be more or less concentrated or more or less diversified than described in this Brochure. Additional investment restrictions may be imposed in the Adviser's discretion, or on a negotiated basis, with respect to a Client by the applicable Governing Documents.

### **Risks**

An investment in a Fund or Account involves a high degree of investment risk, including the risk that the entire amount invested may be lost, and such an investment is not intended as a complete investment program for any investor. Clients invest in securities using strategies and financial techniques with significant risk characteristics. No guarantee is made that the investment objectives of a Client will be realized. Although certain of the Adviser's investment professionals have participated in the management of other investment funds and accounts, the past performance of such other investment funds and accounts cannot be relied upon as an indicator of a Client's own success. There is no guarantee that a Client will be able to control investment risks or that the risks will not aggregate in a manner adverse to a Client. In addition, there will be occasions when the Adviser will encounter potential conflicts of interest in connection with the Clients. In evaluating whether to make an investment in a Client, potential investors should consider all information contained in a Client's offering documents, including the considerations and risk factors set forth therein. Material risks relating to the investment strategies and methods of analysis described above and to the types of securities typically purchased by or for the Adviser's Clients include, but are not limited to, the risks outlined in the following paragraphs.

### Investment Risks

*General Economic, Political or Regulatory Conditions.* General economic, political or regulatory conditions may affect a Client's activities. Interest rates, general levels of economic activity, the price of securities, availability and terms of credit, changes in laws, regulatory interventions and changes in regulations, changes in fiscal policies, tax laws, trade barriers, commodity prices, currency exchange rates and controls, national and international political circumstances and participation by other investors in the financial markets may affect the value and number of investments made by a Client or considered by a Client for prospective investments. A Client's investments can be expected to be sensitive to the performance of the overall economy. A negative impact on economic fundamentals and consumer confidence would likely increase market volatility and reduce liquidity, both of which could have a material adverse effect on the performance of a Client's investments. No assurances can be given as to the effect of these economic, political or regulatory conditions on a Client's investment objectives.

The recent change in the U.S. presidential administration has increased uncertainty regarding future political, legislative or administrative changes that may impact the Adviser, the Clients and their investments, and the range and potential implications of possible outcomes are difficult to predict. Such uncertainty may have an adverse effect on, or cause volatility in, the United States or global economies and currency and financial markets in the short or long term, which in turn could have a material adverse effect on the performance of a Client's investments. In addition, such changes could impact the regulations applicable to the Adviser, the Clients, or their investments. While certain of such changes could have a beneficial impact, other changes may more beneficially impact competitors, or could adversely impact the Adviser, the Clients or their investments.

*Financial Market Fluctuations.* Fluctuations in the market prices of securities and economic conditions generally, particularly of the type experienced since 2008, may reduce the availability of attractive investment opportunities for the Clients and may affect the Clients' ability to make investments and the value of investments held by the Clients. For example, volatile market conditions can lead to significantly diminished availability of credit and an increase in the cost of financing, which can materially hinder the initiation of leveraged transactions. Instability in the securities markets and economic conditions generally may also increase the risks inherent in the Clients' investments. The ability to realize investments in an effective manner depends not only on the Portfolio Companies and their historical results and prospects, but also on political, market and economic conditions at the time of such realizations. The trading market, if any, for the securities of any Portfolio Company may not be sufficiently liquid to enable a Client to sell these securities when the Adviser believes it is most advantageous to do so, or without adversely affecting the stock price. Volatility in the financial sector may have a material adverse effect on the ability of the Clients to buy or sell, in whole or in part, its investments. A Client may be adversely affected to the extent that they seek to dispose of any of its portfolio investments in an illiquid or volatile market, and a Client may find itself unable to dispose of investments at prices that the Adviser believes reflect the fair value of such investments.

*Equity Risk.* The market price of securities owned by a Client may go up or down, sometimes rapidly or unpredictably. The Funds and Accounts are subject to the risk that the equity securities in each of their portfolios will decline in value due to factors affecting equity securities markets generally or particular industries represented in those markets. The values of equity securities may decline due to general market conditions, which are not specifically related to a particular company, such as real or perceived adverse economic conditions, changes in the general outlook for corporate earnings, changes in interest or currency rates or adverse investor sentiment generally. Such values may also decline due to factors that affect a particular industry or industries, such as labor shortages or increased production costs and competitive conditions within an industry. Other risks of investing globally in equity securities may include changes in currency exchange rates, exchange control regulations, expropriation of assets or nationalization, imposition of withholding taxes on dividend or interest payments and difficulty in obtaining and enforcing judgments against non-U.S. entities. In addition, securities which the Adviser believes are fundamentally undervalued or incorrectly valued may not ultimately be valued in the capital markets at prices and/or within the time frame the Adviser anticipates. As a result, a Client may lose all or substantially all of its investment in any particular instance.

*Lack of Liquidity in Markets.* The markets for some securities may be thinly traded from time to time. This lack of liquidity and market depth could disadvantage a Client, both in the realization of quoted prices and in the execution of orders at desired prices or in desired quantities. Also, securities exchanges and the SEC have authority to suspend trading in a particular security without notice.

*Concentration of Investments.* Subject to applicable limitations in the Governing Documents, the Adviser expects each Client's portfolio to be relatively concentrated. Any such lack of diversification would increase the risk of loss to a Client if there were a decline in the market value of any security or sector in which such Client had invested a large percentage of its assets. Investment in a "non-diversified" fund will generally entail greater risks than investments in a "diversified" fund.

*Investment in Small Companies.* There is no limitation on the size or operating experience of the companies in which a Client may invest. Some small companies in which a Client 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 actors in their industries and may face intense competition from larger companies and entail a greater risk than investment in larger companies.

*Investment in Illiquid Securities.* Subject to any applicable limitations in each Client's Governing Documents, Clients may invest in illiquid investments (including illiquid investments that the Adviser designates as such because of a transaction involving or other relationship between the issuer of such security or other instrument and Berkshire), which are securities that are not readily marketable, only thinly traded or which the Adviser otherwise determines to be illiquid or lacking a readily ascertainable market value. Illiquid investments may include

privately placed securities that are not registered under the Securities Act and may have little or no trading market. In many cases, the fair value of such investments may be difficult to ascertain, and there is a risk of mistaken valuations. In addition, a Client may not be able to readily dispose of such investments and, in some cases, may be contractually prohibited or otherwise restricted from disposing of such securities for a specified period of time. These limitations on liquidity of such investments could prevent a successful sale thereof, result in delay of any sale or reduce the amount of proceeds that might otherwise be realized.

*Geographic Concentration.* Generally, the primary geographic focus of each Client's investments will be in the United States, although the Adviser also pursues (subject to any limitations in the applicable Governing Documents) international investments. There is generally no limitation on the level of concentration of a Client's U.S. investments. Targeting a specific geographical area could hurt a Client's performance or cause such performance to be more volatile than a more geographically diversified fund or account.

*Investment in Non-U.S. Securities.* On behalf of its Clients, the Adviser invests from time to time in non-U.S. securities. Foreign securities involve certain risks not typically associated with investing in U.S. securities due to non-U.S. economic, political and legal developments, including risks relating to (i) favorable or unfavorable changes in currency exchange rates, (ii) differences between the U.S. and foreign securities markets, including potential price volatility in and relative illiquidity of some foreign securities markets, (iii) the absence of uniform accounting, auditing and financial reporting standards, practices and disclosure requirements and less government supervision and regulation, (iv) the potential for rapid fluctuations in inflation rates, (v) certain economic and political risks, including possible regulations and restrictions on foreign investment and repatriation of capital and the risks of economic, political or social instability, (vi) foreign governmental approvals and compliance with foreign laws and regulations, (vii) the possible imposition of foreign taxes on income and gains recognized with respect to such securities, (viii) more rudimentary anti-fraud and anti-insider trading regulation and (ix) less developed corporate laws regarding fiduciary duties and the protection of investors. Additionally, investments in foreign securities may be subject to greater risks than U.S. investments due to exchange control regulations (including currency blockage), expropriation of assets or nationalization, imposition of taxes on dividends, interest payments or capital gains, the need for approval by government or other authorities to make investments, and possible difficulty in obtaining and enforcing judgments against non-U.S. entities and other factors beyond the control of the Adviser. Furthermore, issuers of non-U.S. securities are subject to different, often less comprehensive accounting, reporting or disclosure requirements than U.S. issuers. The securities markets of some countries in which a Fund or Account may invest have substantially less volume than those in the United States, and securities of certain companies in these countries are less liquid and more volatile than securities of comparable U.S. companies. Accordingly, these markets may be subject to greater influence by adverse events generally affecting the market, and by large investors trading significant blocks of securities, than is usual in the United States. Brokerage commissions and other transaction costs on securities exchanges in non-U.S. countries are generally higher than in the United States. Non-U.S. securities settlements may in some instances be subject to delays and related administrative uncertainties. In some countries, there are restrictions on investments or investors such that the only practicable way for a Client to invest in such markets is by entering into swaps or other derivative

transactions with a prime broker or other intermediary or counterparty. Such transactions involve counterparty risks that are not present in the case of direct investments and that the Adviser may not be able to control. The Clients' historical returns on their U.S. investments may not be indicative of the results they may achieve on future investments located in foreign countries.

Investments in companies with significant operations in emerging markets will be subject to all of the risks detailed above, as well as to various other risks that cannot currently be predicted with precision. Additionally, owing to the less developed political systems and markets often in place in emerging markets, the risks described above may be more pronounced with respect to a Fund's or Account's investment in emerging markets than with respect to investments in other international markets. For example, any such investments may be subject to a greater risk of expropriation, confiscatory taxation, nationalization, or political, economic or social instability than present in more developed markets. In comparison to securities markets in more developed countries, securities markets in developing countries may be substantially less liquid, and may have greater volatility, greater fluctuations in the rate of exchange between currencies and greater costs associated with currency conversions. Any of these factors could cause the Adviser not to pursue certain investments or to alter certain activities or liquidate certain investments prior to or after the time when the Adviser would otherwise prefer to liquidate such investments, and such factors may cause losses or have other negative impacts on a Client or its investments.

*Currency Exchange Risk.* Generally, investments in a Client are payable in U.S. dollars, and each Client's assets are valued in U.S. dollars. Non-U.S. investments may be denominated in, or linked to, currencies other than the U.S. dollar. Currency exchange rates can be volatile and affected by, among other factors, the international balance of payments and other general economic and financial conditions of a country, the forces of supply and demand in the foreign currency exchange markets, the actions of governments or central banks and the imposition of currency controls and speculation. A Fund or Account may be affected favorably or unfavorably by exchange control regulations or changes in the exchange rate between such currencies and the U.S. dollar. A change in the value of a non-U.S. currency relative to the U.S. dollar will result in a corresponding change in the U.S. dollar value of the Fund's or Account's assets denominated in that non-U.S. currency. On behalf of its Clients, the Adviser may enter into transactions (including currency swaps, forward currency exchange contracts, currency futures and options on currencies and futures) to hedge against currency exchange risk, but the Adviser is not obligated to do so. Additionally, suitable hedging transactions may not be available in all circumstances, or such transactions may not be successful and may eliminate any chance for a Client to benefit from favorable fluctuations in relevant currencies. There can be no assurance as to the success of any hedging operations that a Client may implement.

*Market Disruption and Geopolitical Risk.* An unstable geopolitical climate and continued threats of terrorism could have a material effect on general economic conditions, market conditions and market liquidity. Additionally, a serious pandemic or a natural disaster could severely disrupt the global, national and/or regional economies. A Client is subject to the risk that war, terrorism and related geopolitical events may lead to increased short-term market volatility and have adverse long-term effects on the U.S. and world economies and markets



generally, as well as adverse effects on issuers of securities and the value of a Client's investments. Those events, as well as other changes in U.S. and non-U.S. economic and political conditions, also could adversely affect individual issuers or related groups of issuers, securities markets, interest rates, credit ratings, inflation, investor sentiment and other factors affecting the value of a Fund's or Account's investments. At such times, a Client's exposure to a number of other risks described elsewhere in this section can increase.

*Cybersecurity Risk.* The Adviser, a Client's service providers and other market participants increasingly depend on complex information technology and communications systems to conduct business functions. These systems are subject to a number of different threats or risks that could adversely affect a Client and its investors, despite the efforts of the Adviser and a Client's service providers to adopt technologies, processes and practices intended to mitigate these risks and protect the security of their computer systems, software, networks and other technology assets, as well as the confidentiality, integrity and availability of information belonging to a Client and its investors. For example, unauthorized third parties may attempt to improperly access, modify, disrupt the operations of, or prevent access to these systems of the Adviser, a Client's service providers, counterparties or data within these systems. Third parties may also attempt to fraudulently induce employees, customers, third-party service providers or other users of the Adviser's systems to disclose sensitive information in order to gain access to the Adviser's data or that of a Client's investors. A successful penetration or circumvention of the security of the Adviser's systems could result in the loss or theft of an investor's data or funds, the inability to access electronic systems, loss or theft of proprietary information or corporate data, physical damage to a computer or network system or costs associated with system repairs. Such incidents could cause a Client, the Adviser or their service providers to incur regulatory penalties, reputational damage, additional compliance costs or financial loss.

Similar types of operational and technology risks are also present for the companies in which a Client invests, which could have material adverse consequences for such companies, and may cause such Client's investments to lose value.

*Third-Party Advice.* The Adviser and its Clients utilize the services of attorneys, accountants and other advisors and consultants in their operations. The Adviser and its Clients generally rely upon such advisors for their professional judgment with respect to legal, tax and other regulatory matters. Nevertheless, there exists a risk that such advisors may provide incorrect advice from time to time. Neither the Adviser nor its Clients will have any liability to a Client's investors for any reliance upon such advice, provided that such advisors were selected with reasonable care.

*Portfolio Turnover.* There is no limit on the rate of portfolio turnover for any Client, and portfolio investments held by a Client may be sold without regard to the length of time they have been held when, in the opinion of the Adviser, investment considerations warrant such action. This could result in frequent trading. A high rate of portfolio turnover involves correspondingly greater expenses than a lower rate, leads to greater brokerage and other transaction costs, may reduce a Fund's or Account's investment gains, may create a loss for investors and may result in taxable costs for investors, depending on the tax provisions applicable to such investors.

*Short Sales.* Although short sales are not currently a significant element of the Adviser's investment strategy, the Adviser may strategically make short sales of investment securities on behalf of a Client to hedge certain risks or capitalize on market misunderstandings of fundamentals, such as flawed business models or poor company management. In a short sale, the seller sells a security that it does not own, typically a security borrowed from a broker or dealer. Because the seller remains liable to return the underlying security that it borrowed from the broker or dealer, the seller must purchase the security prior to the date on which delivery to the broker or dealer is required. As a result, the Adviser typically engages in short sales only where it believes the value of the security will decline, or will underperform relative to another security or group of securities in its portfolio, between the date of the sale and the date a Client is required to return the borrowed security, or for hedging purposes. Short selling exposes a Client to the risk of liability for the market value of the security that is sold, which in certain circumstances is an unlimited risk due to the lack of an upper limit on the price to which a security may rise. In addition, there can be no assurance that securities necessary to cover a short position will be available for purchase or that securities will be available to be borrowed at reasonable costs. If a request for return of borrowed securities occurs at a time when other short sellers of the security are receiving similar requests, a "short squeeze" can occur, and the Adviser may be compelled to replace borrowed securities previously sold short with purchases on the open market at the most disadvantageous time, possibly at prices significantly in excess of the proceeds received in originally selling the securities short. Any of these factors could make the Adviser unable to execute its investment strategy.

In the past, the SEC has adopted interim rules requiring reporting of all short positions above a certain *de minimis* threshold and may adopt rules requiring public disclosure in the future. In addition, other jurisdictions in which the Adviser may trade have adopted reporting rules for short sales and short positions. If a Client's short positions or its strategy become generally known, it could have a significant effect on the Adviser's ability to implement its investment strategies for such Client. In particular, it would make it more likely that other investors could cause a "short squeeze" in the securities held short by a Client forcing a Client to cover its positions at a loss. In addition, if other investors engaged in copycat behavior by taking positions in the same issuers as a Client, the cost of borrowing securities to sell short could increase drastically, and the availability of such securities to such Client could decrease drastically. Such events could make the Adviser unable to execute its investment strategy. The SEC has adopted restrictions on the short sales of securities that fall more than ten percent in a given day (referred to as the "circuit breaker" or "modified uptick" rule). Such events and these and other restrictions on the Adviser's ability to engage in short sales could make the Adviser unable to execute its investment strategy and cause losses to a Client.

The SEC and regulatory authorities in other jurisdictions may adopt (and in certain cases, have adopted) bans on short sales of certain securities in response to market events. Bans on short selling may make it impossible for the Adviser to execute certain investment strategies on behalf of a Client and may have a material adverse effect on its ability to achieve its investment objective and generate returns.

*Leverage.* Although the Adviser does not currently expect leverage to be a significant element of its investment strategy, the Adviser has the power to cause a Client to borrow and may do so when it deems it necessary or advisable to provide efficient portfolio management or, in unusual circumstances, to take advantage of investment opportunities. The Adviser also may cause a Client to borrow when the Adviser deems it appropriate to meet withdrawal requests, which would otherwise result in the premature liquidation of investments. Leverage increases returns if a Client earns a greater return on investments purchased with borrowed funds than such Client's cost of borrowing. However, the use of leverage exposes a Client to additional risks, including (i) greater losses from investments than would otherwise have been the case had such Client not borrowed to make the investments; (ii) margin calls or interim margin requirements that may force premature liquidations of investment positions; and (iii) losses on investments where the investment fails to earn a return that equals or exceeds such Client's cost of borrowing. In the event of a sudden, precipitous drop in value of a Client's assets, such Client may not be able to liquidate assets quickly enough to repay its borrowings, further magnifying the losses incurred by such Client.

*Derivatives and Counterparty Risks.* Although the Adviser does not currently expect derivative transactions to be a significant element of its investment strategy, the Adviser may utilize swaps and other derivative transactions to some degree where it believes it will further the objectives of a Client. Under the Governing Documents, notional amounts of swap transactions are not subject to any limitations, and swap contracts may expose a Client to unlimited risk of loss. Swaps may be used as an alternative to futures contracts. To the extent a Client invests in repos, swaps, forwards, futures, options and other "synthetic" or derivative instruments, counterparty exposures can develop, and such Client bears the risk of nonperformance by the other party to the contract. This risk may differ materially from those entailed in exchange-traded transactions which generally are supported by guarantees of clearing organizations, daily marking-to-market and settlement, and segregation and minimum capital requirements applicable to intermediaries. Transactions entered directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of counterparty default. In the international securities markets, the existence of less mature settlement structures and systems can result in settlement default and exposure to counterparty credits.

In addition, the U.S. government has enacted legislation that includes provisions for new regulation of the derivatives market, including new clearing, margin, reporting and registration requirements. The overall impact of such legislation is highly uncertain and it remains unclear how the derivatives market will adapt to this new regulatory regime. The regulatory changes could, among other things, restrict the Adviser's ability to engage in derivatives transactions and/or increase the costs of such derivatives transactions (including through increased margin requirements), and a Client may be unable to execute its investment strategy as a result. Additionally, the new requirements may result in increased uncertainty about counterparty credit risk. Moreover, dealers can be expected to try to pass these increased costs along, at least partially, to market participants such as the Clients in the form of higher fees or less advantageous dealer marks. The regulation of derivatives transactions and funds that engage in such transactions is an evolving area of law and is subject to modification by government and judicial action.



A Client may only close out a swap or contract for differences with the consent of the particular counterparty, may only transfer a position with the consent of the particular counterparty, and following transfer of a position, may only close out the transaction with the new counterparty. Also, if the counterparty defaults, a Client will have contractual remedies pursuant to the agreement related to the transaction, but there is no assurance that contract counterparties will be able to meet their obligations pursuant to such contracts or that, in the event of default, the Client will succeed in enforcing its contractual remedies. There also may be documentation risk, including the risk that the parties may disagree as to the proper interpretation of the terms of a contract. If such a dispute occurs, the cost and unpredictability of the legal proceedings required to enforce its contractual rights may lead a Client to decide not to pursue its claims against the counterparty. Such Client thus assumes the risk that it may be unable to obtain payments owed to it under swap contracts, over-the-counter options and other two-party contracts, or that those payments may be delayed or made only after a Client has incurred the costs of litigation.

Counterparty risk may be further complicated by recently enacted U.S. financial reform legislation which includes provisions for new clearing, margin and reporting requirements for derivatives transactions and new restrictions on the types of derivatives transactions that can be entered into by certain financial companies. The ultimate impact of these regulatory changes remains unclear because much is left to rule making by the CFTC and the SEC; however, these new requirements could mean that a Client will face less creditworthy counterparties on certain derivatives transactions. Also, the new legislation may limit the flexibility of a Client to protect its interests in the event of an insolvency of a derivatives counterparty, because of powers granted to clearinghouses and to the Federal Deposit Insurance Corporation to limit or delay close-out of derivatives positions of insolvent clearing members or financial companies and to transfer such positions to other entities.

Certain derivatives transactions that may be used by a Client, including certain interest rate swaps and credit default index swaps, will be required to be cleared. In a cleared derivatives transaction, a Client's counterparty to the transaction is a central derivatives clearing organization, or clearing house, rather than a bank or broker. Because the Clients are not members of a clearing house, and only members of a clearing house can participate directly in the clearing house, the Clients will hold cleared derivatives transactions through accounts at clearing members, who are futures commission merchants who are members of the clearing houses. A Client will make and receive payments owed under cleared derivatives transactions (including margin payments) through its accounts at clearing members. A Client's clearing members guarantee a Client's performance of its obligations to the clearing house. In contrast to bilateral derivatives transactions, following a period of advance notice to a Client, clearing members can generally require termination of existing cleared derivatives transactions at any time and increase the amount of margin required to be provided by a Client to the clearing member for any cleared derivatives transaction above the amount of margin that was required at the beginning of the transaction. Any such termination or increase could interfere with the ability of a Client to pursue its investment strategy. Also, a Client is subject to execution risk if it enters into a derivatives transaction that is required to be cleared (or which the Adviser expects to be cleared), and no clearing member is willing to clear the transaction on a Client's behalf. In that case, the transaction might have to be

terminated, and a Client could lose some or all of the benefit of any increase in the value of the transaction after the time of the trade.

*Fixed-Income Securities.* Clients invest primarily in equity securities. However, subject to any applicable guidelines and/or restrictions in the Governing Documents, a Client may invest in bonds or other fixed-income securities, including, without limitation, commercial paper and “higher yielding” (and, therefore, higher risk) debt securities. Such securities may be below “investment grade” and may face ongoing uncertainties and exposure to adverse business, financial or economic conditions that could lead to the issuer’s inability to meet timely interest and principal payments. The market values of certain of these lower-rated debt securities 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, and tend to be more sensitive to economic conditions than are higher-rated securities. Companies that issue lower-rated debt securities often are highly leveraged and may not have access to more traditional methods of financing. Trading in such securities may be limited or disrupted by an economic recession, resulting in an adverse impact on the value of such securities. In addition, it is likely that any such economic downturn could affect adversely the ability of the issuers of such securities to repay principal and pay interest thereon and, therefore, increase the incidence of default for such securities.

*Pooled Investment Vehicles and Pass-through Entities.* On behalf of its Clients, the Adviser does not generally seek to invest in pooled investment vehicles and pass-through entities. However, subject to any applicable guidelines and/or restrictions in the Governing Documents, should the Adviser believe it would benefit a Client and deem such investment to be comparable to an investment in an operating company, a Client has in the past and may in the future invest in other pooled investment vehicles or pass-through entities, including registered and unregistered REITs, master limited partnerships and other registered and unregistered vehicles (“Pooled Investment Vehicles”). When a Client makes any investments in unregistered Pooled Investment Vehicles (including unregistered REITs), the Adviser (or its designee) generally expects to waive, in its sole discretion, its right to receive Management Fees and Incentive Allocations from such Client in respect of such investments to the extent necessary to ensure that no Client bears aggregate fees or incentive allocations in respect of such investments in excess of the fees and allocations ordinarily borne by such Clients with respect to a Fund or an Account.

A Client may invest in certain Pooled Investment Vehicles either directly or through derivatives contracts. To the extent a Client invests directly in Pooled Investment Vehicles and other “pass-through” entities which are treated as partnerships for federal income taxation purposes, a Client must rely on such vehicles to deliver to it certain tax information that is necessary to complete a Client’s own tax returns. If this information is not delivered to a Client in a timely fashion, a Client will be delayed in providing tax information to its investors.

If, in the discretion of the Adviser, a particular Client should not be an investor in a Pooled Investment Vehicle for tax or regulatory reasons, an investment by other Clients in such Pooled Investment Vehicle will be allocated only to such Clients not affected by such tax or regulatory reasons. To the extent any Clients are not able to participate in a Pooled

Investment Vehicle, a Client who does participate in such vehicle could incur a disproportionate amount of income or loss related to such investment relative to the other Clients who did not participate in the Pooled Investment Vehicle.

*Options.* The Adviser may cause a Client to invest in options. Purchasing put and call options, as well as writing such options, are highly specialized activities and entail greater than ordinary investment risks. Although an option buyer's risk is limited to the amount of the original investment for the purchase of the option, an investment in an option may be subject to greater fluctuation than is an investment in the underlying securities. In theory, an uncovered call writer's loss is potentially unlimited, but in practice the loss is limited by the term of existence of the call. The risk for a writer of a put option is that the price of the underlying securities may fall below the exercise price. The ability to trade in or exercise options may be restricted in the event that trading in the underlying securities interest becomes restricted.

Unlike exchange-traded options, which are standardized with respect to the underlying instrument, expiration date, contract size and strike price, the terms of over-the-counter options (options not traded on an exchange) are generally established through negotiation with the other party to the option contract. While this type of arrangement allows the Adviser greater flexibility to tailor an option to a Client's needs, over-the-counter options generally involve greater credit risk than exchange-traded options, which are guaranteed by the clearing organization of the exchanges where they are traded.

*Futures and Related Options.* The Adviser does not presently expect to buy and sell futures contracts and related options on behalf of its Clients; however, the Adviser has the ability, to the extent permitted by applicable law and any relevant Governing Documents, to buy and sell futures contracts and related options on behalf of a Client at any time. A futures contract is an agreement between two parties to buy and sell a specific quantity of a commodity (including a securities index or an interest-bearing security) for a set price at a future date. A Client may also buy and sell call and put options on futures or on securities indexes in addition to or as an alternative to purchasing or selling futures contracts, or, to the extent permitted by applicable law, to earn additional income.

The use of futures and options involves certain special risks. Futures and options transactions involve costs and may result in losses. Certain risks arise because of the possibility of imperfect correlations between movements in the prices of futures and options and movements in the prices of the underlying securities, securities index, currencies or other commodities or of the securities or currencies in a Client's portfolio that are the subject of the hedge (to the extent a Client uses futures and options for hedging purposes). The successful use of futures and options further depends on a Client's ability to forecast market or interest rate movements correctly. Other risks arise from a Client's potential inability to close out its futures or options positions, and there can be no assurance that a liquid secondary market will exist for any futures contract or option at a particular time. The use of futures and options for purposes other than hedging is regarded as speculative. Certain regulatory requirements may also limit a Client's ability to engage in futures and options transactions.

*Other Instruments and Future Developments.* On behalf of its Clients, the Adviser may take advantage of opportunities in the area of swaps, options on various underlying instruments and swaptions and certain other customized synthetic or derivative investments in the future. In addition, on behalf of its Clients, the Adviser may take advantage of opportunities with respect to certain other synthetic or derivative instruments that are not presently contemplated for use by a Client or that are currently not available, but which may be developed to the extent such opportunities are both consistent with such Client's investment objective and Governing Documents and legally permissible for such Client. As a result of such practices, special risks may apply to a Client's investments in the future.

*Cash and Other Investments.* A Client may invest all or a portion of its assets in cash or cash items, in whole or in part, for investment purposes, pending other investments or as provision of margin for futures or forward contracts. These cash items are generally of high quality at the time of investment and may include a number of money market instruments such as negotiable or non-negotiable securities issued by or short-term deposits with the U.S. and non-U.S. governments and agencies or instrumentalities thereof, bankers' acceptances, high quality commercial paper, repurchase agreements, bank certificates of deposit and short-term debt securities of U.S. or non-U.S. issuers deemed to be creditworthy by the Adviser. While these investments generally involve relatively low risk levels, they may produce lower than expected returns and could result in losses.

*Recourse to Assets.* A Client's assets, including any investments made by a Client and any funds held by a Client, are generally available to satisfy all liabilities and other obligations of a Client. If a Client becomes subject to a liability, parties seeking to have the liability satisfied may have recourse to a Client's assets generally and may not be limited to any particular asset, such as the asset representing the investment giving rise to the liability.

### Management Risks

*Reliance on Management and Key Personnel; Berkshire Relationship.* The Separate Account Clients and the investors in the Funds rely entirely on the Adviser to conduct and manage the affairs of the Clients. The Separate Account Clients and the investors in the Funds have no right or power to take part in the active management and business of the Clients. The Separate Account Clients and the investors in the Funds will not have the opportunity to evaluate for themselves the relevant economic, financial or other information regarding the investments made by the Clients. Accordingly, no investor should invest in the Clients, or establish an Account, unless such investor is willing to rely on the ability of the Adviser to make appropriate investments for the Clients and entrust all aspects of the management of the Clients to the Adviser.

The investment performance of a Client depends in substantial part upon the skill and expertise of key personnel of the Adviser, including its Managing Directors and others providing investment advice with respect to the Clients. There can be no assurance that these key investment professionals will continue to be associated with the Adviser throughout the life of each Client. The loss of key personnel could have a material adverse effect on a Client's ability to realize its investment objectives. Competition in the financial services industry for qualified investment professionals and other personnel is intense, and there is no guarantee that the talents of the Adviser's departing investment professionals

could be replaced. The success of each Client depends on the Adviser's ability to identify and willingness to provide acceptable compensation arrangements to attract, retain and motivate talented investment professionals and other personnel. In addition, the Managing Directors of the Adviser are also Managing Directors of Berkshire and of the general partners of the Funds and the current and prior Berkshire Funds. While the majority of the Adviser's Managing Directors' time is focused on the Adviser, they will have demands made on their time for the investment, monitoring, exit strategy and other functions of these entities.

The Adviser's investment strategy is currently premised upon its working relationship with Berkshire. If this relationship were to deteriorate, it might have an adverse effect on the Clients' ability to achieve their investment goals. As described in Item 11 below, conflicts of interest between Berkshire and the Clients also exist and may have an adverse effect on the performance of the Clients.

*Regulatory Oversight.* The Funds are not registered under the 1940 Act, and, accordingly, investors in the Funds are not accorded the protections of the 1940 Act (which, among other matters, requires registered investment companies to have at least 40% disinterested directors, requires securities held in custody at all times to be segregated and marked to clearly identify the owner of such securities and regulates the relationship between the investment adviser and the investment company). Because securities of the Funds held by brokers or custodians will generally not be held in the Funds' names, a failure of such broker or custodian is likely to have a greater adverse impact on the Funds than if such securities were registered in the Funds' names.

The Adviser is not currently registered and does not intend to register with the Commodity Futures Trading Commission ("CFTC") and National Futures Association as a "commodity pool operator" or "commodity trading advisor." The Adviser believes that it is currently exempt from having to register as a commodity pool operator or commodity trading advisor with respect to the Funds pursuant to CFTC Rules 4.13(a)(3) and 4.14(a)(5), respectively. The Clients will not engage in commodity interest transactions in the absence of CFTC registration or an appropriate exemption from registration.

### **Item 9. Disciplinary Information**

Item 9 is not applicable to the Adviser.

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

#### **Related General Partner**

An affiliate of the Adviser serves as a general partner of each of the Funds structured as a partnership. For a description of material conflicts of interest created by the relationship between the Adviser and the general partner, as well as a description of how such conflicts are addressed, please see Item 11 below.

#### **Affiliated Adviser**

The Adviser considers the relationship with its affiliated adviser, Berkshire, to be material to its advisory business. Berkshire is separately registered as an investment adviser with the SEC and, like the Adviser, is a wholly-owned subsidiary of BPSP, L.P. Berkshire primarily invests in privately held securities and generally seeks to obtain governance rights in its investments. For a description of material conflicts of interest created by the relationship between the Adviser and its affiliated adviser, as well as a description of how such conflicts are addressed, please see Item 11 below.

### **Affiliated Pooled Investment Vehicles**

The pooled investment vehicles advised by Berkshire are, by virtue of the Adviser's relationship with Berkshire, affiliated with the Adviser and the Clients. Although they have different investment objectives, the Clients may from time to time participate in transactions alongside the pooled investment vehicles advised by Berkshire. For a description of material conflicts of interest created by the relationship between the Adviser and any such affiliated pooled investment vehicles, as well as a description of how such conflicts are addressed, please see Item 11 below.

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

#### **Code of Ethics**

The Adviser has adopted a written code of ethics (the "Code of Ethics") that is applicable to (i) all of its Managing Directors, principals, partners, officers (or any person performing similar functions) and employees; (ii) every natural person (whether or not an employee of the Adviser) that is subject to the Adviser's supervision and control that (a) has access to nonpublic information regarding a Client's purchase or sale of securities, (b) is involved in making securities recommendations to a Client, or (c) has access to nonpublic securities recommendations to a Client, as well as officers and employees of Berkshire and certain independent contractors; and (iii) members of the household of any of the natural persons listed under (i) and (ii) (collectively, "Adviser Personnel"). The Code of Ethics, which is designed to comply with Rule 204A-1 under the Investment Advisers Act of 1940 (as amended, the "Advisers Act"), establishes guidelines for professional conduct and personal trading procedures, including certain preclearance and reporting obligations. The Code of Ethics prohibits Adviser Personnel (other than certain Advisory Directors of Berkshire) from purchasing certain "covered securities" for their own accounts. Under the Code of Ethics, Adviser Personnel are also required to file certain periodic reports with the Adviser's Chief Compliance Officer ("CCO") as required by Rule 204A-1 under the Advisers Act. The Code of Ethics helps the Adviser detect and prevent potential conflicts of interest.

Adviser Personnel who violate the Code of Ethics may be subject to remedial actions, including, but not limited to, unwinding of any applicable trade, profit disgorgement, fines, censure, demotion, suspension or dismissal. Adviser Personnel are also required to promptly report any violation of the Code of Ethics of which they become aware. Adviser Personnel are required to annually certify compliance with the Code of Ethics.



A copy of the Code of Ethics is available to any Client or prospective client upon written request to [Compliance@berkshirepartners.com](mailto:Compliance@berkshirepartners.com).

### **Participation or Interest in Client Transactions**

The Adviser, certain employees of the Adviser and Berkshire and certain Adviser Personnel to Berkshire invest in and alongside the Funds, either through the general partners, as direct investors in the Funds or otherwise. A Fund or its general partner, as applicable, typically will waive or reduce all or a portion of the Management Fee and Incentive Allocation related to investments held by such persons. For further details regarding these arrangements, as well as conflicts of interest presented by them, please see “*Conflicts of Interest*” immediately below.

In addition, because the Feeder Vehicles invest in other Funds, they may be viewed as being solicited to invest in such Funds.

Although all investors in a Fund receive a standard set of offering materials for a Fund, including a private placement memorandum, applicable Governing Documents and such other due diligence information that the Adviser believes may be helpful to an investor in evaluating an investment in such Fund, potential clients and/or potential investors in a Fund (including purchasers of a limited partner’s interests in a secondary transaction) may ask different questions and request different information in addition to the information the Adviser provides to all investors. Similarly, existing investors may ask different questions and request different information in addition to the regular reporting the Adviser provides to all investors. In response to such requests, the Adviser provides from time to time additional or more detailed information to one or more Clients or investors (or prospective clients or investors) that it does not provide to all such Clients or investors.

### **Conflicts of Interest**

The Adviser and its related entities engage in a broad range of activities, including investment activities for their own accounts and for the accounts of other investment funds, and providing transaction-related, investment advisory, management and other services to Funds and Accounts. In the Adviser’s ordinary course of conducting its activities, the interests of a Client can conflict with the interests of the Adviser, other Clients or their respective affiliates. Certain of these conflicts of interest, as well as a description of how the Adviser addresses such conflicts of interest, can be found below.

#### *Resolution of Conflicts*

In the case of all conflicts of interest, the Adviser’s determination as to which factors are relevant, and the resolution of such conflicts, will be made using the Adviser’s best judgment, but in its sole discretion. In resolving conflicts, the Adviser will consider various factors, including, for example, the interests of the applicable Clients with respect to the immediate issue and/or with respect to their longer term courses of dealing. Certain procedures for resolving specific conflicts of interest are set forth below. When conflicts arise, the following factors may mitigate, but will not eliminate, conflicts of interest:

- A Client will not make an investment unless the Adviser believes that such investment is an appropriate investment considered solely from the viewpoint of such Client;
- Many important conflicts of interest will generally be resolved by set procedures, restrictions or other provisions set forth in a Client's Governing Documents and/or in the Adviser's Compliance Policies and Procedures Manual;
- Conflicts of interest related to the allocation of opportunities between the Clients, on one hand, and the pooled investment vehicles advised by Berkshire, on the other hand, are mitigated because the Clients generally pursue different investment strategies from the pooled investment vehicles advised by Berkshire;
- Where the Adviser deems appropriate, unaffiliated third parties may be used to help resolve conflicts, such as the use of an investment banker to opine as to the fairness of a purchase or sale price; and
- Prior to subscribing for interests in a Fund, each investor receives information relating to significant potential conflicts of interest arising from the proposed activities of the Fund.

### *Conflicts*

The material conflicts of interest encountered by a Client include those discussed below, although the discussion below does not necessarily describe all of the potential conflicts that may be faced by a Client. Other conflicts may be disclosed throughout this Brochure and in the offering documents of each Fund or Account, and these materials should be read in their entirety for other conflicts.

### *Allocation of Investment Opportunities*

In exercising its discretion to allocate investment opportunities and fees and expenses, the Adviser may be faced with a variety of potential conflicts of interest. For example, in allocating an investment opportunity among Clients with differing fee, expense and compensation structures, the Adviser has an incentive to allocate investment opportunities to the Clients from which the Adviser or its related persons may derive, directly or indirectly, a higher fee, compensation or other benefit. Further, if, in the discretion of the Adviser, a Client should not participate in a particular investment opportunity for tax or regulatory reasons, such investment opportunity will be allocated only to other Clients not affected by such tax or regulatory reasons. To the extent an investment is not allocated pro rata, the Clients participating in such an investment opportunity could incur a disproportionate amount of income or loss related to such investment relative to any other Clients.

The appropriate allocation among the Clients, any Berkshire Funds and the Adviser of expenses and fees generated in the course of evaluating potential investments that are not



consummated, such as out-of-pocket expenses associated with due diligence, attorney's fees and the fees of other professionals will be determined by the Adviser in its sole discretion.

Certain Adviser Personnel invest, either indirectly or directly, in Funds and, therefore, participate in investments made by the Funds in which they invest. Although the Adviser believes these investments serve to align the interests of Adviser Personnel with those of the Funds, individual and aggregate interests will vary Fund by Fund. The existence of these varying circumstances may present potential conflicts of interest in determining how much, if any, of certain investment opportunities to offer to a Fund.

### *Investments by the Clients and the Berkshire Funds*

There may be a conflict of interest in the allocation of investment opportunities among the Clients and the Berkshire Funds. The Adviser and its affiliates (including Berkshire) intend to allocate investment opportunities in a manner which is believed to be appropriate and in the best interests of all the entities involved. While allocations among Clients investing in parallel are generally made on a *pro rata* basis in proportion to the relative equity of each, there can be no assurances that an investment opportunity which comes to the attention of the Adviser and its affiliates (including Berkshire) will not be allocated wholly or primarily to one or more Clients or Berkshire Funds, with any particular Client being unable to participate in such investment opportunity or participating only on a limited basis.

A Client could be disadvantaged because of the activities conducted by the Adviser or its affiliates (including Berkshire) for other Clients or Berkshire Funds as a result of, among other things, (i) legal restrictions on the combined size of positions held for all accounts managed by the Adviser or its affiliates (including Berkshire), thereby limiting the size of a Client's position, (ii) the difficulty of liquidating an investment for more than one account where the market cannot absorb the sale of the combined positions and (iii) the regulatory filing obligations that could be imposed on the Adviser or Berkshire (or their affiliates) if, for example, Berkshire and the Adviser (and their affiliates) are treated as members of a "group," resulting in aggregation of their holdings for purposes of their regulatory filing obligations or the applicability of short-swing profit disgorgement rules with respect to such acquisitions and dispositions, where the Client and the Adviser would not have been subject to such filing obligations and short-swing profit rules in the absence of Berkshire Funds being invested in the same securities. These filing obligations and short-swing profit rules may cause the Adviser to make investment decisions for a Client different from the decisions it would have made in the absence of affiliation with Berkshire. The Adviser intends to manage its Clients' investments so as to avoid the short-swing profit liability provisions of Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

In addition, there may be circumstances under which the Adviser or its affiliates (including Berkshire) will consider participation by certain Clients or Berkshire Funds in investment opportunities in which the Adviser does not intend to invest, or intends to invest only on a limited basis, on behalf of certain other Clients. Investments by a Client and a Berkshire Fund in securities of the same issuer may raise the risk of using the assets of such Client to support positions taken by a Berkshire Fund. The Adviser and its affiliates (including Berkshire) will evaluate for each Client or Berkshire Fund a variety of factors which may be

relevant in determining whether a particular investment opportunity is appropriate and feasible for each Client or Berkshire Fund at a particular time, including the nature of the investment opportunity taken in the context of the other investments at the time, the potential liquidity of the investment relative to the needs of the particular investing entity, the investment or regulatory limitations on the particular investing entity and the transaction costs involved. Because these considerations will generally differ for each Client and one or more of the Berkshire Funds in the context of any particular investment opportunity, investment activities of the Clients may differ considerably from time to time, and investment activities of the Clients and Berkshire Funds will generally differ considerably as a result of the different investment focus of the Clients and the Berkshire Funds. In addition, where an investment opportunity may be appropriate for a Client, but is of the type of investment made by Berkshire Funds (e.g., private company investments and/or investments in public companies with representation on the board of directors and/or other active governance roles), it will typically be offered first to such Berkshire Funds.

Conflicts may arise in determining the terms of investments, particularly where a Client and a Berkshire Fund may invest in different types of securities in a single issuer. Questions may arise as to whether payment obligations and covenants should be enforced, modified or waived, or whether debt should be refinanced. Decisions about what action should be taken in a troubled situation, including whether or not to enforce claims, whether or not to advocate or initiate a restructuring or liquidation inside or outside of bankruptcy, and the terms of any work-out or restructuring may raise conflicts of interest. A Client or a Berkshire Fund may invest in bank debt and securities of companies in which the other holds securities, including equity securities, and their interests may be in conflict, particularly in circumstances where the underlying company is facing financial distress. The involvement of a Client and a Berkshire Fund at both the equity and debt levels could inhibit strategic information exchanges among fellow creditors. In certain circumstances, a Client or a Berkshire Fund may be prohibited from exercising voting or other rights, and may be subject to claims by other creditors with respect to the subordination of their interest.

### *Other Strategies*

The Adviser or its affiliates (including Berkshire) are considering and may in the future pursue investment strategies that it believes are complementary to the business of the Adviser, such as debt financing investments (e.g., bank loan participations or assignments, bonds, mezzanine debt or similar investments), and including minority investments in or related to the debt financing of an issuer in which a Client has invested. This investment strategy would differ from that of the Clients, and conflicts of interest may arise among the Clients and their affiliates that invest in debt securities. If such strategies are pursued, there may be a conflict of interest in the allocation of investment opportunities among the Clients and such affiliates. In such event, the Adviser will evaluate for the Clients or such affiliates a variety of factors which may be relevant in determining whether a particular investment opportunity is appropriate and feasible for the Clients or such affiliates, including the nature of the investment opportunity taken in the context of market conditions at the time.

On behalf of a Client, the Adviser or its affiliates may invest in the debt securities of an issuer in which other Clients or certain Berkshire Funds have invested, and a Client may

invest in an issuer in which such affiliates have previously made or concurrently will make an investment. Investments made by such affiliates and such a Client would likely be in different parts of an issuer's capital structure, including with respect to seniority, interest rates, security, dividends, voting rights and participation in liquidation proceeds. In addition, such investments could be acquired by such Client and such affiliates at different times or at different prices. As a result, the interests and/or investment objectives of such Client and such affiliates may differ in the case of financial distress of such an issuer, including the structuring of, or exercise of rights with respect to, investment transactions and the timeframe for and method of exiting the investment. In certain circumstances, the Adviser may be required to abstain from exercising its voting rights with respect to a portfolio investment of a Client, where exercising such voting rights could conflict with the interests of an affiliate.

### *Cross-Transactions*

In certain cases, the Adviser may cause a Client to purchase investments from another Client or Berkshire Fund, or it may cause a Client to sell investments to another Client or Berkshire Fund. Such transactions create conflicts of interest because, by not exposing such buy and sell transactions to market forces, a Client may not receive the best price otherwise possible, or the Adviser might have an incentive to improve the performance of one Client by selling underperforming assets to another Client in order, for example, to earn fees. Additionally, in connection with such transactions, the Adviser, Berkshire and/or their professionals (i) may have significant investments, or intentions to invest, in a Fund that is selling and/or purchasing such an investment or (ii) otherwise have a direct or indirect interest in the investment (such as through certain other participations in the investment). The Adviser and Berkshire may receive management or other fees in connection with their management of the relevant Client involved in such a transaction and may also be entitled to share in the investment profits of the relevant Client. To address these conflicts of interest, the Adviser's CCO will be responsible for confirming that the Adviser (i) considers its respective duties to each Client, (ii) determines whether the purchase or sale and price or other terms are comparable to what could be obtained through an arm's length transaction with a third party, and (iii) obtains any required approvals of the transaction's terms and conditions. The Adviser will not directly or indirectly receive any commission or other transaction-based compensation for effecting any such transaction, and the Adviser will not effect any such transaction for any Fund where the Adviser is deemed to own more than 25% of the Fund, unless such transaction complies with the requirements of the Adviser's principal transactions policy, as described below.

Clients will enter from time to time into "rebalancing" transactions with one or more other Clients that have the same investment objectives as such Client when contributions or withdrawals of capital to or from either such Client or the other Clients change the ratio of such Client's assets to the assets of other Clients. The purpose of any such rebalancing transactions is to bring each Client's exposure to a commonly held investment into line with each Client's percentage of total equity under management. A Client could be a purchaser or a seller in such rebalancing transactions. All "rebalancing" transactions between Clients (i) are effected for cash consideration at the current market price of the particular securities, (ii) do not involve restricted securities or securities for which market quotations are not

readily available, and (iii) if executed through a broker, generally do not involve any brokerage commission fee (except for customary transfer fees and brokerage fees for transactions involving U.S. options or certain non-U.S. equities or where some or all of a position is in a swap) or other remuneration. All “rebalancing” transactions are subject to any restrictions contained in the applicable Advisory Agreements.

### *Principal Transactions*

Section 206 under the Advisers Act regulates principal transactions among an investment adviser and its affiliates, on the one hand, and the clients thereof, on the other hand. Very generally, if an investment adviser or an affiliate thereof proposes to purchase a security from, or sell a security to, a client (what is commonly referred to as a “principal transaction”), the adviser must make certain disclosures to the client of the terms of the proposed transaction and obtain the client’s consent prior to the settlement of any principal transaction. In connection with the Adviser’s management of the Funds and Accounts, the Adviser and Berkshire are permitted to engage in principal transactions. The Adviser has established certain policies and procedures to comply with the requirements of the Advisers Act as they relate to principal transactions, including that disclosures required by Section 206 of the Advisers Act be made to the applicable Client(s) regarding any proposed principal transactions and that any required prior consent to the transaction be received. In addition, the offering documents or Governing Documents of each applicable Client contain additional restrictions on the ability of such Client or the Adviser to engage in principal transactions.

### *Management of the Funds*

The Adviser manages a number of Funds and Account(s) that typically have investment objectives similar to each other. The Adviser expects that it or its personnel will in the future establish one or more additional investment funds or accounts with investment objectives substantially similar to, or different from, those of the current Clients. Allocation of available investment opportunities between Clients and any such investment fund or account could give rise to conflicts of interest. See “*Allocation of Investment Opportunities Among Clients*” above. In addition, it is expected that employees of the Adviser and its affiliates responsible for managing a particular Fund or Account will have responsibilities with respect to other Funds or Accounts managed by the Adviser (and, in the case of certain employees, with respect to Berkshire Funds), including funds or accounts that may be raised or established in the future. Conflicts of interest may arise in allocating time, services or functions of these employees.

A Client (or the Adviser on a Client’s behalf) or a Berkshire Fund may invest in opportunities that other Clients or Berkshire Funds have declined, and likewise, a Client (or the Adviser on a Client’s behalf) or a Berkshire Fund may decline to invest in opportunities in which other Clients or Berkshire Funds have invested. A conflict of interest arises because one Client or Berkshire Fund will, in such circumstances, benefit from the initial evaluation, investigation and due diligence undertaken by the Adviser on behalf of the original Client considering the investment. In such circumstances, the benefitting Client or Berkshire Fund will not typically be required to reimburse the original Client for expenses incurred in connection with researching such investment.

### *Access to Insider Information*

As a result of participation by representatives of Berkshire or the Adviser on boards of certain companies, and/or as a result of confidentiality agreements or non-disclosure agreements entered into by Berkshire or the Adviser, the Adviser may acquire confidential or material, non-public information or be restricted from initiating transactions in certain securities. The Adviser will not be free to act upon any such information, which may serve to restrict the Clients in their investment activities. Due to these restrictions, a Client may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it otherwise might have sold. Such possession of material, non-public information may create a conflict of interest involving (i) the duties and obligations of Berkshire, the Adviser or their representatives to the companies on whose boards these representatives participate and (ii) a Client's ability to effect purchases and sales of the securities of such companies. Inadvertent trading on material, non-public information could have material adverse effects on the Adviser's reputation, result in the imposition of regulatory or financial sanctions and, as a consequence, negatively impact the Adviser's ability to perform its investment management services on behalf of the Clients. The Adviser and Berkshire maintain a Code of Ethics that limits their employees' ability to engage in personal trading and allows the Adviser and Berkshire to monitor for such activity.

### *Conflicts Relating to the Adviser*

The Adviser may, in its discretion, contract with any related person of the Adviser (including, but not limited to, a company in the investment portfolio of a Client or Berkshire Fund) to perform services for the Adviser in connection with its provision of services to the Clients. When engaging a related person to provide such services, the Adviser may have an incentive to recommend the related person even if another person may be more qualified to provide the applicable services and/or can provide such services at a lesser cost.

The Adviser generally may, in its discretion, recommend to a Client or to a Portfolio Company thereof (in response to a solicitation for a recommendation or otherwise) that it contract for services with (i) the Adviser or a related person of the Adviser (including, but not limited to, a company in the investment portfolio of a Client or Berkshire Fund) or (ii) an entity with which the Adviser or Berkshire or a member of their personnel has a relationship or from which the Adviser or Berkshire or their personnel otherwise derives financial or other benefit. When making such a recommendation, the Adviser may, because of its financial or other business interests, have an incentive to recommend the related or other person even if another person is more qualified to provide the applicable services and/or can provide such services at a lesser cost.

The Adviser, Berkshire and their partners, Managing Directors, officers, principals, employees and affiliates have in the past and may in the future buy securities in transactions offered to but rejected by Clients, or buy securities in transactions that were not available at appropriate levels for Client investment. A conflict of interest may arise because such investing Adviser Personnel will, for some investments, benefit from the evaluation, investigation and due diligence undertaken by the Adviser on behalf of a Client. In such circumstances, the investing Adviser Personnel will share or reimburse the relevant Client(s)



and/or the Adviser for any expenses incurred in connection with the investment opportunity in a manner the Adviser deems to be fair and equitable. In addition, officers and employees may also buy securities in other investment vehicles (including venture capital funds, hedge funds, real estate funds, private equity funds and other similar investment vehicles) which may include potential competitors of the Adviser. Such transactions are subject to the policies and procedures set forth in the Adviser's Code of Ethics. The investment policies, fee arrangements and other circumstances of these investments may vary from those of the Clients. If officers, principals and employees of the Adviser and Berkshire have made large capital investments in or alongside the Clients, they may have conflicting interests with respect to these investments.

Certain expenses are paid for by a Client and/or Portfolio Companies or, if incurred by the Adviser, are reimbursed by a Client and/or Portfolio Companies. However, the Adviser may not necessarily seek out the lowest cost options when incurring (or causing a Client or a Portfolio Company to incur) such expenses since other mitigating factors may prevail over cost.

### *Fee Structure*

As discussed above in Item 6, the Adviser is entitled to Incentive Allocations under the terms of the Governing Documents. The existence of the Incentive Allocation creates an incentive for the Adviser to cause the Clients to make more speculative investments than they would otherwise make in the absence of performance-based compensation.

### *Service Providers*

The Adviser and/or its affiliates may engage or refer service providers to provide services to the Adviser, the Clients and/or their Portfolio Companies. Such service providers are, in certain circumstances, investors in a Fund, future funds or a current or prior Berkshire Fund, and may include, for example, deal sources, consultants, lenders, brokers, attorneys, outside directors and other investors who provide services (including mezzanine and/or lending arrangements). The engagement of any such service provider may be concurrent with an investor's admission to a Fund, or during the term of such investor's investment in a Fund. This creates a potential conflict of interest, as the investment by such service providers in a Fund may influence the Adviser in deciding whether to select such a service provider or have other relationships with the Adviser. The Adviser may have a conflict of interest with a Client in recommending the retention or continuation of a service provider to such Client or a Portfolio Company if such recommendation, for example, is motivated by a belief that the service provider will continue to invest in Funds or Berkshire Funds or will provide the Adviser or Berkshire information about markets and industries in which the Adviser or Berkshire operates or is interested or will provide other services that are beneficial to the Adviser or Berkshire. Additionally, employees of the Adviser, Berkshire, their affiliates and/or their family members or relatives may have ownership, employment or other interests in such service providers. These relationships that an Adviser may have with a service provider can influence the Adviser in determining whether to select such service provider to perform services for a Client or recommend such service provider to a Portfolio Company. Notwithstanding the foregoing, the Adviser will only select a service provider to

the extent the Adviser determines that doing so is appropriate for a Client given all surrounding facts and circumstances and is consistent with the Adviser's responsibilities under applicable law, provided, however, the Adviser may not necessarily seek out the lowest-cost option when engaging such service providers as other factors or considerations may prevail over cost.

In addition, the Adviser, the Clients and the Portfolio Companies may engage common service providers. In such circumstances, there may be a conflict of interest between the Adviser, on the one hand, and a Client and its Portfolio Companies, on the other hand, in determining whether to engage such service providers, including the possibility that the Adviser may favor the engagement or continued engagement of such persons if it receives a benefit from such service providers, such as lower fees, that it would not receive absent the engagement of such service provider by a Client and/or its Portfolio Companies. The Adviser may from time to time receive a discount on services provided to it by such a common service provider even though a Client and/or its Portfolio Companies may receive a lesser, or no, discount. In addition, different Portfolio Companies may receive different levels of discounts. In the event of a significant dispute or divergence of interest between Clients and the Adviser, the parties may engage separate counsel in the sole discretion of the Adviser, and in litigation and other circumstances separate representation may be required.

### *Diverse Investor Group*

The investors in the Funds typically include U.S. taxable and tax-exempt entities, and institutions from jurisdictions outside of the United States. Such investors may have conflicting investment, tax and other interests with respect to their investments in the Funds. The conflicting interests among the investors may relate to or arise from, among other things, the nature of the investments made by a Fund, the structuring of the acquisition of investments and the timing of the disposition of investments. As a consequence, conflicts of interest arise in connection with decisions to be made by the Adviser, including with respect to the nature or structuring of investments that are more beneficial for one investor than for another investor, especially with respect to certain investors' individual tax situations. In selecting and structuring investments appropriate for a Fund, the Adviser will consider the investment and tax objectives of such Fund and its investors as a whole, not the investment, tax or other objectives of any investor individually.

### *Positions with Portfolio Companies*

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

As described in Item 5 above, the Adviser and/or its Managing Directors are on occasion entitled to receive directors fees, options or other equity incentive compensation for such board service. To the extent such Portfolio Company is also a company in which a Berkshire Fund is invested, a portion of such compensation, which is paid to the Adviser (or its affiliates) directly, may be credited against the fees payable to such Berkshire Funds, but the Adviser's Clients may not receive a similar benefit.

In addition, to the extent a Client's Portfolio Company is also a company in which a Berkshire Fund is invested, Berkshire (and its employees) from time to time perform services for, and receive options or other equity compensation, as well as expense reimbursements, from such actual or prospective Portfolio Companies or other investment vehicles of the Berkshire Funds. This creates a conflict of interest between the Adviser, on the one hand, and its Clients and their investors, on the other, because the amounts of this compensation and these reimbursements to Berkshire may be material, and the Clients and their investors do not have an interest in this compensation and these reimbursements. The amount of such compensation and reimbursements to Berkshire also may not be disclosed to investors in the Funds or Separate Account Clients. The Adviser will not be obligated to reduce the amount of Management Fees paid by the applicable Client in connection with the receipt by Berkshire of fees for Related Services in connection with such Portfolio Companies.

### *Side Letter Agreements*

Although none of the Funds' investors has entered into a Side Letter as of the date of this Brochure, the Adviser, on behalf of a Fund, may, in the future, enter into certain Side Letter arrangements with certain investors in a Fund providing such investors with additional or different rights or terms than such investor would otherwise have pursuant to the applicable Governing Document or such investor's subscription agreement. If any such Side Letters are entered into, certain investors will receive additional rights that other investors will not receive. The Adviser on behalf of a Fund will not be required to notify any or all of the other investors of any such Side Letters or any of the rights or terms or provisions thereof, nor will the Adviser be required to offer such additional or different rights or terms to any or all of the other investors. The Adviser, on behalf of a Fund, will enter into such Side Letters with any party as it may determine in its sole discretion at any time. Other investors will have no recourse against such Fund or any of its affiliates in the event that certain investors receive additional or different rights or terms as a result of such Side Letters.

### *Separate Account Agreements*

Separate Account Clients generally negotiate the terms pursuant to which the Adviser manages such Client's Account. The Advisory Agreement between the Adviser and a Separate Account Client typically provides for additional or different rights or terms than those available to investors in the Funds, even though the Adviser generally invests such Accounts in parallel with the Funds.



### *Advisory Affiliates*

As described in Item 10 above, Berkshire, an affiliate of the Adviser, has its own clients. Although Berkshire focuses primarily on a different investment strategy than the Adviser, clients of the Adviser and Berkshire are invested in, and may in the future invest in, the same portfolio companies, including in the same security or in different securities of a Portfolio Company. Interests of the Clients may therefore conflict with the interests of the clients of Berkshire. For instance, see “*Allocation of Investment Opportunities Among Clients*” and “*Investments by the Clients and the Berkshire Funds*” above for more information.

### *Valuation by the Adviser*

Securities for which no market prices are available will be valued at such value as the Adviser may reasonably determine. All other assets of the Clients (except goodwill, including the name of such Client, which will not be taken into account) will be assigned such value as the Adviser may reasonably determine. The exercise of such discretion in each of the above cases may give rise to conflicts of interest, since the Incentive Allocation and Management Fee are calculated based on these valuations and such valuations affect performance return calculations.

### *Other Potential Conflicts*

The Governing Documents of a Client establish complex arrangements among the Clients, the Adviser, a Fund’s investors, and other relevant parties. From time to time, questions may arise regarding certain parties’ rights and obligations in certain situations, some of which may not have been contemplated upon the negotiation and execution of such documents. In some instances, the operative provisions of the Governing Documents, if any, may be broad, unclear, general, conflicting, ambiguous, and vague and may allow for multiple reasonable interpretations. In other instances, there may not be a directly applicable provision. While the Adviser will construe the relevant provisions in good faith and in a manner consistent with its legal obligations, the interpretations used may not be the most favorable to a Client or a Fund’s investors.

The Adviser may, in its discretion, have and cause a Client and/or Portfolio Companies to have, ongoing business dealings, arrangements or agreements with persons who are former employees or executives of the Adviser or Berkshire. A Client and/or Portfolio Companies may bear, directly or indirectly, the costs of such dealings, arrangements or agreements. In such circumstances, there may be a conflict of interest between the Adviser and a Client (or its Portfolio Companies) in determining whether to engage in or to continue such dealings, arrangements or agreements, including the possibility that the Adviser may favor the engagement or continued engagement of such persons even if a better price and/or quality of service could be obtained from another person.

The Adviser may represent creditors or debtors prior to or in proceedings under Chapter 11 of the Bankruptcy Code. From time to time, the Adviser may serve as advisor to creditor or equity committees. This involvement, for which the Adviser may be compensated, may limit or preclude the flexibility that the Clients may otherwise have to make investments.

If a Client purchases in the secondary market at a discount debt securities of a company in which a Client has, for example, a substantial equity interest, (a) a court might require a Client to disgorge profit it realizes if the opportunity to purchase such securities at a discount should have been made available to the issuer of such securities or (b) a Client might be prevented from enforcing such securities at their full face value if the issuer of such securities becomes bankrupt. The effect of these transactions will vary from jurisdiction to jurisdiction.

In addition, the Governing Documents of certain Funds permit the Adviser to restrict the information provided to certain limited partners or investors in such Fund in certain circumstances. For instance, information may be restricted in the case of limited partners that are subject to Freedom of Information Act or similar requirements. The Adviser may elect to restrict access to certain information with respect to such limited partners for reasons relating to the Adviser's public reputation or overall business strategy, despite the potential benefits to such limited partners of receiving such information.

Certain employees of Berkshire provide research, trust, administrative, reporting and similar services to the Managing Directors of the Adviser and certain of their family members and estate planning vehicles, in each case with respect to personal investment activities. Such services could potentially present a conflict of interest between the Adviser and a Client. However, the Adviser believes any potential conflicts of interest are substantially mitigated because (i) the investments are not investments that would be suitable for a Client, (ii) the investments are reportable by the Adviser's Managing Directors and subject to preclearance pursuant to the Adviser's Code of Ethics, (iii) such employees are not involved in the provision of investment advice to Clients and (iv) such employees generally do not exercise investment discretion with respect to such personal investment activities.

Please see the discussion above under the subheading "*Resolution of Conflicts*" for a description of the means by which the Adviser and its related persons may seek to alleviate conflicts of interest among the Clients or other persons.

### **Item 12. Brokerage Practices**

#### **Selection of Broker-Dealers**

For each of the Clients, the Adviser has sole discretion over the purchase and sale of investments (including the size of such transactions) and the broker or dealer, if any, to be used to effect transactions. In placing each transaction for a Client involving a broker-dealer, the Adviser will seek "best execution" of the transaction except to the extent it may be permitted to pay higher brokerage commissions in exchange for brokerage and research services (as discussed below). "Best execution" means obtaining for a Client account the lowest total cost (in purchasing a security) or highest total proceeds (in selling a security), taking into account the circumstances of the transaction and the reputability and reliability of the executing broker or dealer.

In determining whether a particular broker or dealer is likely to provide best execution in a particular transaction, the Adviser's Best Execution Committee takes into account all factors that it deems relevant to the broker's or dealer's execution capability, including, by way of illustration, price, the size of the transaction, the nature of the market for the security, the amount of the commission, the timing of the transaction taking into account market prices and trends, the reputation, experience and financial stability of the broker or dealer, and the quality of service rendered by the broker or dealer in other transactions. In addition, the Adviser may consider the use of Electronic Communications Networks ("ECNs") when placing trades on behalf of a Client. When purchasing or selling over-the-counter securities with market makers, the Adviser generally seeks to select market makers it believes to be actively and effectively trading the security being purchased or sold.

In order to monitor best execution, the Adviser's Best Execution Committee, in consultation with the Adviser's Compliance Committee, periodically monitors broker-dealers to assess the quality of execution of brokerage transactions effected on behalf of the Adviser and each Client.

### **Research and Other Soft Dollar Benefits**

The Adviser may be authorized to use soft dollars with respect to certain Clients, although with respect to others, the Adviser may be required to provide notice or obtain the consent of a Client before using soft dollars to pay for research or services provided by persons other than the Clients' brokers. To the extent consistent with achieving best execution and where permitted by the applicable Advisory Agreement, the Adviser may also consider the quality of other business a particular broker or dealer may have done with the Adviser, such as identifying investment opportunities, performing investment banking services and providing services to the Adviser's principals. The Adviser may "pay up" (e.g., pay a higher commission to execute a trade than the lowest available negotiated commission) using a portion of a broker-dealer's brokerage commission (i.e., soft dollars) for brokerage and research services. Brokerage and research services may either be obtained from brokerage firms or paid for by brokerage firms and may include, but are not limited to, written information and analyses concerning specific securities, companies or sectors; news, quotation, statistics and pricing services, as well as discussions with research personnel and consultants; and software, databases and other technical and telecommunications services and equipment utilized in the investment management process and consulting fees in connection with investigating and monitoring potential and existing investments. Research services may be proprietary research (created or developed by the broker-dealer) and research created or developed by a third party. Research services, whether obtained by the use of commissions arising from a Client's portfolio transactions or paid for by the Adviser and charged to a Client as described above, may on occasion be used by the Adviser for the benefit of other Funds or Accounts. In formulating and implementing its policies with regards to the use of commissions or "soft dollars," it is the Adviser's intent to stay within the parameters of Section 28(e) of the Exchange Act.

A broker-dealer providing such brokerage and research services may receive a commission that is in excess of the amount of commission another broker-dealer would have received for effecting that transaction provided the Adviser determines in good faith that such commission was reasonable in relation to the value of the research and brokerage services

provided by the broker-dealer. Any such research service may be broadly useful and of value to the Adviser in rendering investment advice to all or a significant portion of the Clients, or may be relevant and useful for the management of one or only a few Clients' accounts, regardless of whether such account or accounts paid commissions to the broker-dealer through which the research service was provided. The Adviser will only make securities transactions that it in good faith believes are in the best interest of a Client. A conflict of interest may exist when a broker-dealer provides such research services, however, as the Adviser will have an incentive to favor such broker-dealer over others that may charge lower commissions.

### **Directed Brokerage**

The Adviser does not have client-directed brokerage arrangements. In the event that the Adviser in the future enters into an Advisory Agreement with a Client that provides for directed brokerage arrangements, such arrangements may deprive such Client of benefits that might otherwise be obtained by "bunching" the Fund's or Account's order with orders for other Funds or Accounts advised by the Adviser. This may result in the Fund or Account paying a higher commission rate or receiving less favorable execution than if the Adviser had discretion to select the broker or negotiate the commission rate, or orders being placed at different times and potentially after orders are placed for Clients who have not implemented directed brokerage arrangements.

### **Aggregation of Orders**

The Adviser and Berkshire may aggregate (or bunch) the orders of more than one Client (and Berkshire Fund) for the purchase or sale of the same publicly traded security, and shared personnel of the Adviser and Berkshire from time to time execute trades on behalf of Berkshire Funds, whether or not a Client is participating in the trade. Portfolio managers and traders often employ this practice because larger transactions may enable them to obtain better overall prices, including lower commission costs or mark-ups or mark-downs. The Adviser and Berkshire may combine orders on behalf of Clients with orders for other Clients (and Berkshire Funds) for which it or Berkshire has trading authority, or in which it or Berkshire has an economic interest. In such cases, the Adviser generally aggregates trade orders for publicly traded securities so that each participating Client (and Berkshire Fund) will receive the average price for each execution of a transaction. There may, however, be instances in which trade aggregation could result in a less favorable transaction than a particular Client would have obtained by trading separately. Similarly, when orders are not bunched, there may be circumstances when purchases or sales of portfolio securities for one or more Clients will have an adverse effect on other Clients.

If an order for more than one Client (or Berkshire Fund) for a publicly traded security cannot be fully executed, allocation shall be made based upon the Adviser's procedures for allocation of investment opportunities, as described in Item 11 above.

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

### **Oversight and Monitoring**

The Adviser provides continuous advisory services for Clients. The portfolio investments of each Client are primarily reviewed by a team of investment professionals, which currently includes the Managing Directors, Principals, Vice Presidents and Associates of the Adviser.

### **Reporting**

The Adviser distributes to investors in the Funds performance updates each month and Capital Account balance updates. The Adviser has engaged an independent public accounting firm to prepare and deliver audited financial statements of the Funds to investors in the Funds, in each case within 120 days of the end of each fiscal year or as soon as reasonably practicable thereafter. At end of each month, the Adviser also furnishes each Separate Account Client with a monthly investment report for its Account that provides detailed information on, among other things, holdings, the value of holdings, acquisitions and dispositions and fees and expenses. Further, at the end of each fiscal year, the Adviser provides a report for each Separate Account Client showing the calculation of such Client's Incentive Allocation for such fiscal year. The Adviser may from time to time, in its sole discretion, provide additional information relating to such Fund to one or more investors in such Fund as it deems appropriate.

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

For details regarding economic benefits provided to the Adviser by non-clients, including a description of related material conflicts of interest and how they are addressed, please see Item 11 above. In addition, the Adviser and its related persons, in certain instances, receive discounts on products and services provided by companies in the investment portfolio of Berkshire Funds and/or the customers or suppliers of such portfolio companies.

### **Item 15. Custody**

Item 15 is not applicable to the Adviser.

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

The Adviser provides investment advice directly to each Fund pursuant to written Advisory Agreements with such Fund and the other Governing Documents of such Fund and not individually to the investors in the Funds. Similarly, the Adviser provides investment advice directly to each Separate Account Client pursuant to a written Advisory Agreement. In each case, the Adviser has discretionary authority to manage the Client's accounts. Powers of attorney and any restrictions on the Adviser's authority are set forth in the Governing Documents or subscription documents with respect to each Fund or Account.

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

The Adviser has established written policies and procedures setting forth the principles and procedures by which the Adviser votes or gives consent with respect to securities owned by a Client ("Votes"). The guiding principle by which the Adviser votes all Votes is to vote in the best interests of each Client by maximizing the economic value of the relevant Client's holdings, taking into account the relevant Client's investment horizon, the contractual

obligations under the relevant Advisory Agreements or comparable documents and all other relevant facts and circumstances at the time of the Vote. The Adviser does not permit voting decisions to be influenced in any manner that is contrary to, or dilutive of, this guiding principle.

It is the Adviser's general policy to vote or give consent on all matters presented to security holders in any Vote. However, the Adviser reserves the right to abstain on any particular Vote or otherwise withhold its vote or consent on any matter if, in the judgment of the Adviser's CCO, General Counsel or the relevant Adviser investment professional, the costs associated with voting such Vote outweigh the benefits to the relevant Clients or if the circumstances make such an abstention or withholding otherwise advisable and in the best interests of the relevant Clients.

Clients generally cannot direct the Adviser's Vote. However, the Advisory Agreements with respect to certain Separate Account Clients allow such Separate Account Clients to instruct the Adviser to vote a Vote in certain matters. If so instructed, the Adviser is required to follow such instruction, subject to applicable law.

All voting decisions initially are referred to the Adviser's CCO or appropriate investment professional for a voting decision. In most cases, the CCO or investment professional covering the particular investment will make the decision as to the appropriate vote for any particular Vote. In making such decision, he or she may rely on any of the information and/or research available to him or her. If the investment professional is making the voting decision, the investment professional will inform the CCO of any such voting decision, and if the CCO does not object to such decision as a result of his or her conflict of interest review, the Vote will be voted in such manner. If at any time any investment professional becomes aware of any potential or actual conflict of interest or perceived conflict of interest regarding any particular voting decision, he or she is required to contact the Adviser's CCO or General Counsel. If any investment professional is pressured or lobbied either from within or outside of the Adviser with respect to any particular voting decision, he or she is required to contact the Adviser's General Counsel. If the investment professional and the CCO are unable to arrive at an agreement as to how to vote, then the CCO may consult as to the appropriate vote with the Adviser's Compliance Committee, which will then review the issues and arrive at a decision based on the overriding principle of seeking the maximization of the economic value of the relevant Client's holdings.

The Adviser's CCO has the responsibility to monitor Votes for any conflicts of interest, regardless of whether they are actual or perceived. All voting decisions will require a mandatory conflicts of interest review by the Adviser's CCO and/or General Counsel in accordance with the Adviser's Voting Policies and Procedures, which will include consideration of whether the Adviser or any investment professional or other person recommending how to vote and/or Berkshire and its clients has an interest in how the Vote is voted that may present a conflict of interest. In addition, all Adviser investment professionals are expected to perform their tasks relating to the voting of Votes in accordance with the principles set forth above, according the first priority to the best interest of the relevant Funds and Accounts. The Adviser's CCO and/or General Counsel will use his, her or their best judgment to address any such conflict of interest and ensure that it is



resolved in accordance with his, her or their independent assessment of the best interests of the Clients and in accordance with the Clients' and the Adviser's contractual obligations.

Where the Adviser's General Counsel or Compliance Committee deems appropriate in his, her or its sole discretion, unaffiliated third parties may be used to help resolve conflicts. In this regard, the Adviser's General Counsel or Compliance Committee shall have the power to retain independent fiduciaries, consultants or professionals to assist with voting decisions and/or to delegate voting or consent powers to such fiduciaries, consultants or professionals (including, for the avoidance of doubt, professionals primarily affiliated with Berkshire).

Copies of relevant proxy logs, identifying how proxies were voted in connection with a Fund or Account and copies of proxy voting policies are available to any Client upon written request to: [Compliance@berkshirepartners.com](mailto:Compliance@berkshirepartners.com).

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

There is no financial condition that is reasonably likely to impair the Adviser's ability to meet contractual commitments to a Client. Further, the Adviser has not been the subject of a bankruptcy petition at any time during the past ten years.

#### **Item 19. Requirements for State-Registered Advisers**

Item 19 is not applicable to the Adviser.