



**Athyrium Capital Management, LP**

**March 29, 2017**

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**This *brochure* provides information about the qualifications and business practices of Athyrium Capital Management, LP, an investment adviser registered with the United States Securities and Exchange Commission (the “SEC”). If you have any questions about the contents of this *brochure*, please contact us at 212-402-6925. The information in this *brochure* has not been approved or verified by the SEC or by any *state securities authority*.**

**Additional information about Athyrium Capital Management, LP also is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

*Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.*

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## Item 2. Material Changes

The following summary only discloses material changes made to the *brochure* since the Adviser's (as defined in Item 4) previous annual update to its *brochure*, which was filed in March 2016. Various material revisions were made to Items 4, 5, 8, 10, 11, 12 and 17 to accurately update and describe the policies, procedures and practices of the Adviser.

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#### Item 4. Advisory Business

Athyrium Capital Management, LP (“ACM”) is a limited partnership under the Delaware Revised Uniform Limited Partnership Act. ACM commenced operations as an investment adviser on December 9, 2008 and its principal place of business is in New York, New York. ACM began its operations as Athyrium Capital Management, LLC, which converted from a Delaware limited liability company to a Delaware limited partnership pursuant to a Certificate of Conversion filed with the Delaware Division of Corporations on January 13, 2015. Jeffrey A. Ferrell and Jeremy D. Lack are the principal owners of ACM (the “Principals”).

For purposes of this brochure, the “Adviser” means ACM, together (where the context permits) with its affiliates that provide advisory services to and/or receive advisory fees from the Clients (as defined below). Such affiliates are generally expected to be under common control with ACM, but possess a substantial identity of personnel and/or equity owners with ACM and are subject to the same compliance manual, policies and procedures. These affiliates may be formed for tax, regulatory or other purposes in connection with the needs of the Adviser’s clients or may serve as general partners of certain of the Adviser’s clients.

The Adviser provides advisory services both on a *discretionary* and *non-discretionary basis* to its clients, which may include specific tailored vehicles (the “Specific Vehicles”) and pooled investment vehicles (the “Funds,” and together with the Specific Vehicles, the “Clients”) intended for sophisticated investors and institutional investors, in accordance with the applicable limited partnership agreement (or analogous governing document) of each such Client, or separate investment and advisory, investment management or portfolio management agreements (each, an “Advisory Agreement”). The Adviser provides a full range of private equity style services including sourcing, due diligence, negotiation, structuring, monitoring and valuation.

The Adviser specializes in the healthcare sector and is primarily focused on longer term investments including private equity, public equity and structured investments. Structured investments are investments composed of one or more of the following instruments: convertibles, loans, bonds, preferred stock, common stock, warrants, and royalties. The Adviser will engage in primary and secondary transactions on behalf of its Clients.

Investment advice is provided directly to the applicable Client, subject to the discretion and control of the applicable general partner, and not individually to the investors in any Client. Services are provided to the Clients in accordance with the Advisory Agreements with the Clients and/or the governing documents of the applicable Client. Investment restrictions for the Clients, if any, are generally established in the organizational or offering documents of the applicable Client and/or side letter agreements negotiated with investors in the applicable Client. Clients may impose restrictions on investing in certain instruments or certain types of instruments.

The Adviser provides advice to its Clients based on specific investment objectives and strategies. Under certain circumstances, the Adviser may agree to tailor advisory services to the individual needs of particular Clients. Currently, the Adviser tailors its advisory services in the following manner: by providing only a subset of services or by providing recommendations to Clients who maintain discretion and control over their assets.

As of December 31, 2016 the Adviser had approximately \$3,079.9 million of Client assets under management. The Adviser has calculated this number in the same manner as it calculates regulatory assets under management for purposes of Part 1 of this Form ADV and includes the aggregate amount of

capital commitments to the Funds that were contractually callable as of such date and amounts outstanding under credit facilities of the Funds as of such date. As of December 31, 2016, the Adviser managed approximately \$3,074.4 million on a *discretionary basis* and \$5.6 million on a *non-discretionary basis*. The Adviser considers its management of the Client accounts comprising such \$3,074.4 million to be on a *discretionary basis* because the Adviser has the authority to determine the securities and other assets to be purchased and sold for such Client accounts (subject to restrictions on its activities set forth in the applicable Advisory Agreement or sub-advisory agreement, including the requirement of approval by one or more investment committees, and any written investment guidelines).

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## Item 5. Fees and Compensation

The Adviser usually charges each Client an investment management fee based on the value of the Client's assets under management. Management fees are negotiated on an account by account basis and generally relate to the services provided by the Adviser. Management fees are generally in the range of 1 percent to 2 percent per annum.

The Funds are generally charged a management fee payable quarterly in advance which is based upon committed capital during the investment period. After the end of the investment period, the management fee is generally a function of remaining invested capital or remaining fair value of such Fund's investments. Certain of the Funds are charged a management fee with respect to each capital account of the investors in such Fund. These management fees are payable quarterly and calculated with respect to each capital account as a percentage of the beginning capital account balance for such quarter.

Where applicable, fees and expenses charged to the Clients are generally deducted from the assets of the Client, subject to the specific terms in each Client's applicable governing documents and/or Advisory Agreements.

Some Clients have entered into pledge fund-like arrangements with the Adviser where no management fee is charged until an investment is completed by the Client. Once an investment is completed, fees are charged six months in arrears usually based on net asset value or investment cost remaining at the end of the six month period.

Some Clients may be required to pay the Adviser's fees in advance. Carried Interest distributions and allocations (as discussed in Item 6 below) are not generally paid to the Adviser in advance, except that, in certain circumstances, the Adviser may receive an advance in an amount sufficient to allow it to discharge its and its *related persons'* tax liabilities with respect to such distributions or allocations.

Generally speaking, with illiquid assets, funds tend to exist for fixed terms, and accordingly, the Adviser's Advisory Agreements with the Funds can generally only be terminated by the Fund under a limited number of circumstances including fraud, gross negligence or bankruptcy of the Adviser. Advisory Agreements with certain of the Funds, however, may terminate solely upon the termination of the applicable Fund. Agreements may include the ability for a Fund to terminate the Advisory Agreement without cause. Specific payment and repayment arrangements which may arise upon termination of an Advisory Agreement are, if applicable, addressed in the governing documents and/or the Advisory Agreements of each applicable Client.

In addition, subject to the applicable Clients' governing documents and Advisory Agreements, certain Clients have agreed to allow their investment managers, including the Adviser, to retain collectively up to

20 percent of any arrangement fees or other fees generated as a result of structuring a transaction. In these situations, the remaining 80 percent of the arrangement fee is held and applied to reduce management fees payable to such investment managers, including to the Adviser. These fees are generally the result of a loan or loan syndication.

In addition to paying investment management fees and, if applicable, Carried Interest or other compensation, subject to the applicable provisions of each Client's offering memorandum and/or governing documents, certain Clients are also subject to certain other expenses, including, but not limited to: (i) accounting, bookkeeping, tax compliance, counsel, consulting, and other out-of-pocket fees, costs and expenses of professional advisers, such as legal counsel (including unreimbursed fees, costs and expenses in connection with acquiring investments or proposed investments on behalf of the Client and disposing of those investments), administrators, custodians, depositaries or nominees, consultants, valuation experts/networks, loan administrators, loan servicers and agents, appraisers, prime brokers and accountants; (ii) audit and Client accounting and Client administration expenses (including maintaining the books and records of a Client, including any related internal costs that the Adviser may incur to produce any such books and records or external costs for a third-party administrator to maintain and oversee a Client's books and records), certification fees and any other expenses associated with the preparation of the Client's financial statements, tax returns and Schedules K-1 (or equivalent information); (iii) domestic and foreign taxes, fees or other governmental charges levied against the Client; (iv) expenses associated with the preparation, printing and distribution of reports to the investors in the Client and costs and expenses associated with Client and advisory committee meetings (including, without limitation, keynote speaker fees); (v) investment banking and similar consulting and professional fees associated with the sourcing, investigating, diligence, acquisition, holding, monitoring, distributing and disposition of the Client's investments, including unconsummated investments and broken deal expenses (including expenses that would have been borne by co-investment vehicles if the investment had been consummated) and extraordinary expenses (such as litigation, if any); (vi) syndication costs and expenses; (vii) all other out-of-pocket fees, costs and expenses relating to the sourcing, diligence, acquisition, holding, monitoring and disposition of potential investments and the actual or proposed acquisition, holding, monitoring or disposition of securities and other financial instruments (including, without limitation, subscription costs for market or industry research, subscription costs for related software, banking fees, brokerage and underwriting commissions, transfer taxes, finder's and consultant's commissions, fees and expenses, custody costs, hedging costs and the costs of meals, travel and lodging (including, as permitted by the Adviser's policies and procedures, first class travel, and cars and meals outside normal business hours), including for industry conferences; (viii) insurance, indemnity, exculpation or litigation expenses relating to the Client's activities (and any judgments or settlements paid in connection therewith); (ix) placement fees; (x) the costs of forming any alternative investment vehicle; (xi) all other costs or liabilities incurred in connection with the administration, operation and activities of the Client (including, but not limited to, (a) any registration, regulatory, or licensing fees incurred in connection with operating a Client, (b) expenses associated with the use of paying agents and local representatives as may be necessary or appropriate to comply with applicable local law, (c) expenses incurred in connection with the winding up or dissolution of a Client (and the distribution, realization or disposal of the Client's investments and other assets pursuant thereto), and (d) costs and expenses incurred in relation to obtaining waivers, consents or approvals of the investors in the Client, and costs and expenses of, and/or incidental to, the preparation of amendments to a Client's governing documents) or that are authorized by the Client's governing documents or approved by a majority in interest of the Client's investors; (xii) borrowings and interest expenses on borrowings and all expenses incurred in negotiating, entering into, effecting, maintaining, varying and terminating any borrowing or guarantee incurred by the Client (including, without limitation, any promissory note which may be issued to an investor in the Client); (xiii) insurance premiums or similar expenses incurred by and/or providing coverage to the Client, the Adviser or the Adviser's employees in connection with the activities and management of the Client (including, without limitation, key man insurance and fidelity insurance) and

other insurance of which the Adviser and its affiliates are beneficiaries; (xiv) any of the foregoing types of expenses incurred in connection with the organization, administration, operation and activities of applicable feeder funds or parallel or alternative fund vehicles; and (xv) expenses incurred by any applicable sub-advisor or its affiliates, including any such expenses incurred in connection with the administration, operation and activities of a feeder fund controlled by such sub-advisor or an affiliate thereof.

Depending on the terms of each Client's Advisory Agreements and governing documents, some of the Client's expenses that would otherwise be payable by the Adviser may be reduced through the use of "soft" or commission dollars to the extent the Adviser decides to engage in "soft dollar" transactions in the future, as discussed in Item 12 below.

Client assets may be invested in pooled investment vehicles. In these cases, Clients will bear their pro rata share of the underlying fund's operating and other expenses including, in addition to those listed above: sales expenses; legal expenses; internal and external accounting, audit and tax preparation expenses; and organizational or winding-up expenses. Client assets may be invested in money market mutual funds, exchange-traded funds, or other registered investment companies. In these cases, the Client will bear its pro rata share of the investment management fee and other fees of such funds, which are in addition to the investment management fee paid to the Adviser. Client assets may be invested in a master-feeder structure. Feeder funds bear a pro rata share of the expenses associated with the related master funds. In addition, Clients will incur brokerage and other transaction costs. Please refer to Item 12 of this *brochure* for a discussion of the Adviser's brokerage practices.

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

The Adviser and its investment personnel provide investment management services to multiple portfolios for multiple Clients. The Adviser and certain of its personnel are entitled to receive Carried Interest (as defined below) and other forms of performance-based compensation from certain of the Clients.

Examples of performance-based compensation include, but are not necessarily limited to:

- a performance allocation where the allocation is calculated as a percentage of a Client's profits, taking into consideration both realized and unrealized profits (sometimes referred to as an incentive allocation or carried interest);
- a performance fee where the Adviser receives a fee calculated as a percentage of the net profits of each capital account in a Fund, generally subject to high water mark or loss carryforward limitations;
- a high water mark where the Adviser receives a performance allocation only on profits of a Client in excess of certain levels; and
- hurdle rates where the Adviser does not charge a performance allocation until the Client's performance over certain periods of time exceed certain benchmark rates or fixed percentages.

With respect to certain Clients, a portion of the profits of each such Client is distributed to its general partner, if any, as "carried interest," and/or a performance-based fee calculated as a percentage of the net profits of each capital account in such a Client is paid to the Adviser (together, the "Carried Interest"). This compensation may be distributed to the Adviser, to a *related person* of the Adviser, or to certain of the Adviser's strategic partners. Under certain circumstances, receipt of such Carried Interest may be

subject to a hurdle rate, as described above. Carried Interest and hurdle rates are negotiated on an account-by-account basis.

Carried Interest paid by a Client is indirectly borne by investors in such Client. Certain Clients and investors in such Clients may incur lower or no Carried Interest. The payment by some, but not all, Clients of Carried Interest or the payment of Carried Interest at varying rates (including varying effective rates based on the past performance of a Client) may create an incentive for the Adviser to disproportionately allocate time, services or functions to Clients paying Carried Interest or Clients paying Carried Interest at a higher rate, or allocate investment opportunities to such Clients. The Adviser has adopted and implemented policies and procedures intended to address conflicts of interest relating to the management of multiple accounts, including accounts with multiple fee arrangements, and the allocation of investment opportunities. The Adviser reviews investment decisions for the purpose of ensuring that all accounts with substantially similar investment objectives are treated equitably. Please also see Item 11 below regarding allocation for additional information relating to how conflicts of interests are generally addressed by the Adviser.

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

The Adviser's Clients generally consist of individuals, banks and thrift institutions, private funds, pension and profit sharing plans, trusts, estates, charitable organizations, endowments, corporations, insurance companies and other business entities.

Set forth below are the minimum account requirements for the Adviser's accounts:

### **Pooled Investment Vehicles**

Investors that are *United States persons* must be "accredited investors" under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), "qualified purchasers" under the Investment Company Act of 1940, as amended (the "Investment Company Act"), and "qualified clients" eligible to be charged performance fees under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). The minimum investment required by an investor varies depending on the Fund and in each case is subject to waiver by the Adviser. Investors should review the offering memorandum and the applicable governing documents for each relevant private fund for further information with respect to minimum requirements for investment.

### **Specific Vehicles**

The Adviser may create specific tailored vehicles on a case-by-case basis, such as the Specific Vehicles. These customized vehicles are designed to meet the specific risk and return goals, liquidity restraints, factor sensitivity targets and other requirements of the applicable investors.

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

### Methods of Analysis & Investment Strategies

The Adviser is focused primarily on investments in the healthcare and life sciences sector (the “Targeted Sector”). The methods of analysis are all fundamental in nature and are based on a variety of factors including, among others: market opportunity, downside risk, quality of management, collateral value, entry valuation, regulatory risk, clinical data, competition / market dynamic, intellectual property, and exit prospects.

The Adviser frequently engages outside consultants or experts to assist in the evaluation of any opportunity including: reimbursement consultants, intellectual property attorneys, regulatory consultants and other scientific or medical experts.

The Adviser most typically employs a fundamental buy and hold strategy. Frequently, investments made by the Clients at the Adviser’s recommendation will generate meaningful current income as part of the investment structure.

The Adviser’s approach to analysis is typically private equity-like in nature and includes: sourcing, due diligence, structuring and negotiating transactions, and actively monitoring portfolio investments.

The Adviser occasionally will engage in hedging transactions designed to reduce interest rate risk or foreign currency risk or to otherwise reduce risk in certain investments.

The Adviser’s investment program often utilizes leverage which involves the borrowing of funds from brokerage firms, banks and other institutions in order to be able to increase the amount of capital available for investments or to facilitate the acquisition and disposal of investments (e.g. line of credit, bridge loans, etc.).

### Risk of Loss

Potential investors should be aware that investing in securities involves a significant degree of risk and, therefore, should be undertaken only by investors capable of evaluating the risks and bearing the risks of such investment, including the risk of a complete loss of their investments. Prospective investors should carefully consider the following discussion, which enumerates certain material risk factors with respect to the Clients. **For more information on the particular risk factors which may apply to an investment in each Client, please carefully review the offering memorandum and governing documents of the applicable Client.**

The risks set out below are not the only risks the Clients face. Additional risks and uncertainties may also impair the Clients’ operations and performance. If any of the following events occur, the Clients’ business, financial condition, results of operations and prospects could be materially adversely affected. In such case, performance could decline, such Client’s ability to achieve its investment objective could be negatively impacted and investors may lose all or part of their investment.



## **General Risks of Investing in the Clients**

### ***Suitability of Investing in the Clients; No Assurance of Investment Returns***

Investing in securities involves a substantial degree of risk. An investment in the Clients is not suitable for all investors. An investment is suitable only for sophisticated investors and an investor must have the financial ability to understand and the willingness to accept the extent of its exposure to the risks and lack of liquidity inherent in an investment in the Clients. Investors with any doubts as to the suitability of an investment in the Clients should consult their professional advisors to assist them in making their own legal, tax, accounting and financial evaluation of the merits and risks of investment in the Clients in light of their own circumstances and financial condition. There can be no assurance that the Clients will be able to implement their investment strategy and investment approach or achieve their investment objectives or that an investor will receive a return of its capital. There can be no assurance of liquidity and no assurance that the Clients will be able to make distributions or other payments or generate returns for its investors or that the returns will be commensurate with the risks of making the types of investments described herein. An investment in the Clients should only be considered by persons who can afford a loss of their entire investment.

### ***Lack of Liquidity for the Interests; Lack of Withdrawal Rights***

Interests in the Clients (the “Interests”) have not been, and are not contemplated to be, registered under the 1933 Act, any state securities laws or the securities laws of any other jurisdiction, and may not be transferred unless registered under applicable federal, state and/or other securities laws or unless an exemption from registration under such laws is available. No public market exists for the Interests and none is expected to develop. Accordingly, it may be difficult to obtain reliable information about the value of the Interests. An investor will not generally be permitted to assign or transfer its Interests without the prior written consent of the Adviser, which may be given or withheld in the Adviser’s sole and absolute discretion. Voluntary withdrawals from certain Clients will not be permitted except under the very limited circumstances set forth in the applicable Clients’ governing documents. Consequently, with respect to such Clients, investors will likely not be able to liquidate their investments prior to the end of the applicable Client’s term and, therefore, must be prepared to bear the risks of owning Interests and contributing capital for an extended period of time. An investment in the Clients is appropriate for sophisticated investors only.

### ***Confidential Information***

The Adviser may, as adviser to a particular Client as holder of loans, or through its management of other Clients, be entitled to receive material, non-public information regarding borrowers that may limit the ability of another Client, under applicable securities laws or contracts, to trade in the public securities of such borrowers. To avoid some of these restrictions, the Adviser may elect not to receive such non-public information. As a result, the Clients, at times, may receive less information regarding such a borrower than is available to the other investors in such borrower’s loans. Receipt of such information or conflicts of interest related to the management of such other Clients may from time to time limit each Client’s ability to invest in attractive investment opportunities or dispose of investments when it may otherwise desire to do so.

### ***In-Kind Distributions***

Investors should be aware that dispositions may also take the form of in-kind distributions to the investors. When such investments are distributed to the investors, such investors will generally be unable to protect their interests as effectively as the Client. In certain circumstances provided for in certain

Clients' governing documents, securities or other assets of the Client may be distributed that are not marketable or are otherwise illiquid. Investors may incur costs and expenses associated with disposing of such investments, which would reduce the cash such investor would ultimately receive. Investments distributed in-kind will likely not be readily marketable or saleable and may, as a result, have to be held by investors for an indefinite period of time. The risk of loss and delay in liquidating securities or other assets distributed in-kind will be borne by the investors in the Clients, with the result that such investors may receive less cash than was reflected in the fair value of such securities as determined by the general partner of the Client pursuant to the Client's governing documents.

### ***Phantom Income***

Each investor in a Fund vehicle that is subject to U.S. federal income tax will be, and other investors subject to tax in other jurisdictions may be, required to take into account its distributive share of all items of partnership income, gain, loss, deduction and credit, whether or not there are any distributions. In part because of the nature of the Clients' investment activities (e.g., the Clients may receive paid-in-kind interest or acquire obligations issued with original issue discount, and the Clients may also reinvest certain proceeds), the Clients may generate taxable income in excess of cash distributions to investors and no assurance can be given that the Clients will make cash distributions to cover such tax liabilities as they arise. Accordingly, each investor should ensure that it has sufficient cash flow from other sources to pay all tax liabilities resulting from such investor's ownership of Interests in the Clients.

### ***U.S. Dollar Denomination of Interests***

Interests in the Clients are typically denominated in U.S. dollars. Investors subscribing for Interests in any country in which U.S. dollars are not the local currency should note that changes in the value of exchange between U.S. dollars and such currency may have an adverse effect on the value, price or income of such investors' investments. In addition, there may be foreign exchange regulations applicable to investments in foreign currencies in certain jurisdictions where Interests in the Clients are offered. Each prospective investor should consult with his or her own counsel and advisors as to all legal, tax, financial, regulatory and related matters concerning an investment in the Interests.

### ***Absence of Regulatory Oversight***

The Clients are not registered with the SEC as investment companies pursuant to the Investment Company Act, generally in reliance on an exception under Section 3(c) of the Investment Company Act. Accordingly, the Clients are not subject to the provisions of the Investment Company Act (which, among other things, require registered investment companies, in certain circumstances, to have boards of directors comprised of a majority of disinterested directors, require securities to be held in custody by a bank or broker in accordance with rules requiring the segregation of securities and regulate the relationship between the adviser and the investment company). The Adviser is not currently registered, but may in the future register with the Commodity Futures Trading Commission and the National Futures Association ("NFA") as a "commodity pool operator" or a "commodity trading advisor." The Adviser is registered as an investment adviser under the Advisers Act.

### ***Capital Call Facility Debt***

Certain Clients utilize indebtedness that is secured by commitments to such Clients. Such borrowings are generally secured by pledge or other collateralization of the obligations of the applicable Clients' investors to make capital contributions to such Clients. This will likely limit investors' ability to use their Interests in the Clients as collateral for other indebtedness. In addition, the inability of the Clients to repay borrowings under a credit facility secured by unpaid capital obligations could enable a lender to take

action against any investor to the extent of its then unpaid capital obligations in the applicable Client. Further, certain Clients' indebtedness, or certain derivatives transactions entered into by a Client, are structured in a way such that (i) certain parallel fund vehicles are jointly responsible on a cross-collateralized basis for the repayment of the indebtedness or any obligations related to such derivatives transactions, and (ii) the commitments of the investors in a particular parallel fund vehicle are pledged or otherwise collateralized to secure indebtedness obtained for the benefit of other parallel fund vehicles. Investors whose commitments have been pledged or otherwise collateralized may be called upon to fund their entire commitment to repay indebtedness, and the failure of other investors in any parallel fund vehicle to honor their commitments may result in a particular investor's payments exceeding its pro rata share of the indebtedness. In the case that the subscription facility lender requires repayment by a parallel fund vehicle of more than its pro rata share of indebtedness of the applicable Client, the other parallel fund vehicles may not have sufficient assets to appropriately reimburse the Client that made the repayment. Certain Clients provide guarantees in support of credit facilities used to acquire investments or fund expenses relating to investments, and there can be no assurance that such guarantees will not have adverse consequences for such Clients.

### ***Exculpation; Absence of Recourse***

Certain Clients' governing documents will include exculpation and indemnification provisions that will limit the circumstances under which the Adviser and others can be held liable to the Client. Additionally, certain service providers to the Client, the Adviser and their respective affiliates, including, without limitation, members of the Clients' investment committees, placement agents and finders, will likely be entitled to exculpation and indemnification (in certain cases on terms more favorable to them than those available to indemnitees generally). As a result, investors in such Clients will likely have a more limited right of action in certain cases than they would in the absence of such limitations.

### ***Indemnification / Contingent Liabilities and Disposition of Investments***

Certain of the Clients have an obligation pursuant to their governing documents to indemnify and hold harmless the Adviser and their affiliates and any of their respective managers, members, shareholders, partners, directors, officers, investment committee member, employees, agents, advisors or representatives, and will likely indemnify other persons (including service providers, distribution agents and placement agents), from and against liabilities arising in connection with the applicable Client. The Clients may also provide broad indemnities, representations, warranties and covenants in connection with the acquisition, management and disposition of investments or otherwise in connection with the Client's investment program. Such liabilities may be material and have an adverse effect on the returns to the investors. The indemnification obligations of such a Client would be payable from assets of the Client, including the unpaid commitments of the investors. In particular, in connection with the disposition of an investment, the Clients may be required to make representations about the business and financial affairs of such company typical of those made in connection with the sale of a business and may be responsible for the content of disclosure documents under applicable securities laws. Such Clients also will likely be required to indemnify the purchasers of such investment to the extent that any such representations are inaccurate or with respect to certain potential liabilities. These arrangements may result in the incurrence of contingent liabilities, which shall be borne by the applicable Clients. In that regard, investors may be required to return amounts distributed to them to satisfy Client obligations (including indemnity obligations) without regard to their commitments, subject to certain limitations set forth in the applicable Clients' governing documents.

### ***Cybersecurity Risk***

The Adviser, the Clients' 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 the Clients and their investors, despite the efforts of the Adviser and the Clients' 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 the Clients and their 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, the Clients' 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 the Clients' 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 the Clients, 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 the Clients invest, which could have material adverse consequences for such companies, and may cause the Clients' investments to lose value.

## **General Risks Relating to the Investment Program**

### ***Unspecified Investments***

Investors acquiring Interests in a Client must rely upon the ability of the Principals and the other members of each Client's investment team to identify and execute investments consistent with each Client's investment objective and policies. The Clients may be unable to find a sufficient number of attractive opportunities to meet their investment objectives. The availability of investment opportunities will depend upon general market conditions and, in part, upon conditions in the private equity markets that affect the number of investment opportunities generally available. Although the Adviser believes that significant opportunities exist, there can be no assurance that the Adviser will be able to source, identify, select and invest in a sufficient number of opportunities to permit each Client to invest all of its committed capital, to diversify its portfolio investments to the extent described in the applicable Client's offering memorandum or to meet its investment objective. Investors will not generally have an opportunity to evaluate for themselves the relevant economic, financial and other information regarding the portfolio investments to be made by the Clients and, accordingly, will be dependent upon the judgment and ability of the Principals to identify suitable investments.

### ***Highly Competitive Market for Investment Opportunities***

The activity of identifying, completing and realizing on attractive investments is a highly competitive one (and may become more competitive over time) and involves a high degree of uncertainty. Clients will be competing for investment opportunities with, among other entities, other private investment vehicles as well as institutional investors. There can be no assurance that the Principals and the other members of each Client's investment team will be able to source an adequate number of attractive investment opportunities or that it will be able to fully invest its committed capital. Moreover, the Adviser's beliefs regarding the availability of certain investment opportunities for the Clients are based in part on assumptions regarding the amount of private equity capital that will be invested over such time period, the amount of private debt and other financing that will be required for such investments, the Clients' ability

to participate in such investments and other market, economic and related assumptions, some or all of which may not materialize as expected.

### ***Limited Number of Investments***

Although the Clients will generally consider the benefits of diversification with respect to their portfolio investments, other than the restrictions described in certain Clients' offering memoranda and/or governing documents, the Clients are generally not subject to investment limitations or requirements and investors have no assurance regarding the number of investments in which the Clients will participate or the degree of diversification of the Clients' investments by issuer, security, geographic region or industry. Decisions regarding diversification will generally be made in the discretion of the Adviser. To the extent the Clients concentrate portfolio investments in a particular operating portfolio company, Product (as defined below), Service (as defined below), geographic region or area within the Targeted Sector, the portfolio investments will become more susceptible to fluctuations in value resulting from adverse economic or business conditions with respect thereto. As a consequence, the aggregate return of such Clients may be adversely affected by the unfavorable performance of one or a small number of portfolio investments or industries or unfavorable developments in one or a small number of geographic regions. In addition, certain of the Clients' investments may be made in a single Product or Service or in an operating portfolio company which invests in a single Product or Service. In either case, if an investment is made in a single Product or Service, the consequences of that Product's or Service's failure could negatively affect the performance of certain Clients.

### ***Investments Longer Than Term***

Although the Adviser expects that Clients' investments will be realized prior to the end of the applicable Client's term or be suitable for in-kind distribution at dissolution, Clients may have to sell, distribute or otherwise dispose of their investments at a disadvantageous time. As a result, the Clients may sell, distribute or otherwise dispose of their investments for a price which is less than the price that could have been obtained if the investments were held for a longer period of time. There can be no assurance that the winding up of a Client and the final distribution of its assets will be able to be executed expeditiously.

### ***Financial Market Fluctuations***

General fluctuations in the market prices of securities may affect the value of the investments held by the Clients. Instability in the securities markets may also increase the risks inherent in the Clients' investments.

### ***Illiquidity***

The lack of an established, liquid secondary market for a large portion of the Clients' investments may have an adverse effect on the value of the Clients' investments and on the Clients' ability to dispose of them. Certain Clients' investments include securities that have not been registered for sale to the public under the 1933 Act pursuant to an exemption from registration (including Section 4(a)(2) of, or Rule 144A under, the 1933 Act). Such restricted securities are generally only sold to institutional investors in private sales from the issuer or from an affiliate of the issuer. These securities are typically less liquid than securities registered for sale to the general public. Additionally, certain Clients' investments are subject to certain transfer restrictions that also contribute to illiquidity. Finally, Client assets that are typically traded in a liquid market may become illiquid if the applicable trading market tightens as a result of a significant macro-economic shock or for any other reason.

Therefore, no assurance can be given that, if a Client is determined to dispose of a particular investment held by such a Client, it could dispose of such investment at the prevailing market price or the current valuation of the Adviser. In addition, the Adviser or any applicable sub-advisor may, from time to time, possess material, non-public information about a borrower or issuer or a Client may be an affiliate of a borrower or an issuer. Such information or affiliation may limit the ability of the Clients to buy and sell investments when they would otherwise want to do so.

### ***Valuation***

The process for valuing securities for which reliable market quotations are not available is based on inherent uncertainties, and the resulting values may differ from values that would have been determined had a ready market existed for such securities, from values placed on such securities by other investors and from prices at which such securities may ultimately be sold. In some cases (generally with respect to less liquid securities for which reliable market quotations may not be available), the process of valuing securities may provide the Adviser with wide latitude as to specific valuations. There is no guarantee that an investment's valuation will represent the value that will be realized by a Client on the eventual disposition of the investment or that could, in fact, be realized upon an immediate disposition of the investment. In addition, there is no guarantee that the price at which a Client seeks to purchase securities or other assets via a cross trade with another parallel fund vehicle will represent the price at which an unaffiliated third party would sell such assets to the Client or that the price at which a Client seeks to sell securities to another parallel fund vehicle will represent the price at which an unaffiliated third party would purchase such assets from the Clients. See "*Transactions with Affiliates*" in Item 11 for more information. Third-party pricing information may at times not be readily available regarding certain of the Clients' assets or, if available, may not be considered reliable. In certain circumstances, the Adviser may, and certain Clients may require the Adviser to, solicit valuations from a third party valuation service.

### ***Hedging Policies/Risks***

Certain Clients, in some circumstances, directly or indirectly, employ hedging techniques in connection with their portfolio investments designed to reduce the risks of adverse movements in interest rates, securities prices, currency exchange and other factors (including risks associated with the use of derivative instruments). While such transactions are intended to reduce certain risks, such transactions themselves entail certain other risks. Thus, while such Clients may benefit from the use of these hedging mechanisms, unanticipated changes in interest rates, securities prices, currency exchange rates or other events relating to such hedging transactions may result in a poorer overall performance for such Clients than if they had not entered into such hedging transactions.

### ***Leverage***

Certain Clients are permitted to borrow money and guarantee obligations, subject to the limitations set forth in their applicable governing documents. The use of leverage has certain cash management and other advantages but it also exposes such Clients and their assets to certain risks, including risk of loss if such Clients default under a credit or loan facility. The extent to which the applicable Clients use leverage (directly or indirectly) will likely have important consequences to the investors in such Clients, including, but not limited to, the following: (i) greater fluctuations in the net assets of such Clients; (ii) use of cash flow for debt service, rather than for additional investments, distributions or other purposes; (iii) to the extent that Client revenues are required to meet principal payments, the partners may be allocated income (and therefore tax liability) in excess of cash available for distribution; and (iv) in certain circumstances such Clients may be required to sell instruments prematurely to service their debt obligations. There can also be no assurance that such Clients will have sufficient cash flow to meet their debt service obligations. As a result, these Clients' exposure to losses may be increased due to illiquidity of their investments

generally. In addition, leverage provided to such Clients will result in interest expense and other costs in connection with such borrowings, which could reduce net investor returns. Further, the assets of such Clients may be used to secure any credit facilities entered into by the Client, and the lender will likely have the right to look to the assets of the Client to support such facilities.

Certain Clients will likely make equity investments in highly leveraged companies, and while such investments offer the opportunity for capital appreciation, such investments also involve a high degree of risk. If a Client's portfolio companies involve high degrees of leverage, recessions, operating problems, and other general business and economic risks will likely have a more pronounced effect on the profitability or survival of such companies. Also, increased interest rates generally increase portfolio company interest expenses. In the event any such portfolio company cannot generate adequate cash flow to meet debt service, the applicable Client may suffer a partial or total loss of capital invested in the portfolio company. Certain Clients may also guaranty the obligations of their portfolio companies. In such a circumstance, if a portfolio company defaults on its obligations, the Client may be required to satisfy such obligation.

### ***Small and Middle Market Companies***

Certain Clients invest in the debt obligations or securities of small and middle market and/or less well-established companies. While these companies may have potential for rapid growth, they often involve higher risks. Small and middle market companies have more limited financial resources than larger companies and may be unable to meet their obligations under their debt securities and other obligations that such Clients hold, which may be accompanied by a deterioration in the value of any collateral and a reduction in the likelihood of such Clients realizing any guarantees they may have obtained in connection with their investments. These companies also typically have shorter operating histories, narrower product lines and smaller market shares than larger businesses, which tend to render them more vulnerable to competitors' actions and market conditions, as well as general economic downturns. Less publicly available information may be available about these companies and they may not be subject to the financial and other reporting requirements applicable to public companies. They are more likely to depend on the management talents and efforts of a small group of persons; therefore, the death, disability, resignation or termination of one or more of these persons could have a material adverse impact on the company and, in turn, on the relevant Clients. Small and middle market companies also tend to have less predictable operating results and may require substantial additional capital to support their operations, finance expansion or maintain their competitive position. They also tend to have difficulty accessing the capital markets to meet future capital needs, which may limit their ability to grow or to repay their outstanding indebtedness upon maturity.

### ***Adverse Consequences of Ownership of Controlling Interests in Portfolio Companies***

Clients have not previously, but the Adviser anticipates that certain Clients will, from time to time, own a controlling percentage of the common equity of portfolio companies. Because of their equity ownership, representation on the board of directors and/or contractual rights, such Clients may on occasion be thought to control, participate in the management of or influence the conduct of portfolio companies. This could expose the assets of such Clients to claims by a portfolio company, its other security holders, its creditors or governmental agencies.

### ***Reliance on Portfolio Company Management***

Although it is the intent of the Clients to invest in companies with strong and stable management, there can be no assurance that the existing management team of a portfolio company, or any new one, will be able to operate such company successfully. Furthermore, although the Adviser will monitor the

performance of each portfolio company, it will be primarily the responsibility of portfolio company management to operate the business on a day-to-day basis.

### ***Lack of Control in Minority Investments***

Clients' equity investments will frequently represent minority positions in portfolio companies, without power individually to exert significant control over such portfolio companies' boards of directors and management. In such cases, the Clients will rely significantly on the existing management and boards of directors of such companies, which may include representatives of other investors with whom the Client is not affiliated and whose interests or views may conflict with the interest of the Client.

### ***Risks Relating to Geography of Investments***

Certain Clients pursue certain investments located outside of the U.S., or based on sales of portfolio companies outside of the U.S. Investments in certain non-U.S. capital markets and securities involve risks and special considerations not typically associated with investing in the more developed and established U.S. capital markets and securities, including risks relating to: (i) currency exchange, including fluctuations in the rate of exchange between the U.S. dollar and foreign currencies; (ii) the absence of uniform accounting, auditing and financial reporting standards, practices and disclosure requirements and less government supervision and regulation; (iii) changes in tax treaties; (iv) certain economic and political risks, including potential exchange control regulations and restrictions on foreign investment and repatriation of capital, the risk of political, economic, or social instability, including war and the possibility of expropriation or confiscatory taxation; (v) the possible imposition of foreign taxes and tax-filing obligations on income and gains recognized with respect to such securities; and (vi) less developed corporate laws and laws with respect to creditor rights. To the extent such non-U.S. laws and regulations do not provide such Clients with equivalent rights and privileges necessary to promote and protect their interests in any such proceeding, such Clients' investments may be adversely affected. For example, bankruptcy law and process in a non-U.S. jurisdiction may differ substantially from that in the U.S., resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganization timing and the classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganization remains highly uncertain. While the Adviser intends, where appropriate, to manage the Clients in a manner that will minimize exposure to the foregoing risks, there can be no assurance that developments with respect to such risks and others will not adversely affect the assets of the Clients that are held in certain countries.

### ***Market Disruption and Geopolitical Risk***

Clients are 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 the Clients' 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 Clients' investments. At such times, Clients' exposure to a number of other risks described elsewhere in this *brochure* can increase.

### ***United Kingdom's Exit from European Union.***

A non-binding referendum took place in the United Kingdom on June 23, 2016 on whether the United Kingdom should remain in or leave the European Union ("EU"). The outcome of the referendum resulted in an overall vote to leave the EU, by 51.9% against 48.1%. In order to start the process to



leave the EU, the UK government will have to, inter alia, invoke Article 50 of the Treaty on European Union (“TEU”), which contains a procedure for withdrawal. The UK government is currently assessing the consequences of the referendum and the process by which Article 50 of the TEU may be triggered. There is debate as to whether or when Article 50 will be invoked and it will be necessary to monitor the progress of these deliberations and future negotiations with the EU.

The consequences of the referendum and any subsequent process to withdraw from the EU are uncertain, but may have a material adverse effect on the UK, European and global economies and currency and financial markets, the values of Clients’ investments and Clients’ ability to execute their investment strategies. Significant uncertainty remains in the market regarding the consequences, and the range and potential implications of possible political, regulatory, economic and market outcomes are difficult to predict.

### ***Currency Exchange Risk***

Investments or liabilities of certain Clients are denominated in currencies other than the U.S. dollar, and hence the value of such investments, or the amount of such liabilities, will depend in part on the relative strength of the U.S. dollar. Such Clients may be affected favorably or unfavorably by exchange control regulations or changes in the exchange rate between foreign currencies and the U.S. dollar. Changes in foreign currency exchange rates may also affect the value of dividends and interest earned, and the level of gains and losses realized on the sale of securities. The rates of exchange between the U.S. dollar and other currencies are affected by many factors, including forces of supply and demand in the foreign exchange markets. These rates are also affected by the international balance of payments and other economic and financial conditions, government intervention, speculation and other factors. The Clients are not generally obligated to engage in any currency hedging operations, and there can be no assurance as to the success of any hedging operations that a Client may implement.

### ***Credit Market Risks***

Conditions in the credit markets will likely have a significant impact on the business of certain Clients. The credit markets in the U.S. have experienced a variety of difficulties and changed economic conditions in recent years that have adversely affected the performance and market value of many securities and financial instruments. There can be no assurance that the Clients will not suffer material adverse effects from broad and rapid changes in market conditions in the future. Among other things, the level of investment opportunities may decline from the Adviser’s expectations. As a result, fewer investment opportunities may be available to the Clients, although if credit markets remain constrained, the Clients may have the opportunity to take larger positions in potential transactions. One possible consequence is that certain Clients may take longer than anticipated periods to invest capital, as a result of which, at least for some period of time, such Clients may be relatively concentrated in a limited number of investments. Consequently, during this period, the returns realized by investors may be substantially adversely affected by the unfavorable performance of a small number of these investments.

Furthermore, market conditions may unfavorably impact certain Clients’ ability to secure leverage on terms as favorable as more established borrowers in the market, or to obtain any leverage on commercially feasible terms. To the extent the Clients are able to secure financing for investments, increases in interest rates or in the risk spread demanded by financing sources would make the partial financing of investments with indebtedness more expensive and could limit the Clients’ ability to structure and consummate their investments. Although the Adviser believes that the continued unfolding of the credit cycle will result in attractive investment opportunities, it may not be able to time the Clients’ investments correctly, which could result in further depreciation in values. Furthermore, market conditions could deteriorate further and the Clients may be limited in their ability to realize investments

already made by the Clients due to difficulties in buyers' ability to obtain financing on favorable terms, or to secure financing at all. For reasons not necessarily attributable to any of the risks set forth herein, the prices of the securities and other financial assets in which the Clients invest may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even lower levels at a time of valuation or at the time of sale.

### ***Third Party Litigation***

The Clients' investment activities subject them to the normal risks of becoming involved in litigation by third parties. This risk is somewhat greater where the Clients exercise control or significant influence over a portfolio company's direction. The expense of defending against claims by third parties and paying any amounts pursuant to settlements or judgments would generally be borne by the applicable Clients and would reduce net assets of such Clients.

### ***Taxation in Portfolio Company Jurisdictions***

If a Client makes investments in a jurisdiction outside the United States, such a Client and/or such Client's investors may be subject to income or other tax in that jurisdiction, as well as tax filing obligations. Additionally, withholding taxes or branch taxes may be imposed on earnings of such a Client and/or investors from investments in such jurisdiction. Local tax incurred in such a jurisdiction by the Clients or vehicles through which they invest may not entitle investors to either (i) a credit against tax that may be owed in their respective home tax jurisdictions or (ii) a deduction against income taxable in such home jurisdictions by the investors. Taxes paid or withheld by the Clients allocable to an investor will typically be deemed to have been distributed to such investor. In certain situations, the Clients may hold investments through entities organized outside the U.S. that are treated as corporations for U.S. federal income tax purposes. Investors may be subject to special rules applicable to "controlled foreign corporations" or "passive foreign investment companies" with respect to investments made through such entities.

### ***Legal, Tax and Regulatory Consequences***

Legal, tax and regulatory changes could occur during the term of a Client that adversely affect the Client, its investments, or its investors. These risks and others will likely be more pronounced in certain less developed countries or regions in which the Clients invest.

### ***Future Changes in Applicable Law***

Each Client's ability to implement its investment program, as well as the ability of the Clients to conduct their operations and objectives, is based on laws and regulations which are subject to change through legislative, judicial or administrative action. Future legislative, judicial or administrative action could adversely affect a Client's ability to implement its investment program, as well as the ability of the Clients to conduct their operations and achieve their investment objectives. The regulatory environment for private investment funds and their investment advisers as well as investors in such private funds is evolving, and changes in the regulation of private investment funds or their investment advisers may adversely affect the value of investments held by the Clients and the ability of the Clients to obtain the leverage they might otherwise obtain or to pursue their trading strategies. In addition, the securities and futures markets are subject to comprehensive statutes, regulations and margin requirements. The SEC, other regulators and self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies. 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. The outcome of the U.S. Presidential election has also increased uncertainty regarding

future political, legislative or administrative changes that may impact the Clients or their investors and the Clients' portfolio companies. Significant uncertainty remains in the market regarding the consequences of the election, and the range and potential implications of possible political, regulatory, economic and market outcomes are difficult to predict. Uncertainty regarding the consequences of the election may have an adverse effect or may cause volatility in the U.S. or global economies and currency and financial markets in the short or long term, as well as the values of the Clients' investments and the Clients' ability to execute their investment strategies or the financial prospects of their portfolio companies. Such changes could impact the laws and regulations applicable to the Adviser, the Clients, or their portfolio companies. While certain of such changes could beneficially impact the Clients or certain of their portfolio companies, other changes may more beneficially impact competitors of the Clients or their portfolio companies, or could adversely impact the Client, the Clients' portfolio companies, or investors in the Clients. The effect of any future regulatory change on the Clients could be adverse.

### **Risks Relating to the Targeted Sector**

The ability of the Clients to generate returns for investors will generally depend in part on the success of the pharmaceutical, biotechnology, specialty and generic pharmaceuticals, medical devices and products, laboratory and diagnostics products (the "Products") and healthcare and life science focused services, leasing, equipment and information technology companies (the "Services") related to the Clients' investments in the portfolio companies. To the extent any such risks described below adversely affect sales of the portfolio companies, potential returns for investors will, in turn, be adversely affected.

#### ***Sales Risk***

Sales from the portfolio companies may be lower than their historical levels or lower than the amounts projected due to pricing pressures, insufficient demand, product competition, lack of market acceptance, obsolescence, safety or efficacy issues, restrictions on distribution imposed or requested by regulatory authorities, narrowing of the approved indication(s) for use, addition of a boxed warning or other warning or precaution to the labeling, manufacturing shortages, loss of patent protection or other factors. The portfolio companies may be adversely affected by decreased sales.

#### ***Withdrawal from Market Risk***

After its regulatory approval and introduction into the market, a Product may still be subject to withdrawal from the market at the request or direction of the U.S. Food and Drug Administration ("FDA") or a non-U.S. regulatory body. The manufacturer or marketer of a Product may voluntarily withdraw the Product from the market for medical, technical, regulatory, commercial or other reasons. There can be no assurance that a Product in which any Client has an interest will not be withdrawn or that any such withdrawal will not have an adverse effect on a portfolio company.

#### ***Product and Service Competition***

The Targeted Sector is highly competitive and rapidly evolving. Each portfolio company is subject to competition from alternative products, procedures or services that are now available, or that may be developed or become available in the future. Portfolio companies and their Products face competition from (i) products currently on the market that are approved for other indications, but may be subsequently approved for the same indications as those of the Products, (ii) off-label use of products approved for other indications, (iii) the introduction of new products or procedures, and/or (iv) improvements to existing products. Any of these changes may cause a Product to become more expensive than its competitors or less relevant as a therapeutic alternative, thereby decreasing the value of (and in some instances, rendering worthless) the expected revenue stream on that Product. In addition, a change of law

could permit importation into the countries for which certain Clients or their portfolio companies are entitled to royalties for Product sales (the “Protected Countries”) of Products for which such Clients or their portfolio companies may not be entitled to royalties, which could reduce the sales of royalty bearing Products or otherwise have an adverse effect on a portfolio company that has invested in the development of such Product.

Licensees of the Products (“Licensees”) are generally responsible for the development, production, marketing and sale of the Products. The sale of the Products and the Licensees’ ability to maintain their competitive positions are related to the success of the Licensees’ respective marketing efforts. These efforts rely, in part, on the strength and reputation of a Product’s brand name, the capabilities of the Licensee’s sales force, and underlying trademarks, trade names and related intellectual property. A Licensee’s activities both in marketing the Products and in protecting its intellectual property are outside the control of the Clients. A Licensee’s failure either to market the Products actively or to diligently protect its intellectual property rights could reduce its competitive position or have an adverse effect on a Client’s investment in any portfolio company that enters into an agreement with such Licensee.

### ***Competitor Designation***

Certain Clients enter into arrangements whereby they take on some of the risk of the potential success or failure of the products in which they invest and arrangements whereby they invest directly in biopharmaceutical companies and products. These investments may limit such a Client’s ability to invest in other products or companies in the same industries or industry segments because companies may believe that, through its investment in competing products or companies, such a Client is in competition with them. This could prevent such a Client from making investments in companies or products that it views as attractive investment opportunities.

### ***Customer Cost Containment***

Portfolio companies may sell their Products through Group Purchasing Organizations (“GPO”) and/or Independent Distributor Networks (“IDN”) that use their leverage in order to negotiate provider-favorable pricing for their healthcare provider members. Portfolio companies may be unable to compete with discounts offered to GPOs and IDNs by market segment competitors. Increasing consolidation and purchasing coordination in certain provider segments, including lab and diagnostic services, urgent care, inpatient care, and certain specialty practices may erode portfolio companies’ negotiating position in direct customer sales. In addition, both federal and state governmental authorities in the U.S. continue to propose and pass new legislation affecting coverage and reimbursement policies, which are designed to contain or reduce the cost of healthcare. There may be future changes that result in reductions in current coverage and reimbursement levels for current and future Products and Services, and the Adviser is not able to predict the scope of any future changes or the impact that those changes would have on any portfolio company. Any of these changes could negatively affect the future revenues and potential profitability of a portfolio company.

### ***Independent Licensees***

Certain Clients receive royalties paid by the Licensees or, in the case of bonds or other securities collateralized by royalties, payments supported by royalties paid by the Licensees. These Licensees are not owned by or affiliated with the Clients and some of these Licensees may have interests that are different from the Clients’ interests. These Licensees may be motivated to maximize income by allocating resources to other products and, in the future, may decide to focus less attention on the Products. There can be no assurance that each of these parties has adequate resources and motivation to continue to produce, market and sell the Products. Aside from any limited audit rights relating to the

activities of the Licensees that the Clients may have in certain circumstances, the Clients do not generally have oversight rights with respect to the Licensees' operations. The Clients also generally have limited information on the Licensees' operations. While the Clients may be able to receive certain information relating to sales of Products through the exercise of audit rights and review of royalty reports, if available, the Clients will not generally have the right to review or receive other important information relating to Products, including the results of any studies conducted by the Licensees or others, or complaints from doctors or users of the Products, that the Licensees may have. The market performance of the Products, therefore, may be diminished by any number of factors relating to the Licensees that are beyond the Clients' control.

In addition, royalty payments are typically determined by the Licensees based on their reported sales. Each Licensee's calculation of the royalty payments is subject to and dependent upon the adequacy and accuracy of its sales and accounting functions, and errors may occur from time to time in the calculations made by a Licensee. While certain Clients have certain audit rights with respect to the calculations and sales data for the associated royalty payments, such audit rights are generally limited. In addition, such audits may occur many months following the applicable Client's recognition of the royalty revenue, may require the Client to adjust its royalty revenues in later periods and may require expense on the part of the Client.

### ***Risk Associated with Generic Substitutes***

Competitors of a portfolio company may develop technologies or products, which are, or in the future may be, the basis for products that will directly compete with a portfolio company or reduce the market for a Product, including the development and marketing of generic substitutes for products that generate substantial portions of a portfolio company's revenue. Portfolio companies may face competition from fully integrated and more established companies. Although the Products may be based upon patents and/or patent applications with exclusive rights and may have other types of exclusivity under relevant laws, a regulatory authority may, upon expiration of such exclusivities, authorize marketing by a third party for a generic substitute for a Product, in which case the Product would become subject to competition from such generic substitute. Generic substitutes are typically sold at significantly lower prices than branded products. Governmental and other pressures to reduce pharmaceutical costs, including from third-party payers such as health maintenance organizations and health insurers, could influence physicians or pharmacies to increasingly use generic substitutes for the Products. An early or unexpected termination of exclusivity rights by courts, could lead to the early entry of generic competitors. These factors may materially adversely affect the investments held by the Clients.

### ***Risks to Portfolio Companies that Develop Generic Substitutes***

Certain Clients also invest in portfolio companies that derive a substantial portion of their revenue from the development or sale of generic products. Generic pharmaceutical products face intense competition from brand-name companies that sell or license their own generic products or seek to delay the introduction of generic products. Brand-name pharmaceutical companies have taken aggressive steps to thwart competition from generic companies. In particular, brand-name companies continue to sell or license their products directly or through licensing arrangements or strategic alliances with generic pharmaceutical companies (so-called "authorized generics"). No significant regulatory approvals are required for a brand-name company to sell directly or through a third party to the generic market. Brand-name companies do not face any other significant barriers to entry into such market. In addition, such companies continually seek new ways to delay generic introduction and decrease the impact of generic competition, such as (i) filing new patent applications on drugs whose original patent protection is about to expire; (ii) filing an increasing number of patent applications that are more complex and costly to challenge; (iii) filing suits for patent infringement that automatically delay FDA approval; (iv) filing

citizens' petitions with the FDA contesting approval of the generic version of the product due to alleged health and safety issues; (v) developing controlled-release or other "next-generation" products, which often reduces demand for the generic version of the existing product for which portfolio companies may be seeking approval; and (vi) developing and marketing as over-the-counter products those branded products which are about to face generic competition. Such actions may adversely affect the Clients' investments. In addition, the revenues and profits from generic pharmaceutical products decline as competitors introduce their own generic equivalents. A portfolio company's ability to sustain sales and profitability on any product over time is dependent on both the number of new competitors for such product and the timing of such competitors' regulatory approvals.

### ***Potential Product Liability Claims***

Portfolio companies and/or the manufacturers, developers or marketers of the Products could become subject to product liability claims. A successful product liability claim could adversely affect the amount of revenue generated by the Clients. Although the Adviser believes neither it nor the Clients will bear responsibility in the event of a product liability claim against portfolio companies and/or the companies manufacturing, marketing and/or selling the underlying Products, there can be no assurance that such claims would not materially and adversely affect the Clients.

### ***Effect of Patient Protection and Affordable Care Act***

The Patient Protection and Affordable Care Act (as amended by the Health Care and Education Affordability Reconciliation Act and otherwise, the "ACA") may substantially change the way healthcare is financed by both governmental and private payors. The ACA provides for changes to extend medical benefits to those who currently lack insurance coverage, encourages improvements in the quality of healthcare items and services, and significantly impacts the U.S. medical industry in a number of ways. By extending coverage to a larger population, the ACA may substantially change the structure of the health insurance system and the methodology for reimbursing medical services, drugs and devices. These structural changes could entail modifications to the existing system of private payors and government programs, such as Medicare, Medicaid and State Children's Health Insurance Program, as well as the creation of a government-sponsored healthcare insurance source, or some combination of both. Such restructuring of the coverage of medical care in the U.S. could impact the extent of reimbursement for medical devices and services. The ACA also imposes an excise tax of 2.3% on the sale price of certain medical devices. Portfolio companies that manufacture or import Products subject to the excise tax must report and pay applicable excise taxes on a quarterly basis.

Initiatives to repeal the ACA, in whole or in part, to delay elements of implementation or funding, and to offer amendments or supplements to modify its provisions have been persistent and may increase as a result of the 2016 U.S. Presidential election. The ultimate outcomes of legislative attempts to repeal or amend the ACA and legal challenges to the ACA are unknown. Results of recent U.S. congressional elections and the change of U.S. Presidential administrations beginning in 2017 could create a political environment in which substantial portions of the ACA are repealed or revised. Specifically, President Donald Trump's 100 Day Action Plan calls for full repeal of the ACA and its replacement with health savings accounts, cross-states sales of health insurance, and modifications to state-managed Medicaid programs. Nevertheless, prospects for rapid enactment of radical change in the health care regulatory landscape are not clear, and President Trump has indicated that certain provisions of the ACA, such as provisions restraining the ability of insurers to deny or limit coverage based on pre-existing conditions or mandating that parents have the ability to extend insurance coverage to their children until they turn 26, should be preserved. On March 6, 2017, Republican leadership in the U.S. House of Representatives introduced legislation that would repeal substantial portions of the ACA, including the individual mandate. The legislation would eliminate health care exchanges and would replace means-tested

insurance premium subsidies with age-adjusted tax credits. The legislation would also limit federal funding available for the ACA's Medicaid expansion and transition federal Medicaid funding to a per-capita cap basis by 2020. It remains unclear what portions of the ACA may remain, or what any replacement or alternative programs may be created by any future legislation. Any such future repeal or replacement may have significant impact on the Clients or their portfolio companies. Accordingly, there can be no assurance that the adoption of any future federal or state healthcare reform legislation will not have a negative financial impact on the Clients.

### ***Intellectual Property Risks***

#### ***Patent and Other Intellectual Property Rights May Be Challenged and/or Otherwise Compromised***

The success of the Clients' investments will frequently depend, at least in part, on the existence of valid and enforceable claims of issued patents and/or claims in pending patent applications in the United States and elsewhere throughout the world, and/or possibly on other forms of registered and/or unregistered intellectual property rights. For instance, in the case of royalty investments, the Clients' rights to receive payments will depend on the sales of Products covered by such intellectual property rights. In the case of direct equity or credit investments in companies in the Targeted Sector, these companies' performance and consequently the success of the Clients' investments in these companies will similarly be dependent on these intellectual property rights. The patents, patent applications, and/or other intellectual property rights on which these royalty streams or other investments depend may be challenged, invalidated, rendered unenforceable or otherwise compromised. By way of example only, there can be no assurance that a third party will not assert ownership or other rights in or to any such patents, patent applications or other intellectual property, or that any patent applications on which royalty streams or other investments may depend will proceed to grant. Similarly, there can be no assurance that, in the context of a patent challenge or otherwise, evidence such as prior art references, will not be uncovered that could have an adverse effect on the scope, validity or enforceability of any of the patents or on the patentability of any of the patent applications on which the royalty streams or other investments depend. Any challenge or other compromise of the patents, patent applications or other intellectual property rights on which the royalty streams or other investments depend may adversely affect the performance of the Clients.

#### ***The Intellectual Property May be Infringed or Circumvented by Others***

There is a risk that third parties may use the patents, patent applications and/or other intellectual property rights on which the royalty streams and other investments depend without authorization from the licensor or in the case of royalty streams, without otherwise paying royalties to the licensor. There also is a risk that companies within the Targeted Sector may develop or otherwise obtain intellectual property that potentially could reduce any competitive advantage afforded by the patents, patent applications and/or other intellectual property on which the royalty streams or other investments depend. The undetected or unremedied use of these intellectual property rights by third parties, and/or the design-around or circumvention of these intellectual property rights, could adversely affect the payments that the Clients would receive.

#### ***Trade Secrets***

Certain Clients' rights to receive payments in relation to royalty streams or other investments depend, in part, on trade secrets, know-how and technology which are not protected by patents. This information is typically protected through confidentiality agreements with parties that have access to such information, such as collaborative partners, licensors, employees and consultants. Any of these parties may breach the agreements and disclose or use the confidential information, and third parties might learn of or use the information in some other lawful or unlawful way. Any such disclosure or use of the trade secrets, know-

how or technology, whether lawful or unlawful, may adversely affect the payments that the Clients would receive.

#### *Foreign Jurisdictions*

A significant portion of the royalty streams and other investments of certain Clients relates to income generated from the manufacture, use or sale of the Products outside of the United States. The patents, patent applications and/or other intellectual property rights on which the royalty streams or other investments depend may not extend in each jurisdiction in which such Products are made, used or sold, and thus it may not be possible to prevent competitors from exploiting competing products in such markets. In addition, foreign jurisdictions have differing procedures and/or standards for prosecuting and/or maintaining patents, and provide differing degrees of protection against the infringement or other unauthorized use of patents or other intellectual property. These variations among various international jurisdictions may affect the payments that the Clients would receive.

#### *The Clients Depend on Third Parties to Maintain, Enforce and Defend Patent Rights and Other Intellectual Property Rights on which the Clients' Rights to Receive Payments May Depend*

While the value of certain Clients' investments, including royalty streams may be highly dependent on the prosecution, maintenance, defense and/or enforcement of the patents, patent applications and other intellectual property rights, in most, if not all cases, such Clients have no ability to control these activities and must rely on the willingness and ability of the licensor or its designee to undertake these activities. It is anticipated that the licensor or its designee will be in the best position to prosecute, maintain, enforce and/or defend the underlying patent and other intellectual property rights and that the licensor or its designee will have the requisite business and financial motivation to do so. However, there can be no assurance that these third parties will seek to vigorously prosecute, maintain, enforce or defend such rights, or that their efforts to do so will be successful. Any failure to successfully prosecute, maintain, enforce or defend such rights could have a material adverse effect on the respective investment and on the Clients. Certain Clients may not have the ability to participate in patent or other proceedings brought by or against the licensor or its designee, and if they do, such Clients could incur substantial litigation costs.

#### *Changes in Intellectual Property Law*

Legislative, judicial and/or regulatory changes could occur during the term of a Client with respect to intellectual property matters that adversely affect its ability to derive income from the royalty streams and other investments.

#### *Infringement of Third Party Patents and Other Intellectual Property Rights*

The commercial success of the Products depends, in part, on avoiding infringement of the intellectual property rights of others. Third party issued patents or patent applications, trademarks, copyright, designs or other intellectual property rights claiming subject matter used to manufacture, market, sell and/or use the Products could exist. There can be no assurance that a license would be available for such subject matter if such infringement were to exist or, if offered, would be offered on reasonable and/or commercially feasible terms. Without such a license, it may be possible for third parties to assert infringement or other intellectual property claims against a Licensee based on such patents or other intellectual property rights. For instance, in the case of royalty streams, an adverse outcome in infringement proceedings could subject the Licensee to significant liabilities to third parties, require disputed rights to be licensed from third parties or require the Licensee to cease or modify its manufacturing, marketing, distribution, sale and/or use of the Products, thereby reducing the royalty streams.



### *Finite Terms and Other Contractual Matters*

Rights to receive payments in respect of royalty streams typically have limited terms that are generally not subject to extension. Following the termination or expiration of the licensed intellectual property rights, or the termination or expiration of the license or contractual right to receive payments under any agreement pursuant to which a Client has the right to receive payments, such Client may not receive any further revenue related to the relevant Product, even if the Product continues to be sold. There also is a risk that disputes may arise with respect to the license agreements pertaining to the patents, patent applications and/or other intellectual property rights on which the royalty streams depend that adversely affect certain Clients' rights or ability to collect payments.

### *Lack of Ownership*

With respect to certain types of investments, the issuer does not have any ownership or license rights to the intellectual property related to the royalty stream. If an event of default occurs and continues with respect to certain types of investments held by a Client, such Client and the other security holders will not have the right to receive the underlying intellectual property related to the relevant product. If the issuer defaults on its obligations, the recourse of such Client and other security holders may be limited.

### ***Regulatory Risks***

#### *Product Development Risks*

Certain Clients acquire interests in Products undergoing development or clinical trials that have not yet received marketing approval by any regulatory authority. Such Clients expect to focus on commercial-stage companies, although such Clients may invest a portion of their assets in early stage or venture stage companies, or special purpose vehicles or companies that finance such companies. There can be no assurance that the FDA, the European Medicines Agency (the "EMA"), Japan's Pharmaceuticals and Medical Devices Agency or other regulatory authorities will approve or clear such Products, or that such Products will be brought to market in a timely manner or at all, and such risks will likely be greater for early stage or venture stage companies. The research, development, preclinical and clinical trials, manufacturing, labeling, and marketing related to a life sciences company's products are subject to an extensive regulatory approval process by regulatory agencies. The process for obtaining required regulatory approvals, including the required preclinical and clinical testing, is very lengthy, costly, and uncertain. There can be no guarantee that, even after such time and expenditures, a company will be able to obtain the necessary regulatory approvals for clinical testing or for the manufacturing or marketing of any products or that the approved labeling will be sufficient for favorable marketing and promotional activities. If a company is unable to obtain these approvals in a timely fashion, or if after approval for marketing, a product is later shown to be ineffective or to have unacceptable side effects not discovered during testing, the company may experience significant adverse effects, which in turn could negatively affect the performance of the Clients.

#### *Manufacturing and Supply Risk*

Pharmaceutical products are manufactured in specialized facilities that, in major markets, require the approval of, and are subject to ongoing regulation by, regulatory agencies. For example, in the United States, Europe, and Japan (among other countries), drug product manufacturers must achieve and maintain compliance with current "Good Manufacturing Practices" set forth in national regulations and harmonized guidelines developed through the International Conference on Harmonization. To the extent these manufacturing standards are not met, manufacturing facilities may be closed or the production of applicable Products may be interrupted until such time as any deficiencies noted by such agencies are

remedied. Any such closure or interruption may interrupt, for an indefinite period of time, the manufacture and distribution of a Product.

In addition, manufacturers of such Products may rely on third parties for aspects of the manufacturing process, including packaging of the Products or supplying bulk raw material used in the manufacture of the Products. Licensees generally rely on a small number of key, highly specialized suppliers, manufacturers and packagers. Any interruptions, however minimal, in the operation of these facilities could have a material adverse effect on Product sales.

#### *Changes to International Tax Laws*

Several companies operating within the Targeted Sector have engaged in, or announced plans to consummate, so-called “inversion transactions,” which are transactions between a U.S. corporation and a non-U.S. corporation which result in a redomiciliation of the U.S. corporation in a foreign jurisdiction for tax purposes. In the past, U.S. legislative proposals have aimed to limit the attractiveness of such transactions by expanding the scope of U.S. corporate tax residence, limiting the ability of foreign-owned corporations to deduct interest expense and making other changes in the taxation of multinational corporations. Any such changes could have prospective or retroactive application, and may apply even if enacted after a transaction is consummated. Moreover, U.S. and non-U.S. tax authorities may carefully scrutinize companies that result from a cross-border business combination, which may lead such authorities to assert that such companies owe additional taxes. Any changes in tax laws or the enforcement or interpretation of existing laws and rules could have an adverse effect on the companies operating in the Targeted Sector and may adversely affect the value of the investments held by the Clients.

#### *Enforcement Risk*

Marketed medical products are subject to extensive post-marketing requirements, including laws and regulations related to advertising and promotion, safety surveillance and reporting, and price reporting. Failure to comply with these requirements could result in a range of enforcement actions that could have a material adverse effect on Product sales, including investigations, administrative penalties, judicial oversight, and potentially even market withdrawal.

Medical products reimbursed by government and third-party payors are subject to state and federal laws regarding fraud and abuse, including anti-kickback liability and liability under the U.S. federal civil False Claims Act. Violations of these laws can lead to substantial civil and criminal penalties, as well as potential exclusion from government contracting programs including Medicare, Medicaid, the Veteran’s Administration, TRICARE, CHAMPUS, and the Federal Employees’ Health Benefit Plan. Internal whistleblowers, competitors, and independent government investigations all constitute potential sources of such claims.

Portfolio companies that market and distribute their products internationally are increasingly at risk of foreign corrupt practices act (“FCPA”) liability in the United States, as well as related national and international bribery investigations. The FCPA prohibits payments to certain government officials in order to obtain or retain business. Internationally, health care providers that portfolio companies contract with or market products to may be considered government officials under the FCPA due to the prevalence of government-sponsored health care systems. Portfolio companies may face risk when selling and marketing products in certain countries and may be subject to criminal fines, penalties, and prosecution in the United States for practices that are routine, customary, and not prohibited by law in the country where the alleged FCPA violation occurred.

## *Uncertainty Related to Healthcare Reimbursement and Reform Measures*

In both the U.S. and foreign markets, sales of a life sciences company's products and its success depend in part on the availability of reimbursement from third-party payors, including government health administration authorities (such as Medicare or Medicaid in the United States), private health insurers, and other health management organizations. The revenues and profitability of life sciences companies may be affected by the continuing efforts of governmental and other payors to contain or reduce the costs of healthcare. Payors are increasingly challenging the prices charged for medical products and services that they reimburse. If the Products of the companies the Clients invest in are determined to not meet the criteria for coverage or reimbursement, these organizations may not reimburse the Products or may at lower levels. Significant uncertainty exists as to the reimbursement status of newly approved products. There can be no assurance that a company's proposed product will be considered cost-effective or that adequate third-party reimbursement will be available to enable a company to maintain price levels sufficient to realize an appropriate return on its investment in product development. Payors and pharmacy benefit managers may also exclude products entirely from reimbursement despite regulatory approval, leaving limited opportunities to recoup research and development costs.

In addition, changes in government legislation or regulation, changes in formulary or compendia listings, or changes in payors' policies may reduce or eliminate reimbursement of such products. Payor policies may require automatic substitution of Products with a generic equivalent, if such an equivalent is available. If reimbursement is reduced or is not available for a Product, sales would diminish and decrease cash flows available to satisfy royalty and other payment obligations, including payments on debt obligations thereby harming the Clients' revenue. In addition, macroeconomic factors may affect the ability of patients to pay for Products by, for example, diminishing the income patients have to pay out-of-pocket costs and/or obtain sufficient health insurance coverage.

## **Risks Relating to Certain Instruments and Techniques**

### ***General Debt Risks***

A significant portion of certain Clients' investments are expected to consist of debt investments. Debt instruments are subject to credit risk, interest rate risk, and pre-payment risk.

- "Credit risk" refers to the likelihood that an issuer will default in the payment of principal and/or interest on an instrument. Financial strength and solvency of an issuer are the primary factors influencing credit risk. In addition, lack or inadequacy of collateral or credit enhancement for a debt instrument may affect its credit risk. Credit risk may change over the life of an instrument, and debt obligations that are rated by rating agencies, are often reviewed and may be subject to downgrade.
- "Interest rate risk" refers to the risks associated with market changes in interest rates. Interest rate changes may affect the value of a debt instrument indirectly (especially in the case of fixed rate debt securities) and directly (especially in the case of debt instruments whose rates are adjustable). In general, rising interest rates will negatively impact the price of a fixed rate debt instrument and falling interest rates will have a positive effect on price. Adjustable rate instruments also react to interest rate changes in a similar manner although generally to a lesser degree (depending, however, on the characteristics of the reset terms, including the index chosen, frequency of reset and reset caps or floors, among other factors). Interest rate sensitivity is generally more pronounced and less predictable in instruments with uncertain payment or pre-payment schedules. In addition, interest rate increases generally will increase the interest carrying costs to the Clients of borrowed securities and leveraged investments.

- “Pre-payment risk” refers to the risk that a borrower could repay the principal on an obligation held by a Client earlier than expected. This may happen when there is a decline in interest rates, when the borrower’s improved credit or operating or financial performance allows the refinancing of certain classes of debt with lower cost debt. The yield of the Clients’ investments assets will likely be affected by the rate of pre-payments differing from the Adviser’s expectations. In addition, if the Clients are unable to reinvest the proceeds of such pre-payments received in investments expected to be as profitable, the proceeds generated by such Clients will decline as compared to the Adviser’s expectations.

### ***Credit Ratings***

The ratings that may be assigned by various credit rating agencies to loans or other debt instruments that may be acquired by certain Clients reflect only the views of those agencies. No assurance can be given that ratings assigned will not be withdrawn or revised downward if, in the view of such credit rating agency, circumstances so warrant and there is no guarantee that any ratings relied on by the Adviser will not be so withdrawn or revised.

### ***Second Lien, or Other Subordinated Loans or Debt***

Certain Clients acquire second liens or other subordinated loans. In the event of a loss of value of the underlying assets that collateralize the loans, the subordinate portions of the loans may suffer a loss prior to the more senior portions suffering a loss. If a borrower defaults and lacks sufficient assets to satisfy a Client’s loan, such Client may suffer a loss of principal or interest. If a borrower declares bankruptcy, the Clients may not have full recourse to the assets of the borrower, or the assets of the borrower may not be sufficient to satisfy the loan. In addition, certain of the Clients’ loans may be subordinate to other debt of the borrower. As a result, if a borrower defaults on such a Client’s loan or on debt senior to such Client’s loan, or in the event of the bankruptcy of a borrower, such Client’s loan will be satisfied only after all senior debt is paid in full. The Adviser’s ability to amend the terms of the Clients’ loans, assign the Clients’ loans, accept pre-payments, exercise the Clients’ remedies (through “standstill periods”) and control decisions made in bankruptcy proceedings relating to borrowers may be limited by intercreditor arrangements if debt senior to a Client’s loans exists.

### ***Senior Secured Loans***

When the Clients make a senior secured loan to a portfolio company, they generally will take a security interest in the available assets of the portfolio company, including the equity interests of its subsidiaries, which should help mitigate the risk that the Clients will not be repaid. However, there is a risk that the collateral securing such a Client’s loans may decrease in value over time, may be difficult to sell in a timely manner, may be difficult to appraise, and may fluctuate in value based upon the success of the business and market conditions, including as a result of the inability of the portfolio company to raise additional capital. In some circumstances, such a Client’s lien could be subordinated to claims of other creditors. In addition, deterioration in a portfolio company’s financial condition and prospects, including its inability to raise additional capital, may be accompanied by deterioration in the value of the collateral for the loan. Consequently, the fact that a loan is secured does not guarantee that the Clients will receive principal and interest payments according to the loan’s terms, or at all, or that the Clients will be able to collect on the loan should it be forced to enforce its remedies.

### ***Unsecured Loans or Debt***

Certain Clients invest in loans which are not secured by collateral. In the event of default on an unsecured loan, a lien holder may have a prior claim to the assets supporting the loan. In such a

circumstance, it is possible that no asset value would remain for an unsecured lender and therefore there could be a resulting loss to the Clients.

### ***Term Loans, Delayed Draw Loans, or Revolvers***

The Adviser expects that certain Clients will invest in a variety of different types of debt, including but not limited to term loans, delayed draw term loans, bridge loans, and revolving loans. A term loan is a loan that has a specified repayment schedule. A delayed draw loan is a loan that typically permits the borrower to withdraw predetermined portions of the total amount borrowed at certain times. A revolving credit facility differs from a delayed draw loan in that as the borrower repays the loan, an amount equal to the repayment may be borrowed again during the term of the revolving credit facility. Delayed draw loans and revolving credit facilities usually provide for floating or variable rates of interest. If a Client enters into a commitment with a borrower regarding a delayed draw loan or a revolver, the Client will be obligated on one or more dates in the future to lend the borrower monies (up to an aggregate stated amount) if called upon to do so by the borrower. These commitments may have the effect of requiring the Client to increase its investment in a borrower at a time when it might not otherwise decide to do so (including at a time when the company's financial condition makes it unlikely that such amounts will be repaid). Delayed draw loans and revolvers may be subject to restrictions on transfer, and only limited opportunities may exist to resell such instruments. As a result, a Client may be unable to sell such investments at an opportune time or may have to resell them at less than fair market value. In the event that a contractual obligation extends beyond a Client's investment period, the Client would be required to meet such contractual requirements and, if it were unable to do so, would be subject to contractual penalties under such loans. Such a Client's obligation to meet such contractual requirements, which may be met through draw downs of commitments, may extend beyond the Client's investment period.

### ***Convertible Securities***

Certain Clients invest in convertible securities, which are bonds, debentures, notes, preferred stocks or other securities that may be converted into or exchanged for a specified amount of common stock of the same or different issuer within a particular period of time at a specified price or formula. A convertible security entitles the holder to receive interest that is generally paid or accrued on debt or a dividend that is paid or accrued on preferred stock until the convertible security matures or is redeemed, converted or exchanged. Convertible securities have unique investment characteristics in that they generally (i) have higher yields than common stocks, but lower yields than comparable non-convertible securities, (ii) are less subject to fluctuation in value than the underlying common stock due to their fixed income characteristics and (iii) provide the potential for capital appreciation if the market price of the underlying common stock increases. A convertible security may be subject to redemption at the option of the issuer at a price established in the convertible security's governing instrument. If a convertible security held by a Client is called for redemption, such Client will be required to permit the issuer to redeem the security, convert it into the underlying common stock or sell it to a third-party. Any of these actions could have an adverse effect on the applicable Client's ability to achieve its investment objectives.

### ***Equity Securities***

Certain Clients acquire equity securities. Equity securities may include common and preferred stocks and warrants, rights and equivalents. As with other investments that the Clients may make, the value of equity securities held by the Clients may be adversely affected by actual or perceived negative events relating to the issuer of such securities, the industry or geographic areas in which such issuer operates or the financial markets generally. However, equity securities tend to be even more susceptible to such events given their subordinate position in the issuer's capital structure. As such, equity securities generally have greater price volatility than fixed income securities or debt instruments. Preferred

securities are subordinated to bonds and other debt securities in an issuer's capital structure in terms of priority for corporate income and liquidation payments and, therefore, will be subject to greater credit risk than those debt securities. Depending on the features of the particular security, holders of preferred stock may bear the risks disclosed herein regarding equity or fixed income securities.

### ***Warrants***

Certain Clients receive or purchase warrants or rights. Warrants and rights generally give the holder the right to receive, upon exercise, a security of the issuer at a stated price. Risks associated with the use of warrants and rights are generally similar to risks associated with the use of options. Unlike most options, however, warrants and rights are issued in specific amounts, and warrants generally have longer terms than options. Warrants and rights are not likely to be as liquid as exchange-traded options backed by a recognized clearing agency. In addition, the terms of warrants or rights may limit the Clients' ability to exercise the warrants or rights at such time, or in such quantities, as the Clients would otherwise wish.

### ***Structured Investments***

Certain Clients invest in structured products, securitizations and other asset-backed securities, including collateralized debt obligations, collateralized loan obligations and repackaged securities (collectively, "Structured Investments"). These may be fixed pools or may be "market value" or managed pools of collateral, including commercial loans, high yield and investment grade debt, structured securities and derivative instruments relating to debt. The pools are typically separated into tranches representing different degrees of credit quality, with lower rated tranches being subordinate to senior tranches.

Investments in structured products will be subject to a number of risks, including risks related to the fact that the structured products will often be leveraged, increasing their risk. See "*General Risks Relating to the Investment Program -- Leverage*" above. In addition, if the particular structured product is invested in a security in which the applicable Client is also invested, this would tend to increase such Client's overall exposure to the credit of the issuer of such securities.

Structured Investments are subject to the risks of the underlying assets. These risks include the possibility of a default by, or bankruptcy of, the issuers of such assets or a claim that the pledging of collateral to secure any such asset constituted a fraudulent conveyance or preferential transfer that can be subordinated to the rights of other creditors of the issuer of such asset or nullified under applicable law. The Clients will not generally own such assets directly and will therefore not typically benefit from general rights applicable to the holders of assets, such as the right to indemnity and the rights of setoff, or have voting rights with respect to such assets.

### ***High Yield Securities***

Certain Clients may make investments in "high yield" debt and preferred securities which are rated lower than investment grade by the various credit rating agencies (or in comparable non-rated securities). Securities that are rated lower than investment grade are subject to greater risk of loss of principal and interest than higher-rated securities and are generally considered to be predominantly speculative with respect to the issuer's capacity to pay interest and repay principal. They are also generally perceived to be subject to greater risk than securities with higher ratings in the case of deterioration of general economic conditions such that the yields and prices of such securities tend to fluctuate more than those for higher-rated securities. The market for lower-rated securities is thinner and less active than that for higher-rated securities, which can adversely affect the prices at which these securities can be sold.

Securities that are rated BB+ or lower by Standard & Poor's Ratings Group or Ba1 or lower by Moody's Investors Service are often referred to in the financial press as "junk bonds" and may include securities of

issuers in default. “Junk bonds” are considered by the rating agencies to be predominately speculative and tend to involve major risk exposures such as: (i) vulnerability to economic downturns and changes in interest rates; (ii) sensitivity to adverse economic changes and corporate developments; (iii) redemption or call provisions which may be exercised at inopportune times; and (iv) difficulty in accurately valuing or disposing of such securities.

### ***Inflation/Deflation Risk***

Inflation risk is the risk that the value of assets or income from Client’s investments will be worth less in the future as inflation decreases the value of payments at future dates. As inflation increases, the real value of the Client’s portfolio could decline and the interest payments on Client borrowings, if any, may increase. Deflation risk is the risk that prices throughout the economy decline over time. Deflation may have an adverse effect on the creditworthiness of issuers and may make issuer default more likely or materially impair the ability of distressed issuers to restructure, which may result in a decline in the value of certain Clients’ portfolios.

### ***Pooled Investment Vehicles and Pass-through Entities***

Certain Clients invest in or act through other pooled investment vehicles or pass through entities which are treated as partnerships for U.S. federal income tax purposes, including master limited partnerships and other registered and unregistered vehicles (“***Pooled Investment Vehicles***”), either directly or through derivatives contracts. To the extent a Client invests directly in Pooled Investment Vehicles, the Client must rely on such vehicles to deliver to it certain tax information that is necessary to complete the Client’s own tax returns. If this information is not delivered to the Client in a timely fashion, the Client will be delayed in providing tax information to its investors. To the extent the Client’s investment in a Pooled Investment Vehicle is via a derivatives instrument, such as a swap agreement, generally the Client’s counterparty assumes responsibility for any such tax reporting.

### ***Follow-On Investments***

Following its initial investment in a given Product or portfolio company, a Client may decide to provide additional funds to such Product or portfolio company. There is no assurance that a Client will make follow-on investments or have sufficient funds to make all or any of such investments. Any decision by a Client not to make follow-on investments or its inability to make such investments may have a substantial negative effect on a Product or company in need of such an investment or may result in a lost opportunity for the Client to increase its participation in a successful operation.

### ***Derivatives***

Derivatives are financial contracts whose value depends on, or is derived from, the value of an underlying asset, reference rate or index. Although the Clients generally will not invest directly in uncovered options, futures contracts or other derivatives (with the exception of convertible securities, as discussed above) other than to hedge currency or interest rate exposure or to hedge or otherwise protect or enhance an existing or prospective investment, certain Clients use derivatives (such as put and call options, swaps, futures contracts and options on futures contracts) for hedging purposes and/or to substantially replicate the benefits and risks of acquiring, holding or disposing of an otherwise permissible investment. Such Clients’ use of derivative instruments involves risks different from the risks associated with investing directly in securities and other traditional investments. Derivatives are subject to a number of risks described in this *brochure* such as interest rate risk, credit market risks, liquidity risk, credit risk, management risk and counterparty risk. They also involve the risk of mispricing or improper or

subjective valuation, the risk of ambiguous documentation and the risk that changes in the value of the derivative may not correlate perfectly with the underlying asset, rate or index. In addition, because many derivatives have a leverage component, adverse changes in the value or level of the underlying asset, reference rate or index can result in a loss substantially greater than the amount invested in the derivative itself.

#### *Derivatives Tax Risk*

A Client's use of derivatives may be subject to special tax rules and could generate additional taxable income for taxable investors.

#### *Management Risk*

Derivative products are specialized instruments that require investment techniques and risk analyses different from those associated with equity and fixed income securities. The use of a derivative requires an understanding not only of the underlying instrument but also of the derivative itself. In particular, the use and complexity of derivatives require the maintenance of adequate controls to monitor the transactions entered into and the ability to assess the risk that a derivative adds to a Client's portfolio.

#### *Counterparty Risk*

A Client is exposed to counterparty risk to the extent it uses "over-the-counter" derivatives, enters into repurchase agreements, lends its portfolio securities or allows a prime broker, if any, or an over-the-counter derivative counterparty to retain possession of collateral. If a counterparty fails to meet its contractual obligations, goes bankrupt, or otherwise experiences a business interruption, the Client could miss investment opportunities or otherwise hold investments it would prefer to sell, resulting in losses for the Client. Certain markets in which a Client may effect transactions are "over-the-counter" or "interdealer" markets, and may also include unregulated private markets. The lack of a common clearing facility creates counterparty risk. The participants in such markets typically are not subject to the same level of credit evaluation and regulatory oversight as are members of "exchange-based" markets. This exposes the investor to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not bona fide) or because of a credit or liquidity problem, thus causing the Client to suffer a loss. Such "counterparty risk" is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where the Client has concentrated its transactions with a single or small group of counterparties. The Client may also be exposed to similar risks with respect to non-U.S. brokers in jurisdictions where there are delayed settlement periods.

There can be no assurance that a counterparty will be able or willing to make timely settlement payments or otherwise meet its obligations. A Client typically may only close out over-the-counter transactions with the relevant counterparty, and may only transfer a position with the consent of the particular counterparty. When a counterparty's obligations are not fully secured by collateral, then the Client is essentially an unsecured creditor of the counterparty. If the counterparty defaults, the Client will have contractual remedies, but there is no assurance that a counterparty will be able to meet its obligations pursuant to such contracts or that, in the event of default, the Client will succeed in enforcing contractual remedies. Counterparty risk is still present even if a counterparty's obligations are secured by collateral because the Client's interest in collateral may not be perfected or additional collateral may not be promptly posted as required. To the extent the Client allows a counterparty to retain possession of any collateral, the Client may be treated as an unsecured creditor of such counterparty in the event of the counterparty's insolvency. Counterparty risk also may be more pronounced if a counterparty's obligations exceed the amount of collateral held by the Client (if any), the Client is unable to exercise its



interest in collateral upon default by the counterparty, or the termination value of the instrument varies significantly from marked-to-market value of the instrument.

A Client may also bear the risk of settlement default. For example, although the seller under a repurchase agreement will be required to maintain the value of the securities subject to the agreement in an amount exceeding the repurchase price, default by the seller would expose the Client, as buyer, to possible loss due to adverse market action or delay in connection with the disposal of the underlying obligations. Conversely, where the Client acts as seller under a repurchase agreement it is exposed to the risk of the buyer defaulting in its obligation to return the securities when it is required to do so, and the Client could realize a loss on the purchase of the underlying security to the extent that the purchase price of the underlying security is greater than the cash collateral posted by the buyer.

Securities purchased or sold on a “when-issued” or “delayed delivery” basis involve a risk of loss if the value of the securities to be purchased declines prior to the settlement date or if the value of the securities to be sold increases prior to a settlement date. Loans of securities also involve risks of delay in receiving additional collateral or in recovering the securities loaned, or possibly loss of rights in the collateral, should the borrower of the securities become insolvent.

A Client may invest in derivatives and/or execute a significant portion of its securities transactions through a limited number of counterparties, and events that affect the creditworthiness of any of those counterparties may have a pronounced effect on the Client. In addition, the creditworthiness of a counterparty may be adversely affected by larger than average volatility in the markets, even if the counterparty’s net market exposure is small relative to its capital. Clients are not restricted from dealing with any particular counterparty or from concentrating any or all transactions with one counterparty. The ability of a Client to transact business with any one of a number of counterparties, the lack of any meaningful and independent evaluation of such counterparties’ financial capabilities and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Client.

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. Certain risks associated with clearing are discussed below, however, the ultimate impact of these regulatory changes remains unclear, however, these new requirements could mean that the Client will face less creditworthy counterparties on certain derivatives transactions. Also, the new legislation may limit the flexibility of the 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.

#### *Cleared Derivative Transactions*

Certain derivatives transactions used by a Client including certain interest rate swaps and certain credit default index swaps, will be required to be cleared. In a cleared derivatives transaction, the Client’s counterparty to the transaction is a central derivatives clearing organization, or clearing house, rather than a bank or broker. Since the Client is not a member of a clearing house, and only members of a clearing house can participate directly in the clearing house, the Client will hold cleared derivatives transactions through accounts at clearing members, who are futures commission merchants who are members of the clearing houses. The Client will make and receive payments owed under cleared derivatives transactions (including margin payments) through its accounts at clearing members. The Client’s clearing members guarantee the Client’s performance of its obligations to the clearing house. In contrast to bilateral derivatives transactions, following a period of advance notice to the 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 the 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 the Client to pursue its investment strategy. Also, the 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 the Client's behalf. In that case, the transaction might have to be terminated, and the Client could lose some or all of the benefit of any increase in the value of the transaction after the time of the trade.

#### *Other Instruments and Future Developments*

A Client 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, the Client may take advantage of opportunities with respect to certain other "synthetic" or derivative instruments which are not presently contemplated for use by the Client or which are currently not available, but which may be developed to the extent such opportunities are both consistent with the Client's investment objective and legally permissible for the Client. Special risks may apply to the Client's investments in the future.

#### *Short Sales*

Certain Clients engage in short sales to hedge risk. 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, a Client would typically engage in short sales 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 the Client is required to return the borrowed security. The making of short sales exposes the 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 by a Client 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 applicable Client 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 applicable Client unable to execute its investment strategy.

The SEC has in the past 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 Clients 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. 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 the 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 the Client could decrease drastically. Such events could make a Client unable to execute its investment strategy. The SEC has adopted restrictions on the short sales of securities which fall more than 10 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 certain Clients’ investment strategies and cause losses to such Clients.

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 recent market events. Bans on short selling may make it impossible for Clients to execute certain investment strategies and may have a material adverse effect on the ability of certain Clients to achieve their investment objectives and generate returns.

### ***Originated Investments***

Certain Clients originate loans. In originating and purchasing loans, such Clients compete with a broad spectrum of lenders, some of which have greater financial resources than the applicable Clients. Increased competition for, or a diminishment in the available supply of, qualifying loans could result in lower yields on such loans, which could reduce returns to investors. The level of analytical sophistication, both financial and legal, necessary for successful loan origination activities is unusually high. There is no assurance that the Adviser will correctly evaluate the value of the assets collateralizing these loans or the prospects for successful repayment or a successful reorganization or similar action.

### ***Syndication***

Certain Clients may originate certain investments and later syndicate all or a portion of one or more investments to other affiliated fund vehicles or third parties. Prior to such syndication, or if such syndication is not successful, the Client’s exposure to the originated investment will likely exceed the exposure that the Client intends to have over the long-term or would have had if it had purchased such investment in the secondary market rather than originating it. See “*Transactions with Affiliates*” in Item 11 for more information. Syndication of such loans is also subject to valuation risks.

### ***Financially Troubled Companies***

Certain Clients invest in the obligations of companies that are financially troubled and that are either engaged in a reorganization or expect to file for bankruptcy. Investments in financially troubled companies involve significantly greater risk than investments in non-troubled companies, and the repayment of obligations of financially troubled companies is subject to significant uncertainties. Loans issued by companies in bankruptcy are also highly risky, as there are a number of significant rights throughout the bankruptcy process, which may result in losses to the Clients. Additionally, certain Clients invest in the securities of financially troubled companies that are non-U.S. issuers. Such non-U.S. issuers may be subject to bankruptcy and reorganization processes and proceedings that are not comparable to those in the United States and that may be less favorable to the rights of lenders.

### ***Public Debt***

In the event that a Client acquires fixed income securities and/or other instruments that are publicly traded, such Client will be subject to certain inherent risks. In some circumstances, such a Client may be unable to obtain financial covenants or other contractual rights, including management rights, that it might otherwise be able to obtain in making privately-negotiated debt investments. Moreover, such a Client may not have the same access to information in connection with investments in public instruments, either when investigating a potential investment or after making an investment, as compared to a privately-negotiated debt investment.

### ***Dependence on Payments***

Because the issuers of certain Client investments may be special purpose financing entities with no operations of their own, they may depend on payments from counterparties to meet the obligations under the investments. If the counterparties fail to make royalty payments, or if such payments are not made in a timely manner, the issuer will not generally have any other source of funds to meet its payment obligations.

### ***Risks of the Bankruptcy Process Affecting Client Investments***

There are a number of significant risks inherent in the bankruptcy process. If any portfolio company, issuer of instruments held by a Client, any counterparties to the instruments entered into by a Client, any custodians of a Client's assets, or any obligors in connection with the Fund's investments are involved in U.S. bankruptcy proceedings, the relevant Client will be subject to certain of those risks, including potential for reduced recovery on the relevant Client's investments, uncertain duration of bankruptcy proceedings, administrative costs and impact of a bankruptcy case on the value of assets administered in bankruptcy or on a company's value (including that a bankruptcy case may damage or diminish a company's relationship with its customers and/or suppliers). Many of the events within a bankruptcy case may be adversarial and are often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions in a bankruptcy case, a court may still approve actions which are contrary to the interests of creditors, potentially including the relevant Client.

Generally, the duration of a bankruptcy or insolvency case is difficult to predict. The reorganization of a company in bankruptcy usually involves the development and negotiation of a plan of reorganization, court approval to solicit creditor votes on that plan, plan approval by creditors and confirmation by the court. This process can involve substantial legal, professional and administrative costs to the company and the relevant Client; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganize and may be required to liquidate assets. In addition, the debt of companies in financial reorganization may, in some cases, not pay current interest, may not accrue interest during reorganization and may be adversely affected by an erosion of the issuer's fundamental value. Further, a debtor seeking to reorganize under U.S. federal bankruptcy law will frequently obtain a "first day" order from the bankruptcy court limiting trading in claims against, and shares of, the debtor in order to maximize the debtor's ability to utilize net operating losses following a successful reorganization.

During a bankruptcy case, an automatic stay will generally prevent all creditors from taking action against the debtor to collect on amounts owed to such creditors, unless the court lifts that automatic stay for a specified action or purpose. Unless a creditor's claim in such case is secured by assets having a value in excess of such claim, it is likely interest will not be permitted to accrue and, therefore, a creditor's return on investment can be adversely affected by the passage of time during which the plan of reorganization of the debtor is being negotiated, approved by the creditors and confirmed by the bankruptcy court.

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

U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for purpose of voting on a plan of reorganization. Because the

standard for classification is vague, there exists a significant risk that a Client's influence with respect to a class of instruments can be diminished by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. Even valid claims in bankruptcy cases often recover less than the amount of the claim and, depending on the debtor's assets and liabilities, there may be no recovery at all for some classes of creditors. At the outset of a bankruptcy case, only the debtor may file a proposed plan of reorganization. While the U.S. Bankruptcy Code permits other parties-in-interest to file proposed plans of reorganization and solicit creditor votes on such plans after a debtor's "exclusivity periods" to do so end, bankruptcy courts often extend the debtor's exclusive periods, which effectively permits only the debtor to file a proposed reorganization plan. While creditors can vote on approved plan(s) of reorganization, the unanimous consent of all creditor classes is not necessarily required for the bankruptcy court to confirm a plan. Therefore, in certain circumstances a plan can, subject to the provisions of the U.S. Bankruptcy Code, be "crammed down" on dissenting classes of creditors.

Even if a class of claims is entitled to a recovery in a bankruptcy proceeding, such recovery could be in the form of instruments or interests different from the form of instrument or interest which formed the basis for the creditor's initial claim, including debt securities, equity securities, warrants, options, cash, interests in litigation claims or trusts formed to pursue such litigation claims, interests in liquidation trusts, or other property or interests, any of which could be illiquid and/or difficult to value.

Notwithstanding the corporate structure of various debtor entities, such as special purpose entities created to hold assets and to structure for bankruptcy remoteness, such entities may, in certain cases, be consolidated in bankruptcy proceedings, which can affect the outcome of such proceedings and the amounts ultimately received by creditors.

Portfolio investments may include securities or obligations collateralized by assets located outside of the United States, or of issuers organized under the laws of jurisdictions other than the United States. Similarly, issuers of securities constituting portfolio investments may have a principal place of business or substantial assets located outside of the United States. As a result, such securities or obligations may be subject to bankruptcy or insolvency laws of non-U.S. jurisdictions. These laws may be substantially less favorable to creditors than the U.S. Bankruptcy Code.

The U.S. Bankruptcy Code and other laws and regulations affecting debtors' and creditors' rights are subject to change, including by way of legislative action or judicial interpretation. Any such actions could alter the expected outcome or introduce greater uncertainty regarding the expected outcome of an investment situation of an affected Client, which may adversely affect such investment or the relevant Client's investment program.

### ***Fraudulent Conveyance Risk***

Various U.S. federal and state and applicable foreign laws enacted for the protection of creditors may apply to the purchase of the Clients' investments by virtue of the Clients' role as creditors with respect to the borrowers under such investments. In general, if payments on an investment are voidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Clients) or from subsequent transferees of such payments, including investors.

### ***Borrower Fraud***

Of concern is the possibility of material misrepresentation or omission on the part of the borrower. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of the Clients to perfect or effectuate a lien on any collateral securing the loan. The Clients cannot guarantee the accuracy or completeness of representations made by and

information provided by borrowers. Under certain circumstances, payments to the Clients may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

### ***Lender Liability Considerations and Equitable Subordination***

In recent years, a number of judicial decisions in the United States have upheld the right of borrowers to sue lending institutions on the basis of various evolving legal theories (collectively termed “lender liability”). Generally, lender liability is founded upon the premise that an institutional lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower resulting in creation of a fiduciary duty owed to the borrower or its other creditors or shareholders. Because of the nature of certain of the Clients’ investments, such Clients could be subject to allegations of lender liability.

In addition, under common law principles that in some cases form the basis for lender liability claims, if a lending institution (i) intentionally takes an action that results in the undercapitalization of a borrower to the detriment of other creditors of such borrower, (ii) engages in other inequitable conduct to the detriment of such other creditors, (iii) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (iv) uses its influence as a stockholder to dominate or control a borrower to the detriment of the other creditors of such borrower, a court may elect to subordinate the claim of the offending lending institution to the claims of the disadvantaged creditor or creditors, a remedy called “equitable subordination.” Because of the nature of certain of the Clients’ and their affiliates’ investments, such Clients could be subject to claims from creditors of an obligor that such Clients’ investments issued by such obligor should be equitably subordinated.

### ***Participation on Creditors’ Committees***

Certain Clients participate on committees formed by creditors to negotiate the management of financially troubled companies that may or may not be in bankruptcy or such Clients may seek to negotiate directly with the debtors with respect to restructuring issues. If a Client joins a creditors’ committee, the participants of the committee would be interested in obtaining an outcome that is in their respective individual best interests and there can be no assurance of obtaining results most favorable to such Client in such proceedings. By participating on such committees, the Clients may be deemed to have duties to other creditors represented by the committees, which might thereby expose such Clients to liability to such other creditors who disagree with such Clients’ actions.

Certain Clients can also be provided with material non-public information that may restrict such Clients’ ability to trade in the company’s securities or be subject to other limitations on trading. While the Clients generally intend to comply with all applicable securities laws and to make judgments concerning restrictions on trading in good faith, the Adviser’s judgments may ultimately be incorrect, and a Client’s trading in a restructuring could result in litigation and liability that may cause such Client to incur significant legal fees and potential losses. As the Clients will typically indemnify any person serving on a committee on its behalf for claims arising from the breaches of those obligations, indemnification payments could adversely affect the return on the Clients’ investments in a portfolio company.

### ***Custodian and Counterparty Risk***

One or more banks or broker-dealers will act as custodians or could act as prime brokers for certain assets of Clients. These counterparties could provide certain clearing, including prime brokerage, margin financing or other financing facilities in addition to custodial functions. Such institutions (including the custodians or any of the Clients’ affiliates rendering similar services to the extent permissible) hold

certain assets of the Clients in their own name and in non-segregated accounts. Bankruptcy or fraud at one of these institutions or other entities could impair the operational capabilities or the capital position of the Clients or result in its inability of the institution to perform its obligations. Certain brokers and custodians will typically have general custody of the assets of the Clients, and the failure of a broker or custodian may result in adverse consequences to the assets held and may in turn have an adverse effect on the value of the Interests.

### ***Other Instruments and Future Developments***

Certain Clients 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 addition, Clients may take advantage of opportunities with respect to certain other “synthetic” or derivative instruments which are not presently contemplated for use by such Client or which are currently not available, but which may be developed to the extent such opportunities are both consistent with such Client’s investment objective and legally permissible for such Client. Such synthetic and derivative instruments may include risks not contemplated herein. Certain Clients may also take advantage of opportunities using other forms of securities and instruments not presently described herein. Clients may invest in a general category of security or instrument listed herein and, where applicable, with particular emphasis on a certain type of security or instrument, but unless the relevant Client is otherwise prohibited from investing in a particular type of security or instrument by statements in its offering memorandum or governing documents or under applicable law, a Client’s investments are not limited to the categories listed herein or the securities and instruments specifically enumerated under each category.

### ***Cash and Other Investments***

Certain Clients may invest all or a portion of their assets in cash or cash items for investment purposes, pending other investments or as provision of margin for futures or forward contracts. These cash items must be 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. Certain Clients may also hold interests in investment vehicles that hold cash or cash items. While investments in cash items generally involve relatively low risk levels, they may produce lower than expected returns, and could result in losses. Investments in cash items and money market funds may also provide less liquidity than anticipated by the Clients at the time of investment.

### ***Portfolio Turnover***

Certain Clients are not subject to any limit on the rate of portfolio turnover, and portfolio securities held by such Clients may be sold without regard to the time they have been held when, in the opinion of the Adviser, investment considerations warrant such action. A high rate of portfolio turnover involves correspondingly greater expenses than a lower rate, may act to reduce such a Client’s investment gains, or create a loss for investors.

*The foregoing risks do not purport to be a complete explanation of all the risks involved in acquiring an Interest in any of the Clients. There is no assurance that there are not other risks that may exist now or may arise in the future. Prospective investors are urged to read the entire offering memorandum and the governing documents of the applicable Client before making a determination whether to invest.*

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## **Item 9. Disciplinary Information**

Neither the Adviser nor any of its management persons have been subject to any material disciplinary events in the previous ten years.

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

A. Neither the Adviser nor any of its management persons are registered, or have an application pending to register, as a broker-dealer or a registered representative of a broker-dealer.

B. Neither the Adviser nor any of its management persons are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or an associated person of the foregoing entities.

C. Other Relationships that are Material to the Adviser's Advisory Business

### **Related General Partners**

Various limited partnerships and/or limited liability companies (the "General Partners") serve as general partners of certain of the Clients. For a description of material conflicts of interest which may be created by the relationship among the Adviser and the General Partners, as well as a description of how such conflicts would be addressed, should they arise, please see Item 11 below.

### **Affiliated Advisers**

ACM does not currently have any affiliated advisers.

### **Related Broker-Dealers**

ACM does not currently have any related broker-dealers.

### **Other Advisers**

A representative of NB Alternatives Advisers LLC ("NB Alternatives") sits on the investment committees of certain of the Funds, NB Alternatives acts as sub-advisor to certain of the Funds and provides certain support services to such Funds pursuant to certain sub-advisory agreements between the Adviser and NB Alternatives, and the Adviser acts as sub-advisor to an affiliate of NB Alternatives with respect to certain of the Funds.

As compensation for its services, the Adviser has agreed to pay NB Alternatives or its affiliates certain fees, including a fee calculated as a percentage of the value of certain investors' capital commitments to certain of the Funds. Further, NB Alternatives is entitled to receive a portion of the management fees paid by certain Funds to the Adviser and a portion of the carried interest distributions made by certain Funds to the applicable General Partners.



For a more detailed discussion of how this relationship may give rise to material conflicts of interest, see *“Conflicts Associated with the Adviser’s and Certain Clients’ Relationship with Neuberger Berman”* in Item 11 below.

### **Co-Investments, Joint Ventures and Third-Party Involvement**

The Adviser may from time to time but has no obligation (other than as specified in side letters or other similar agreements with one or more limited partners) to offer co-investment opportunities to Fund investors or other third parties. From time to time, a Fund may make an investment with the expectation of offering a portion of its interests therein as a co-investment opportunity to limited partners and/or other third-party investors. There can be no assurance that the Fund will be successful in syndicating such co-investment, in whole or in part, that the closing of such co-investment will be consummated in a timely manner, that the syndication will take place on terms and conditions that will be preferable for the Fund or that expenses incurred by the Fund with respect to such syndication will not be substantial. In the event that the Fund is not successful in syndicating such co-investment, in whole or in part, the Fund would consequently hold a greater concentration and have more exposure in the related investment than initially was intended, which could make the Fund more susceptible to fluctuations in value resulting from adverse economic and / or business conditions with respect thereto. Moreover, an investment by the Fund which is not syndicated to co-investors as originally anticipated could increase the Fund’s otherwise anticipated expenses and significantly reduce the Fund’s overall investment returns.

The Adviser has in the past and may, from time to time in the future, establish certain investment vehicles through which such co-investors may participate in such co-investment opportunities. Such vehicles, referred to herein as “co-investment vehicles” may, in certain instances, be contractually required to purchase and sell certain investment opportunities at substantially the same time and on substantially the same terms as the applicable Client that is invested in that investment opportunity.

If a co-investment vehicle is created in connection with the offer of a co-investment opportunity to investors or third parties, the investors in such co-investment vehicle will typically bear all expenses related to its organization and formation and other expenses incurred solely for the benefit of the co-investment vehicle. The co-investment vehicle will generally bear its pro rata portion of expenses incurred in the making of an investment. If a proposed transaction is not consummated, no such co-investment vehicle generally will have been formed, and the full amount of any expenses relating to such proposed but not consummated transaction (“Dead Deal Costs”) would therefore be borne, depending on the facts and circumstances, by the Fund or Funds selected by the Adviser as proposed investors for such proposed transaction. Furthermore, if a proposed transaction is not consummated and a co-investment vehicle has been formed for the purpose of making an investment in such proposed transaction (or co-investors have otherwise committed to invest in the proposed transactions), some or all of the Dead Deal Costs may be borne solely by the Fund or Funds selected by the Adviser as proposed investors for such proposed transaction, rather than the co-investment vehicle or other co-investor. Similarly, co-investment vehicles are not typically allocated any share of break-up fees paid or received in connection with such an unconsummated transaction. Additionally, to the extent a co-investment vehicle is formed in connection with a proposed but not consummated transaction, expenses relating to such co-investment vehicle may, in certain situations, be borne by another Fund or Funds.

Certain Funds co-invest with third-parties through partnerships, joint ventures or other entities. In such situations, the applicable Fund’s ability to control its equity investments will depend upon the nature of the joint investment arrangements with such partners and the applicable Fund’s relative ownership stake in such investments. Such a Fund may be a minority investor in these circumstances. In addition, such arrangements may restrict the applicable Fund’s ability to dispose of its investments for potentially significant periods of time. Such investments may involve risks not present in investments where a third

party is not involved. A co-venturer or partner of a Fund may at any time have economic or business interests or goals which are inconsistent with those of the applicable Fund and may be in a position to take (or block) action inconsistent with the Fund's investment objectives. Applicable Funds may be liable for certain actions of their co-venturers or partners. Co-investments may also involve higher costs than other investments. Co-venturers or partners potentially may include investors in certain of the Funds.

### **Side Letters**

Certain Funds have and may in the future enter into agreements, or "side letters," with certain prospective or existing investors whereby such investors may be subject to terms and conditions that are more advantageous than those set forth in the offering memorandum or governing documents for the applicable Fund. For example, such terms and conditions may provide for discounted management fee and Carried Interest rates; special rights to make future investments in the Fund or other investment vehicles or managed accounts or to participate in co-investment opportunities alongside the Fund; special redemption rights, relating to frequency or notice; a waiver or rebate in fees or redemption penalties to be paid by the investor and/or other terms; rights to receive reports from the partnership on a more frequent basis or that include information not provided to other investors (including, without limitation, more detailed information regarding portfolio positions); excuse rights applicable to particular investments (which may increase the percentage interest of other investors in, and contribution obligations of other investors with respect to, such investments); waiver or modification of certain confidentiality obligations and/or documentation that might be requested by the Adviser for the benefit of lenders or other persons extending credit to or arranging financing for the applicable Fund; consent of the Adviser to certain transfers of Fund Interests by such investors; certain rights or terms necessary in light of particular legal, regulatory or policy requirements of a particular investor; additional obligations and restrictions with respect to structuring particular investments in light of the legal and regulatory considerations applicable to a particular investor; veto rights; and such other rights as may be negotiated by the applicable Fund and such investors. The modifications are solely at the discretion of the applicable Fund and may, among other things, be based on the size of the investor's investment in the applicable Fund or affiliated investment entity, an agreement by an investor to maintain such investment in the applicable Fund for a significant period of time, or other similar commitment by an investor to the applicable Fund.

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

### **Code of Ethics**

The Adviser has adopted a Code of Ethics (the "Code") that obligates the Adviser and its related persons to put the interests of the Adviser's Clients before their own interests and to act honestly and fairly in all respects in their dealings with Clients. All of the Adviser's personnel are also required to comply with applicable federal securities laws. Clients or prospective clients may obtain a copy of the Code by contacting Andrew C. Hyman (Chief Compliance Officer) by email at [ahyman@athyrium.com](mailto:ahyman@athyrium.com), or by telephone at 212-402-6925.

The Adviser, in the course of its investment management and other activities (e.g., board or creditor committee service), may come into possession of confidential or material nonpublic information about issuers, including issuers in which the Adviser or its *related persons* have invested or seek to invest on behalf of Clients. The Adviser is prohibited from improperly disclosing or using such information for its own benefit or for the benefit of any other *person*, regardless of whether such other *person* is a Client.

The Adviser maintains and enforces written policies and procedures that prohibit the communication of such information to *persons* who do not have a legitimate need to know such information and to assure that the Adviser is meeting its obligations to Clients and remains in compliance with applicable law. In certain circumstances, the Adviser may possess certain confidential or material, nonpublic information that, if disclosed, might be material to a decision to buy, sell or hold a security, but the Adviser will be prohibited from communicating such information to the Client or using such information for the Client's benefit. In such circumstances, the Adviser will have no responsibility or liability to the Client for not disclosing such information to the Client (or the fact that the Adviser possesses such information), or not using such information for the Client's benefit, as a result of following the Adviser's policies and procedures designed to provide reasonable assurances that it is complying with applicable law.

The Adviser requires its *related persons* to preclear certain securities transactions, limited offerings and initial public offerings in their personal accounts with the Adviser's Chief Compliance Officer (the "CCO") or his delegate, who may deny permission to execute the transaction if such transaction will have any adverse economic impact on one of its Clients or if the security is on the firm's restricted list. All of the Adviser's *related persons* are required to disclose their securities transactions on a quarterly basis and holdings on an annual basis. Trading in *employee* accounts will be reviewed by the CCO or his delegate and compared against the investments that have been precleared.

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

The Adviser and certain employees and affiliates of the Adviser have invested and may in the future invest in and alongside the Clients, either through the General Partners, as direct investors in the Clients or otherwise. A Client or its General Partner, as applicable, may reduce all or a portion of the management fee and Carried Interest related to investments held by such persons. For further details regarding these arrangements, as well as conflicts of interest which may be presented by them, please see "*Conflicts of Interest*" immediately below.

### **Investor Due Diligence Information**

Due in part to the fact that potential investors in a Client (including purchasers of a limited partner's interests in a secondary transaction) may ask different questions and request different information, the Adviser may provide certain information to one or more prospective investors that it does not provide to all of the prospective or current investors of the applicable Client.

### **Conflicts of Interest**

The purchase of Interests in the Clients involves a number of significant risks that should be considered before making any investment. The Adviser and its affiliates, along with NB Alternatives, Neuberger Berman Group LLC, and certain affiliates and employees of NB Alternatives and Neuberger Berman Group LLC (collectively, "Neuberger Berman") engage in a broad range of activities, including investment activities for their own account and for the account of other investment funds or accounts. In the ordinary course of conducting their activities, the interests of the Clients may conflict with the interests of the Adviser or other funds or accounts advised by the Adviser, Neuberger Berman or their affiliates. A description of certain of these potential conflicts of interest is provided below.

**The discussion below does not necessarily describe all conflicts that may arise, and all information in this section is subject to the specific disclosures included in each applicable Client's offering memorandum, governing documents, and/or Advisory Agreements.** Any references to the Adviser or Neuberger Berman in this section will be deemed to include their respective affiliates, partners, members, shareholders, officers, directors and employees.

### ***Resolution of Conflicts***

In the case of all conflicts of interest, subject to each Client's offering memorandum and governing documents, 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 may consider various factors, including 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:

- (1) 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;
- (2) Many important conflicts of interest will generally be resolved by set procedures, restrictions or other provisions contained in the relevant offering and/or governing documents for the Clients;
- (3) Certain Clients have established, and other Clients may in the future establish, an advisory committee (each, an "LP Advisory Committee"), consisting of certain representatives of investors not affiliated with the Adviser. The LP Advisory Committees meet as required to consult with the Adviser as to certain potential conflicts of interest. On any issue involving actual conflicts of interest, the Adviser will be guided by its good faith discretion. If an LP Advisory Committee waives the conflict of interest or the Adviser acts in a manner, or pursuant to the standards and procedures, approved by such LP Advisory Committee with respect to the conflict of interest, then the Adviser will not have any liability to the applicable Client or its investors for such actions, including actions in pursuit of their own interests;
- (4) Where the Adviser deems appropriate, unaffiliated third parties may be used to help resolve conflicts, such as the use of a valuation agent to opine as to the fairness of a purchase or sale price; and
- (5) Prior to subscribing for Interests in a Client, each investor receives information relating to significant potential conflicts of interest arising from the proposed activities of the Client.

### ***Potential Conflicts***

The material conflicts of interest encountered by the Clients include those discussed below, although the discussion below does not necessarily describe all of the conflicts that may be faced by a Client. Other conflicts are disclosed throughout this brochure, and in each Client's offering memorandum and/or governing documents, and such documents should all be read in their entirety for disclosure of material conflicts that may arise.

#### **Devotion of Time**

The Principals and other employees of the Adviser are not obligated to devote their full time to any particular Client, subject to the requirements described in each Client's offering memorandum and governing documents. The Adviser presently serves as investment adviser or sub-adviser to certain other accounts and investment funds, and the Adviser may serve as an investment adviser to certain additional accounts or investment funds in the future. Therefore, employees of the Adviser and its affiliates responsible for managing Clients have responsibilities with respect to other Clients of the Adviser.

Conflicts of interest may arise in allocating time, services or functions of these employees between Clients.

#### Allocation of Investment Opportunities

In connection with its investment activities, the Adviser may encounter situations in which it must determine how to allocate investment opportunities among various Clients and other persons. The Adviser has adopted written policies and procedures relating to the allocation of investment opportunities, and will make allocation determinations consistently therewith.

Because of the differences in Client investment objectives and strategies, risk tolerances, tax statuses and other criteria, there may be differences among Clients in invested positions and investment opportunities allocated to each of the Adviser's Clients. Allocation decisions can raise conflicts, for example, if Clients have different fee structures. The Adviser seeks to allocate investments in a fair and equitable basis over time. In allocating investment opportunities, the Adviser will take into account a variety of factors that it considers relevant. The following factors may be taken into account by the Adviser in determining whether any investment opportunity is appropriate for a Client's account and, if appropriate, in allocating investment opportunities among such Clients:

- Clients' investment objectives and strategies;
- Clients' risk profiles;
- Clients' tax statuses;
- any restrictions placed on a Client's portfolio by the Client or by virtue of federal or state law (such as the Employee Retirement Income Security Act of 1974, as amended ("ERISA"));
- size of a Client account;
- total portfolio invested position;
- nature of the security to be allocated;
- size of available position;
- prior investments in the applicable issuer's securities;
- suitability as a follow-on investment for a current portfolio company of a Client;
- supply or demand for a security at a given price level;
- current market conditions;
- timing of cash flows and account liquidity;
- amount of capital available for investment by each Client as well as each Client's projected future capacity for investment; and
- any other information determined to be relevant to the fair allocation of securities.

Although it is the Adviser's general policy to allocate investment opportunities to eligible participating Client accounts on a pro rata basis, the above factors may nevertheless lead the Adviser to allocate such opportunities to participating Client accounts in varying amounts. Even Client accounts that are typically managed on a pari passu basis may from time to time receive differing allocations of securities based on the Adviser's consideration of the factors listed above.

It is the Adviser's general policy to allocate opportunities to dispose of investment assets held in eligible participating Client accounts on a pro rata basis. However, the above factors may nevertheless lead the Adviser to allocate such opportunities to participating Client accounts in varying amounts. If the Adviser is not able to dispose of the full amount of the applicable investment asset it deemed appropriate to dispose of, the amount of investment assets that would have otherwise been disposed of by each participating Client account shall be reduced pro-rata based upon the value of the applicable investment asset held by each selling participating Client account relative to the aggregate value of the applicable investment assets held by all selling participating Client accounts.

Investment assets acquired by the Adviser for its Clients through initial public offerings ("IPOs"), private placements, or other circumstances in which allotments are limited ("limited availability securities") will be allocated pursuant to the following procedures: (i) the Adviser will determine the proposed allocations of limited availability securities after considering the factors described above with respect to general allocations of investment assets, (ii) only those Client accounts that have established their eligibility to participate in IPOs with the Adviser can participate in IPO allocations, (iii) if the Adviser receives a full allocation of limited availability securities, the investment assets will be allocated by the Adviser to participating Client accounts in accordance with the Adviser's procedures set forth above, and (iv) if the Adviser receives less than a full allocation of limited availability securities, the amount of investment assets that would have otherwise been allocated to each participating Client account shall be reduced pro-rata based upon the amount of limited availability securities originally allocated to each participating Client account pursuant to clause (iii) of this paragraph.

Securities acquired by the Adviser for its Clients through a limited offering will be allocated pursuant to the procedures set forth in the Adviser's allocation policy, as described above. Eligibility of a Client to participate in such offerings will be based on the legal status of the Client and the Client's investment objectives and strategies.

Where allocations of investment assets are made on a basis other than pro rata, or when allocations of opportunities to dispose of investment assets are made on a basis other than pro-rated based on the value of the applicable investment assets held (except, in each case, for the avoidance of Odd Lots (as defined below)), the Adviser shall document the reason for such allocation. In the event (a) one participating Client account acquires investment assets of an issuer within 6 months of a different participating Client account disposing of investment assets of such issuer (except where such participating Client accounts acquired and disposed of such investment assets substantially contemporaneously), or (b) participating Client accounts acquire investment assets at different levels of an issuer's capital structure (except where, following such acquisition, such participating Client accounts hold the same investment assets of such issuer), then, in each case, the Adviser shall document the circumstances of such event and, if any such participating Client account is an account of a Client with a LP Advisory Committee (or equivalent body designated to address conflicts of interest) the Adviser shall provide notice thereof to such body at the next regular meeting of such body. "Odd Lot" means a number of equity securities or value of debt securities or other investment assets comprising a trading lot that, in the Adviser's discretion, (x) is less than the regular unit of trading for that particular asset, or (y) due to its irregular size, would reduce the marketability or the market value of such lot.

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 may have 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. The Adviser will not allocate investment opportunities based, in whole or in part, on (i) the relative fee structure or amount of fees paid by any Client or (ii) the profitability of any Client.

### Allocation of Co-Investment Opportunities

The Adviser will determine if the amount of an investment opportunity exceeds the amount the Adviser determines would be appropriate for the Clients (after taking into account any portion of the opportunity which the Adviser may allocate to certain participants in the applicable deal, such as co-sponsors, consultants and advisers to the Adviser and/or the Clients or management teams of the applicable portfolio company, certain strategic investors and other investors whose allocation is determined by the Adviser to be in the best interest of the applicable Client), and any such excess may be offered to one or more co-investors pursuant to the procedures included in such Clients' governing documents and as set forth in the following paragraphs.

Subject to any investment allocation requirements in any particular Client's governing documents, in general, (i) no investor in a Client has a right to participate in any co-investment opportunity, (ii) decisions regarding whether and to whom to offer co-investment opportunities are made in the sole discretion of the Adviser or its related persons or other participants in the applicable transactions, such as co-sponsors, (iii) co-investment opportunities may, and typically will, be offered to some and not other investors in the Clients, in the sole discretion of the Adviser or its related persons and investors may be offered a smaller amount of co-investment opportunities than originally requested, (iv) certain persons other than investors in the Clients, and the Adviser and its affiliates (e.g., third parties) may be offered co-investment opportunities, in the sole discretion of the Adviser or its related persons, and (v) co-investors may purchase their interests in a portfolio company at the same time as the Clients or may purchase their interests from the applicable Clients after such Clients have consummated their investment in the portfolio company (also known as a post-closing sell down or transfer).

In exercising its discretion to allocate co-investment opportunities with respect to a particular investment among the Clients and other potential co-investors, the Adviser may consider some or all of a wide range of factors, which include, but are not limited to, one or more of the following:

- The Adviser's evaluation of the size and financial resources of the potential co-investment party and the Adviser's perception of the ability of that potential co-investment party (in terms of, for example, staffing, expertise and other resources) to efficiently and expeditiously participate in the investment opportunity with the relevant Client(s) without harming or otherwise prejudicing such Client(s), in particular when the investment opportunity is time-sensitive in nature, as is typically the case;
- Any confidentiality concerns the Adviser has that may arise in connection with providing the other account or person with specific information relating to the investment opportunity in order to permit such potential co-investment party to evaluate the investment opportunity;
- The Adviser's perception of its past experiences and relationships with the potential co-investment party, such as the willingness or ability of the potential co-investment party to respond promptly and/or affirmatively to potential investment opportunities previously offered by the Adviser and the expected amount of negotiations required in connection with a potential co-investment party's commitment;
- The potential co-investment amount;
- The Adviser's perception of whether the investment opportunity may subject the potential co-investment party to legal, regulatory, reporting, public relations, media or other burdens that

make it less likely that the other account or person would act upon the investment opportunity if offered;

- The Adviser's evaluation of whether the profile or characteristics of the potential co-investment party may have an impact on the viability or terms of the proposed investment opportunity and the ability of the Clients to take advantage of such opportunity (for example, if the potential co-investment party is involved in the same industry as a target company in which a Client wishes to invest, or if the identity of the potential co-investment party, or the jurisdiction in which the potential co-investment party is based, may affect the likelihood of a Client being able to capitalize on a potential investment opportunity); and
- Whether the Adviser believes, in its sole discretion, that allocating investment opportunities to a potential co-investment party will help establish, recognize, strengthen and/or cultivate relationships that may provide indirectly longer-term benefits to current or future Clients and/or the Adviser.

The Adviser's exercise of its discretion in allocating co-investment opportunities with respect to a particular investment among the relevant persons, including the Clients and the potential co-investors, and in the manner discussed above often will not result in proportional allocations among such persons, and such allocations may be more or less advantageous to some such persons relative to other such persons. While the Adviser will determine how to allocate co-investment opportunities using its best judgment, considering such factors as it deems relevant, but in its sole discretion, there can be no assurance that a Client's actual allocation of a co-investment opportunity, if any, or the terms on which that allocation is made will be as favorable as they would be if the conflicts of interest to which the Adviser is subject, discussed herein, did not exist.

In the event the Adviser determines to offer an investment opportunity to co-investors, there can be no assurance that the Adviser will be successful in offering a co-investment opportunity to a potential co-investor, in whole or in part, that the closing of such co-investment will be consummated in a timely manner, that the co-investment will take place on the terms and conditions that will be preferable for the Clients or that expenses incurred by the Clients with respect to the syndication of the co-investment will not be substantial. In the event that the Adviser is not successful in offering a co-investment opportunity to potential co-investors, in whole or in part, the applicable Client may consequently hold a greater concentration and have exposure in the related investment opportunity than was initially intended, which could make such Client more susceptible to fluctuations in value resulting from adverse economic and/or business conditions with respect thereto.

#### Aggregation of Orders

From time to time, it may be appropriate for the Adviser to aggregate Client orders for the purchase or sale of investment assets at the same broker-dealer. The Adviser will generally follow the guidelines set forth below in aggregating Client orders for investment assets at the same broker-dealer, including any orders placed for private investment vehicles:

- no Client will be favored over any other Client other than as permitted under the Adviser's policies and procedures;
- each Client that participates in an aggregated order will participate at the average share price for all the Adviser's transactions in that security on a given business day or such shorter period, as applicable and transaction costs will be shared pro rata based on each Client's participation in the aggregated order;



- if the aggregated order is filled in its entirety, it will be allocated among Clients in accordance with the Adviser's policies and procedures; and
- if the aggregated order is partially filled, the amount of investment assets that would have otherwise been allocated to each participating Client account shall be reduced pro-rata based upon the amount of investment assets originally allocated pursuant to the preceding bullet point.

Notwithstanding the foregoing, an aggregated order may be allocated following execution on a basis different from that specified in the applicable allocation statement, if the reason for the different allocation is explained in writing and approved, in the case of a participating Client account for which investment decisions are made by an investment committee or comparable decision-making body, by such decision-making body in accordance with its general procedures for decision making, and in all other cases, by the CCO, no later than the close of trading on the day on which the order was executed. Reasons for allocation on a basis different from that specified in the allocation statement may include, without limitation: a Client's investment guidelines and restrictions; available cash; liquidity requirements; legal regulatory reasons; and to avoid Odd Lots.

The Adviser will generally aggregate in the same transaction, the same securities for Client accounts where the Adviser has brokerage discretion. Such aggregation may enable the Adviser to obtain for Clients a more favorable price or a better commission rate based upon the volume of a particular transaction. However, in cases where the Client has negotiated the commission rate directly with the broker, the Adviser will not be able to obtain more favorable commission rates based on an aggregated trade. In such cases, the Client will be precluded from receiving the benefit of any possible commission discounts that might otherwise be available as a result of the aggregated trade.

In cases where trading or investment restrictions are placed on a Client's account, the Adviser may be precluded from aggregating that Client's transaction with others. In such a case, the Client may pay a higher commission rate and/or receive less favorable prices than Clients who are able to participate in an aggregated order.

### 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"), then the adviser must make certain disclosures to the client of the terms of the proposed transaction and obtain the client's consent to the transaction. The Adviser does not anticipate engaging in any principal transactions.

### Cross-Transactions

The Adviser may generally effect cross transactions between discretionary Client accounts, except as otherwise noted below. Cross transactions enable the Adviser to effect a trade between two Clients for the same security at a set price, thereby possibly avoiding an unfavorable price movement that may be created through entrance into the market and saving commission costs for both accounts. Cross transactions include rebalancing transactions that are undertaken so that, after withdrawals or contributions have occurred, the portfolio compositions of similarly managed accounts remain substantially similar. The Adviser has a potentially conflicting division of loyalties and responsibilities regarding both parties to cross transactions. Cross transactions between Client accounts are not permitted if they would constitute principal trades or trades for which the Adviser is compensated as a broker unless Client consent has been obtained based upon written disclosure to the Client of the capacity in which the

Adviser will act. In addition, cross transactions are not permitted for benefit plan or other similar Client accounts that are subject to ERISA.

#### Management of the Clients

The Adviser manages a number of Clients that may 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 with investment objectives substantially similar to, or different from, those of the current Clients. Allocation of available investment opportunities between the Clients and any such investment fund could give rise to conflicts of interest. See “*Allocation of Investment Opportunities*” above. In addition, it is expected that employees of the Adviser responsible for managing a particular Client will have responsibilities with respect to other Clients managed by the Adviser, including funds raised in the future or to proprietary investments made by the Adviser and/or its Principals of the type made by a Client. Conflicts of interest arise in allocating time, services or functions of these officers and employees.

The Adviser may consider, and reject, an investment opportunity on behalf of one Client and, the Adviser or an affiliate of the Adviser may subsequently determine to have another Client make an investment in the same company. A conflict of interest arises because one Client 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 Clients will not be required to reimburse the original Client for expenses incurred in connection with researching such investment.

The Funds will, from time to time, enter into borrowing arrangements that require certain of the Clients to be jointly and severally liable for the obligations. If one Client defaults on such an arrangement, other Clients may be held responsible for the defaulted amount. The Clients will only enter into such joint and several borrowing arrangement when the Adviser determines it is in the best interests of such Clients.

#### Transactions with Affiliates

Conflicts may also arise in connection with loans or other assets originated by one or more of the Clients and sold to one or more other parallel fund vehicles or other Clients of the Adviser. To the extent that a fund vehicle purchases loans or other assets and subsequently sells all or a portion thereof to other Clients of the Adviser (including another parallel fund vehicle), the selling vehicle will bear the risk of changes in the value of such loans or other assets during the period it holds such loans or other amounts, and the amount of capital available to such vehicle to pursue other investment opportunities, including more profitable investment opportunities, may be reduced. It may be difficult to determine the value of the loans or other assets acquired by the selling Client(s) and hence the consideration due from the purchasing Client(s) in such acquisitions. The valuation of loans or other assets that may be transferred in such cross trades involves inherent conflicts of interest for the Adviser and there is no guarantee that the Adviser will resolve these conflicts in a manner that will not have an adverse effect on the Clients. Prospective investors should review the applicable offering materials and governing documents for more information.

#### Follow-on Investments

An additional investment made by a Client in an existing portfolio company of another Fund or account managed by the Adviser may present conflicts of interest, including with respect to the terms of any new financing as well as the allocation of the investment opportunities in the case of follow-on investments by a Client and such other vehicle or account in a portfolio company in which such Client or such other vehicle has previously invested. In addition, the Clients may participate in relevering and recapitalization transactions involving a portfolio company in which another fund vehicle or account managed by the

Adviser or its affiliates has already invested or will invest. Conflicts of interest may arise, including determinations of whether existing investors are being cashed out at a price that is higher or lower than market value and whether new investors are paying too high or too low a price for the company or purchasing securities with terms that are more or less favorable than the prevailing market terms.

#### Conflicts Related to Purchases and Sales

The Adviser and officers, principals or employees of the Adviser may buy or sell securities or other instruments that the Adviser has recommended to Clients. In addition, such officers, principals or employees may buy securities in transactions offered to but rejected by Clients. Such transactions are subject to the policies and procedures adopted by the Adviser from time to time. The investment policies, fee arrangements, and other circumstances of these investments may vary from those of the Adviser's other Clients. The Adviser, certain of its principals and employees, and their relatives may invest in and alongside the Clients or other funds or accounts managed by the Adviser either through a General Partner or such other funds or accounts or as direct investors in the Clients or such other funds or accounts or otherwise, and therefore may have additional conflicting interests in connection with these investments.

A particular investment may be bought or sold for a Client in different amounts and at different times for one or more other funds or accounts managed by the Adviser even though it could have been bought or sold for such other funds or accounts at the same time. Likewise, a particular investment may be bought for a Client or one or more other funds or accounts managed by the Adviser when one or more of such funds or accounts are selling the investment. Conflicts also may arise when a Client makes investments in conjunction with an investment being made by such other funds or accounts, or in a transaction where another fund or account managed by the Adviser has already made an investment. Investment opportunities may be appropriate for a Client and other funds or accounts managed by the Adviser at the same time, at different or overlapping levels of a portfolio company's capital structure. Conflicts may arise in determining the terms of investments, particularly where these Clients may invest in different types of instruments in a single portfolio company. 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, particularly in a Client and other funds or accounts managed by the Adviser that have invested in different securities within the same portfolio company.

Certain Clients of the Adviser may invest in bank debt and securities of companies in which other Clients hold securities, including equity securities, including in a controlling position. In the event that such investments are made by a Client or another fund or account managed by the Adviser, the interests of the Client may be in conflict with the interest of such other fund or account, particularly in circumstances where the underlying company is facing financial distress. The involvement of such persons at both the equity and debt levels could inhibit strategic information exchanges among fellow creditors. In certain circumstances, the Client or such other fund or account may be prohibited from exercising voting or other rights, and may be subject to claims by other creditors with respect to the subordination of its interest. If additional capital is necessary as a result of financial or other difficulties, or to finance growth or other opportunities, a Client or such other fund or account may or may not provide such additional capital, and if provided the Client or such other fund or account will supply such additional capital in such amounts, if any, as determined by the Adviser. The Adviser may seek to address these conflicts by adopting policies and procedures designed to mitigate such conflicts but given the structure of the Adviser and its investment team may be unable to do so.

In addition, investments by more than one Client of the Adviser in a portfolio company may also raise the risk of using assets of a Client of the Adviser to support positions taken by other Clients of the Adviser. The Adviser will attempt to resolve any such conflicts of interest in good faith, but there can be no assurance that such conflicts of interest or actions taken by the Adviser in respect of other funds or accounts will not have an adverse effect on the investments made by a Client. There can be no assurance that the return of a Client participating in a transaction would be equal to and not less than any other fund or account participating in the same transaction or that it would have been as favorable as it would have been had such conflict not existed.

Certain Clients may sell down an interest in portfolio companies to co-investors. Subject to such Clients' governing documents, the Adviser may charge (or may decide not to charge) a co-investor (such as an investor in a Client or a third party) interest costs for the time period between the closing of the applicable Client's investment in a portfolio company to the date of the transfer of interests in such portfolio company to the applicable co-investor or co-investment vehicle.

#### Conflicts Related to the Adviser

The Adviser generally may, in its discretion, contract with any related person of the Adviser (including but not limited to a portfolio company of a Client) 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 portfolio company of a Client) or (ii) an entity with which the Adviser or its affiliates or a member of their personnel has a relationship or from which the Adviser or its affiliates or their personnel otherwise derives financial or other benefit. When making such a recommendation, the Adviser, because of its financial or other business interest, has 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, its affiliates, and partners, officers, Principals and employees of the Adviser and its affiliates may buy or sell securities or other instruments that the Adviser has recommended to Clients. Officers, principals and employees of the Adviser may also buy securities in transactions offered to but rejected by Clients. 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 the Clients. In such circumstances, the investing Adviser personnel may not share or reimburse the relevant Fund(s) and/or the Adviser for any expenses incurred in connection with the investment opportunity. In addition, officers and employees of the Adviser may also buy securities in other investment vehicles (including private equity funds, hedge funds, real estate funds and other similar investment vehicles) which may include potential competitors of the Clients. The transactions described above are subject to the policies and procedures set forth in the Adviser's Code of Ethics and investors will not benefit from any such investments. The investment policies, fee arrangements and other circumstances of these investments may vary from those of the Clients. Subject to any applicable limitations in the Clients' governing documents, if the Adviser's officers, Principals and employees have made large capital investments in or alongside the Clients, they will have conflicting interests with respect to these investments.

Because certain expenses are paid for by certain Clients and/or their portfolio companies or, if incurred by the Adviser, are reimbursed by certain Clients and/or their portfolio companies, the Adviser may not

necessarily seek out the lowest cost options when incurring (or causing a Client or its portfolio companies to incur) such expenses.

#### Diverse Limited Partner Group

Various investors may have conflicting investment, tax, regulatory and other interests with respect to their investments in the Clients. The conflicting interests of individual investors in a Client may relate to or arise from, among other things, the specific Client through which such investors invest, the nature of investments made by the Clients, and/or the structuring or the acquisition of portfolio investments. As a consequence, conflicts of interest may arise in connection with decisions made by the Adviser or NB Alternatives that may be more beneficial for one investor in a Client than for another, especially with respect to investors' individual tax situations. In selecting and structuring investments appropriate for the Clients, the Adviser will consider the investment and tax objectives of each Client and the investors therein as a whole, and not the investment, tax or other objectives of any particular investor individually. Certain investors are expected to, by virtue of the size of their investments or other special factors, negotiate special arrangements which are more beneficial than those obtained by other investors in the Clients.

#### Carried Interest; Management Fee

The existence of the Adviser's Carried Interest distributions and allocations could create an incentive for the Adviser to make or recommend riskier or more speculative investments for the Clients than would be the case in the absence of such arrangement. In addition, the fact that, after the expiration of the investment period of certain Clients, the management fee payable by such Clients to the Adviser is calculated based on invested capital, rather than commitments, may create an incentive for the Adviser to (i) make more speculative investments than it otherwise would have made if such management fees were based on commitments, (ii) seek to deploy the commitments in investments at an accelerated pace, (iii) hold investments longer than it otherwise would have if such management fees were based on commitments and/or (iv) employ a greater degree of leverage than it otherwise would have if such management fees were based on commitments. NB Alternatives and its affiliates are entitled to receive a portion of the management fees paid by certain Clients and a portion of the Carried Interest distributions made by certain Clients. See "*Conflicts Associated with the Adviser's and Certain Clients' Relationship with Neuberger Berman*" below.

#### Other Fees

The Adviser earns arrangement fees and other transaction fees in connection with certain Clients' investment programs. In certain circumstances the Adviser may enter into agreements with a portfolio company providing for the acceleration of certain fees such that there may be certain circumstances (such as the occurrence of an IPO or strategic exit) which may accelerate the payment of fees under the management agreement with such portfolio company. Since the agreements with the portfolio companies providing for such fees may have prolonged terms (often exceeding ten years and/or be subject to automatic extensions and renewal), the effect of such acceleration may be substantial, particularly in the event such circumstances occur early in the life of the applicable Client's investment in such portfolio company. The management fee payable by an investor in such a Client will generally be reduced by an amount equal to a percentage of such investor's pro rata share of such fees. Generally, the portion of such fees allocable to capital invested by the Client, a co-investment vehicle or a third-party investor that does not pay management fees will be retained by the Adviser and such amounts will not offset the management fees payable by the applicable Client.

The Adviser retains strategic advisors, consultants, and other similar professionals who are not employees or affiliates of the Adviser and who may, from time to time, receive payments from, or allocations with respect to, a Client's portfolio investments. In such circumstances, such amounts will not be deemed paid to or received by the Adviser and such amounts will not be subject to the offset provisions of the relevant Client's governing documents. Certain consultants and strategic advisors may be offered the ability to co-invest alongside certain Clients, including in investments in which the strategic advisor is involved or participates in the management thereof. Fees and expenses associated with strategic advisors may be paid and/or reimbursed by portfolio companies and/or the applicable Client.

Portfolio companies may reimburse the Adviser for expenses, including without limitation travel expenses, which may include expenses for chartered or first class travel, and meals and entertaining expenses (including, as applicable, closing dinners and mementos, cars and meals (outside normal business hours), social and entertainment events with portfolio company management, customers, clients, borrowers, brokers and service providers), expenses relating to training programs, meetings or other events (to the extent such programs, meetings or events are attended by portfolio company personnel), expenses relating to hiring portfolio company personnel (including background checks, recruiting and relocations expenses), indemnification expenses, certain legal expenses and similar out-of-pocket expenses, as well as consulting fees and other cash and non-cash compensation and expenses, incurred by the Adviser in connection with its performance of services for such portfolio company; such reimbursed expenses will not offset or reduce management fees payable to the Adviser by its Clients.

Investors in "feeder" entities organized by NB Alternatives for the purpose of investing in the Clients may bear additional placement or other fees, as described in more detail in such entities' offering and subscription documents.

#### Service Providers

The Adviser and/or its affiliates may engage certain service providers to provide services to the Adviser, the Clients and/or the Clients' portfolio companies. Such service providers are, in certain circumstances, investors in a Client or affiliates of such investors and may include, for example, investment bankers, outside legal counsel, pension consultants and/or other investors who provide services. The engagement of any such service provider may be concurrent with an investor's admission to a Client, or during the term of such investor's investment in the Clients. This creates a conflict of interest, as the Adviser may give such investor preferred economics or other terms with respect to its investment in a Client, or may have an incentive to offer such investor co-investment opportunities that it would not otherwise offer to such investor.

Additionally, employees of the Adviser or its 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, or recommend such service provider to perform services for a Client or a portfolio company. The Adviser will have a conflict of interest with the Clients in recommending the retention or continuation of a service provider to the Clients or a portfolio company if such recommendation, for example, is motivated by a belief that the service provider will continue to invest in the Clients or will provide the Adviser information about markets and industries in which the Adviser operates or is interested or will provide other services that are beneficial to the Adviser. Although the Adviser selects service providers that it believes will enhance the performance of the relevant Client(s), there is a possibility that the Adviser, because of financial, business interest, or other reasons, may favor such retention or continuation even if a better price and/or quality of service could be obtained from another person. While the Adviser often does not have visibility or influence regarding advantageous service rates or

arrangements, there may be situations in which the Adviser receives more favorable service rates or arrangements than the Clients or their portfolio companies.

#### Other Conflicts; Possible Future Activities

The Clients' governing documents establish complex arrangements among the Clients, the Adviser, 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 Clients' 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 fiduciary duty and legal obligations, the interpretations used may not be the most favorable to a Client or its investors.

The Adviser and the Clients will generally engage common legal counsel and other advisers in a particular transaction, including a transaction in which there may be conflicts of interest. Members of the law firms engaged to represent the Clients may be investors in a Client, and may also represent one or more portfolio companies or investors in a Client. In the event of a significant dispute or divergence of interest between Clients, and the Adviser and/or its affiliates, the parties may engage separate counsel in the sole discretion of the Adviser and its affiliates, and in litigation and other circumstances separate representation may be required. Additionally, the Adviser, the Clients and the portfolio companies of the Clients may engage other common service providers. In certain circumstances, the service provider may charge varying rates or engage in different arrangements for services provided to the Adviser, the Clients, and/or the portfolio companies. This may result in the Adviser receiving a more favorable rate on services provided to it by such a common service provider than those payable by the Clients and/or the portfolio company, or the Adviser receiving a discount on services even though the Clients and/or the portfolio companies receive a lesser, or no, discount. This creates a conflict of interest between the Adviser, on the one hand, and the Clients and/or portfolio companies, on the other hand, in determining whether to engage such service providers, including the possibility that the Adviser will 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 the Clients and/or the portfolio companies.

The Adviser and its personnel have in the past and may, from time to time in the future, receive certain intangible and/or other benefits and/or perquisites arising or resulting from their activities on behalf of a Client, including benefits and other discounts provided from service providers. For example, airline travel or hotel stays incurred as Client expenses may result in "miles" or "points" or credit in loyalty/status programs to the Adviser and/or its personnel, and such rewards and/or amounts will exclusively benefit the Adviser and/or such personnel and will not be subject to the offset arrangements described above or otherwise shared with such Clients, their investors and/or the portfolio companies.

The Adviser may, in its discretion, in the future have, and may, in its discretion, cause the Clients and/or their portfolio companies to have, ongoing business dealings, arrangements or agreements with persons who are former employees or executives of the Adviser. The Clients and/or their 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 the Clients (or their 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 governing documents of certain Clients permit each such Client's General Partner, or its affiliates, to lend money to the applicable Client. Such lending arrangements create conflicts of interest between the applicable General Partner or affiliate and the Client acting as borrower.

The governing documents of certain Clients permit each such Client's General Partner to withhold information from certain limited partners or investors in such Client in certain circumstances. For instance, information may be withheld from investors that are subject to Freedom of Information Act or similar requirements. The General Partner may also elect to withhold certain information from such investors for reasons relating to the General Partner's public reputation or overall business strategy, despite the potential benefits to such investors of receiving such information.

Subject to its obligations under the governing documents of the Clients and applicable law, the Adviser and its Principals anticipate that they will engage in other investment, business or advisory activities in the future that could present potential conflicts of interest with the Clients, their investments and the implementation of the Clients' investment strategies, including the risks identified herein with respect to the Adviser's and certain Clients' relationship with Neuberger Berman.

The Adviser anticipates that it will expand the range of services that it provides over time. Except as provided in certain Clients' offering memoranda or governing documents, the Adviser will not be restricted in the scope of its business or in the performance of any such services (whether now offered or undertaken in the future) even if such activities could give rise to conflicts of interest, and whether or not such conflicts are described herein. The Adviser has, and will continue to develop, relationships with a significant number of companies, financial sponsors and their senior managers, including relationships with investors who may hold or may have held investments similar to those intended to be made by the Clients. These investors may themselves represent appropriate investment opportunities for the Clients or may compete with the Clients for investment opportunities.

The Adviser will have the power to resolve, or consent to the resolution of, conflicts of interest on behalf of, and such resolution will be binding on, the Clients. Investors should be aware that conflicts will not necessarily be resolved in favor of the Clients' investments.

#### Conflicts Associated with the Adviser's and Certain Clients' Relationship with Neuberger Berman

As discussed in Item 10 above, the Adviser's relationship with NB Alternatives is material to the Adviser's advisory business, and such relationship may give rise to certain material conflicts of interest. For a complete description of such conflicts and how they are addressed with respect to each Client, please thoroughly review the applicable Client's offering memorandum, governing documents, and Advisory Agreements.

In the ordinary course of its investment activities, Neuberger Berman's activities or strategies, or the activities or strategies used for other accounts or funds managed by Neuberger Berman, may conflict with the transactions and strategies employed on behalf of the Clients. Certain of these potential conflicts of interest include:

- Neuberger Berman's trading activities are carried out generally without reference to positions held by the Clients and may have an effect on the value of the positions so held, or may result in Neuberger Berman having an interest in the issuer adverse to that of the Clients (e.g., Neuberger Berman may have a short position in a security held long by the Clients).



- Neuberger Berman may (i) sponsor or form one or more new investment vehicles or funds, (ii) manage or advise other investment vehicles, accounts and clients, or (iii) offer, on an agency basis for third parties, interests in other investment vehicles, having objectives similar, in whole or in part, to those of the Clients, including other collective investment vehicles in which Neuberger Berman may have an equity interest. Neuberger Berman holds interests in, and furnishes advisory, consulting and/or management services to, other persons or entities with respect to investments similar to or different from investments of the Clients. Neuberger Berman manages, on an independent and autonomous basis, several investment vehicles in which it is currently investing on behalf of third-party investors, Neuberger Berman and/or eligible employees. The Clients will not have any rights to investment opportunities in relation to the rights of such other vehicles or accounts. Neuberger Berman may also furnish similar management, advisory and/or consulting services to certain separate accounts or make investments for its own account.
- Neuberger Berman may, from time to time, be presented or have available to it investment opportunities that could be appropriate for investment by the Clients. There can be no assurance that the Clients will have the opportunity to participate in investments presented or available to Neuberger Berman. In addition, Neuberger Berman or its employees or investment vehicles, accounts and clients managed or advised by Neuberger Berman may be offered the opportunity to co-invest, and may co-invest, alongside the Clients from time to time.
- Client portfolio investments may involve (directly or indirectly) new or follow-on investments in companies in which Neuberger Berman, or other investment funds or vehicles, accounts and clients managed or advised by Neuberger Berman, have made or will make investments. Such investments by such other Neuberger Berman funds, vehicles, accounts or clients may have been or may be made at different prices and on different terms than the Clients' investments in the same companies. No assurance can be given that the Clients will realize identical economic results from an investment in a portfolio company as such other Neuberger Berman funds, vehicles, accounts or clients, and as a result thereof the interests of Neuberger Berman or such other investment funds vehicles, accounts and clients, on the one hand, and the interest of the Clients, on the other hand, in restructuring, exercising with respect to or realizing such investments in the same companies may differ. In addition, there may be situations in which new or follow-on investments in existing Client portfolio companies are made by Neuberger Berman or other investment funds, vehicles, accounts and clients managed or advised by Neuberger Berman but with respect to which the relevant Client does not participate because of concentration, capital availability or other reasons. Such follow-on investments may be made by Neuberger Berman or such other Neuberger Berman funds, vehicles, accounts or clients at prices or on terms that are different than the prices of, or terms applicable to, the relevant Client's existing investments in such portfolio companies.
- Neuberger Berman or its sponsored or managed funds and accounts may hold investments in entities that are engaged in similar businesses to those of the Clients or the Clients' investments. As a result, such other entities may compete with the Clients for investment opportunities. Neuberger Berman will be able to pursue other business activities and provide services to third parties that compete directly with the Clients, including third parties that sponsor or manage a private equity Clients, hedge fund or fund of funds that makes investments that are similar to the types of investments that the Clients intends to make. In addition, Neuberger Berman has established or advises, and may continue to establish or advise, other investment entities that rely on the diligence, skill and business contacts of Neuberger Berman's investment professionals and the information and deal flow they generate during the normal course of their activities. The requirements of these entities may be substantial and may cause Neuberger Berman to divert some of the resources and professionals that would otherwise be made available. Some of these

entities may also have investment objectives that overlap to some degree with certain Client's investment objectives and Neuberger Berman may have greater financial incentives to assist those other entities over the relevant Clients. To the extent that Neuberger Berman engages in activities for itself or others, those activities may be detrimental to a Client's business and adverse to the interests of its investors and may, in some cases, lead to the allocation of investment opportunities to others.

- As a result of the investment management, advisory and related activities of Neuberger Berman, as well as investments made by Neuberger Berman for its own account, Neuberger Berman may acquire confidential or material non-public information and therefore be restricted from initiating transactions in certain securities. Disclosure of such information to the Principals will be on a need-to-know basis only, and the Clients may not be free to act upon any such information. Therefore, the Clients may not be provided access to material non-public information in the possession of Neuberger Berman which might be relevant to an investment decision to be made by the Clients, and the Clients may initiate a transaction or sell a portfolio investment which, if such information had been known to it, may not have been undertaken. In the event any material, non-public information is disclosed to any person responsible for the affairs of a Client, the Client may be prohibited by applicable securities laws and Neuberger Berman's internal policies from acting upon any such information. Due to these restrictions, the Client may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell a portfolio investment that it otherwise might have sold. In other cases, because of confidential or material non-public information acquired by other business units of Neuberger Berman, a Client may also be prohibited from acquiring or selling such portfolio investment.
- Certain members of NB Alternatives and other Neuberger Berman teams providing support to the Clients and on the Client's investment committees have additional responsibilities to Neuberger Berman in their respective capacities as senior executives of Neuberger Berman. Additionally, other Neuberger Berman employees providing services to the Clients or the Adviser will have other responsibilities to Neuberger Berman.
- Certain Clients pay fees to administrators which include affiliates of Neuberger Berman for accounting and administrative services at rates that the Adviser determines in good faith could be obtained on an arm's length basis. Neuberger Berman may also provide a broad range of financial and other services to entities in which the Clients invest or to the Clients and Neuberger Berman generally will be paid fees (which may include warrants or other securities) for such services.
- Subject to the terms of its governing documents, a Client Fund may engage in transactions with its affiliates by, for example, co-investing with Neuberger Berman and affiliates of Neuberger Berman (including employee funds and other funds or accounts sponsored or managed by Neuberger Berman) in portfolio companies, and may invest in entities in which Neuberger Berman or its affiliates hold material investments and with which Neuberger Berman may have important business relationships. The Clients may make investments in portfolio companies from time to time in transactions where Neuberger Berman is acting as agent, manager or otherwise on the other side of the transaction or for other parties in the transaction. Any such transaction will be made only on terms, including the consideration to be paid, that are determined by the General Partner to be appropriate for the Clients.
- Neuberger Berman employees involved in the marketing and placement of Interests are acting for the Adviser and not acting as investment advisors to potential investors in connection with the offering of the Interests. The Adviser or Neuberger Berman may pay such employees a fee based upon the amount of Interests committed to by investors that such employees introduce to the

Adviser. Potential investors must independently evaluate each offering of Interests in a Client and make their own investment decisions.

Conflicts of interest that arise between the Clients or their portfolio investments, on the one hand, and Neuberger Berman, its affiliates, any existing or future affiliated fund, accounts or Neuberger Berman's clients, on the other hand, will be discussed and resolved on a case-by-case basis by senior management of Neuberger Berman and representatives of the General Partner.

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## **Item 12. Brokerage Practices**

The Adviser considers a number of factors in selecting a broker-dealer to execute transactions (or series of transactions) and determining the reasonableness of the broker-dealer's compensation. Such factors include net price, reputation, financial strength and stability, efficiency of execution and error resolution, and offering to the Adviser on-line access to computerized data regarding a Client's accounts. In selecting a broker-dealer to execute transactions (or series of transactions) and determining the reasonableness of the broker-dealer's compensation, the Adviser need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost. It is not the Adviser's practice to negotiate "execution only" commission rates, thus a Client may be deemed to be paying for research, brokerage or other services provided by a broker-dealer which are included in the commission rate. 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. A conflict of interest exists 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. The Adviser's personnel meet at least annually to evaluate the broker-dealers used by the Adviser to execute Client trades using the foregoing factors.

### **Soft Dollars**

The Adviser's investment strategy is such that the Adviser does not anticipate that it will engage in securities transactions on behalf of its Clients that would generate soft dollars. To the extent that the Adviser does engage in securities transactions on behalf of Clients that do generate soft dollars, the Adviser will limit the use of "soft dollars" to obtain research and brokerage services to services that constitute research and brokerage within the meaning of Section 28(e) of the Securities Exchange Act of 1934 ("Section 28(e)"). Research services within Section 28(e) may include, but are not limited to, research reports (including market research); certain financial newsletters and trade journals; software providing analysis of securities portfolios; corporate governance research and rating services; attendance at certain seminars and conferences; discussions with research analysts; meetings with corporate executives; consultants' advice on portfolio strategy; data services (including services providing market data, company financial data and economic data); advice from broker-dealers on order execution; and certain proxy services. Brokerage services within Section 28(e) may include, but are not limited to, services related to the execution, clearing and settlement of securities transactions and functions incidental thereto (i.e., connectivity services between an adviser and a broker-dealer and other relevant parties such as custodians); trading software operated by a broker-dealer to route orders; software that provides trade analytics and trading strategies; software used to transmit orders; clearance and settlement in connection with a trade; electronic communication of allocation instructions; routing settlement instructions; post trade matching of trade information; and services required by the SEC or a self-regulatory organization such as comparison services, electronic confirms or trade affirmations.

If the Adviser uses Client commissions to obtain Section 28(e) eligible research and brokerage products and services, the Adviser's CCO, traders and portfolio managers will meet periodically to review and evaluate its soft dollar practices and to determine in good faith whether, with respect to any research or other products or services received from a broker-dealer, the commissions used to obtain those products and services were reasonable in relation to the value of the brokerage, research or other products or services provided by the broker-dealer. This determination will be viewed in terms of either the specific transaction or the Adviser's overall responsibilities to the accounts or portfolios over which the Adviser exercises investment discretion.

The use of client commissions (or markups or markdowns) to obtain research and brokerage products and services raises conflicts of interest. For example, the Adviser will not have to pay for the products and services itself. This would create an incentive for the Adviser to select or recommend a broker-dealer based on its interest in receiving those products and services.

If the Adviser receives soft dollar benefits, the Adviser intends to use such soft dollar benefits to service all of its Clients' accounts. The Adviser is not required to apply such soft dollar benefits to Client accounts proportionately to the soft dollar credits the accounts generate.

In some instances, the Adviser may obtain a product or service that is used, in part, by the Adviser for Section 28(e) eligible purposes and, in part, for other purposes. In such instances, the Adviser will make a good faith effort to determine the relative proportion of the product or service used to assist the Adviser in carrying out its investment decision-making responsibilities and the relative proportion used for administrative or other purposes outside Section 28(e). Such determination will be based on its evaluation of the research and non-research uses of the product. The proportion of the product or service attributable to assisting the Adviser in carrying out its investment decision-making responsibilities will be paid through brokerage commissions generated by Client transactions and the proportion attributable to administrative or other purposes outside Section 28(e) will be paid for by the Adviser from its own resources. The determination of the appropriate allocation of "mixed use" products and services creates a potential conflict of interest between the Adviser and Clients.

If the Client is subject to ERISA, the Adviser will request that the Client represent that the products or services obtained for soft dollars will be used exclusively for the benefit of the plan's participants and their beneficiaries.

### **Directed Brokerage**

Although the Adviser does not intend to agree to any Client directed brokerage arrangements, in certain instances, Clients may seek to limit or restrict the Adviser's discretionary authority in making the determination of the brokers with whom orders for the purchase or sale of securities are placed for execution, and the commission rates at which such securities transactions are effected. Clients may seek to limit the Adviser's authority in this area by directing that transactions (or some specified percentage of transactions) be executed through specified brokers in return for portfolio evaluation or other services deemed by the Client to be of value. Any such Client direction must be in writing, and should contain a representation from the Client that the arrangement is permissible under its governing laws and documents.

When Clients direct trades to particular brokers, with respect to their directed trades, they will be treated as if they have retained the investment discretion that the Adviser otherwise would have in selecting brokers to effect transactions and in negotiating commissions, and such direction may adversely affect the Adviser's ability to obtain best execution. In addition, when a Client directs trade to particular brokers,

such orders may not be aggregated with other orders and may be submitted after other orders have been filled, and such direction may otherwise hinder best execution and may cost the Client more money as the Client may receive less favorable prices.

### **Aggregation of Purchases and Sales**

For a description of the Adviser's policies and procedures concerning the aggregation of the purchase or sale of securities for Clients, see "*Aggregation of Orders*" in Item 11 above.

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

### **Oversight and Monitoring**

The Adviser provides continuous advisory services for the Clients and performs various periodic reviews of each Client's portfolio. In addition, a review may be triggered by special circumstances. Significant market events affecting the prices of one or more investments in Client accounts, changes in the investment objectives or guidelines of a particular Client, or specific arrangements with particular Clients may trigger reviews of Client accounts on other than a periodic basis. The portfolio investments of each Client are primarily reviewed by the senior investment professional or senior investment professionals responsible for the applicable Client account.

### **Reporting**

Each Client that is a Specific Vehicle will receive quarterly reports providing valuations from the Adviser, along with annual audited financial statements prepared in accordance with U.S. generally accepted accounting principles. Such reports may be delivered electronically to the Client in accordance with the applicable Advisory Agreements and/or the governing documents of the applicable Client.

The Funds' investors receive reports pursuant to the terms of each Fund's offering memorandum or as otherwise described in the offering and governing documents of the Fund.

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

While not a client solicitation arrangement, the Adviser notes that it may from time to time engage one or more persons to act as a placement agent for a Client in connection with the offer and sale of interests to certain prospective investors. Such persons generally will receive a fee in an amount equal to a percentage of the capital commitments for Interests in a Client that are accepted by such Client's general partner or board of directors with respect to such prospective investors. Such fees will be negotiated individually between the Adviser and such person. Where applicable, cash payments for client solicitations will be structured to comply fully with the requirements of Rule 206(4)-3 under the Advisers Act and related SEC staff interpretations.

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### Item 15. Custody

The Adviser has *custody* of certain Client funds and securities, which are held by third party qualified custodians.

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### Item 16. Investment Discretion

The Adviser provides investment advisory services on a *discretionary basis* to certain of its Clients. Please see Item 4 for a description of any limitations Clients may place on the Adviser's *discretionary authority*.

Prior to assuming full/limited discretion in managing a Client's assets, the Adviser enters into an investment management agreement or other agreement that sets forth the scope of the Adviser's discretion.

Unless otherwise instructed or directed by a discretionary Client, the Adviser has the authority to determine (i) the securities to be purchased and sold for the Client account (subject to restrictions on its activities set forth in the applicable investment management agreement and any written investment guidelines) and (ii) the amount of securities to be purchased or sold for the Client account. Because of the differences in certain Clients' investment objectives and strategies, risk tolerances, tax status and other criteria, there may be differences among Clients in invested positions and securities held.

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### Item 17. Voting Client Securities

#### Voting

The Adviser's Clients generally invest in instruments that do not have attached voting rights. However, the Adviser has been delegated proxy voting authority on behalf of its Clients for any investments that may have attached voting rights.

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 its Clients ("Votes"). When the Adviser has discretion to vote the proxies of its Clients, it will vote those proxies in the best interest of its Clients and in accordance with such policies and procedures.

In the absence of specific voting guidelines from the Client, the Adviser will vote proxies in the best interests of each particular Client, which may result in different voting results for proxies for the same issuer. The Adviser has adopted a set of voting guidelines it believes will result in the Adviser voting proxies in the best interests of its Clients.

Clients generally cannot direct the Adviser's Vote.

All voting decisions initially are referred to the CCO, who will then typically refer them to the appropriate investment professional for a voting decision. In most cases, the Adviser's 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.

The 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 CCO in accordance with the Adviser's policies and procedures, which will include consideration of whether the Adviser or any investment professional or other person recommending how to vote has an interest in how the Vote is voted that may present a conflict of interest. In addition, all of the Adviser's 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 Clients. If a material conflict exists, the Adviser will determine whether voting in accordance with the voting guidelines and factors described above is in the best interests of the Client. The Adviser will also determine whether it is appropriate to disclose the conflict to the affected Clients and, except in the case of Clients that are subject to ERISA, give the Clients the opportunity to vote their proxies themselves.

Clients may contact the CCO via e-mail at [ahyman@athyrium.com](mailto:ahyman@athyrium.com), or by telephone at 212-402-6925, in order to obtain information on how the Adviser voted such Client's proxies, and to request a copy of the Adviser's proxy voting policies and procedures. If a Client requests this information, the CCO will prepare a written response to the Client that lists, with respect to each voted proxy about which the Client has inquired, (a) the name of the issuer; (b) the proposal voted upon, and (c) how the Adviser voted the Client's proxy.

#### Class Action Claims

To the extent that the Adviser has authority, pursuant to the governing documents of a Client, to deal with class action claims ("Claims"), it will do so on a case-by-case basis in accordance with its written and adopted policies and procedures. If any such Client is a pooled investment vehicle, any profits derived from the applicable Claim shall be allocated in accordance with the governing documents of such Client. To the extent the Adviser does not have authority to deal with Claims on behalf of any particular Client, it will forward any such Claims it receives to the Client.

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

This item is not applicable.

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

This item is not applicable.