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**ACRES Capital, LLC**  
**Form ADV Part 2A**  
**Disclosure Brochure**  
**March 30, 2018**

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Westbury, New York 11590  
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Form ADV, Part 2; the “Disclosure Brochure” or “Brochure” provides information about the qualifications and business practices of ACRES Capital LLC., a New York limited liability company (“ACRES”).

If you have any questions about the contents of this Brochure, please contact Jaclyn Jesberger, General Counsel and Chief Compliance Officer for ACRES, at (516) 535-0015; [jjesberger@acrescap.com](mailto:jjesberger@acrescap.com). The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority.

Additional information about ACRES is also available at the SEC’s website [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov) (click on the link “Investment Adviser Search”, select “Investment Adviser Firm” and type in our name “ACRES Capital LLC”). The search results will provide you with both Parts 1 and 2A of ACRES’s Form ADV.

ACRES is registered with the SEC as an investment adviser. ACRES’s registration as an investment adviser does not imply any level of skill or training. The oral and written communications we provide to you, including this Brochure, serve as information for you to use to evaluate ACRES and should be considered in connection with any investment decisions relating to activity advised by ACRES.

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## Item 2: Material Changes

This Brochure amends the initial filing dated October 1, 2015.

This section describes the **material changes to ACRES' Brochure since its last annual amendment**. ACRES, at any time, may update this Brochure and either send you a copy or offer to send you a copy (either by electronic means (email) or in hard copy form). If you would like another copy of this Brochure, please download it from the SEC's website as indicated above, or you may contact ACRES' Chief Compliance Officer, Jaclyn Jesberger, General Counsel and Chief Compliance Officer at (516) 535-0015; [jjesberger@acrescap.com](mailto:jjesberger@acrescap.com).

- The disclosure in Item 4 ("Advisory Business") has been expanded to clearly describe ACRES duties in performing investment advisory services for its clients and include ACRES role as an investment adviser to a private fund.
- The disclosure in Item 5 ("Fees and Compensation") has been updated to disclose ACRES role as an investment adviser to a private fund.
- The disclosure in Item 6 ("Performance Based Fees and Side-By-Side Management") has been updated to disclose ACRES role as an investment adviser to a private fund.
- The disclosure in Item 7 ("Types of Clients") has been updated to disclose ACRES role as an investment adviser to a private fund.
- The disclosure in Item 8 ("Methods of Analysis, Investment Strategies and Risk of Loss") has been updated to reflect ACRES role as an investment adviser to a private fund as well as include cybersecurity risks.
- The disclosure in Item 10 ("Other Financial Industry Activity and Affiliations") has been updated to reflect ACRES Capital Servicing, LLC as servicer.
- The disclosure in Item 13 ("Review of Accounts") has been updated to reflect ACRES role as an investment adviser to a private fund.
- The disclosure in Item 14 ("Client Referrals and Compensation") has been updated to reflect ACRES use of third-party solicitors.

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## Item 4: Advisory Business

### A. Description of the Firm

ACRES Capital, LLC (“we” or “us” or “our” or “ACRES”), a New York limited liability company, was established in 2012. ACRES is a commercial real estate direct lending company which provides unique capital solutions for owners and operators of commercial real estate debt. ACRES’ originates, structures, underwrites and manages middle market commercial real estate debt investments.

ACRES tailors its advisory services to the specific investment objectives of its clients.

### B. Types of Advisory Services

The Separate Accounts invest in commercial mortgage loan investments, commercial real estate and related assets.

We provide investment management services to the following:

We provide investment management, administrative and other services to five separate accounts and assist in originating, structuring, underwriting and servicing investments pursuant to managed account agreements. (“**Separate Account**”)

We provide investment management, administrative and other services to a private investment fund (the “**Fund**”) and will monitor, oversee, supervise and control any and all investment advisory services provided with respect thereto. Investment advice is provided directly to the Fund and not individually to the investors in the Fund. Current and Prospective Investors should refer to the applicable governing documents for complete information regarding investment objectives, restrictions and risks relating to the Fund.

The term “**Client**” herein refers to the owner of the Separate Account or the investors in the Fund.

As investment adviser to Clients, ACRES’ identifies investment opportunities and participates in the origination, underwriting, structuring, management, monitoring and disposition of investments for each Client. ACRES’ provides investment advice pursuant to the investment guidelines set forth in each Client’s management agreement, private placement memorandum, advisory agreement or other governing documents.

### C. Client Tailored Services and Client Tailored Restrictions

Each Separate Account Client has its own tailored investment strategy and Separate Account Clients may impose restrictions on investing in certain types of investments. The governing documents for each Separate Account Client contain investment parameters related to asset class, geographic location, asset type, sponsor concentration and position size.

The governing documents of the Fund provide ACRES’ with discretion to make investments with a

focus on originating, structuring, underwriting and servicing a portfolio of collateralized first mortgage loans by providing opportunistic financings to qualified commercial real estate Borrowers in the U.S. middle market holding real estate assets with a focus on commercial properties that are poised for transition or repositioning, and whose owners and/or developers are in need of funding in order to maximize property value prior to acquiring long-term, permanent financing. The governing documents of the Fund include investment restrictions such as prohibitions on asset class, geographic location, asset type and position size.

#### **C. Wrap Programs**

We do not participate in wrap fee programs.

#### **D. Assets Under Management**

As of December 31, 2017, we managed approximately \$485,741,346 of Client assets on a non-discretionary basis and \$30,105,000 on a discretionary basis.

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

#### **A. Fee Schedule; Prepayment of Fees and Refunds, Payment Method**

All investors and prospective Fund Investors should carefully review the governing documents of the Fund in conjunction with this Brochure for complete information on the fees and compensation payable with respect to the Fund.

The amount of the advisory fees of the Fund are set forth in the Fund's governing documents, which are distributed to each investor prior to making an investment in the Fund. Advisory Fees are borne by ACRES' and are not paid by investors in the Fund. ACRES' also receives, origination fees, management fees, servicing fees and performance based compensation.

Separate Accounts pay a Management Fee & Servicing Fee, for servicing, management and origination services, which is generally based on a percentage of the aggregate amount invested at cost for the investments made for the account. Fees are individually negotiated and may be different than the terms and conditions that apply to the Fund. Fees are set forth in the governing documents for each Separate Account.

#### **B. Other Fees and Expenses**

Separate Account Clients may elect to have account assets held in the custody of a bank, trust company, broker-dealer or other entity selected by the Client or us. The Client bears any custodial fees associated with any such account. Any fees incurred by the Client will be in addition to the fee payable to ACRES.

Separate Account Clients shall pay their pro rata share of any fees and expenses which (i) are directly attributable to any investment made on behalf of such Separate Account Client; (ii) are payable to third parties, including, without limitation, fees and expenses or third party consultants, attorneys and accountants, commission expenses and costs of litigation relating to such investment, (iii) are not subject to reimbursement on the part of any other party with respect to such investment.

Investors in a Separate Account or the Fund are generally allocated their pro rata share of such additional fees and expenses. A portion of staff out-of-pocket travel expenses in connection with the Separate Accounts' or the Fund's transactions may be treated as Separate Account or Fund expenses, subject to the terms of the governing documents. ACRES' will be required to decide whether costs and expenses are to be borne by a Client, on the one hand, or ACRES. ACRES' will make such judgments in a manner that it determines to be fair and reasonable in good faith, notwithstanding its interest in the outcome, and will make corrective allocations should it determine that such corrections are necessary or advisable.

Fees are payable in arrears, generally on a quarterly basis. ACRES is authorized under the governing documents to charge and deduct certain fees directly from the assets at times and in amounts set forth in governing documents. Fees may be deducted or billed directly, depending on the nature of the fee. Please refer to the applicable governing documents for complete information on timing of fee payments.

The General Partner is permitted to enter into side letters and other agreements pursuant to which certain investors may be granted specific rights, benefits or privileges, which could include rights with respect to management fees, performance allocations, expense pass-throughs, reporting obligations and other rights or terms requested in light of particular investment, legal, regulator or public policy characteristics of an investor. These rights, benefits or privileges could create preferences or priorities for certain investors as compared to other investors.

<b>C. Sales Compensation</b>
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Neither we, nor any of our supervised persons, accept or otherwise receive compensation in connection with the sale of any other security or investment product.

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

### *Performance Based Fees*

Neither we, nor any of our related persons is obligated to allocate any specific amount of time to a particular Client. We and our related persons intend to devote as much time as is deemed necessary for the conduct of each Client's portfolio management and will allocate investment opportunities in accordance with our allocation policy.

To manage these potential conflicts, we have adopted a number of compliance policies and procedures. These policies and procedures include (i) the Code of Ethics (see Item 11), (ii) the Compliance Manual, and (iii) allocation policies which seek to ensure that investment opportunities are allocated on a fair and reasonable basis among Clients (as determined by ACRES, in good faith) and that all Client accounts are managed in accordance with their respective investment mandate. We do not consider fee structures in allocating investment opportunities.

ACRES is entitled to performance-based compensation (i.e., incentive fee, carried interest or other performance fees) from its Fund and Separate Accounts as part of its compensation for management services. Such performance-based compensations arrangements comply with Rule 205-3 under the Investment Advisers Act of 1940 (together with all rules and regulations promulgated thereunder, the "Advisers Act").

### *Side-By-Side Management*

ACRES' provides concurrent advisory services to our Fund and Separate Accounts for which the compensation and fee arrangements differ between Clients. The potential for ACRES to receive higher fees from certain accounts creates a potential conflict of interest with respect to the allocation of investment opportunities, as ACRES may be incentivized to allocate investments to Clients who pay higher fees.

To mitigate these potential conflicts of interest, ACRES allocates investment opportunities among Clients in accordance with our investment allocation policy and consistent with our fiduciary duties to our Clients. It is ACRES policy to allocate investment opportunities, to the extent practicable, on the basis that, over a period of time, is fair and equitable to each Client relative to any other Client, taking into account the terms of the relevant governing documents of such client, as well as the relevant facts and circumstances, including, but not limited to (i) differences with respect to available capital, overall size of Client accounts and remaining life of Client accounts; (ii) differences in investment objectives or strategies; and (iii) potential conflicts of interest. ACRES will use its best efforts to meet any target allocations set forth in each Client's investment objectives, however, individual investments may deviate based on individual loan considerations.

### *Co-Investment Policy*

ACRES has adopted a co-investment policy that allows ACRES to invest directly alongside other Clients who share similar investment mandates. ACRES shall have the opportunity to co-invest in such investment based on ACRES investment objectives which are stated in ACRES internal investment policy and include factors such as principal amount, term, asset type, geographic

concentration, asset type, loan-to-value and loan-to-cost ratios. ACRES will have the opportunity to invest, on economic terms substantially no more favorable to ACRES than to the other Clients ACRES will be allocated an amount in such investment opportunity, to the extent practicable, on the basis that, over a period of time, is fair and equitable to each Client relative to any other Client, taking into account the terms of the relevant governing documents as well as the relevant facts and circumstances, including, but not limited to (i) differences with respect to available capital, overall size of a Client account and remaining life of a Client account; (ii) differences in investment objectives or strategies; and (iii) potential conflicts of interest.



## Item 7: Types of Clients

ACRES' generally provides investment advice to investment vehicles including separately managed accounts, a private investment fund and other institutional clients. ACRES' acts as the general partner to a private investment Fund. Investors in our Fund are and will be comprised primarily of high net worth individuals, family offices, trusts, foundations, endowment, pensions, fund-of-funds and other similar institutions. Investors participating in our Fund are required to meet certain suitability and net worth qualifications including qualifications that they are (A)(i) an "accredited investor" as defined in Rule 501(A) of regulation D under the Securities Act of 1933, as amended (the "**Securities Act**") (i) a "Qualified Client" as defined in Rule 205-3(d)(1) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"); (iii) are able to bear the economic risk of and investment in an interest for an indefinite period, and (iv) acquiring an interest for its own account for investment purposes only and not with a view to any resale or distribution of such interest.

### *Minimum Investment Requirements*

The minimum investment in the Fund is \$250,000. ACRES' has the ability to waive this minimum at our discretion.

With respect to separately managed accounts, ACRES' generally requires a minimum investment of \$25 million.

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

### **A. Methods of Analyses**

For each prospective investment, an underwriting team is assigned to perform a ground-up analysis of all aspects of credit risk. We have developed the capability to apply this methodology to a high volume of investment opportunities, with the primary investment objective of seeking to generate attractive risk-adjusted returns, by originating (and/or acquiring) loans to qualified commercial real estate borrowers in the U.S. middle market while preserving capital. On all levels, we incorporate input received from our finance, capital markets, credit and legal teams, as well as from various third parties, including our credit providers. The due diligence that ACRES carries out with respect to any investment opportunity may not reveal or highlight all relevant facts that may be necessary or helpful in evaluating such investment opportunity, and such an evaluation will not necessarily result in the investment being successful.

ACRES' underwriting focuses on understanding the borrower and sponsor and their ability to execute the intended business plan as well as structuring the transaction so that it has the appropriate controls and rights with respect to the investment.

ACRES' strives to design a customized structure for each investment that provides us with the necessary credit, yield and protective structural features while meeting the varying, and often complex, needs of our Clients.

We actively manage our Clients' portfolios. From the closing of an investment through its final repayment, our dedicated asset management team is in constant contact with our borrowers and servicers, monitoring performance of our collateral and enforcing our rights as necessary.

### **B. Investment Strategies**

ACRES' provides advice primarily on senior mortgage loans secured by an individual property or a portfolio of properties. ACRES' expects to pursue transactions with one or more of the following characteristics:

- Properties that are poised for transition or repositioning and whose owners/developers need funding in order to maximize property value prior to acquiring long-term permanent debt.
- Dislocated opportunities in the commercial real estate industry.
- Value enhancement opportunities where ACRES' identifies underperforming assets with correctable defects.

Investment opportunities which are appropriate for more than one Client will be allocated by us according to our allocation policies as described further in Section 12.B below.

ACRES' personnel meet as necessary to discuss the investment activities of the Separate Accounts and the Fund (it being understood that the investment periods for certain of the Separate Accounts have ended). At that meeting, transactions and other relevant developments and/or activities regarding the Separate Accounts and the Fund are discussed.

This is a summary only. Clients should look to their investment advisory agreements or the Fund Documents and other Client materials for a more complete description of each strategy. Clients should not rely solely on the descriptions provided above.

### **C. Material Risks**

*Investments in securities involve risk of loss that investors must be prepared to bear. ACRES' does not make any assurances that any investment will realize returns. Past performance is not indicative of future results.*

#### ***Investment Strategy Risks***

Separate Account Clients and Fund Investors are sophisticated and can understand and accept the risks associated with the investment strategy developed for them. Risks encountered by our Clients may include (but are not limited to):

- Investing in real estate related investments will expose the Client to a high degree of risk and the characteristics of Client investments (commercial mortgage loan investments) will give rise to certain risk factors
- The real estate investment business is highly competitive. Our investment success depends on our ability to compete with other providers of capital for real estate investments
- The success of our investments on behalf of our Clients will be dependent on the availability of, and the degree of competition for, attractive investments
- Our due diligence may not reveal all of the factors affecting an investment and may not reveal weaknesses in the underlying loans securing such investments
- Market factors outside of our control may affect the market value of investments
- Leverage Risk--We may not be able to obtain leverage; the use of leverage will expose Clients to heightened risk. We may not be able to liquidate assets quickly enough to repay borrowings, which will increase the losses incurred by the Client
- The impact of the events of September 11, 2001 and other acts of terrorism and the effect thereon on terrorism insurance expose Clients to certain risks
- Investments are subject to risks associated with a changing economic environment
- Investments may be subject to fluctuations in interest rates and hedging risks. In addition to such investment valuation risks, our investments are generally collateralized by commercial real estate and changes in interest rates may impact the value of the collateral securing our investment

- Our investments are secured by commercial property and are subject to risks of delinquency and foreclosure which depend on the operating performance of the underlying property
- Investments may be illiquid
- We may not be able to achieve diversification in investments made for Clients
- We may make investments with maturity dates later than the term of a Fund or Separate Account; it may be difficult to dispose such investments
- We may invest in non-performing assets that are subject to a higher degree of financial risk
- We may not have control over Client investments
- We may not achieve the Client's targeted rate of return on investments
- Clients may be exposed to the risks involved with making subordinated debt investments. Subordinated debt and related investments involve the risks attendant to real estate investments as well as additional risks attendant to investments in subordinated positions
- There are increased risks involved with construction lending activities
- Clients may make investments in, or may become the owner of, the equity of properties, portfolios and operating entities
- Clients may guarantee some of their leverage and contingent obligations

**Investments are appropriate only for sophisticated investors for whom an investment does not constitute a complete investment program and who fully understand and are willing to assume the risks involved in the Fund's investment program. An investment involves a significant degree of risk, including risk of loss. There can be no assurance that the investment objective of the Fund will be achieved or that significant losses will not be incurred**

Stock markets, bond markets and real estate markets fluctuate substantially over time. As recent global and domestic economic events have indicated, performance of any investment is not guaranteed. As a result, there is a risk of loss of the assets ACRES manages that is out of its control. ACRES cannot guarantee any level of performance or that investors in the Separate Accounts will not experience a substantial or complete loss of their account assets.

There is no assurance that the Separate Accounts or the Fund will be able to generate returns or that the returns will be commensurate with the risks inherent in their investment strategy. The marketability and value of any such investment will depend upon many factors beyond the control of ACRES. The expenses of the Separate Accounts may exceed their income, and an investor in a Separate Account could lose the entire amount of its contributed capital. Past performance cannot be taken to guarantee future results.

### ***Real Estate Risks***

There are certain risks inherent in the ownership and operation of real estate and real estate related businesses and assets. The value of real estate is affected by a number of factors, including the general economic climate, physical condition of properties, unexpected cost overruns, changes in real property tax and transfer tax rates, competition based on rental rates, reduced availability of mortgage funds which may render refinancing difficult and natural disasters. Real estate historically has experienced significant fluctuations and cycles in value and a real estate Fund may

make an investment at a less than optimal time. If investments do not generate sufficient revenues or proceeds to meet operating expenses, including debt service and capital expenditures, distributions to Clients may be adversely affected.

ACRES may determine that it is in the best interests of the Client to foreclose on collateral securing one or more investment. The foreclosure process varies by jurisdiction and can be lengthy and expensive. Borrowers often assert claims, counterclaims and defenses to delay or prevent foreclosure actions, which can prolong and complicate an already difficult and time-consuming process. In some states or other jurisdictions, foreclosure actions can take up to several years or more to conclude. During the foreclosure proceedings, a borrower may have the ability to file for bankruptcy, with the effect of staying the foreclosure action, further delaying the process, and materially increasing the expense thereof, which may not be recoverable.

### ***Cybersecurity Risks***

In addition to the risks described above that primarily relate to the value of investments, there are various operational, systems, information security and related risks involved in investing, including but not limited to “cybersecurity” risk. ACRES’ depends on information technology and communication systems to conduct business. Cybersecurity attacks include electronic and non-electronic attacks that include, but are not limited to, gaining unauthorized access to digital systems to obtain client and financial information, compromising the integrity of systems and client data (e.g., misappropriation of assets or sensitive information), or causing operational disruption through taking systems off-line (e.g., denial of service attacks). As the use of technology has become more prevalent, we and the accounts we manage have become potentially more susceptible to operational risks through cybersecurity attacks. For example, unauthorized third parties might attempt to access, modify, disrupt the operations of or prevent access to our systems or the systems of our service providers. These attacks in turn could cause us and client accounts (including funds) we manage to incur regulatory penalties, reputational damage, additional compliance costs associated with corrective measures, and/or financial loss. While cybersecurity risk management systems and business continuity plans have been developed and are designed to reduce the risks associated with these attacks, there are inherent limitations in any cybersecurity risk management system or business continuity plan, including the possibility that certain risks have not been identified. Accordingly, there is no guarantee that such efforts will succeed, especially since we do not directly control the cybersecurity systems of issuers or third-party service providers

## **Item 9: Disciplinary Information**

ACRES' does not have any legal, financial or other “disciplinary” item to report. As a registered investment adviser, ACRES is obligated to disclose any disciplinary event that would be material to the investor when evaluating an investor/adviser relationship.

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

### **Other Financial Industry Activities**

ACRES Capital Servicing, LLC (“Servicer”) is an affiliate of ACRES that will be responsible for servicing certain of the investments. The Servicer will provide various monitoring and advisory services in exchange for a Servicing Fee and certain expense reimbursements; including without limitation analyzing and monitoring loan compliance, cash flow and business plans of respective borrowers and conducting monthly reviews of the investments.

## **Item 11: Code of Ethics**

ACRES' recognizes and believes that (i) high ethical standards are essential for its success and to maintain the confidence of its investors; (ii) its long-term business interests are best served by adherence to the principle that the interests of investors come first; and (iii) it has a fiduciary duty to its investors to act in or not opposed to the best interests of the Separate Accounts. All ACRES personnel are required to act in accordance with the implied contractual covenants of good faith and fair dealing in respect of their dealings with investors and are required to comply with applicable laws.

ACRES is governed by our Code of Ethics (the "Code of Ethics"). The Code of Ethics governs a number of potential conflicts of interest which exist when ACRES' provides advisory services to the investors in the Separate Accounts it manages. The Code of Ethics is designed to ensure that ACRES' meets its fiduciary obligation to ACRES' investors (or prospective investors) and to instill a culture of compliance within ACRES. An additional benefit of the Code of Ethics is to detect and prevent violations of securities laws.

The Code of Ethics is distributed to each employee at the time of hire and annually thereafter. ACRES' also supplements the Code of Ethics with ongoing monitoring of employee activity. The Code of Ethics includes, among other items, the following:

- Requirements related to confidentiality;
- Limitations on, and reporting of, gifts and entertainment;
- Pre-clearance of political contributions;
- Pre-clearance and reporting of certain employee personal securities transactions;
- Pre-clearance of outside business activities; and
- Protection of persons who engage in "whistle blowing" activities from retaliation.

On an annual basis, ACRES' requires all employees to certify that they are in compliance with the Code of Ethics.

ACRES and its related personnel are subject to guidelines governing the ability to trade in their personal accounts. The guidelines generally require that any trading related to an account for which the employee has material non-public information must receive pre-clearance from ACRES' Legal and Compliance Department. These guidelines are designed to comply with SEC requirements that registered investment advisors have a Code of Ethics. In addition, ACRES has implemented certain policies and procedures (e.g., information walls) to restrict access to material non-public information. The Code of Ethics is available for review upon request.

In certain cases, principal transactions may occur in connection with the investment activities of the Separate Accounts, subject to applicable legal, regulatory and contractual requirements. In such case, generally either the investors in the Separate Accounts, an advisory committee representing third party investors or an independent client representative of the Separate Accounts must receive notice of the transaction and consent to the transaction prior to the closing of such transaction.

You may request a copy of the Code of Ethics by contacting Jaclyn Jesberger, General Counsel and Chief Compliance Officer for ACRES, at (516) 535-0015.



## Item 12: Brokerage Practices

<b>A. Criteria for Selection of Broker-Dealers</b>
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### **In General-Brokerage Selection**

ACRES' does not enter brokerage transactions on behalf of the Separate Accounts or the Fund. Therefore, a broker-dealer is not required to effect transactions in the Separate Accounts or the Fund.

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

ACRES' does not utilize soft dollar agreements.

### **Brokerage for Client Referrals**

We do not enter into agreements with, or make commitments to, any broker-dealer that would bind us to compensate that broker-dealer, directly or indirectly, for client referrals (or sale of fund interests) through the placement of brokerage transactions.

### **Directed Brokerage**

We do not engage in directed brokerage transactions.

### **Item 13: Review of Accounts**

All accounts are regularly reviewed by our senior investment professionals. Senior investment professionals, with the assistance of other investment professionals, regularly review and discuss portfolio status, potential investments, performance, and related issues.

Separate Accounts receive quarterly and annual (or if requested, more frequent) statements indicating their capital balances and the accounts balance sheet and income statement. These materials are provided with a report highlighting the developments for the period. Other Clients receive monthly or quarterly statements regarding their portfolios and activities during the period.

The timing and nature of reviews for the Fund are dictated by regulatory requirements and the Funds offering documents. The custodian or Fund administrator delivers a quarterly report to each investor.

## Item 14: Client Referrals and Other Compensation

### A. Compensation by Non-Clients

We and/or our affiliates may be entitled to receive special servicing fees from the servicing of commercial mortgage loans underlying certain of our Clients' investments. We may obtain such special servicing assignments by exercising special servicing designation decision rights possessed by such Clients.

From time to time, we may receive transaction fees, including origination, acquisition, disposition, brokerage, investment banking, financing, break-up or similar fees from third party borrowers or property owners which are directly related to the activities of our Clients. Depending upon the terms of the governing documents, these fees may be for our account or our Client's account.

ACRES' enters into solicitation agreements pursuant to which it compensates third-parties for client referrals that result in the provision of investment advisory services by the Firm. All agreements comply with Rules 206(4)-3 and 206(4)-5 under the Advisers Act and any applicable state laws and regulations. Third parties who introduce clients to ACRES may receive compensation from ACRES or its affiliates, including a percentage of introduced capital. Compensation is paid pursuant to a written agreement with the solicitor and generally may be terminated by either party from time to time. ACRES' bears the costs of these fees and, therefore, these fees do not result in any additional charges to the Fund or any Clients.

## **Item 15: Custody**

As a practical matter, ACRES' does not maintain physical possession of the funds or securities of the Fund or any Separate Account. Physical custody of the assets of a Separate Account will be maintained with a bank, trust company, broker-dealer or other qualified custodian (a "Qualified Custodian") selected by ACRES in our exclusive discretion, which selection may change from time to time generally without the consent of the investors in the Separate Account or the Fund.

Although ACRES' does not have physical possession or custody of the assets of any Separate Account or Fund investor under Rule 206(4)-2 of the Advisers Act, as amended (the "Custody Rule"), we are deemed to have "constructive custody" of the assets of the Separate Accounts or Fund Investors by virtue of our relationships with our clients and our respective agreements.

It is ACRES' policy to cause the Fund to be audited annually and to distribute audited financial statements, prepared in accordance with US GAAP, to investors, no later than 120 days after the end of each fiscal year.

As part of our custody agreements with our Separate Account Clients, we engage in the movement of funds into and out of the accounts. Receipts and disbursements are generally authorized by our Clients in one form or another. Clients are supplied copies of loan statements that detail monthly activities with respect to receipts and disbursements to and from various loan reserve and escrow accounts. In addition, ACRES' has instructed its qualified custodian to send monthly account statements to each Client.

## **Item 16: Investment Discretion**

Subject to any investment restrictions set forth in the documents governing our relationship with our Clients, ACRES has discretionary authority to determine the investments that are to be made or disposed of without obtaining the consent of any Client.

We also exercise other discretionary authority in connection with ongoing asset management, including loan modifications, of Client investments, subject to the documents governing our relationship with our Clients.

ACRES' discretionary authority is derived from our authority conveyed by the documents governing our relationship with the Clients. For ACRES to assume such discretionary authority, each Client must complete the appropriate Fund subscription documents or investment advisory agreement prior to the establishment of an advisory relationship granting such authority.

## Item 17: Voting Client Securities

As a fiduciary, an investment adviser with proxy voting authority has a duty to monitor corporate events and to vote proxies, as well as a duty to cast votes in the best interest of clients and not subrogate client interests to its own interests. Rule 206(4)-6 under the Advisers Act (the “**Proxy Voting Rule**”) places specific requirements on registered investment advisers with proxy voting authority. Due to the nature of our investment strategy, equity securities will generally not be a large portion of the investments of any Client. Nevertheless, because we have discretionary authority over the securities held by the Clients, we are viewed as having proxy voting authority over such securities. Accordingly, we are subject to the Proxy Voting Rule. To meet our obligations under this rule, we have adopted written Proxy Voting Policies and Procedures, which are available upon request. These policies and procedures are reasonably designed to ensure that we vote proxies in the best interest of the Clients and addresses how we will resolve any conflict of interest that may arise when voting proxies.

From time to time, conflicts may arise between the interests of the investor and the interests of ACRES. If ACRES determines that we have, or may be perceived to have, a conflict of interest when voting a proxy, ACRES will address matters involving such conflicts of interest on a case-by-case basis in a fair and equitable manner, subject to legal, regulatory, contractual or other applicable considerations. ACRES, in our sole discretion, may elect not to vote a proxy if unduly burdensome.

Investors may request a copy of the Proxy Voting Policies and Procedures and the voting records relating to proxies as provided by the Proxy Voting Rule by contacting Jaclyn Jesberger, General Counsel and Chief Compliance Officer for ACRES, at (516) 535-0015.

### **Item 18: Financial Information**

We have never filed for bankruptcy as of the date of this ADV Part 2A and are not aware of any financial condition reasonably likely to impair our ability to meet contractual commitments to our Clients.

### **Item 19: Requirements for State Registered Advisers**

Not applicable as ACRES' is not registered in any state.