

**ITEM 1 – COVER PAGE**

**FORM ADV 2A**

**FIRM BROCHURE**



**CONTACT: LEE PANTUSO**

**ENCORE CONSUMER CAPITAL, LP  
111 PINE STREET  
SUITE 1825  
SAN FRANCISCO, CA 94111  
415-296-9850  
[www.encoreconsumercapital.com](http://www.encoreconsumercapital.com)**

**April 24, 2020**

**This Brochure provides information about the qualifications and business practices of Encore Consumer Capital, LP (“Encore”). If you have any questions about the contents of this Brochure, please contact Lee Pantuso at 415-296-9850 or by email at [lee@encoreconsumercapital.com](mailto:lee@encoreconsumercapital.com). The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (the “SEC”) or by any state securities authority, and references in this Brochure to Encore as a “registered investment adviser” are not intended to imply a certain level of skill or training.**

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

## ITEM 2 – MATERIAL CHANGES

This Brochure contains the following material changes since the last update of the Brochure on March 16, 2020:

- **Item 4:** Encore has updated its regulatory assets under management and clarified its client relationships.

Encore encourages each client or potential client to read the Brochure carefully and to call us with any questions at the number provided on the Item 1- Cover Page.

Pursuant to SEC regulations, Encore will ensure that clients receive a summary of any material changes to this Brochure within 120 days of the end of our fiscal year, along with a copy of this Brochure or an offer to provide the Brochure.

### ITEM 3 - TABLE OF CONTENTS

	<u>Page</u>
ITEM 1 – COVER PAGE .....	i
ITEM 2 – MATERIAL CHANGES.....	ii
ITEM 3 - TABLE OF CONTENTS .....	iii
ITEM 4 – ADVISORY BUSINESS.....	4
ITEM 5 – FEES AND COMPENSATION .....	6
ITEM 6 - PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT .....	8
ITEM 7 – TYPES OF CLIENTS .....	10
ITEM 8 – METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS.....	11
ITEM 9 – DISCIPLINARY INFORMATION.....	17
ITEM 10 – OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS .....	18
ITEM 11 – CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING.....	19
ITEM 12 – BROKERAGE PRACTICES .....	22
ITEM 13 – REVIEW OF ACCOUNTS .....	23
ITEM 14 – CLIENT REFERRALS AND OTHER COMPENSATION .....	24
ITEM 15 – CUSTODY .....	25
ITEM 16 – INVESTMENT DISCRETION.....	26
ITEM 17 – VOTING CLIENT SECURITIES .....	27
ITEM 18 – FINANCIAL INFORMATION.....	28

## **ITEM 4 – ADVISORY BUSINESS**

### **A. Description of Advisory Firm**

Encore is a private equity firm which primarily provides advice on and manages investments in lower middle-market companies in the consumer product industry. Encore is a Delaware limited partnership, originally formed as a limited liability company in 2005. Encore provides discretionary investment advisory services to a number of private investment funds (the “Funds”) and co-investment vehicles. At the present, the only advisory clients of Encore are the Funds.

The principal owners of Encore are Sellers Trust and Hoefer Brown Family Trust. The trustees of such trusts include Scott Sellers and Robert Brown, the founders and principals of Encore (the “Principals”). Investors in the Funds should refer to the Schedule A of Form ADV Part 1A for details on Encore’s ownership information.

Encore serves as the investment manager to private investment funds exempt from registration under the Investment Company Act of 1940, as amended (the “Investment Company Act”). In addition, the securities of the Funds are not registered under the Securities Act of 1933, as amended (the “Securities Act”). A full list of Funds can be found on Encore’s Form ADV Part 1A, Section 7.B.(1).

In 2016, Encore formed two Alternative Investment Vehicles for the special purpose of investing in one of its portfolio companies: Encore Consumer Capital Taxable III, LP and Encore Consumer Capital Tax-Exempt III, LP (together the “Encore Vehicles”). Encore does not receive any management fees or performance allocation directly from the Encore Vehicles. Encore does not consider the Encore Vehicles as advisory clients for purposes of this Brochure.

Affiliates of Encore serve as the general partners of the Funds (the “Affiliated General Partners”).

Each Fund is governed by a limited partnership agreement or an operating agreement (each, a “Fund Agreement”) that outlines the specific investment guidelines and restrictions applicable to each Fund. In addition, a private placement memorandum, if applicable, is prepared for the investors of each Fund and contains information regarding the intended investment program. Encore, together with the Affiliated General Partners, provide investment management and administrative services to the Funds in accordance with the applicable Fund Agreements, private placement memoranda and other offering materials. Each of the Affiliated General Partners retains management authority over the business and affairs, including investment decisions of the Funds, for which it serves as general partner.

### **B. Types of Advisory Services**

Encore maintains broad investment authority with respect to the administration and direction of the Funds. Each Fund’s investment objectives and strategy are set forth in a confidential private placement memorandum. All investors in the Funds (“Investors”) are provided with a confidential private placement memorandum prior to investing in the Funds and are urged to carefully review Fund documents.

Encore typically will invest in lower middle market companies with between \$10 million and \$100 million of annual revenue and with leading positions in attractive segments of the consumer products industry. Encore believes that its consumer products expertise and its large network will allow the investment team to identify investment opportunities within the industry and add significant value to

its portfolio companies. Within the consumer products industry, Encore will seek investments that the Principals believe have a favorable combination of the following characteristics:

- Strong brand name or leading market position;
- Strong management team;
- Low cost operations or sourcing advantages;
- Leverageable, consistent cash flows;
- Opportunity to expand into new product lines or channels; and/or
- Clearly identifiable and attractive exit strategy.

Encore will (through the Funds) make investments in various sectors of the consumer products industry including food, beverages, personal care, household products, and pet products. Encore typically will not invest in traditional retailers or restaurants, or service businesses.

#### **C. Client Objectives and Restrictions**

As noted above, the clients of Encore are the Funds. Encore does not tailor its advisory services to the individual needs of Investors.

Notwithstanding the fact that Encore has not accepted any sort of investment restrictions for individual Investors, it should be noted that Encore has agreed to modify certain rights and privileges for certain Investors which are not available to other Investors (including without limitation, transparency rights, reporting rights, capacity rights, approval rights and certain other protections and the right to receive certain special allocations). Typically, such modifications are contained within side letters which are negotiated prior to an investment in the Funds.

#### **D. Wrap Fee Programs**

Encore does not participate in wrap fee programs.

#### **E. Regulatory Assets Under Management**

As of December 31, 2019, Encore manages \$415,208,848 of client assets on a discretionary basis. Encore does not currently manage any client assets on a non-discretionary basis.

## ITEM 5 – FEES AND COMPENSATION

### A. Advisory Fees and Compensation

#### Management Fees

Encore is generally compensated for advisory services through asset-based management fees (the “Management Fee”). In addition, affiliates of Encore are entitled to performance-based compensation.

Encore receives a quarterly management fee from each Fund in an amount equal to 2.00% per annum. The Management Fee is based on a percentage of capital commitments or capital contributions remaining invested, as applicable.

#### Performance-Based Fees (Carried Interest)

Affiliates of Encore may be eligible to receive a percentage of investment proceeds on distributions (the “Carried Interest”). All distributions are split between Investors and the Affiliated General Partner as set forth in the applicable Fund’s governing documents. The Carried Interest is generally equal to 20% of realized gains, which applies once an Investor in the relevant Fund has received a specific preferred return (the “Return”), as outlined in the Fund’s governing documents. Investors are generally allocated all gains until they have surpassed the Return. Thereafter, the Affiliated General Partner is then allocated a greater portion of the gains until it has received a specified portion of the cumulative distributions. Thereafter, gains are generally shared on an 80% / 20% basis between Investors and the Affiliated General Partner.

### B. Payment of Fees

It should be noted that the fees paid by Investors are negotiable prior to an investment being made in the Fund, Encore, or the Affiliated General Partner has the ability to waive or reduce the fees. Encore, or the Affiliated General Partner, deducts fees applicable to the applicable Fund (and Investors) directly from the Funds’ assets. Clients and Investors do not have the ability to choose to be billed directly for fees incurred. The Management Fee is payable quarterly in advance and the Carried Interest is made pursuant to the detailed terms as described in the respective Fund’s governing documents.

It should be noted that Management Fees and/or Carried Interest may and have been waived by Encore, as applicable, in certain cases. Affiliated persons of Encore are generally not subject to such fees/allocations.

**It is critical that Investors refer to the relevant confidential private placement memorandum or other governing documents for a complete understanding of how fees are paid to Encore, or an Affiliated General Partner. The information contained herein is a summary only and is qualified in its entirety by such documents.**

### C. Other Advisory Client Fees and Expenses

The Funds are responsible for all expenses related to the operation of the applicable Fund, including fees, costs and expenses directly related to the purchase, holding and sale of investments in portfolio companies, expenses of any administrators, consultants (including operating executives, described

below), custodians, counsel and accountants (including the audit and certification fees), any insurance, indemnity or litigation expense, the out-of-pocket expenses of the advisory board, certain taxes and any fees or other governmental charges levied against the relevant Fund. In addition, each Fund will pay any unreimbursed expenses for transactions not completed (i.e. “broken deals”), including amounts payable to third parties and all fees and expenses of lenders, investment banks and other financing sources in connection with arranging financing for transactions which are not consummated, and any deposits or draw-down payments which are forfeited in connection with unconsummated transactions.

Each Fund bears all expenses associated with the organization of such Fund in connection with marketing, formation, staffing and organization of such Fund, up to a maximum as detailed in the respective offering documents of the Fund.

If any Fund expenses are associated with two or more Funds, such expenses will typically be allocated according to the aggregate capital commitments of the applicable funds. In circumstances where one or more Funds invest alongside a Fund into a specific investment, direct costs pertaining to such investment will typically be allocated based on the relative share of invested capital in such investment of the Fund or the applicable Encore Vehicles.

In addition, Encore or the Affiliated General Partners may receive certain transaction fees, advisory fees, director’s fees, break-up fees or other similar fees in connection with portfolio investments of the Funds as compensation for financial advisory and similar services provided to the Funds’ Portfolio Companies.

The Management Fees payable by the Funds may be offset by a portion (typically 50%) of such fees pursuant to the terms of the applicable fund’s limited partnership agreement or other offering document. As noted above, the Encore Vehicles do not pay management fees, and as a result, there is no offset with respect to fee income attributable to portfolio investments held by Encore Vehicles. These fees, and the associated conflicts of interest they present, are further described in Item 11 below.

Encore and its affiliates engage and retain certain senior executives, advisors, consultants, and other similar professionals (“Operating Executives”) who are not employees or affiliates of Encore but provide advice and assistance with respect to identifying, analyzing, and working with the companies in which the Funds invest and who may receive payments from the Funds and/or portfolio companies. These payments will not be subject to the Management Fee offset described above. Please refer to Item 10 for additional information relating to the conflicts of interest presented by such arrangements.

Please refer to Item 12 of this Brochure for information regarding Encore brokerage practices.

It is critical that Investors refer to the relevant confidential private placement memorandum and/or other governing documents for a complete understanding of expenses they may pay through an investment in the Funds. The information contained herein is a summary only and is qualified in its entirety by such documents.

#### **D. Advance Payment of Fees**

As noted above, Management Fees applicable to Investors are paid quarterly in advance to Encore or its affiliates.

Investors may not terminate advisory contracts prior to the end of a billing period because they may not withdraw from their respective Fund prior to dissolution and may not transfer any of their interest rights or obligations under the Fund without the prior written consent of Encore or the applicable Fund's Affiliated General Partner. As such, there is no need for a refund mechanism.

The Management Fee obligation of a Fund may be terminated only in connection with the dissolution of that Fund and or certain limited circumstances including legal or regulatory issues. Pursuant to the respective management agreement, in the event of an early termination, a pro-rated portion of the Management Fees paid in advance of the fiscal quarter in which such termination occurs would be returned to the applicable Fund.

**E. Access Persons Compensation for Sale of Securities**

Not applicable to Encore.



## **ITEM 6 - PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

As described in Item 5 above, an affiliate of Encore may receive performance-based allocations and distributions from the Funds in the form of Carried Interest, which is calculated based on the profits generated on the sale or disposition of Fund assets, together with the current income generated by such assets (subject to certain limitations set forth in the applicable each limited partnership agreement or operating agreement).

It should be noted that the possibility an affiliate of Encore may receive Carried Interest creates a potential conflict of interest in that it may create an incentive to make investments that are riskier or more speculative than in the absence of such compensation arrangements. Investors are provided with clear disclosure as to how Carried Interest is charged with respect to each Fund and the risks associated with such Carried Interest prior to making an investment. Please see Item 10 and Item 11 for disclosure as to how this conflict is addressed.

## **ITEM 7 – TYPES OF CLIENTS**

Encore provides investment advisory services to the Funds, as described in Item 4. During the periods of time when the Funds are open to new Investors, the Funds are open only to Investors meeting certain suitability requirements. In addition, the Funds required and do require a significant minimum capital commitment.

## **ITEM 8 – METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

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

The following summarizes the methods of analysis and investment strategies used by Encore in formulating investment advice. There can be no assurance that Encore and the Funds will achieve their investment objectives or that the investment strategies employed by Encore will be successful.

Encore seeks to employ a disciplined investment process to review, evaluate, and eventually approve potential investment opportunities. In many cases Encore sources deals directly. Primary responsibility for each transaction lies with the deal team, which usually consists of three Encore professionals, led by a Managing Director. When a potential investment is identified that fits Encore's criteria, a deal team may be formed to conduct an initial review of the company including its market position, major customer relationships, growth prospects, profitability, and management team strength. If the team determines that the opportunity is attractive, a summary may be completed and presented to Encore's investment staff. If this meeting results in a consensus to move forward, the deal team may submit an indication of interest letter (including an initial indication of value) to the target company or intermediary representing that company.

Encore believes that adding value to portfolio companies post-investment is a core competency of Encore and will be the key driver in generating superior investment returns. Encore will seek to take a hands-on approach to managing portfolio companies, with frequent and open communication with management teams. Encore believes its focus and experience in the consumer products industry allows Encore to leverage the industry knowledge of its Principals and employees in seeking to create equity value throughout the life of each portfolio investment.

The managing directors and deal teams lead investment due diligence efforts and enlist an outside network as appropriate to evaluate each company. The team may identify key business drivers, develop an investment thesis that includes a detailed strategic plan for the company post acquisition, and work rapidly to execute that strategy.

The managing directors and deal teams seek to be deeply involved in, and bring broad experience to, strategic decision making at the portfolio company level. Throughout the life of each investment, Encore intends to actively monitor detailed financial and operating results, and be a visible, hands-on owner in close interaction with management.

**As a general matter, Encore utilizes the methods of analysis and investment strategies described in the Funds' governing documents provided to all Investors prior to the time of an investment. The information contained herein is a summary only and Investors and prospective Investors should refer to the respective Fund's governing documents for a complete overview of Encore's methods of analysis and investment strategies.**

### **B. Material Risks of Investment Strategies and Methods of Analysis**

#### **General Investment Risks**

Prospective Investors should carefully consider, among other factors, the matters described below, each of which could have an adverse effect on the value of the Interests in the Funds.

The types of investments that the Encore Funds make involve a high degree of risk. In general, financial and operating risks confronting portfolio companies can be significant. While targeted returns should reflect the perceived level of risk in any investment situation, there can be no assurance that the Funds will be adequately compensated for risks taken. A loss of an Investor's entire investment is possible. The timing of profit realization is highly uncertain. There can be no assurance that Investors in a Fund will receive distributions from such Fund in an amount equal to their investment(s). Losses are likely to occur early in a Fund's term, while potential successes often require a long maturation. Encore or its affiliates identify potentially successful business enterprises, a process that is difficult even for those with extensive experience investing in such enterprises. Portfolio companies may operate at a loss or with substantial variations in operating results from period to period and may require substantial additional capital to support expansion or to achieve or maintain a competitive position. The environment for private equity investments is increasingly competitive and an Investor should only invest in the Funds if the Investor can withstand the liquidity constraints of an investment in the Fund and a total loss of its investment.

### Consumer Products Industry

The North American consumer products industry, which is the investment focus of Encore, is very competitive, and characterized by a large number of competitors. Market success is subject to a number of factors, many of which lie outside the control of the Encore, its Funds, and the Funds' portfolio companies. In addition, such portfolio companies may face competition from a number of other companies, including ones with much greater financial and other resources. Portfolio companies may ultimately be unsuccessful in gaining significant market position or an anticipated market opportunity may not develop as expected. In either case, the Funds' investment results may be affected in a materially adverse manner.

### Illiquid and Long-Term Investments

Investment in the Funds requires a long-term commitment, with no certainty of return. Investment in the Funds is suitable only for certain sophisticated investors that have no need for immediate liquidity in their investment and who understand that they may lose all or a significant portion of their invested capital. There is unlikely to be much or any near-term cash flow available to Investors. Generally, the Funds' investments will be highly illiquid, and there can be no assurance that a Fund will be able to realize on such investments in a timely manner. Distributions in kind of illiquid securities to the Investors may be made. Although certain investments by a Fund may generate current income, the return of capital and the realization of gains, if any, from an investment generally will occur only upon the partial or complete disposition of such investment. While an investment may be sold at any time, any such sale will occur typically a number of years after the investment is made. The Funds will generally not be able to sell securities of its portfolio companies unless such sale is registered under applicable securities laws, or unless an exemption from such registration requirements is available. In addition, in some cases the Funds may be prohibited by applicable law, contract or otherwise from selling certain securities for a period of time. Additionally, the realizable value of a highly illiquid investment may be less than its intrinsic value. A variety of factors (including economic conditions, asset conditions, political and regulatory considerations and public opinion) could affect the ability of a Fund to buy or sell investments on favorable terms. An Investor generally will not be permitted to withdraw from a Fund or excused from participation in any Fund investment unless such participation would cause such Investor to violate applicable law.

### Contingent Liabilities Following Dispositions

In connection with the disposition of an investment, a Fund may be required to make representations about the business and financial affairs of a target portfolio company, representations typical of those made in connection with the sale of any business. The Funds also may be required to indemnify the purchasers of such investment with respect to certain matters, including the accuracy of such representations. These arrangements may result in contingent liabilities, for which the Funds may establish reserves or escrow arrangements and such liabilities may result in Investors being required to return distributions to satisfy such obligations. Furthermore, under the Delaware Revised Uniform Limited Partnership Act, each Investor that receives a distribution in violation of such Act will, under certain circumstances, be obligated to return such distribution to a Fund.

#### Indemnification

Encore, its affiliates, members, partners, shareholders, directors, officers, employees, and agents each of them and any other person who serves on the Advisory Board or on behalf of the Fund as an officer, director, partner, employee or agent of any other entity, will be entitled to indemnification from the Funds from and against all liabilities to which they may be or may become subject by reason of their activities on behalf of the Funds, except in certain limited circumstances. As a result, the Funds and the Investors may have a more limited right of action against these persons than they might otherwise have. The assets of the Funds will be available to satisfy these indemnification obligations, and Investors may be required to return distributions to satisfy such obligations. Such obligations will survive the dissolution of a Fund. Encore and its affiliates may cause a Fund to purchase insurance, at the Fund's expense, against such liability in connection with the activities of the Fund. There is no assurance that such insurance will be available or obtained in sufficient amounts to cover any such liabilities.

#### Leverage

The Funds' investments are expected to include companies whose capital structures may have significant leverage. Such investments are inherently more sensitive to declines in revenues and to increases in expenses and interest rates. Although Encore will seek to use leverage in a prudent manner, the leveraged capital structure of such investments will increase the exposure of the portfolio companies to adverse economic factors such as downturns in the economy or deterioration in the condition of the portfolio company or its industry. Additionally, the securities acquired by a Fund may be the most junior in what will typically be a complex capital structure, and thus subject to the greatest risk of loss.

#### Bridge Financing

The Funds may provide bridge financing in connection with one or more of its investments. Such bridge financing is intended to be of a temporary nature in the form of debt or equity, including debt issued on a short-term, unsecured basis, in anticipation of a future issuance of equity or long-term debt securities or other refinancing or syndication. Funds will bear the risk of any changes in capital markets, which may adversely affect the ability of a portfolio company to refinance any bridge investments. If the portfolio company were unable to complete a refinancing, a Fund could have a long-term investment in a junior security or that junior security might be converted to equity. If the bridge financing were to remain outstanding, the returns on such bridge financing may not adequately reflect the risk associated with the investments made by a Fund.

#### No Market for Interests; Restrictions on Transferability and Withdrawal

Fund interests have not been registered under the Securities Act or the securities laws of any state or other jurisdiction and cannot be resold unless they are subsequently registered under the Securities Act and other applicable securities laws or an exemption from registration is available. It is not contemplated that registration of the interests under the Securities Act or other securities laws will ever be affected. There is no public market for the interests, and none is expected to develop. An investor will also generally not be permitted to assign Fund interests without the prior consent of the Encore or its affiliates, which may be withheld in their sole discretion. Transfer of an Investor's interest will not necessarily relieve such investor of its obligations in respect of its unpaid Commitment. Any credit facility of a Fund, which may be secured by a pledge of unpaid Commitments, may impose additional restrictions on the transferability of Interests in a Fund. Investors may not withdraw capital from a Fund. Consequently, Investors may not be able to liquidate their interests prior to the termination of a Fund and must be prepared to bear the risks of owning Fund interests for an extended period of time.

#### Reliance on Key Personnel

The investment decisions of the Funds are made exclusively by Encore. Encore's operations are substantially dependent upon the skill, judgment, and expertise of certain key personnel and its employees or agents. The death, disability, departure, or other unavailability of any key personnel could have a material and adverse effect on the Funds managed by Encore. Accordingly, Investors must be willing to entrust all management aspects of the Funds to Encore.

#### Cybersecurity

Encore and its Funds generally rely on information technology systems for current and planned operations. Encore's information and technology systems may be vulnerable to damage and interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. If any systems designed to manage such risks are compromised, become inoperable for extended periods of time or cease to function properly, Encore or the Funds may have to make a significant investment to fix or replace them. Any disruption in any of these systems or the failure of any of these systems to operate as expected could, depending on the magnitude of the problem, adversely affect a Fund's investment results and its ability to make distributions to Investors. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in Encore's and/or the Fund's operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors (and the beneficial owners of investors). Such a failure could harm Encore or the Fund's reputation, subject them to legal claims and otherwise affect their business and financial performance.

#### Force Majeure

Portfolio investments may be affected by force majeure events (i.e., events beyond the control of the party claiming that the event has occurred, including, without limitation, acts of God, fire, flood, earthquakes, outbreaks of an infectious disease, pandemic or any other serious public health concern, war, terrorism, labor strikes, major plant breakdowns, pipeline or electricity line ruptures, failure of technology, defective design and construction, accidents, demographic changes, government macroeconomic policies, social instability, etc.). Some force majeure events may adversely affect the ability of a party (including a portfolio company or a counterparty to an Encore Fund or a portfolio company) to perform its obligations until it is able to remedy the force majeure event. These risks could, among other effects, adversely impact the cash flows available from a portfolio company,

cause personal injury or loss of life, damage property, or instigate disruptions of service. In addition, the cost to a portfolio company or an Encore Fund of repairing or replacing damaged assets resulting from such force majeure event could be considerable. Force majeure events that are incapable of or are too costly to cure may have a permanent adverse effect on a portfolio company. Certain force majeure events (such as war or an outbreak of an infectious disease) could have a broader negative impact on the world economy and international business activity generally, or in any of the countries in which Encore Funds would invest. Additionally, a major governmental intervention into industry, including the nationalization of an industry or the assertion of control over one or more portfolio companies or its assets, could result in a loss to Encore Funds, including if the investment in such portfolio companies is canceled, unwound or acquired (which could be without adequate compensation).

#### Side-Letters

Encore and its affiliates are authorized to enter into side letters or similar written agreements with Investors that have the effect of establishing rights under, or altering or supplementing the terms of the applicable Fund Agreement, including without limitation to provide for different or more favorable fees, access to information about the Fund's investments, or other matters relating to an investment in the applicable Fund. The ability of other Investors to elect to receive the benefit of such side agreements will be limited.

#### Co-Investments

Encore, from time to time, serves as an investment manager to certain co-invest vehicles that invest alongside the Funds in certain portfolio companies. Certain Encore affiliates and Encore personnel, third party investors and other persons may be permitted to participate in the co-invest vehicles. In circumstances where an entire investment could be made by a Fund, Encore may still allocate a portion of such investment to one or more co-invest vehicles or other co-investors in accordance with the applicable Fund Documents and Encore's investment allocation policy if Encore believes in its good faith judgment that the full investment by the Fund would not be in the best interests of the Fund or that a particular co-investor would add value to the Fund or the investment. Investors that participate in co-investments may be in a position to obtain additional information regarding the applicable portfolio company that may not generally be available to investors in the applicable Fund.

#### Lack of Operating History for New Funds

Encore may sponsor and manage new funds in the course of its advisory business. Newly established Funds maintain shorter operating histories and therefore maintain a limited track record upon which prospective investors may evaluate its performance. The prior investment performance of the predecessor Funds and the Encore do not necessarily represent the prior performance of the investment program to be pursued by a new Fund and may not be indicative of the future results of a new Fund. Although the Encore has prior experience relating to the acquisition and financing of private companies and in investments similar to those to be made by the Funds, newly established Funds have no operating history and no basis upon which an evaluation of their prospects can be made. As with all performance data, past performance can provide no assurance of future results.

#### No Assurance of Investment Return

No guarantee or representation is made that the Funds' investment program will be successful.

The performance of prior investments made by the predecessor Funds, and Encore, is not indicative of future results. While Encore intends to make investments that have estimated returns commensurate with the risks undertaken, there can be no assurance that the historical internal rate of return (“IRR”) generated by prior investments made by predecessor Funds and Encore will be achieved. Encore and its affiliates cannot provide assurance that it will be able to choose, make and realize investments in any particular company or group of companies. There is no assurance that the Funds will be able to generate returns for Investors or that the returns will be commensurate with the risks of investing in the type of assets, companies, industries and transactions.

**Investors and prospective Investors are provided with a confidential private placement memorandum that contains a detailed description of the material risks related to an investment in the Funds and are advised to carefully review all risk factors set forth in the relevant confidential private placement memorandum.**



## **ITEM 9 – DISCIPLINARY INFORMATION**

Encore is required to disclose all material facts regarding any legal or disciplinary events that would be material to an Investor's evaluation of Encore or the integrity of Encore's management.

Encore has no legal or disciplinary information to disclose at this time.

## **ITEM 10 – OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

Neither Encore, nor its management persons are registered or have an applicable pending to register as a broker-dealer or a registered representative of a broker-dealer

Neither Encore, nor its management persons are registered, or have an applicable pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or an associate person of the forgoing.

Encore is not of the view that it has any material relationships or arrangements with any related person listed above. Notwithstanding the prior sentence, Encore is of the view that the following should be noted:

1. Affiliated General Partners of Encore serves as general partners to the Funds and in connection therewith maintain investments in the Funds.
2. As described elsewhere in this Brochure, Encore generally seeks to make significant investments in portfolio companies. Encore typically seeks control or substantial minority positions in portfolio companies, with board representation and customary shareholder rights. As such, Encore's management persons may have management roles with portfolio companies.
3. As described elsewhere in this Brochure, Encore has in the past, and may in the future, have unaffiliated strategic relationships with co-investors who invest alongside Encore in portfolio companies. Encore is of the belief that such strategic relationships do not disadvantage the Funds.
4. As discussed in Item 5 above, Encore and its affiliates engage and retain Operating Executives and Operating Partners and other similar professionals who are not employees or affiliates of Encore but who may receive payments from the Funds and/or portfolio companies in exchange for providing advice and/or assistance with respect to due diligence of potential investments as well as being actively involved in various stages of the monitoring and value creation process for portfolio companies. Amounts paid to such persons will not be subject to the Management Fee offset (as described in Item 5 above).

Encore does not recommend or select other investment advisers for compensation.

## **ITEM 11 – CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

### **A. Code of Ethics**

Encore's Code of Ethics (the "Code") is designed to meet the requirements of Rule 204A-1 of the Investment Advisers Act of 1940 (the "Advisers Act"). The Code applies to Encore's "Access Persons." Access Persons include, generally, any member, officer or director of Encore and any employee or other Access Person of Encore who, in relation to the Funds (1) has access to non-public information regarding any purchase or sale of securities, or non-public information regarding securities holdings or (2) is involved in making securities recommendations, executing securities recommendations, or has access to such recommendations that are non-public. All Encore employees are deemed to be Access Persons. In addition, certain other individuals may also be deemed to be Access Persons.

The Code sets forth a standard of business conduct that takes into account Encore's status as a fiduciary to the Funds and requires Access Persons to place the interests of Funds above their own interests and the interests of Encore. The Code requires Access Persons to comply with applicable federal securities laws. Further, Access Persons are required to promptly bring violations of the Code to the attention of Encore's Chief Compliance Officer. All Access Persons are provided with a copy of the Code and are required to acknowledge receipt of the Code upon hire and on at least an annual basis thereafter.

The Code also sets forth certain reporting and pre-clearance requirements with respect to personal trading by Access Persons. Access Persons must provide Encore's Chief Compliance Officer with a list of their personal accounts and an initial holdings report listing the holdings of such personal accounts within 10 days of becoming an Access Person. In addition, Encore's Access Persons must provide annual holdings reports and quarterly transaction reports detailing, respectively, the holdings and quarterly transactions in their personal accounts in accordance with Advisers Act Rule 204A-1.

The Code also describes Encore's duty to protect material non-public information about securities/investment recommendations provided to (or made on behalf of) advisory clients. Underlying these policies and procedures are two primary principles. First, confidential information must be maintained in confidence. Second, employees of Encore who possess non-public information, whether or not it is material, must not trade in the securities affected by such information, must not disclose such information to anyone who does not have a legitimate need to know it and must immediately disclose such information to the Chief Compliance Officer.

Investors or prospective Investors may obtain a copy of the Code by contacting the Chief Compliance Officer at [lee@encoreconsumercapital.com](mailto:lee@encoreconsumercapital.com)

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

As explained in Item 10 above, the Affiliated General Partners, which are owned by the Principals and are related persons to Encore, serve as the general partners of the Funds. These Affiliated General Partners also commit capital to the Funds, and as a result every investment made by a Fund involves a purchase of securities whereby related persons of Encore indirectly acquire an indirect interest in such securities. Encore's Principals and employees may also invest directly in certain of the Funds.

Encore's Principals and employees also invest indirectly in the Funds through the Encore Vehicles or the Affiliated General Partners. Such investments generally are not subject to the management or performance-based fees described in Item 5 above.

### **C. Conflicts of Interest**

The fact that Encore's Principals and employees have financial ownership interests in the Funds creates a potential conflict in that it could cause Encore to make different investment decisions than if such parties did not have such financial ownership interests. Such potential conflicts are addressed by the personal securities transaction pre-clearance and reporting requirements described in Item 11.

Encore seeks to address these potential conflicts through regular monitoring of the Funds' portfolios for consistency with objectives and strategies. Further, the Principals carefully consider the risks involved in any investments and Encore provides extensive disclosure to Investors regarding the potential risks that come with an investment with Encore. As stated above, the Code requires Access Persons to place the interests of the Funds over their own or those of Encore, and all Access Persons are required to acknowledge their receipt and understanding of the Code.

Further, Encore receives a Management Fee and the applicable Fund's Affiliated General Partner receives performance-based compensation. The Management Fees are payable without regard to the overall success or income earned by the Funds and therefore may create an incentive on the part of Encore to raise or otherwise increase assets under management to a higher level than would be the case if Encore were receiving a lower or no management fee. Performance-based fees may create an incentive for Encore to make investments that are riskier or more speculative than in the absence of such performance-based fees.

In addition, as noted in Item 5 above, because the Encore Vehicles do not pay management fees, Encore may have an incentive to allocate more fee income to Encore Vehicles since such amounts will not be subject to the Management Fee offset applicable to the Funds (as described above).

#### **Allocation of Investment Opportunities**

Encore has adopted allocation policies and procedures that seek to ensure that investments (and any fees and expenses related to such investments) are allocated among Advisory Clients in a fair and equitable manner.

Generally, investment opportunities will be allocated based on each participating Fund's available capital. In cases where investments are split between two Funds, Encore will determine the proper allocation method based on the best interest of the Funds. Encore will document such allocations as needed. Encore will disclose the allocation to investors in both Funds and will seek comments from each Funds investor advisory board with respect to the allocation rationale.

Encore's Access Persons are permitted to make certain securities transactions in their Personal Accounts. This presents potential conflicts in that an employee could make improper use of information regarding a Fund's holdings or future transactions or research paid for by the Funds. Although unlikely, an Access Person could theoretically take for himself or herself an investment opportunity available to a Fund.

Encore manages the potential conflicts of interest inherent in Access Person personal trading by rigorous enforcement of its Code, which contains strict pre-clearance and reporting guidelines for Access Persons.

Encore requires that Access Persons pre-clear certain transactions with the Chief Compliance Officer. Further details are available in the Code which is available to Investors upon request.

Encore maintains a “Restricted List” with the names of issuers of securities about which Encore or its affiliates (including Access Persons) have learned material, non-public information. In order to minimize the risk of improper transactions, all publicly-traded affiliates of portfolio companies, will be placed on the Restricted List. Encore may also place certain public companies that do business with the portfolio companies on the Restricted List as needed. Access Persons are strictly prohibited from trading securities on the Restricted List.

In addition, Encore receives transaction and holdings reports in accordance with Advisers Act Rule 204A-1. The Chief Compliance Officer or her designee also reviews Access Persons’ personal transaction and holdings reports to make sure each Access Person is conducting his or her personal securities transactions in a manner that is consistent with the Code.

## **ITEM 12 – BROKERAGE PRACTICES**

Not applicable to Encore. As a general matter, Encore invests in private transactions that are not executed on an exchange and does not utilize investment broker-dealers. Encore does not receive soft dollar benefits, utilize capital introduction, permit client-directed brokerage or aggregate client trades. If this were to change in the future, Encore would amend this Brochure to explain such practice.

## **ITEM 13 – REVIEW OF ACCOUNTS**

### **A. Review of Client Accounts**

Encore's client accounts are under continuous review by the Principals of Encore. Such reviews include a review of investment performance, the suitability of the investments used to meet policy objectives, and investment objectives. Encore considers, among other things, investment performance, the portfolio's sensitivity to market changes, and whether anything has changed subsequent to an initial investment decision that impacts the risk or potential return.

### **B. Advisory Client Reporting**

Each Investor in the Funds will receive: (i) quarterly unaudited financial statements of the Funds; (ii) an annual financial report audited by an independent accounting firm that is registered with and subject to review and examination by the Public Company Accounting Oversight Board ("PCAOB"); (iii) tax information regarding the Fund necessary for the completion of each Investor's tax return; and (iv) semiannual reports providing summary financial information on each portfolio company.

## **ITEM 14 – CLIENT REFERRALS AND OTHER COMPENSATION**

### **A. Other Compensation for Provision of Investment Advice**

As noted above in Item 10, Encore may from time to time pursue unaffiliated strategic relationships with co-investors who invest alongside Encore in Portfolio Companies. Encore may, and has, received performance fees from such co-investors in relation to such investments. Encore is of the belief that such strategic relationships do not disadvantage the funds. If Investors have any further questions about such co-investments they should contact the Chief Compliance Officer at lee@encoreconsumercapital.com.

### **B. Compensation to Unsupervised Persons for Client Referrals**

Encore has engaged third-party placement agents to refer prospective Investors to Funds. All arrangements with placement agents must be approved by Encore's Chief Compliance Officer and Principals, and any approved placement agent must be an appropriately registered broker-dealer with the Securities and Exchange Commission, Financial Industry Regulatory Authority, and licensed in appropriate states. Placement agents are generally compensated based upon a percentage of capital committed to or invested in a Fund.

Encore does not currently maintain any traditional solicitor arrangements for client referrals and would ensure that all future arrangements comply with the relevant provisions of Rule 204-3 under the Advisers Act.



## **ITEM 15 – CUSTODY**

Encore, through the applicable Fund's Affiliated General Partner, is deemed to have custody over client assets by virtue of their status as investment manager or general partner to the Funds. All of the Funds' assets, save for certain uncertificated securities purchased in private transactions, are held with a "qualified custodian," as defined in the applicable custody rules, which generally includes a bank or broker-dealer.

To ensure compliance with Rule 206(4)-2 under the Advisers Act, Encore will provide Investors with audited financial statements for their respective Funds on an annual basis, generally within 120 days after the end of the relevant Fund's fiscal year. Such audited financial statements will be prepared by an independent accounting firm that is registered with and subject to review and examination by the PCAOB, and in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). Investors should carefully review the Funds' audited financial statements of the Funds and compare them to account statements they receive from the Adviser, custodian or administrator, as applicable.

## **ITEM 16 – INVESTMENT DISCRETION**

Encore has discretionary authority to manage securities accounts on behalf of the Funds. Encore is authorized to make transaction recommendations for the Funds. As explained in Item 4 above, each Fund's investment strategy is set forth in detail in such Fund's confidential private placement memorandum. Investors do not have the ability to impose limitations on Encore's discretionary authority. Investors must execute a subscription agreement in which they make various representations, including representations regarding their suitability to invest in a high-risk investment pool. Further, prospective Investors in the Funds are subject to a limited partnership agreement which includes a power of attorney.

## **ITEM 17 – VOTING CLIENT SECURITIES**

Encore understands and appreciates the importance of proxy voting. Encore has adopted proxy voting and procedures that are designed to ensure that when Encore votes proxies with respect to securities held on behalf of Funds, such proxies are voted in the Funds' best interests, in the judgment of Encore to the extent reasonably practicable. The procedures also require that Encore identify and address conflicts of interest between Encore, its related persons and its Funds. If a material conflict of interest is identified, Encore will determine whether voting in accordance with the guidelines set forth in the procedures is in the best interests of its Funds or whether taking some other action may be more appropriate.

Encore will occasionally receive proxies with respect to securities held on behalf of Funds. To the extent that Encore controls a Portfolio Company, such voting will not be required. However, there are situations where private companies could have proxy issues (e.g. a private company needs approval of Investors to make changes to board of directors, auditors, etc.). In such situations, Encore would have authority to vote proxies on behalf of Funds (assuming that Encore does not otherwise have control over the Portfolio Company and exercise such authority through control of the Portfolio Company's board of directors).

If a material conflict is identified, Encore will determine what course of action is in the best interests of the affected Investors (which may include utilizing an independent third party to vote such proxies). Further, Encore will determine whether it is appropriate to disclose the conflict to affected Investors and give such Investors the opportunity to vote the proxies in question themselves.

Encore keeps a record of its proxy voting policies and procedures, proxy statements received, votes cast, and each client request for proxy voting records and Encore's response for the previous five years.

Investors generally do not have the ability to direct proxy votes. Investors may obtain additional information regarding how Encore voted proxies and may obtain a copy of Encore's proxy voting policies and procedures by contacting the Chief Compliance Officer at [lee@encoreconsumercapital.com](mailto:lee@encoreconsumercapital.com).

## **ITEM 18 – FINANCIAL INFORMATION**

Encore is not currently aware of any financial condition that is reasonably likely to impair its ability to meet contractual commitments to Funds or Investors.

Encore has not been the subject of any such bankruptcy petition.